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DUBLIN: PRINTED BY JOHN FALCONER, 53 UPPER SACKVILLE-STREET.

PREFACE TO THE THIRD EDITION.

IN the ten years which have elapsed since the publication of the second edition of this work many alterations have been made in the law of land tenure in Ireland, both by legislation and by judicial decision. Seven new Acts of Parliament have been passed dealing with the subject, the most important of which—viz., the Land Law (Ireland) Act, 1896—I had the honour of editing, in conjunction with the present MR. JUSTICE BARTON, as a separate volume, in the year 1897. Two Statutes dealing exclusively with Land Purchase, since passed, and several Congested Districts Board Acts, as well as the Act of 1896, are included in the present volume with the earlier Acts, thus making a complete code of the Irish Land Laws down to the present date.

It is not alone by legislation that the law has been altered. The decisions of the Courts, though professing not to do so, are found insensibly to modify the principles of law in all its branches, and the law of landlord and tenant in Ireland is no exception to this rule. Reports of many more land cases now appear than was formerly the case. The valuable series of reports appearing in the *New Irish Jurist* and MR. GREER'S *Monthly Law Reports*, in addition to the *Irish Law Times* and the authorised Reports, furnish a continual supply.

I have followed the same rule in the present edition as on former occasions in noting these cases—namely, to refer to *all cases* decided by the Superior Courts and Land Commission, but only to those of the County Courts and Sub-Commissions which decide new points, upon which there is no authority in the judgments of Courts of higher position. The number of cases is now so great that

the practitioner is apt to be confused rather than assisted by a multitude of references; it is to the leading cases decided by Courts of the highest authority that he needs to be referred.

Altogether it will be found that about eight hundred cases, decided since the publication of the last edition, are referred to throughout the volume, making the total number of cases cited considerably over two thousand. All cases reported before October 1st, 1902, are referred to, either in the text or in the Addenda.

Changes have taken place, not only in the law, but in the practice and procedure of the Courts. The much-discussed "Fortieth Section" has led to the publication of an elaborate series of Rules in the Land Judge's Court. The ejectment Sections of the Act of 1896 rendered new Rules necessary, both in the High Court and County Courts, and the Land Commissioners have also found it necessary to issue completely new sets of Rules and Forms, both in their Rent-fixing and Land Purchase Departments. A new edition of the book, it will therefore be seen, would, in any event, have been required, even if the former editions had not been for some years out of print, and all the new Rules and Forms are, of course, included in the present volume.

In order to reduce to some extent the bulk of the volume, now becoming rather unwieldy for convenient use in Court, I have in the present edition omitted all Sections of the Acts which have been totally repealed. Though it is sometimes convenient to have these for reference, it is not often necessary to refer to them, and the disadvantages of printing them rather outweigh the advantages, as most of them are completely obsolete. Where a Section has only been partially repealed, on the other hand, the repealed portion will, in all cases, be found printed in italics, as it is frequently necessary, in order to rightly construe the unrepealed portion, to read the whole as originally enacted.

The only other alteration in the arrangement of the work which calls for reference is the addition of a complete Table of Forms to the other Tables at the beginning of the volume. This has been carefully arranged, according to the Court and Department in which the various Forms are authorised for use, so as to enable any particular one to be found with the least possible trouble when required.

In preparing the present edition (which I found to be a much more serious task than I thought it would be when I commenced it), I have especially to acknowledge the assistance I received from Mr. MAXWELL in the arrangement and annotation of the Rules, correction of proofs, and preparation of the Index. The latter will be found to be much larger and, I think, more accurate and complete than it was in former editions.

RICHARD R. CHERRY.

92 ST. STEPHEN'S-GREEN, DUBLIN,

October, 1902.

**Gokhale Institute of Politics
and Economics, PUNE 4.**

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Irish			British			Irish			British		
£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
0	0	1	0	0	1	1	0	0	0	18	5½
0	0	2	0	0	1½	2	0	0	1	16	11
0	0	3	0	0	2	3	0	0	2	15	4½
0	0	4	0	0	3	4	0	0	3	13	10½
0	0	5	0	0	4	5	0	0	4	12	3½
0	0	6	0	0	5	6	0	0	5	10	9½
0	0	7	0	0	6	7	0	0	6	9	2½
0	0	8	0	0	7	8	0	0	7	7	8½
0	0	9	0	0	8	9	0	0	8	6	1½
0	0	10	0	0	9	10	0	0	9	4	7½
0	0	11	0	0	10	11	0	0	10	3	1
0	1	0	0	0	11	12	0	0	11	1	6½
0	2	0	0	1	10½	13	0	0	12	0	0
0	3	0	0	2	9½	14	0	0	12	18	5½
0	4	0	0	3	8½	15	0	0	13	16	11
0	5	0	0	4	7½	16	0	0	14	15	4½
0	6	0	0	5	6½	17	0	0	15	13	10½
0	7	0	0	6	5½	18	0	0	16	12	3½
0	8	0	0	7	4½	19	0	0	17	10	9½
0	9	0	0	8	3½	20	0	0	18	9	2½
0	10	0	0	9	2½	30	0	0	27	13	10½
0	11	0	0	10	1½	40	0	0	36	18	5½
0	12	0	0	11	1	50	0	0	46	3	1
0	13	0	0	12	0	100	0	0	92	6	1½
0	14	0	0	12	11	200	0	0	184	12	3½
0	15	0	0	13	10½	300	0	0	276	18	5½
0	16	0	0	14	9½	400	0	0	369	4	7½
0	17	0	0	15	8½	500	0	0	461	10	9½
0	18	0	0	16	7½	1,000	0	0	923	1	6½
0	19	0	0	17	6½						

* Rents reserved in Irish leases made prior to the 5th January, 1826, are generally construed as meaning Irish currency, unless there are some circumstances to show that the parties contracted in British currency. See judgment of WOLFE, C.B., *Neville v. Ponsonby*, 1 I. L. R., at p. 217. And this is so, even though the amount is specified as "current and lawful money of Great Britain:" *Ex parte Keatinge*, I. R. 2 Eq. 26.

By the 6 Geo. IV., c. 79, the currency of Ireland was assimilated to that of Great Britain, and it was provided that as from the 5th January, 1826, when the Act came into force, all money transactions were to be in British currency (Sec. 1), and that contracts and debts in Irish currency made prior to that date were to be carried into effect and satisfied by payment in British currency of 12-13ths of the nominal amount according to Irish currency (Sec. 2).

COMPARATIVE TABLE OF STATUTE AND IRISH PLANTATION LAND MEASURE.*

STATUTE MEASURE REDUCED TO IRISH 1 Acre Statute = 617347 Irish				IRISH MEASURE REDUCED TO STATUTE 1 Acre Irish = 1.619835 Statute							
Statute			Irish			Irish			Statute		
A.	R.	P.	A.	R.	P.	A.	R.	P.	A.	R.	P.
0	0	1	0	0	6	0	0	1	0	0	1.6
0	0	2	0	0	1.2	0	0	2	0	0	3.2
0	0	3	0	0	1.9	0	0	3	0	0	4.9
0	0	4	0	0	2.5	0	0	4	0	0	6.5
0	0	5	0	0	3.1	0	0	5	0	0	8.1
0	0	6	0	0	3.7	0	0	6	0	0	9.7
0	0	7	0	0	4.3	0	0	7	0	0	11.3
0	0	8	0	0	4.9	0	0	8	0	0	12.9
0	0	9	0	0	5.6	0	0	9	0	0	14.6
0	0	10	0	0	6.2	0	0	10	0	0	16.2
0	0	20	0	0	12.3	0	0	20	0	0	32.4
0	0	30	0	0	18.5	0	0	30	0	1	8.6
0	1	0	0	0	24.7	0	1	0	0	1	24.8
0	2	0	0	1	9.4	0	2	0	0	3	9.6
0	3	0	0	1	34.1	0	3	0	1	0	34.4
1	0	0	0	2	18.8	1	0	0	1	2	19.2
2	0	0	1	0	37.6	2	0	0	3	0	38.3
3	0	0	1	3	16.3	3	0	0	4	3	17.5
4	0	0	2	1	35.1	4	0	0	6	1	36.7
5	0	0	3	0	13.9	5	0	0	8	0	15.9
6	0	0	3	2	32.7	6	0	0	9	2	35
7	0	0	4	1	11.4	7	0	0	11	1	14.2
8	0	0	4	3	30.2	8	0	0	12	3	33.4
9	0	0	5	2	8.9	9	0	0	14	2	12.6
10	0	0	6	0	27.8	10	0	0	16	0	31.7
20	0	0	12	1	15.5	20	0	0	32	1	23.5
30	0	0	18	2	3.3	30	0	0	48	2	15.2
40	0	0	24	2	31	40	0	0	64	3	6.9
50	0	0	30	3	18.8	50	0	0	80	3	38.7
60	0	0	37	0	6.5	60	0	0	97	0	30.4
70	0	0	43	0	34.3	70	0	0	113	1	22.1
80	0	0	49	1	22	80	0	0	129	2	13.9
90	0	0	55	2	9.8	90	0	0	145	3	5.6
100	0	0	61	2	37.6	100	0	0	161	3	37.4

* By 5 Geo. IV., c. 74, Sec 2, it is provided that the acre of land shall contain 4,840 square yards. This is the "statute acre," and if the word "acre" is used in any document, after 1st May, 1825, it is interpreted as meaning the statute acre. Extrinsic evidence is not admissible to show that it was intended to mean the Irish plantation acre: *O'Donnell v. O'Donnell*, 13 L. R. Ir. 226.

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ADDENDA.

N.B.—Readers are requested to cut out the notes of cases given below and to insert the slips in their proper places in the book. By doing so, the references to reported cases will be made complete to the end of September, 1902. For convenience of removal the notes are printed on one side of the page only.

- Page 8, line 5—After "*Hurly v. Hanrahan*, I. R. 1 C. L. 700," add, "See also *Nicholson v. Smyth*, 2 N. I. J. R. 78 (K. B. D.), where it was held that a tenancy was not created by payment of rent after the expiration of a lease, the rent having been received pending an appeal in the Land Commission Court and 'without prejudice to the appeal.'"
- Page 12, line 12—Add, "In *Butterly v. M'Kechnie*, 2 N. I. J. R. 222, it was held by the K. B. D. that, where one of two joint tenants entered into an agreement to grant a lease, and the other subsequently confirmed the letting by endorsement in the fold of the agreement, the subsequent confirmation dispensed with the necessity of proving a written authority to the first joint tenant to act as agent for the other, so as to satisfy the provisions of this section."
- Page 14, four lines from bottom—After "*In re O'Connor & Small's Contract*, 33 I. L. T. R. 43," add, "This case has, however, been overruled by the Court of Appeal in *Duckett v. Keene* (36 I. L. T. R. 111, 2 N. I. J. R. 226), where it was held, upon the construction of similar words in a lease, that the terms of lives and years were concurrent and not reversionary."
- Page 30, line 7—After "*Billing v. Welch*, I. R. 6 C. L. 88," add, "This case has now been overruled by the Court of Appeal in *M'Naul's Estate* [1902] 1 I. R. 114, 36 I. L. T. R. 45, 4 Greer 150, where the whole question as to the effect of covenants against alienation in fee-farm grants under the Renewable Leasehold Conversion Act was considered; and it was decided that a limited covenant restricting alienation, by making additional rent payable thereon, copied from the renewable lease, was rightly retained in the fee-farm grant made in pursuance of the Act, and that regard should be had to it in fixing the redemption price of the fee-farm rent, on a sale to an occupying tenant under the Land Purchase Acts."
- Page 51, after line 2—Add, "In *Buck v. Sullivan* (2 N. I. J. R. 164, 4 Greer 245) it was held that this section was retrospective, and applied to leases made before 1861 so far as regards rent which accrued due after the passing of the Act."
- Page 51, 13 lines from bottom—After "*Grogan v. Regan*, 35 I. L. T. R. 73, 1 N. I. J. R. 158," add, "Now also reported in the authorised reports [1902], 2 I. R. 196."
- Page 79, line 6—After "*Dennis v. Sweeny*, 34 I. L. T. R. 200," add, "See also to the same effect *Dunally v. Ryan*, 2 N. I. J. R. 163, 4 Greer 230. (BARTON, J.)"
- Page 81, line 5—Add, "Income Tax can, however, only be deducted by a tenant in respect of the rent payable to the landlord for the time being, not from rent which subsequently accrues due: 5 & 6 Vic., c. 35, s. 60 (9); 16 & 17 Vic., c. 34, ss. 5 & 40. *Bloomfield Land and Building Co. v. Lytle*, 2 N. I. J. R. 243. (WRIGHT, J.)"

- Page 92, after Sec. 50—Add, “Where a tenancy determines by disclaimer on bankruptcy this Section provides for payment to the landlord of an apportioned part of the rent from the last gale day to the date of adjudication. The amount payable is a debt recoverable, and, therefore, provable in the bankruptcy: *In re Leeks a bankrupt* [1902], 2 I. R. 339, 36 I. L. T. R. 74, 2 N. I. J. R. 113.”
- Page 99, line 6—After “*Wren v. Stokes*, 1 N. I. J. R. 137,” add, “Now also reported in the authorised reports [1902], 1 I. R. 167.”
- Page 130, 8 lines from bottom—Add, “See also, *Hussey v. Domville* (No. 2), 2 N. I. J. R. 238.”
- Page 131, line 10—Add, “Where premises are held under a special agreement enabling the tenancy to be determined by notice to quit, if the rent is unpaid for a certain time, the writ in ejectment founded on such a notice cannot be specially endorsed, nor can the plaintiff obtain final judgment thereon under Order XIV., rule 1, of the Rules of the Supreme Court: *Gleeson v. Keown*, 32 I. L. T. R. 150 (C. A.); *Conran v. M'Kittrick*, 2 N. I. J. R. 3 (K. B. D.).”
- Page 144, line 11—Add, “*Rex (Ryan) v. Justices of Co. Limerick*, 2 N. I. J. R. 2 (K. B. D.).”
- Page 163, end of note (a)—Add, “As to evidence of custom in leasehold cases, and the effect of sub-division and sub-letting upon the right of a tenant holding under the custom, see also *Smyth v. Nicholson*, 36 I. L. T. R. 159, 4 Greer 270 (C. C.).”
- Page 235, 9 lines from bottom—Add, “A sale will not be set aside merely because two holdings are included in one notice of intention to sell, where the landlord has no intention of exercising his right of pre-emption (*Connolly v. Stanhope*, 2 N. I. J. R. 205 [L. C.]), or where he has had an opportunity of purchasing and has omitted to avail himself of his rights under the Act (*Nugent v. Brennan*, 4 Greer 90 [L. C.]).”
- Page 245, line 10—After “*Coyle v. M'Fadden*, 1 N. I. J. R. 142,” add, “PALLES, C.B., has refused to follow this case, in so far as it decides that next-of-kin remaining in possession of a farm on the death of an intestate are joint tenants. He has decided that they are tenants in common in equity, until lapse of time turns their estate into a legal one: *Martin v. Kearney*, 2 N. I. J. R. 195. KENNY, J., takes the same view: *Mortshed v. Mortshed*, 36 I. L. T. R. 142.”
- Page 258, line 3—Add, “The purpose for which a landlord may be allowed to resume possession under this Section must be of a definite and permanent character. The Court refused to allow resumption for the purpose of an experiment in cattle breeding for the benefit of the estate and district: *Foy v. Montgomery*, 36 I. L. T. R. 123. An order to resume possession of portion of a holding which comprised the ruins of an ancient abbey was, however, made: *Filgate v. Balfour*, 4 Greer 143.”
- Page 267, 9 lines from bottom—After “*Gosford v. Alexander*, 35 I. L. T. R., at p. 107,” add, “This case is now also reported in the authorised reports [1902], 1 I. R. 139.”
- Page 270, end of note (e)—Add, “See also as to English-managed estates: *McClintock v. Currell*, 4 Greer 286 (L. C.).”
- Page 278, line 10—Add, “Where, on an application to fix a fair rent, it was proved that a holding had been deteriorated by the tenant's neglect, the Court adjourned the case for a year, to enable the tenant to restore the land to its proper condition: *Bunting v. Brown*, 4 Greer 335 (L. C.).”

- Page 307, end of note (h)—Add, "The order must be one which would enable the landlord to take possession of the entire holding. Where portion of the holding was sublet with the landlord's consent an application to resume was refused by TUCKER, A.L.C. : *Carden v. Cullinan*, 4 Greer 267 (S.C.)."
- Page 400, line 21—After "*Pilson v. Spratt*, 25 L. R. I. 5," add, "*Hickey v. Ronayne*, 35 I. L. T. R. 208."
- Page 403, line 24—Add, "The 5th Section of the Land Act, 1887 (now repealed), provided as follows:—'In case of an application to fix a judicial rent made before the gale day next following the passing of this Act, if the judicial rent is fixed at a lower rent than the rent previously payable, the tenant may deduct from the amount of the judicial rent payable by him such sum as he may have paid over and above the amount of the judicial rent in respect of the half-year expiring on the gale day aforesaid.' It has been held by BAILEY, A.L.C., that this provision had not the effect of making the statutory term run from the gale day *preceding* the passing of the Act in cases where an originating notice was served within the time limited : *Savage v. Henry*, 4 Greer. 316. The statutory term runs, in case of all applications made after the passing of the Act of 1887, from the gale day next succeeding the service of the originating notice : *M'Cann v. O'Neill*, 36 I. L. T. R. 95, 135, 2 N. I. J. R. 192, 262 (C. A.)."
- Page 415, line 20—Add, "*Donnellan v. Mahon*, 2 N. I. J. R. 264, 4 Greer 223 (L. C.)."
- Page 422, 9 lines from bottom—Add, "In *Fitzgerald's Est.* [1902], 1 I. R. 444, MEREDITH, J., stated that he would adhere to the rule laid down in *Earl of Portarlington's Est.* (33 I. L. T. R. 64), under which the redemption price of inappropriate tithe rentcharge is, in the absence of special circumstances, fixed at 20 years' purchase, even when the rentcharge has been reduced under the Tithe Rentcharge Act of 1900."
- Page 513, line 26—Add, "A question of some importance as to allowances for improvements in fixing fair rents for a second statutory term was raised before a sub-Commission in *M'Dermott v. Gormanston*, 4 Greer 311. (Judgment delivered 22 July, 1902.) It appeared that the tenant, on the fixing of the first judicial rent had not been allowed any deduction in respect of some improvements made by him owing to the fact that the 4th Section of the L. & T. Act, 1870, debarred him from claiming compensation therefor. It was contended on behalf of the landlord that this decision was an estoppel, and that in spite of the change in the law made by Sec. 1 (7) of the Act of 1896, no allowance could be made for them in any subsequent fixing of the rent. BAILEY, A.L.C., however, overruled this contention and decided that allowances for improvements on fixing rents for a second statutory term should be governed by the present state of the law, as altered by this Section."
- Page 524, line 13—Add (in list of holdings held to be non-agricultural), "A corn-mill, flax-mill, and 15 Irish acres : *Woods v. Heron* 4 Greer 306 (L. C.)."
- Page 530, line 4—Add, "*Donelan v. Mahon* (No. 2), 2 N. I. J. R. 265."
- Page 534, line 29—Add, "The onus of proving that a holding has been let to be used for the purpose of pasture is on the landlord : *Fawcett v. Morley*, 4 Greer 314 (L. C.)."
- Page 539, 2 lines from bottom—Add, "*Trustees of Convoey Reformed Presbyterian Church v. Boyton*, 2 N. I. J. R. 263, 36 I. L. T. R. 118 : 4 Greer 234."

- Page 540, line 17—Add, "In *Johnston v. Garvagh*, 4 Greer 172, the Land Commission ordered, under the Sub-section, the segregation of a hotel in a village from eleven acres of land outside it."
- Page 541, line 13—Add, "Where a tenant died and her two sons went into occupation of separate portions of her holding with the landlord's knowledge and worked each part separately, though the receipts were given in the name of the representatives of the original tenant, it was held by the Land Commission that the two sons were tenants in common within the meaning of the Land Act, 1896, Sec. 5 (3), and that the widow of one of them was entitled to have a fair rent fixed as regards the part separately occupied by her: *Curran v. Musgrave*, 2 N. I. J. R. 240: 4 Greer 291."
- Page 541, line 18—Add, "*Stanley v. Stubber*, 4 Greer 240."
- Page 545, lines 13 and 23—After *Cowell v. Buchanan*, add, "Decision of C. A. now also reported, 36 I. L. T. R. 166."
- Page 545, line 30—At end of note (b) add, "A good deal of difficulty has arisen in the interpretation of the words 'not being the dwelling in which the tenant for the time being resides,' in Land Act, 1896, Sec. 7 (1) a.; for obviously a house cannot be sublet, in which the tenant for the time being resides. The view adopted by the Land Commission is that where the principal dwelling-house on the holding—the dwelling-house in which the tenant would presumably live were he to reside on the holding—is sublet, the tenant is excluded from the Section; but that where there is a second dwelling-house on the holding, or an outhouse converted into a dwelling-house, this may be sublet without depriving the tenant of his rights under the Land Acts." See *Cairnes v. Dunville*, 4 Greer 188 (S. C.).
- Page 546, after note (f)—Add, "In *Nicholson v. Smyth*, (2 N. I. J. R. 78) it appeared that the Land Commission, in exercise of the jurisdiction conferred upon them by Land Act, 1896, Sec. 7 (1) b (ii), had decided that it was not reasonable to entertain a lessee's application to have a fair rent fixed, though it did not clearly appear that more than one-eighth of the holding was sublet. The K. B. D. subsequently held under these circumstances, in an ejectment brought at the expiration of the lease, that the lessee could not rely upon a tenancy having been created by virtue of the 21st Section of the Land Act, 1881, or by the receipt of rent after the expiration of the lease, pending the Land Commission proceedings, the rent having been expressly received 'without prejudice to the appeal pending in the Land Commission Court.'"
- Page 559, end of note (b)—Add, "But see, *contra*, *Jardine v. Dickenson*, 4 Greer 320 (L. C.)."
- Page 571, line 24—After note (g.), add "In fixing the redemption price of a superior interest, the test to apply is the market value of the rentcharge or annuity: 25 years' purchase of a well secured rentcharge is usually allowed; *Wakefield's Estate*, 2 N. I. J. R. 244 (MEREDITH, J.). The value of exceptions and reservations, such as mines, minerals, and timber must also be taken into account, if these are redeemed. Grantees under fee-farm grants are, however, usually entitled, under 5 Geo. III., cap. 17 (see App., *post*, p. 925), to all timber planted after the date of the original renewable lease, by them or their predecessors in title, even though unregistered under Sec. 3 of the same Act. The law as to this subject is fully discussed by MEREDITH, J., in *Moore's Estate*, 36 I. L. T. R. 14."
- Page 598, 6 lines from bottom—Add, "See also *Trustees of Convoy Reformed Presbyterian Church v. Boyton*, 36 I. L. T. R. 118: 4 Greer 234 (L. C.)."

THE
LANDLORD AND TENANT LAW AMENDMENT ACT
(IRELAND), 1860.

(23 & 24 VIC., CAP. 154.)

AN ACT TO CONSOLIDATE AND AMEND THE LAW OF LANDLORD AND
TENANT IN IRELAND. [28th August 1860.]

(Preamble repealed by Stat. Law Rev. Act, 1892.)

1. In the construction of this Act the following words and expressions shall have the force and meaning hereby assigned to them, unless there be something in the subject or context repugnant thereto: (a)

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Construction of
certain terms in
this Act.

The word "person" or "party" shall extend to and include any body politic, corporate, or collegiate, whether aggregate or sole, and any public company:

The word "Lease" (b) shall mean any instrument in writing, whether under seal or not, containing a contract of tenancy in respect of any lands, in consideration of a rent or return:

The word "Lands" (c) shall include houses, messuages, and tenements of every tenure, whether corporeal or incorporeal:

The word "Acre" shall mean statute acre:

The word "Landlord" (d) shall include the person for the time being entitled in possession to the estate or interest of the original landlord, under any lease or other contract of tenancy, whether the interest of such landlord shall have been acquired by lawful assignment, devise, bequest, or act and operation of law, and whether he has a reversion or not:

The word "Tenant" (e) shall mean the person entitled (f) to any lands under any lease or other contract of tenancy, whether the interest of such tenant shall have been acquired by original contract, lawful assignment, devise, bequest, or act and operation of law:

The expression "Perpetual Interest" (g) shall comprehend, in addition to any greater interest, any lease or grant for one or

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more than one life, with or without a term of years, or for years whether absolute, or determinable on one or more than one life, with a covenant or agreement by a party competent thereto, in any of such cases, whether contained in the instrument by which such lease or contract is made or in any separate instrument, for the perpetual renewal of such lease or grant.

The word "Rent" (*h*) shall include any sum or return in the nature of rent, payable or given by way of compensation for the holding of any lands:

The word "Agreement" shall include every covenant, contract, or condition expressed or implied (*i*) in any lease:

The word "County" shall extend to and include *a county of a city, a county of a town,** a city and county, and a riding of a county:

The expression "Chairman" shall mean the Chairman of the Quarter Sessions of the County, and shall extend to and include the Recorder of *the City of Dublin and Borough of Cork*, and the Recorder of any borough or town in Ireland under the Act passed in the third and fourth years of her Majesty's reign, intituled an Act for the Regulation of Municipal Corporations in Ireland, and their Deputies lawfully appointed.

The expression "Clerk of the Peace" shall extend to and include *the Registrar of the Chairman of the Quarter Sessions of the County of Dublin, so long as such Registrar shall continue in office, and the** Registrar of civil bills for the City of Dublin, and also the acting or Deputy Clerk of the Peace, or Registrar or other officer discharging the duties of such Clerk of the Peace or Registrar.

(a) Although this Act is not included in "The Land Law (Ireland) Acts" as defined by the 34th Sec. of the Land Act, 1887, or the 48th Sec. of the Land Act, 1896; and although there is no section in any of the latter Acts incorporating the definitions here given, still as it is *in pari materia* with the Acts of 1870 and 1881, it has been laid down by PALLES, C.B., that "all three must be construed together as one harmonious whole": *Ireland v. Landy*, 22 L. R. Ir., at p. 421. "Words which in the former Acts must be interpreted in any particular sense, unless there is something to the contrary in the subject matter to which they are applied by the latter Acts, or in the context in which they are found, ought to be construed in these latter Acts in the same sense" *Ibid.* This Act, however, it must be remembered, unlike the others, is not restricted to tenancies in agricultural or pastoral holdings, but applies generally to all cases in which the relation of landlord and tenant exists.

*The words in italics are repealed by Stat. Law Rev. Act, 1893 (No. 1).

• (b) The term "Lease" has by this definition a much wider signification than it previously had. Formerly a lease was required to be by deed (8 & 9 Vic., c. 106, s. 3), and it was necessary that a reversion should remain in the lessor, by whom also it was required that the deed should be executed. Now any contract in writing, whether under seal or not, for the taking of lands constitutes a lease. No reversion in the lessor is necessary, and the agreement need not be signed by him. In *Jago v. Harrington* (10 L. R. Ir. 335) it was held that an instrument creating a yearly tenancy, signed by the tenant only, was a "lease" within this definition. And a written agreement for a weekly tenancy appears also to be a lease. See *Dale v. Conolly*, 22 I. L. T. R., p. 54. But see also *O'Sullivan v. Ambrose*, 32 L. R. Ir. 102, 27 I. L. T. R. 45, which overrules *Dale v. Conolly* on other grounds. Sect. 1.
Lease.

A lease for a life or for a term of years is still, however, required to be signed by the landlord (Sec. 4). See notes to that sect., *post*, p. 11, and *Domville v. Brack*, 16 I. C. L. R. 167, 9 Ir., Jur. N. S. 265; *Lord Dunsandle v.* — 12 I. C. L. R., App. xv.

(c) At common law no legal estate could be created in an incorporeal hereditament save by grant under seal, but now "whatever is sufficient to create the relation of landlord and tenant in corporeal is sufficient also with respect to incorporeal hereditaments" *per* MONAHAN, C.J., *Bayley v. Marquis Conyngham*, 15 I. C. L. R., at p. 412. In that case it was held (CHRISTIAN, J., *diss.*) that a parol letting for one year of a several fishery was valid (15 I. C. L. R. 406, 8 Ir. Jur. N. S. 213), though in *Irish Society v. Crommelin* (I. R. 2 C. L. 324) it was considered doubtful whether an ejectment would lie for such. A shooting lease also appears to be within the provisions of this Act: *Downing v. Low*, 13 L. R. Ir. 553. And Sec. 57, *post*, speaks of an ejectment for non-payment for rent in respect of a lease of "tithes, tithe rent charge, or other ecclesiastical dues," which are undoubtedly incorporeal in their nature.

(d) The term "Landlord" may include a plurality of persons. Thus where a lessor, after making a lease, executed a deed by which he constituted himself and another person tenants in common of the land demised, it was held by the House of Lords that the two tenants in common constituted a "conjunct landlord," who, together could exercise any of the powers which belonged to the original landlord: *Liddy v. Kennedy*, L. R. 5 H. L. 134, I. R. 1 C. L. 105, 5 C. L. 314. "Any landlord," says LORD HATHERLEY, L.C., in that case, "means any person or persons, including the original lessor himself, who, by any subsequent deed or instrument derived from the original lessor, can assert a title to the land" (L. R. 5 H. L., at p. 145).

(e) "Tenant" similarly may include a number of persons holding separate parcels of the demised premises. See judgment of PALLIS, C.B., *Ireland v. Landy*, 22 L. R. Ir., at p. 421. Tenant.

As to the position of an assignee of portion of demised premises, see notes to Sec. 12, *post*.

(f) A tenant under this Act need not be an occupier, as under the Land Acts of 1881 to 1896. See Land Act, 1881, Sec. 57, *post*.

(g) As to the position of tenants entitled to a perpetual interest, as regards waste, see Sec. 25, *post*, and notes thereto.

(h) The word "Rent," according to this definition, means the full sum that is given as return for the letting of the lands. Thus where a lease recited that a dwelling house had been erected on the lands demised with money borrowed

Sects. 1-3. by the lessor from the Board of Works, and demised the lands subject to a fixed sum, and also so long as any sum should remain due on foot of said loan, subject to "the further yearly annual sum of £44 16s. 4d., or such other annual sum, be the same more or less, as should for the time being be payable to said Board in respect of said loan", it was held by the Q. B. D. that the annual instalment payable to the Board of Works thus made payable by the tenant to the landlord was a "rent" within the meaning of this definition. *Lloyd v Eves*, 34 I. L. T. R. 149 3 Greer L. "The division of a rent into two parts and the terminable character of one part are not inconsistent with the nature of the true rent, per GIBSON, J., 34 I. L. T. R., at p 150, citing *Ashtown v. White*, 11 Ir. L. R., 400, *Condon v. Haynes*, 9 I. O. L., App. 1. *Ex p. Vowsey*, L. R. 21 Ch. Div 442.

(i) As to what covenants and conditions are implied in a lease, see Sec 42, *post*.
As to the interpretation of various words and phrases in Acts passed after 1850, see Interpretation Act, 1889 (52 & 53 Vic., c 63).

Short Title.

2. In citing this Act it shall be sufficient to use the expression "The Landlord and Tenant Law Amendment Act (Ireland), 1860."

Contract of Tenancy.

Relation to rent on contract of parties.

3. The relation of landlord and tenant shall be deemed to be founded on the express or implied contract (*c*) of the parties, and not upon tenure (*a*) or service, and a reversion (*b*) shall not be necessary to such relation, which shall be deemed to subsist in all cases in which there shall be an agreement by one party to hold land (*d*) from or under another in consideration of any rent

(*a*) The effect of this section is to substitute an entirely different theory as the basis of the relationship of landlord and tenant for that which previously existed. The practical result is, however, not very different. "The intention of the Act of 1860," says FITZGERALD, B., "seems to have been to maintain the relation of landlord and tenant with its incidents, even though there was neither tenure nor service to support it, provided there was a contract to create the relation" *Gordon v. Phelan*, 15 I. L. T. R., at p. 72. This section, though it abolishes tenure and service, does not abolish rights such as distress which depend upon rent-service, accordingly, it has been held that the common law right to distrain the day after rent becomes due remains, even though the lease confers the right to distrain only when rent is in arrear for a space of time therein named: *Gordon v. Phelan*, 15 I. L. T. R. 70.

Reversion unnecessary

(*b*) Prior to the passing of this Act it was always necessary, in order that the relation of landlord and tenant should exist, that a reversion should remain in the landlord. Where a person who himself held for a term of years, or for lives, purported to sub-demise for the same period as that for which he himself held, or for a longer one, the instrument operated under the old law as an assignment, and not as a sub-letting. The rent reserved was, in contemplation of law, not a rent-service but a *rentcharge*, and the relation of landlord and tenant was not thereby created between the parties to the deed, but the person to whom the sub-letting was made became a direct tenant to the head landlord (see judgment of PALLES, C.B., *Ireland v. Landy*, 22 L. R. Ir., at p. 416) The middleman, under the old law, could not therefore maintain an ejectment for non-payment of rent. *Porter (lessee of) v. French*, 9 Ir. L. R. 514. And this is still

the law where both lease and sub-lease were made before Jan. 1st, 1861 (when this Act came into operation), and are for the same period; for it has been held that this section is not retrospective, and does not apply to contracts entered into prior to its being passed: *Chute v. Busteed*, 16 I. C. L. R. 222, 10 Ir. Jur. N. S. 363. In that case it was held, overruling the decision of the Court of Exchequer (14 I. C. L. R. 125, 8 Ir. Jur. N. S. 369), that a fee-farm grant made prior to the Act did not create the relationship of landlord and tenant, as no reversion was reserved to the grantor, and the grant was not made in pursuance of the Renewable Leasehold Conversion Act (12 & 13 Vic., c. 105). Where, however, a lessee under a lease made prior to 1860, made a sub-lease *after this Act came into force* for the same period as that for which he himself held, it was held that the relation of landlord and tenant was created notwithstanding that the middleman had no reversion: *Seymour v. Quirke*, 14 L. R. Ir. 97, 455.

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A fee-farm grant, however, even though it be an instrument whereby the relation of landlord and tenant is created under this section, passes the fee-simple in the lands to the grantee, subject to the payment of a rent. The grantor does not, by virtue of this section, retain any estate in fee in the lands (for there cannot be two fee-simples co-existing in the lands). He retains merely a statutable right to recover an estate in fee in certain events: *Irish Land Commission v. Holmes*, 32 I. L. T. R. 85 (Q. B. D.).

Fee-farm grant.

A tenant from year to year may make a valid letting for a term of years, and as the tenancy from year to year may last longer than the term, there is a reversion, under which, even independently of this section, an action of covenant can be maintained: *per DEASY, B., Wright v. Tracey*, I. R. 8 C. L., at p. 485.

(c) As tenure and service are now abolished, and are replaced by contract as the basis of the relation of landlord and tenant, "when we are obliged to determine for what period a tenant holds, we are bound to look to the agreement of the parties:" *per PALLES, C.B., Hodges v. Clarke*, 17 I. L. T. R., at p. 84. A lease "for ever" is perfectly valid; it creates the relation of landlord and tenant, although it operates as a fee-farm grant: *Twaddle v. Murphy*, 8 L. R. Ir. 123.

Contract, how construed.

Where a tenant has an agreement with his landlord that the landlord will not turn him out so long as he pays his rent, he has a right to remain in possession as long as the landlord's interest exists: *In re King's Leasehold Estates*, L. R. 16 Eq. 521. Thus, where by a contract in writing the landlord agreed that the tenant should not be disturbed in his holding "so long as the rent for which he has stipulated is paid, and so long as I (the landlord) am in possession of the premises myself," it was held that the agreement created a tenancy for the lessee's life, if the landlord's estate continued so long: *Wood v. Davis*, 6 L. R. Ir. 50. Though in *Holmes v. Day*, Ir. R. 8 C. L. 235, the Court of Common Pleas was equally divided as to the validity of a similar clause. Where, however, a proposal is made in one document effectual when accepted to create a yearly, monthly, or a weekly tenancy, as the case may be, with a proviso for its determination by notice to quit; and a promise is made in another document by the landlord undertaking not to dispossess the tenant so long as certain conditions are fulfilled, the terms of the first document are not so modified by the second as to prevent the landlord determining the tenancy by a notice to quit, or to convert it into a freehold estate: *March and Cliddorn v. Wilson*, 29 I. L. T. R., 133; *Cheshire Lines Committee v. Lewis*, 50 L. J. (Q.B.) 121: 44 L. T. 293.

See further on this point, *Harrison v. Rorke*, 12 I. L. T. R. 107; *Conolly's Estate*, I. R. 3 Eq. 339.

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A contract of tenancy, like any other contract, must be certain in its terms. In *Wood v. Beard* (2 Ex. D. 30) it was held that an agreement to let for as long as the landlord should have power to let the premises was void for uncertainty. If no sum for rent is agreed upon, or if it is agreed to let the rent be fixed by arbitration, and the arbitrators cannot agree, there is no tenancy created. *John v. Jenkins*, 1 Cr. & M. 227. Where, however, a tenant who had been evicted by a civil bill decree, but had remained in occupation pending the hearing of a claim for compensation, entered into an agreement with his landlord that he should "continue to hold as tenant from year to year" at a rent to be ascertained by three persons named, it was held that, although the persons named declined to act, as it was a question of the continuance, and not the creation of a tenancy, the agreement entitled the tenant to maintain an action of trespass against his landlord who had subsequently put him out of possession. *M'Creesh v. M'Geough*, 1 R. 7 C. L. 236.

Lettings by mortgagors.

It is not necessary that a landlord should have a good title to lands in order that he could create a tenancy in them. If a mortgagor in possession creates tenancies after the date of his mortgage, even though they are not within the powers conferred upon him by the 18th section of the Conveyancing Act, 1881, they will be perfectly valid as against him, though the mortgagee may not be bound by them in any way. *O'Rourke's Estate*, 23 L. R. Ir. 497. "If the mortgagee enters into the receipt of the rents, and continues to take them from the tenants, this is almost conclusive evidence of an agreement between the mortgagee and the tenant for a new tenancy from year to year on the terms of the old tenancy" *per* MONROE, J., 23 L. R. Ir., at p. 500. But prior to the passing of the Land Act, 1896, it was held that a new tenancy was not created between the mortgagee and the tenant merely because the latter took no active steps to disavow a tenancy created by the mortgagor. *Ibid.*, p. 501. The mortgagee was not bound by the tenancy at all unless or until he chose to adopt it. If he accepted rent from the tenant of the mortgagor, that was held to be, *per se*, only evidence of a new tenancy from year to year between the mortgagee and the tenant, but where the tenant held under a lease from the mortgagor, evidence might have been given that the mortgagee had shown an intention to deal with the lessee as holding under the lease; and in that event the lease was held to be binding on him. *Roulston v. Caldwell* [1895], 2 I. R. 136 (C A) Reversing the L. C. 28 I. L. T. R. 99. Lettings made by the mortgagor, prior to the mortgage were in all cases binding upon the mortgagee as assignee of the reversion, but save as above stated, if such lettings were made after the date of the mortgage, they were not. This is still the law as regards all non-agricultural holdings, and other holdings excluded from the Land Acts, 1881 to 1896, but by the 10th section of the Land Act, 1896, all tenancies created by a mortgagor in possession are binding upon the mortgagee, except in cases of fraud, collusion, or letting at a gross under-value see that section and notes thereto, *post*.

An arranging debtor whose estate has vested in his assignees under Secs. 349 and 350 of the Bankruptcy (Ireland) Act, 1857, is in the same position as regards creating tenancies as a mortgagor, and if left in possession he is competent to make leases which, though void against the assignees, are good as between himself and the tenants, giving him the right to receive the rent, and to sue or distrain for it if unpaid, until the assignees interfere: *Doran v. Moore*, 16 L. R. Ir. 181; *Wyse v. Myers*, 4 I. C. L. R. 101; *Alchorne v. Gomme*, 2 Bng. 54.

Lettings.

A parol agreement to create a tenancy is valid if the tenancy is from year to year, or for a lesser period; but if it is sought to create a tenancy for any period

longer than one year, or for a life or lives, there must be either a deed or note in writing signed by the landlord or his authorised agent (Sec. 4, *post*). Where a person purported to make a parol letting of lands for two years, it was held by the Exchequer Chamber that an estate at will only was created which a demand of possession would at any time determine: *Ward v. Ryan*, I. R. 10 C. L. 17, 9 C. L. 51. The tenant is, in such a case, however, estopped from denying his landlord's title in the same manner as if the lease were valid: *Ward v. Ryan*, I. R. 10 C. L. 17. As to the effect of a lease which is not executed by the lessee, see notes to Sec. 4, *post*, p. 10.

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A tenancy from year to year, which is the greatest estate which can now be created by parol agreement, is "a lease for a year certain, with a growing interest during every year thereafter, springing out of the original contract, and parcel of it": *per* LORD WENSLEYDALE, *Oxley v. James*, 13 M. & W. 214. The nature of such a tenancy was much discussed in the case of *Wright v. Tracey*, I. R. 8 C. L. 478, 7 C. L. 134. "A tenant under a tenancy from year to year, created by express contract," says PALLES, C.B., "holds therefore for one year certain in the first instance; and if at the end of the year the lessor and lessee mutually will (as in the absence of six months' previous notice in writing they will be presumed to will) that the tenancy shall not determine, then the next year is added to, and becomes part of the one term held under the original contract; and in the same manner each year until the original tenancy is determined, an estate for the new year entered upon springs out of the original contract, and becomes parcel of the term:" I. R. 8 C. L., at p. 498. The right on the part of the landlord to determine such a tenancy does not now exist in the case of "statutory tenancies" in agricultural holdings within the Land Act, 1881. Such tenancies, therefore, are now practically perpetuities unless the landlord's estate is evicted by title paramount. See notes to Sec. 5 of Land Act, 1881, *post*. Such a tenancy will now be sold by the Land Judge of the Chancery Division: *Re Macalester*, 19 L. R. Ir 149. The estate of a tenant from year to year is a continuing estate, and does not terminate without notice to quit upon the expiration of the landlord's estate if the latter continues to hold under a new title: *Hayes v. Fitzgibbon*, I. R. 4 C. L. 500, 5 I. L. T. R. 7. Where a middleman's lease expires a head landlord is also bound by a tenancy from year to year created by the middleman in cases which come within Sec. 15 of the Land Act, 1881. See that section, *post*, and notes thereto. Even independently of this section, if the head landlord, on the expiration of a middleman's interest, allows a sub-tenant to remain in possession, a tenancy between them may be implied: *London and North Western Railway Co. v. West*, L. R. 2 C. P. 553.

Tenancies from year to year.

A tenancy from year to year may be implied from the conduct of the parties, where there is no express contract; and the nature and incidents of such a tenancy will be practically the same as where it is created by express words. See judgment of PALLES, C.B., *Wright v. Tracey*, I. R. 8 C. L., at p. 498.

When implied.

The circumstance from which the existence of a tenancy is most commonly implied is the payment of rent. This is not, however, conclusive evidence; thus where a man paid rent on being served with a writ for same, it was held by LAWSON, J., that he was not estopped from denying that he was tenant, upon showing that the lands were really vested in his wife: *Leader v. Manning*, 20 I. L. T. R. 55. "It is true, as a general rule, that upon proof of payment of rent, in respect of the occupation of premises, the law will imply that the party making such payments held as yearly tenant under that rent; but it is equally clear that it is competent for either party to rebut that implication, by proving the circumstances

From Payment of rent.

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under which such payments were made" *Per* O'BRIEN, J., *Hurly v Hanrahan*, I. R. 1 C. L., at p. 715. In this case the receipt of rent by the lessor of a lease for lives for a period subsequent to the death of the last life, was held not to create a yearly tenancy, when it was received in ignorance of the fact that the life had dropped *Hurly v Hanrahan*, I. R. 1 C. L. 700 But where a middleman's lease expired by the dropping of a life, and both lessor and lessee continued to act for some years upon the *bona-fide* assumption that it was a subsisting lease it was held that the lessor could not afterwards recover from a sub-tenant the difference between the rent paid by the sub-tenant to the middleman and the rent paid by the middleman to the lessor *Eyre v Hardy*, 32 I. L. T. R. 160.

Where the rent paid is very small in proportion to the value of the premises, and has been paid for a long series of years, there is no evidence of a tenancy from year to year. Such payments merely afford evidence of title to the rent, and not to the land. The presumption is that they are chief rents or quit rents, and in order to recover possession the claimant must derive title to the land, and cannot be suffered to rest his case exclusively on the fact of rent having been paid and a notice to quit *Reynolds v Reynolds*, 12 Ir. Eq. R. at p. 181. See also *Doc d. Whittick v Johnson*, Gow. N. P. C. 173, 21 R. R. 826 Thus where premises of considerable value were held subject to a payment of one shilling a year, and no evidence could be given of the origin of this payment, it was held by the Q. B. D., on a case stated by MADDER, J., that no presumption arose of the existence of a yearly tenancy which could be determined by notice to quit *Madden v McKeon* (unreported; judgment delivered 29th Jan., 1896).

The receipt of rent by a Receiver under the Court will not create a tenancy without the sanction of the Court, for the Receiver is a mere officer of the Court, powerless to create tenancies without its sanction *O'Rourke's Estate*, 23 L. R. I. 497; *Croker v Clanchy*, 20 L. R. I. 111.

"The payment of rent is not necessary to imply a tenancy from year to year, it is only one of many things which are evidence of it" *per* BUSHE, C. J., *Smith (lessee of) v Byrne*, Batty 464. Any dealings between the parties which amount to an acknowledgment of the right to receive, or an undertaking to pay rent, will also create a tenancy *Fahy v O'Donnell*, I. R. 4 C. L. 332.

Continuance in possession

The mere fact that a person who was formerly tenant has been allowed to remain undisturbed in possession of the holding after the expiration of his tenancy is evidence of the existence of a new tenancy *Vance v Vance*, I. R. 5 C. L. 363 And where a tenant, after the expiration of his lease, continued in possession and paid a half-year's rent, it was held to be a question for the jury whether he continued on as tenant from year to year upon the terms of the expired lease or subject to negotiations for the creation of a new tenancy at an increased rent *Caulfield v Farr*, I. R. 7 C. L. 469.

But where, after the expiration of a notice to quit, the former tenant continued in occupation, and tendered rent which the landlord refused to accept, telling the former tenant that he was a trespasser and that he should give up possession, it was held that there was no evidence of assent to the latter occupying as tenant, and that a verdict was properly directed for the landlord in an ejectment on title *Cusack v Farrell*, 20 L. R. Ir. 56. 18 L. R. I. 494.

Continuance in possession, by a lessee, upon the expiration of his lease, for one month after possession is demanded, gives an option to the landlord, under Sect. 5, *post*, to deem it the creation of a new tenancy. And in the case of leases

within the 21st Section of the Land Act, 1881, a new tenancy from year to year is in all such cases created.

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It must be remembered that in all these cases a new tenancy is created. "The subsequent payment of rent may be evidence of the creation of a new tenancy on the terms of the old; but when a lease actually determines, or is put an end to, no payment of rent can restore the old tenancy under the expired lease, though it may create a new one:" *per* MONAHAN, C.J., *Rawson v. Grogan*, I. R. 3 C. L., at p. 637.

If a tenant for life makes lettings of land which are not authorized by any power conferred upon him, the remainderman is not (except in the case of tenancies coming within the 10th section of the Land Act, 1896) bound by these lettings unless he does something to recognize them. "What then is the position of existing tenants whose interests are carved out of an estate for life on the termination of that particular estate? They become tenants at sufferance, and so they remain until there is some dealing between them and the remainderman or reversioner coming into possession of the estate. It is quite a mistake to suppose that it is still the old tenancy. It is not; it is a new one—though the law imports into such new tenancy all the incidents of the former one which are not inapplicable:" *per* CHATTERTON, V.C., *Wakefeld v. Hendron*, 11 L. R. Ir., at p. 510. This is still the law in the case of all holdings excluded from the Lands Acts, 1881 to 1896.

O'Keefe v. Walsh, 8 L. R. I. 184, 6 L. R. I. 348, is the leading case upon the question as to what acts on the part of a remainderman will amount to an adoption by him of a tenancy created by a tenant for life. The tenant for life in that case had died on 9th June, 1877. The tenant who had held under him continued on in possession and tilled the land in 1877 and 1878, and the plaintiff in the action, who was entitled in remainder, did nothing either recognizing or repudiating a tenancy until some time in 1878, when she refused to receive rent which was tendered to her. Possession was first demanded on 31st Dec., 1878. Under these circumstances it was held by the Court of Appeal (8 L. R. I. 184), reversing the decision of the Queen's Bench Division (6 L. R. Ir. 348), that there was evidence of the adoption by the plaintiff of the pre-existing yearly tenancy in the defendant upon which the jury were warranted in finding that the plaintiff was bound thereby. The importance of this decision lies in the fact that the plaintiff had done nothing active to recognize the tenancy, and that it was her *negative* conduct in not repudiating it which was held to bind her. In the subsequent case of *Enright v. O'Loughlin* (20 L. R. Ir. 159, 392), however, it was held that the mere continuance in possession and payment of rent by a former tenant of a tenant for life did not create a new tenancy from year to year as against the remainderman, where the payment of rent was distinctly made on foot of a lease made by the tenant for life which, though void for want of compliance with the leasing power, had, nevertheless, been adopted by the remainderman. See further on this point, *Kennan v. Murphy*, 8 L. R. Ir. 285, 6 L. R. I. 108.

It would appear, however, from the observations of CHATTERTON, V.C., in *Wakefeld v. Hendron* (11 L. R. Ir. at p. 511), that in all cases where the remainderman adopts a letting made by a tenant for life (not being bound to do so by the 10th section of the Land Act, 1896, or otherwise), the tenancy thereby created is a new tenancy, and not a continuance of the former tenancy. This question was not of any importance in the case of *O'Keefe v. Walsh*, and it might appear from the observations of some of the judges that the old tenancy was continued. "The continuance was that of the possession: the tenancy was new, but clothed

10 *Landlord and Tenant Act (Ireland), 1860.*

Secta. 3-4. with the same terms as those which formed part of the old contract so far as applicable." per CHATTERTON, V.C., 11 L. R. Ir., at p 511. See also *Sparrow v. Hepenstall*, 24 I. L. T. R. 65, and *Monaghan v. Hinds*, 1895, 2 I R 689.

The question is now only of importance in cases of holdings excluded from the Land Acts, as the 10th section of the Land Act, 1896, makes tenancies created by limited owners in cases within the Lands Acts binding upon the remaindermen, subject to certain specified exceptions. See that section and notes thereto, *post*.

Change in terms of tenancy.

A change in the terms of a tenancy, such as an increase or reduction of rent agreed upon during a current year of the tenancy, does not operate to put an end to the old tenancy and create a new one *Inchiquin v. Lyons*, 20 L. R. Ir 474. Nor does the mere service of a notice to quit, which is not acted upon, even independently of Sec 13 of the Land Act, 1881 (*ibid*). And even where a landlord, in addition to increasing the rents, consolidated two holdings into one in his rent-book, it was held that there was no change in the tenancies *Delmege v. Mullins*, I. R. 9 C. L. 209. But this was upon the ground that there was no evidence that the tenant knew of this consolidation or assented to it. See judgment of WHITESIDE, C.J., at p. 213. So an alteration in the rent receipts, unless it is assented to by all the parties interested, does not afford evidence from which a change of tenancy or a transfer of legal rights can be inferred *Bourke v Bourke*. I. R 8 C. L. 221; *M'Ilherron v. M'Ilherron*, 27 I. L. T. R 62, *Kirkpatrick v M'Coy*, Greer, Irish Land Act cases, App. 55

Mistake in L. E. C conveyance.

If there is a mistake in the description of a tenancy in the schedule to a Landlord's Estates Court conveyance of the landlord's interest, the erroneous description is conclusive as between the purchaser and the tenant (*Cusack v Hulson*, 6 L R. Ir 309; 4 L R. I. 694) unless the tenancy is under lease, and the lease itself is incorporated by reference in the schedule *Muddleton v. Clarenc*, I R. 11 C. L. 499, *De Vesci v. O'Kelly*, I. R. 4 C L. 269, 2 C. L. 267. See further on this question *Lauder v. Alby*, I. R 1 C. L. 82, *Mullarkey's Estate*, I. R 6 Eq. 23; *Seaton v M'Grath*, I. R. 6 Eq. 381; and notes to Sec. 4, *post*, p 13.

(d) As the word "land" in this Act includes both corporeal and incorporeal hereditaments of every tenure (Sec. 1), a tenancy from year to year in an incorporeal hereditament, such as a right of fishing or of shooting, may be created by parol agreement, notwithstanding the 2nd section of the Statute of Frauds (7 Wm. III., c 12, Ir.); *Bayley v. Marquis Conyngham*, 15 I. C. L. B. 406, 8 Ir Jur. N. S. 213.

Contract for definite periods to be by deed, or note in writing

4. Every lease (c) or contract with respect to lands (e) whereby the relation of landlord and tenant is intended to be created for any freehold estate or interest (d), or for any definite period of time not being from year to year or any lesser period, shall be by deed, executed, (f) or note in writing signed by the landlord (a) or his agent thereunto lawfully authorized in writing (b).

This section, which requires leases to be by deed, or agreement in writing, does not apply to lettings from year to year or for any lesser period. These latter may now be made by parol agreement, whether they relate to corporeal or incorporeal hereditaments: *Bayley v. Marquis Conyngham*, 15 I. C. L. R. 406. 8 Ir. Ju N. S. 213.

At Common Law no freehold estate in land could be created by parol or by mere writing, unaccompanied by livery of seisin, unless it were by bargain and sale, or by lease and release, which always implied a deed; and no legal estate could be created in an incorporeal hereditament save by grant under seal; but an agreement was valid at Common Law either by parol or by writing without seal for a lease for a term of any lands of a corporeal nature, or for any estate or interest therein. See judgment of *MONAHAN, C.J.*, *Bayley v. Marquis Conyngham*, 15 I. C. L. R., at p. 410. Sect. 4.
History of the
law as to leases.

By the Statute of Frauds, 7 Wm. III., c. 12 (Ir.), corresponding to 29 Car. II., c. 3 (Eng.), it was provided that no estate in lands and tenements should be created by parol except leases which did not exceed three years (Sec. 1); and further, that no agreement respecting any contract or sale of lands should be binding unless it was in writing and signed by the parties to be charged therewith (Sec. 2). The effect of the Statute of Frauds was that a mere parol agreement to lease lands was not binding, but an actual lease of the lands by parol, for a term certain, which did not exceed three years in duration, was valid. A lease for life or for any freehold estate could only be created, prior to the present Act, by deed, or by livery of seisin; and an estate or interest in incorporeal hereditaments of any duration was also required to be by deed. The 1st Section of the Statute of Frauds is expressly repealed by this Act (Sec. 104), and the 2nd Section has been held by *MONAHAN, C.J.*, to be impliedly repealed by this section: *Bayley v. Marquis Conyngham*, 15 I. C. L. R. at p. 413. See, however, remarks of *SULLIVAN, M.R.*, *M'Causland v. Murphy*, 9 L. R. Ir., at p. 15.

The 3rd Section of 8 & 9 Vic., c. 106, which required that leases made after 1st October, 1845, should be by deed, is also repealed so far as it relates to the relation of landlord and tenant in Ireland (Sec. 104), so that now, as regards contracts for the letting of land in Ireland, made after 1st January, 1861, a deed is never necessary; but a note in writing is always required unless the letting is from year to year, for a year certain, or for a lesser period.

This section, however, only applies when an interest in lands is intended to be actually passed, a *preliminary agreement* for the future creation of a tenancy is not within it, and is still regulated by the 2nd Section of the Statute of Frauds: *M'Causland v. Murphy*, 9 L. R. Ir. 9. See further as to the distinction between an executory agreement to let land and a present demise: *Earl of Leitrim v. Geelan*, I. R. 8 C. L. 122.

(a) A lease, in order to be valid, requires to be executed by the landlord or his agent, "authorized in writing." The older authorities established that when the lessor did not execute a lease, as no estate passed, the tenant, though he had executed the lease, was not at law bound by the covenants in it: *Soprani v. Skurro*, Yelv. 18; *Pitman v. Woodbury*, 3 Exch. 4. And this was so, though the lessee had enjoyed the possession during the whole time: *Swatman v. Ambler*, 8 Exch. 72; *Hutchins v. Vaughan*, 11 I. C. L. R. 349, 6 Ir. Jur. N. S. 103. But this appears not to be the law since the Judicature Act: *Babington v. O'Connor*, 20 L. R. Ir. 246, 21 I. L. T. E. 41. See further as to the necessity for signature of landlord: *Archbold v. Lord Houth*, I. E. 1 C. L. 608; *Domville v. Brack*, 16 I. C. L. E. 167, *Collum v. Mangan*, 17 I. L. T. R. 94; *Butterly v. M'Kechnie*, 2 N. I. J. R. 26. A written agreement for a tenancy from year to year need not be signed by the landlord, as it is not within this section: *Jagoe v. Harrington*, 10 L. R. Ir. 335.

The effect of the entry of a lessee under a void lease is to make the lessee a tenant at will only to the landlord: *Ward v. Ryan*, I. R. 10 C. L. 17, 9 C. L. 51.

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Execution by agent.	<p>(b) The lease or agreement may be executed by an agent for the landlord, and not by himself personally, but where an interest in the lands is intended to be actually passed, the agent must be authorized <i>in writing</i> to execute it. Where a mere executory agreement is entered into which is intended to be followed by the execution of a more formal lease, it is not necessary that the agent should be authorized in writing to conclude it <i>M'Causland v. Murphy</i>, 9 L. R. I. 9.</p> <p>The lease must be executed by the agent, as agent, at a time when he had authority to act as such. In equity, as well as in law, the rule holds good that a contract which is made by a person who, professing to be agent for another, makes the contract not as agent, but as a principal, and who, when making it, has not authority to do so, cannot be validated by a subsequent ratification and adoption of it by the person for whom it is afterwards alleged to have been made <i>Byrne v. Rorke</i>, I. R. 3 Eq. 642. See further as to the responsibility of a landlord for the acts of his agent in making an agreement for a lease <i>Archbold v. Lord Howth</i>, I. R. 1 C. L. 608, 11 Ir. Jur. N. S. 88.</p>
Registration	<p>(c) A lease, if for more than 21 years, should be registered under 6 Anne, c. 2, or under the Local Registration of Title Act, 1891, Sec 53, so that its priority or validity may not be interfered with by a subsequent registered lease or conveyance. But by Sec. 14 of the Registry Act (6 Anne, c. 2) "leases for years not exceeding twenty-one years, where the actual possession goeth with the said lease," are excepted from the provisions of the Act, and have priority over any subsequent registered conveyance or lease.</p>
Costs of preparing lease.	<p>A lease or agreement for a lease should be stamped with an <i>ad valorem</i> stamp as prescribed by the Stamp Act, 1891, but a mere <i>proposal</i> for a tenancy, not accepted by the landlord in such a manner as to constitute a contract, does not require a stamp. See <i>Edge on Leases</i>, p. 10, <i>note</i>.</p> <p>"The lease is usually prepared at the tenant's expense, but the landlord's solicitor is generally employed by the tenant to carry into execution any agreement for a lease, or for the renewal of a lease between the parties, and if the lessor, under such circumstances, pay his own solicitor the costs of the lease or renewal, he may recover the amount from the tenant in an action for money paid to his use." <i>Furlong, Landlord and Tenant</i>, 1st ed., p. 379. But if an action be brought for breach of agreement to execute a lease by an intended lessee, it is no answer to allege that the plaintiff had not prepared the lease and tendered it for execution, for there is nothing in law to prevent a lessor from preparing the lease and tendering it for execution himself <i>Cantley v. Powell</i>, I. R. 10 C. L. 200; <i>Burke v. Smyth</i>, 9 Ir. Eq. R. 137; and "although it may be customary for a landlord's solicitor to prepare the lease, it is, without doubt, the part of the tenant's solicitor to register it." <i>per BRADY, L.C., In re Rorke's Estate</i>, 14 Ir. Ch. R., at p. 445.</p>
Lease good by estoppel.	<p>Any person, whether he has any title to lands or not, may make a lease which will be good, as against himself by estoppel, and the assignee of the reversion which exists only by estoppel is entitled to the benefit of the estoppel in like manner as the original lessor <i>Cuthbertson v. Irving</i>, 4 H. & N. 742, 29 L. J. (N. S.) Exch. 485, 6 Jur. N. S. 1211. The real owner of the lands may be similarly bound by estoppel if he knowingly permits a person having no estate in the lands to make</p>

a lease of them. "Where the real landlord permits another person to treat a third person as his landlord, he cannot go back from that afterwards. Lord Denman puts it very pointedly that, as a tenant is estopped from denying his landlord's title, so the landlord will be estopped from alleging that the tenant has not properly paid his rent when he has paid it to another person with the sanction of the landlord:" *per* BARRY, L. J., *Harold and Maher v. Daly*, 30 L. R. Ir., at p. 711.

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The most usual case of a lease which operates by way of estoppel is a letting by the Land Judge of the Chancery Division, or by the Receiver, of a portion of an estate under the control of the Court. Such a letting makes the occupier a tenant by estoppel to the official landlord, and all its terms may be enforced against him. The landlord's estate is also bound by the tenancy of the occupier, because the letting has been made through the power of the Court (see judgment of FITZGIBBON, L.J., *in re Lawrence's Estate* [1896], 2 I. R., at pages 354-5).

*A lease cannot operate by way of estoppel, when the absence of title in the lessor appears on the face of the deed: *Pargeter v. Harris*, 7 Q. B. 708; *M'Areavy v. Hannan*, 13 I. C. L. R. 70.

Leases by persons having no estate in lands.

Thus where a lease was made by mortgagor and mortgagee, reciting the mortgage, and *reserving rent to the mortgagor*, it was held to be void, for the rent was reserved to a person having no title to the lands, and as the want of title appeared on the face of the deed, there was no estoppel to render it valid: *M'Areavy v. Hannan*, 13 I. C. L. R. 70.

But if the defect does not appear on the face of the deed the reservation to a person having no estate in the lands may be good. Thus where A, being solely seized of lands joined with B, who had no estate therein, in a lease to C, the rent and remedies being reserved to B, and it *did not appear on the face of the deed that B had no estate in the lands*, it was held that the representatives of B could recover in ejectment for non-payment of rent, for that the tenant was estopped from denying that B had an estate in the lands *Lessee of Parke v. McLoughlin*, 3 Ir. Jur. (O. S.) 405.

If a lessor has, at the date of a lease, no estate sufficient to support it, and the lease takes effect only by estoppel in the first instance, any estate in the lands which he afterwards acquires "feeds the estoppel" and the lessee becomes entitled as if the lessor originally had title. The lease which rested merely in estoppel will thus become good and unavoidable in interest: *Co. Lit.* 476. *Furlong L. & T.*, 2nd Ed., p. 474, *et seq.*

Where lessor afterwards acquires title.

A lease by a mortgagor after the date of his mortgage was always valid by way of estoppel as against him, so long as the mortgagee did not interfere. And similarly it has been held that an arranging debtor whose estate was vested in his assignees, under Secs. 349 & 350 of the Bankruptcy (Ireland) Act, 1857, may make a valid lease, between himself and the tenant: *Doran v. Moore*, 16 L. R. Ir. 181. Sometimes the mortgagee has been held bound by a lease thus granted. Thus where a mortgagee, with notice of a lease made subsequent to the mortgage, took from the mortgagor a conveyance of the equity of redemption in such a way as that instead of being kept distinct it became united to the interest in the mortgage, it was held that the mortgagee was bound by the lease: *O'Loughlin v. Fitzgerald*, I. R. 7 Eq. 483. But the mere fact of a mortgagee raising no objection to the mortgagor creating new tenancies, when informed of it, does not bind him by such tenancies: *O'Rourke's Estate*, 23 L. R. Ir. 497. The 10th Section of the Land Act, 1896, now, however, makes lettings of agricultural holdings which are within the Land Acts binding on mortgagees, in certain cases,

By Mortgagor.

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Annuitants	Annuitants who receive rents reserved by leases in part discharge of their annuities are not bound by the leases, as they have no estate in the lands and no power to interfere. <i>Metcalf v. Ryves</i> , 14 Ir. Ch. R. 558.
Leases by limited owners.	Limited owners, such as tenants for life, could not, by the rules of the Common Law, make valid leases to continue longer than the duration of their own estates. Settlements by deed or will, however, often confer express powers on limited owners or upon trustees to grant leases, which bind all estates deriving under the settlement. Trustees in whom the legal estate is vested may, indeed, without any express leasing power, make yearly or other reasonable lettings <i>Fitzpatrick v. Waring</i> , 11 L. R. Ir. 35 (C. A.). But the <i>cestus que trust</i> cannot, without express power, bind more than their own estates.
Leases by trustees	
Powers of leasing	Leases executed in pursuance of powers take effect by way of limitation of the use not merely out of the estate of the lessor who exercises the power, but out of the original inheritance of the settlor, just as if the term were limited to the lessee by the instrument creating the power. Sugden on Powers, 484. But the conditions and restrictions attached to the power must be carefully observed, or the lease made under it will be void. Relief, however, against the defective execution of powers of leasing may now be given in certain cases under 12 & 13 Vic. c. 26, and 13 and 14 Vic., c. 17. As to the construction of these statutes, and when they are intended to apply, see <i>Harold and Maher v. Daly</i> , 30 L. R. I. 697 (C. A.).
Effect of void lease under power.	"A lease made by a tenant for life, not warranted by his leasing power, is absolutely void at law as against the remainderman, and will not be set up or ratified by the simple acceptance of rent. If, however, the person in remainder accept rent from the lessee which accrued due after the lessor's decease, though the lease be void, a yearly holding will be created, which can only be put an end to by a regular notice to quit."—Furlong's "Landlord and Tenant," 2nd ed., p. 56.
Statutory powers of leasing	Powers of leasing are now also conferred on mortgagors, mortgagees, tenants for life, and other limited owners by various statutes. A mortgagor of land, while in possession, may, as against every incumbrancer, and a mortgagee, in possession, may as against all prior incumbrancers, under the powers conferred by the 18th Section of the Conveyancing Act, 1881, grant valid agricultural leases for 21 years and building leases for 99 years, provided the conditions of the section are complied with. Tenants for life and other limited owners may, under the Settled Land Act, 1882, grant building leases for 99 years, and any other lease (in Ireland) for 35 years, binding on the persons entitled in remainder. See Secs. 6, 58 & 65 of that Act; see also L. & T. Act, 1870, Sec. 23, <i>post</i> .
Lease for lives.	(d) A lease for a life or lives can now be created by a written agreement not under seal in the same way as a lease for a term of years. And if it is clear that the parties intended such to be the duration of the lease, their intention will be given effect to, even though the document is inartificially drawn. Thus where a lease demised lands to hold "from the 29th September last for the lives of (persons named) and for the term of 88 years from thence," it was held by PORTER, M.R., that the term of years was reversionary, and not concurrent: <i>In re O'Connor and Small's Contract</i> , 33 I. L. T. R. 43. Also, where a landlord agreed with a tenant that the latter should not be disturbed in his holding "so long as the rent for which he has stipulated is paid, and so long as I (the landlord) am in possession of the premises myself," it was held that a tenancy for

the life of the lessee was created if the landlord's estate lasted so long: *Wood v. Davis*, 6 L. R. I. 50. See, however, *contra*, *Holmes v. Day*, I. R. 8 C. L. 235 (where the Court was equally divided as to whether a similar provision could be given effect to or not), and *March v. Wilson*, 29 I. L. T. R. 133, referred to in notes to Sec. 3, *ante*, p. 5. Sect. 4.

(e) As to the extent of the premises demised by a lease, it has been laid down that "where land adjoining a highway or inland river is granted, the *prima facie* presumption is that the parties intended to include in the grant a moiety of the road or river bed, as the case may be (*per* FITZGERALD, B., *Dwyer v. Rich*, I. R. 6 C. L., at p. 149), and such general presumption ought to prevail unless there is something to indicate a contrary intention": *Ibid.*

The word "Appurtenances" when used in a lease is a flexible term, and must be interpreted so as to carry out the intention of the parties: *Dobbyn v. Somers*, 13 I. C. L. R. 293, 6 Ir. Jur. N. S. 57. In that case it was held to include a right of turbary. In *O'Hare v. Fahy*, 10 I. C. L. R. 318, a right of commonage upon an adjoining mountain was held to be similarly included. But in *Jones v. Whelan*, 16 I. C. L. R. 495, it was held that the word "appurtenances" could not include a piece of ground usually occupied by the tenants of the holding, but not necessary to its enjoyment.

As to the effect of exceptions and reservations in a lease, see *Cochrane v. M'Cleary*, I. R. 4 C. L. 165; *Corcor v. Payne*, I. R. 4 C. L. 380; and *Moroney v. Macnamara*, I. R. 6 C. L. 181.

(f) A lease by deed requires to be delivered, but a formal delivery is sufficient; and the fact that the lessor retains actual custody of the deed does not interfere with its validity: *Doe d. Garnons v. Knight*, 5 B. & C. 671. "It seems to me," says BAYLEY, J., in that case, "that where an instrument is formally sealed and delivered, and there is nothing to qualify the delivery but the keeping the deeds in the hands of the executing party, nothing to show that he did not intend it to operate immediately, that it is a valid and effectual deed, and that delivery to the party who is to take by it, or to any other person for his use, is not essential." See also *Earl of Miltown v. Goodman*, I. R. 10 C. L. 27; *Babington v. O'Connor*, 20 L. R. Ir. 246. Delivery, how far necessary.

When there is an obvious clerical error in a lease it may be treated as amended, and it is not necessary that there should be a counterclaim for the purpose of having the deed reformed: *Borrowes v. Delaney*, 24 L. R. Ir. 503. But if there is conflicting evidence as to the intention of the parties, an amendment cannot be made: *Gray v. Boswell*, 13 I. Ch. R. 77; *Fallon v. Robins*, 16 Ir. Ch. R. 422. And where, after the execution of a lease, the reversion was conveyed to a purchaser for value, the Court refused to reform the deed upon an allegation of mutual mistake as to its duration: *Coates v. Kenna*, I. R. 7 Eq. 113. It is only where the mistake is mutual that a lease may be rectified; if the mistake is on one side only, it may be a ground for setting aside the deed, but not for reforming it: *Gun v. M'Carthy*, 15 L. R. Ir. 304. "If the operative part of the deed be doubtfully expressed, then the recital may be safely referred to as a key to the intentions of the parties; but where the operative part of the deed uses language which admits of no doubt, it cannot be controlled by the recital": *per* SIR J. LEACH, *Bailey v. Lloyd*, 5 Russ. 344. A recital, though it generally operates as an estoppel between the parties, does not necessarily do so: *Blackhall v. Gibson*, 2 L. R. Ir. 49. Mistake, how reformed.

The question as to how far the terms of a lease can be held to be varied by the mode in which the lease is described in a Landed Estates Court conveyance of the

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 Misdescription in
 L. E. C. con-
 veyance.

lessor's interest, has been frequently discussed. The following extract from the judgment of MAY, C.J., in *Middleton v. Clarence* (I. R. 11 C. L. 499), thus lays down the law upon the subject — "If lands are conveyed subject to a lease referred to in the schedule annexed, and the schedule does not purport to set out the terms of the lease, but states merely the quantity of land demised and the particulars of the lease, for the purpose of identification, the lease itself must be referred to in order to ascertain those terms, and must be regarded as incorporated in the deed. If, on the other hand, the deed in the schedule or otherwise purports to set forth the terms of the lease, then the terms so set forth must alone be regarded as those regulating the rights and liberties of the lessee " I. R. 11 C. L., at p. 504. Thus, where a L. E. C. conveyance erroneously stated, by reference to a map, that a lease, subject to which the conveyance was made, comprised premises which it did not, as a matter of fact, include, it was held by the Court of Appeal affirming the Q. B. D., that the erroneous statement was binding and conclusive *Oliver v. Rooney* (1895) 2 I. R. 660. "In my opinion," says MADDEN, J., in that case, "whenever the Court has, in performance of its statutory duties, ascertained any term of the tenancy, and stated that term in the conveyance, positively, and not by way of reference to the lease, the lease, although incorporated with the conveyance, and capable of being looked at for other purposes, cannot be used to contradict, alter, or modify in any respect the statement contained in the conveyance " [1895] 2 I. R. at p. 675 See, however, *contra*, *Riordan v. Mullins*, 26 I. L. T. & S. J. 646, where BARRY, L.J., held, on a civil bill appeal, that a tenant was not precluded, by an erroneous recital of the covenants of a lease in the schedule to a Landed Estates Court Conveyance, from claiming the benefit of a covenant according to the terms actually contained in the lease itself. See further on this point *De Vesce v. O'Kelly*, I. R. 4 C. L. 269, 2 C. L. 267; *Cusack v. Hudson*, 6 L. R. Ir. 309, 4 L. R. Ir. 694, and notes to Sec. 3, *ante*, p. 7.

Specific per-
 formance.

Where an executory agreement for a lease is entered into, a decree for specific performance can be obtained against either party who refuses to execute a lease in accordance with the agreement. The contract must be in writing, and "signed by the party to be charged therewith, or some person thereunto by him lawfully authorised," so as to comply with the 2nd Section of the Statute of Frauds: *M'Causland v. Murphy*, 9 L. R. I. 9. But it may be made out from several documents connected together by parol evidence *Craig v. Elliott*, 15 L. R. Ir. 257.

The contract must also be complete in all its terms. See *Fry*, Spec. Perf., cap. III. An executory agreement for a lease does not satisfy the Statute of Frauds unless it can be collected from it on what day the term is to begin *Marshall v. Berridge*, 19 Ch. D. 233. In which case it was held, overruling the previous case of *Jacques v. Millar* (6 Ch. D. 153), that there is no inference that the term is to commence from the date of the agreement, in the absence of language pointing to that conclusion. See also *Wysc v. Russell*, 17 I. L. T. R. 31, MacD. 281; *Drew v. Brabazon*, 17 I. L. T. R. 75, MacD. 287. An agreement for a lease, however, though it mentions no date for the commencement of the term, may contain a reference to circumstances from which such date can be ascertained; and, in that case, specific performance of it will be decreed by the Court: *Phelan v. Fedcastle*, 15 L. R. Ir. 169, 175; *Erskine v. Armstrong*, 20 L. R. Ir. 296. But the inference as to the date must be plain and unambiguous *White v. M'Mahon*, 18 L. R. Ir. 460.

Where there was a concluded agreement for a lease followed by a negotiation as to some of the covenants it was to contain, upon all of which the parties agreed

except as to one, which was repudiated by the intended lessee, but which by law is implied in every lease unless it is otherwise expressly provided, the Court, notwithstanding the dispute, decreed specific performance: *Blakeney v. Hardie*, I. R. 8 Eq. 381. Sects. 4-5

If the landlord from the limited extent of his estate or power is unable to give a lease for the whole interest which he agreed to give, he will be compelled, if the lessee so desires, to execute a lease to the full extent which his estate or power authorizes, and compensation will be allowed to the lessee for the agreement not being carried out to its full extent: *Leslie v. Crommelin*, I. R. 2 Eq. 134.

A mere verbal agreement for a lease, which by the Statute of Frauds and this Section, in order to be valid, should be in writing, may, however, be specifically enforced if a sufficient act of part performance by the party who seeks relief can be established. In *Nunn v. Fabian* (L. R. 1 Ch. App. 35), it was held that payment of an increased rent by a tenant was sufficient part performance of a parol agreement for a lease as against the landlord, to take the case out of the Statute of Frauds. This case, however, has been strongly dissented from in England in *Humphreys v. Green* (10 Q. B. D. 148), and *Alderson v. Maddison* (8 App. Cas. 467, 7 Q. B. D. 174); but, notwithstanding this, it has been followed in Ireland in the cases of *Conner v. Fitzgerald* (11 L. R. Ir. 106), and *Lanyon v. Martin* (13 L. R. I. 297). In these cases it was laid down, as a general rule, that, where a new letting for any term is made, at an altered rent, to a tenant in possession, under a pre-existing tenancy, the payment by the tenant and the acceptance by the landlord of the altered rent, if shown to have been paid and accepted on foot of the new tenancy, is a sufficient part performance to enable either party to enforce specific performance as against the other, even though the agreement be merely verbal. In the case, however, of *Howe v. Hall*, I. R. 4 Eq. 242, where the rent of other neighbouring tenants had been increased at the same time as the plaintiff's, and different versions of the agreement had been given by him at different times, the Court refused specific performance. Part performance.

The expenditure of a large sum of money in improvements on the land may also amount to a part performance of the agreement: *In re Sullivan's Estate*, 23 L. R. Ir. 255. But if the sum so expended be small, and such as a tenant from year to year might have prudently expended, it will not be considered such: *Howe v. Hall*, I. R. 4 Eq. 242. See further as to part performance, Fry, Spec. Perf., 3rd ed., p. 268, *et seq.*

The part performance may be the act of a third party. Thus, when A surrendered an existing lease to B his landlord, on the faith of a verbal promise by B to give a new lease to C, it was held that the execution of the surrender by A was a sufficient act of part performance to enable C to enforce the verbal agreement against B: *In re Cooke's Trustees' Estate*, 5 L. R. Ir. 99.

A parol agreement to grant a lease, entered into by a tenant for life with a leasing power, coupled with part performance by the lessee during the lifetime of the tenant for life, does not, however, bind a remainderman who did not acquiesce in the acts of part performance: *Hope v. Lord Cloncurry*, I. R. 8 Eq. 555.

5. In case any tenant or his representative, after the expiration or determination of the term agreed upon in any lease or instrument in writing, shall continue in possession (b) for more than one month after demand of possession by the landlord or his agent, such continuance shall, at the election of the landlord, (a) be deemed Continuance after expiration of contract.

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to constitute a new holding of the said lands from year to year, subject to the former rent and to such of the agreements contained in the lease or instrument as may be applicable to the new holding (c)

(a) This section gives an option to a landlord to treat an overholding tenant as a tenant from year to year on the terms of his expired lease. The option is taken away from the landlord in the case of leases of agricultural holdings by the 21st Section of the Land Act, 1881, the effect of which section is to apply to every tenant of an expired lease the provisions of this section of the Act of 1860. See judgment of PALLES, C.B., *Ireland v. Lundy*, 22 L. R. Ir., at pp. 420, 422.

(b) The fact that a tenant is allowed to continue in possession after the expiration of his lease may be, in itself, and apart from any question of payment of rent, evidence *as against the landlord* of the creation of a new tenancy on the terms of the expired lease: *Nixon v. Darby*, I. R. 2 C. L. 467. See, especially the judgment of O'HAGAN, J., at p. 474. And this may be the case even where the person entitled to the reversion is not the original lessor, but a third party, such as a new rector of a parish (*Doe d. Cates v. Somerville*, 6 B. & C. 126), or a remainderman upon the death of a tenant for life *O'Keefe v. Walsh*, 8 L. R. Ir. 184, 6 L. R. Ir. 348.

Continuance in possession is only, of course, evidence of the creation of a new tenancy when it is by the permission of the landlord, and if there is a controversy as to the terms upon which the tenant has been permitted to occupy, it is a question of fact to be left to the jury what was the precise character of the tenant's occupation, whether as tenant from year to year on the terms of the expired lease, or subject to negotiations for a new lease on different terms or otherwise *Caulfield v. Farr*, I. R. 7 C. L. 469. Thus, where, though the tenant remained in possession, the landlord frequently demanded possession, told the tenant he was a trespasser, and refused to accept rent when tendered, it was held that there was no evidence of the creation of a new tenancy, and that a verdict was properly directed for the landlord in an action to recover possession (*Cusack v. Farrell*, 18 L. R. Ir. 494); affirmed on appeal (20 L. R. Ir. 56).

A tenant who has been declared entitled to compensation under the Land Act, 1870, cannot be compelled by process of law to quit his holding until the amount awarded has been paid to him or lodged in court (Land Act, 1870, sec. 21). It would appear that continuance in possession upon this ground could not create a new tenancy if the landlord delayed to pay the compensation.

Terms of new tenancy.

(c) If a new tenancy is created by the tenant's continuance in possession, the terms of it are presumed to be that the tenant holds according to the terms of the original lease, including any special covenants, so far as they are applicable to a yearly tenancy. *Roe v. Ward*, 1 H. Bl. 97; *Kelly v. Patterson*, L. R. 9 C. P. 681. Thus, a covenant to repair may be one of the terms imported into the new tenancy, so that if the premises are accidentally burned down during the existence of such new tenancy the tenant may be bound to rebuild them. *Morrogh v. Alleyne*, I. R. 7 Eq. 487; *Digby v. Atkinson*, 4 Camp. 275. See as to the rights of a tenant in case of destruction by fire or accident of the demised premises, when there is no covenant or agreement to repair, Sec. 40, *post*. So also a covenant against alienation contained in a lease has been held to extend to a tenancy from year to year, which arose on its expiration, where the tenancy did not come within the

provisions of Sec. 1 of the Land Act, 1881, as to sales: *Meath v. Megan* (1897) 2 I. R. 47 (L. C.) 477 (C. A.) 31 I. L. T. R. 28, 83. Sect. 5-7.

But although there is a presumption that all the terms of the old agreement continue to apply, except so far as they are rendered inapplicable by the change in the duration of the tenancy, "it is always open to the parties to show that, though many of the terms are carried on by express agreement, or by tacit implication, other terms do not continue. Any term may be dropped or changed by actual contract, and in other cases, certain conditions, such, for example, as agreements to erect buildings within a fixed period, may be impliedly dropped, or may become inappropriate, and will consequently be held not to be continued by implied contract." (*per FITZGIBBON, L.J., Meath v. Megan* (1897) 2 I. R. at p. 479. Some terms, again, may not attach to the yearly tenancy arising on the expiration of a lease because they are inconsistent with statutory rights subsequently conferred. Thus, a covenant against alienation without the landlord's consent contained in a lease does not attach to the tenancy which arises at its expiration, if the power of sale conferred by the 1st Section of the Land Act, 1881, applies to the tenancy: *In re Wright and Tittle's Contract*, 29 L. R. I. 111.

See further as to the creation of a tenancy by the conduct of the parties upon the expiration of a lease, notes to Sec. 3, *ante*, p. 7.

6. Every tenancy from year to year shall be presumed to have commenced on the last gale day of the calendar year on which rent has become due and payable in respect of the premises, until it shall appear to the contrary. Presumed commencement of tenancy.

This section is chiefly of importance as regards the service of notices to quit. It was frequently referred to in the various cases decided upon the ambiguous Sec. 58 of the Land Act, 1870 (now partly repealed). See *Fitzwilliam v. Dillon*; I. R. 9 C. L. 251; *Murphy v. M'Cormick*, I. R. 10 C. L. 326; and *Shearman v. Kelly*, 2 L. R. Ir. 415. As to service of notices to quit and the length of notice now required, see notes to Notices to Quit Act, 1876, Sec. 1, *post*.

7. The estate or interest of any tenant under any lease or other contract of tenancy shall not be surrendered otherwise than by a deed executed, or note in writing (a) signed by the tenant or his agent thereto lawfully authorized in writing, or by act and operation of law (b). Surrenders to be in writing.

A surrender cannot be made to take place *in futuro*; it must operate as an immediate conveyance of the tenant's interest: *Doe v. Millward*, 3 M. & W. 328; *Neville v. Harman*, 17 I. L. T. R. 86, MacD. 277.

A surrender by an assignee relieves the lessee from liability for any future rent. Where an assignee in whom the interest in a lease was vested surrendered it by an agreement in writing, which the landlord accepted "without prejudice to my claim against J. C. M. as lessee," it was held that as the lease was validly surrendered he could not afterwards recover rent under it from J. C. M.: *Clements v. Richardson*, 22 L. R. I. 535.

A mortgagor may, notwithstanding his conveyance of the reversion, accept a surrender of a tenancy, if he is in possession and the mortgagee has served no Who may accept a surrender.

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notice of his intention to take possession or enter into receipt of the rents. Jud. Act, 1877, Sec. 28 (5).

A tenant for life may accept surrenders of any leases of the settled land (Settled Land Act, 1882, Sec. 13), and can give new leases provided they are, at the time of their execution, in conformity with his powers. See *Lefroy v. Walsh*, 1 Ir. C. L. R. 311.

A surrender of portion of demised premises does not prejudice the landlord's right as to the residue either as against the original lessee or an assignee. See Sec. 44, *post*, and *Baynton v. Morgan*, 22 Q. B. D. 74

Evidence of
surrender.

(a) Although a surrender must be in writing, oral admissions by the party against whom the evidence is given, that notice of surrender has been served may be proved, even though the written notice itself is not produced. *Martin v. Doherty*, 6 L. R. Ir. 194, following *Slatterie v. Pooley*, 6 M. & W. 669, the authority of which had been previously questioned in Ireland. *Lawless v. Qucale*, 8 I. L. R. 382.

Payment of an abated rent for a long period of time by a tenant holding under a lease is, if unexplained, also evidence from which the surrender of the lease and the creation of a new tenancy from year to year may be inferred. *Lefroy v. Walsh*, 1 I. C. L. R. 311. See, however, *contra*, *Roche v. Roche*, 8 I. L. T. R. 7, and *Booth v. Daly*, 6 I. C. L. R., 460. In the latter case, after an abated rent had been received for 18 years, a landlord was held entitled to recover the full rent reserved by the lease. A landlord should give notice, however, to the tenant of his intention to exact the full rent again before he can recover it. *Fitzgerald v. Lord Portarlinton*, 1 Jones, 431, *Ambrose v. Keohan*, 17 I. L. T. R. 7. (See notes to Sec. 45, *post*.)

Where a lease is surrendered, even by all the parties who are beneficially interested in it, and a new lease obtained in lieu thereof, the latter is subject to the same trusts in equity as the former was. *Hill v. Hill*, 1 I. R. 8 Eq. 140, 622. As to the doctrine of graft generally, see notes to *Keech v. Sandford*, 1 Wh. & Tud., L. C.

Who may sur-
render.

A tenant from year to year can surrender his tenancy at any time, without his landlord's consent, upon duly serving a notice of surrender in sufficient time beforehand, according to the terms of his tenancy. See Notice to Quit Act, 1876, Sec. 1, *post*, and notes thereto. A lessee cannot, as a general rule, surrender, without the lessor's consent, unless by virtue of a clause in his lease empowering him to do so, or under some statutory authority.

It would appear from the case of *Torrens v. Cook*, 22 L. R. Ir. 239, that there is nothing in the Land Act, 1881, to prevent a present tenant under that Act surrendering his tenancy and taking a new future tenancy instead thereof. The case actually decided that a surrender by a lessee of a lease which was existing when the Act passed and the acceptance of a new future tenancy from year to year in lieu thereof was valid, but in giving judgment NAISB, L.J., lays down in general terms that "there is nothing in the Act to prevent the *bona fide* surrender of an old and the creation of a new tenancy" 22 L. R. Ir., at p. 246. See further on this point notes to Land Act, 1881, Sec. 20, *post*.

When a surrender is made by virtue of a proviso contained in a lease, the terms of the lease must be strictly complied with. *M'Grath v. Shannon* (17 I. C. L. R. 128), in which case it was held that the payment of all rent due was by the terms of the lease a condition precedent to the surrender. Similarly, where a lease contained a clause enabling a tenant "to surrender and deliver up the hereby demised premises . . . and to terminate this present demise," upon serving six

months' notice of his intention to do so, and the tenant served the notice, but at the expiration of the six months did not give up possession, claiming to hold on as a present tenant under the 21st Section of the Land Act, 1881, it was held that the lease was not surrendered: *Perrott v. Dennis*, 18 L. R. Ir. 29; 20 I. L. T. R. 7. But a lease may be so expressed that the mere service of the notice will determine it: *Hodges v. Clarke*, 17 I. L. T. R. 83. The notice of surrender in such a case, it has been held, need not be signed by the tenant, unless the lease so requires it: *Carleton v. Herbert*, 11 Ir. J. N. S. 326; 14 W. R. 772. Query, whether this would be so under the words of the present section, "signed by the tenant or his agent thereto lawfully authorised in writing." But if a tenant serves a notice of surrender, and the landlord accepts it, the tenant will be estopped from afterwards setting up the invalidity of the notice *Brosnan v. Dobson*, 2 I. W. L. R. 181.

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A voluntary surrender by a middleman does not affect the rights of sub-tenants: *Mellor v. Watlins*, L. R. 9 Q. B. 400. Even though the middleman was, at the date of the surrender, liable to a forfeiture *Great Western Railway Co. v. Smith*, 2 Ch. D. 235.

Voluntary
surrender.

Various statutes confer powers on lessees to surrender their leases in certain events, without the concurrence of their landlords. Thus Sec. 40 of the present Act enables a lessee, upon the destruction of a dwellinghouse or building, which is the substantial matter of the demise, by accidental fire or other inevitable accident, to surrender same, provided there is no clause in his lease binding him to repair.

Statutory power
of surrender.

A middleman may also surrender an agricultural holding, when the rents of his sub-tenants are reduced by the Court under the Land Acts, 1881 and 1887, below that which he himself pays. (See Land Act, 1887, Sec. 8, and notes thereto, *post*.)

Assignees in bankruptcy may disclaim the interest in a lease belonging to the bankrupt, and if they do so the lease is deemed to be surrendered from the date of the order of adjudication: Bankruptcy (Ireland) Act, 1872, sec. 97. If the bankrupt refuses to give up possession, a writ of assistance may be issued to compel him to do so under Sec. 271 of the Bankruptcy (Ireland) Act, 1857.

(b) A surrender may take place "by act and operation of law" without any deed or note in writing. "A surrender by act and operation of law, I think," says BRADY, C.B., "may properly be stated to be a surrender effected by the construction put by the Courts on the acts of the parties, in order to give to those acts the effect substantially intended by them, and when the Courts see that the acts of the parties cannot have any operation except by holding that a surrender has taken place, they hold it to have taken place accordingly" *Lynch v. Lynch*, 6 Ir. L. R., at p. 138.

Surrender by
operation of law

The acts of the parties which may thus constitute a surrender by operation of law may be classed under four headings—(1) Delivery of possession of the demised premises to the landlord; (2) The tenant adopting a position inconsistent with the fact of his holding as tenant; (3) The acceptance by the tenant of a new lease or agreement; or (4) The admission of a new tenant under a new letting, made to the knowledge of, and with the consent of, the former tenant.

(1) If possession is delivered to, and accepted by, the landlord there will be a surrender of a lease even without any writing. But there must be a physical taking, or at all events something amounting to a virtual taking of possession: *per COCKBURN, C.J., Oastler v. Henderson*, 2 Q. B. D., at p. 578. In that case a lessee, having gone to America, left the keys with an agent to dispose of the house as best he could; the agent, unable to find a tenant, gave the keys to the landlord

By actual
delivery of
possession.

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in December, 1868, who put up bills and advertised the house to be let. The house was, however, not let until 1872, and it was held by the Court of Appeal that there was no surrender by operation of law until the new letting in 1872, although some workmen of the landlord's occupied two rooms in the house in 1870. "The mere attempting to let," says COCKBURN, C.J., "does not amount to an estoppel. The landlords did nothing but what they might reasonably be expected to do under the circumstances for the benefit of all parties. As for the fact that the plaintiff's workmen used two of the rooms in 1870, I do not think that any jury ought to hold that to be equivalent to a taking of possession, for it is, under the circumstances, quite consistent with an intention to hold the defendant to his lease" *Oastler v. Henderson*, 2 Q. B. D., at p. 578. But if the landlord, having accepted the key against his will, afterwards avail himself of its possession in a way he would not be entitled to do unless he had accepted the surrender, such as to obtain a tenant at any moment, and put him into immediate possession, this may amount to an acceptance of the surrender *McMurtry v. McGwern*, 32 L. L. T. R. 154 (PALLES, C.B.). See further on this point *O'Reilly v. Mercer*, 10 Ir. Jur. N. S. 149; *Grimman v. Legge*, 8 B. & C. 324, *Doe d. Huddleston v. Johnston*, M'Clel. & Y 141, *Phené v. Popplewell*, 12 C. B. N. S. 334, and notes to *Duchess of Kingston's Case*, 2 Sm. L. C.

By tenant becoming caretaker

(2) Similarly, if a tenant becomes a servant or caretaker to his landlord, that is equivalent to giving up actual possession. Thus, where a middleman surrendered his lease by deed, and a sub-tenant, who was ploughman to the head landlord, on being informed of the fact, verbally agreed to continue in possession of his house as caretaker, and so continued for some time, receiving his weekly wages and paying no rent, it was held that the agreement amounted to a surrender by operation of law. *Lambert v. M'Donnell*, 15 I. C. L. R. 136; 9 Ir. Jur. N. S. 371.

By acceptance of new tenancy.

(3) The acceptance by a tenant of a new lease, or even a parol agreement for a new tenancy, also works a surrender by operation of law of the lease previously subsisting. "It was settled law," says PENNEFATHER, B., "on the older authorities that the acceptance of a new lease by a tenant operated as a surrender of his interest, whether such new interest were for a greater or less estate, whether the first lease had been freehold or whether it was one for a long term of years. There are many authorities to show that the previous lease, whether of freehold or for a term of years, was surrendered by the acceptance of a demise, though by parol" *Lynch v. Lynch*, 6 I. L. R., at p. 140. See also on this point *Fenner v. Blake* (1900) 1 Q. B. 426; *Gray v. Gray* [1894] 1 I. R. 65. If the new lease, however, does not take effect according to the intention of the parties, the former interest is not deemed to be surrendered. There must be a valid lease to destroy the previous estate *Doe d. Egremont v. Courtenay*, 11 Q. B. 702. But where a tenant for life made a lease for a term exceeding his power of two parcels of land, of one of which the lessee had previously been in possession as tenant from year to year, it was held, in an action to recover possession brought by the remainderman on the death of the tenant for life that the lessee could not set up as a defence the old yearly tenancy as unsurrendered: *Brinkley v. M'Munn*, 32 L. R. I. 532 (Q. B. D.). But *quære*, whether this would be so, if the tenancy from year to year had existed before the lands were put in settlement, and was binding upon the several estates thereby created. See judgment of HOLMES, J., 32 L. R. Ir., at pp. 539-540.

But the acquisition by the tenant of a present tenancy under the Land Act, 1881, of an additional parcel of land, and the fixing of a bulk rent for the enlarged holding by

the landlord, does not, in consequence of the 20th Section of the Land Act, 1881, necessarily effect a surrender by operation of law of the old tenancy and the creation of a new one, although independently of this section it appears that it would do so: *Jackson v. Hagan*, 28 L. R. Ir. 326; *Conroy v. Drogheda*, 1894, 2 I. R. 590 (C. A.). As to how far the doctrine of implied surrender is affected by Sec. 20 of the Land Act, 1881, see notes to that Section, *post*, and *Butler v. O'Mahony*, 32 I. L. T. R. 93: 1 Greer 22. Sects. 7-3.

(4) A letting made to a new occupier, with the privity and assent of the former tenant, has the same operation: *Thomas v. Cook*, 2 B. & Al. 119, 2 Stark, 408. *Nickells v. Atherstone*, 10 Q. B. 944: *Doran v. Kenny*, I. R. 3 Eq. 148. And this has been held to be so, even where the original lease was a freehold lease *Lynch v. Lynch*, 6 I. L. R. 131. This latter decision was, however, disapproved of by Sir E. SUGDEN, L.C., in *Creagh v. Blood*, 3 Jones & Lat. 153; but it was approved of and followed by the Court of Common Pleas in *Lynch v. Collins*, 1 Ir. Jur. N. S. 211. By letting to a new tenant.

In order to create a surrender by operation of law in this way, there must, however, be an actual change of possession: *M'Cracken v. Ross*, 20 I. L. T. R. 65, 73; *Anderson v. Anderson*, 21 I. L. T. R. 35. But it is not necessary that the new tenant should go into actual physical possession; it is sufficient if another goes in as his agent or manager *M'Cracken v. Ross*, 20 I. L. T. R. 65, 73. A mere change in the receipts for rent is not sufficient: *Bourke v. Bourke*, I. R. 8 C. L. 221; nor is an entry in the estate books, without any actual change of possession: *Anderson v. Anderson*, 21 I. L. T. R. 35. There must, also, be an intention to surrender, so that an assignment void as a breach of covenant against alienation under Sec. 10, *post*, cannot be given effect to in this way *Clifford v. Reilly*, I. R. 4 C. L. 218.

The surrender of a tenancy for the purpose of the acceptance by the landlord of a new tenant does not, if the holding is within the Land Acts of 1870 and 1881, effect a determination of the old tenancy, or prevent the old tenant from being considered a predecessor in title of the new tenant, so as to enable the latter to have a fair rent fixed or obtain compensation for improvements made by the former. See Land Act, 1881, Secs. 7 and 20, *post*.

As an actual shifting of possession is necessary to constitute a surrender by operation of law, it follows that there can be no surrender by operation of law in the case of reversions and incorporeal hereditaments: *Lyon v. Reed*, 13 M. & W. 285; 13 L. J. Ex. 377; 8 Jur. 762. This decision was approved of in *Nickells v. Atherstone*, 10 Q. B. 944, though the observations of the judges in deciding it were questioned. It was also followed in Ireland in the case of *M'Grath v. Shannon*, 17 I. C. L. R. 128. See, especially, judgment of PIGOR, C.B., at pp. 139-140.

An action for breach of contract cannot be maintained upon a surrender of premises unless the agreement is in writing, as required by the Statute of Frauds, even although the interest in land moves not *to*, but *from*, the plaintiff. *Rovayne v. Sherrard*, I. R. 11 C. L. 146.

8. The surrender of any lease made before or after the passing of this Act for the purpose of obtaining a renewal thereof, shall be valid without the surrender of the interests of the under-tenants thereunder; and the owners of such renewed lease for the time being and their representatives shall have the same rights and Lease may be renewed without surrender of under-tenancies.

Sects. 8-9. remedies as against such under-tenants as he or they would have had or have been entitled to had such surrender not been executed; and the chief landlord shall have the same remedies against the premises for the rents and duties reserved in such new lease, not exceeding the rents and duties reserved by the lease out of which such under-tenancies were derived, as he would have been entitled to in case no such surrender had been executed.

Rights of sub-tenants in such event.

This section, though it does not in terms contain a provision for the preservation of the sub-tenants' interests co-extensive with the rights and remedies given to the lessee against such sub-tenants, yet, by implication, it does so preserve the interests of the sub-tenants intact. A tenancy from year to year under a middleman whose own interest in the premises is derived under a lease for lives does not, therefore, where the middleman has obtained a new lease, terminate without notice to quit upon the expiration of the original lease, even though the new head-lease contains a covenant against sub-letting *Hayes v. Fitzgibbon*, I. R. 4 C. L. 500.

"The eighth section of the Landlord and Tenant Act," says FITZGERALD, B., "which has been substituted for the repealed fourth section of the Irish Act, 5 Geo. II. c. 4, provides for the continuance of a lessee's rights and remedies against his sub-tenants upon a surrender of his lease and the taking of a new lease as if there had been no surrender—in other words, makes the new lease a continuance of such lessee's reversion, which it was not at Common Law; and I cannot doubt that the intention of the Legislature was to preserve the sub-tenants' interests exactly as the repealed section of the Act of Geo. II. did in terms preserve them—viz., 'as if the original lease out of which the respective under-leases are derived had been still kept on foot and continued.'" I. R. 4 C. L. at p. 505. So, also, it has been held in England that a voluntary surrender by a middleman does not affect the interests of sub-tenants. *Great Western Railway Co. v. Smith*, 2 Ch. D. 235, 3 App. Cas. 165. *Mellor v. Watkins*, L. R. 9 Q. B. 400.

As to assignment of estate and interest of tenant.

9. The estate or interest of any tenant (a) in any lands under any lease or other contract of tenancy shall be assigned, granted, or transmitted by deed executed, or instrument in writing (b) signed by the party assigning or granting the same, (d) or his agent thereto lawfully authorized in writing, or by devise, (c) bequest, or act and operation of law, (e) and not otherwise; and in case the said estate or interest shall, on the death of the tenant, remain undisposed of and without any special occupant, (f) it shall pass to the personal representative of the tenant as part of the personal estate of such tenant

History of law as to assignment.

The history of the law as regards the assignment of the interests of tenants in land in Ireland may shortly be summarized as follows:—

The first statute dealing with the subject is the Statute of Frauds (7 Will. III. C. 12), Sec. 1 of which provided that no estate or interest in land should be assigned, granted, or surrendered, unless by deed or note in writing or by act and operation of law. Prior to this Act parcel assignments were, apparently, valid.

By 7 Geo. IV., c. 29, s. 3, it was provided that where lands were held under any lease or agreement for a lease made after 1st June, 1826 (other than renewable leases or leases for 99 years or upwards), not containing an express clause authorising assignment, any assignment should be void, unless it was made with the express consent of the lessor, by being a party to the deed or written instrument, or by indorsement thereon if the assignment was by deed or instrument in writing, or by a written consent thereto if otherwise.

This Act was repealed by 2 Will. IV., c. 17, except as regards leases made between 1st June, 1826, and 1st May, 1832 (Sec. 10). It is still the law as regards leases made between these dates, as the schedule of repealed statutes to the present Act contains the same saving clause, although it repeals the Act.

By 8 & 9 Vic., c. 106, s. 3 (which was extended to Ireland as regards assignments, though not as regards releases and surrenders), all partitions, exchanges, and assignments which previously were required to be in writing were made void in law, unless made by deed. This section is now repealed by the present Act (Sec. 104), except as regards partitions and exchanges, which still require to be by deed (see Sch. B, *post*).

The present section, which takes the place, practically, of all previous legislation, restores the law as regards the assignment of a tenant's interest in land to what it was under the Statute of Frauds.

The Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vic., c. 66), now provides for the registration of leasehold estates in certain cases, and where this takes place future transfers of such can only take place in the manner provided by Sec. 35 of that Act. Until the transferee is registered as owner of the land transferred an instrument of transfer does not convey any estate in the lands to him [Sec. 35 (2)].

Transfer under Local Registration of Title Act.

(a) "The estate or interest of *any tenant*" would seem to include a tenancy at will. Prior to this Act, however, it was decided that a tenancy at will was not assignable: *Murphy v. Ford*, 5 I. C. L. R. 19. The question may be of some importance in cases where a void lease has been executed and no rent paid thereunder.

(b) An instrument in writing to operate under this section must purport to transfer the estate; though if that intention is sufficiently expressed no particular form of words is required: *per WALSH, M.R., Doran v. Kenny*, I. R. 3 Eq., at p. 153. A mere agreement to assign is not sufficient: *Doran v. Kenny*, I. R. 3 Eq. 148. But an instrument may amount to an actual transfer, although the words used are merely "agrees to assign," if immediate possession was obviously intended to pass: *Manning v. Saul*, 26 L. R. Ir. 640.

What amounts to an assignment.

As to whether an assignment amounts to an absolute transfer of the estate with an agreement to re-convey in certain events, or is merely a mortgage, see *O'Reilly v. O'Donoghue*, I. R. 10 Eq. 73; *Williams v. Owen*, 5 M. & Cr. 305; *Fee v. Cobine*, 11 Ir. Eq. R. 406.

An under-lease for the whole term does not, if made after 1st January, 1861, in Ireland, amount to an assignment, as a reversion is not necessary to constitute the relation of landlord and tenant: *Seymour v. Quirk*, 14 L. R. I. 97, 455, 18 I. L. T. R. 29. See notes to Sec. 3, *ante*, p. 4. It is otherwise in England: *Beardman v. Wilson*, L. R. 4 C. P. 57.

"The assignee of a lease becomes liable to the lessor for the performance of all the covenants which run with the land, and the lessee is also liable in the nature of a surety as between himself and the assignee for the performance of the same

Liability of assignee.

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covenants " *per* PARKE, B, *Humble v. Langston*, 7 M. & W., at p. 530. There is an implied promise on the part of each successive assignee of a lease to indemnify the original lessee against breaches of covenant committed by each assignee during the continuance of his own term, and a lessee who has been compelled to pay damages to his landlord for such can sue an assignee by mesne assignment through whose default the breach has occurred *Moule v. Garrett*, L. R. 7 Ex. 101, 5 Ex. 132, considered and explained in *Bonner v. Tottenham & Edmonton Permanent Investment Building Society* [1899] 1 Q. B. 161. But a lessee can only recover from an assignee the actual loss sustained; and where an action is merely commenced against him by the lessor he is not entitled to claim from the assignee the prospective damages which may be recovered against him *Beatty v. Quirey*, I. R. 10 C. L. 516. He can, however, recover the costs which he has actually incurred, to be taxed as between solicitor and client *Wiley v. Smith* [1894], 1 I. R. 153.

It has been held by the Court of Appeal in Ireland, dissenting from *Price v. Jenkins*, 5 Ch. D. 619, and following the earlier Irish authority, *Gardiner v. Gardiner*, 12 I. C. L. R. 565, that there is no inflexible rule that every assignment of a leasehold interest must be an assurance for good consideration within 10 Car. I., sess. 2, c. 3, s. 14, in consequence of this liability of the assignee to indemnify the lessee from liability for breaches of covenant *Lee v. Matthews*, 6 L. R. Ir. 530. The existence of onerous liabilities may give the transaction the character of a bargain, even though no money is paid, but, in each case, it is a question of fact whether the transfer is a bargain or a gift *Lee v. Matthews*, 6 L. R. Ir. 530; *Gardiner v. Gardiner*, 12 I. C. L. R. 565.

Liability of
devisee or
legatee

(c) As to the liability of a *devisee* or a *legatee* of a leasehold estate, on the covenants in a lease, where he has not entered into possession, see *Parnell v. Boyd* [1896], 2 I. R. 571. He may apparently disclaim the gift, if he disclaims it *in toto* and in that event he will not be liable to the lessors, but if properties of different kinds are embraced in the same testamentary gift, he cannot repudiate what is onerous and keep the rest, if he accepts any portion of the gift, the leasehold interest vests in him, and the lessors may proceed against him directly (see judgment of HOLMES, J. [1896], 2 I. R., at pp. 579-580).

(d) The signature of the tenant, or of his agent authorized in writing, is, in general, necessary to the validity of an assignment, but the necessity for such signature is dispensed with in two cases—(1) Where a sheriff seizes under a *fi. fa.* and duly assigns to a purchaser the chattel interest of the judgment debtor in a tenancy (see Dixon on Sheriffs, pp. 134, *et seq.*, and notes to Land Act, 1881, sec. 1, subsec. 14, *post*); (2) when a judgment mortgage is registered against the tenant's interest under 13 & 14 Vic., c. 29, the effect of which is to "transfer to, and vest in, the creditor" the interest in the lands (Sec. 7). See Madden on Registration, 2nd ed., pp. 90, *et seq.*

Assignment by
operation of law

(e) An assignment by "act and operation of law" without any deed or note in writing may also take place—(1) Where there is a parol assignment followed by actual change of possession; (2) Upon the bankruptcy of the tenant, or (3) His death, and formerly also (4) Upon the marriage of a female tenant. Now, however, by the Married Woman's Property Act, 1882, no tenancy held by any woman married after January 1st, 1883, vests in her husband *jure mariti*.

Upon actual

(1) As regards transfers by acts of the parties, it would seem that an actual transfer of possession of a tenancy to another without writing, if the new tenant is accepted by the landlord, constitutes an assignment by operation of law. Strictly speaking, under the old law it amounted to a surrender of the old tenancy

by operation of law to the landlord and the creation of a new tenancy in the assignee. See *M'Cracken v. Ross*, 20 I. L. T. R. 65, 73, and cases cited in the notes to Sec. 7, *ante*, p. 23. But now, by Sec. 20 of the Land Act, 1881, it is provided that the surrender of a tenancy for the purpose of the admission of a new tenant or otherwise by way of transfer does not determine a tenancy (Sub-sec. 1); so that, in the case of agricultural tenancies at least, such a transaction must be looked on as an assignment.

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It must be remembered that this section applies to tenancies from year to year created by parol as well as to leasehold interests under deed or agreement in writing. It is doubtful, therefore, whether a parol agreement to transfer, followed by a change of possession, would, *without the landlord's knowledge and consent*, effect an assignment by operation of law.

"Mere alteration in the form of receipt by a landlord, unless assented to by all the parties interested, does not found evidence from which we can infer a change of the tenancy or a transfer of legal rights:" per LAWSON, J., *Bourke v. Bourke*, I. R. 8 C. L., at p. 223; *M'Ilherron v. M'Ilherron*, 27 I. L. T. R. 62.

(2) Upon the bankruptcy of a tenant, any leasehold estate or tenancy from year to year which he possesses remains vested in him, notwithstanding, Secs. 267 and 268 of the Bankruptcy (Ireland) Act, 1857, until his assignees "elect to take" same under Sec. 271; *Hanway v. Taylor*, I. R. 8 C. L. 254, *Somers v. McDonnell*, 5 I. W. L. R. 10. Upon their doing so, all the estate of the bankrupt vests in them by operation of law, under the sections previously mentioned; but "the assignees of the bankrupt are not liable as assignees of the tenancy, unless they have done some act which unequivocally indicates to the lessor that they have elected to take the benefit of the lease:" per LORD CAMPBELL, C.J., *Goodwin v. Noble*, 8 E. & B., at p. 602. If the assignees elect not to take, the Court has power to order a surrender of the premises under Sec. 271 of the Bankruptcy (Ireland) Act, 1857: *In re Brownrigg*, 17 L. R. I. 589.

Bankruptcy.

(3) The death of a tenant also effects a transfer of the tenancy by operation of law. If the tenancy is for a term of years, or from year to year, it vests at once in the personal representative when raised, who can recover possession from any person in possession: *Wallis v. Wallis*, 12 L. R. I. 63. If the tenant of an agricultural tenancy dies intestate and leaves no person entitled to his personal estate, the tenancy vests in the landlord: Land Act, 1881, Sec. 3.

Death.

An outstanding tenancy in the representatives of a deceased tenant, even where no representative has been raised, must be determined before a mortgagee of the landlord's interest can recover possession: *Cosgrave v. Darcy*, 12 I. L. T. R. 27.

A legal personal representative in possession of a tenancy is personally liable to the landlord for rent and breaches of covenant: *Nixon v. Quinn*, I. R. 2 C. L. 248. The landlord may either sue him as executor or treat him as assignee: *Fielding v. Cronin*, 16 L. R. I. 380. But he is personally liable only to the extent of the value of the premises upon which he has entered (*per* MAY, C.J., *London & North Western Railway Co. v. Hill*, 12 L. R. Ir. at p. 146). If the letting was made to the testator and the executors do not give up the premises, the assets of the testator may be made chargeable during such time as they retain them in their possession: *per* TINDAL, C.J., *Atkins v. Humphrey*, 2 C. B., at p. 657. See further as to the liability of personal representatives, notes to Sec. 14, *post*.

Liability of personal representative.

An executor *de son tort* is as much liable as a legal representative (*Fielding v. Cronin*, 16 L. R. I. 379), but, of course, the assets of the deceased are not rendered liable by the occupation of an executor *de son tort*.

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An administrator is not bound to sell a tenancy if there are no debts to be paid. *Bradley v Flood*, 16 Ir. Ch. R. 236. He may, in such case, assign it to the parties entitled, but, if it is an agricultural holding it must be to one person only. Land Act, 1881, Sec. 3.

If an agricultural tenancy is bequeathed to more than one person, the personal representatives must nominate one only of such persons as tenant, and, if they do not do so, the landlord may require the tenancy to be sold. Land Act, 1881, Sec. 3.

Estates *pur
autre vie*

(f) The concluding words of the section refer to what are called *estates pur autre vie*, leases for a life or lives of persons other than the lessee. Originally, if such an estate was granted to a man, without mentioning his heirs, upon his death it became derelict the heir could not take because he was not mentioned in the lease, and the executor could not, because the interest in the lands was not personalty; anyone, it was held, might then enter, for the residue of the life of the *cuius in loco*, and whoever entered was called the *general occupant*. If the heir was named in the demise, the estate passed to him not as heir but as *special occupant*. The 9th section of the Statute of Frauds (7 Wm III c 12, Ir) provided that such an estate should be devisable, and that where no devise was made, it should be charged with debts in the hands of the heir in case he was the special occupant, and that, in case there was no special occupant, it should pass to the personal representatives as part of the personal estate, subject to the payment of the debts of the deceased. This section is repealed but re-enacted by the Wills Act (1 Vic, c 26, ss. 2 and 6)

Devolution of
such estates

The devolution of a lease for lives, in case of the death of the lessee intestate, is therefore now to the heir, if the lease is expressed to be made to the lessee "and his heirs", otherwise it passes to the personal representatives as if it were personal estate

If the interest in a lease for lives is vested in a purchaser under any of the Purchase of Land (Ireland) Acts and registered under the Local Registration of Title (Ireland) Act, 1891, it devolves in all cases where a death occurs after January 1st, 1892, like personal estate (54 & 55 Vic., c. 66, ss 83, 84, and 85).

Tenancies held under *agreements for leases* for lives in which there are no words of limitation, devolve on the personal representatives as personal estate and do not pass to the heir *Cornwall v. Saurin*, 17 L. R. Ir. 595; *McDermott v. Balfe*, I. R. 2 Eq 440.

How it may be
changed.

Even if a lease for lives is made to a man "and his heirs" the mode of devolution may be changed by the lessee or any assignee who is absolute owner of the estate *Brennan v Boyne*, 16 Ir. Ch. R. 87, *Croker v. Brady*, 4 L. R. I. 653. "Lands originally granted to A., or to A. and his heirs, may be diverted by A. by will or deed, and made to devolve on the executors or administrators of A., or the executors or administrators of a grantee or devisee of A. Such grantee or devisee may again change the devolution, and constitute the heirs of his grantee or devisee the special occupants, and so on; the last instrument creating a special occupant being that which regulates the devolution for the time being: *per CHATTERTON, V.C., Whithead v. Morton*, 19 L. R. Ir., at p. 447. But the mere donee of a power cannot change the devolution in this way *Whithead v. Morton*, 19 L. R. Ir. 435.

Where a man having an estate *pur autre vie*, limited to him and his heirs, devises that estate by words which, without words of limitation, are sufficient to pass his entire interest, and the devisee afterwards dies intestate, the person to take is the heir, and not the personal representative of the devisee *King v. King*

[1899], 1 I. R. 30 (C. A.) affirming the decision of PORTER, M.R. [1898] 1 I. R. 91; **Sects. 9-10.** *Wall v. Byrne*, 2 Jo. and Lat. 118; *Blake v. Jones*, 1 H. and Br. 227 n. In dealing with lands held *pur autre vie*, owing to the nature of the estate the whole interest passes absolutely without words of limitation. *Brenan v. Boyne*, 16 Ir. Ch. R. 87.

There may be a special occupant of an equitable estate as well as of a legal estate in an interest *pur autre vie*, and the question who is such special occupant is determined in precisely the same manner in both cases: *Reynolds v. Wright*, 2 De G. F. & J. 590, 30 L. J. (Ch.) 381. If there be no special occupant the estate will pass upon the death of the owner of the equitable estate intestate, to his personal representatives under the 6th section of the Wills Act (1 Vic., c. 26): *Mountcashell v. More-Smyth* [1896], A. C. 158; [1895], 1 I. R. 44.

If an estate for lives be limited to A. and his heirs, executors, and administrators," the heir will take as special occupant, but if it be limited to "A. and his executors and administrators" the latter will take as special occupants, and not as personal representatives *per* CHATTERTON, V.C., *M'Dermott v. Balfe*, 1 R. 2 Eq., at p. 445. The distinction may sometimes be of consequence. See *Norbury v. M'Donald*, 4 I. C. L. R. 137, and notes to Sec. 11, *post*, p. 35.

The heir, if special occupant, is liable to the landlord for the rent reserved by the lease, but if he is in possession only as heir, he is liable only to the extent of the freehold lands which have descended to him from the ancestor. *De la Poer v. Kirwan*, 1 R. 9 C. L. 519; *Fitzgerald v. Fitzgerald*, 1 I. C. L. R. 347.

10. Where any lease (a) has been or shall be made containing an agreement restraining (b) or prohibiting assignment, the benefit of which has not been waived before the first day of June, one thousand eight hundred and twenty-six (c), it shall not be lawful (d) to assign the lands or any part thereof contrary to such agreement without the consent (e) in writing of the landlord or his agent thereto lawfully authorized in writing, testified by his being an executing party to the instrument of assignment, or by an indorsement on or subscription of such instrument.

(a) "Any lease" includes an agreement in writing for a yearly tenancy, even though it is signed by the tenant only and not by the landlord: *Jagoe v. Harrington*, 10 L. R. Ir. 335 (see notes to Sec. 1, *ante* p. 3). It is doubtful, however, whether a covenant against assignment in a lease or agreement for a yearly tenancy in an agricultural holding made after the passing of the Land Act, 1881, to an occupying tenant, would be valid, if the poor law valuation were under £150 per annum. See Secs. 1 and 22 of that Act, *post*. The same question has been raised as regards a covenant against alienation in a lease, when a fair rent has been fixed under Sec. 1 of the Land Act, 1887; and it has been held by CHATTERTON, V.C., that such a covenant does not attach to the statutory tenancy then created, so as to prevent the tenant selling his tenancy under the provisions of the Land Act, 1881. *Re Wright and Tittle's Contract*, 29 L. R. Ir. 111. The Land Acts, however, only apply to occupying tenants, and, if the tenant is not in occupation a covenant against alienation in a lease, even of an agricultural holding, is still valid, and will be extended to a tenancy from year to year which arises on its expiration: *Meath v. Megan* [1897], 2 I. R. 39, 477 (C. A.), 31 I. L. T. R. 28, 93.

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A covenant against alienation in a fee-farm grant is absolutely void and inoperative, as repugnant to the free power of alienation necessarily implied by a fee-farm grant, whether the grant is made under the Renewable Leasehold Conversion Act *In re Quin*, 8 I. Ch. R. 578; or otherwise, *Lunham's Estate*, I. R. 5 Eq. 170. When a lease for lives renewable for ever contained such a covenant, it was held that a corresponding covenant should not be inserted in the fee-farm grant, and if inserted would be wholly void *Billing v. Welch*, I. R. 6 C. L. 88.

(b) An agreement which under special provisions affirmatively allows alienation is an agreement restraining alienation within the meaning of this section: *In re Coffey's Estate*, I. R. 4 Eq. 47, *Lunham's Estate*, I. R. 5 Eq. 170.

7 Geo. IV., c. 29,
and 2 Wm. IV.,
c. 17.

(c) The 1st June, 1826, was the date upon which 7 Geo. IV., c. 29, which placed a restriction upon the Common Law rules as to waiver, came into force. The provisions of Secs 3 and 4 of that Act were somewhat similar to those of Sec. 43 of the present Act (see notes to that section, *post*). The present section contains no provision as to waiver similar to that contained in the corresponding section as to sub-letting (see Sec. 18, *post*).

As to the provisions of 7 Geo. IV., c. 29, and the repealing Statute, 2 Wm. IV., c. 17, with regard to assignments, see notes to Sec. 9, *ante*. The former Act is repealed by this Act (Sec. 104), "except as to leases, instruments, and agreements for leases made between the 1st day of June, 1826, and the 1st day of May, 1832" (Sch. B., *post*). The latter Act is repealed by the Stat. Law Rev. Act, 1874. Unless a lease made between these two dates contain a clause expressly authorizing assignment, its effect is the same as if it contained a clause prohibiting assignment without the landlord's consent under this section. Leases for terms of 99 years or upwards, and leases for lives with a covenant for perpetual renewal, and leases from or under bodies corporate, lay or ecclesiastical, with a *totes quoties* covenant for renewal, are, however, excepted from the Act, 7 Geo. IV., c. 29, by sec. 3.

As to what amounts to a clause expressly authorizing assignment within the meaning of 7 Geo. IV., c. 29, see *Collins v. Healy*, 9 I. C. L. R. 514; *Meares v. Redmond*, 4 L. Ir. 533

Effect of assign-
ment, in violation
of covenant

(d) This section renders *null and void* an assignment of lands held under a lease prohibiting assignment where the landlord's consent is not testified in the prescribed manner. This was first decided in *Butler v. Smith*, 16 I. C. L. R. 213 (reported as *Smith v. Bernal*, 10 Ir. Jur. N. S. 94), where it was held that, notwithstanding an assignment made without the landlord's consent, the lands were liable to be taken in execution under a judgment against the lessee.

A settlement on marriage is an assignment within the meaning of this section, if it purports to convey the lands. It will consequently be void if the landlord's consent is not given *Smith v. Whitmore* (1896), 1 I. R. 520. But a person who goes into possession under the settlement may be estopped from setting up its invalidity *Kavanagh v. Crowley*, 33 I. L. T. R. 30, notwithstanding the decision in *Gullman v. Murphy*, I. R. 6 C. L. 34, and *Doody v. Nolan*, 2 L. R. Ir. 199.

In *Gullman v. Murphy*, I. R. 6 C. L. 34, it was held that the assignor could, after such an assignment, himself repudiate it and recover possession from the assignee.

The illegality of the assignment may even be set up by the assignee as against the landlord, even though the latter has given a verbal consent and has given receipts to the assignee for rent which accrued due subsequently to the assignment. *Earl of Donoghmore v. Forrest*, I. R. 5 C. L. 443. In this case it was held by the Exchequer Chamber, overruling *Duke of Leinster v. Metcalf*, 11 I. L. R. 365, that the landlord could not, in consequence of the previous payment of rent

by the assignee, treat the assignment as valid and sue the assignee for rent on the covenant.

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But an assignment without consent, though void as regards the passing of the estate, may cause a forfeiture where the lease contains a forfeiture clause, if the breach is not waived: *Clifford v. Reilly*, I. R. 4 C. L. 218.

Although the assignment may be void, the assignee who enters under it acquires a lawful possession, though not as tenant. He cannot, therefore, be treated as a trespasser until possession is demanded; nor can mesne rates be recovered from him except from the date of such demand. See judgment of PALLES, C.B., *Meares v. Redmond*, 4 L. R. Ir., at pp. 545-6.

The illegality of the assignment, if relied upon, must be specially pleaded. In an ejectment on title by the assignee of a lease against the assignors it was held that upon a mere traverse of the assignment the defendant could not set up its illegality, as having been executed contrary to a covenant against alienation: *Hayes v. Corcoran*, 8 L. R. I. 75.

The assignor may still be sued for rent by the landlord if the assignment is without consent; and if he pays he cannot recover it from the assignee, even if the latter is in possession: *Manning v. Saul*, 26 L. R. Ir. 640. An agreement to assign, followed by a change of possession, is equivalent to an assignment: *Manning v. Saul*, 26 L. R. Ir. 640.

If the assignment is itself void, all covenants in the deed dependent upon it are also void, and the covenantor is not estopped from relying upon the illegality: *Doody v. Nolan*, 2 L. R. Ir. 199, Ir. R. 11 C. L. 23.

This "severe interpretation" of the section, as CHRISTIAN, L.J., calls it in *Doody v. Nolan*, 2 L. R. I. at p. 215, has not been concurred in by all judges. FITZGERALD, B., differed from the rest of the Court in *Donoghmore v. Forrest*, I. R. 5 C. L. 443, while CHRISTIAN, L.J., in *Doody v. Nolan*, refers to the decision of *Donoghmore v. Forrest* as a *reductio ad absurdum*, and that in *Gillman v. Murphy* as a *reductio ad latrocinium* (2 L. R. I., at p. 215). Of late there has been a tendency, both by legislation and judicial decision to restrict somewhat the strictness of the interpretation. Thus, where a tenant held an agricultural holding under a written agreement for a yearly tenancy, containing a clause against assignment, it was held that the effect of Sec. 1 of the Land Act, 1881, which confers a general power of sale on tenants within its provisions, was so to modify the effect of this section as to make an assignment without consent and without even notice to the landlord merely voidable at the option of the landlord; but good as between the assignor and assignee: *Hughes v. Higgins*, 29 I. L. T. R. 82.

By the Land Act, 1888 (51 & 52 Vic., c. 13), it is provided that an assignee of a lease with a clause against assignment may have a fair rent fixed, if the landlord has, as a matter of fact, consented to the assignment, though the consent has not been given in the manner prescribed by this section. And by the Land Act, 1889 (52 & 53 Vic., c. 59), this provision is extended to the case of leases executed between 1st June, 1826, and 1st May, 1832, not containing a clause authorizing assignments. See these Acts, *post*. In such cases the assignees are, thereafter, estopped from denying that they were such (51 & 52 Vic., c. 13, sec. 1).

It has also been held that although the interest in a lease containing a clause against alienation cannot be transferred directly without the landlord's consent, it may be acquired by a stranger under the statute of limitations, without such consent: *Rankin v. M'Murtry*, 24 L. R. Ir. 290. See on this point *Mayor of Brighton*

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v. Guardians of Brighton, 5 C. P. D. 368. But see, *contra*, *Tichborne v. Weir*, 67 L. T. 735. 8 *Times Reports*, 713.

Assignments by
operation of law

Again, a clause against alienation does not operate to prevent a transmission of a tenant's interest by operation of law (*Kennelly v. Enright*, 8 L. R. I. 33), unless there is a special provision in the lease to that effect (*Maconchy v. Douglas*, 23 I. L. T. R. 12), so that a conveyance by the Sheriff of the interest in a lease containing such a covenant is good, even without the landlord's consent: *Kennelly v. Enright*, 8 L. R. Ir. 33. In this case it was held that even where, by the terms of the lease, such a conveyance was capable of operating as a forfeiture, it was effectual to pass the interest in the lease to the purchaser, until the lessor elected to take advantage of the forfeiture. But if the covenant in the lease by its express terms refers to involuntary as well as voluntary assignments, it appears that an assignment by the Sheriff would be invalid *per PALLES, C.B., Hillock v. Cope*, 9 I. L. T. R., at p. 78.

A judgment mortgage registered under 13 & 14 Vic., c. 29, operates as an assignment by operation of law, and is a good charge on a lease prohibiting alienation. *Reidy v. Piercc*, 11 I. C. L. R. 361. See, however, remarks of DEASY, L.J., upon this case *Qurke's Estate*, 3 L. R. Ir. at p. 26.

It would seem also that a clause against alienation does not prevent a lease vesting in assignees in bankruptcy, notwithstanding the decision in *Masterson v. Rochfort*, 5 I. C. L. R. 102. The principle of the decision in *Kennelly v. Enright*, 8 L. R. Ir. 33, seems to apply to the case. See also the judgment of FITZGERALD, B., in *Barry v. Fitzsimons*, I R. 2 C. L., at p. 336.

But an assignment by operation of law, through the acts of the tenant himself, as by a parol or invalid assignment, followed by delivery of possession, cannot take place, as otherwise the prohibition would have no effect. *Clifford v. Reilly*, I. R. 4 C. L. 218.

It would seem that the interest in a lease containing a clause against assignment may vest in the executors or administrators of the lessee, without any breach of the conditions. *Perry v. Harbert*, Dyer, 45 b. But whether they can make a good title to a purchaser without such consent seems a little doubtful, notwithstanding the remarks of FITZGERALD, B., in *Bury v. Fitzsimons* (I. R. 2 C. L., at p. 336) quoted below. It would seem, at all events, that if the executors or administrators are not named in the covenant, they can do so. *Norbury v. McDonald*, 4 I. C. L. R. 157; *Seers v. Hind*, 1 Vesey Jun. 295. The question is fully discussed in *Williams on Executors*, Part III., Bk. 1, ch. 1.

Assignments by
personal repre-
sentatives.

Devise by will

It has been held that a devise by will is not an assignment within the repealed Sub-letting Acts (7 Geo. IV., c. 29, and 2 Will. IV., c. 17): *Bury v. Fitzsimons*, I. R. 2 C. L. 327. "I think," says FITZGERALD, B., in that case, "the 9th Section of the Act (2 Will. IV., c. 17) shows that dispositions by way of devise are not assignments within the meaning of the Act any more than assignments by sheriffs under executions or assignments by executors or administrators, or from assignees of bankrupts or insolvents, or by operation of law" (p. 336). CHATTERTON, V.C., however, expressed a doubt in *Ex p. Raymond* (I. R. 8 Eq., at p. 234), whether a covenant against assignment was not broken under the present section by a devise. But in the subsequent case of *Foley v. Gallagher* (2 L. R. Ir. 35, 389), it was distinctly decided by the Court of Appeal, affirming the decision of the Exchequer Division, that the word "assignment" in this section, as well as in the repealed sections, 7 Geo. IV., c. 29, sec. 3, and 2 Will. IV., c. 17, sec. 2, comprises acts *inter vivos* only, and that a disposition by will is not, therefore, within the operation of

any of these sections. But where a lease contained a covenant by the lessee not to assign the premises "or to devise or bequeath same other than to two of his children, without the previous licence or consent in writing of the [lessor]," it was held that an assignment *by deed* to a child of the lessee without such consent was void: *Mahony v. Mahony*, 30 L. R. Ir. 475 (Q. B. D.).

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A deed of partition by joint tenants of lands is not an assignment within this section: *Foley v. Gallagher*, 2 L. R. Ir. 35, 389.

An equitable mortgage by deposit of a lease, even if accompanied by a letter of agreement that the depositee shall have a lien thereon is not a violation of a covenant not to "mortgage, sell, or assign:" *M'Kay v. M'Nally*, 4 L. R. I. 438, 13 I. L. T. R. 130. And it has been held that the Landed Estates Court has jurisdiction to sell the interest created by a lease containing a covenant against assignment where the lease has been deposited by way of equitable mortgage: *Ex p. Domville*, 14 Ir. Ch. R. 19. But in *Quirke's Estate*, 3 L. R. Ir. 23, ORMSBY, J., refused to sell such an interest on the petition of a judgment mortgagee without the landlord's consent, and the Court of Appeal held that he had exercised a wise discretion, as the conveyance by the court would either derogate from the landlord's rights or give a defeasible title. It is the practice of the Land Judges not to sell in such cases without the landlord's consent. In *Byrne's Estate* (29 L. R. Ir. 250), MONROE, J., thus states the practice of the Court where a petition is presented by an equitable mortgagee for the sale of a lease containing a clause against alienation: "The deposit of the title deeds is not an assignment within the 10th Section of the Landlord and Tenant Act, 1860, so as to render the security void in the absence of such a consent as is therein provided. It may be the lease has been forfeited by the creation of a charge or incumbrance of which the lessor could take advantage. If I had arrived at the conclusion that in the absence of such covenants as are contained in this lease the petitioners had a right to sell, I should have directed notice to be served on the landlord, to give him an opportunity, if he chose to do so, of consenting to the sale. If the landlord consented to the sale, the order would have been made absolute. If he refused to consent to a sale, and I were satisfied that a breach of covenant had been committed entitling the landlord to re-enter, I should probably have exercised my discretion by refusing to sell, as was done in *Quirke's case* (3 L. R. Ir. 23). But I should not at once have dismissed the petition without first endeavouring to ascertain what course the landlord was disposed to take" (29 L. R. Ir., at p. 260). The decision of MONROE, J., on the case generally, was affirmed by the Court of Appeal (*Ibid.*).

A sub-demise is not a breach of a covenant against assignment: *Palmer v. Spring*, 14 Ir. Ch. R. 380. And a sub-lease is not now an assignment, even if it be for the whole term: *Seymour v. Quirk*, 14 L. R. Ir. 97, 455, 18 I. L. T. R. 29. See, however, Sec. 18, *post*, as to sub-lettings in breach of agreement.

Where an assignee under a deed of assignment void under this section makes a sub-letting, the sub-letting is good *by estoppel* as from a person in possession without any title: *Wogan v. Doyle*, 12 L. R. Ir. 69.

An executory agreement for the sale of the interest in a lease with a covenant against alienation is perfectly good without the landlord's consent, provided the vendor is willing and able to obtain such consent to the conveyance: *Jackson v. Meteer*, 1 R. 7 C. L. 499. And to a suit for specific performance in such a case by the purchaser against the vendor it is no defence that it does not appear that the consent of the landlord has been obtained: *Leitch v. Simpson*, 1 R. 5 Eq. 613.

But if the landlord has refused his consent the case will be different, for the

Equitable mortgage

Executory agreement for sale.

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Court will not compel a defendant specifically to perform an agreement when the result would be to compel him to commit a breach of a prior agreement with another person. *Willmott v. Barber*, 15 Ch. D. 96 (FRY, J., whose judgment was varied by C. A., but not on this point, 17 Ch. D. 772).

Nature of consent required.

(e) A consent in conformity with the express words of the lease, though not expressed in the manner prescribed by the section, renders an assignment valid, for in that case there is nothing done "contrary to such agreement." *In re Ulster Permanent Building Society, &c.*, 13 L. R. Ir. 67. There it appeared that the consent was endorsed on the lease, as required by the lease itself, and not upon the assignment as required by this section, nevertheless it was held to be sufficient.

But the requirements of the section must, in general, be strictly complied with. Thus where the consent is endorsed upon the assignment by the landlord's agent, it must be shown that he was authorized, in writing to give it, otherwise the consent is ineffectual, and there is no presumption that an ordinary land agent is so authorized. *M'Grath v. Ahern*, 20 L. R. Ir. 341, *Smith v. Whitmore* [1896], 1 I. R. 520 (see judgment of CHATTERTON, V.C., at p. 530). *Smyth v. Edie*, 21 I. L. T. R. 86. See further as to what amounts to written consent, note (d) to Sec. 18, *post*. And as to presuming the existence of a lost deed waiving the covenant. *Stevenson v. Parker* [1895], 2 I. R. 504; and *De Montmorency v. McAdam* [1899], 2 I. R. 299.

Must be pleaded.

Where an assignment of a lease containing a clause against alienation is relied upon in an action, the plea should aver not only the fact of the assignment, but also that the landlord's consent was given in the manner required by this section. *Staton v. Canny*, 8 L. R. Ir. 216. And conversely where the illegality of an assignment is relied upon, the fact that the landlord's consent was not duly given should be specially pleaded; for a mere traverse puts in issue the mere fact only of the assignment having been executed, and not its legality. *Hayes v. Corcoran*, 8 L. R. Ir. 75. In this case the judge at the trial refused to allow the defendant to amend, and the Court approved of his having so refused, upon the ground that if the illegality had been brought to the plaintiff's notice in time he might have procured a sufficient endorsement of consent before the trial.

When consent may be given.

The section does not require the consent to be given at any particular time. Whenever it is endorsed it validates the assignment as from that date, provided there are no intervening transactions to interfere with it. *Scott v. Redmond* 8 L. R. Ir. 112; *Tobin v. Cleary*, 1 R. 7 C. L. 17, *Davis v. Davis*, 4 Ir. L. R. 353; *Moynehan v. Hickey*, 1 R. 10 C. L. 253. But the consent when given does not operate retrospectively, *M'Grath v. Ahern*, 20 L. R. Ir. 341, so that if it be given after a verdict for a lessee in an action for possession, it does not entitle the assignee to judgment. The latter can only commence a cross-ejectment: *Meares v. Redmond*, 4 L. R. Ir. 533 [Affirmed on appeal but not reported]. And where, after the date of the assignment but before the consent was endorsed, the leasehold interest was seized under an execution against the original lessee it was held that the seizure was good. *Butler v. Smith*, 16 I. C. L. R. 213.

Forfeiture

Although the section renders any assignment not in accordance with its provisions unlawful, it does not provide that there shall be any forfeiture in consequence of non-compliance; nor will there be, unless there is some clause in the lease to create one.

An assignment though void under this section may cause a forfeiture of the lease, if the breach be not waived. *Clifford v. Reilly*, 1 R. 4 C. L. 218. But a person who has no legal interest in the lease cannot work a forfeiture, even though he is in possession and has paid rent to the landlord: *Hely v. Perry*, 2 L. R. Ir. 266.

Where a forfeiture has been incurred, the fact of bringing an action to recover possession is an election to avoid the lease: *Kilkenny Gas Co. v. Sommerville*, 2 L. R. I. 192. No demand of possession is necessary before commencing the action: *Lord Talbot de Malahide v. Odium*, L. R. 5 C. L. 302. But the Court will not allow interrogatories to be delivered for the purpose of discovering whether a forfeiture has been committed: *Browne v. Davis*, 2 L. R. Ir. 434.

Where, in an ejectment for forfeiture incurred by an attempted assignment of a lease, a defence of waiver was set up, the Court refused to stay the proceedings under Sec. 13 (3) of the Land Act, 1881, so as to allow the tenant to obtain the benefit of the Land Act, 1888 (51 & 52 Vic., c. 13), on the hearing of an application to the Land Commission to fix a fair rent: *M'Neill v. Thompson*, 24 L. R. Ir. 444.

An ejectment for a breach of condition against assignment is not a disturbance within the Land Act, 1870. (See Sec. 9 of that Act, *post*).

The 14th section of the Conveyancing Act, 1881, provides, generally, that a right of re-entry or forfeiture for a breach of covenant contained in a lease is not to be enforced by action or otherwise until a notice as prescribed by the section has been served upon the lessee. But by Sub-sec. 6 it is provided that the section does not extend to "a covenant or condition against the assigning, underletting, or disposing of the land leased," or to bankruptcy, or taking in execution of the lessee's interest, &c.

A court of equity has jurisdiction to relieve against a forfeiture caused by an assignment without consent contrary to a covenant: *Burke v. Prior*, 15 Ir. Ch. R. 106. But the general rule is not to give relief except in cases of fraud, accident, or surprise. See judgment of KAY, L.J., in *Barrow v. Isaacs* [1891], 1 Q. B., at p. 425. In that case the Court refused relief, although the breach which was occasioned by sub-letting without consent only occurred through the forgetfulness of the lessee's solicitor, and did no injury to the lessor.

This section of the Landlord and Tenant Act, 1860, contains no provision as to a waiver of a clause against assignment similar to that contained in Sec. 18 as to sub-letting. Sec. 43, *post*, provides for the case of leases made after the 1st January, 1861, only. As regards leases made before that date "whatever at Common Law would be a waiver of a clause against assignment must be so still." *per* MONAHAN, C.J., *Clifford v. Reilly*, L. R. 4 C. L., at p. 230. In that case, accordingly, it was held that the receipt of rent by a landlord with knowledge of a forfeiture previously incurred by an assignment without consent was a waiver of the forfeiture. But it must be remembered that, although the forfeiture which depends on the lease may be waived, the assignment is not for that reason made valid under this section: *Clifford v. Reilly*, L. R. 4 C. L. 218. The question of waiver is one of fact for the jury: *M'Neill v. Thompson*, 24 L. R. I. 444; *Mears v. Redmond*, 4 L. R. I. 533. As to waiver, generally, see notes to Sec. 43, *post*.

11. Every assignee (a) of the estate or interest or any part thereof (b) of any tenant, by lawful assignment, or by devise, bequest, or act and operation of law, made after the passing of this Act, shall be subject to the observance of all agreements in respect of assignment or sub-letting to the same extent as the original tenant might have been.

(a) The effect of this section is to place an assignee with consent, when the lease contains a clause against alienation, in exactly the same position as regards liability

Sect. 11-12. under the lease as the original lessee was before assignment, for, in such a case, an assignment with consent discharges the lessee from liability (Sec. 16, *post*); and, as under this section an assignee cannot again assign without consent, he cannot rid himself of liability, any more than an original lessee can do so, without the sanction of the landlord.

As to the liability of an assignee generally to perform the covenants contained in a lease, see Sec. 14 and notes thereto, *post*, p. 41.

Under the repealed Act, 2 Will. IV., c. 17, section 7 of which was *in pari materia* with this section, it was held that the executors of a lessee for lives containing a covenant against alienation could not assign the leasehold interest without the consent of the landlord, as the estate vested in them not *quod* executors, but as special occupants under the grant, which was made to the lessee, "his heirs, executors, administrators and assigns" *Norbury v. McDonald*, 4 I. C. L. R. 137.

Liability of assignee of part of demised premises.

(b) The assignee of a tenant's interest, "or any part thereof," is bound by the covenant against assignment under the terms of this section. As to the liability under the general covenants of a lease of a person who is assignee of part of the lessee's interest only, see *Grattan v. Wall*, I. R. 2 C. L. 485, and notes to Sec. 14, *post*, p. 41.

Benefit of covenants and agreements transferred to assignee of the landlord.

12. Every landlord (a) of any lands holden under any lease or other contract of tenancy shall have the same action and remedy against the tenant, and the assignee of his estate or interest, or their respective heirs, executors, or administrators, in respect of the agreements contained or implied in such lease or contract, (b) as the original landlord might have had against the original tenant, or his heir or personal representative respectively; and the heir or personal representative of such landlord on whom his estate or interest under any such lease or contract shall devolve or should have devolved shall have the like action and remedy against the tenant, and the assignee of his estate or interest, and their respective heirs or personal representatives, for any damage done to the said estate or interest of such landlord by reason of the breach of any agreement contained or implied in the lease or other contract of tenancy in the lifetime of the landlord, as such landlord himself might have had.

Section not retrospective.

In *Chute v. Busteed*, 16 I. C. L. R. 222, 10 Ir. Jur. N. S. 367, it was held by the Exchequer Chamber, reversing the decision of the Court of Exchequer (14 I. C. L. R. 115, 8 Ir. Jur. N. S. 369), that this section was not retrospective; and that although it applied to fee-farm grants, whether made under the Removable Leasehold Conversion Act or otherwise (see judgment of HAYES, J., 16 I. C. L. R., at p. 338), still that when a fee-farm grant containing a covenant to repair was made before 1860, and the interest in the grantor became vested in the plaintiff also before 1860, the latter was not entitled to sue the assignee of the grantee for breach of the covenant to repair, as there was no privity of contract between them. "I think," says HAYES, J., "the action and remedy provided by the 12th Section ought not to

be applied to cases of assignment before the Act, but only to those which occurred after the Act; so that the rights of persons claiming under the contract of assignment might not be unduly or unjustly interfered with. In short, I understand the 12th Section merely to say that for the enforcement of any right which the landlord now has or shall hereafter have against the tenant or his assignee, he shall have the same action and remedy as the original landlord might have had against the original tenant; but it gives no new rights in respect of bygone assignments upon which that remedy was to operate." 16 I. C. L. R. at pp. 239-240.

It appears from this decision that although the Section does not apply in any event to fee-farm grants made before the passing of the Act, even when assigned after 1st January, 1861 (for there being, in such cases, no reversion, there is no relationship of landlord and tenant within the meaning of Sec. 3), still the Section does apply to assignments made after that date of leases, made before the passing of the Act, where a reversion is reserved to the lessor. This question has not, however, been directly decided in any reported case.

In the case of fee-farm grants made under the Renewable Leasehold Conversion Act (12 & 13 Vic., c. 105), it is provided by Sec. 10 of that Act that all covenants implied by law on the part of the landlord or tenant of the former leases, and all covenants contained in such fee-farm grants in substitution for covenants contained in the old leases shall run with the estate in fee created under that Act in the same manner as they formerly did in the cases of the Renewable Leases: See that Sect. Appendix, *post*.

(a) "Every landlord" means every person "for the time being entitled to the estate or interest of the original landlord:" (Sec. 1, *ante*, p. 1). It includes the assignee of a person who had possession but no title, and a tenant is estopped from denying the rights of such an assignee just as he would be from denying the title of the original landlord: *Ward v. Ryan*, I. R. 10 C. L. 17. But where the plaintiffs claimed rent as assignees of the reversion, it was held to be a good defence for a tenant that the assignment was made with intent to defraud creditors, that the assignor had subsequently become bankrupt, and that his assignee in bankruptcy had demanded and obtained payment of the rent sued for: *Sexton v. Canny*, 8 L. R. Ir. 216.

Where a lessor in 1864 executed a deed by which he constituted himself and another person tenants of lands which he himself had leased in 1863, it was held by the House of Lords that the two together as "conjunct landlord" were entitled under this section to the benefit of the covenants in the lease (*Liddy v. Kennedy*, L. R. 5 H. L. 134), affirming the judgment of the Exchequer Chamber and Common Pleas in Ireland: I. R. 1 C. L. 105. "Although it may be held in Ireland," says LORD HATHERLEY, L.C., "that the Statute of Henry VIII. (to which the Statute of Charles I. in Ireland was analogous, dealing with the interest of assignees of reversions, is not applicable to a case like this, where the reversion has been severed, and therefore does not enable persons, where the reversion has been parted with to avail themselves of the previous construction of this proviso, yet the Statute for Ireland of the 23 & 24 Vic., c. 154, has entirely remedied that defect. It appears to me that this Statute has been framed for the express purpose of removing some of those technical difficulties which stood in the way of justice, and which, though devised originally with logical regard to consequences, have been found in practice to involve far more frequently the failure of justice than to secure any beneficial result to the parties; it carries into effect the true meaning of the contracts into which they had entered:" L. R. 5 H. L., at p. 143.

Severance of the reversion.

Sects. 12-13.
 Lease of the
 reversion.

A lease of the reversion granted to commence *in presenti* during the continuance of a prior subsisting lease appears to put the second lessee in the position of a landlord as regards the prior lessee, provided the latter attorns. *Edwards v. Wickwar*, L. R. 1 Eq., 403. Whether an attornment is necessary in Ireland in such a case seems doubtful, having regard to Sec. 3 of this Act. It is stated in Furlong's *Landlord and Tenant* (2nd ed., p. 30), that "if there be a tenant in possession under a lease for lives or years and during the continuance of his term another lease is made to a different person for lives or for years, to commence *in presenti*, the second or concurrent lease operates as an immediate grant of the reversion. It constitutes the owner of the second or concurrent lease the immediate landlord of the original lease, and entitles him to the rent and services reserved by the prior lease, and upon the expiration or sooner determination of the prior lease his lease becomes a lease in possession for the residue of the term for which it was granted, then to come and unexpired." Such a lease is a lease of the reversion, as distinguished from a lease *in reversion*. The distinction between the two is of great importance in reference to the statutory tenancy created by the 21st section of the Land Act, 1861, on the expiration of an existing lease. See notes to that section, *post*, and judgment of FITZGIBBON, L.J., *Beamish v. Crowley*, 16 L. R. Ir., at p. 290.

Benefit of
 covenants.

It is enacted by 8 & 9 Vic., c. 106, s. 5, that under an Indenture executed after 1st October, 1845, the benefit of a covenant respecting any tenements or hereditaments may be taken, although the taker thereof be not named a party to the same Indenture. Under this section it has been held that, where one of the Land Judges of the Chancery Division demised lands "pending the matter," the rent being reserved to "the lessor or his successors in office, or to the Receiver for the time being appointed to receive the rents," a Receiver subsequently appointed could, by direction of the Land Judge, bring an action for rent under the covenant in the lease (*Lloyd v. Byrne*, 22 L. R. Ir. 269; and the action may be maintained during the life of the lessor, though he is not a party to it (*Monroe and Darley v. Plunket*, 23 I. L. T. R. 76); and against the tenant's sureties as well as against the tenant himself. *Ibid.*

(c) This section appears to give a right to the assignee of a landlord to sue upon all covenants which are "incident to the tenancy," whether they run with the land or not. See judgment of ANDREWS, J., in *Borrowes v. Delaney*, 24 L. R. I., at p. 517, where the point was thus decided on the corresponding 13th Section, as regards the assignee of a tenant. As to what covenants run with the land, see notes to *Spencer's Case*. 1 Sm. L. C.; notes to Sec. 13, and Sec. 14, *post*; *Fleetwood v. Hull*, 23 Q. B. D. 35, and *Athol v. Mid. G. W. Ry. Co.*, I. R. 3 C. L. 333; where it was held that a covenant to allow a lessee to make use of a conduit made for carrying off waste water ran with the land.

It seems that the burden of a covenant, not involving a grant, never runs with the land, except as between landlord and tenant: *Ansterberry v. Corporation of Oldham*, 29 Ch. Div. 750.

Benefit of
 covenants and
 agreements
 transferred to
 assignee of the
 tenant.

13. Every tenant of any lands shall have the same action and remedy against the landlord and the assignee of his estate or interest, or their respective heirs, executors, or administrators, in respect of the agreements contained or implied in the lease or other contract concerning the lands, as the original tenant might have had against the original landlord, or his heir or personal

representative respectively; and the heir or personal representative of such tenant on whom his estate or interest shall devolve or should have devolved shall have the like action and remedy against the landlord, and the assignee of his estate or interest, and their respective heirs and personal representatives, for any damage done to the said estate or interest of such tenant by reason of the breach of any agreement contained or implied in the lease or other contract of tenancy in the lifetime of the tenant, as such tenant might have had.

The same principles of construction would appear to be applicable, *mutatis mutandis*, to this section as to the last. See notes, *ante*, pp. 36-38.

An assignee can only recover damages for a breach in his own time. See judgment of PALLIS, C.B., *Doyle v. Hort*, 4 L. R. Ir., at p. 467. In that case a sub-lease was made containing a proviso to permit a particular trade prohibited by the superior lease. The head landlord stopped the conversion of the premises into a shop for the purpose of the trade, and subsequently the sub-lessee assigned to the plaintiff, who again attempted to carry on the trade, but was restrained by injunction; it was held that, even assuming that the proviso amounted to a covenant to permit the trade, the covenant was one of which there had been a complete breach before the assignment, and that no right of action for this breach passed to the plaintiff as against the executors of the middleman: *Doyle v. Hort*, 4 L. R. Ir. 455.

In *Borrowes v. Delaney* (24 L. R. Ir. 503) a lessor had covenanted with a lessee to allow a sum of £40 paid to the lessor by the lessee at the date of the lease in discharge of a particular gale of rent, under the lease. The Exchequer Division held that this was a covenant of which an assignee of the lessee's interest could claim the benefit under this section whether it was one which ran with the land or not. "With respect to the point," says ANDREWS, J., "that the covenant in question does not run with the land, even assuming that it does not (which I by no means decide), I think the defendant, as assignee of the lease, is entitled to the right which was incident to the tenancy by virtue of the covenant when he became assignee—viz., the right of having the gale of rent falling due on the 29th September, 1888, deemed satisfied, in the events which have happened, by the £40 which was paid when the lease was granted." 24 L. R. Ir., at p. 517.

It was also decided in this case that the assignee was entitled to the benefit of the covenant, notwithstanding that he became a present tenant at the expiration of his lease under the 21st section of the Land Act, 1881, and did not give up possession in accordance with the covenant in the lease.

A covenant by a lessor to allow a lessee to make use of a conduit made for carrying off waste water, and to use such waste water for his own use, has been held to be a covenant running with the land, for which the assignee of the lessee could sue the assignee of the reversion: *Athol v. Midland G. W. Ry. Co.*, I. R. 3 C. L. 333.

Covenants contained in, or implied by law in, fee-farm grants made under the Renewable Leasehold Conversion Act (12 & 13 Vic., c. 105) run with the land, in the same manner as similar covenants in the old renewable leases. See Sec. 10 of that Act, *App.*, *post*.

Sect. 14.
Liability of
assignee to
come after
assignment over.

14. No landlord or tenant, being such by assignment, (a) devise, bequest, or act and operation of law only, (b) shall have the benefit or be liable in respect of the breach of any covenant or contract contained or implied in the lease or other contract of tenancy, otherwise than in respect of such rent as shall have accrued due, and such breaches as shall have occurred or continued subsequent to such assignment, and whilst he shall have continued to be such assignee: Provided, however, that no assignment made by any assignee of the estate or interest of any tenant shall discharge such assignee from his liability to the landlord, unless and until notice in writing (c) of the particulars of such assignment shall have been given to the landlord.

There are only three ways in which leasehold premises can be legally assigned (1) by instrument in writing, *inter vivos*, (2) by will, and (3) by act and operation of law: *per* HOLMES, J., *Powell v. Adamson* [1895], 2 Ir. R., at p. 49.

(a) If the lessee's estate is actually conveyed to the assignee, even though he never occupies or becomes possessed in fact of the premises, he renders himself liable on the covenants. Thus, a mortgagee by assignment is so liable, even though he never goes into possession: *Williams v. Bosanquet*, 3 Moore 500; *Rendall v. Andrea*, 61 L. J. (Q. B.) 630.

Who is an
assignee.

Any person in possession of land is presumed to be an assignee until the contrary is shown: *Sweeney v. Sweeney*, 1 R. 10 C. L. 375, 10 I. L. T. R. 101; *Shee v. Gray*, 15 I. C. L. R. 296, 9 Ir. Jur. N. S. 270. Where under a lease containing a covenant against assignment it was proved that the lessee had died intestate, and that no legal personal representative had been raised to him, but that his son had remained in possession, and paid the rent under the lease, it was held that the landlord was entitled to treat the son as assignee. *Foot v. Benn*, 18 I. L. T. R. 90. "I am of opinion," says PALLIS, C.B., in that case, "that, when a person is in possession of land claiming to hold it under an existing lease, and that that person has a good title against every person except the true owner, and, in addition, that there is no person in existence in whom the legal interest is vested, he is entitled as against everybody. I think it follows logically from this that a landlord is entitled to treat the person in possession under such circumstances as the assignee of the lease:" 18 I. L. T. R. at p. 91. In *Tichborne v. Weir*, 67 L. T. 735, 8 *Times* L. R. 713, the Court of Appeal in England appear, however, to have taken a different view, holding that a person in possession of a lessee's interest in land paying rent to the lessor for over 20 years, could not be sued on the covenants without proof that he had either taken the lease by actual assignment or had estopped himself from denying that he was assignee of the term. "If a man pays rent to the landlord," says BOWEN, L.J., in that case, "on the footing of accepting a term, and the liabilities under it, and the landlord accepts the rent on those conditions, then such a person might be estopped from denying that he has become tenant to the landlord" (67 L. T. at p. 737). In this particular case it was held that there was no such estoppel.

In the same case it was held that where a person is in possession of the lessee's interest in land for over 20 years, although the title of the lessee may be extinguished by the Statute of Limitations (3 & 4 Wm. IV., c. 27, sec. 34), the right

and title of the lessee is not transferred to the person in possession: *Tichborne v. Weir*, 61 L. T. 735; 8 *Times* L. R. 713. The contrary has, however, been held in Ireland, even in the case of a lease with a covenant against alienation: *Rankin v. M'Murtry*, 24 L. R. Ir. 290.

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As to the liability on the covenants contained in a lease, of a person who is assignee of part only of the lessee's interest, see *Grattan v. Wall*, I. R. 2 C. L. 485. In that case it appeared that the demised premises had vested in the defendants (three in number) and two other persons not parties to the action, as tenants in common, and it was held that a verdict was properly directed against them for the rent reserved by the lease, for the defence raised only amounted to what would have been a plea in abatement under the old system (*Shee v. Gray*, 15 I. C. L. R. 296), and pleas in abatement are now abolished: see Rules of Supreme Court, 1891, Order XXI., Rule 20. On the other hand, it appears that if the demised premises become vested in several persons, in separate divided portions, one of these assignees of part cannot be personally sued for the whole rent. He is only liable for the rent of the portion vested in him, and the rent should be apportioned by the jury if necessary. The law was thus laid down by MAX, C.J., in *Orme v. Wills*, 2 L. R. Ir. at pp. 127 and 128; but the decision of the Court in that case was reversed on appeal, and unfortunately the decision of the Court of Appeal is not reported (see Murray & Dixon's Digest, col. 791). The facts of the case were very special, and a good deal turned upon the pleadings; probably, therefore, the reversal of Court of Appeal was upon special grounds, for there appears to be no reason to question the law as laid down by MAX, C.J., in the Court below. See further upon this point *Ireland v. Landy*, 22 L. R. Ir. 403.

Assignee of part of lessee's interest.

Notwithstanding an assignment of a term, the lessee remains liable on his covenant, unless the landlord has given his consent to the assignment in the manner prescribed by Sec. 10, *ante*, p. 29. An assignment with such consent operates as a discharge of the original lessee from liability for any future breaches: Sec. 16, *post*, p. 43.

Lessee's liability.

In the case also of a lease not containing such a covenant, if an assignee in possession obtains an order fixing a fair rent under Sec. 1 of the Land Act, 1887, the original lessee is thereby discharged from liability upon his covenants: *Sturges v. Ryan*, 24 L. R. Ir. 305.

As to the lessee's right of indemnity against an assignee in case he is sued by the lessor for breaches of covenant committed by the assignee while in possession, see notes to Sec. 9, *ante*, p. 25.

An assignee is in general only liable to perform such of the covenants contained in a lease as run with the land, namely, those which directly affect the use of the demised premises, such as a covenant to repair, to pay rent, to use the land in a particular manner, or to insure buildings. A covenant in a lease of a hotel not to buy wines, except from the lessor, his successors, or assigns, has been held to run with the land: *White v. Southend Hotel Co.* [1897], 1 Ch. 767. Similarly, a covenant to manage the business of a public house in an orderly manner: *Fleetwood v. Hull*, 23 Q. B. D. 35. See further as to what covenants run with the land, notes to Spencer's Case, 1 Sm. L. C., and notes to Secs. 12 and 13, *ante*, pp. 36 and 39.

Covenants running with the land.

But a covenant, even though it runs with the land, will not be binding upon an assignee, unless it is a continuing covenant. If it is merely to perform a definite act within a specified time, which has elapsed before he became assignee, he cannot be sued for its breach. Thus, a covenant to make a new street on demised

What covenants bind assignees.

Sect. 14.

premises within one year from the date of a lease, was held to have been broken once for all when the year had elapsed, and not to be enforceable against an assignee whose title accrued subsequently: *Morris v. Kennedy* [1896], 2 I. R. 247 (C. A.).

(b) An assignment by operation of law takes place when upon the death of a lessee his interest passes to his personal or real representatives, or when on his bankruptcy it passes to his assignees. (See note to Sec. 9, *ante*, p. 27.)

Liability of Personal Representatives.

The liability of an executor as assignee of a term on the covenants contained in a lease is thus stated by SMITH, J., in *Rendall v. Andrae*, 61 L. J. (Q. B.) 630: "Before entry and taking possession, the executor of a lessee cannot be made liable as assignee of the term, but if he does enter and take possession, he may be made liable as assignee; yet he may then, by proper pleading, limit his liability for rent to the yearly value the premises might have yielded, though it would seem he cannot so limit his liability in respect of breach of covenant to repair" [61 L. J. (Q. B.) at p. 633]. *Wollaston v. Hakewell*, 3 M. & G. 297.

If personal representatives are in possession, they are liable as assignees, and may be treated as such *Fielding v. Cronin*, 16 L. R. I. 379. But if they assign the leasehold interest to a purchaser, and distribute the assets, they are protected from liability by 22 & 23 Vic., c. 35, sec. 27, provided they comply with the terms of that section.

Executors or administrators are not liable after a decree for administration for rent or breaches of covenant in a lease made to a deceased person. The decree is a complete protection to them against all liability, not only on foot of future breaches of the covenants, but also on foot of past breaches for which no claim has been made in the cause by the lessor *Buckley v. Neabitt*, 5 L. R. Ir. 199. See further as to the liability of personal representatives on covenants in a lease, Williams on Executors, 9th ed., p. 1635, and note to Sec. 9, *ante*, p. 27.

Legatees and devisees,

As to the liability of legatees and devisees, similarly, see notes to Sec. 9, *ante*, p. 26.

A landlord cannot claim payment out of real estate of a deceased lessee, under 2 Geo. IV. and 1 Wm. IV., c. 47, in respect of rent which became due after the lessee's death: *M'Carthy v. Clerke*, 32 L. R. I. 75.

As to the liability of the heir of a deceased lessee for lives, see *De la Poer v. Kirpoon*, I. R. 9 C. L. 519, and notes to Sec. 9, *ante*, p. 29.

Assignees in bankruptcy

Assignees in bankruptcy who take actual possession of leasehold property of the bankrupt are personally liable for rent which accrues due after they take possession: *Ex p. Dressler*, 9 Ch. Div. 252. But they do not become assignees by the mere filing of the petition. The interest in a leasehold or tenancy from year to year remains vested in the bankrupt until the assignees elect to take same under Sec. 267 of the Bankruptcy (Ireland) Act, 1857. *Hanway v. Taylor*, I. R. 8 C. L. 254; *In re Ellis*, 10 Ir. Jur. N. S. 19.

What notice of assignment should contain.

(c) The "notice in writing of the particulars of such assignment" should state the mode in which the assignment has been carried out, *e.g.*, whether by deed or will or otherwise, the parties to the assignment if by act *inter vivos*, and its date. It is not necessary that the notice should give an abstract of everything contained in the document, such as covenants, declarations of trust, &c.: *Powell v. Adamson* [1895], 2 I. R. 41 (C. A.). A general statement by letter of an intention to assign is insufficient to comply with the terms of this section: *Cottingham v. Manning*, 3 I. W. L. R. 43. And even a similar statement of an assignment actually made, which gave no particulars as to date, &c., has been held bad: *Powell v. Adamson* [1895], 2 I. R. 41.

15. Every tenant, being an assignee as aforesaid, who shall have assigned his estate or interest in the lease or other contract of tenancy in the interval between two gale days, shall, notwithstanding such assignment, be liable as assignee to the payment of the rent and the performance of the agreements contained in the lease or other contract up to and including the gale day next following the service of notice of the said assignment. Sects. 15-16.
Assignee liable till end of accruing gale

This section alters the law. "At common law an assignee of a lease was only liable for rent accrued in his own time, and he could defeat the landlord's claim by assigning over, before the rent claimed accrued, and no notice of assignment to the landlord was necessary:" *per* WALKER, C.: *Powell v. Adamson* [1895], 2 I. R. at p. 61.

As to what the notice of assignment should state, see *Powell v. Adamson* [1895], 2 I. R. 41; *Cottingham v. Manning*, 3 I. W. L. R. 43; and notes to Sec. 14, *ante*, p. 42.

16. From and after any assignment hereafter to be made of the estate or interest of any original tenant in any lease, (b) with the consent of the landlord, (a) testified in manner specified in Section Ten, the landlord so consenting shall be deemed to have released and discharged the said tenant from all actions and remedies at the suit of such landlord, and all persons claiming by, through, or under him, in respect of any future breach of the agreements contained in the lease, but without prejudice to any remedy or right against the assignee of such estate or interest. Adoption of assignee, discharge of tenant from covenants.

A lessee generally remains liable on his covenants for the whole duration of the lease, even though he has assigned away all his interest: *Baynton v. Morgan*, 22 Q. B. D. 74. But he is relieved from liability, independently of this section, where an assignee of his interest in possession obtains an order fixing a fair rent under the 1st Section of the Land Act, 1887: *Sturges v. Ryan*, 24 L. R. Ir. 305. In that event "the lease and the term demised by it (and therefore the defendant's covenant for payment of the rent reserved by the lease during the term demised by the lease) are dealt with by the Act (Sec. 1) as having expired." *per* JOHNSON, J., 24 L. R. Ir., at p. 312.

(a) Where a lessee under a lease containing a clause against alienation is relying upon an assignment over by him of the interest in the lease before the breach occurred for which the action is brought, as a defence under this section he should plead that the landlord's consent was given to the assignment in the manner prescribed by Sec. 10, otherwise the plea will be bad. *Seaton v. Canny*, 8 L. R. Ir. 216.

(b) The words "Any assignment, . . . of the estate or interest of any original tenant in any lease," would appear to apply to leases whether they contain clauses against alienation or not, provided the landlord's consent to the assignment is signified in the prescribed manner.

Sec. 17.
 Fixtures of
 trade or
 agriculture
 erected by the
 tenant may be
 removed.

17. Personal chattels, engines, and machinery, and buildings accessorial thereto, erected and affixed to the freehold by the tenant at his sole expense, for any purpose of trade, (a) manufacture, or agriculture, or for ornament or for the domestic convenience (b) of the tenant in his occupation of the demised premises, and so attached to the freehold that they can be removed without substantial damage to the freehold or to the fixture itself, and which shall not have been so erected or affixed in pursuance of any obligation or in violation of any agreement in that behalf, may be removed by the tenant, or his executors or administrators, during the tenancy, (d) or when the tenancy determines by some uncertain event, and without the act or default of the tenant, within two calendar months after such determination, except so far as may be otherwise specially provided by the contract of tenancy; (c) provided that the landlord shall be entitled to reasonable compensation for any damage occasioned to the premises by such removal.

At Common Law the general rule was that a tenant, if he affixed anything to the freehold during his term, could not remove it without the consent of the landlord (see Coke Litt. 53a). But an exception was early established in favour of lessees engaged in trade as regards fixtures set up by them for the carrying on of their trade. This was recognised in the year books (42 Ed. III., fo. 6, pl. 19; 20 Hen. VII., fo. 13, pl. 24), and was firmly established by the decision of Lord Holt in *Poole's Case*, 1 Salk, 368.

The principle was subsequently extended to *agricultural fixtures*, to some extent at least: but as regards the latter, the question is not now of much consequence in Ireland, as the tenant of an agricultural holding has a right to compensation for all improvements of whatsoever nature which are suitable to the holding upon his quitting possession: Landlord and Tenant Act, 1870, sec. 4.

The principle was also extended to fixtures put up for the purposes of *ornament or convenience*: *Beck v. Row*, 1 P. Wm. 94.

It appears that a tenant may have a right to remove fixtures which would not be considered to be such if the question arose between persons not standing in the relation of landlord and tenant to each other. "The decisions," says WILLES, J., "which established a tenant's right to remove trade fixtures do not apply as between mortgagor and mortgagee any more than between heir-at-law and executor" (*Climie v. Wood*, L. R. 4 Ex., at p. 330); so that the cases as between mortgagor and mortgagee are irrelevant when the question arises as between landlord and tenant. See judgment of FITZGIBBON, L.J., *Cosby v. Shaw*, 23 L. R. Ir., at pp. 193-4.

What are
 tenant's fixtures.

(a) As regards what particular things a tenant may remove as trade fixtures, it is well settled in the first place that "mere movable chattels standing by their own weight only, and not in any way affixed to or connected with the soil," may be so removed. See judgment of CHATTEBTON, V.C., *Cosby v. Shaw*, 19 L. R. I., at p. 325. Machines affixed to the floor by screws or solder may also be trade fixtures which a tenant can remove: *Hellawell v. Eastwood*, 6 Exch. 295. The authority of this case has been recognised by the Court of Appeal in *Cosby v. Shaw*, 23 L. R. Ir., at p. 193, and in *Barnett v. Lucas*, I. R. 6 C. L. 247, machines firmly

attached by bolts and screws to the walls and floors of a building were treated by the Exchequer Chamber as being trade fixtures removable as between landlord and tenant. "Ordinary shop fittings, such as counters, desks, shelves, iron safes, gas or water pipes, as usually erected in manufactories, shops, or warehouses, may be removed; but not shop fronts or plate glass windows." De Moleyns' Landowners' Guide, 7th ed., p. 277. Window sashes, however, which are neither hung nor beaded into the frames, but are merely fastened by laths nailed across the frames, are not fixed to the freehold: *Rea v. Hedges*, 1 Leach. C. C. 201. "Gardeners and nurserymen are entitled to remove trees, shrubs, &c., grown by them in their nursery gardens for purposes of sale; though a different rule applies to young plantations or seedling root trees planted by a private person." De Moleyns' Landowners' Guide, 7th ed., p. 239.

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(b) Fixtures erected for ornament or domestic convenience include pumps (*Grymes v. Boverin*, 4 M. & P. 143), chimneypieces of an ornamental character (*Bishop v. Elliott*, 11 Exch. 113), but not a conservatory erected on a brick foundation and attached to the wall of the dwellinghouse (*Buckland v. Butterfield*, 2 B. & B. 154). The question in every case depends upon—(1) the mode in which, and the extent to which, the structure is united to the premises; (2) whether it is intended as a permanent or a temporary structure; and (3) whether its removal would occasion any substantial damage to the freehold. See further on this subject, notes to *Elwes v. Mawe*, 2 Smith L. C.; and Amos on Fixtures, *passim*.

(c) This section applies only where the matter is not otherwise specially provided for in the contract of tenancy. In *Cosby v. Shaw*, 19 L. R. Ir. 307, 23 L. R. I. 181, a question arose upon the construction of a lease of 1823 and a sub-lease of 1834. "As the law now stands," says NAISH, L.J., "and as it stood at the date of the lease and sub-lease, a tenant erecting trade fixtures was, *prima facie*, entitled to remove them during or at the end of the time. They were *prima facie* his property; but then it was open to him and the landlord to enter into such a contract as they thought fit with regard to them, and if the tenant contracted not to remove them, it was well settled that such contract made the fixtures part of the freehold without right of removal:" 23 L. R. Ir., at p. 199. The lease in that case demised certain mills. It contained the usual covenants to repair, and, in addition, a special covenant "to keep or cause to be kept the said mills and the works and machinery therein and belonging thereto, in working order and repair and condition; and at the determination of the demise to yield up the demised premises, and all buildings and improvements thereon, in the like good and sufficient tenable order, repair, and condition." It was held by the Court of Appeal (23 L. R. Ir. 181), varying the decision of the Vice-Chancellor (19 L. R. Ir. 307), that although the covenant to repair, if it stood alone, "would extend only to improvements permanently, as between landlord and tenant, incorporated with the freehold, and would not include trade fixtures" (*per FRIZZIBON, L.J.*, at p. 190), still that the special covenant included trade fixtures as well, whether originally demised or contracted for, as essentially and integrally belonging to the demised premises, or substituted for such during the term, so as to preclude the tenant from removing them. The Court, however, excluded from the injunction, which was granted, all trade fixtures which had been newly introduced, as scientific improvements, to fulfil functions previously performed by manual labour or movable utensils, to which they held the tenant was entitled under this section.

Special provision
in lease as to
fixtures.

(d) The tenant should remove the fixtures "during the tenancy." In *Mackintosh v. Trotter*, 3 M. & W. 184, it was held, however, that he might remove them within

When fixtures
may be removed.

Sects. 17-18. a reasonable time after the expiration of the term, during "what may be called an enlargement of the term, or, to use the words of Baron PARKE, an excrescence on the term during which the tenant has a right to consider himself as still in possession of the premises as tenant under the landlord:" *per* JAMES, L.J., *Ex p. Stephens*, 7 Ch. D., at p. 130. But it has been held that he has no right to enter subsequently for the purpose of removing them *Leader v. Homewood*, 5 C. B. N. S. 546, 27 L. J. C. P. 316. *Quære*, however, whether under this section, in the event of a tenancy determining "by some uncertain event," as *e.g.*, the death of a *cestus que vic*, he would not have the right to re-enter within two months if he gave up possession before that time.

A purchaser of tenant's fixtures in bankruptcy has been held entitled to enter and remove them, even after the premises had been surrendered to the landlord and re-let by him. *Saint v. Pilley*, L. R. 10 Exch. 137. But an assignee in bankruptcy, after he has executed a disclaimer of a lease, is not entitled, even though he is in possession of the demised premises, to remove tenant's fixtures, for the effect of the disclaimer is to give the landlord an absolute title to the fixtures as from the date of the order of adjudication: *Ex p. Stephens, In re Davies*, 7 Ch. D. 127.

Subletting
Subletting,
contrary to
agreement
to be void.

18. When any lease has been or shall be made containing an agreement against sub-letting or against letting in conacre, the benefit of which has not been waived before the first day of June, one thousand eight hundred and twenty-six, it shall not be lawful (a) for the tenant to sub-let (b) the said lands or any part thereof, or, in case of an agreement against letting in conacre, to let the same in conacre (c), without the express consent (d) in writing of the landlord or of his agent thereto lawfully authorized, testified by his being a party to the instrument of sub-lease, or by an endorsement on or subscription of such instrument, "or by a note in writing signed by such landlord or his agent," and no receipt of rent by any landlord or his agent shall be deemed to be a waiver (e) of any such agreement against sub-letting.

This section, which applies to all leases, whether made before or after the passing of the Act, takes the place of the repealed statutes, 7 Geo. IV., c. 29, and 2 Will. IV., c. 17, as regards sub-letting without consent. The earlier Acts dealt with sub-letting in the same way as assignment; and, although they have been repealed by the present Act, they are still effectual, except in so far as they are affected by the 11th Section of the Land Act, 1896, to render void a sub-letting, without the consent of the landlord in writing, of any lands held under any lease made between 1st June, 1826, and 1st May, 1832 (other than a lease for a term of 99 years or upwards, or a lease for lives or years renewable for ever, or an ecclesiastical lease), which does not contain a clause expressly authorizing the lessee to sub-let. See Schedule B, to this Act, and judgment of PALLIS, C.B., *M'Carthy v. Swanton*, 14 L. R. Ir., at p. 381.

The present section corresponds pretty closely with Section 10, as to assignments without consent. It is different, however, in two respects—(1) The consent to a sub-letting need not be endorsed upon the instrument; it may be by a separate "note in writing," even apparently when the sub-letting itself is by deed; and (2)

it is provided by this section, though not by the 10th, that a receipt of rent shall not be deemed a waiver of any agreement against sub-letting.

Sect. 18.

(a) The effect of this section in rendering sub-lettings contrary to its provisions void has been very much cut down as regards agricultural holdings, which are within the provisions of the Land Acts, 1881 to 1896, by the 11th Section of the Land Act, 1896, which provides that a contract of tenancy entered into before or after the passing of that Act, in violation either of 7 Geo. IV., c. 29, or of an agreement against sub-letting in a lease, shall not as between the middleman and sub-tenant be, or be deemed to have been, void or voidable. See that section and notes thereto, *post*.

In the case of non-agricultural holdings, and also in the case of agricultural holdings, except so far as they are affected by the Land Act, 1896, sec. 11, a sub-letting made without the landlord's consent being given in the manner prescribed by this section, contrary to the provisions of the lease, appears to be wholly void, just as an assignment under similar circumstances would be under the 10th Section: *Jagoe v. Harrington*, 10 L. R. I. 335. In that case it was held that the lessee who had himself sub-let could repudiate his own act and recover possession from the sub-tenant, just as an assignor may bring an ejectment against an assignee, if the assignment is void under the 10th Section. See *Gillman v. Murphy*, I. R. 6 C. L. 34, and notes to the 10th Section, *ante*, p. 30.

Effect of sub-letting contrary to the section.

But where a middleman takes a new lease containing a clause against sub-letting, this does not invalidate a sub-letting *previously* made, where the middleman's former lease contained no such clause, even though the sub-tenant only holds from year to year: *Hayes v. Fitzgibbon*, I. R. 4 C. L. 500.

Although a sub-letting made in violation of agreement, contrary to this section, may be absolutely void, still the intended sub-tenant, if he enters under it, has legal possession of the lands, good against everybody except the landlord: *per PALLES, C.B., Ryan v. Byrne*, 17 I. L. T. R., at p. 103. The attempted sub-letting is at least a licence to occupy, so as to entitle him to remain in possession until the licence is revoked, and possession demanded by some person legally entitled to make such demand: *Littleton v. M'Namara*, I. R. 9 C. L. 417. He can also maintain an action of trespass, even against the person who would be entitled to turn him out, if the proper steps were taken: *Littleton v. M'Namara (ubi supra)*. And if he pays to the head landlord rent due by the lessee, who has purported to sub-let to him, in order to save himself from eviction, he is entitled to recover same from the lessee as money paid to his use: *Ryan v. Byrne*, 17 I. L. T. R. 102. But (in the case of holdings outside the provisions of the Land Acts) possession may be recovered from him without the service of any notice to quit: *Jagoe v. Harrington*, 10 L. R. Ir. 335.

A sub-letting in violation of this section may sometimes be good by estoppel, where it would not otherwise be legally valid. Thus, where a lease containing a clause against both alienation and sub-letting had been assigned without consent to A, who sub-let without consent to B, it was held that as no estate in the lands had passed to A under the assignment, he was not tenant of the premises within the meaning of this section, and therefore the sub-letting was not rendered void thereby, but was good by estoppel as that of a person in possession without any title: *Wogan v. Doyle*, 12 L. R. Ir. 69. And similarly where there was a clause of forfeiture in the lease in case of sub-letting without consent, it was held that a forfeiture by sub-letting could not be incurred where the interest in the lease was not legally vested in the person who had attempted to sub-let: *Hely v. Perry*, 2 L. R. Ir. 266.

Sect. 18.

The Land Act, 1881, now provides that a tenant from year to year to which the Act applies (Sec. 2), and a tenant during the continuance of a statutory term (Sec. 5 (3)) shall not, without the consent of the landlord in writing, sub-let the holding or any part thereof. The words "shall not" in that Act have the same force as "it shall not be lawful" in this section, so as to render any sub-letting not in compliance with the Act absolutely void. See notes to that section, *post*.

(b) To let lodgings is not a breach of a covenant not to underlet (*Doe d. Pitt v. Laming*, 4 Camp. 77), nor is a letting in con-acre (*Booth v. M'Manus*, 12 I. C. L. R. 418, 6 Ir. Jur. N. S. 367), nor an agistment contract, in which the possession of the lands is not parted with (*Mulligan v. Adams*, 8 Ir. L. R. 132).

An assignment, it has been held also, would not be a violation of a covenant not to "set or demise the premises" without the consent of the lessor: *In re Doyle and O'Hara's Contract* [1899], 1 I. R. 113 (C. A.). But in England it has been held that a covenant not to "let, set, or demise" the premises, "for all or any part" of the term, was violated by an assignment: *Greenaway v. Adams*, 12 Vesey 395. In England, it must, however, be remembered, a sub-demise for the whole term amounts to an assignment, as it leaves no reversion in the lessor. But this is not so in Ireland. See Sec. 3, *ante*, p. 4, and *Seymour v. Quirk*, 14 L. R. Ir. 97, 455. Conversely, a covenant against assignment is not violated by a sub-letting *Palmer v. Spring*, 14 Ir. Ch. R. 380.

Conacre.

(c) A letting in con-acre is distinct from a sub-letting. It is not a demise of the land but a sale of a profit to be derived from the land *Dease v. O'Reilly*, 8 I. L. R. 52. "Although a special possession for a particular purpose is with the con-acre holder, the general possession remains with the landlord." *per* CRAMPTON, J., at p. 59. "The owner of the land retains the occupation of the premises, the con-acre holder having a licence to till the land and a right connected with that licence of egress and regress for the purpose of so tilling" (*per* FIGOTT, C.B., *Booth v. M'Manus*, 12 I. C. L. R., at p. 435); so that a letting in con-acre does not violate a covenant against sub-letting, nor does it even violate a covenant not to "part with the possession" or "cease to occupy." *Booth v. M'Manus*, 12 I. C. L. R. 418, 6 Ir. Jur. N. S. 367.

Where, however, an agreement in writing purported to be a letting in con-acre for fifteen successive years, it was held to be a question for the jury whether, under all the circumstances, the transaction was really a con-acre letting or a sub-letting concealed under that form for the purpose of evading a covenant against sub-letting in a lease: *Evans v. Monagher*, I. R. 6 C. L. 526. See further as to con-acre lettings, *M'Keowne v. Bradford*, 7 Ir. Jur. N. S. 169, and notes to Land Act, 1881, Sec. 2, *post*.

Consent, how to be expressed

(d) As to the how the "consent" required by this section may be expressed, so as to give validity to the sub-letting, see note (c) to Sec. 10, *ante*, p. 34, regard being had, of course, to the difference between the wording of the two sections.

The Land Act, 1896, sec. 11, now, however, provides, in the case of all agricultural holdings within its provisions, that a superior landlord shall be deemed to have expressed a sufficient consent to a sub-letting made in violation of an agreement in a lease, unless within a reasonable time after it came to his knowledge he served a notice of dissent on the lessee or sub-tenant, or instituted a proceeding against the lessee founded upon the violation of the agreement. See that section and notes thereto, *post*.

Prior to the passing of that Act it was held that the signature by the landlord's agent as a witness to the agreement creating the sub-letting was not a "consent

in writing" within the meaning of this section: *Smyth and Donaghey v. Edie*, Sect. 18.
27 I. L. T. R. 86 (C. A.).

Where a sub-letting had been in existence since 1856, in violation both of a covenant against sub-letting in the lease, and of 7 Geo. IV., c. 29 (the lease having been made in 1827), it was held by the Court of Appeal, reversing the decision of the Land Commission, that the Court could not, in the absence of express evidence, presume the existence of a lost deed, releasing the covenant or waiving the clause in the statute against the sub-letting: *Stevenson v. Parker* [1895], 2 I. R. 504. Following this decision, MEREDITH, J., in *De Montmorency v. M'Adam* [1899], 2 I. R. 299, refused to presume a lost deed consenting to sub-lettings in violation of a covenant, merely restricting sub-letting.

(c) It is difficult to see what was the object of the last clause of this section as to Waiver. waiver, inasmuch as the section does not, although it prohibits sub-lettings without consent, create a forfeiture of a lease in the event of such a sub-letting being made. The clause in question has been declared by the Court of Exchequer Chamber to be wholly unnecessary, inasmuch as the 43rd Section protects from waiver, by the receipt of rent, all conditions against sub-letting in future leases; and leases in existence when the Act passed were protected by 2 Will. IV., c. 17, and the saving terms of the repealing clause of this Act: *Donoghmore v. Forrest*, I. R. 5 C. L. 443. See, especially, judgment of WHITESIDE, C.J., at pp. 474, 475. As to waiver generally, see notes to Sec. 43, *post*.

If a lease creates a forfeiture in the event of a sub-letting being made without Forfeiture. consent, the person whose acts are relied upon as working a forfeiture must be the legal assignee of the lease. A person in possession under an invalid assignment cannot by sub-letting enable the landlord to bring an ejection for a forfeiture: *Hely v. Perry*, 2 L. R. Ir. 266.

Interrogatories will not be allowed for the purpose of discovering a forfeiture by sub-letting: *Bishop of Cork v. Porter*, I. R. 11 C. L. 94; *Browne v. Davis*, 2 L. R. Ir. 434.

The Chancery Division has jurisdiction to relieve a tenant from a forfeiture by sub-letting in cases of accident, surprise, or fraud. Thus where a landlord deliberately encouraged the tenant to sub-let, relief was granted: *Burke v. Prior*, 15 I. Ch. R. 106. But, in a recent case in England, it appeared that, in a lease for years the lessees covenanted not to underlet the premises, or any part thereof, without the consent in writing of the lessor, which consent the lessor agreed should not be arbitrarily withheld in the case of a respectable or responsible person, and power to re-enter was given to the lessor in case the lessees did not well and truly observe and perform their covenants. The lessees underlet part of the premises without obtaining or asking for the lessor's consent. The underlease was prepared by their solicitor, who omitted to look at the head lease, and forgot that it contained the covenant not to underlet without consent. Both the lessees and their under-lessees were respectable and responsible persons, and no injury was done, or likely to be done, to the lessor by reason of the underlease, nor could he have had any valid objection to it if his consent had been asked. In an action by the lessor to recover possession of the premises for breach of the covenant, it was held that the omission to ask the lessor's consent was not a mistake in respect of which the Court would grant the lessees equitable relief against forfeiture for breach of the covenant, and therefore that the plaintiff was entitled to succeed in the action: *Barrow v. Isaacs* [1891], 1 Q. B. 417.

Ejection for breach of condition against sub-letting is not a disturbance within

Sects 18-20 the Land Act, 1870, Sec. 9. As to a landlord's remedies in case of sub-letting without consent under the Land Act, 1881, see Secs. 5 and 13 of that Act, *post*.

Sub-letting with consent to free sub-tenant from double charge

19. Where any sub-letting shall take place with the consent of the landlord given in manner aforesaid, except in the case of a building-lease, and the sub-tenant shall have paid and satisfied the rent or any part thereof due from him to the tenant or his representatives, the receipt of such tenant or his representatives shall be a full discharge to such sub-tenant and the lands sub-let, as against the landlord so consenting, in respect of all rent issuing out of the same and theretofore due, except so much, if any, as remains due from the sub-tenant; provided the landlord shall not have previously served the notice upon the default hereinafter mentioned (a): Provided always, that such discharge to such sub-tenant shall be without prejudice to the landlord's remedies for the balance of his rent against the tenant or his representatives and the other premises out of which such rent shall accrue due.

(a) See Sec 20, *post*.

Landlord's notice to sub-tenant to pay rent to him.

20. Where any tenant sub-letting shall neglect to pay to his landlord the rent payable in respect of the lands comprised in the lease, it shall be lawful for the landlord, or his agent lawfully acting in that behalf, after and as often as one gale of such rent shall have accrued due and remained unpaid for the space of one month, to give notice in writing to the sub-tenant, requiring him to pay to the landlord so much of the rent payable by such sub-tenant to the tenant under whom he holds as may be sufficient to discharge the gale or gales stated in such notice to be due from the tenant to the landlord, such notice to be delivered to the sub-tenant, or left at his usual place of abode with some member of his family above the age of sixteen years; and thereupon such sub-tenant shall be liable to pay to the landlord all rent that may accrue due after the receipt of such notice, or so much thereof as may be sufficient to discharge such gale or gales; and the receipt of the landlord or his agent shall be a full discharge to the sub-tenant against the tenant in respect of all rent so paid; and the said landlord and his representatives shall be entitled to all such rights and remedies for the enforcing payment of such rent as the said tenant so sub-letting might have had.

A landlord now also, where he recovers judgment in ejectionment for non-payment of rent against a middleman, may proceed, without serving any notice upon the sub-tenant, for the recovery from him of all rent due by him to the middleman,

as if it had always been due to the superior landlord: Land Act, 1896, sec. 12 (2), Sects. 20-21. post. This applies, however, only in the case of agricultural holdings.

21. Where any tenant sub-letting shall neglect to pay his landlord the rent payable in respect of the lands comprised in the lease, it shall be lawful for the sub-tenant, (c) after and (a) often as any one gale of such rent shall have accrued due and remain unpaid to such landlord, and before any action brought (b) by such tenant against the sub-tenant, voluntarily to make payment of so much of the rent due by such sub-tenant to such tenant as may be sufficient to discharge such gale or gales; and the receipt of the landlord or his agent shall be a full discharge to the sub-tenant against the tenant in respect of all rent so paid. (d)

Sub tenant's election to pay rent to landlord.

This section gives to the sub-tenant who voluntarily pays rent to the head landlord a right to deduct the amount so paid from the rent due to his immediate landlord, but not a right to bring an action for its recovery. See judgment of FITZGERALD, J., *Ahearne v. M'Swiney*, I. R. 8 C. L., at p. 576.

(a) The word "so" appears to have been inadvertently omitted before "often."

(b) The rent must be paid to the head landlord "before any action brought" by the middleman in respect of it. If, however, a sub-tenant pays after action brought by the middleman and the middleman subsequently adopts the payments and claims and obtains credit from the head landlord for the amount so paid, the sub-tenant is entitled to recover the amount from him as money paid for him at his request (*Ahearne v. M'Swiney*, I. R. 8 C. L. 568, 9 I. L. T. R. 26); for the subsequent adoption of the payment is equivalent to a prior request (see notes to *Lamp-leigh v. Braithwait*, 1 Sm. L. C.), and the cause of action accrues, as regards the Statute of Limitations, at the date of the adoption, not of the original payment: *Ahearne v. M'Swiney*, I. R. 8 C. L. 568, 9 I. L. T. R. 26. Also, if the head landlord brings an ejection against the lands, and the sub-tenant pays the head rent to save himself from eviction, he is entitled to recover the amount from the middleman as money paid to his use under compulsion of law: *Murphy v. Davey*, 14 L. R. I. 28.

Payment after action brought by middleman.

Voluntary payments to a head landlord by a sub-tenant under this section are not deemed to be payments to the middleman within the Statutes of Limitation, so as to prevent the middleman's right to recover rent subsequently accruing from being barred by the statutes: *Grogan v. Regan*, 35 I. L. T. R. 73: 1 N. I. J. R. 158 (C.A.), reversing the decision of Q.B.D., 34 I. L. T. R. 188.

A sub-tenant is entitled to pay head rent under this section and take credit for it as against the rent due to his own landlord, even though a receiver has been appointed by the Court over his immediate landlord's interest: *Commissioners of Church Temporalities v. Harrington*, 11 L. R. I. 127.

(c) It appears that such payment may be made to the head landlord and recovered from the middleman, not only by a sub-tenant, but by any person who has lawful possession of the lands under him. Thus, where a lessee, under a lease containing a clause against sub-letting without consent, purported to sub-let to another without consent, it was held that he was liable as for money paid to his use for head rent so paid by the intended sub-tenant to save the lands from eviction: *Ryan v. Byrne*, 17 I. L. T. R. 102. In this case, however, it appeared that the lessee had adopted and enjoyed the benefit of the payments, though this does not appear

By persons other than sub-tenant.

Sects. 21-23. to have been the ground of the decision. (See judgment of PALLES, C.B., at p. 103.) And where a tenant gave possession of a part of his holding to another on the terms that the latter was to hold rent free and make certain expenditure upon building which was done, it was held that the assignee of the tenant's interest who let the rent fall into arrear was liable to repay to this occupier head rent which he had paid to save the lands from eviction: *Murphy v. Davey*, 14 L. R. Ir. 28.

Salvage pay-
ments to save
lands from
eviction

Independently of this section, also, a sub-tenant who has paid the head landlord the arrears of rent due to him so as to save the lands from eviction is a salvage creditor on the mesne interest of his immediate landlord, who has neglected or refused to pay such arrears, and he may have a decree for the sale of the mesne interest to repay him the sums so advanced: *O'Geran v. M'Swaine*, I. R. 8 Eq. 500 624, 9 I. L. T. R. 13, *Locke v. Evans*, 11 Ir. Eq. R. 52. As to the conditions necessary in order to constitute a good salvage payment generally, see judgment of HOLMES, L.J., *In re Power's Policies* [1899], 1 Ir. R., at p. 27; and notes to sec. 71, *post*.

Where a head landlord has recovered judgment in ejectment against a middleman, for non-payment of rent of an agricultural holding, the sub-tenant is now bound to pay all rent due from him to the middleman, as if it had always been due to the head landlord, and his interest in his sub-tenancy is not destroyed. See Land Act, 1896, sec. 12 (2), *post*. Whether in such a case he could now treat payments made voluntarily before such judgment was recovered as salvage payments seems doubtful. See judgment of HOLMES, L.J. *In re Power's Policies* [1899], 1 Ir. R., at p. 27.

(d) This section enables a sub-tenant to put himself in privity with the head landlord, and so prevent his own interest being destroyed by non-payment of rent by his immediate lessor. It has, therefore, been decided that a purchaser who has agreed to take an assignment of premises held under a lease for a term cannot object to the title upon the ground that the lease is, in reality, a sub-lease: *Balfour v. MacNeill*, 7 Ir. Jur. N. S. 8. See as to the rule in England in such cases, *Camberwell and South London Building Society v. Holloway*, 13 Ch. Div. 754.

Provision for
sub-letting
with consent.

22. When any sub-letting shall take place with such consent as aforesaid, it shall not be deemed a general waiver of the benefit of the agreement against sub-letting.

See Sec. 18, *ante*, p. 46, and as to waiver generally, notes to Sec. 43, *post*, and notes to *Dumport's Case*, 1 Sm. L. C.

Evidence.
Proof of contents
of lease.

23. In all actions, suits, and proceedings, proof by or on behalf of any landlord of the perfection of the counterpart of any lease shall be equivalent to proof of the perfection of the original lease; and in case it shall appear that no counterpart existed, or that the counterpart has been lost, destroyed, or mislaid, proof of a copy of the original lease or counterpart, as the case may be, shall be sufficient evidence of the contents of the lease, as against the lessee or any person claiming from or under him.

If the counterpart has been executed, as is sometimes the case, only by the tenant, *quære* whether its production is sufficient proof of the execution of the

original lease by the landlord. As to when it is necessary to prove such execution, Sects. 23-24. see notes to Sec. 4, *ante*, p. 11.

Where there is a manifest clerical error in a lease, the counterpart may be looked at for the purpose of correcting it (*Burchell v. Clarke*, 2 C. P. D. 88); but if there is merely a discrepancy between the lease and the counterpart, and no error manifest on the face of the lease, "the counterpart must give way, being the inferior instrument, and the lease, which is the superior instrument, must prevail:" *per* COCKBURN, C.J., *Burchell v. Clarke*, 2 C. P. D., at p. 94.

Counterpart,
how far evidence

In an ejectment on the title, where the lease was lost, the landlord was ordered to permit the tenant to inspect and take a copy of the counterpart: *Barry v. Scully*, 1 R. 6 C. L. 449.

24. In all actions, suits, and proceedings brought by or against any person claiming to be landlord otherwise than by original contract, after proof of the original lease or contract, it shall be sufficient *prima facie* evidence of the title of such person as landlord, as to all parties in the said suit or proceeding, to prove that he has for one year (*a*) at least, or that the person under whom immediately he derives his title has for one year at least, and within three years before the transmission of such title, received the rent of the lands in respect of which such action, suit, or proceeding shall be brought from a party in possession thereof.

Proof of land-
lord's title when
derivative.

This section renders payment of rent *prima facie* evidence of the devolution of title of the landlord in all cases within it: *Musgrave v. Walsh*, 6 L. R. I. 335. In order to take advantage of its provisions, a plaintiff who claims to be landlord by devolution of title from the original lessor should in his statement of claim merely state the fact generally that all the estate and interest of the original lessor came to, and is now vested in, him without giving the details of the devolution of title: *Beatty v. Leacy* (18 I. L. T. R. 89; affirmed on appeal, 16 L. R. Ir. 132). "The only way he can get the benefit of the section is by pleading generally. If he were to set out his title in detail he would be bound to prove it at the trial, and he would thus actually deprive himself of the benefit of the section:" *per* PALLIS, C.B., 18 I. L. T. R., at p. 90. See as to pleading generally, *Kenmare v. Casey*, 18 Ir. L. T. R. 77.

As to the application of the section where one of several co-owners is in receipt of the rent, and brings an action in his own name alone, without joining the others, see remarks of FITZGERSON, L.J., in *Dempsey v. Ward* [1899], 1 I. R., at pp. 476-7.

(*a*) Prior to this Act, proof of payment of rent to a party for three years was, under the repealed Statute, 8 Geo. I., c. 2, sec. 1, evidence of the devolution of title in an ejectment for non-payment of rent: *Hynaman v. Bailey*, 8 I. L. R. 143.

Sec. 20 of the Renewable Leasehold Conversion Act (12 & 13 Vic., c. 105) made the receipt of rent for three years similarly evidence of the devolution of the title of the grantor to the person in receipt of the fee-farm rent (see that section, *App., post.*). It may still be necessary to take advantage of this provision, in the case of fee-farm grants made prior to Jan. 1st, 1861, which appear not to be within the terms of this section. See *Busteed v. Chute*, 16 I. C. L. R. 222, 10 Ir. Jur. N. S. 363.

Sects 25-26

*Mines, &c.
Rights and
Reservations.*Tenant in
fee-farm not
impeachable
of waste.

25. No tenant of any lands entitled to any perpetual interest (a) under any lease or grant made after the first day of January, one thousand eight hundred and sixty-one, shall be impeachable of any waste, other than fraudulent or malicious waste, except in so far as such tenant shall, by any agreement contained in the lease or grant, be prohibited from doing or permitting any act: Provided that no fee-farm grant made under the "Renewable Leasehold Conversion Act," or any renewed lease executed after the first day of January, one thousand eight hundred and sixty-one, in pursuance of an agreement for renewal contained in a lease (b) made before the passing of this Act, shall be deemed to be a perpetual interest made after the first day of January, one thousand eight hundred and sixty-one, within the meaning of this section.

Fee-farm grants
under Renew-
able Leasehold
Conversion Act.

(a) For definition of the term "perpetual interest," see Sec. 1, *ante*. The exclusion of fee-farm grants made under the Renewable Leasehold Conversion Act, and of all renewed leases executed after 1st January, 1861, in pursuance of agreements for renewal made before the passing of the Act, very much limits the operation of this section.

Thus, where *hog eo nomine* was demised along with other lands for lives renewable for ever, and the lease was converted into a fee-farm grant under the provisions of the Renewable Leasehold Conversion Act, it was held that the grantee, cutting turf for sale, was impeachable for waste, just as an ordinary tenant would be. *Gore v. O'Grady*, 1 R. 1 Eq. 1. (Affirmed on Appeal, but unreported. See Murray & Dixon's Digest, col. 1676.) See generally as to the rights of tenants to cut turf Sec 29, *post*, and Land Act, 1881, Sec. 5 (5).

Tenants for lives renewable for ever are not impeachable for waste in respect of timber trees or woods planted by them or their predecessors in title, after 1st September, 1776 (see 5 Geo. III., c. 17, sec. 1, *App., post*), whether the trees be or be not registered, and whether the leases under which the tenants claim are of a date prior or subsequent to the passing of that Act: *Pentland v. Somerville*, 2 Ir. Ch. R. 239. *Ex p. Armstrong*, 8 Ir. Ch. R. 30; *Moore's Estate*, 36 I. L. T. R. 14.

Under Church
Temporalities
Acts.

(b) Grantees under Fee Farm Grants made under the Church Temporalities Acts, 3 & 4 Wm. IV., c. 37; 4 & 5 Wm. IV., c. 90; and 6 & 7 Wm. IV., c. 99, would appear to be entitled to the benefit of this section, and not impeachable of waste. They would appear not to be excluded by the proviso at the end of the section, inasmuch as the church leases for which the fee farm grants are substituted, though customarily renewable, did not contain any covenant for renewal; and there was no legal obligation on the bishops to renew. For a full account of these leases and of the legislation which provided for grants in fee in lieu of them, see judgment of BEWLEY, J., *Hamilton v. Casey* [1894], 2 I. R. 224.

Tenant of lesser
interest not to
open mines or
quarries.

26. No tenant of any lands holden for any estate or interest less than a perpetual estate or interest, made after the first day of January, one thousand eight hundred and sixty-one, by virtue of any lease or contract, shall, without the previous consent in writing of the landlord, being a person competent to grant such licence, or of

his agent duly authorized to act on his behalf, open, dig for any unopened mines, (a) minerals, (b) or quarries, (c) or (except as hereinafter provided) remove the soil or surface or subsoil of the said lands, or permit or commit any other manner of waste (d) thereon, unless the said lands shall have been, in express terms, leased for the purpose or with the permission of being so used and enjoyed.

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(a) The primary meaning of the word "mine," standing alone, is an *underground* Mines. excavation made for the purpose of getting minerals: *per* TURNER, L.J., *Bell v. Wilson*, L. R. 1 Ch. App., at p. 308. It usually imports a cavern or subterranean place: *Listowel v. Gibbings*, 9 I. C. L. R. 223, as distinguished from a quarry, which is a place "upon, or above, and not under the ground:" *per* TURNER, L.J., *Bell v. Wilson*, L. R. 1 Ch. App., at p. 309.

But the word "mine" may have a wider signification, and may apply to beds and seams of minerals which would be properly worked by open or surface operations: *Midland Railway Co. v. Robinson*, 15 App. Cas. 19. "Applying oneself to the consideration of the word 'mines,'" says LORD HERSCHELL in that case, "I cannot think that its natural meaning imports such beds or strata of minerals only as are ordinarily got by underground working" (15 App. Cas., at p. 30). "I think, however," he adds, "it is ordinarily applied only to beds of minerals which are being or have been wrought" (*Ibid.*, p. 31). See also as to the meaning of the word, which may differ according to the context in which it occurs, whether in an Act of Parliament or a deed: *Lord Provost of Glasgow v. Farie*, 13 App. Cas. 657; and *Shaftesbury v. Wallace* [1897], 1 Ir. R. 381.

(b) "Minerals," on the other hand, means primarily all substances (other than Minerals the agricultural surface of the ground) which may be got for manufacturing or mercantile purposes, whether from a mine, as the word would seem to signify, or such as stone or clay, which are got by open working. *per* KAY, J., *Midland Railway Co. v. Haunchwood Brick & Tile Co.*, 20 Ch. Div., at p. 555. This is substantially the same definition as that given by MELLISH, L.J., in *Heat v. Gill*, L. R. 7 Ch. App. 699—*viz.*, "Every substance which can be got from underneath the surface of the earth for the purpose of profit" (L. R. 7 Ch. App., at p. 712). The definition of MELLISH, L.J., though criticised very much in later cases, even in the House of Lords (see *Lord Provost of Glasgow v. Farie*, 13 App. Cas. 657, and *Midland Railway Co., &c., v. Robinson*, 15 App. Cas. 19), has been adopted as correct in more recent cases: *Earl of Jersey v. Guardians of Neath Union*, 22 Q. B. D., at p. 559; *Fishbourne v. Hamilton*, 25 L. R. Ir. 483 (see especially judgment of LORD ASHBOURNE, C., at p. 502).

"Minerals" is a more general term than "mines," and the authorities show that the word "mines" coming before "minerals"—as in the ordinary phrase "mines and minerals"—does not restrict the sense of the latter term, so as to confine it to such as can only be worked by going under the land. See *Heat v. Gill*, L. R. 7 Ch. App. 699, and *Earl of Jersey v. Guardians of Neath Union*, 22 Q. B. D. 555 (especially judgment of LORD ESHER, M.R., at p. 559).

Thus it has been held by the Court of Appeal in Ireland, affirming the decision Limestone. of the Vice-Chancellor, that beds of limestone are included in the definition of "mines and minerals," whether got by quarrying or surface working: *Fishbourne v. Hamilton*, 25 L. R. Ir. 483. And the cases of *Darvill v. Roper*, 3 Drew 294;

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Brown v. Chadwick, 7 I. C. L. R. 101; and *Listowell v. Gibbings*, 9 I. C. L. R. 223, in so far as they decide that the term "minerals" only includes metallic fossil bodies, and not limestone, must be considered as overruled. See judgment of CHATTERTON, V.C., *Fishbourne v. Hamilton*, 25 L. R. I., at p. 492.

Brick clay, &c.

"Minerals" have been held to include brick clay in a reservation in a deed (*Earl of Jersey v. Guardians of Neath*, 22 Q. B. D. 555; *Shaftesbury v. Wallace* [1897], 1 I. R. 381); china clay (*Hezt v. Gill*, L. R. 7 Ch. App. 699); freestone (*Bell v. Wilson*, L. R. 1 Ch. App. 303); limestone (*Midland Railway Co. v. Robinson*, 15 App. Cas. 19; *Fishbourne v. Hamilton*, 25 L. R. Ir. 483); and granite (*Attorney-General v. West Granite Co.*, 1 Times Reports 549).

As to the landlord's rights, by himself or his lessees, to work minerals which are reserved to him, see Sec. 32, *post*, and notes thereto, and Land Act, 1881, Sec. 5 (5).

Quarries.

(c) The word "quarry" is said to be derived from the French *quarrière*, meaning the place where stone was cut in squares—clearly, therefore, it indicates a place above and not under the ground. See judgment of TURNER, L.J., *Bell v. Wilson*, L. R. 1 Ch. App., at p. 309. A quarry is defined in the Factory and Workshop Act as "any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals:" 41 Vic., c. 16, Sch. 4, part 2.

Where lands were demised with a quarry, "together with liberty of quarrying," it was held that the lessee was entitled to cast the spoil and refuse of the quarry upon a portion of the land in the lessor's possession immediately adjoining the quarry; that this right was in the nature of an easement incidental to the liberty of quarrying, and that, though not expressly preserved, it was not extinguished by a Landed Estates' Court conveyance of the landlord's interest subsequent to the date of the lease: *Middleton v. Clarence*, I. R. 11 C. L. 499.

What constitutes waste.

(d) Waste is the destructive or material alteration of things forming an essential part of the inheritance, done by one having a limited interest therein: Co. Litt. 53a. "A tenant has the right to use, but not to abuse, the property let to him. He may not, therefore, under pretence of improvements, do substantial injury, such as altering the nature of the land by ploughing up ancient meadow or pasture or converting arable land into woodland, or meadow into orchard; nor is he allowed to open new pits, to raise limestone or gravel, or to cut turf on reclaimed bog:" De Moleyns' Landowners' Guide, 7th ed., p. 290. The six following sections of this Act deal with the particular acts which a tenant is allowed to do, although otherwise they would be waste. Whether a tenant from year to year holding by parol contract is liable for *permissive* as distinct from *voluntary* waste seems to be doubtful (see *Martin v. Gilham*, 7 A. & E. 540), but if he holds by written agreement made after January 1st, 1861, it seems that he would be liable for both, for a covenant to repair is implied by Sec. 42, *post*, in every "lease" unless it is otherwise specially provided; and any agreement in writing for a tenancy constitutes a "lease" under this Act: *Jagoe v. Harrington*, 10 L. R. Ir. 335.

To erect unsuitable buildings upon a holding is waste, especially if the buildings materially alter the nature of the demised premises: *Brooke v. Mernagh*, 23 L. R. Ir. 86; *Brooke v. Kavanagh*, 23 L. R. Ir. 97. In these cases the tenants of ordinary agricultural holdings erected upon their farms a number of dwellinghouses for the use of tenants evicted from other farms in the neighbourhood. Injunctions were granted both by the Master of the Rolls and the Vice-Chancellor to restrain these acts as waste, and in the case of *Brooke v. Kavanagh* the decision was affirmed on appeal: 23 L. R. I. 112.

In *Steele v. Tiernan* (23 L. R. Ir. 585) a tenant holding under a statutory term, who had erected one wooden hut upon it for the use of an evicted tenant, was

restrained by injunction from allowing it to remain; and it was held that the fact that the erection of the hut was a breach of a statutory condition under the Land Act, 1881, Sec. 5 (3), for which a particular remedy was provided by that Act, was no reason why a court of equity should not interfere by injunction, and that the County Court judge, the matter having been brought before him by equity civil bill, ought to have granted an injunction. (See also *Lansdowne v. Kehoe*, 29 L. R. Ir. 230; 31 L. R. I. 433).

Any substantial alteration of the demised premises amounts to waste; such, for instance, as converting the stable of a dwelling-house into a butcher's shop: *Maunsell v. Hort*, 11 E. R. 478. Converting agricultural lands into a cemetery: *Oregan v. Cullen*, 16 Ir. Ch. R. 339. Ploughing up ancient meadow or pasture land: *Murphy v. Daly*, 13 I. C. L. R. 239. See, however, *Palmer v. M'Cormick*, 25 L. R. Ir. 110, where it was held that there was no absolute rule that land which had not been broken up during the twenty years which immediately preceded the execution of a lease should never be tilled, although such land was defined to be "ancient pasture" in *Murphy v. Daly*, 13 I. C. L. R. 239. Digging up the soil for the purpose of making bricks is also waste: *Bishop of London v. Web*, 1 P. W. 527. Similarly, opening mines (Sec. 26, *post*); cutting turf for sale (Sec. 29); burning the soil (Sec. 30); and cutting timber (Sec. 31).

Where a landlord sued his tenant for injury done to the demised land by removing a large quantity of clay, and, in addition, for the conversion of the clay, it was held that he was not entitled to recover the value of the clay in addition to compensation for injury done to the land by its removal: *Templemore v. Moore*, 15 I. C. L. R. 14.

An injury to, or even the destruction of, premises resulting from the use of them by the tenant in a reasonable and proper manner, having regard to the class of tenement to which they belong, is not waste: *Saner v. Bilton*, 7 Ch. Div. 815; *Manchester Bonded Warehouse Co. v. Carr*, 5 C. P. D. 507; *Grand Canal Co. v. M'Namee*, 29 L. R. I. 131.

And it may be shown that the acts complained of as waste are in reality a benefit and not an injury to the demised premises. This "meliorating waste," as it is called, a court of equity will not restrain by injunction. Thus, the House of Lords held that the conversion of store buildings into dwellings was "ameliorative," and refused to restrain it: *Doherty v. Allman*, 3 App. Cas. 709. For the same reason the Court of Appeal refused to grant an injunction to restrain a tenant from ploughing up land which had not been broken up for more than twenty years, holding that the breaking up of the land was calculated not to injure, but rather to improve it: *Palmer v. M'Cormick*, 25 L. R. I. 110.

Waste can only be committed of the premises demised. Consequently, it is not waste to cut timber, which is reserved to the landlord by the lease (*Allen v. Carver*, 5 I. C. L. R. 544), or to cut turf on a bog outside the ambits of a tenant's holding (*Boyle v. Masterson*, 25 L. R. I. 179, 24 I. L. T. R. 69; *Kelly v. Drought*, 21 I. L. T. R. 31); though, of course, the landlord has other remedies for such acts, if unlawful.

A summary means of preventing waste is provided by magistrate's precept under Sec. 35, *post*.

As to what other remedies the landlord has for waste, see notes to Sec. 39, *post*, p. 72.

27. Where any lease (a) shall be made on or after the first day of January, one thousand eight hundred and sixty-one, of lands con-

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Meliorating waste.

No waste outside holding.

Tenant may work mines already opened.

Sects. 27-28. taining any mines or minerals which at the time of the making of such lease shall have been opened (c) or worked, it shall be lawful for the tenant thereof to enter upon and follow, and to work and dig for, and remove the said mines or minerals, (b) whether they shall have been granted by name or not in the said lease, unless by the said lease it shall be otherwise provided.

(a) This section is confined to tenants holding under lease. A "lease" is defined by Sec. 1, as "any instrument in writing, whether under seal or not, containing a contract of tenancy," &c. This has been held to include an agreement in writing for a tenancy from year to year *Jago v. Harrington*, 10 L. R. I. 335.

(b) The right of a tenant who holds under lease to work open mines is more extensive than his right to work open quarries or gravel pits. See next section. If his lease is silent on the subject, he can work mines, it would appear, for purposes of trade, manufacture, or sale, but he cannot thus work quarries.

(c) As to when a mine or a quarry is said to be "open," see notes to next section and *Elias v. Snowden Slate Quarries Company*, 4 App. Cas. 454; *Ellias v. Griffith*, 8 Ch. D. 521.

Tenant may work quarries already open, but not for profit or sale

28. Where any lease of demise (a) shall be made on or after the first day of January, one thousand eight hundred and sixty-one, of lands containing any quarries or beds of stone, limestone, sand, marl, gravel, or clay, which at the time of the making of such lease shall have been opened (c) or worked, it shall be lawful for such tenant, unless by the said lease otherwise provided, to work, dig for, and use such quarries or beds so far as may be necessary or useful for the purposes of agriculture and good husbandry, and the lawful erection or repair of any necessary buildings on the said lands, but not for any purpose of trade or manufacture, or for profit or sale, (b) unless the right so to use and enjoy the same shall have been expressly granted in writing by the landlord being competent so to grant as aforesaid.

(a) The opening words of this section—"Where any lease or demise"—differ from those in the 27th Section, which are merely "Where any lease, &c." There is no definition in the Act of the word "demise," but, apparently, it is intended here to apply to parol lettings, as a lease includes any agreement in writing, whether under seal or not, whereby a tenancy is created. The same words are used in the commencement of the 29th Section as to cutting turf; and that section has been held to apply to tenants from year to year under parol agreements. *Browne's Estate*, I. R. 8 Eq. 237.

Law in England as to mines and quarries.

(b) The law in England draws no distinction between the rights of a tenant as regards the working of open mines and open quarries for sale or profit, such as exists in Ireland under this and the 27th Section (see notes to that section, *ante*, p. 58). A termor of land in England with no power to work mines or quarries upon the land cannot open any in order to work them; but if the mines or quarries have been worked before the commencement of the term he may continue the working,

and may work both for profit: *Elias v. Snowdon Slate Quarries Company*, 4 App. Cas. 454, affirming the decision of the Court of Appeal, reported as *Ellias v. Griffith*, 8 Ch. Div. 521. In that case a question was raised as to when a mine or a quarry might be said to be "open." The Court of Appeal held that, "to enable a termor or tenant for life punishable for waste to work mines, it must be shown that the owner of the inheritance, or those acting by his authority, have commenced the working of the mines *with a view to making a profit*," although it was not necessary to show that a profit had actually been made, and that the same principle applied to quarries; so that if stone or slate were dug for the purpose merely of building or repairing houses on the property and not for the purpose of profit, the quarries would not be "open" in the sense necessary to enable a termor to continue the working. This principle, however, was not adopted by the House of Lords. "I am not at present prepared to hold," says Lord SELBORNE, "that there can be no such thing as an open mine or quarry which a tenant for life or other owner of an estate impeachable for waste may work, unless the produce of such mine or quarry has been previously carried to the market and sold. No doubt, if a mine or quarry has been worked for commercial profit, that must ordinarily be decisive of the right to continue working; and, on the other hand, if minerals have been worked or used for some definite and restricted purpose (*e.g.*, for the purpose of fuel, or repair to some particular tenements), that would not, alone, give any such right. But if there had been a working and use of minerals not limited to any special or restricted purpose, I find nothing in the older authorities to justify the introduction of sale as a necessary criterion of the difference between a mine or a quarry which is, and one which is not, to be considered open in a legal sense:" *Elias v. Snowdon Slate Quarries Co.*, 4 App. Cas., at p. 465.

(c) When a mine or quarry is once open, so that a tenant may work it, it is not necessarily the opening of a new mine or a new quarry to sink a new pit on the same vein, or to break ground in a new place upon the same rock. *Clavering v. Clavering*, 2 P. Wm. 388; *Bagot v. Bagot*, 32 Beav. 509; *Elias v. Snowdon Slate Quarries Co.*, 4 App. Cas. 454.

29. Where any lease or demise (a) shall be made on or after the first day of January, one thousand eight hundred and sixty-one of lands containing turf bog, unreclaimed and unprofitable for agriculture, or where any lease shall be so made giving a right of turbary on the premises, or conferring a right of common of turbary on premises not comprised in the lease, (d) it shall be lawful for the tenant, unless by the said lease it be specially provided to the contrary, (e) to cut, use, and enjoy the said turf bog, so far as shall be necessary for the *bonâ fide* use on the demised premises (b) of the tenant and his lawful sub-tenants, but not for any purpose of trade or manufacture, or for profit or sale, (c) unless the right so to use and enjoy the same shall have been expressly granted in writing by the landlord being competent so to grant as aforesaid.

Tenant may cut turf, but not for sale.

(a) This section applies to all classes of tenancies, including tenancies from year to year, created by parol agreement: *Broune's Estate*, I. R. 8 Eq. 297; *Wakefield v. Hendron*, 11 L. R. Ir. 505; *Lord Lifford v. Kearney*, 17 I. L. T. R. 30, MacD. 391.

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(b) Where bog forms a portion of lands demised, the tenant is, at common law, entitled to turbarry thereout by way of estovers for consumption upon the demised premises: *Howley v. Jebb*, 8 I. C. L. R. 435; 4 I. J. N. S. 184. A right to turbarry includes the right to use the bog-stuff for purposes of manure and for all reasonable purposes, not necessarily only for burning: *Hutchinson v. Drain*, 33 I. L. T. R. 147.

Where the holding of a tenant is subject to the right on the part of the landlord and other tenants, to exercise rights of turbarry, the landlord and tenants are entitled to remove turf for all reasonable purposes. The limit to such a right is that it cannot be exercised to such an extent as to render the land incapable of such reclamation as, according to its nature, it is capable of (*per FITZGIBBON, L.J.*: *Hutchinson v. Drain*, 33 I. L. T. R. 147).

(c) Before the passing of this Act, in order to confer a right to cut turf for purposes of sale, or in unlimited quantities, it was necessary that there should be an instrument under seal, as the right is an incorporeal hereditament. *FLANAGAN, J.*, appears to have considered that a deed was still necessary (*Ancketell's Est.*, 17 I. L. T. & S. J. 99), but *quare*, is this so, having regard to the concluding words of this section and Sec. 1, *ante*? See note (c) to Sec. 1, *ante*, p. 3.

Demise of bog

A demise of bog *eo nomine*, along with other lands, does not authorize the lessee to cut turf for sale (*Fowler v. Blakely*, 13 I. Ch. R. 58), but where the bog is demised alone, or where it had always been cut for sale, it may be held to confer the right: *Coppinger v. Gubbins*, 9 I. Eq. R. 304; 3 J. & L. 397; *Stevenson v. Moore*, 7 I. Ch. R. 462.

Reservation of turbarry.

A reservation to the lessor in a lease of "all bogs and turf mosses" has been held to apply to the soil and freehold of the land, and not merely to a right of turbarry, even though there was also reserved a right of ingress for the purpose of carrying away the excepted premises. *Boyle v. Opherts*, 4 Ir. Eq. R. 241; *Quinn v. Shields*, Ir. R. 11 C. L., at p. 264.

There is no repugnancy between the grant of a bog and the reservation of turbarry: *Beere v. Fleming*, 13 I. C. L. R. 506. See also *Cochrane v. M'Cleary*, I. R. 4 C. L. 165.

The grantee under a fee-farm grant made under the provisions of the Renewable Leasehold Conversion Act cannot cut turf for sale, even where bog *eo nomine* forms portion of the grant, for the 4th Section of that Act (12 & 13 Vic., c. 105) preserves to the grantor whatever rights belonged to the reversion in this respect, where the tenure was by leases for lives renewable for ever: *Gore v. O'Grady*, I. R. 1 Eq. 1. (Affirmed on appeal, but unreported, *Murray & Dixon's Digest*, col. 1676.)

(d) Where a lessor grants by lease a right to cut and carry away turf from a certain bog, he is not at liberty to confine the tenant in the exercise of his right to a certain portion of the bog allocated to him, though it is sufficient and convenient: *Hargrove v. Congleton*, 12 I. C. L. R. 362.

The right to cut turf for domestic use upon a bog belonging to the landlord, not forming portion of the demised premises, may be "appurtenant" to the holding, so as to pass to the lessee under the general word "appurtenances" in the habendum of the lease: *Dobbyn v. Somers*, 13 I. C. L. R. 293. But where a farm was demised "together with half an acre of bog, during the continuance of the demise," and the lessee was disturbed in the enjoyment of the bog allotted to him, it was held that the demise was too vague and uncertain to enable him to maintain an action upon the covenant for quiet enjoyment: *M'Kenna v. Moutray*, 8 Ir. Jur. N. S. 233.

A right of turbary can be acquired by prescription under 2 & 3 Wm. IV., c. 71, Sects. 29-30. sec. 1, extended to Ireland by 21 & 22 Vic., c. 42; and if the right is enjoyed for 60 years, it is deemed absolute and indefeasible, unless it appears to have been enjoyed by some consent or agreement. It is not necessary to show for the purpose of resisting the right that the consent was given by a person having authority to make a valid grant of the turbary: *Lowry v. Crothers*, 1 R. 5 C. L. '98. Right of turbary how acquired

(c) The right of a tenant to cut turf upon his holding for *bona fide* consumption thereon, whether at common law or under this section, is subject to be controlled or excluded by contract: *Lord Lifford v. Kearney*, 17 I. L. T. R. 30, MacD. 391; *Douglas v. M'Laughlin*, 17 I. L. T. R. 84, MacD. 393. The established usage on an estate acquiesced in by the tenants, of disallowing the cutting of turf without a written licence from the landlord is sufficient evidence of such a contract: *Lord Lifford v. Kearney*, 17 I. L. T. R. 30, MacD. 391; *Douglas v. M'Laughlin*, 17 I. L. T. R. 84, MacD. 393.

Where a contract of tenancy under which a tenant holds thus reserves the turbary to the landlord and deprives the tenant of his right to cut turf under this section, it has been held by the Court of Appeal in *Knox v. Baxter*, 19 L. R. Ir. 460 (overruling the decision of two judges in the case of *M'Geough v. M'Dermott*, 18 L. R. I. 217), that an order of the Land Commission fixing a fair rent for the holding does not alter the rights of the landlord as to turbary previously existing, and that Sec. 5, Sub-sec. 5, of the Land Act, 1881, does not confer upon a tenant during the currency of a statutory term any right to cut turf which he did not previously enjoy either by his contract or under this section. Effect of Land Act, 1881.

Where a tenant persists in cutting turf upon land which forms no portion of his holding, and to which he has no right, he may be convicted by the magistrates of malicious injury to property under 24 & 25 Vic., c. 97, sec. 52: *The Queen (M'Elgun) v. Justices of Fermanagh*, 17 I. L. T. R. 105. But the Act must be proved to have been malicious, and accordingly, if it was done under a fair and reasonable supposition of right, he cannot be convicted under that section: *Magee v. Montgomery*, 17 I. L. T. R. 92. Remedies for cutting turf wrongfully.

Where a tenant wrongfully cuts turf upon his own holding, it appears to be doubtful whether proceedings can be successfully taken against him under the Malicious Injuries to Property Act (*Magee v. Montgomery*, 17 I. L. T. R. 92), but the landlord may obtain a precept to restrain waste from the magistrates under Sec. 35, *post*, or he may proceed for an injunction in the Chancery Division (see *Lifford v. Quin*, 1 R. 7 Eq. 347), or by Equity Civil Bill, in the County Court, where the annual value of the holding does not exceed £30: 40 & 41 Vic., c. 56, sec. 33 (h).

30. No tenant under any lease or other contract of tenancy conferring an estate or interest less than a perpetual estate or interest shall burn or permit to be burned the soil or surface of the land, or any part thereof, without the previous consent in writing of the landlord, being a person competent to grant such licence, under a penalty not exceeding twenty pounds for each statute acre or any fractional part of an acre on which such burning shall take place, to be recoverable by the immediate landlord by civil bill action in the county in which the tenant usually resides, or in the county in Tenant shall not burn land

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For rules as to procedure under this section, see County Court Orders, 1890, Order VI. (Dixon's Carleton's C. C. Practise, p. 1165). The action must be brought in the division of the county in which the lands lie, or in which the tenant resides: (Rule 11). If the tenant has no residence in the county, the process must be served 15 clear days before the return day (Rule 7), and in that case it need not be served by a process server (Rule 8) If the tenant has a residence in the county the ordinary rules apply. (See 14 & 15 Vic., c. 57, ss. 65-68.)

Tenant shall not cut or lop trees

31. No tenant of any lands holden under any lease or other contract of tenancy conferring an estate or interest less than a perpetual estate or interest, (e) and made on or after the first day of January, one thousand eight hundred and sixty-one, shall cut down, top, lop, or grub any tree or wood (a) growing on the said lands, (b) unless such tenant shall be authorized thereto by covenant or agreement in the lease under which the lands are holden, if there be a lease, or unless such tenant shall have the previous consent in writing of the landlord competent to give such consent for that purpose, or shall have been lawfully required so to do, under a penalty not exceeding five pounds for each tree cut down, topped; lopped, or grubbed, to be recoverable by the immediate landlord by civil bill action (c) in the county in which the tenant usually resides, or in the county in which the lands or any part of them are situate, at the election of the landlord: Provided that nothing in this provision contained shall affect any right which any tenant may lawfully exercise or enjoy in respect of trees duly registered and belonging to such tenant, or in respect of willows, osiers, or sallows, under any act in force in Ireland. (d)

The general property in trees which are, or which are likely to become, timber is in the landlord (*Berriman v. Peacock*, 2 M. & Scott, 524), and, even though there is no reservation of timber to him, he can maintain an action against a third person for carrying it away after it has been cut down: *Ward v. Andrews*, 2 Chit. 636. But unsound trees, only fit for firewood, if blown down or felled by the landlord, become the property of the tenant. *Cannon v. Patch*, 5 B. & C. 897.

Timber trees.

"Timber trees are those which serve for building or reparation of houses, such as oak, ash, or elm of the age of twenty years or upwards:" Cruise, Digest, Vol. I., p. 116; *Dunn v. Bryan*, I. R. 7 Eq. 143.

(a) Whether this section applies to trees which are not timber appears to be doubtful, the proviso at the end of the section as to "willows, osiers, or sallows," which in no point of view could be considered timber, would seem to imply that it does; but there has been, so far as the author is aware, no decision upon the subject. It has been decided in the case of a lease made before the passing of this Act, that it is not waste in a lessee to cut down trees not timber unless they

re planted for the ornament or shelter of the house or perform some important function, such as supporting a bank or the like: *Dunn v. Bryan*, I. R. 7 Eq. 143.

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Independently of this section it has also been held that the general property in hedges, bushes, and trees not timber belongs to the tenant (Furlong, *Landlord and Tenant*, 2nd ed., p. 679), and that the landlord cannot maintain trespass against a stranger for cutting bushes or thorns growing in a hedge: *Berriman v. Teacock*, 2 M. & Scott, 524, 9 Bing. 384.

A tenant, it has been ruled, may cut down and appropriate non-timber trees, provided he does not injure the land thereby: *Phillips v. Smith*, 14 M. & W. 589. And a nurseryman who plants trees for carrying on his business may, at the determination of his tenancy, remove the young trees which were planted there for sale: *Wardall v. Usher*, 3 Scott, N. R. 508, 5 Jur. 802. "Trees, even of the kinds that may become timber, do not attain that character till they are of twenty years' growth; from which it would follow that trees, even of these kinds, may, under the growth of twenty years, be cut by a lessee at least if they be cut reasonably, that is to say, according to what has been done, either with the same trees if springing from old stools, or other trees in the same place, or in the same neighbourhood, on former occasions:" per CHATTERTON, V.C., *Dunn v. Bryan*, I. R. 7 Eq., at pp. 153-154.

So the mere cutting of a hedge in such a manner as that it will grow again is not waste, and a court of equity will not interfere by injunction to prevent the cutting of hedges with a saw instead of with a hatchet or hedgeknife. But cutting hedges so unseasonably or improperly as that they will not grow again is waste. Likewise, grubbing up the thorns of which it is composed, or allowing the germs to be destroyed by cattle: *Dunn v. Bryan*, I. R. 7 Eq. 143.

(b) The exception of trees out of a lease relieves a tenant from some liabilities respecting them which he would incur if they were not so excepted, for the cutting of them is not in that case an act of waste, nor is it a breach of covenant to keep the demised premises in repair: *Allen v. Carver*, 15 I. C. L. R. 544. If the trees are excepted from the demise, a tenant who cuts them down without the landlord's consent is liable to an action of trespass or trover on the part of the landlord as owner of the trees; and apparently, also, he is liable to a penalty under this section, as it seems to apply to all trees "growing on the said lands," whether excepted from the demise or not.

Trees excepted from demise.

It has been held that a tenant for life without impeachment of waste has not a right to cut ornamental trees, even though they are decayed, unless they are injuring other trees of greater value and importance: *Marquise de la Bedoyère v. Breville Nugent*, 25 L. R. Ir. 143.

(c) For Rules of Procedure in the County Court under this section see County Court Orders, 1890, Order VI. (Dixon's *Carleton's County Court Practice*, pp. 165-1166). The action must be brought in the division as well as in the county in which the lands lie or the tenant resides (Rule 11). If the tenant has no residence in the county the process must be served fifteen clear days before the return day (Rule 7), and in that case it need not be served by a process server (Rule 8). If the tenant has a residence in the county the ordinary Rules apply. (See 14 & 15 Vic., c. 57, ss. 65 to 68).

(d) The concluding paragraph of the section refers to the Timber Acts, which confer upon tenants in certain cases the right to cut timber on their holdings. The most important of these Acts are 5 & 6 Geo. III., c. 17 (Ir.); 15 & 16 Geo. III., c. 26 (Ir.); and 23 & 24 Geo. III., c. 39 (Ir.) The principal sections of these Acts are printed in the Appendix, *post*. Sec. 1 of the latter Act provides that any

Timber Acts.

Sects. 31-32. tenant for life or lives, or for years exceeding fourteen years unexpired, who shall plant any trees may cut, sell, and dispose of the same during the term, provided that (Sec. 2) within twelve months after such planting he shall lodge with the clerk of the peace of the county an affidavit sworn before some justice of the peace of the county, stating the number and kind of trees planted and the name of the lands, in the form provided by the section (see Appendix, *post*); and Sec. 9 of the same Act provides that if the tenant's lease be for a life or uncertain period he may enter upon the lands and cut the timber within one year after the expiration of his lease, making reasonable compensation for any damage he does thereby

The Timber (Ireland) Act, 1838, 51 & 52 Vic., c. 37 (see *post*), now extends the provisions of these Acts to all tenants who have statutory terms under the Land Act, 1831.

The form of affidavit given by Sec. 2 of 23 & 24 Geo. III., c. 39, need not be literally followed, nor need it be made, necessarily, by the tenant himself. It may be made by his agent and may be varied to suit the circumstances. *Mountcashel v. O'Neill*, 5 H. L. C. 937. But one affidavit as to trees planted upon two denominations of land, without distinguishing how many are on each, is bad if the lands are held under different landlords, though it is good if they are under the same: *Mountcashel v. O'Neill*, 5 H. L. C. 937, 4 I. C. L. R. 345, 2 I. C. L. R. 436.

Effect of registration.

By the registration of trees under these Acts, the lessee acquires the absolute property in them which he can transfer to an assignee: *Standish v. Murphy*, 2 Ir. Ch. R. 264. But the timber, until it is felled, remains part of the inheritance, so that if a lessee holds under a lease for lives limited to his heirs, and dies intestate, the property in registered timber which is uncut passes to his heirs and not to his personal representatives: *Alexander v. Godley*, 6 I. C. L. R. 445.

Timber under these Acts includes "all oak, beech, ash, elm, larch, sycamore, walnut, chesnut, cherry, lime, poplar, alder, quicken or mountain ash, holly, timber, sallow, asp, birch, cedar, pine, and fir trees" (15 & 16 Geo. III., c. 26, sec. 3), and now also fruit trees: (51 & 52 Vic., c. 37, sec. 1 (2)).

"Sally, ozier, or willows," planted by a tenant for life or lives, or for a term of 12 years unexpired, become his sole property during the continuance of the lease and he may cut and fell them in the same way as trees, provided they are registered in like manner: 5 Geo. III., c. 17, sec. 2. (For a full account of the Timber Acts and the decisions in respect of them, see Furlong, *Landlord and Tenant* 2nd ed., pp. 682-688).

(c) Tenants for lives renewable for ever are not within the prohibition of section, having a "perpetual estate or interest" within the meaning of the definition in Sec. 1 (*ante*, p. 2). They are not impeachable of waste in timber, trees, woods planted by them after 1st Sept., 1776 (see 5 Geo. III., c. 17, sec. 1, *A. post*), even though the trees are not registered under the Timber Acts: *Pentlan v. Somerville*, 2 I. Ch. R. 289. *Ex p. Armstrong*, 8 I. Ch. R. 30; *Moore's Estate*, 36 I. L. T. R. 14.

Where mines reserved, landlord may work or lease the mines.

32. Where lands shall be granted or leased for any estate or interest, excepting thereout the mines and minerals (a) upon the demised premises, it shall be lawful for the person entitled to the rent thereof, in fee-simple, fee-farm, fee-tail, or for life, with immediate remainder to his own issue, to open, dig for, and work all mines and minerals found in or upon the said lands, and to carry away the ore thereof, or to lease the same to any person or persons

for any term within the leasing power of such person in respect of mines and minerals; and such owner or his lessee shall have full liberty to enter on the said lands, and to build and make all houses, railways, tramways, and conveniences necessary for the purpose of mining, and to employ all streams on the said land not previously occupied, making to the tenant of said lands such yearly or other compensation (b) or allowance for the damage sustained by reason of such digging of the ore, or building the said houses, or otherwise using of the said lands or streams, as shall be agreed upon between the said parties, or in case they shall not agree, then such compensation or allowance as shall be ascertained by the chairman of the county upon a civil bill action brought for that purpose with the same incidents as in ordinary civil bill process. (c) Provided, however, that no person shall search for, open, or work any mine or mineral, by virtue of this Act, on any spot of ground on which any church or other place of worship, graveyard, cemetery, or public school shall be situate, nor within thirty yards thereof, nor upon any spot of ground on which any house, outhouse, garden, orchard, or avenue shall be situate, without the consent of the tenant in possession thereof first had and obtained.

what are "mines" or "minerals" within this section, see notes *supra*, p. 55, and *Fishbourne v. Hamilton*, 25 L. R. Ir. 483, where it was held that a limestone worked by open quarrying was a "mineral."

The section takes the place of what are called the Irish Mining Acts—viz., 5 Geo. I., c. 15, 15 Geo. II., c. 10, and 23 Geo. II., c. 9, to which there are no corresponding enactments in England. Portions of these Acts are repealed by 104, *post*, "except so far as may be necessary to support or enforce any lease, or contract entered into, or as to anything heretofore done, or any right created, or liability incurred." In *Fishbourne v. Hamilton*, 25 L. R. Ir. 483, it was held, therefore, that where the owner of the grantor's estate in a fee-farm grant, made in 1712, reserving mines and minerals, exercised his right to enter the lands for the purpose of working a limestone quarry, he was bound to pay compensation to the persons in possession of the lands. "I am of opinion," says CHATTERTON, V.C., "that the Act of 10 Geo. I. extends to all mines and minerals, according to the meaning of these words as now judicially ascertained, and that it enables the owners of all such mines and minerals, under reservations such as that in the grant of 1712, even without express power such as in that grant contained, to enter upon the lands, the subject of such grants, in order to search for, and to raise and carry away, all minerals thereon or thereunder. To this is attached the corresponding liability to payment of full compensation to the owner or occupier of the soil and surface of the lands for all damages, whether direct or consequential, which he may have sustained by the exercise of the grantor's rights" (25 L. R. Ir. at p. 497). In the case of all fee-farm grants or leases for long terms of years made prior to 1861, the rights of the grantors and lessors are still regulated by 10 Geo. I., c. 5. The present section deals only with leases made after January 1st, 1861.

current year (e) in which such tenancy shall determine, and shall then quit upon the terms of his lease or holding, (g) in the same manner as if such lease or tenancy were then determined by effluxion of time or other lawful means, during the continuance of his landlord's estate; and the landlord or succeeding landlord or owner shall be entitled to recover rent from the tenant in the same manner as if the tenant's interest had only determined on such gale day; (h) and the landlord, or the succeeding landlord or owner, and the tenant respectively, shall, as between themselves and as against each other, be entitled to all the benefits and advantages, and be subject to all the terms, conditions, and restrictions, to which the landlord or preceding landlord or lessor and such tenant respectively would have been entitled and subject in case the lease or tenancy had determined in manner aforesaid at the expiration of such current year (i): Provided always, that no notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.

This section is now of much less importance than it formerly was, as, in the majority of cases coming within its terms, the tenant at the expiration of the lease becomes a present tenant from year to year under the 21st section of the Land Act, 1881. It is still of importance, however, to consider the rights conferred, in reference to—(1) Holdings such as town-parks, &c., excluded from the Land Acts; (2) Leases made since 22nd August, 1881; (3) Leases or other lettings made by tenants for life, even before that date, as to which no rights are conferred by the Land Act, 1881, *against the remainderman*, if they expire with the death of the tenant for life. See, however, Land Act, 1896, Sec. 10, and notes thereto, *post*. There can be no doubt that the right to continue to occupy conferred by this section is available against the remainderman, for the section speaks of "the landlord, or succeeding landlord or owner," recovering rent for the period. (4) Leases made by the Court of Chancery pending a cause. These were held not to come within the words of 14 & 15 Vic., c. 25, which regulated the right of the tenant to remain in occupation in lieu of emblements prior to the passing of this Act: *Hyde v. Roche*, 5 I. C. L. R. 195. Sec. 1 of that Act, however, did not contain the words, "or by the happening of any contingency whereby such lease or tenancy shall determine without the act or default of the tenant," which are to be found in this section; and it has been held under the old law that tenants under Chancery lettings are entitled to emblements: *O'Connell v. O'Callaghan*, 3 Ir. Eq. R. 199; *Creed v. Creed*, 3 Ir. Eq. R. 207. See, however, *Callan v. Dowdall*, MacD., at p. 315.

(a) The right to emblements is the right which the occupier of land, or his personal representatives, has to reap in peace the crop which he sowed, when his occupation has been determined by his death, or otherwise unexpectedly comes to an end from a cause beyond his control: Co. Litt. 55a—56a. Emblements, originally limited to growing corn, have been extended with the improvements in agriculture to other descriptions of crops—to flax, hemp, turnips, beans, vetches, carrots, parsnips,

Nature of emblements

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potatoes, artificial green crops, such as clover, sainfoin, &c., and to young fruit trees planted by nurserymen or gardeners in the course of their trades, but not to natural grasses (*Flanaghan v. Seaver*, 9 Ir. Ch. R. 230), nor to crops requiring a second year to mature, such as clover sown with barley, though the barley may be taken as emblements." De Moleyns' Landowners' Guide, 7th ed., p. 230. Crops sown after the expiration of the tenancy are not emblements: *Kelly v. Webber*, 11 I. C. L. R. 5.

Now under the Land Act, 1870, Sec. 8, the tenants of agricultural holdings generally are entitled on quitting their holdings to take away growing crops or the value, so that the question as to emblements is not of much consequence, except in respect to the right of occupation in lieu thereof conferred by this section.

(b) The lands must be held at a rack-rent, *i.e.*, as it has been determined, at their full letting value, when the lease expires, not when it was originally granted (*Mansfield v. M'Kay*, 7 Ir. Jur. N. S. 13).

(c) It is the occupying tenant who must claim the right to remain in possession in lieu of emblements, and a tenant who has sublet cannot claim to remain in possession upon the ground that his sub-tenants had cropped the lands: *Lord Stradbroke v. Mulcahy*, 2 I. C. L. R. 406. The sub-tenants would apparently have the right to continue on in possession as against the head landlord (see *Hemphill v. Frazer*, 10 L. R. Ir. 87, and judgment of LEFROY, C.J., in *Lord Stradbroke v. Mulcahy*, 2 I. C. L. R. at p. 409); but now, if they hold as tenants from year to year, when the tenancy of their immediate landlord determines, they at once become tenants from year to year to the head landlord: Land Act, 1881, Sec. 15.

Where the herd of a tenant held as part of his wages three roods of a farm of 86 acres, and had sown oats and potatoes therein, it was held that the tenant was entitled to avail himself of these crops as emblements, and to continue in occupation under this section, upon the ground that the herd was not an under-tenant, and that the crops belonged to the tenant, although by contract he was bound to allow the herd to take them: *Kenna v. Nugent*, I. R. 6 C. L. 547; 7 C. L. 464.

(d) The right to continue in possession in lieu of emblements appears to exist, no matter how small the holding is, provided the claim as regards emblements is not frivolous. In *Haines v. Welch*, L. R. 4 C. P. 91, a tenant of a labourer's cottage with about an acre of land attached, partly cultivated as a garden and partly sown with corn and potatoes, was held to be in possession by virtue of such right, under 14 & 15 Vic., c. 25, s. 1, which is still in force in England, though it has been repealed so far as it affects Ireland by this Act.

(e) The tenant is entitled to remain in possession "until the last gale day of the current year." This has been held to mean the current year of the tenancy, not the calendar year (*Earl of Derby v. Sadlier*, 11 Ir. Jur. N. S. 171); so that apparently if a tenancy originally began on the 1st of May, and a *cestui que vie* died on the 1st of April, the tenant could only remain in for one month. However, in *Hyde v. Roche*, 5 I. C. L. R. 195, which was decided under 14 & 15 Vic., c. 25, s. 1, MONAHAN, C.J., expressed a strong opinion that the right to possession was given during the period in which previously the tenant had the right to enter and take away his emblements, and from thence to the end of the then current year of the tenancy; that is, in the case of a *cestui que vie* dying in the month of April to the 1st of May in the following year" (5 I. C. L. R., at p. 200).

(f) The words "if he think proper so to do" do not occur in the 1st section of 14 & 15 Vic., c. 25, so that apparently the tenant has the option, under this Act, which he had not under the repealed Act, to take his emblements and not continue to occupy until the last gale day of the year: see *Earl of Derby v. Sadlier*, 11 Ir. Jur. N. S. 171.

Right to continue in possession in lieu of emblements

(g) The right of occupation conferred by this section does not create a tenancy or continue the previously existing tenancy so as to confer any rights under the Land Act, 1881, either upon a sub-tenant (*Hemphill v. Frazer*, 10 L. R. Ir. 87) or upon the lessee himself (*M'Cullagh v. Batt*, 24 I. L. T. R. 52). See, however, judgment of MONAHAN, C.J., in *Hyde v. Roche*, 5 I. C. L. R., at p. 200, on the construction of 14 & 15 Vic., c. 25, s. 1. Sects. 34-35.
Rights of occupier under the section.

In England it has been held that the landlord has the right to distrain for the period during which the tenant continues to occupy in lieu of emblements: *Haines v. Welch*, L. R., 4 C. P. 81.

(h) The rent which is due for the half-year during which the tenancy expires should be apportioned between two successive owners, if the interest of the landlord terminates with the lease and a different person is entitled to the rent for the period from its expiration to the last gale day of the current year; but the whole half-year's rent should be recovered from the tenant by the succeeding owner under this section, and then apportioned between him and the previous owner or his representatives under the Apportionment Act, 1870. The owner, whose estate has determined, is not entitled to sue the tenant directly for rent for the broken period from the previous gale day to the date of the determination of the lease: *Irwin v. Frazer*, 10 L. R. Ir. 273. (The head-note of this case is misleading; but the judgment of FITZGERALD, B., at pp. 283-4, shows plainly what was decided by the Court). Apportionment of rent.

(i) Where a lessee remains on in possession, in ignorance of the death of a *cestui que vie*, and pays rent, he is entitled to be treated as holding on under this section up to the last gale day of the current year at the rent reserved by the lease; but for the succeeding period the landlord may recover a higher sum, in use and occupation, even though he has already accepted (in ignorance of the expiration of the lease) rent at the rate reserved by the lease: *Hurly v. Hanrahan*, I. R. 1 C. L. 700. Of course, however, this would not be so, if the case came within Sec. 21 of the Land Act, 1881.

35. Where any person shall be in possession of lands, or of any dwellinghouse, outhouse, or buildings, as tenant thereof, or as a servant or caretaker of any owner, or having obtained the possession thereof from any such tenant, servant, or caretaker, and the landlord or owner or other person interested in the preservation of the premises, or any agent acting on his behalf, shall, by affidavit, (a) satisfy any Justice of the Peace of the county, not being a party interested in the said premises (who is hereby authorized and required to take such affidavit), that there exists probable and just grounds of suspicion that such person is about to commit or to permit or suffer any unlawful waste, injury, alteration, destruction upon, or removal from any such dwellinghouse, outhouse, or other building, or intends unlawfully to burn or break up any part of the soil or surface or subsoil of the lands, or unlawfully to remove the soil or surface or subsoil of the said lands, (b) or unlawfully to cut down, top, lop, or grub any trees, woods, or underwoods growing on the said lands, or otherwise use or misuse the premises or any part Prevention of Waste and Law of Repairs.
Magistrate's precept to restrain waste.

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thereof, contrary to his agreement, or that he is in the act of doing or suffering any of the aforesaid matters, it shall be lawful (c) for such Justice of the Peace (d) to issue his precept in writing under his hand and seal, stating that information had been received that such waste or injury is intended to be or is in the act of being done or permitted, and commanding all such persons and all other persons whomsoever to desist from such waste or injury, and not to continue the same until special leave and authority for that purpose shall be first procured from the magistrate who shall have signed such precept, or until the subject matter of the said information be inquired into at the next petty sessions of the district in which the said premises are situate, or such other time as may be therein mentioned; and such precept may be according to the Form No. 1 in the Schedule (A.) to this Act annexed, and shall be served on every or any person by whom it shall be suspected that such waste or injury is intended to be or is being committed, by delivering a copy thereof to such person, if he can be found, and if not, by affixing a copy thereof on the principal door or entrance to the dwellinghouse, outhouse, or other building, and if there be no such house or building, on some conspicuous part of the premises; and the said persons shall and may attend at the petty sessions, and such order may be made thereat by the court of petty sessions for annulling or continuing for a limited period the said precept, or otherwise as may be agreeable to justice.

This, and the following sections to Sec. 39, deal with the landlord's remedies for waste; Secs. 25 to 31 lay down generally what is and what is not waste by a tenant.

Necessary averments in affidavits.

(a) The affidavit to obtain a justice's precept should state *facts* sufficient to satisfy the justice that waste is about to be committed. If present acts of waste are complained of, it should state what these acts are, and if future, it should give similar details as to what it is believed the tenant intends to do. A precept, therefore, granted on an information which stated merely past acts of waste, and which averred that the tenant "persists in doing and committing acts of unlawful waste to the injury and damage of said premises," was held bad and quashed: *Brady v. Slator*, 9 Ir. Jur. N. S. 152. In another case, where the affidavit only stated that the informant had good *grounds of suspicion* that waste was about to be committed, it was held that that averment was insufficient, and the Court of Exchequer set aside the precept. *Ex parte Donaghy*, I. R. 2 C. L. 22.

(b) The act of waste must be committed upon the demised premises; cutting turf, for instance, upon adjoining lands cannot be restrained by precept under this section: *Kelly v. Drought*, 21 I. L. T. R. 31.

Jurisdiction, how far discretionary.

(c) The words "it shall be lawful," though permissive in form, do not, it appears, give any discretion to the magistrate as to issuing his precept, when a proper case is made for it. "If," says LAW, C., in reference to the jurisdiction of the Land Commission to set aside leases, under the 21st section of the Land Act, 1881, "the

Legislature, besides conferring the requisite authority or jurisdiction, proceeds to specify the particular circumstances and conditions under which the authority or jurisdiction may be exercised, this context is naturally regarded as showing that it meant the authority to be exercised in those cases; and thus by implication a duty is imposed on those to whom the authority has been given to exercise it in favour of the persons and under the circumstances specified." *Sweeney v. Ashtown*, 14 L. R. Ir. at pp. 125, 126.

A magistrate issuing a precept under this section, and a constable or bailiff executing it, are protected from liability to an action, by reason of the person applying for same having no lawful right to prohibit the act therein prohibited (Sec. 100, *post*).

(d) "It will be observed that *one* justice can issue a precept, and that it need not be done in petty sessions:" Molloy, Justice of the Peace, p. 391, *note*.

As to enforcing the precept, see Sec. 36, and as to annulling it, see Sec. 37, *post*.

For Form of precept, see Sch. A. to this Act, Form No. 1, *post*. For Forms of Notice for annulling or varying same, see County Court Forms Nos. 52, 53 and 54, *post*.

36. If any person shall, after the service or posting of such precept, in disobedience thereto, without such leave and authority as aforesaid, proceed with or continue to do the act prohibited by such precept, or wilfully aid, abet, or assist in so doing, he shall, on conviction thereof before two or more Justices of Peace at Petty Sessions, be liable to be imprisoned for a period not exceeding one calendar month; and all the provisions of the "Petty Sessions (Ireland) Act" respecting summary convictions before Justices at Petty Sessions, and respecting appeals therefrom, shall be applicable to every conviction under this section.

Punishment
of disobedience
of precept.

The Petty Sessions Act (14 & 15 Vic., c. 93) only gives a right of appeal where an order is made for imprisonment for any term "exceeding one month" (Sec. 24). *Quere*, therefore, can there be an appeal in any case under this section as the maximum term of imprisonment which can be awarded is one calendar month? An application may, however, be made to "annul or vary the conviction," either to the Superior Courts, to the Judges of Assize, or to the County Court Judge, under Sec. 37, *post*.

37. It shall be lawful for any of the Superior Courts of Law or Equity in Ireland, or any judge thereof, or for the going Justices of Assize, (a) or one of them, or for the Chairman presiding in the County, (b) on a summary application on behalf of any person aggrieved by any such precept, order, or conviction, of which due notice shall be given to the opposite party, to annul or vary any such precept granted by any justice of the peace, or any order or conviction made at Petty Sessions in relation thereto, and to award as between the parties a reasonable sum for the costs occasioned by

Annulling
precept of
Magistrate.

Sects. 37-39. the procuring and sustaining, or annulling or varying, the said precept, or order or conviction, and reasonable compensation for any loss or damage caused by the procuring such precept or order.

The Court of Exchequer has set aside precepts under this section where merely *past acts* of waste were complained of: *Brady v. Slator*, 9 Ir. Jur. N. S. 152. And where the applicant merely stated in his affidavit that he had good *grounds of suspicion* that waste was about to be committed, without setting out the facts, the precept was similarly set aside. *Ex parte Donaghy*, I. R. 2 C. L. 22. See notes to Sec. 35, *ante*, p. 70.

(a) The application to the "going Justices of Assize" need not be to the *next* going Judge of Assize. PALLES, C.B., at the Summer Assizes of 1887, set aside a precept which was granted in May, 1885, upon sufficient grounds being shown: *Kelly v. Drought*, 21 I. L. T. R. 31.

(b) The application to vary or annul, if made to the County Court Judge, must be made to the sessions next following the service of the precept. The procedure is regulated by the County Court Orders, 1890, Order XXVI. (see *post*).

Landlord may enter to inspect waste.

38. It shall be lawful for the landlord of any premises holden under lease or other contract of tenancy made on or after the first day of January, one thousand eight hundred and sixty-one, upon which any waste, misuser, or destruction shall have been committed or suffered, and his agent lawfully authorized, at any reasonable time to enter upon the premises so wasted or misused, and to inspect and, if necessary, to survey the same for the purpose of ascertaining the nature and extent of any waste or injury done, or the quantity of land burned contrary to the provisions of this Act; and if any person shall hinder or obstruct such landlord or agent in making such entry, inspection, or survey, he shall forfeit to the said landlord a sum not exceeding ten pounds, to be recovered by civil bill action in the same manner and with the like appeal as in ordinary cases of civil bill actions.

See, as to similar rights of a landlord to enter upon a tenant's holding, and the consequence to a tenant of his "unreasonable refusal" to allow him to do so, Land Act, 1870, Sec. 14, and Land Act, 1881, Sec. 5, and notes thereto, *post*.

Ordinary civil remedies preserved.

39. Nothing in this Act contained shall deprive any landlord or owner of any lands of any other remedy, either at law or in equity, which he might previously have had or pursued against any person for any injury sustained by such landlord or other person, or for preventing such injury.

Landlord's remedies for waste

A landlord has the following different means of obtaining redress for waste committed by his tenant:—

(1) He may sue for damages in a Common Law action: *Templemore v. Moore*, 15 I. C. L. R. 14.

(2) He can proceed in the Chancery Division for an injunction: *Brooke v. Mernagh*, Sects. 39-41. 23 L. R. I. 86. But where the tenant held for such a long term of years as practically to amount to a perpetuity, and there was nothing to show that the security for the rent would be impaired or the identity of the premises confused, the Court of Appeal in Chancery, reversing the decision of the Vice-Chancellor (I. R. 10 Eq. 362), refused to interfere by injunction, and left the landlord to his Common Law remedies (*Doherty v. Allman*, I. R. 10 Eq. 460), and the House of Lords affirmed their decision (3 App. Cas. 709; 1 L. R. Ir. 249). As to enforcing covenants of a restrictive character by injunction, see *Craig v. Greer* [1899], 1 I. R. 258, and notes to Sec. 42, *post*.

(3) He may sue by equity civil bill in the County Court, if the valuation of the holding is under £30: 40 & 41 Vic., c. 56, s. 33 (*h*). See as to the limits of the County Court jurisdiction under this sub-section: *Boyle v. Masterson*, 25 L. R. Ir. 179, 24 I. L. T. R. 69. The County Court Judge may grant an injunction, and should do so, in a proper case, even though the landlord may have other remedies by which he can enforce his rights: *Steele v. Tiernan*, 23 L. R. Ir. 583.

(4) If the waste is a breach of a statutory condition under the Land Act, 1881, to which the holding is subject, the landlord may also proceed by notice to quit and ejectment under Land Act, 1881, Sec. 13, Sub-sec. 3.

(5) He may obtain a precept from a magistrate to restrain waste under Sec. 35, *ante*, p. 69.

40. If any dwellinghouse or other building constituting the substantial matter of the demise, and holden by any tenant under any lease or other contract of tenancy not containing an express covenant or agreement binding on the tenant to repair the same, shall be destroyed, become ruinous and uninhabitable, or incapable of beneficial occupation or enjoyment, by accidental fire or other inevitable accident, and without the default or neglect of the said tenant, it shall be lawful for such tenant to surrender the said premises, and on tendering the said surrender, and on payment of all rent and arrears due or accruing due, or tendering the same, the said tenant shall be thenceforth discharged from all obligation to pay the rent or perform the covenants and conditions in the lease thenceforward.

Destruction of subject of the lease to determine the tenancy.

By Sec. 42, *post*, a covenant to repair is *implied* in every lease made after January 1st, 1861 (unless otherwise provided). This implied covenant would not, under the wording of this section, prevent a lessee from surrendering upon the accidental destruction of the demised premises.

Where a tenant relies upon this section in an action in the County Court, "he shall lodge with the clerk of the peace the money tendered by him as thereby directed, and give notice of such lodgment to the plaintiff two clear days before the return day:" County Court Rules, 1890, Order IV., Rule 2.

41. Every lease of lands or tenements made after the commencement of this Act shall (unless otherwise expressly provided) (a) by such lease) imply an agreement on the part of the landlord making such lease, his heirs, executors, administrators and assigns, with the

Covenants and conditions.
Covenants implied on behalf of landlord.

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tenant thereof for the time being, that the said landlord has good title (b) to make such lease, and that the tenant shall have the quiet and peaceable enjoyment (c) of the said lands or tenements without the interruption of the landlord or any person whomsoever during the term contracted for, so long as the tenant shall pay the rent and perform the agreements contained in the lease to be observed on the part of the tenant.

Covenants for (1) good title and (2) quiet enjoyment are, by this section, implied on behalf of the landlord in every lease made after 1st January, 1861. This appears to be the law, independently of the section, where the lease contains the word "demise:" *Line v. Stephenson*, 5 Bing. N. C. 183; and the case of *Hart v. Windsor* (12 M. & W. 68) is an authority that the word "let" has the same effect in this respect as the word "demise," and that any other equivalent word would have the same effect: *per* BRETT, J., *Mostyn v. West Mostyn Coal and Iron Co.*, 1 C. P. D. at p. 152. In fact, by agreeing to let, a lessor impliedly promises that he has a good title to let. *Stranks v. St. John*, L. R. 2 C. P. 376.

Section extends law as to implied covenants.

The question as to whether this section was merely declaratory of the previous law, or whether it extended the covenants previously implied, was discussed at some length in *Leonard v. Taylor*, I. R. 7 C. L. 207; 8 C. L. 300. It appears from the judgments of FITZGERALD, J., and BARRY, J., in the Queen's Bench, and that of PALLES, C.B., in the Exchequer Chamber, that the section extended the Common Law rule in several respects. "It was asserted very forcibly," says FITZGERALD, J., "that the two covenants mentioned in this section are exactly the covenants which the Common Law would imply from the word 'demise,' and that consequently the statute did not go beyond, but was merely declaratory of, the Common Law. I do not concur in that view. The statutable covenant is an absolute and unconditional covenant for title on the part of the landlord, his heirs, executors, administrators, and assigns. Now, I do not think that such a covenant as that was implied by the Common Law. There is some uncertainty on the authorities, but I am rather inclined to think that the covenant implied by Common Law from the word 'demise' was one for quiet enjoyment against the lessor and all claiming under him by title:" I. R. 7 C. L. at p. 216. "It was suggested in argument," says BARRY, J., "that if the 41st section of the Landlord and Tenant Act, 1860, were only declaratory of the Common Law, it would have been simply unnecessary; but there seems to be two answers to that argument. In the first place, as has been shown, this section goes further than the Common Law in making the covenants binding on the heirs and executors of the landlord; and, secondly, it was prudent, if not necessary, that this section should be inserted. The covenant was implied at Common Law where there was a demise—that is, where there was a creation of the legal relation of landlord and tenant; but, by the 3rd and 4th sections of this statute, that relation may be created in a way before unknown—namely, by mere contract, and without the retention by the landlord of any reversion. Now, it seems to me that it was eminently prudent, if not necessary, that this 41st section should be introduced, for in the case of one of these new leases, where the relation of landlord and tenant did not exist at Common Law, it might be contended that no covenant or agreement for good title or quiet enjoyment could be implied at all unless so provided by the legislature:" I. R. 7 C. L., at p. 217-8.

(a) If there is an express covenant, either for title or quiet enjoyment, then there is no implied covenant at all (*Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 145; see judgment of BARR, J., at p. 152), and the covenant for title implied by this section is negatived by an express covenant for quiet enjoyment *restricted to the acts of the lessor and those deriving under him*: *Leonard v. Taylor*, 1 R. 7 C. L. 207; 8 C. L. 300; *Clayton v. Leech*, 41 Ch. Div. 103.

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Effect of limited express covenants.

Where an agreement for a fee-farm grant provided that the grant should contain "all covenants usual and proper in building leases" it was held that the grantee was entitled to the statutable covenants contained in this section, and that the grantors were not entitled to insert a qualified covenant for title limited to the acts of themselves and persons claiming under them: *Colhoun v. Feyle College Trustees* 1898], 1 I. R. 233; 32 I. L. T. R. 49.

(b) If a lessor knows that he has no title to part of the lands, and does not disclose his want of title to the lessee, who has no means of knowing the real facts, such concealment by the lessor is a sufficient ground for the lessee to seek to have the lease set aside, if he so desires; or he may refuse to take possession of the part of the demised premises to which the lessor has no title, and keep the remainder; and if the lessor then sues him for rent due under the lease, he may counterclaim or damages for breach of the implied covenant for title: *Mostyn v. West Mostyn Coal and Iron Co.*, 1 C. P. D. 145.

In England it has been held that where a lessee, acting in good faith, makes a sub-lease for a longer term than that for which he himself holds, the implied covenant for title is limited to the duration of his own lease: *Baynes v. Lloyd* [1895], 1 Q. B. 610. *Quære*, however, whether this would be so in Ireland, having regard to the terms of this section.

Effect of implied covenant for title.

No covenant for title or for quiet enjoyment can be implied in a lease which is void under Sec. 2 of the Land Act, 1881, by reason of the absence of the landlord's consent to a sub-letting. *Canavan v. Burton* [1900], 2 I. R. 359; 34 I. L. T. R. 6; 1 Greer 148.

(c) A covenant for quiet enjoyment is also implied, even in a parol letting: *Bandy v. Cartwright*, 8 Ex. 913; *Robinson v. Kilvert*, 41 Ch. Div. 88: But the implied covenant which would arise from the demise is excluded by an express covenant, even though the latter be merely a qualified covenant: *Clayton v. Leech*, 41 Ch. Div. 103. (See judgment of BOWEN, L.J., at p. 107), *Leonard v. Taylor*, 1 R. 7 C. L. 207; 8 C. L. 300.

The implied covenant for quiet enjoyment in a letting from year to year does not extend to a statutory term, if the tenant gets a fair rent fixed under the Land Act, 1881. Thus, where a landlord let lands which he held under lease to a tenant from year to year, who had a fair rent fixed, and the landlord's lease was evicted for non-payment of rent, it was held that no action lay for breach of covenant for quiet enjoyment at the suit of the statutory tenant. *Kearns v. Oliver*, 24 L. R. Ir. 473. "The contention of the plaintiff," says MORRIS, C.J., "is, and must be, that this implied covenant has been swelled from its original extent into a covenant for a term of fifteen years, with renewable terms, *in secula seculorum*, by operation of the Land Law (Ireland) Act, 1881. Of course, if that Act had so enacted, it would be a consequence no more extraordinary than many other extraordinary consequences of that Act, but, fortunately for the defendant here, the Act did not say so. We are called upon to give it that meaning by converting a covenant for a year into a covenant binding for ever, and to do so because the landlord is in future to get a far less rent. It appears to me that there is no authority for that or any such proposition:" 24 L. R. Ir. at p. 477.

Statutory tenancies.

Sects 41-42.

Covenant for quiet enjoyment when broken.

A covenant for quiet enjoyment may be broken "where the ordinary and lawful enjoyment of the demised premises is substantially interfered with by the acts of the lessor or those lawfully claiming under him . . . although neither the title to the land nor the possession of the land may be otherwise affected:" *per* FRX, L.J., *Sanderson v. Mayor of Berwick-upon-Tweed*, 13 Q. B. D. at p. 551. But the mere neglect to pay head rent, by reason of which a superior landlord recovers possession of the premises under a condition of re-entry for non-payment of rent has been held not to be a breach of a covenant for quiet enjoyment contained in an under-lease, limited to the acts of the under lessor and persons claiming under him: *Kelly v. Rogers* [1892], 1 Q. B. 910. If a tenant wants extraordinary protection for a particular branch of trade, he must bargain for it in his lease, and the implied covenant will not extend so far: *Robinson v. Kilbert*, 41 Ch. D. 88. Mere annoyance by noise will not amount to a breach of covenant for quiet enjoyment: *Jenkins v. Jackson*, 40 Ch. Div. 71. As to the amount of damages which may be recovered for breach of covenant for quiet enjoyment, see *Rolph v. Crouch*, L. R. 3 Exch. 44.

Covenants implied in letting of furnished house.

The covenants for good title and quiet enjoyment are the only covenants which, as a general rule, are implied in leases. There is, for instance, in ordinary cases, no implied covenant that a house is reasonably fit for habitation, or land for occupation or cultivation: *Hart v. Windsor*, 12 M. & W. 68; *Murray v. Mace*, I. R. 8 C. L. 396. But in an agreement to let a furnished house, there is an implied condition that it is fit for occupation at the time at which the tenancy is to begin, and if it is unfit for habitation, owing, *e.g.*, to defective drainage at that time, the lessee is entitled to rescind the contract. This right he may avail himself of, even though the landlord afterwards repairs the drains: *Wilson v. Finch-Hatton*, 2 Exch. D. 336; *Smith v. Marrable*, 11 M. & W. 5, 12 L. J. (Exch.) 223.

Lettings to the working classes.

The Housing of the Working Classes Act, 1890 (53 & 54 Vic., c. 70), provides also by Sec. 75 that in any contract made after August 14th, 1885, for habitation by persons of the working classes of a house, or part of a house, "there shall be implied a condition that the house is, at the commencement of the holding, in all respects reasonably fit for human habitation." And such a letting is defined by the section to be a letting of a house or a part of a house at a rent not exceeding (in Ireland) four pounds.

A tenant has a right to sue his landlord under this section for injuries caused by the premises being in a defective state of repair, such as, for instance, injury caused by the fall of plaster from the ceiling: *Walker v. Hobbs*, 23 Q. B. D. 458.

Covenants implied on behalf of the tenant.

42. Every lease of lands or tenements made after the commencement of this Act shall (unless otherwise expressly provided (a) by such lease) imply the following agreements on the part of the tenant for the time being, his heirs, executors, administrators, and assigns, with the landlord thereof; that is to say,

1. That the tenant shall pay, when due, the rent (b) reserved and all taxes (c) and impositions payable by the tenant, and shall keep the premises in good and substantial repair (d) and condition:
2. That the tenant shall give peaceable possession (f) of the demised premises, in good and substantial repair (e) and con-

dition, on the determination of the lease (accidents by fire without the tenant's default excepted), subject, however, to any right of removal (or of compensation for improvements) that may have lawfully arisen in respect of them, and to any right of surrender in case of the destruction of the subject matter of the lease as hereinbefore mentioned. (g)

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(a) The covenants mentioned in this section are implied only in the absence of similar ones being expressed. Express covenants, even of a restricted nature, exclude implied covenants of a similar kind altogether: *Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 145; *Leonard v. Taylor*, I. R. 7 C. L. 207; 8 C. L. 300; *Clayton v. Leech*, 41 Ch. Div. 103.

(b) As to the covenant to pay rent and the remedies of the landlord for breach of same, see notes to Sec. 45, *post*, p. 85.

(c) The principal taxes now payable by the tenant in Ireland are poor rate and income tax. Poor rate is levied by the County Council under the Local Government Act, 1898, in order to provide for all county and district expenses (61 & 62 Vic., c. 37, sec. 51). This new poor rate is a consolidated rate comprising the old poor rate (as levied under 1 & 2 Vic., c. 56; 6 & 7 Vic., c. 92; 12 & 13 Vic., c. 104; 3 & 14 Vic., c. 69; and 31 & 32 Vic., c. 49) and the old county cess (formerly levied by the Grand Jury under 6 & 7 Wm. IV., c. 116, and 19 & 20 Vic., c. 63).

Poor Rate under Local Government Act

The poor rate is now levied upon the occupier, and not upon the landlord, in all cases, with two exceptions—(1) where a house is let in separate apartments or lodgings, and (2) where a half-rate is levied in respect of premises used for charitable or public purposes under 1 & 2 Vic., c. 56, sec. 63, and 12 & 13 Vic., c. 104, sec. 10. (In these two cases the rate is still levied on the landlord as the immediate lessor L. G. Act, 1898, sec. 52).

Levied upon the occupier.

1 & 2 Vic., c. 56, s. 71 (which is still in force), provides that poor rate is to be paid by the person in actual occupation at the time the rate is made, and on his default by the person subsequently in occupation.

Poor Rate

Formerly, where the whole of the rateable property occupied by any one person in a union was not of greater value than £4, and where the occupier held under a yearly tenancy or a lease made subsequent to the 24th August, 1843, the immediate lessor was rated and not the occupier: 6 & 7 Vic., c. 92, s. 1. But this section is now repealed by the Local Government Act, 1898 (Sch. VI., Part IV.).

A tenant having paid poor rate was formerly entitled to deduct from his rent one-half of the sum he had paid for poor rate in respect of each pound or lesser sum of the rent which he paid (1 & 2 Vic., c. 56, s. 74); but where the valuation was below his rent he was not entitled to deduct more than one-half of the total sum that he paid (12 & 13 Vic., c. 104, s. 11).

Deduction from rent.

Now, however, by the L. G. Act, 1898, it is provided, as a general rule, that "the occupier of a hereditament shall not be entitled to deduct from his rent any part of the poor rate, and any contract to the contrary respecting such deduction shall be void" (Sec. 52, Sub-sec. 2). There are, however, certain exceptions to this rule.

No deduction from rent legal.

(1) Where an Urban District Council can, independently of the Local Government Act, raise a sum by a rate upon the same basis as the poor rate, "that sum may be raised by means of the poor rate, but as a separate item thereof, and any right to deduct any part of the said rate from rent shall continue as respects that item." (L. G. Act, 1898, Sec. 53, Sub-sec. 2 (a))

Exceptions. Special rates

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 ———
 Railway,
 Harbour, Naviga-
 tion, and Public
 Health charges

(2) By L. G. Act, 1898, Sec. 54, Sub-sec. 9, it is provided that "An occupier of any holding under an existing tenancy shall, until the tenancy is determined or a new statutory term in the tenancy begins, be entitled, notwithstanding any provision of this Act, to deduct from his rent the like proportion of any sum paid by him for poor rate on account of any railway, harbour, navigation or public health charge, as he would have been entitled to deduct from his rent on account of any cess or rate to meet the charge, if the provisions of this Act with reference to the deduction of poor rate from his rent had not been enacted, and in the case of existing charges, as if the charge had continued to be raised by the same cess or rate as previously." The charges referred to are set out in the 57th section of the Act (see Vanston, Local Government, Vol. I., pp. 63-64).

Existing
 tenancies in
 urban districts.

(3) Originally, the most important of all the exceptions was that created by L. G. Act, 1898, Sec. 54, Sub-sec. 11, as follows:—"Where the existing tenancy of a holding in an urban district is constituted by a lease for lives, or a lease of which not less than five years are unexpired on the appointed day, then, notwithstanding anything in the foregoing provisions of this section, the rent of such holding shall be unaltered, but the occupier shall be entitled to deduct from his rent such portion of the amount of poor rate actually paid by him from time to time in respect of such holding as he would have been entitled to deduct if this Act had not passed, or, if he was entitled before the passing of this Act to deduct all the poor rate and county cess, then the whole of the poor rate so actually paid." "Urban districts," within the meaning of this sub-section, are those comprised in the table in Sec. 4 of the Public Health (Ireland) Act, 1878 (41 & 42 Vic., c. 52), or constituted by order of the Local Government Board under Sec. 7 of the same Act. As to what constitutes an "existing tenancy" within the meaning of this sub-section, see *Vernon v. Pale*, 1 N. I. J. R. 109, and *Haslett v. Shurman* [1901], 2 I. R. 433.

The Local Government Act, 1898, was amended, as regards this right of deduction for poor rate, by the Local Government Act, 1900 (63 & 64 Vic., c. 63, Sec. 3, Sub-sec. 3). But the latter sub-section is now repealed by the Local Government Act, 1901 (1 Ed. VII., c. 28) Sec. 1. This section now provides that Sub-section 11 of Section 54 of the Act of 1898 "shall not apply in the case of an occupier who would but for this enactment be entitled under that sub-section to deduct from his rent a portion of the poor rate";—thus apparently abolishing the right of deduction altogether.

Special rates
 formerly made
 upon landlord

(4) It is also provided, in reference to special rates levied by Urban District Councils under the L. G. Act, 1898, Sec. 53, that "where the occupier of a hereditament in an urban district becomes, by reason of this Act, liable to pay all or part of any rate made by the council of such urban district, other than the poor rate, and such rate was previously made upon the landlord, or immediate lessor, he shall, until his tenancy determines, be entitled, save so far as his contract of tenancy otherwise provides, to deduct the amount for which he so becomes liable from his rent" (Sec. 54, Sub-sec. 12).

For a concise general account of these exceptions, and of the changes made by the Local Government Act generally, as to the incidence of rates, see Walker on the Rating Provisions of the Local Government Act, *passim*. See also Vanston, Local Government, Vol. I., pp. 55, and *seq.*

Tenant's former
 right to deduct
 poor rate.

Prior to the passing of the Local Government Act, 1898, it was held that where a tenant allowed several years of rent to accrue, making some payments on account, he was entitled on settling the account to deduct poor rate, in respect of the whole rent, notwithstanding the provisions of 1 & 2 Vic., c. 56, sec. 74; *Stott v. Walsh*, 27 I. L. T. R. 70. This would appear to be still the law in the exceptional cases where poor rate can still be deducted.

Where the Land Commission fixed a judicial rent, after the passing of the Local Government Act, 1898, taking account of the incidence of rates as directed by Sec. 55 of that Act, it was held by FRZEMBSON, L.J., that the tenant was not entitled to make a deduction from his rent in respect of rates paid by him for the period between the service of the originating notice (before 1898) and the order fixing the rent: *Dennis v. Sweeney*, 34 I. L. T. R. 200. Sect 42.

The Local Government Act, 1898, also contains elaborate provisions for the adjustment of rent as between the landlord and the occupier in consequence of the change in the incidence of rates (see Sec. 54; Vanston, Local Government, Vol. I., p. 57-62; and *King-Harman v. Cayley* [1900], 2 I. R. 255; 34 I. L. T. R. 81; I. W. L. R. 37). Adjustment rents under Local Government Act, 1898

A middleman was formerly entitled on paying his own rent to deduct therefrom his poor rate, "a sum bearing such proportion to the amount of rate deducted from the rent received by him as the rent paid by him bears to the rent received by him." (1 & 2 Vic., c. 56, s. 75). As the rent which he received was to that which he paid, so should the amount of deduction allowed by him to his tenant be to the deduction claimed by him from his own landlord: *Carr v. Tottenham*, 7 Ir. Jur. O. S. 363. This section has, however, been repealed by the L. G. Act, 1898 (Sch. VI., Part IV), "except so far as it applies to any case where a rate can, under the provisions of this Act, be made on the immediate lessor," i.e., in the case of houses let in separate apartments, or lodgings, and premises used for charitable or public purposes (Sec. 52). Deduction by middleman.

Although a middleman's right to deduction in respect of rates is, in the majority of cases, taken away, he has a right conferred upon him in the case of any holding which is not agricultural land, where the rent he receives is permanently reduced to have the rent which he pays also reduced "by a sum bearing such proportion to the amount of the reduction as the rent he pays bears to the rent he receives," except where, under the terms of his contract, he is not entitled to make any deduction from his rent in respect of rates (L. G. Act, 1898, Sec. 54, Sub-sec. 4). How affected by Local Government Act, 1898.

And the Local Government Act, 1900, now provides that this sub-section shall apply also where a deduction is made from rent payable to him under sub-section 11 of the same section, i.e., in respect of an existing tenancy in an urban district for lives or a term of not less than five years unexpired on the 1st April, 1899 (63 & 64 Vic., c. 63, s. 3 (2)). But see, now, also, Local Gov. Act, 1901 (1 Ed. VII., c. 23). Local Government Act, 1900

Prior to the passing of the Local Government Act, 1898, a tenant was not prohibited from covenanting with his landlord not to deduct the landlord's proportion of the poor rate (12 & 13 Vic., c. 104, s. 12). As poor rate is not, however, a charge upon the land, but a charge upon the occupier in respect of the land (*Lally v. Concannon*, 3 I. C. L. R. 557; 6 Ir. Jur. O. S. 26), it was held that a covenant to pay rent "over and above all taxes, charges and impositions whatsoever," did not debar a tenant from making a deduction in respect of his poor rate, as it only extended to taxes charged upon the lands (*Palmer v. Power*, 4 I. C. L. R. 191; 6 Ir. Jur. O. S. 237). A local improvement rate levied under the Towns Improvements Clauses Act, 1847, was held also to come within the same principle, not being a charge upon the land, but merely a personal liability arising by reason of occupation: *Gloster v. Murphy* [1894], 2 I. R. 49, Q. B. D. Covenant not to make deduction.

On the other hand it was held by DOWSE, B., that "all rates and taxes" mean all taxes charged upon the lands, or payable by the tenant in respect of his occupation of the lands, so that when a tenant agreed to take a house at the yearly rent of £90, "including all rates and taxes," he was entitled to deduct the whole of the poor rates paid by him: *Barcroft v. Welland*, 12 L. R. Ir. 35.

- Sect. 42.** Grand Jury cess, however, was different from poor rate, having been always considered a charge upon the land. When a lessee of an agricultural holding, therefore, covenanted to pay rent "over and above all taxes" it was held that he was not entitled to deduct half the Grand Jury cess under L. & T. Act, 1870, Sec. 65: *Cooper's Est.*, 30 I. L. T. R. 89, *Fitz. Irish Land Reg.* 82, C. A.; *Bradford's Est.*, 31 L. R. Ir. 364, over-ruling *Bradford v. Reid*, 12 I. L. T. R. 139.
- Grand Jury Cess.**
- Exemptions** The Crown is not liable to poor rates. And a tenant under the Crown cannot deduct one-half of the poundage rate paid by him in respect of the premises. This exemption extends to premises vested in trustees for the Crown even after the public purpose to which they had been applied has ceased: *Hartington v. Bowerman*, I. R. 2 C. L. 683.
- Obligation of tenant to recoup landlords** Premises used exclusively for charitable purposes are exempt from rating for poor rates, subject to the proviso that one-half of the rent received by the owner from such hereditaments is to be included in the rating: (17 & 18 Vic., c. 8, s. 2; 15 & 16 Vic., c. 63, s. 12). The tenants in such cases may, however, be bound under the terms of their leases to recoup the lessors the rates so paid by them under the terms of their leases; as, for instance, where they covenant to pay "all existing and future taxes, &c., payable in respect of the premises." *Greene v. Thornton*, 16 L. R. Ir. 381; or where they covenant to pay rent "clear above all taxes:" *Morrogh v. Hall*, 32 L. R. Ir. 216.
- Where a tenant covenanted to pay all "taxes, rates, duties, assessments, and impositions" it was held that the obligation to lay a new drain imposed upon the landlord under a local Public Health Act was a "duty" imposed in respect of the premises; and that the tenant was liable to pay to the landlord the amount expended in complying with a notice of the sanitary authority: *Brett v. Rogers* [1897], 1 Q. B. 525. The judgment of Bruce, J., in that case contains an elaborate review of the authorities upon the question.
- Untenanted houses.** The owner of untenanted houses is not liable to poor rates as a person in actual occupation thereof: *Guardians of North Dublin Union v. Scott*, 1 I. C. L. R. 76; 2 Ir. Jur. O. S. 246; *Guardians of Limerick v. White*, 2 I. C. L. R. 630, 25 & 26 Vic., c. 83, s. 12. But if the house is filled with the owner's furniture, and is open to inspection by anyone wishing to rent same as a furnished house, the owner is liable to be rated though he does not live in it: *Staunton v. Powell*, I. R. 1 C. L. 182. The Court is, however, not bound to hold, as a matter of law, that a disused mill is in the use and occupation of an owner so as to render him liable to poor rate, merely because machinery is stored in it, even though there is a caretaker in charge of the premises: *Guardians of Middleton Union v. McDonnell* [1896], 2 I. R. 228.
- Untenanted lands.** Land, in an owner's hands, which he desires to let to a tenant, but does not succeed in letting, is not similarly exempt, and the owner is liable to be rated as the occupier thereof. *Guardians of Callan Union v. Armstrong*, 16 L. R. Ir. 33. But he is not liable for the portion of the rate assessed upon the buildings on the land: *Guardians of New Ross v. Byrne*, 30 L. R. Ir. 160. Such land was also liable to county cess. *Huntington's Estate*, 21 L. R. I. 443.
- Where one rate has been struck in respect of land and buildings, forming together one tenement, the land being the principal element and the buildings merely accessory, if the premises are untenanted, the owner is liable to pay the whole rate: *Guardians of Croom Union v. Trench*, 27 I. L. T. R. 28.
- Income tax.** Income tax is assessed on both the ownership and occupation of land. The owner's tax is assessed under Schedule A, either on the landlord or immediate lessor, or, with the sanction of the Commissioners of Inland Revenue, upon the persons rated for the premises under the Poor Law Acts (16 & 17 Vic., c. 34, s. 13) If the tenant

is required to pay income tax under Schedule A., he is entitled to deduct the whole poundage in respect of every pound of rent which he pays to his landlord, limited to the total amount of duty paid (16 & 17 Vic., c. 34, ss. 35, 40), and any agreement by a tenant to forego his right of deduction for income tax is absolutely void: 5 & 6 Vic., c. 35, s. 103.

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The duties under Schedule B are assessed on the occupier, and he has no right of deduction in respect of them: (16 & 17 Vic., c. 34, s. 13).

Prior to the passing of the L. G. Act, 1898, a tenant, not precluded by contract, was entitled to deduct from his rent, in the same manner as poor rate, one-half of the special sanitary rates assessed in rural districts under the Public Health (Ireland) Act, 1874 (37 & 38 Vic., c. 93), and a reservation of rent in a lease over and above all taxes, &c., charged or imposed on the demised premises, it was held, did not preclude him from making the deduction: *Malton v. West*, I. R. 11 C. L. 525, 12 I. L. T. R. 6. This right is still preserved to the occupier of any holding under a tenancy existing on April 1st, 1899, until the tenancy is determined or a new statutory term in the tenancy begins (L. G. Act, 1898, sec. 54, sub-sec. 9).

Sanitary rate.

As to the liability of a lessee to pay the public and domestic water rate in the City of Dublin assessed under 24 & 25 Vic., c. 72 (loc. and pers.), and how far the terms of his lease may exempt him therefrom, see *Bourne v. Longfield*, 8 Ir. Jur. N. S. 270, and *Scovell v. Gardiner*, 8 Ir. Jur. N. S. 361.

A tenant is not generally liable to pay tithe rent-charge: but if he has a perpetual estate or interest in the lands—as if he holds under fee-farm grant, or lease for lives renewable for ever, or if he holds under a lease made before 30th October, 1838, for a term of years of which 100 were unexpired at that date—he is liable to tithe rent-charge, and has no right to deduct any portion of same from his rent. See 1 & 2 Vic., c. 109, ss. 7 & 8, and *Irish Land Commission v. Holmes*, 32 I. L. T. R. 85.

Tithe rent-charge.

If a landlord allows a tenant to make a deduction from his rent in respect of any tax where he is not bound to do so, with knowledge of all the circumstances, he cannot afterwards recover the amount from the tenant: *O'Loughlen v. O'Callaghan*, I. R. 8 C. L. 116. And conversely, a tenant who voluntarily pays full rent, without claiming allowances to which he is entitled, cannot afterwards deduct their amount the payments of rent were made on an open account. *Stott v. Walsh*, 27 I. L. T. R. 70. The payments of rent were made on an open account. *Stott v. Walsh*, 21 I. L. T. R. 70.

Mistakes in deduction of rates.

(d) A tenant from year to year of a house, under a *parol demise*, is not bound to repair. He is only bound to keep the house wind and water tight: *Auworth v. Johnson*, 5 C. & P. 239. If, however, he holds under a written agreement, such agreement is a "lease" within the meaning of this Act (*Jago v. Harrington*, 10 L. R. I. 335), and a covenant to repair is consequently implied by this section.

Yearly tenants' liability as to repairs.

The tenant's obligation under a covenant to repair is to put and keep the premises in such repair as, having regard to their age, character, and locality, would make them fit for the occupation of a tenant of the class who would be likely to take them: *Proudfoot v. Hart*, 25 Q. B. D. 42. A covenant to repair does not, however, impose an obligation to rebuild, if the premises at the date of the lease were in such a state that they could not have been repaired without being rebuilt. *Chaloner v. Broughton*, 11 Ir. Jur. N. S. 8. Nor does it bind a tenant to make good defects caused by the natural operation of time and the elements upon a building the original construction of which was faulty: *Lister v. Lane* [1893], 2 Q. B. 212. But the keeping of premises in bad repair cannot be justified by the fact that they happened to be in that state when the tenant took them: *Payne v. Haine*, 16 M. & W. 541. A tenant who covenants to keep premises in repair is bound to do so, as long as the subject-matter exists, even though originally it was of no

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value: *Meath v. Cuthbert*, I. R. 10 C. L. 395. But where by common consent of both parties that subject-matter ceases to exist, as, e.g., by a house being taken down, the covenant thereupon ceases to operate, on the ground that it is impossible to perform it, and the landlord cannot take advantage of it to enforce a forfeiture. *Foot v. Benn*, 18 I. L. T. R. 90.

It is no breach of a covenant to repair to make alterations in premises by removing portions of buildings, when these alterations are necessary for the purpose for which the premises are taken: *Powis v. Poor Law Commissioners*, 4 I. C. L. R. 273 7 Ir. Jur. O. S. 106. But if a covenant to keep in repair be once broken by pulling down houses, the breach is a continuing breach so long as they are not rebuilt, and the Statute of Limitations is no defence to an action upon the covenant during the continuance of the term. *Maddock v. Mallet*, 12 I. C. L. R. 173, 5 Ir. Jur. N. S. 189.

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A covenant to repair cannot be specifically enforced by a Court of Equity. (*per* CHATTERTON, V.C., *Dunn v. Bryan*, I. R. 7 Eq. at p. 156). The proper remedy of the landlord is by a common law action for damages for the breach. In such an action the proper measure of damages is the extent to which the actual present value of the reversion is injured (*per* CHATTERTON, V.C., *Lombard v. Kennedy*, 23 L. R. I. at p. 4). The damages may, but need not necessarily, be a sum equal to the cost of repair. *Mcyle v. Kavanagh*, I. R. 11 C. L. 431. In the case of a fee-farm grant, where there is no reversion, and the only right the grantor has is to preserve the security for his fee-farm rent the measure of damages is the amount by which the interest of the grantor in the premises has been depreciated, regard being had to any diminution in the security of the fee-farm rent, or in the selling value of the grantor's interest: *Lombard v. Kennedy*, 23 L. R. Ir. 1.

If an action be brought upon a covenant to repair, and the evidence is that the premises were out of repair when the action was commenced, but were subsequently put into repair, the lessor is entitled to nominal damages. *Moroney v. Ferguson*, I. R. 8 C. L. 551.

Measure of damages.

(c) The general rule with regard to the measure of damages in an action for breach of a covenant by a lessee to deliver up the demised premises in repair is that such damages are the cost of putting the premises into the state of repair required by the covenant. Such measure of damages is not affected by the fact that, by reason of the terms of a lease granted by the lessor to another lessee from the expiration of the defendant's term, the lessor is at the time of action brought no worse off than he would have been if the defendant's covenant had been performed. *Joynce v. Weeks* [1891] 2 Q. B. 31.

Forfeiture

If a lease contains a forfeiture clause for breach of covenant to repair, the lessor may bring an ejectment for the forfeiture, even though he has given notice to the lessee to repair in accordance with the covenants in the lease. *Fer v. Perkins*, L. R. 2 Ex. 92.

Sec. 14 of the Conveyancing Act, 1881, now provides that a forfeiture is not to be enforced for certain breaches of covenant, including a covenant to repair, until the lessor serves a notice upon the lessee, specifying the breach complained of, and requiring the lessee to remedy same, and the Court is empowered by the same section to grant relief against the forfeiture. This notice must specify in detail the breaches complained of. It is not sufficient that it should be in general terms. *Fletcher v. Nokes* [1897], I. Ch. 271. It may be served upon an assignee, or any person whom the landlord is entitled to treat as such. *Foot v. Benn*, 18 I. L. T. R. 90. But, the provisions of the section enabling the Court to grant relief to lessees against forfeiture for breach of covenant, do not enable an under-lessee of a part of the demised premises to obtain relief for breach of a covenant to repair contained

in the head lease *Burt v. Gray* [1891], 2 Q. B. 98. See also Conveyancing Act, 1892, Sec. 5, and *Mercers Co. v. McKefrey*, 30 I. L. T. R. 41. Sects. 42-43.

(f) The covenant to deliver up possession on the determination of the lease cannot be enforced in cases coming within Sec. 21 of the Land Act, 1881. Independently of that section, it appears that such a covenant is implied in every letting. It has been held in England that where a tenant under a parol letting, without any stipulation as to giving up possession, has under-let the premises, and the under-tenant, at the determination of the tenancy, holds over, against the will of the tenant, the landlord can recover from the tenant, as damages, the value of the premises for the time he is kept out of possession, and the costs of ejecting the under-tenant *Henderson v. Squire*, L. R. 4 Q. B. 170. See further on this point, notes to Sec. 77, *post*. Covenant to deliver up possession.

In addition to the covenants implied by this section, there is also, it would appear, an implied covenant in a letting of an agricultural holding to preserve the premises as such during the demise *Brooke v. Mernagh*, 23 L. R. I. 86, *Brooke v. Kavanagh*, *ibid.*, 97; *Steele v. Tiernan*, *ibid.*, 583.

As to the obligation of covenants against carrying on particular trades, see *Maunsell v. Hort*, I. R. 11 Eq. 478, 1 L. R. Ir. 88, *Doyle v. Hort*, 4 L. R. I. 455, 469; *O'Farrell v. Stephenson*, 4 L. R. I. 151, 715, 13 I. L. T. R. 161. and *Pembroke v. Warren* [1896], 1 I. R. 76, 104, 142. Restrictive covenants.

The right of a person to enforce a restrictive covenant by injunction cannot be defeated by mere change in the character of the neighbourhood *Craig v. Greer* [1899], 1 I. R. 258. But it may be lost by acquiescence in the proceedings of the defendant *Sayers v. Collyer*, 28 Ch. Div. 103.

As to whether a covenant is joint only, or joint and several, see *Tyndall v. White*, 13 App. Cas. 263, 20 L. R. I. 517, 18 L. R. I. 263, 22 I. L. T. R. 37.

(g) As to the right of surrender in case of the accidental destruction of the demised premises, see Sec. 40, *ante*, p. 73.

43. Where any lease made after the commencement of this Act (a) shall contain or imply any condition, covenant, or agreement to be observed or performed on the part of the tenant, no act hereafter done or suffered by the landlord shall be deemed to be a dispensation with such condition, covenant, or agreement, or a waiver (b) of the benefit of the same in respect of any breach thereof, unless such dispensation or waiver shall be signified by the landlord or his authorised agent in writing under his hand. Waiver and dispensation of covenants.

In *Foot v. Bunn*, 18 I. L. T. R. p. 91, PALLIS, C.B., expressed an opinion that this section merely applies to a general waiver of a covenant, and that a receipt of rent by a landlord after a breach of covenant, with knowledge of it, would still waive all rights of the landlord arising from that particular breach, although it would not amount to a general dispensation of the covenant.

(a) The section only applies to leases made after 1st January, 1861. Leases made before that date are still governed by the old law (*Clifford v. Reilly*, I. R. 4 C. L. 218), except as regards covenants against sub-letting, which are dealt with by Secs. 18 & 22, *ante*. The latter sections apply to leases whenever made.

(b) Under the rule in *Dunpor's Case*, 1 Sm. L. C., the acceptance of rent for a period subsequent to a breach of covenant, with knowledge of the breach, operated as a total waiver of the covenant, both as regards past and future breaches. It

Sects. 43-44. was provided, however, by 23 & 24 Vic., c. 38, s. 6, that no waiver of a particular breach of covenant for the future should operate as a general waiver of the benefit of the covenant, unless an intention to that effect should appear; so that, although the acceptance of rent for a period subsequent to a breach of covenant, with knowledge of the breach, may still operate as a waiver of that particular breach (in the case, at all events, of leases made before 1st January, 1861), it cannot now, in any case, operate as a general release of the covenant.

In *Chifford v. Reilly*, I. R. 4 C. L. 218, it was expressly decided that a forfeiture caused by a breach of a covenant against assignment contained in a lease made prior to 1860, was waived by the landlord subsequently treating the lease as subsisting, and receiving rent under it, although the assignment itself was void under Sec. 10, *ante*. Waiver by matter *in pais* in such a case is a question of fact to be decided by a jury, under the direction of the Judge, and a Court of Law will not stay an ejectment for a forfeiture under Sec. 13 of the Land Act, 1881, to enable the question to be determined by the Land Commission upon an application to fix a fair rent. *McNeill v. Thompson*, 24 L. R. Ir. 444.

The general rule as to waiver does not apply where there is a continuing breach, as in the case of a covenant not to carry on a particular trade; there, a new breach occurs each day that the prohibited trade is carried on, and the landlord can take advantage of it at any time, notwithstanding previous acquiescence: *Maunsell v. Hort*, 1 L. R. I. 88; *Lawrie v. Lees*, 14 Ch. Div. 249, 7 App. Cas. 19. See also as to waiver generally *Tennent v. Neil*, I. R. 5 C. L. 418; *Ex parte Raymond*, I. R. 8 Eq. 231; *Bray v. Fogarty*, I. R. 4 Eq. 544; *German v. Chapman*, 7 Ch. D. 271; *Walronde v. Hawkins*, L. R. 10 C. P. 342; *Colville v. Hall*, 14 I. C. L. R. 265, 8 I. Jur. N. S. 303; and notes to *Dunpor's Case*, 1 Sm. L. C.

Surrender of portion of premises not to prejudice rights of landlord.

44. The surrender to or resumption by a landlord, or eviction of any portion of the premises demised by a lease, shall not in any manner prejudice or affect the rights of the landlord, whether by action, or entry, or ejectment, as to the residue of said premises.

This section is retrospective, inasmuch as it operates upon contracts of tenancy made prior to the passing of the Act; but it only applies to such as regards breaches committed after that time: *Mercer v. O'Reilly*, 13 I. C. L. R. 153, 7 Ir. Jur. N. S. 383. The judgment in this case was varied in the Exchequer Chamber. See note to *Irish Society v. Tyrrell*, 16 I. C. L. R., at p. 296. Under the old law it was decided that when a lessor had, with the consent of the lessee, resumed possession of a small portion of the demised premises, he could not afterwards eject premises for non-payment of rent *Delap v. Leonard*, 5 I. L. R. 287. In England, however, it has recently been decided, apart from any statutory provision, that the surrender by an assignee of portion of leasehold premises to the lessor does not debar the latter from suing the lessee upon his covenant for at least an apportioned rent for the part of the premises not surrendered: *Baynton v. Morgan*, 22 Q. B. D. 74.

Where lessee has never had possession.

This section was held to be applicable where the lessees had never got possession of certain portions of the premises proposed to be demised by the lease in an ejectment for non-payment of rent (*Irish Society v. Tyrrell*, 16 I. C. L. R. 249, 10 Ir. Jur. N. S. 367), and in an action of covenant for rent which accrued due after the passing of the Act. *Simmonds v. Farrel*, I. R. 8 C. L. 1. In the latter case, the Court, following the judgment of the Exchequer Chamber in *Mercer v. O'Reilly*, 16 I. C. L. R. 296 (note), ordered that judgment should be entered for the plaintiff

for an apportioned part of the rent reserved by the lease, according to the value of the premises in the possession of the lessee, which value, in case of dispute, was to be ascertained by a jury. See also *Persse v. Malcomson*, I. R. 5 C. L. 572, and *Grand Canal Co. v. Fitzsimons*, 1 Hud. and Brook, 449, 1 Law Rec. O. S. 181. Sects. 44-45.

In the case of eviction by title paramount the rent also may be apportioned: *Domville v. Ward*, 16 I. C. L. R. 381, 10 I. J. N. S. 367.

The surrender by a lessee of portion of demised premises under a clause in the lease, does not necessarily prevent the tenant having a fair rent fixed upon expiration of lease under the 21st section of the Land Act, 1881: *Nagle v. Galbraith*, 25 I. L. T. R. 33. See notes to that section, and to Sec. 57 of the same Act, *post*. Land Act, 1881

By Sec. 16 of the Renewable Leasehold Act (12 & 13 Vic., c. 105) it is provided that, when any fee-farm rent is charged upon any lands by any grant made under that Act, the acquisition of part of such lands by the person entitled to fee-farm rent shall operate to extinguish only a proportionate part of the rent, and that the residue of the fee-farm rent shall be recoverable in the same manner as if such acquisition had not been made. (See App., *post*.)

As to the exercise by a landlord of a right to resume possession of portion of demised premises under a clause in a lease, see *Liddy v. Kennedy*, L. R. 5 H. L. 134; *Coyne v. Coyne*, I. R. 10 Eq. 496.

As to the right of resumption of a landlord under the Land Act, 1881, see Secs. 5 and 21, *post*, and Land Act, 1887, Sec. 1, *post*.

45. Every person entitled (a) to any rent (b) in arrear, whether in his own right or in right of his see, dignity, benefice, or corporation, or in right of his wife, or as executor or administrator of any party deceased, under any lease or other contract of tenancy, whether of freehold or for years or both, and whether the estate or interest in such lease or contract shall be continuing or not, shall be entitled to recover (d) such arrear from the tenant (c) of such lands at the time of the accruing of the said rent, or his executors or administrators, by an action in any of the superior courts of law at Dublin, or, where the amount shall not exceed the sum of one hundred pounds, by civil bill action (e) in the court of the chairman of the county or riding in which the lands or any part of them shall be situate. Actions for rent. —
Action for rent in arrear

It will be convenient to consider the subject of actions for rent under four headings—(1) Who may bring the action; (2) what rent can be sued for; (3) who may be sued; and (4) what defences are available.

(a) Firstly, as regards the persons who under this section may recover rent, "every person entitled" includes, of course, a minor entitled in his own right, and he can recover more than six years' arrears under a parol tenancy: *Nixon v. Darley*, I. R. 2 C. L. 467. Who may sue.

The committee of a lunatic's estate can sue in his own name and in that of the lunatic upon a lease made by the committee in the lunacy matter; but he cannot maintain an action in his own name for rent which has accrued due after the death of the lunatic, though the lunacy matter has not been dismissed out of court: *Foot v. Leslie*, 16 L. R. Ir. 411.

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A mortgagor may sue for rent in his own name, provided the mortgagee has not served notice of his intention to enter into receipt of the rents and profits: *Judicature Act, 1877, s. 28 (5)*.

A mortgagee is also entitled to sue, as assignee of the reversion, for rent due under a letting made by the mortgagor before the mortgage, without serving the tenant with any notice, the bringing of the action being sufficient notice as regards rent not previously paid to the mortgagee *Laffan v. Maguire, 4 L. R. I., at p. 416*. And his personal representative can also sue, if the landlord's interest in the lands is a term of years: *Laffan v. Maguire, 4 L. R. I. 412*.

Where a lease is made by a land judge, pending the matter, reserving rent to the lessor or his successors in office and to the receiver for the time being appointed, a successor of the land judge may maintain an action for rent under the lease (*Monroe and Darley v. Plunkett, 23 I. L. T. R. 76*), or a receiver subsequently appointed, who was not a party to the deed (*Lloyd v. Byrne, 22 L. R. I. 269*); as 8 & 9 Vic., c. 106, s. 5, enables a person who takes a benefit under a deed to sue in covenant for the rent, although he is not named as a party (*per FITZGIBBON, L.J., 22 L. R. I., at p. 276*).

Where a receiver under the Court sues in the name of the owner he need not produce, at the trial, the ruling of the Land Judge authorising him to do so: *Lyons-Montgomery v. Dolan, 33 I. L. T. R. 144*. Moreover, as the action though nominally in the name of the owner, is really brought on behalf of the incumbrancers, a tenant cannot set up as a defence a set-off against the owner personally, if he was aware of the appointment of the receiver prior to the accrual of the rent, even though formal notice of the appointment of the receiver and the usual order to pay rent to him had not been served *Mullarkey v. Donohoe, 16 L. R. Ir. 365*. But the appointment by the Court of a receiver over a landlord's estate does not change the correlative rights of landlord and tenant previously subsisting, though the Court thereby acquires additional powers of enforcing the landlord's rights: *Commissioners of Church Temporalities v. Harrington, 11 L. R. I. 127* (affirmed on appeal, but unreported. See Murray and Dixon's Digest col. 1371).

A receiver appointed not by the Court but by a mortgagee under the Conveyancing Act is entitled to sue in the name of the mortgagor (Conveyancing Act, 1881, Sec. 24, Sub-sec. 3), or in that of his heir-at-law after his death: *Fairholme and Palliser v. Kennedy, 24 L. R. Ir. 498*.

Where two parties claiming adversely under a settlement which contained a power of leasing, brought actions at law against a tenant for rent reserved by a lease made under the power, it was held that it was a proper case for interpleader by the tenant *Birmingham v. Tute, I. R. 7 Eq. 221*.

What rent can be sued for

(b) Secondly, as to the rent which may be sued for, although special forms of pleading are now abolished, it is still sometimes of consequence whether a plaintiff sues for rent under this section or for use and occupation under Sec. 46. Thus, where a writ was specially endorsed for rent under a lease, and the defendant denied that he held under the lease, the Exchequer Division refused to allow the plaintiff upon a motion for final judgment to amend the writ by inserting in lieu of the claim for rent, a claim for use and occupation of the lands in order to obtain judgment for the amount sued for *Cuthbert v. Haynes, 18 L. R. Ir. 473*.

Rent payable in advance.

If rent is made payable in advance by a lease, judgment may be obtained for it, and a proviso for re-entry upon non-payment enforced, before the period for which it is due has elapsed *Malone v. Manton, 13 I. L. T. R. 144*. But payment of rent in advance to a mortgagor when it is not so reserved in a lease is not a good payment as against a mortgagee who subsequently gives notice to the tenant to pay

rent to him: *De Nicholls v. Saunders*, L. R. 5 C. P. 589. See also as to when rent is payable in advance *National Telephone Co. v. Clotworthy*, 35 I. L. T. R. 240.

A demise at an acreable rent of lands "subject to survey" means, according to legal construction, that the parties intend that the acreage shall be ascertained by actual measurement for the purpose of fixing the rent *Persse v. Malcomson*, I. R. 5 C. L. 572. And an order may be made by the Court giving liberty to the landlord to enter for the purpose of surveying the farm in such a case: *Conyers v. Dorgan*, 15 I. L. T. R. 121.

Where a lease contained a proviso that if the lessee should perform the covenants, &c., contained therein, the lessor would accept a reduced rent in full satisfaction of the rent reserved, it was held by the Court of Appeal that it was not necessary that the lessee should tender the rent *ad diem*, in order to entitle himself to the benefit of the proviso for the acceptance of the reduced rent: *M'Kay v. M'Nally*, 4 L. R. Ir. 438; 13 I. L. T. R. 130.

Payment of an abated rent for a very long period by a tenant holding under a lease is, if unexplained, evidence to go to a jury of the surrender of the lease, and the creation of a new tenancy at the abated rent *Lefroy v. Walsh*, 1 I. C. L. R. 311. Even if a surrender and the creation of a new tenancy is not presumed, a landlord who for a number of years has accepted an abated rent under a lease cannot exact the full rent reserved without first giving notice to the lessee of his intention to do so *Fitzgerald v. Lord Portarlinton*, 1 Jones, 431; *Ambrose v. Keohan*, 17 I. L. T. R. 7. See, however, *Booth v. Daly*, 6 I. C. L. R. 460; 1 Ir. Jur. N. S. 288, where payment of an abated rent for 18 years was held no answer to an action for the full amount by the purchaser under an Incumbered Estates Court Conveyance, even though the schedule to the conveyance stated the rent as having been abated.

The Renewable Leasehold Conversion Act (12 & 13 Vic., c. 10b) gives to the assignee of a fee-farm rent, as against the grantee of the lands, the same remedies for the recovery of the fee-farm rent as the assignee of a reversion has for the recovery of rent reserved on a lease, in the case of fee-farm grants made in pursuance of that Act (Sec. 20). And by 14 & 15 Vic., c. 20, s. 1, this right is extended to all fee-farm rents. See those sections, *App. post*, and *Butler v. Archer*, 12 I. C. L. R. 104; 5 Ir. Jur. N. S. 276. As to the right to bring an ejectment for non-payment of rent in such cases, see notes to Sec. 52, *post*.

A penal rent made payable upon breach of certain covenants in a lease has been held not to be "rent" within the meaning of the Land Act, 1881, so as to prevent a landlord from suing for it, in addition to the fair rent fixed by the Land Commission: *O'Connor v. Smith*, 20 L. R. Ir. 393. As to whether a penal rent reserved in a lease is a penalty, or is recoverable as liquidated damages, see *Dickson v. Lough*, 18 L. R. Ir. 518. Affirmed on appeal, but unreported (Murray and Dixon's Digest, col. 899). The general rule appears to be that where a contract contains a variety of stipulations, and one large sum is stated at the end to be payable on breach of any of them, it is to be considered as a penalty, but if a different sum is provided on breach of each covenant, it must be looked upon in each case as liquidated damages. See judgment of O'BRIEN, J., *Dickson v. Lough*, 18 L. R. Ir. at p. 531. See, however, *Wright v. Tracey* (I. R. 7 C. L. 134), where in an agreement it was provided that a specified sum as "additional or penal rent" was to be paid in the event of the breach of any one of several stipulations of different kinds and different degrees of importance, and yet it was held that the additional rent was not a penalty. This decision was, however, disapproved of by LORD ESHER, M.R., in *Wilson v. Love* [1896], 1 Q. B. 626, where the whole subject is discussed. See also *Law v. Local Board of Ridditch* [1892], 1 Q. B. 127.

Sect. 45 The release of a covenant to pay a penal rent may be presumed from non-payment thereof for a number of years after breach of the covenant upon which it is made payable: *Tennent v. Neil*, I. R. 5 C. L. 418; *Ex parte Raymond*, I. R. 8 Eq. 231.

Where an increased rent is payable for breaking up more than a certain quantity of land, it ceases to accrue from the time that the ploughed land in excess of the quantity allowed is restored to pasture *Domville v. Forde*, I. R. 7 C. L. 534.

Who is liable for rent. (c) Thirdly, as to the persons who are liable to pay rent. If the tenancy is under lease, and the lease contains a covenant to pay the rent, the lessee remains liable during the whole term, even though he is not in possession (*Baynton v. Morgan*, 22 Q. B. D. 74), unless the lease contains a clause against assignment without the landlord's consent, and the landlord has signified his consent to the assignment in the manner prescribed by Sec. 10, *ante*, in which case the lessee is discharged from liability by Sec. 16, *ante*. If, however, an assignee in possession surrenders the lease to the lessor, the lessee cannot be sued for subsequent rent, even though the surrender purports to be made without prejudice to the rights of the landlord against the lessee: *Clements v. Richardson*, 22 L. R. Ir. 535. Similarly, if an assignee in possession gets a fair rent fixed under Sec. 1 of the Land Act, 1887, the lessee is thereby discharged from liability on his covenant thenceforward: *Sturges v. Ryan*, 24 L. R. Ir. 305.

A landlord is entitled to treat a person in possession under a lease as assignee of the lease until the contrary is proved. *Williams v. Heales*, L. R. 9 C. P. 177. Thus, an executor in possession under a lease is personally liable for the rent, and an executor *de son tort* is also similarly liable. *Fielding v. Cronin*, 16 L. R. Ir. 379. See, however, *Tichborne v. Weir*, 67 L. T. 735; 8 *Times* L. R. 713, and note (a) to Sec. 14, *ante*, p. 40.

An infant is liable to an action for rent reserved on a lease made to him for the period during which he occupies and uses the land, even though on attaining his majority he repudiates the contract of tenancy: *Blake v. Concannon*, I. R. 4 C. L. 323.

Defences. (d) Fourthly, as to what will amount to a good defence in an action for rent. A tenant is estopped from disputing his landlord's title, so that he cannot show that his landlord had no estate or interest at the time of making the lease: *Doc v. Smythe*, 4 M. & S. 497. But he may prove that his landlord's estate has expired or that he has conveyed the reversion to a third party: *Rawson v. Grogan*, I. R. 3 C. L. 631. See also notes to *Duchess of Kingston's Case*, 2 Sm. L. C.

It is no defence to an action for rent of a house, that the tenant was unable to occupy it, owing to its being unfit for habitation (*Hart v. Windsor*, 12 M. & W. 68; *Murray v. Mace*, I. R. 8 C. L. 396), unless the house was let as a furnished house, when there is an implied condition that it is fit for occupation. *Wilson v. Finch Hatton*, 2 Exch. Div. 336.

Previous payment by a third party is a good defence to an action for rent: *Purecell v. Henderson*, 16 L. R. I. 213, 466. In that case it was held that an evicted tenant might take advantage of the payment by a new tenant upon going into possession, of the arrears which had accrued due during the occupation of the former, even though there was no privity between them. But the fact that the landlord has obtained a judgment for possession in an ejection for non-payment of rent is no defence to an action for rent, as the remedies of the landlord by personal action for rent and by ejection are distinct, and not co-extensive. *Wakefield v. Smythe*, 16 I. C. L. R. 173; 9 Ir. Jur. N. S. 391.

Bill or note given for rent. A promissory note or bill given and accepted for rent does not extinguish the claim for rent until it is paid. *Davis v. Gyde*, 2 Ad. & El. 623. And where during

the currency of a bill for rent, the sheriff seized under a *f. fa.*, it was held that the landlord's claim under 9 Anne, c. 8, s. 1 (Ir.) for a year's rent out of the proceeds of the execution, was valid, even though the bill was given for that rent: *Davidson v. Allen*, 20 L. R. I. 16. Sects 45-46

Rent reserved by an indenture of demise is recoverable by action within twenty years, the period of limitation fixed in that respect by the Common Law Procedure Act, 1853, s. 20, being unaffected by 37 & 38 Vic., c. 57. The "rent" which by the Act of 1874 can only be recovered within 12 years means a rent-charge or rent of inheritance, not a rent reserved in a lease: *Donegan v. Neill*, 16 L. R. Ir. 309; *Grant v. Ellis*, 9 M. & W. 113. The accruing gales of rent under a lease by deed are recoverable, even though more than 20 years have elapsed since the last payment: *In re Turner's Est.*, 11 Ir. Ch. R. 304. It would appear also that twenty years' arrears of rent reserved by an indenture of demise may be recovered in an action: *Percival v. Dunne*, 9 I. C. L. R. 422. Statute of Limitations

If a tenant has got possession of portion only of demised premises, the landlord retaining the residue, the landlord can only recover an abated rent proportionable to the premises enjoyed by the tenant: *Grand Canal Company v. Fitzsimons*, 1 Hud. & Br. 449; I. L. Rec. O. S. 8, 181; *Mercer v. O'Reilly*, 13 I. C. L. R. 153; 16 I. C. L. R. 296 (note); *Simmonds v. Farrell*, I. R. 8 C. L. 1.

Where a portion of lands held under a lease is taken by a Railway Company under compulsory powers, and the rent is apportioned by the arbitrator, the apportioned rent only is payable to the landlord from the date of the final award, even though no conveyance is executed to the company, and possession is not taken by them until after the accrual of subsequent gales of rent: *Ball v. Graves*, 18 L. R. I. 224. But if the whole of the land held under the lease is taken, and the rent wholly abated, the lessor is entitled to recover rent from the lessee for the period between the date of the award and the lodgment of the compensation in court: *Callow v. Flynn*, 26 L. R. I. 179.

(c) The jurisdiction of the County Court in ordinary civil bills, except for rent, or use and occupation under sec. 46, is only up to £50: 40 & 41 Vic., c. 56, s. 50. As to procedure under this section, see County Court Rules, 1890, Order VI., Rules 7, 8, and 10, *post*.

46. Every person entitled to any lands, and who shall suffer the said lands to be holden or occupied by any person under an agreement (a) not specifying or determining the amount of rent, (b) shall be entitled to recover a reasonable satisfaction for the use and occupation of the said premises holden or occupied by the said person in an action in any of the superior courts of law at Dublin; or where the amount shall not exceed the sum of one hundred pounds, by civil bill action (c) in the court of the chairman of the county in which the lands or any part of them shall be situate. Action for use and occupation.

"A contract to pay a fair compensation for use and occupation is implied by law, from the fact that lands, &c., belonging to the plaintiff have been occupied by the defendant by the plaintiff's permission; the amount of compensation in such case depends on the value of the premises and on the duration of the occupation. As soon as the occupation ceases the implied contract ceases; and as no express time

- Sect. 46** is limited for payment, the compensation accrues from day to day." Bullen and Leake Precedents in Pleading, 4th Ed., Vol. I., p. 234.
- Possession under contract for sale** The circumstances of the occupation must, however, be such that the law will imply an agreement to pay for it. Thus, if a purchaser enters into possession of lands under a contract of sale which is subsequently rescinded, he is not liable in use and occupation during the period between the entry and the rescission; but if after the rescission he remains in possession, he is liable in respect of his subsequent occupation. *Markey v. Coote*, I. R. 10 C. L. 149; *Howard v. Shar*, 8 M. & W. 118. And even where a purchaser under an invalid contract of sale remained in possession for several years without paying any rent, it was held that the owner could not maintain an action of use and occupation against him, as the facts of the case rebutted the implied contract to pay rent for the land: *Corrigan v. Woods*, I. R. 1 C. L. 73. See also *Denniston v. Digan*, 10 I. C. L. R. App. vii.
- (a) It is a question for the jury in every case whether there is an implied agreement that a person occupying the lands should pay what they are reasonably worth. Thus, where a tenant agreed to take possession at a certain rent, which was to commence when certain repairs were done, and the tenant entered before the repairs were made, the judge told the jury that the agreement did not prevent the tenant being liable for the use and occupation for the period he was in possession before the repairs were done. *Smith v. Eldridge*, 15 C. B. 237.
- Occupation through mistake** Where a lease for lives expired, and the tenant continued in occupation afterwards, paying rent as if under the lease, both he and the landlord being ignorant of the death of the last life, it was held that the tenant was liable in use and occupation for the period subsequent to the death, and that the landlord was not bound by the acceptance of payments at the rate specified in the lease for the subsequent period, but that he might recover a higher sum if the premises were really worth more. *Hurley v. Hanrahan*, I. R. 1 C. L. 700.
- Sub-letting void under Land Act, 1881.** An action for use and occupation does not lie by a tenant against a sub-tenant, where the sub-letting is void as being in violation of the statutory condition in Sec 5 of the Land Act, 1881. *O'Kane v. Burns* [1897], 2 I. R. 591; 30 I. L. T. R. 102. 1 FRTZIBBOS, Irish Land Repts 213.
- Parol demise.** (b) An action for use and occupation lies upon a parol demise at a specified rent, though this section deals only with cases where the amount of rent is not determined. In such a case the landlord can sue either for rent or use and occupation. *Gibson v. Ark*, 1 Q. B. 850. Where a tenant from year to year assigned his interest to another whom the landlord refused to accept as tenant, it was held that the former tenant remained liable for use and occupation, notwithstanding that the purchaser was in possession. *Shine v. Dillon*, Ir. R. 1 C. L. 277. But where an action was brought for use and occupation, and upon a motion for final judgment, it appeared from the plaintiff's affidavit that the defendant held under a lease, the Court refused the motion. *Hartford v. Maher*, 16 I. L. T. R. 53. And in another case, where a landlord sued for rent due under a lease, and the tenant, upon a motion for final judgment, denied that he held under a lease, the Court refused to allow the plaintiff to amend the writ by inserting a claim for use and occupation and at the same time to mark final judgment. *Cuthbert v. Haynes*, 18 L. R. I 473. In England it has recently been decided that a claim for use and occupation is not a liquidated demand for which a writ can be specially endorsed under Order III., rule 6, *Gurney v. Small* (1891), 2 Q. B. 584. See, however, *Hartford v. Maher*, 16 I. L. T. R. 53, where the contrary appears to have been assumed by the Common Pleas Division in Ireland. An executor who remains in

occupation of premises formerly held by his testator is personally liable in use and occupation to the landlord. *Nixon v. Quinn*, I. R. 2 C. L. 248. **Sect. 46-48.**

Use and occupation lies in respect of incorporeal hereditaments where there has been an actual enjoyment of same: *Bird v. Higginson*, 6 A. & E. 824, 4 N. & M. 505. As, for instance, in the case of a several fishery, or a right of shooting per CHATTERTON, V.C., *Downing v. Low*, 13 L. R. Ir., at p. 556.

(c) The jurisdiction of the County Court in ordinary cases of debt is only up to £50; but a sum not exceeding £100 for rent (Sec. 45), or for use and occupation under this section, can be recovered, notwithstanding 40 & 41 Vic., c. 56, s. 50. As to procedure under this section, see County Court Rules, 1890, Order VI., rules 7, 8, and 10, *post*.

47. Every receipt or acknowledgment for rent or for money paid on account thereof, and given on or after the first day of January, one thousand eight hundred and sixty-one, shall specify the gale for or on account of which the same was accepted and paid, and in default thereof such money shall, in any action, suit, or proceeding whatsoever, be deemed to have been paid and accepted for and on account of the gale of rent which became due upon the gale day immediately preceding the date of such payment, and shall be *prima facie* evidence that all previously accrued gales have been satisfied. Receipts to apply to last gale.

48. All claims and demands by any landlord against his tenant in respect of rent shall be subject to deduction or set-off in respect of all just debts due by the landlord to the tenant. Set off against rent.

This section is now of comparatively little importance owing to the extended rights of set-off and counter-claim which every defendant enjoys under the Judicature Act. See Sec. 27, Sub-sec. 7; Schedule Rule 22; and Rules Supreme Court, 1891, Order XIX., rule 3.

As to the right of a sub-tenant to set off head rent paid to the superior landlord as against the claims of his immediate landlord, see Sec. 21 and notes thereto, *ante*, p. 51.

Expenditure by a tenant in abating a structural nuisance, pursuant to a magistrate's order, after notice under the Public Health Act, 1878, served on the tenant only, cannot be set off by him against rent due to his landlord. *Butcher v. Ruth*, 22 L. R. Ir. 380.

If a receiver has been appointed by the Court over lands, and the tenants are aware of the appointment, although they have not been served with the usual notice and order requiring them to pay their rents to the receiver, they cannot set off claims against their landlord personally as against rent which subsequently accrues due, even where the action is brought in the name of the landlord, by direction of the receiver-judge: *Mullarkey v. Donohoe*, 16 L. R. Ir. 365. But it would appear that if they make payments to a head landlord to save the lands from eviction, which they are entitled to do under Sec. 21, *ante*, such payments operate as a discharge *pro tanto* of rent due, even after the appointment of a receiver over the interest of their own immediate landlord and service of the order upon them to pay rents Where receiver has been appointed.

Sect. 48-50. to him: *Commissioners of Church Temporalities v. Harrington*, 11 L. R. Ir. 127: affirmed on appeal, but unreported (Murray and Dixon's Digest, col. 1371).

In ejectment for non payment of rent. It was formerly held that a defendant in an ejectment for non-payment of rent could not rely upon a set-off, even where it exceeded the whole amount of rent due: *Cahill v. Kearney*, I. R. 2 C. L. 498. But since the Judicature Act a counter-claim for a sum exceeding the amount of rent in arrear has been allowed in an action to recover possession of lands for non-payment of rent. *Whitton v. Hanlon*, 16 L. R. Ir. 137, 19 I. L. T. R. 31, where the counter-claim was for arrears of annuity charged upon the lands and for head rent which the defendant had been compelled to pay. In many cases, however, counter-claims in ejectments for non-payment of rent have been set aside as embarrassing. This subject is fully discussed in the notes to Sec. 52, *post*.

Where a defendant intends to rely upon this section in an action in the County Court he is bound to give notice in writing of such intention, stating particulars of his deduction or set-off, to the plaintiff, two clear days before the return day. County Court Rules, 1890, Order IV., rule 2.

49. (*As to apportionment of rent. Repealed by Stat. Law Rev. Act, 1893. No. 1.*)

Providing for cases not coming within the provisions of Clause 34

50. In every case not coming within the provisions of Clause thirty-four, (a) when the tenancy determines, otherwise than by the act of the landlord, at any time before the day on which the rent would become payable, the landlord at the time of such determination (unless it is otherwise agreed) shall be entitled to a reasonable proportion of the rent according to the time that has elapsed from the commencement of the tenancy, or the last gale day, to the day of the determination of such tenancy, including such day.

Apportionment Act, 1870

Sec. 49 has been repealed as being now useless, for the Apportionment Act, 1870 (33 & 34 Vic., c. 35), now provides, more generally, that all rents and other periodical payments, whether payable under an instrument in writing or otherwise, "shall, like interest on money lent, be considered as accruing from day to day, and be apportionable in respect of time accordingly." (Sec. 2). The apportioned part of such rent or other payment is not recoverable, however, until the entire portion of which it forms part becomes due (Sec. 3), and the persons liable to pay rent, &c., are not to be resorted to for such apportioned part, but the entire continuing rent is to be recovered by the heir or other person, who would have been entitled to same, and the apportioned part is to be recoverable from him: (Sec. 4).

The Apportionment Act does not apply to sales in the Landed Estates Court, the purchaser is entitled to the rents from the gale days next prior to the date of the purchase: *Dawson's Estate*, 21 L. R. Ir. 441; *Walcott v. Condon*, 3 Ir. Ch. R. 431.

The Apportionment Act does not, as between landlord and tenant, apply to rent payable in advance: *Ellis v. Rowbotham* [1900], 1 Q. B. 740.

Money payable on foot of a conacre agreement was held not to be apportionable between the executor of a tenant for life and a remainderman under the former Apportionment Act, 4 & 5 Wm. IV., c. 22, where the whole had been received by the remainderman: *Dease v. O'Reilly*, 8 I. L. R. 52.

A devise by a tenant for life of all rents and arrears of rent due on the property has been held to include the apportioned part of the gales of rent up to the testator's death: *Sealy v. Stawell*, I. R. 2 Eq. 326. But a devise by an owner in fee of his "estate" does not, since the Apportionment Act, 1870, pass that portion of the current gale of rent which had accrued at the time of his death: *Roseingrave v. Burke*, I. R. 7 Eq. 186. Sects. 50-51

The liability of the estate of a deceased tenant for life, to pay all interest accrued due upon charges binding the inheritance up to the day of his death, is not affected by the clauses in Sec. 4 of the Apportionment Act, 1870, providing that his personal representatives shall set off a proportionate part of such charges against the apportionment payable to them in respect of the gale of rent accruing due at his death: *In re Gore, a minor*, I. R. 9 Eq. 83.

Where a landlord dies between two gale days, the rents payable on the latter are apportionable between the executor and the devisee, under his will: *Hall v. Hall*, 11 Ir. Jur. N. S. 244.

Where between two gale days a tenancy is determined by eviction by title paramount, the gale of rent accruing due is now apportionable under the Apportionment Act, 1870, and the apportioned part can be recovered by the landlord from the tenant directly: *Elridge v. Meldon*, 24 L. R. I. 91.

(a) In cases coming within Sec. 34, the entire gale of rent up to the last gale day of the current year must be recovered in the first instance by the succeeding owner, and he must then account with the former landlord or his representatives, for the broken period up to the date when the former landlord's estate determined: *Irwin v. Fraser*, 10 L. R. Ir. 273.

51. From and after the commencement of this Act, it shall not be lawful for any landlord, or any one on his behalf, to take or seize any distress for rent which became due more than one year before the making of such distress. No distress for more than one year's rent.

"The right of distress attaches to all rents reserved on lettings of corporeal hereditaments by any contract in writing, or by parol, or upon any grant of a rent, and is incident to the reversion in the lands, or, where no reversion is retained, to the estate in the rent. It may, in fact, now be broadly stated that, as the relation of landlord and tenant is founded on the contract of the parties, wherever a contract exists creating that relation the person entitled to the rent may distrain for it. This rent, however, must be a fixed one, ascertained either by express contract or by implication:" *De Moleyns' Landowners' Guide*, 6th ed. p. 118, citing 11 Anne, c. 2, s. 7; 25 Geo. II., c. 13, s. 4; 12 & 13 Vic., c. 105, s. 21; 14 & 15 Vic., c. 20, s. 1. Distress. For what rents.

The 3rd section of this Act, although it abolishes tenure and service, does not abolish rights such as distress which depends upon rent service: *Gordon v. Phelan*, 15 I. L. T. R. 70. "The intention of the Act of 1860," says FITZGERALD, B., "seems to have been to maintain the known relation of landlord and tenant with its incidents, even though there was neither tenure nor service to support it, provided there was a contract to create the relation:" 15 I. L. T. R., at p. 72. A provision in a lease that if the rent be in arrear for a space of time therein named, the landlord may enter and distrain, does not displace the landlord's Common Law right to distrain the day after the rent is due: *Gordon v. Phelan*, 15 I. L. T. R. 70. "A distress cannot be maintained for rent until the day following that upon which it accrues due. No demand is necessary except that provided by the 9 & 10 Vic.,

- Sect. 51** c. 111, s. 10 (see App., *post*), even though the lease contains a power to distrain in case the rent shall be unpaid after having been lawfully demanded." Furlong L. & T., 2nd ed., p. 752.
- Land Act, 1896, s. 16.** Where a tenant is ejected for non-payment of rent, more than two years' arrears of rent being due, and redeems by payment of two years' rent under Sec. 16 of the Land Act, 1896, the balance of the rent due before the commencement of the proceedings is not recoverable by distress (see Land Act, 1896, Sec. 16, *post*).
- Where, to be made.** The distress must, as a general rule, be made upon the demised premises, but "where several different pieces of land in different localities are demised at a single rent, the landlord may distrain on any one of these pieces of land for the entire rent" (*per* MONAHAN, C. J., *M'Leary v. Davis*, I. R. 2 C. L. 234); and where cattle or stock belonging to a tenant are feeding or depasturing upon any common appendant or appurtenant, or anyways belonging to the demised premises, they may be distrained as if they were upon the demised premises; 15 Geo. II., c. 8, s. 5, (Ir.) (See App., *post*).
- When, to be made.** The distress must be made during the continuance of the lease or contract of tenancy under which the lands are held (*Williams v. Sterin*, 9 Q. B. 14); but by 9 Anne, c. 8, s. 7 (Ir), corresponding to 8 Anne, c. 14, s. 6 (Eng.), a distress may be made within six months after the determination of the lease, provided the landlord's title continues and the tenant remains in possession. (See that section, App., *post*). In England it has been held that a landlord may distrain for rent for the period during which a tenant for an uncertain interest is allowed to continue on in possession in lieu of emblements under 14 & 15 Vic., c. 25, s. 1 (corresponding to Sec. 34, *ante*), *Haines v. Welch*, I. R. 4 C. P. 91. And it was also held in Ireland, under the repealed ejectment statutes, that after judgment in ejectment for non-payment of rent, and before eviction, the landlord might, within six months after the day of the demise in the declaration in ejectment, distrain for the rent on account of which the ejectment was brought *Dwyer v. Peacock*, 2 Fx & Sm. 34.
- Entry, how to be made.** A landlord in order to distrain may open an outer door in the ordinary way in which persons using the building are accustomed to open it, as by pulling out a movable staple (*Ryan v. Shilcock*, 7 Exch. 72, 21 L. J. (Ex.) 55), but he cannot break open the outer door (*Broun v. Glenn*, 16 Q. B. 254; 20 L. J. (Q. B.) 205); there is no illegality in his climbing over a fence and so gaining access to the house by an open door (*Long v. Clarke* [1894], 1 Q. B. 119, *Eldridge v. Stacey*, 15 C. B. N. S. 453) an entry through an open window is lawful (*Tulton v. Darke*, 5 H. & N. 647, 29 L. J. (Exch.) 271); and a window partly open may be further opened (*Crabtree v. Robinson*, 15 Q. B. D. 312), but violence must not be used, so that if a window is closed but not fastened, it cannot be opened (*Nash v. Lucas*, L. R. 2 Q. B. 590, *Hancock v. Austin*, 14 C. B. N. S. 634; 32 L. J. C. P. 252). See further as to how an entry may lawfully be made, notes to *Semayne's Case*, 1 Sm L. C., *Nixon v. Freeman*, 5 H. & N. 647, and Furlong, L. & T., 2nd ed., p. 777, *et seq.*
- What amounts to seizure.** No particular form of taking possession of the goods is necessary; nor need there be an actual seizure to create a distress. *Cramer v. Mott*, L. R. 5 Q. B. 357, *Wood v. Nunn*, 5 Bing. 10. It is enough that the landlord or his agent takes effectual means to prevent the removal of the article from the premises, on the ground of rent being in arrear; and he does this when he declares that the article shall not be removed till the rent is paid " *per* COCKBURN, C. J., *Cramer v. Mott*. L. R. 5 Q. B., at p. 359.
- Formalities under 9 & 10 Vic., cap 111** In every case the provisions of 9 & 10 Vic., c. 111, must be strictly complied with (See App., *post*) If the distress is made by any person other than the landlord himself or his known agent or receiver, the person who distrains must be appointed

by a warrant in writing or print which must bear upon it the date and place of signature, and must be signed by the landlord or his known agent or receiver. The warrant must specify the names of the tenants to be distrained and must be acted upon within twenty days of its signature: (9 & 10 Vic., c. 111, s. 10). Where a receiver appointed by deed executed by mortgagees under 23 & 24 Vic., c. 145, sec. 18, signed in his own name a warrant of distraint, it was held that a distress effected under its authority was unlawful by reason of the omission to state the name of the mortgagor in the statutory notice prescribed by 9 & 10 Vic., c. 111, sec. 10: *Croghan v. Maffett*, 26 L. R. Ir. 664.

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The person making the distress must also "at the time of making such distress," i.e., "as soon after making the distress as is practicable" (*per* MONAFAN, C.J., *M'Leary v. Davis*, I. R. 2 C. L., at p. 236), deliver to the person in possession, or, if there be no person in possession, affix on some conspicuous part of the premises a notice stating particulars as to rent, &c., as prescribed by 9 & 10 Vic., c. 111, s. 10 (see App., *post*). If this notice omits to state the name of the person to whom the rent is payable as authorizing the distress it is invalid: *Croghan v. Maffett*, 26 L. R. I. 664. The requisites of this statute must be substantially complied with, even though a literal compliance may be impossible, as in the case of the seizure of goods fraudulently removed at a considerable distance from the lands *M'Leary v. Davis*, I. R. 2 C. L. 234.

"An inventory of the goods seized, though, perhaps, not in strictness necessary, should also be given." *De Moleyns' Landowners' Guide*, 6th ed., p. 125.

A plea justifying the seizure of goods in an action of trespass upon the grounds that they were distrained for rent should aver that the requisites of 9 & 10 Vic., c. 111, were complied with: *Naghton v. Kelly*, I. R. 1 C. L. 556, *M'Leary v. Davis*, I. R. 2 C. L. 234; *Madden v. Bryan*, 1 Ir. C. L. R. 322, but see *Brennan v. Flood*, 4 I. C. L. R. 332.

Although a land agent may be liable in an action for illegal distress for the omission of his bailiffs to comply with the provisions of the Act, in a distress authorized by him, he is not liable for a collateral illegal act committed by the bailiff in the course of effecting the distress which he did not authorize: *Kinsella v. Hamilton*, 26 L. R. Ir. 671. And even as regards the distress itself an irregular act may be held to be waived by the subsequent conduct of the tenant: *Dwyer v. Pracock*, 2 Fox and Sm. 34; *Burgess v. Clowry*, Cr. and Dix. Ab. Not. Cas. 350.

As a general rule "all cattle and movable articles found upon demised premises, whether belonging to the tenant or to any other person, are liable to be distrained by the landlord for his rent" (*Furlong L. & T.*, 2nd Ed., p. 760); and the goods of a stranger may be taken even though the tenant himself has other goods upon the premises sufficient to answer the claim: *Jason v. Dixon*, 1 M. & S. 601. Thus, cattle or horses taken in upon an agistment contract may be distrained, and the owner has no remedy except against the tenant who allows them to be seized (1 Ro. Abr. 669). But cattle on their way to market which have been put to graze for the night are privileged from distress for rent due to the landlord out of the lands on which they are put: *Nugent v. Kirwan*, 1 J. & Sy. 97; 6 Law Rec. N. S. 173.

What may be seized.

A stranger, whose goods are distrained for rent due by a tenant, is not, however, like the tenant, estopped from denying the landlord's title. *Tadman v. Henman* [1893], 2 Q. B. 168.

Cattle cannot be seized off the demised premises unless the landlord or person distraining actually sees them being driven off (*Poole v. Longueville*, 2 Wms. Saund., 659, or unless they have been "fraudulently or clandestinely" removed

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(15 Geo. II., c. 8, *M'Leary v. Davis*, I. R. 2 C. L. 234), after the rent has become due (*Rand v. Vaughan*, 1 Bing. N. C. 767), or unless they belong to the tenant, and are depasturing upon a common appurtenant, or in some way belonging to the demised premises. (15 Geo. II., c. 8, s. 5, App., *post*).

Goods fraudulently removed

A landlord may distrain goods belonging to the tenant which are not upon the demised premises, if they have been fraudulently and clandestinely removed to prevent distress, provided he does so within twenty days of their removal, and provided they have not, before seizure, been sold *bona fide* and for valuable consideration to persons not privy to the fraud: 15 Geo. II., c. 8, ss. 1 and 2 (see App., *post*). It has been held under the corresponding English Act (11 Geo. II., c. 19) that the right of the landlord to follow the tenant's goods in case of fraudulent removal does not attach unless the rent has actually become due before the removal. *Watson v. Main*, 3 Esp. 15; *Rand v. Vaughan*, 1 Scott, 670. A plea justifying the seizure of goods as having been fraudulently carried off the premises to prevent distress must aver compliance with 9 & 10 Vic., c. 111 (see App., *post*); for the provisions of that statute apply to such distresses as well as to those upon the demised premises: *M'Leary v. Davis*, I. R. 2 C. L. 234.

Although a landlord can thus seize goods off the demised premises which have been fraudulently removed, he cannot restrain a tenant from selling the goods upon his farm, pending an action for rent, upon the ground that he is prevented by the state of the country from distraining. *Max v. Buckley*, 16 I. L. T. R. 1.

Distress for rent after bankruptcy

The Bankruptcy Act, 1857, Sec. 321, provides that no distress for rent made after an act of bankruptcy upon the goods of a bankrupt shall be available for more than six months' rent accrued prior to the filing of the petition, but that the landlord may prove for the residue. This privilege does not, however, protect the goods of strangers upon the bankrupt's land. *Brocklehurst v. Lowe*, 7 El. & Bl. 176; 26 L. J. Q. B. 117.

The practice in bankruptcy is to allow the landlord six months' rent in lieu of distress out of the bankrupt's estate, so long as his right to distrain remains; and this right is not lost by his taking ejectment proceedings and executing a writ of *habere*: *Re McQuillan*, 29 I. L. T. R. 4 (C. A.). MILLER, J., however, held that where a landlord had shown his intention not to distrain, but to resort to other remedies, the payment should not be made. *Re O'Toole*, 29 I. L. T. R. 6. And, now, under the Bankruptcy Rules of December 13th, 1899, BOYD, J., has laid it down, as the practice of the Court, that no payment will be made to a landlord under Sec. 321 of the Act of 1857 unless he has levied, or threatened to levy, a distress for the amount due prior to the sale of the distrainable property by the assignees: *Re Smith and Healy*, 6 I. W. L. R. 35.

The 321st section of the Bankruptcy Act, 1857, applies, however, only to rent which accrued due before the bankruptcy. The landlord may distrain for all rent which accrues after bankruptcy: *In re Allen*, 27 I. L. T. R. 104; *Briggs v. Sowry*, 8 M. & W. 729; and goods of a bankrupt in the hands of the assignees in bankruptcy on premises demised to the bankrupt may be distrained by the landlord for such rent. *In re Collins*, 21 L. R. I. 598.

Where a company is being wound up by, or under the supervision of, the Court, no distress can be levied on its estate and effects, except by leave of the Court; Comps. Act, 1862, s. 163; *In re Exhall Coal Mining Co.*, 4 D. J. & S. 377. It lies upon the landlord who applies for leave to distrain to show that there are special circumstances to justify it. *In re Lancashire Cotton Spinning Co.*, 25 Ch. Div. 656.

Certain classes of goods are specially exempt from distress—

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(1) The goods of lodgers upon the premises, provided the notice prescribed by the Goods exempt from distress. Lodgers' Goods Protection Act, 1871 (34 & 35 Vic., c. 79, App., *post*), is served, and all rent due by the lodger paid as directed by the Act. As to what constitutes a lodger within the Act, see *Phillips v. Henson*, 3 C. P. D. 28.

(2) Perishable articles, such as fruit, milk, and meat, which cannot be restored to the tenant without injury to their condition: *Morley v. Pincombe*, 2 Exch. 101, 18 L. J. (Ex.) 272. But sheaves of corn, loose straw, or hay, whether in ricks or in barn, can be taken: 7 Will. III., c. (22 Ir.).

(3) Tenant's fixtures: *Darby v. Harris*, 1 Q. B. 895.

(4) Animals *feræ naturæ*: Co. Lit. 47a. But animals or birds, tamed or confined, which yield a profit to the owner, may be taken: *Furlong, L. & T.*, 2nd ed., p. 761.

(5) Growing crops (9 & 10 Vic., c. 111, s. 11, repealing 56 Geo. III., c. 88, s. 15 (Ir.), which permitted them to be seized); but growing crops which have been seized and sold by a sheriff under a *fi. fa.* or other writ of execution may, in default of any other sufficient distress, be seized for rent which accrues due after such seizure and sale: 14 & 15 Vic., c. 25, s. 2.

(6) Chattels in course of trade or manufacture, such as wool delivered to a weaver (*Wood v. Clarke*, 1 C. & J. 484), and all goods sent to a tradesman for the purpose of being wrought upon in the way of his trade: *Brown v. Shevill*, 2 A. & E., 138. Also goods sent to a factor or auctioneer for sale: *Matthias v. Mesnard*, 2 C. & P. 353; *Williams v. Holmes*, 8 Exch. 861.

(7) Articles in actual use, such as a horse and cart which the owner is driving (*Field v. Adames*, 12 Ad. & E. 649), or a loom with which a weaver is working (*Simpson v. Hartopp*).

(8) Goods *in custodia legis*: *Wharton v. Naylor*, 12 Q. B. 673. But these do not include goods in the hands of assignees in bankruptcy, *In re Collins*, 21 L. R. Ir. 508, and the landlord may require a year's rent to be paid before they are removed. See 9 Anne, c. 8 (App., *post*).

In addition to these classes of goods, which are absolutely privileged, there are others which cannot be taken unless there are no other goods upon the premises sufficient to answer the landlord's demand. These are—

(1) Implements of trade and of husbandry not in actual use. *Nargatt v. Nias*, 1 Bl. & El. 439.

(2) Beasts of the plough, and sheep: 51 Hen. III., st. 4.

The landlord does not acquire any property in goods distrained: *Turner v. Ford*, 15 M. & W. 212. His only right is to hold them for a certain time, and then sell them if the rent is not paid. He should impound them in some convenient pound, not necessarily in the nearest to the premises, for the statutes which so required have been repealed, as regards distress for rent, by 14 & 15 Vic., c. 92, and 38 & 39 Vic., c. 66. Impounding goods seized.

The Summary Jurisdiction Act provides for the care and sustenance of cattle impounded: (14 & 15 Vic., c. 92, sec. 19). Cattle cannot be removed from the county where seized: 52 Hen. III., c. 4 (Eng.), in force in Ireland under Poyning's Act. The goods or cattle may be impounded upon the demised premises: 15 Geo. II., c. 8, s. 6 (Ir.) App., *post*.

If the goods are not redeemed within 8 days after the distress is made, they may be sold 25 Geo. II., c. 13, s. 5 (App., *post*). The sale must be by public auction, without any special conditions (*Hawkins v. Walron*, 1 C. P. D. 280), and six days' previous notice of the auction must be given by bills posted in the next market town: 25 Geo. II., c. 13, s. 5 (App., *post*). "Goods distrained ought to be sold on the fifteenth day after seizure, unless the sale be postponed or adjourned by the express

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desire of the tenant, as the distrainer is not justified without the tenant's concurrence in continuing the distress upon the demised premises after that day nor in detaining the subjects distrained in pound for a longer period:" (Furlong, *Landlord and Tenant*, 2nd ed., p. 787). Tender of the rent due and of the charges of distress, at any time before the commencement of the sale is sufficient to stay the proceedings. 9 & 10 Vic., c. 111, s. 11 (App., *post*).

Landlord's right to a year's rent in lieu of distress.

Under the provisions of 9 Anne, c. 8, s. 1, a landlord has, in lieu of distress, where any goods or chattels are seized by the sheriff under a writ of *fi. fa.* or other execution upon any lands of his tenant, a right to be paid one year's rent before such goods or chattels can be removed from the lands. (See App., *post*.)

The rent is to be paid by the execution creditor, who can require an affidavit that the amount is due (Sec. 2). If he pays, he can require the sheriff to levy for the amount so paid, in addition to the amount of the writ of execution. Sec. 1.

Although the right has been given to the landlord in lieu of distress, it has, nevertheless, been held that the statute applies where goods are seized which are not distrainable, as, for instance, growing crops. *Allen v. Lloyd*, 2 I. C. L. R. 53. It does not apply where the interest in the land itself is seized (see 2 I. C. L. R., at p. 55); but the landlord has, in that case, if the holding is an agricultural one, a more extensive right to be paid all rent due in priority to the execution creditor under the Land Act, 1881, s. 1. *Waldron v. Sutcliffe*, 26 L. R. Ir. 444.

It has been held that the corresponding English Act (8 Anne, c. 14, s. 1) does not apply as between the ground landlord and an under-tenant (*Bennett's Case*, 2 Stra. 787), but that it does apply as between a lessee and an under-tenant of apartments. *Thurgood v. Richardson*, 7 Bing. 428, 5 M. & P. 270.

Sheriff's duty on claim being made.

Any person who can make a letting of the premises is a landlord within the meaning of the Act. Thus, an arranging debtor, whose estate has vested in the official assignees in bankruptcy, is entitled to the benefit of it. *Doran v. Moore*, 16 L. R. Ir. 181. And the rent is "due" if, as a matter of fact, it is unpaid, though the landlord may have taken a bill for it which is still current. *Davidson v. Allen*, 20 L. R. Ir. 16.

It is not the duty of the sheriff to pay the rent due. "His position under the statute is simply negative. The law casts upon him the duty solely to see that the goods are not removed without paying the rent. With that restriction his function begins and ends" (*per O'BRIEN, J., Davidson v. Allen*, 20 L. R. Ir., at p. 24). The strict duty of the sheriff is to call upon the execution creditor to pay the rent due, and in case of non-compliance to withdraw. But a different course, which, according to MAY, C.J., is "warranted by custom, and not inconvenient," is usually followed—namely, for the sheriff to levy a sufficient amount to satisfy both the rent and the execution. *In re M'Carthy*, 7 L. R. Ir., at p. 484.

"When a sheriff has seized, and learns that rent is due, three courses are open to him—The first, and in his own interest, the most prudent, is to notice the execution creditor, if practicable, and require him to pay the rent, and if this is not done to withdraw; 2nd, to satisfy himself that the rent is due, and that the goods are of more value than is sufficient to discharge it, and if so to levy, pay the rent, and apply the balance to the execution; 3rd, to satisfy himself that the rent is due, and that the goods are not of sufficient value to discharge it, and in that case to withdraw. In either of the two latter cases, where the execution is not paid in full, the sheriff may have to justify his action if sued by the execution creditor." *per JOHNSON, J., Davidson v. Allen*, 20 L. R. Ir., at pp. 28, 29. There is, however, no legal obligation upon a sheriff to give the execution creditor notice of a landlord's claim under the statute. *Davidson v. Allen*, 20 L. R. Ir. 16.

If the sheriff receives notice of the landlord's claim at any time before the removal of the goods, even though after they have been sold, he is bound to act on it, and if he allows the goods to be removed without payment of the year's rent, he is liable to an action at the suit of the landlord *Bible v. Hussey*, 1 R. 2 C. L. 308. Even though the goods are afterwards put back on the lands. *Wren v. Stokes*, 1 N. I. J. R. 137 (C.A.). And, conversely, if notice is given to him before the sale though after the removal of the goods, he is bound to act upon it, for notice at any time that it can be complied with is sufficient: *Garde v. Dunlea*, 15 I. L. T. R. 34.

Express notice to the sheriff has been held not to be necessary; it is sufficient if he sells without retaining the rent, with knowledge that it is due (*per PARKE, B., Risley v. Ryle*, 11 M. & W. 20). And if he seizes and sells without notice of the rent being due, and subsequently, before parting with the proceeds of the sale, is informed of rent being due, he is bound to pay the landlord his rent, out of the proceeds, in priority to the execution creditor: *Dixon v. Wilks*, 9 I. C. L. R. 467; *In re M'Carthy*, 7 L. R. Ir. at p. 480.

Questions frequently arise in bankruptcy as to the respective rights of the landlord and the assignees where an execution debtor becomes bankrupt after a seizure has been made by a sheriff under a writ of *fi. fa.* The question in such cases turns upon the date at which the sheriff receives notice of the landlord's claim. In the case of *In re Hudson*, 1 L. R. Ir. 6, goods of a trader were sold under an execution on July 12th. On the 13th he was adjudicated bankrupt, and on the 16th the landlady claimed rent. The judge in bankruptcy held that she was not entitled to be paid, as before any notice by the landlord the entire proceeds of the sale had vested in the assignees under the 54th section of the Bankruptcy (Ireland) Act, 1872. On the other hand, it was held by the Court of Appeal (while approving of the decision *In re Hudson*, 1 L. R. Ir. 6), that, where the sheriff had notice of the landlord's claim, and paid the amount before the date of the adjudication, he was right in doing so, and that he was entitled to deduct the amount so paid from the produce of the sale paid over by him to the assignees: *In re M'Carthy*, 7 L. R. Ir. 473. See, however, *In re Gawn*, 3 L. R. Ir. 260, a decision of MILLER, J., which does not appear to be consistent with the decision of the Court of Appeal *In re M'Carthy*.

“ 52. Whenever a year's rent (a) shall be in arrear in respect of lands (b) held under any fee-farm, grant, (c) lease, (d) or other contract of tenancy, (e) or from year to year, and whether by writing or otherwise, it shall be lawful for the landlord immediately thereon, and before the expiration of the time, if any, limited for re-entry (f) hereupon in any lease or agreement, to proceed by ejectionment for the recovery of the possession of the said lands in any of the Superior Courts (h) of Law at *Dublin*, or, where the rent shall not exceed one hundred pounds by the year, in the Court of the Chairman of the County (i) in which the lands or any part thereof are situated; and the plaintiff's right to sue (g) as such landlord shall not be defeated by proof merely that the legal estate in the rent or lands is vested in any other person not a party to such suit or proceeding, but who would be a trustee for the plaintiff, provided that the plaintiff was at the time of the institution of such suit or

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Bankruptcy

Ejectionment for year's rent unpaid

Sect 52. other proceeding the person substantially and beneficially entitled to the said rent.

One year's rent (a) The year's rent need not apparently consist of one unbroken year's rent due on the gale day previous to the commencement of the action. Where it was made up of one full half-year's rent, and of fractions of previous gales, in all amounting in moneys numbered to one year's rent, it was held, under the repealed statutes, 11 Anne, c. 11, 4 Geo. I., c. 5, and 8 Geo. I., c. 2, that the ejectment could be maintained *Chester v. Beary*, 2 I. C. L. R. 120; 4 Ir. J. O. S. 157. But where there was a *bona fide* dispute as to the amount of rent due, although the defendant admitted by his statement of defence that a year's rent was due, it was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the plaintiff was not entitled to judgment on admissions in the pleadings: *Curtin v. Adams*, reported in Q. B. D. 8 L. R. I. 66, but unreported on Appeal. See Murray and Dixon's Digest, col. 1292.

In calculating the amount of the year's rent due, the landlord is not required to make any deduction in respect of a period during which he was in possession of the lands under a previous ejectment for non-payment of rent, for the rent is not suspended during that period if the tenant redeems, though the landlord is liable to account for the profits made by him: *Wilson v. Burne*, 24 L. R. Ir. 14, 23 I. L. T. R. 59.

Two rents reserved by the same lease.

Where two distinct rents were reserved by the same lease, out of the same holding, one the ordinary rent reserved during the term, and the other the amount of an annual instalment payable by the landlord to the Board of Works, for so long as same should be payable, it was held that an ejectment would not lie under this section unless a full year's amount of both these rents was due: *Lloyd v. Keys*, [1901] 2 I. R. 415; 34 I. L. T. R. 149, 3 Greer 1.

Abated rent.

Where a lease contains a covenant on the part of the lessor to accept an abated rent in full satisfaction of the rent reserved, upon performance of the several covenants contained in the lease, the landlord is not entitled, in an ejectment for non-payment of rent, to have the rent ascertained at the higher rate, upon the ground that the lessee has not kept his covenants to pay the rent on the gale days specified in the lease *M'Kay v. M'Nally*, 4 L. R. Ir. 436, 13 I. L. T. R. 130. And similarly, where a lessor has, without being bound by the lease to do so, accepted an abated rent for a number of years, he can only maintain an ejectment for the abated rent, unless he has given notice to the tenant that he intends to exact the full rent: *Ambrose v. Keohan*, 17 I. L. T. R. 7, following *Fitzgerald v. Lord Portarlington*, 1 Jones, 431. But under the old ejectment statutes it was held in such cases that the ejectment was maintainable for the higher rent, as, being the rent reserved by the lease, it could not be considered a penal rent *Jones, d., Lord Ashtown v. White*, 11 I. L. R. 400; *Condon v. Haynes*, 9 I. C. L. R. App. i.

Rent payable in advance.

It has been held by the Recorder of Cork (Judge NEILGAN) that an ejectment will lie under this section for rent payable in advance, before the date up to which the rent is calculated, if a year's rent is actually due: *Venables v. Cussen*, 32 I. L. T. R. 172. See also *Charters v. Sherrock*, 1 Alc. & Nap. 17.

Penal rent.

An ejectment for non-payment of rent does not lie for a penal rent: *Stephens v. Doyle*, 5 I. C. L. R. 526; affirmed on appeal by Exch. Chamb., 2 Ir. Jur. N. S. 152; *Lord Annesley v. Rooney*, 18 I. L. T. R. 100; for a penal rent is distinct from the contract rent payable by a tenant: *O'Connor v. Smith*, 20 L. R. Ir. 393. See also *Massey v. Neill*, 11 I. L. T. R. 19, and *M'Carthy v. Beamish*, 3 I. L. T. & S. J. 350.

If the tenant disputes the amount of rent claimed, he should lodge the amount he

admits to be due in court, under Sec. 61 or 62, *post*. He will then be entitled to a verdict in the action, if he has lodged the full amount legally due. The fact, however, that the landlord has recovered a personal judgment for the rent due is no defence to an ejectment for non-payment of rent if the judgment is still unsatisfied: *Wakefield v. Smythe*, 16 I. C. L. R. 173; 9 Ir. Jur. N. S. 391.

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The year's rent must be due to the landlord who seeks to recover possession; and it must be due to him by virtue of the same title by which he seeks to recover the land. If the rent is due to him as personal representative, and the reversion expectant on the chattel term is vested in him as such, he can recover the lands; if it is a fee-simple estate, the whole year's rent must be due to him as owner of the reversion in fee: "per DOWSE, B., *Mennons v. Burke*, 26 L. R. Ir. at p. 198. A devisee of land, therefore, who is also executor of the will of the devisor, cannot maintain an ejectment for non-payment of rent in respect of a half-year's rent which has accrued due to him personally since the death of the devisor, and a year's rent which is also due to him as executor, having accrued due in the lifetime of the deceased: *Staples v. Bell*, 21 I. L. T. R. 28. And the same rule has been held to apply where the plaintiff was heir-at-law and administrator of a deceased person: *Mennons v. Burke*, 26 L. R. Ir. 193. But where in a civil bill ejectment by a purchaser of a landlord's estate, half a year's rent had accrued due before the conveyance, but after sale, and another half-year's rent after the conveyance, it was held by O'HAGAN, Q.C., when County Court Judge, that the purchaser could maintain the ejectment, as the previous owner was merely a trustee for him as regards the first half-year's rent: *Murtagh v. Adams*, 2 I. L. T. & S. J. 168. PALLES, C.B., however, expressed his disapproval of this decision in *Staples v. Bell*, 21 I. L. T. R., at p. 29.

Rent due to landlord in different capacities.

(b) "Lands" are defined by Sec. 1, *ante*, as "tenements of every tenure whether corporeal or incorporeal." But *quære* whether an ejectment for non-payment of rent can be maintained in respect of an incorporeal hereditament. In *Irish Society v. Crommelin*, I. R. 2 C. L. 324, it was treated as a doubtful question whether an ejectment would lie for a several fishery; though *Bayley v. Marquis Conyngham*, 15 I. C. L. R. 406, 8 Ir. Jur. N. S. 213, establishes that a lease of a several fishery is within this Act; and Sec. 57, *post*, speaks of an ejectment for non-payment of rent, in respect of a lease of "tithes, tithe rent-charge or other ecclesiastical dues."

Ejectment for incorporeal hereditaments

If portion of the lands has been surrendered to the landlord the remedy by Part of lands. ejectment for non-payment of rent as to the remainder is not prejudiced. See Sec. 44, *ante*. But otherwise, an ejectment of portion of the demised premises is inoperative and void: *Irish Land Commission v. Doherty*, 29 L. R. Ir. 185; *M'Sheffry v. Doherty* [1897], 2 I. R. 191. "The lands sought to be recovered must be all the lands out of which the rent issued under the contract of tenancy" (*per* BARRY, L.J. [1897], 2 I. R. at p. 230).

Formerly where lands were situated in different counties, it was necessary to bring separate ejectments in each. See *Gray v. Lawder*, I. R. 8 C. L. 193, but local venues, as regards ejectments, are abolished by Sec. 33 of the Judicature Act: *Cuseen v. Moloney*, 2 L. R. Ir. 188; 12 I. L. T. R. 659. In the County Court, an ejectment may be brought, under the express words of this section, in any county in which any part of the lands are situated. Sec. 98, *post*, provides for the execution of the decree where the lands are situated in two or more counties.

Lands in different counties.

(c) The repealed ejectment statutes, 11 Anne, c. 11; 4 Geo. I., c. 5, and 8 Geo. I., c. 2; 5 Geo. II., c. 4, and 25 Geo. II., c. 13, were much less general in their operation than this section. They did not, for instance, apply to fee-farm grants,

Sect. 52. or to contracts for yearly tenancies created by parol *Foot v. Warren*, 10 I. C. L. R. 1. This section in terms applies to both.

Fee-farm grants. As regards fee-farm grants, it was previously provided by the 20th section of the Renewable Leasehold Conversion Act (12 & 13 Vic., c. 105) that the fee-farm rent made payable by any grant under that Act, or by any grant made *after the passing* of the Act, should be recoverable by ejectment for non-payment of rent. See that section, App., *post*. It does not appear to be affected by the rather confused enactment 14 & 15 Vic., c. 20, s. 1. As regards fee-farm grants made before the passing of the Renewable Leasehold Conversion Act, it is somewhat doubtful whether they are within this section or not. *Chute v. Busteed*, 16 I. C. L. R. 222, 10 Ir. Jur. N. S. 363, decided that the 3rd and 12th sections did not apply to fee-farm grants made before the passing of the Act; but this was expressly upon the ground that the question there was one of substantive right and not of mere procedure (see judgment of O'HAGAN, J., 16 I. C. L. R., at pp. 231, 232); and HAYES, J., in his judgment, refers to the words "any fee-farm grant" in this section as indicating, apparently, in his opinion, that it applied to fee-farm grants whenever made (16 I. C. L. R., at p. 238). See also *Mercer v. O'Reilly*, 13 I. C. L. R. 153, 7 Ir. Jur. N. S. 383, and *Butler v. Archer*, 12 I. C. L. R. 104, 5 Ir. Jur. N. S. 276. In *Mennons v. Burke*, 26 L. R. Ir., at p. 197, DOWSE, B., states that this section is not governed by the decision in *Chute v. Busteed*, 16 I. C. L. R. 222; and it is clear that it applies to leases and other contracts of tenancy whenever created.

(d) Under the repealed statutes it was decided that an ejectment for non-payment of rent could not be maintained in respect of a lease of the reversion made during the concurrence of another lease: *Herbert v. Madden*, 6 I. C. L. R. 29. But, apparently, this decision would not apply to the present section, which makes the statutory ejectment entirely independent of any right of re-entry on the part of the landlord.

Tenancies less than yearly tenancies.

(e) An action of ejectment for non-payment of rent does not lie under this section in respect of tenancies less than tenancies from year to year: *O'Sullivan v. Ambrose*, 38 L. R. Ir. 102 (Q. B. D.); *Batt v. Carr*, 1 I. W. L. R. 22 (Exch. D.), overruling *Dale v. Conolly*, 22 I. L. T. R. 53. But see as to cottier tenancies, Sec. 85, *post*. See also *Wyse v. Lyons*, 21 I. L. T. R. 48 (C. C.).

As to when a tenancy exists, see Sec. 3, *ante*, and notes thereto, pp. 7-8. It may be a question for the jury: *Nixon v. Darley*, I. R. 2 C. L. 467. But where the lessee, under a lease for lives renewable for ever at a rent of £18, granted the lands comprised in the lease to the lessor for ever at a yearly rent of £40 a year, and the practice of the parties was to set off the £18 a year against the £40, it was held that an ejectment for non-payment of the £18 a year rent could not be maintained: *James v. Russell*, 14 L. R. I. 447.

Proviso for re-entry.

(f) It appears from the decision of the Common Pleas Division in *Malone v. Manton*, 13 I. L. T. R. 144, that a proviso for re-entry in a lease upon the non-payment of less than one year's rent is still good and may be acted upon. There, under a lease reserving a yearly rent payable half-yearly in advance, the lessee covenanted to pay same without demand, it being provided that in case the rent should be in arrear the lessor might re-enter, without prejudice to his rights for the recovery of the rent. The lessor alleging that a half-year's rent was due sued for same and claimed at the same time possession of the premises and mesne rates. The lessee by way of defence relied upon a correspondence prior to the execution of the lease, from which he alleged he was led to believe that he would be entitled to three months from each gale day for payment of the rent. This defence was set aside

as embarrassing, and the plaintiff was allowed to enter judgment for the rent due and for possession of the premises. Sect. 52.

As to the right to bring an ejectment grounded upon a proviso for re-entry in a lease, see *Shepherd v. Berger* (1891), 1 Q. B. 597, and *Barry v. Glover*, 10 I. C. L. R. 113, 4 Ir. Jur. N. S. 260.

Actions to recover land under this section are not ejectments for forfeitures, and have not the incidents of such ejectments, either as regards the relation back of the plaintiff's title, *Russell v. Moore*, 8 L. R. Ir. 318, or as to waiver: *Gaffrey v. Bailey*, 17 I. L. T. R. 89.

The bringing of an ejectment for non-payment of rent is not a waiver of a notice to quit previously served; so held by the Court of Appeal, *Earl of Listowel v. Kelly*, 17 I. L. T. & S. J. 285, overruling the decision of the Common Pleas Division: 17 I. L. T. R. 28. But where a notice to quit was served during the pending of an ejectment for non-payment of rent, in which judgment was subsequently executed, and an order for restitution obtained by the tenant, it was held that the notice to quit was not effectual to determine the tenancy. *Hall v. Flanagan*, I. R. 11 C. L. 470.

(p) The plaintiff in an ejectment for non-payment of rent need not be the person in whom the legal estate in the lands is vested, provided he is "substantially and beneficially entitled" to the rent. Thus a mortgagor may maintain the action in his own name, to evict a tenancy created prior to the mortgage: *Hanson v. Burke*, I. R. 10 C. L. 322. This case was decided before the Judicature Act—Sec. 28, Sub-sec. 5 of which also deals with the matter.

Where a Receiver sues in the name of the owner, by direction of the Land Judge, it is not necessary to produce at the trial a copy of the ruling authorising him to do so: *Lyons-Montgomery v. Dolan*, 33 I. L. T. R. 144.

Whether one tenant in common can alone maintain an ejectment for non-payment of rent appears to be doubtful. See judgment of MONAHAN, C.J., *Stubber v. Roe*, 15 I. C. L. R., at p. 508. He has no right, at all events, to use the name of his co-tenant without his consent: *Stubber v. Roe*, 15 I. C. L. R. 506.

Where one of two co-owners brought an ejectment for non-payment of rent in his own name alone, and recovered judgment, it was held that the judgment was not void: *Dempsey v. Ward* [1899], 1 I. R. 463. "In an ejectment brought by a landlord by estoppel against a tenant by estoppel, it cannot," says FITZGIBBON, L.J., "in my opinion, be open after judgment to treat the eviction as void, merely on the ground of non-joinder of parties" [1899], 1 Ir. R., at p. 477. See also *Parke v. McLoughlin*, 3 Ir. Jur. (O. S.) 405.

An executor or administrator of a landlord entitled to a chattel interest in lands may maintain an ejectment for non-payment of rent, *Doyle v. Maguire*, 14 L. R. I. 24; *Ormsby v. Smith*, 4 Law Rec. N. S. 19, provided the rent is due to him as personal representative, and the reversion is also vested in him as such: *per Dowse, B., Mennons v. Burke*, 26 L. R. I., at p. 198.

In *M'Arde v. Glenny*, I. R. 3 C. L. 628, it was held that the action could not be maintained by an administrator to whom letters of administration had not been granted until after action brought, although they were produced at the trial. But *quære* whether this rule would prevail since the Judicature Act, for in equity it was sufficient if the letters of administration were produced at the trial, even if they had been granted after the bill was filed. (See Williams on Executors, 9th ed., p. 342, and Judicature Act, Sec. 28 (1)).

If, however, the landlord's interest is real estate, the personal representative cannot recover possession for non-payment of rent, even though he is also devisee

Sect. 52.	or heir-at-law, unless a year's rent has accrued due subsequently to the death of the deceased owner: <i>Mennons v. Burke</i> , 26 L. R. Ir. 193, following <i>Staples v. Bell</i> , 21 I. L. T. R. 28, and overruling <i>Crooke v. Callaghan</i> , 6 Law Rec. N. S. 317, 359.
Not against the Crown	An ejectment for non-payment of rent does not lie against the Crown, or against a Secretary of State as trustee for the Crown, and the proceedings in such an action will be stayed <i>Harvey v. Harkin</i> [1898], 2 I. R. 65.
What writ should state.	(h) In an action for the recovery of land for non-payment of rent, the writ should contain a description of the property sought to be recovered, and should state the county and barony, or city and parish, in which it is situated (Rules of Supreme Court, 1891, Order II, rule 7), in addition to the particulars required by Sec. 60, <i>post</i> . A special form of writ is prescribed by Order II., rule 9. The writ must be specially endorsed in all cases coming within Land Act, 1896, Sec. 12, and should be in one of the forms prescribed by Order III, rule 6a, of the Rules of March, 1897: see that rule and forms thereunder, <i>post</i> . No cause of action, except a claim for rent or mesne profits, or damages for breach of the contract under which the lands are held, or for wrong or injury to the premises, can be joined without leave Order XVIII, rule 2.
Joinder of other causes of action.	Leave was given by the Queen's Bench Division to join a claim for recovery of possession on title, with a similar claim for non-payment of rent, where it was doubtful whether the defendant was a tenant or not <i>Balfour v. Marry</i> , 3 I. W. L. R. 114.
Joinder of different holdings.	Leave was also given to join two different holdings held under separate leases in one action of ejectment for non-payment of rent <i>Longford v. Masterson</i> , 30 I. L. T. R. 22, following <i>Grogan v. Byrne</i> , 12 I. L. T. & S. J. 294. Gibson, J., however, doubted whether any leave was necessary (30 I. L. T. R. at p. 23).
Receiver over tenant's interest	Where a Receiver has been appointed over lands held at a rent, the leave of the Court must be obtained before commencing an ejectment for non-payment of rent, and the Court in granting such application has jurisdiction to impose terms on the landlord: <i>Battersby's Estate</i> , 31 L. R. Ir. 73; 27 I. L. T. R. 34.
Who named as defendants.	Any tenant, under-tenant, or other person in actual possession of the property claimed may be named as defendant (Order II., rule 8). In <i>Nugent v. Earl of Bantry</i> (2 H. & Br. 156), it was held that the interest in a lease had been effectually evicted for non-payment of rent, although the lessee was dead and there was no personal representative upon whom process could be served. Under the Common Law Procedure Act, 1853, Sec. 194, it was held that a plaint in ejectment for non-payment of rent, which named A B as defendant, and alleged that C D held the lands as tenant to the plaintiff, was a good plea. <i>Campion v. Champion</i> , I. R. 8 C. L. 313; 8 I. L. T. R. 147. The words "any one tenant in possession" in that section being held to mean "any tenant in the actual possession whose tenancy is dependent on the immediate tenant's right to possession:" I. R. 8 C. L., at p. 316. As to who should be named as defendant in a civil bill ejectment, see Sec. 54, <i>post</i> , and notes thereto.
Appearance.	The mode of service of the writ is prescribed by Order IX., rule 12, which corresponds to Sec. 55, <i>post</i> . An appearance can only be entered within the time allowed (ten days); and if entered without leave after that time has elapsed it is void: Order XII., rules 15 and 17. If the writ be specially endorsed under Order III., rule 6 or rule 6a, an application for final judgment may now be made under Order XIV., rule 1. But the application should be made promptly: <i>Annally v. Comyn</i> , 30 L. R. Ir. 102; 26 I. L. T. R. 45.

The writ in order to be specially endorsed ought to show a contract of tenancy between the parties: *Kecnan v. Carson* [1897], 2 I. R. 234; or, at all events, that the defendant is in possession, or that he is in some way in privity with the lease or contract of tenancy: *Guinness v. Caraher* [1900], 2 I. R. 505 (C. A.).

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Special endorsement.

But *quære* whether the decision in this case applies to agricultural holdings having regard to the forms provided by the Rules of March, 1897, *post*. See judgment of HOLMES, L.J. [1900], 2 I. R. at p. 512. It is not necessary to set out the devolution of title of either plaintiff or defendant: *Rochfort v. Somers* [1899], 2 I. R. 45. As to motions for final judgment in ejectments for overholding, see notes to Sec. 72, *post*, p. 131.

For forms of writs as prescribed by the rules under Sec. 12 of Land Act, 1896, or agricultural holdings, see these Rules and Forms, *post*.

In a statement of claim in an ordinary case "in which the lessor himself is plaintiff, it is unnecessary to state more than (1) a subsisting lease; (2) that the specified lands are held from the plaintiff under that lease; (3) that a year's rent or upwards is due; and, possibly, (4) that the defendants are in possession:" (*per* PALLES, C.B., *Barnes v. Barnes*, 8 L. R. Ir., at p. 168). But, inasmuch as a traverse of the fourth allegation would not constitute a defence, it appears from the judgment of the same learned judge that the allegation itself is unnecessary: *Ibid*. If the action is brought by an assignee of the reversion, or of the original landlord's estate, it is sufficient in the statement of claim to aver generally that the estate of the original landlord has become vested in the plaintiff without setting out the intermediate devolution of title; and such averment may be proved by the fact of payment of rent, as provided by Sec. 24, *ante*, p. 53, *Beatty v. Leacy*, 16 L. R. I. 132 (App.), 18 I. L. T. R. 89 (Exch. Div.); *Musgrave v. Walsh*, 6 L. R. Ir. 335. But the fact that the defendant has paid rent to the plaintiff should not be averred in the statement of claim; and if, without specifying the contract under which it is paid, it be so stated, it may be held to be embarrassing: *Molloy v. Lewers*, 12 L. R. Ir. 39. "The statement of claim," says FITZGERBON, L.J., "must, as concisely as may be, but clearly, state a subsisting tenancy, and I think it must further state its nature. If the plaintiff is unable to state the nature of the tenancy with certainty, he must meet the difficulty either by alternative averments or by discovery; he cannot evade it by vagueness and ambiguity: 12 L. R. Ir., at p. 43.

Statement of claim.

"The statement that the defendant holds as tenant does not necessarily mean that the defendant is the immediate tenant, but is an allegation that there is a contract of an existing tenancy held under the plaintiff. The traverse should be of that allegation so understood, as was decided in *Bell v. Beatty*," 6 I. C. L. R. 399 (*per* MORRIS, J., *Campion v. Campion*, I. R. 8 C. L., at p. 317). See, however, *contra*, *Billing v. Arnold*, I. R. 7 C. L. 529.

The statement of defence if it traverses the existence of the tenancy must deny that there was a subsisting tenancy in the defendant, or in any other person under the plaintiffs: *Rowley v. Laffan*, 10 L. R. I. 9; *Campion v. Campion*, I. R. 8 C. L. 313; and *Bell v. Beatty*, 6 I. C. L. R. 399. It may also set out facts which establish this conclusion: *James v. Russell*, 14 L. R. Ir. 447. This, however, is not necessary where the Plaintiff adopts the general form of statement of claim provided by the Rules of 1891 (App. C., Sec. 7, No. 2), though the Plaintiff may, by pleading more specifically, compel the Defendant to be more specific in his defence: *Leader v. Caffelle*, 1 N. I. J. R. 169 (C.A.). A denial that "the defendant was or was tenant to the plaintiff or any other person for the said premises" was set aside as embarrassing: *Hildige v. O'Farrell*, 8 L. R. I. 158. And where a statement-

Defence.

rent reserved by an indenture of demise: *Grant v. Ellis*, 9 M. & W. 113. The same rule applies to the twelve year limit fixed by 37 & 38 Vic., c. 57, s. 1: *Donegan v. Vill*, 16 L. R. Ir. 309.

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But it appears that where the rent due is being ascertained by the Court pursuant to Sec. 54, *post*, rent barred by the Statutes of Limitation should not be included: *Watt v. Malseed*, 28 I. L. T. R. 79 (Exch. D.). See notes to that section, *post*.

In the case of *Clanricarde v. Clarke*, 26 L. R. Ir. 260, a question arose as to the effect, in an ejectment for non-payment of rent, of a prior civil bill decree for possession of portion of the premises claimed. Two holdings had been consolidated, and a bulk fair-rent fixed by the Land Commission. After this was done, the landlord, through inadvertence, obtained a civil bill decree for the possession of one only of the holdings, which was executed by service of the caretaker notice, prescribed by Sec. 7 of the Land Act, 1887. Afterwards, the mistake being discovered, he commenced an action in the Superior Courts to recover both holdings, as held under the Land Commission order, treating the civil bill decree as a nullity; it was held by the Exchequer Division (MURPHY, J., diss.), that he was not entitled to a verdict for the two holdings, but that upon an amendment of the pleadings he was entitled to a verdict for the one which had not been recovered by the civil bill decree. Effect of prior ejectment.

As to what amounts to a good equitable defence in an ejectment for non-payment of rent, see notes to Sec. 59, *post*.

A defendant in an action to recover possession of land, it has been held, may deliver his defence at any time before judgment, notwithstanding that the time for doing so has elapsed: *Kennane v. Mackey*, 24 L. R. Ir. 495; *Harding v. Lyons*, 14 L. R. Ir. 302 (see, however, *contra*, *Meehan v. Meehan*, 14 L. R. Ir. 300). These cases were all actions on title, but the same rule would appear to apply in the case of actions for non-payment of rent. They were also, it must be remembered, decided before the Rules of 1891 came into force.

Before the passing of the Judicature Act it was decided that a defendant could not avail himself of a set-off to defeat an ejectment for non-payment of rent: *Cahill v. Kearney*, I. R. 2 C. L. 498. But that case has been held not to be a binding authority under the new system, having regard to the extended right of setting up cross-claims conferred by Schedule Rule 22; and in *Whitton v. Hanlon*, 16 L. R. Ir. 137, 19 I. L. T. R. 31, where a counter-claim was pleaded for a sum exceeding the rent in arrear, in respect partly of arrears of annuities charged upon the lessor's interests in the premises and partly of sums paid for head rent in order to save the premises from eviction, the Exchequer Division refused to set it aside. It is only, however, under special circumstances that counter-claims to an ejectment for non-payment of rent can be sustained; and in a great number of cases they have been set aside, even since the Judicature Act. Thus, where a defendant traversed the contract of tenancy, and counter-claimed for damages for breach of that contract, the Court set aside the counter-claim: *Loughrey v. Maguire* [1897], 2 I. R. 140. See also *Fitzgerald v. Day*, 6 L. R. Ir. 326; *Hildige v. O'Farrell*, 8 L. R. Ir. 158; *Carew v. Christopher*, 8 L. R. Ir. 252, 10 L. R. Ir. 38; *Bourke v. Nicholl*, 12 L. R. Ir. 415. See also upon this subject, *Wilson v. Burne*, 24 L. R. Ir. 14, 23 I. L. T. R. 59, and *Beasley v. Darcy*, 2 Sch. & Lef. 403. Set-off or counter claim.

If the defendant does not appear at the trial the plaintiff is entitled to a verdict without proof of his title, but it is necessary for him to prove either orally or by affidavit the amount of rent actually due: Order XXXVI., rules 26-27.

If the defendants, or any of them, give a consent for judgment, it is necessary

Sect. 52. that their signatures to the consent should be attested by their solicitor: C. L. P. Act, 1853, ss. 223, 224; *Gubbins v. O'Grady*, 24 L. R. Ir. 518.

Costs. The plaintiff, even if he obtains judgment, is not entitled to costs, in the Superior Courts, if he might have brought the ejectment in the County Court and the holding is an agricultural one within the provisions of the Land Act, 1881; unless the judge at the trial or the Divisional Court makes a special order awarding him the costs. (See Land Act, 1881, sec. 51, *post*.)

As to the power of the Court to put a stay upon a judgment for possession, see Land Act, 1887, sec. 30, *post*, and as to the mode in which such judgments may be executed, see Secs. 7 and 30 of the same Act, and Rules of Supreme Court, 1891, Order 47, *post*.

As to the time for which a writ of *habere* remains in force, and the circumstances under which it may be renewed, see notes to Sec. 95, *post*.

An ejectment for non-payment of rent has not the incidents of an ejectment for forfeiture. The title of the plaintiff to the lands is only by relation from the date of the commencement of the action, and if growing crops upon the lands have been seized by the sheriff under a *f. fa.*, prior to that date, they do not become the landlord's property upon the execution of the *habere*. *Russell v. Moore*, 8 L. R. I. 318. See also *Gaffrey v. Bailey*, 17 I. L. T. R. 89. An ejectment of a tenant for non-payment of rent is not a "disturbance" within the meaning of the Land Act, 1870. (See Sec. 9 of that Act, *post*.)

Remitting. (i) Any action of ejectment for non-payment of rent, commenced in the Superior Courts, may be remitted to the County Court in the same manner as an action of contract, if it is within the County Court jurisdiction. Jud. Act, Sec. 60, Rules of Supreme Court, 1891, Order 49, rule 10. But the Court cannot remit an action of ejectment in which there is joined a claim for arrears of rent exceeding £50, though under £100. *English v. Spiers*, 4 L. R. Ir. 278.

County Court jurisdiction. Where the rent reserved by a lease is more than £100 a year, but there is a proviso for the acceptance by the landlord of a sum less than that amount, the County Court would appear from the decision in *Condon v. Haynes*, 9 I. C. L. R. App. i., not to have jurisdiction under this section. That decision, however, was made under the 73rd section of 14 & 15 Vic., c. 57, and it may be doubtful whether it would now be followed. See *M'Kay v. M'Vally*, 4 L. R. Ir. 438; 13 I. L. T. R. 130. As to the form of a civil bill process in ejectment, and who should be named as defendant, see Sec. 54, and notes thereto, *post*, p. 110.

When there is more than one defendant to a civil bill ejectment, the County Court Judge may order the costs to be recovered against one or more of the defendants by name, and not against the others. Sec. 90, *post*.

As to the time for which a decree for possession remains in force, and in what cases it can be renewed, see notes to Sec. 95, *post*.

Execution of decree after part payment. A civil bill decree in ejectment, when "regularly pronounced," says PALLES, C.B. "cannot cease to exist but by one of two ways—payment and satisfaction of the amount, or by an agreement for good consideration not to execute it." *Gaffrey v. Bailey*, 17 I. L. T. R., at p. 91. In that case it was held that a decree could be properly executed so long as any sum for rent and costs remained due, and even though all arrears except one half-year's rent had been cancelled by an order made under the Arrears Act, 1882. *Gaffrey v. Bailey*, 17 I. L. T. R. 89. If a decree for possession for non-payment of rent is improperly granted, and afterwards executed by the landlord, it seems that a cross ejectment will lie against him at the suit of the tenant: *Coneys v. Coneys*, 8 I. C. L. R. 379, quoted with approval in *Clanricarde v. Clarke*, 26 L. R. Ir., at p. 265. But if the decree

is properly executed, it destroys all interest in the holding, and a sub-tenant cannot maintain a cross ejectment against the landlord on the ground that he has become a direct tenant to him by virtue of Sec. 15 of the Land Act, 1881: *Commings v. Barron*, 19 I. L. T. R. 38. Sects. 52-53

53. In any ejectment under this Act it shall not be necessary to allege or prove the making of any demand (a) or re-entry, or the existence of any clause or condition of re-entry in the lease or other contract, or of any legal reversion (b) expectant on the determination of the same, and subsisting in the landlord, provided a tenancy between the parties shall appear to exist, (c) whether by original contract, or by lawful assignment, devise, bequest, or act and operation of law. Reversion and actions unnecessary.

(a) A demand of possession is, notwithstanding this section, required by Sec. 86, where summary proceedings are taken before the magistrates to recover possession from permissive occupants. See notes to that Sec., *post*. Demand of possession.

In ejectments upon title, as a general rule, a demand of possession is only required where a tenancy at will has been created between the parties. It has been held not to be necessary in the case of an ejectment on a forfeiture for breach of condition against assignment without consent (*Lord Talbot de Malahide v. Odum*, I. R. 5 C. L. 302); or in the case of an ejectment by a judgment mortgagee (*Reidy v. Pierce*, 11 I. C. L. R. 361); or by a purchaser from the sheriff of a farm sold under a writ of *fieri facias* (*Cloncurry v. Ryan*, 8 L. R. Ir. 392).

The form of civil bill ejectment for over-holding prescribed by Sec. 72, *post*, was made to aver, apparently by inadvertence, that a demand of possession had been made. It was held, notwithstanding, that it was unnecessary to prove that such demand had been made (*Malton v. M'Guire*, I. R. 11 C. L. 4); and the averment has been omitted from the form at present in use. See County Court Rules, 1890, Form No. 6 (Dixon's Carleton, C. C. Practice, p. 1216).

(b) No reversion is now necessary to support a contract of tenancy. See Sec. 3 *ante*, and notes thereto, p. 4. Under the repealed ejectment statutes it was held that a lessee who had demised for the same lives and years as those for which he himself held could not maintain an ejectment for non-payment of rent: *Porter v. French*, 9 Ir. L. R. 514. This case is, of course, not now an authority. See *Seymour v. Quirk*, 14 L. R. Ir. 97, 455; 18 I. L. T. R. 29. Yet it has been held under this Act that where the owner of a lessee's interest under a lease for lives renewable for ever made a demise or grant to the owner of the lessor's interest for ever, reserving a higher rent than that reserved in the lease, an ejectment for non-payment of rent could not afterwards be brought by the assignees in bankruptcy of the owner of the lessor's estate in respect of the tenancy created by the renewable lease: *James v. Russell*, 14 L. R. Ir. 447. Reversion unnecessary.

(c) Notwithstanding the words "provided a tenancy between the parties shall appear to exist," it is not necessary that the person between whom and the landlord the contract of tenancy exists should be named as a defendant in an action in the Superior Courts (Rules of Supreme Court, 1891, Order II., rule 8). And the same rule applied under the C. L. P. Act, 1853, Sec. 194 *Campion v. Champion*, I. R. 8 C. L. 313. As to the rule in the County Courts, see notes to Sec. 54, *post*.

As to when a contract of tenancy between parties may be implied, see notes to Sec. 3, *ante*, p. 7, and *O'Keefe v. Walsh*, 8 L. R. Ir. 184, 6 L. R. Ir. 348.

Sects 54-55. **54.** *Every civil bill of ejectment for non-payment of rent under this Act may be according to the Form No. 2 in the Schedule (A.) to this Act annexed, and** it shall be lawful for the chairman on proof of the service of such civil bill in the manner herein after directed, and that a sum equal to one full year's rent, not exceeding the rate of one hundred pounds by the year after all just and fair allowances, was due when such proceeding by civil bill was commenced, and still remains due to the landlord, to decree the said landlord to be put into possession of the said premises, and to ascertain the amount of the rent then due. (a)

Form of civil bill for non-payment of rent as in Sched. (A).

Where tenant is not in possession.

The form prescribed by this section commences with the words—"Whereas the defendant (or one of the defendants) holds" (part of the lands, &c); "as *tenant thereof to the plaintiff.*" This form, which is the same as that at present in use (see County Court Rules, 1890, Form 3), when read along with the words "provided a tenancy between the parties shall appear to exist," in Sec. 53, was held by Judge Waters in *Bagwell v. Kennedy*, 18 I. L. T. R. 35, to require that the process should name as defendant the person with whom the contract of tenancy is alleged to exist, even though he is not in possession of the lands. In *M'Carthy v. Connors* (28 I. L. T. R. 137), however, the Exchequer Division appear to have decided the contrary, holding that a tenant who was not in possession, and whom, therefore, it was not necessary to serve under Sec 55, need not be named as defendant in the Civil Bill process. As to the rule in the Superior Courts, see notes to Sec. 53, *ante*.

In *Malton v. M'Guire*, I. R. 11 C. L. 4, it was held that although the form of civil bill process in ejectment for overholding, prescribed by Sec. 72, *post*, averred a demand of possession, it was not necessary that such should be made. The form now in use omits this averment (see County Court Rules, 1890, Form No. 6)

Meaning of "Rent then due"

(a) "Due" means here, apparently, recoverable at law; so that in ascertaining the amount of rent due under this section, the court should not include any arrears which are barred by the statute of limitations. *Watt v. Malsed*, 28 I. L. T. R. 79 (Exch. D.), *Twybill v. McGranaghan*, 27 I. L. T. R. 63 (C. C.). See also judgment of LEFROY, C.J., *Percival v. Dunne*, 9 I. C. L. R., at p 444. If, therefore, the lands are held under a parol letting or an agreement not under seal, only six years' arrears can be recovered (C. L. P. Act, 1853, sec. 20). If they are held under a lease by deed it would appear to be doubtful whether twenty years' or only six years' arrears are so recoverable. In *Percival v. Dunne*, 9 I. C. L. R. 422, the Court of Queen's Bench was equally divided on this question.

Amount of rent to be paid on restitution.

The amount of rent due is to be ascertained, apparently, for the purpose of restitution under Secs. 70 and 71, *post*. As, however, now, by Land Act, 1896, sec. 16, a tenant of any agricultural holding within the Land Acts, may redeem on payment of two years' arrears, whatever amount may be due, the question of what rent is barred by the Statutes of Limitation in an ejectment for non-payment of rent, is not of much consequence, except in the case of holdings excluded from the Land Acts.

Who to be served with summons and process in ejectment.

55. In any ejectment for non-payment of rent brought by any landlord under this Act, it shall not be necessary to serve *with the*

*The words in italics are repealed by Stat. Law Rev. Act, 1893 (No. 1).

*summons and plaint in ejectment, or** with civil bill process, any ^{Sects 55-56} person other than the person or persons in the actual possession (a) of the lands as tenant or under-tenant.

An action in the Superior Courts is now always commenced by writ of summons (See Rules of Supreme Court, 1891). Order IX., rule 12, as to service, is to the same effect as this section. Any person served with the writ may appear within 10 days of service (Order XII., rule 16). But an appearance cannot be entered after that time without leave (Order XII., rule 17). As to appearance by sub-tenants in ejectments for agricultural holdings, see now Rules of March, 1897, Order XII., Rules 22a and 22b, *post*. (Made under Sec. 12 of Land Act, 1896.) A person not named as defendant, or served, may, by leave of the Court, appear and defend (Order XII., rule 18).

Where a person who is not named as defendant has been served with the writ, in an ejectment for non-payment of rent, the judgment and *habere* are valid against him notwithstanding the omission to describe him by name in the writ *Russell v. Moore*, 8 L. R. Ir. 318. As to who should be named as defendant, see notes to Sec. 53, *ante*.

(a) "Actual possession" appears to mean *occupation*; so that a middleman in receipt of rents only, but not in occupation of any part of the premises need not be served: *Bagwell v. Kennedy*, 18 I. L. T. R. 35, *McCarthy v. Connors*, 28 I. L. T. R. 137.

56. Service of the *summons and plaint or** civil bill process in ejectment for non-payment of rent on any person in the actual possession as tenant or under-tenant of the premises sought to be recovered, or any part of them, shall be effected either by personal service of the *summons and plaint or** civil bill process on such tenant or under-tenant at any place in Ireland, or by leaving a copy thereof with the wife, child, father, mother, brother, or sister of the party, or with any servant or clerk of the said party at his dwelling house or office or place of business (the person with whom such copy shall be left being of the age of sixteen years or upwards), or in such other manner as shall appear to the Court or Judge thereof* to be sufficient.

See Rules of Supreme Court, 1891, Order IX., rule 14, which is to the same effect as this section. Under the Rules previously in force it was held that the mode of service of writs in ejectments for non-payment of rent was regulated by this section, which was not impliedly repealed or affected by the Rules made under the Judicature Act, and that, therefore, personal service was not necessary *Hudson v. Lindsay*, 6 L. R. Ir. 420, 14 I. L. T. R. 51.

The original writ should, at the time of service, be shown to every person upon whom it is necessary to serve it *per HUGHES, B., Trench v. Mulligan*, I. R. 5 C. L. 50.

The person serving the writ should, within three days after service, indorse upon it the day of the month and week of service (Order IX., rule 16). But the Court

*The words in italics are repealed by Stat. Law Rev. Act, 1893 (No. 1).

Sects. 56-58 may give leave to amend the indorsement of service, if made within the proper time: *Cornwall v. Bradshaw*, 22 L. R. Ir. 67; *Kyne v. Murphy*, I. R. 2 C. L. 35.

Civil bill processes in ejectments must be served 15 clear days before the first day of the Sessions. 14 & 15 Vic., c. 57, s. 68. They need not be served by process-servers. *Ibid.*, Sec. 15.

Service where
no person in
possession.

57. In case there shall be no person in the actual possession of the premises as tenant or under-tenant on whom service of such *summons and plaint or** civil bill process in ejectment can be effected, it shall be lawful instead thereof to affix a copy of such *summons or** civil bill process on some conspicuous part of the premises, and also on the usual place for affixing notices in the nearest market town to the said lands: Provided, however, that in such case, before any decree or judgment by default shall be given, the Court *or a Judge** shall be satisfied that there was no person in actual possession on whom other service might have been effected. Provided also, that in case of an ejectment for non-payment of rent reserved upon any lease of tithes, tithe rentcharge, or other ecclesiastical dues, (a) the Court in which the ejectment is brought may order service to be made by posting the ejectment upon the church door of the parish or union of parishes wherein such tithe, tithe rentcharge, or ecclesiastical dues are payable, and if there be no such church in the parish or union of parishes, upon some public and conspicuous place in the said parish or union.

Order IX., rule 15, of the Rules of the Supreme Court, 1891, is in similar terms to this section. Where the house was shut up, and there appeared to be no furniture in it, service under this section was held good. *Crosthwaite v. Galbraith*, 12 I. C. L. R., App. xlix. The Court may, besides making an order deeming the service good, give leave to mark judgment. *Shaw v. Warmington*, I. R. 3 C. L. 99, *Johnston v. Poyner*, 7 I. L. T. & S. J. 390.

(a) The last part of the section, referring to a lease of tithes, &c., seems to indicate that an ejectment for non-payment of rent may be maintained in respect of an incorporeal hereditament. See notes to Sec 1, *ante*, p. 3, and to Sec. 52, p. 101.

Judgment and
decree by
default.

58. In any ejectment for non-payment of rent brought in any of the Superior Courts of Law, when the tenant shall not take defence to the ejectment, the affidavit of the landlord, his agent, receiver, or clerk, stating the amount of rent due at the time of the bringing of the ejectment, over and above all just and fair allowances, shall be sufficient evidence of the amount due, and shall when the same amounts to or exceeds one year's rent entitle the landlord to judgment for the possession of the premises, provided an affidavit

*The words in italics are repealed by Stat. Law Rev. Act, 1893 (No. 1).

of the service of the summons and plaint in such ejectment shall ^{Sects. 58-59.} have been duly filed, according to the practice of such court.

This section applies, under the new practice, when no appearance is entered Order XIII., rule 9), or when the defendant makes default in delivering a statement of defence (Order XXVII., rule 8), or when he does not appear at the trial Order XXXVI., rule 27). In the case of agricultural holdings, an affidavit is now also required verifying the special indorsement on the writ in the form prescribed by the Rules of March, 1897 (see Order XIII., rule 9a, *post*, and App. A, part 1). But where a defendant by his statement of defence disputed the amount of rent due, though admitting that it was more than a year's rent, it was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the plaintiff was not entitled to judgment: *Curtin v. Adams*, 8 L. R. I. 66 (Q. B. D.), unreported on appeal (Murray & Dixon's Digest, col. 1292).

59. Every defendant in a civil bill ejectment under this Act shall be entitled to every defence at the hearing of such civil bill which he might have had at law or in equity. ^{Defence to civil bill.}

An equitable defence was made available in the Superior Courts by the C. L. P. Act, 1856, sec. 85 (see Bewley and Naish, pp. 350, 354). But the decisions upon that section as regards ejectments considerably restricted its application. Thus it was held that an agreement for a lease was a bad equitable defence to an ejectment for overholding, as the relief in equity in such a case would not have been unconditional: *Turner v. M'Auley*, 6 I. C. L. R. 248; *Deering v. Lawler*, 7 I. C. L. R. 333. Notwithstanding these decisions, however, the Court of Exchequer, in an ejectment upon the title, refused to set aside an equitable defence, stating that the plaintiff had agreed with the defendant that, in consideration of an increased rent, he would not terminate a tenancy during the defendant's lifetime: *Clarke v. Reilly*, 1 R. 2 C. L. 422. And in an ejectment upon notice to quit, where the defendant pleaded upon equitable grounds that he had entered under a parol agreement for a lease for a term certain and at a specified rent, and that he had performed all that he was bound to do, the Court refused to set aside the defence: *M'Carthy v. Barry*, 1 R. 9 C. L. 59.

A more liberal construction has been given to this section than to the 85th section of the C. L. P. Act, 1856. See *Nolan v. Dowd*, 9 I. L. T. & S. J. 182; and it would appear that a defendant in a civil bill ejectment for overholding can rely upon a parol agreement for a new lease, of which there has been part performance, as an equitable defence; or upon a right to renewal of a renewable lease which has expired. See *Dyott v. Massereene*, 1 R. 9 Eq. 149; *Ex parte Peyton*, 21 L. R. Ir. 371, and notes to Sec. 72, *post*.

But an equitable defence should not be confounded with a bad legal defence. Thus, where defendants pleaded that they continued in possession after the death of a tenant for life in lieu of emblements, and that, while they were so in possession, the plaintiffs represented to them that they were willing to demise the premises to them, and that, on the faith of such representation, they made improvements on the lands, it was held that such a state of facts would either establish a tenancy between the parties which would be a legal defence, or be no defence at all, and that it was bad as an equitable defence: *Kenna v. Brien*, 1 R. 6 C. L. 307. See also *Meath v. Cuthbert*, 10 I. L. T. R. 145.

In an ejectment for non-payment of rent in the County Court a defendant would set off.

Sects. 59-60. probably be allowed now, since the decision in *Whitton v. Hanlon*, 16 L. R. Ir. 137, 19 I. L. T. R. 31, to rely upon a set-off, if sufficient to cover the whole amount of rent due, and connected in some way with the contract of tenancy. See as to set-off and counter-claim in an ejectment for non-payment of rent in the Superior Courts, notes to Sec. 52, *ante*, p. 107.

Mistake in lease. A mutual mistake in a lease, which, if rectified, would provide for the discharge of the rent due, would also appear to be a good equitable defence. See *Borrowes v. Delaney*, 24 L. R. Ir. 503. In *Carew v. Christopher*, 10 L. R. Ir. 38, 8 L. R. Ir. 252, a defence to an ejectment for non-payment of rent, alleging that, through mutual mistake of a lessor and a lessee, a bulk, instead of an acreable, rent had been reserved by the lease, that such acreable rent, at the stipulated rate per acre, would have been less by £45 than the rent expressly reserved, and that the defendant had paid all the rent reserved less the yearly sum of £45, was allowed to stand, though a counter-claim incorporating the same allegations was set aside.

Summons and process to state amount of rent claimed.

60. Every *summons and plaint in ejectment in the Superior Courts,** and civil bill process in ejectment in the court of the Chairman, for non-payment of rent shall contain or have endorsed thereon a statement of the amount claimed to be due by the landlord for rent after all just and fair allowances up to the time of the bringing of such ejectment, and the times at which such rent accrued due, (a) and that if the amount thereof, together with a sum for costs, not exceeding *in the case of such summons and plaint one pound ten shillings, and in the case of a civil bill process** ten shillings, be paid (b) to the plaintiff or his attorney or known agent or receiver within ten days (c) from the service of such *summons or** process, all further proceedings will be stayed; and upon payment or tender within the time so mentioned of the sum so claimed, and costs, to the plaintiff or his attorney or known agent or receiver, all further proceedings in respect of the rent then claimed shall cease and be stayed accordingly.

The requirements of this section were held to apply to the writ of summons under the new system of pleading, in the same manner as to the summons and plaint under the Common Law Procedure Act. *Lave v. Murphy*, 12 I. L. T. R. 68.

(a) It does not appear to be necessary to set out with excessive particularity the details as to the rent due. Before the passing of the Act it was held that the statement of a bulk sum "being for two years' rent up to 1st May, 1847," was sufficient. *Lord Ashtown v. White*, 11 I. L. R. 400. And similarly, where the particulars commenced with a broken sum, stated to be a "balance of an old arrear," it was held to be sufficient. *Bowen v. Cleary*, 10 I. L. R. 449. The first section of 9 & 10 Vic., cap. 111, under which these cases were decided, required the details of the rent due to be given in the same way as the present section requires. As to what amount of rent is recoverable in an ejectment for non-payment of rent, see notes to Sec. 54, *ante*, p. 110.

*The words in italics are repealed by Stat. Law Rev. Act, 1893 (No. 1).

The writ should also describe the property sought to be recovered, and the county and barony, or the city or town and parish in which it is situated, but any omission or error as to these matters does not render the writ irregular; it is merely a ground for an application to the Court for particulars (Order II., rule 7). The form of writ at present in use is prescribed by Order II., rule 5. It may be specially endorsed, by conforming to the requirements of Order III., rule 6, and must be specially endorsed in all cases of agricultural holdings within Land Act, 1896, sec. 12; such special endorsement to be in one of the forms prescribed by Rules of March, 1897, Order III., rule 6a (see these Rules and Forms, *post*).

Sects. 60-61.
Particulars as to
lands, &c

(b) The amount to be paid, in the case of agricultural holdings, is now limited to two years' rent. If more than that amount is due, the landlord can recover the balance by personal action (Land Act, 1896, sec. 16).

Where a defendant, within the 10 days limited, sent a bank draft payable on demand to the plaintiff's attorney for the amount due, it was held to be a sufficient payment within the section; and a judgment subsequently marked was set aside *O'Riordan v. Riordan*, I. R. 10 C. L. 547.

(c) The ten days allowed for payment by this section have been held to be exclusive of Sundays: *O'Riordan v. Riordan*, I. R. 10 C. L. 547. But the ten days allowed for appearance have been held by the Court of Appeal to be inclusive of Sundays: *Kcating v. Hanley* (15 I. L. T. & S. J. 138), *Dunn v. Kelly* (15 I. L. T. & S. J. 232), overruling the decision in the Court below (15 I. L. T. R. 20). See Rules of Supreme Court, 1891, Order LXIV., rule 2.

Ten days, how
computed.

61. It shall be lawful for any defendant in a civil bill ejectment for non-payment of rent disputing the amount of rent claimed to be due, at any time not later than three days before the day on which he is required to appear, to deposit with the Clerk of the Peace of the county a sum of money for rent, (a) together with the sum mentioned in said civil bill process for costs, for which deposit, on payment of the fee of one shilling and sixpence, the Clerk of the Peace shall give the defendant a certificate of the lodgment and duplicate, which duplicate shall be delivered to or left at the abode of the plaintiff, his agent, receiver, or attorney in the cause, not later than the second day before the day on which the defendant is required to appear; and in case the said plaintiff, or his attorney in the cause, shall receive such deposit from the Clerk of the Peace (which the Clerk of the Peace is hereby required to pay over to the plaintiff or his attorney on demand), such payment shall be in full discharge of the rent and costs claimed by the said civil bill; but in case the said plaintiff, after delivery of such certificate, shall not accept of the said deposit on or before the day next previous to the day on which the defendant is required to appear, exclusive of any Sunday, and it shall appear at the hearing of such civil bill that no greater sum was due for rent at the time of the service of such process than the sum so deposited as aforesaid, and

Where amount
disputed, lodg-
ment may be
made with clerk
of the peace

Sects. 61-62. that such duplicate was delivered as aforesaid, it shall be lawful for the Chairman to dismiss the said civil bill, with costs of the proceedings subsequent to the delivery of the said duplicate, and the plaintiff shall be entitled to the amount so deposited, reduced by the amount of such costs; and if it shall appear that any greater sum was due than the sum deposited, it shall be lawful for the said Chairman to ascertain the amount of rent actually due (*b*) at the time of the service of the summons in ejectment, and the sum so deposited shall be returned to the defendant, unless the plaintiff shall elect to take the same in lieu of the possession, (*c*) in which case the plaintiff shall be entitled to receive the same in payment of his rent, and to have a decree for his costs or for the balance of his rent and costs.

(*a*) In the case of holdings within the Land Acts, only two years' rent need now be deposited, where more than that amount is due: Land Act, 1896, sec. 16, *post*.

(*b*) "Due" here means "recoverable at law." It does not include arrears barred by the Statute of Limitations: *Watt v. Malseed*, 28 I. L. T. R. 79 (Exch. D.). See notes to Sec. 54, *ante*, p. 110.

(*c*) A special form of decree is provided in the County Court, where the plaintiff elects to take the sum lodged in lieu of possession. By it he obtains a decree for any balance of rent found to be due (see County Court Rules, 1890, Form No. 23, *post*).

Lodgment in court of rent, and undertaking to pay costs.

62. It shall be lawful for any defendant in any action of ejectment for non-payment of rent in any of the Superior Courts of Law, at any time before judgment or service of a notice of trial, to pay into court a sum of money for rent, (*a*) with an undertaking to pay the costs (*b*) then incurred when taxed and ascertained, and in case of non-payment to suffer final judgment to be marked, or an attachment to be issued against him; and thereupon the plaintiff, if he shall not accept of the said sum in full discharge of the action, with costs to be taxed by the proper officer, may proceed in the said action at his peril; and if upon the trial of the issue it shall appear that no greater sum was due for rent at the time of the service of the summons in ejectment than the sum paid into court, the verdict shall be entered for the defendant. (*c*)

Order XXII., rule 2, of the Rules of the Supreme Court, 1891, is almost identical in terms with this section, except that it requires that the leave of the Court or a Judge shall be obtained, if the money is lodged after the defence is delivered.

(*a*) If the holding is an agricultural one, within the Land Acts, only two years' rent need be lodged, where more than that amount is due (Land Act, 1896, sec. 16, *post*).

(*b*) *Quære*, whether the undertaking as to costs is necessary where the plaintiff is not entitled to costs under Land Act, 1861, sec. 51? See that section, *post*.

(c) The defendant, if he succeeds upon the issue, is only entitled to costs from the time of the lodgment of the money in court, for the 78th Section of the C. L. P. Act, 1853 (16 & 17 Vic., c. 113), does not apply to ejectments for non-payment of rent: *Lane v. Lane*, 4 I. C. L. R. 268; 7 Ir. Jur. O. S. 50. If money is lodged in court under this section, and the plaintiff does not accept it, he cannot, it would appear, subsequently discontinue the action and draw out the money without leave: *Spiller v. Coughlan*, 20 L. R. Ir. 321.⁶ In that case the plaintiff was allowed to discontinue after the close of the pleadings upon terms of paying to the defendant all costs incurred after the date of the lodgment, he being held to be entitled to the costs of the action up to that date: *Spiller v. Coughlan*, 20 L. R. Ir. 321.

A tender of the rent due *post diem*, but before action brought, is no ground for setting aside or staying the proceedings in an ejectment for non-payment of rent, for 11 Anne, c. 2, sec. 5, which conferred this right of tender, has been repealed by this Act, (Sec. 104), and the only course now open to a defendant is to lodge the rent in court under this or the preceding section: *Allen v. O'Callaghan*, I. R. 10 C. L. 23.

63. It shall be lawful for the defendant in any civil bill ejectment for non-payment of rent, or any other person having a specific interest (a) in the lease or other contract of tenancy, at any time before the decree for possession shall have been executed, to pay to the plaintiff, or his executor or administrator, or agent or attorney, in the said civil bill, all rent and arrear due at the time of the service of the ejectment, (b) together with the costs incurred, or a sum sufficient to cover such costs, or to tender the same, and in case such tender shall be refused, to deposit the money with the Clerk of the Peace of the County, for which lodgment a certificate and duplicate shall be granted in manner aforesaid, and thereupon it shall be lawful for the Chairman to order all further proceedings to be stayed and to cease, upon payment of such costs incurred up to the date of such tender, as he shall deem reasonable, and the money so lodged with the Clerk of the Peace shall be paid over to the plaintiff, or his executor or administrator or attorney, on demand: Provided that the decision of the Chairman shall be subject to appeal in like manner as if it were a decree or dismissal on a civil bill ejectment for non-payment of rent.

(a) As to what persons are considered to have a "specific interest in the lease or other contract of tenancy," see notes to Sec. 71, *post*, where the same words are used in reference to the right to restitution.

(b) Only two years' rent need now be paid in the case of agricultural holdings, where more than that amount is due: Land Act, 1896, sec. 16, *post*.

64. It shall be lawful for the defendant in any ejectment for non-payment of rent in any of the Superior Courts, or any other

Sects. 62-64.
Costs of issue.

Tender before
civil bill decree
executed.

Tender before
writ of habere
executed.

Sects. 64-65. person having a specific interest (a) in the lease or other contract of tenancy, at any time before the writ of habere facias possessionem shall be executed, to pay to the plaintiff, his executors or administrators, or his known agent or receiver, or to the attorney in the cause, all the rent and arrears due at the time of the service of the ejectment, together with the costs (b) or a sum sufficient to cover such costs, or to tender the same, and in case such tender shall be refused, (c) to lodge the money in court, and thereupon it shall be lawful for the Court, or a Judge thereof, to order all further proceedings to be stayed and to cease, upon payment of such costs incurred up to the date of such tender as the Court or a Judge shall deem to be reasonable; and the money so lodged in court shall be paid to the plaintiff, or his executor or administrator or attorney, on demand; and the defendant shall, notwithstanding any such payment, be at liberty to have the costs taxed and paid back, if disallowed, with the costs of the taxation, in case more than one-sixth shall be disallowed.

(a) The persons "having a specific interest in the lease, &c.," are those entitled to redeem under Sec. 71, *post*, where the same words are used.

(b) A tender of rent *without costs* would appear to be bad. See *Allen v. O'Callaghan* I. R. 10 C. L. 23. But two years' rent at most need be tendered in case of agricultural holdings. See Land Act, 1896, sec. 16, *post*.

(c) *Quære* whether the right to tender under this section could exist where the notice under Sec. 7 of the Land Act, 1887, had been served more than six months before the date of the tender, although a writ of possession had not been executed. See sub-section 3 of that section, *post*, and notes to Sec. 65 of the present Act.

Amount of rent to be endorsed on execution and payable to sheriff.

65. Upon every writ of habere facias possessionem (a) and warrant (c) under a decree for possession (b) in any ejectment for non-payment of rent, there shall be a statement of the amount of rent then due; (d) and if at any time before execution executed the defendant shall pay to the sheriff the sum so marked for rent and costs, (e) such sheriff shall stay such execution, and shall endorse on such writ, as a return thereto, the receipt of such rent and costs.

Different forms of writs of possession.

(a) The Rules of the Supreme Court, 1891, now provide three different forms of writs of possession in ejectments for non-payment of rent. The first (App. H, No. 5) for non-agricultural holdings, and others to which the Land Act, 1887, does not apply; the second (App. H, No. 7) to be used upon expiration of period of redemption after service of the notice prescribed by Sec. 7 of the Land Act, 1887; and the third (App. H, No. 8) to be used after the stay upon the execution of the judgment, which, in certain cases, may be imposed under Sec. 30 of the Land Act, 1887, has been removed (see these forms, *post*). Although Order XLVII., rule 13, provides, in similar terms to this section, that upon every such writ of possession there shall be a statement of the rent due, and that the defendant may stay the

proceedings by paying same and the costs at any time before execution, the form (No. 7) used under Sec. 7 of the Land Act, 1887, contains no such statement. It would appear, therefore, that as the right of redemption under Secs. 70 and 71, *post*, in such cases is at an end (Land Act, 1887, Sec. 7 (3)), this and the preceding sections do not apply to the case, and that there is no right to tender the rent and costs to the plaintiff or to the sheriff at any time after the period for redemption has expired.

Sect. 65.

There may be separate writs of execution for the recovery of possession and for costs (Rules of Supreme Court, 1891, Order XLVII., rule 12, *post*; C. L. P. Act, 1853, Sec. 209). The plaintiff does not waive his costs by issuing a writ of possession for the land: *Harold v. Daly*, 24 L. R. Ir. 412, 23 I. L. T. R. 58 (overruling *Basley v. Chapman*, 6 L. R. Ir. 393).

Separate execution for costs.

As to the time for which a writ of possession remains in force, and when and how it may be renewed, see notes to Sec. 95, *post*.

The sheriff upon executing a writ of possession is entitled to be paid (after execution) the sum of £2 6s. 2d., under 6 Anne, c. 7, sec. 4, and in addition 10s. under the G. O., Feb., 1885 (sch. item 6), less 2s. 6d., which, under sch. item 1, must be paid before execution. But this fee of 10s. cannot be demanded before execution of the writ: *Gibbon v. Buckley*, 24 L. R. I. 423.

It has been held by the Court of Appeal in *Earl of Listowel v. Kelly*, 17 I. L. T. & S. J. 285, overruling the decision of the Common Pleas Division, 17 I. L. T. R. 26, that the execution of a writ of *habere* in an ejectment for non-payment of rent is not a waiver of a notice to quit previously served, though the Court of Exchequer decided in *Hall v. Flanagan*, I. R. 11 C. L. 470, that a notice to quit served pending the proceedings in an ejectment for non-payment of rent was ineffectual to determine the tenancy, after the tenant had redeemed.

Effect of execution of writ of habere

As to the effect of the execution of a writ of *habere* upon the property in crops then growing upon the holding, see *Russell v. Moore*, 8 L. R. Ir. 319, 15 I. L. T. & S. J. 139, *Chester v. Farrell*, 17 I. L. T. R. 73, and notes to Land Act, 1870, Sec. 8.

As to the effect of setting aside a writ of *habere* upon the existence of the lease which has been evicted, see *Le Clerc v. Greene*, I. R. 8 Eq. 203, 7 Eq. 371.

If a plaintiff takes possession under a writ of *habere* of more lands than he is entitled to, it would appear that a writ of restitution may be issued to restore the defendant to possession of the portion wrongfully taken, *Rochfort v. Birmingham*, L. R. 7 C. L. 508, but in that case the application was refused on the ground of delay, as it was not made until a year and a half after the execution of the *habere*.

(b) In the County Court the decree for possession is both a judgment for possession and a writ of execution (see County Court Rules, 1890 and 1897, Orders XXIII. and XXIV., *post*). Only one form of decree is provided in ejectment for non-payment of rent. According as the holding is or is not agricultural in character, and is sublet or in the occupation of the immediate tenant. (See Forms 19, 19a, 19b, and 19c, *post*.) But the rules provide for a special memorandum to be endorsed thereon, if the case comes within Sec. 7 of the Land Act, 1887 (Order XXIV., rule 12), or within Sec. 30 of the same Act (Order XXIV., rule 13). In cases coming within the Land Act, 1887, the Clerk of the Peace ought not, it appears, to part with the possession of the decree "until the time shall have arrived at which the plaintiff is entitled to possession:" *per* PALLIS, C.B., *The Queen v. M'Grath*, 24 L. R. Ir. at pp. 403, 404.

Decrees in County Court.

(c) The "warrant under a decree for possession," referred to in this section, is

Sect. 65-66. not the warrant by the sheriff provided by 27 & 28 Vic., c. 99, but the old warrant to the sheriff which, under 6 & 7 Will. IV., c. 75, was a distinct document, but which is now embodied in the decree: *Gaffrey v. Bailey*, 17 I. L. T. R. 89.

Rent, when ascertained.

(d) "The amount of rent *then* due," which is to be endorsed upon the writ or decree for possession, is the amount due at the time when the rent was ascertained in court and not afterwards (*per* SULLIVAN, M.R., *Gaffrey v. Bailey*, 17 I. L. T. R., at p. 91); and a subsequent payment or discharge of portion of the rent due does not invalidate the warrant or render the sheriff liable to an action for executing it: *Gaffrey v. Bailey*, 17 I. L. T. R. 89.

(e) In the case of agricultural holdings within the Land Acts, only two years' rent need now be paid to the sheriff, where more than that amount is due: Land Act, 1896, sec. 16, *post*.

Remedy for rent not prejudiced by recovery of possession.

66. Every landlord recovering possession by such judgment or decree in any ejectment for non-payment of rent shall have the same remedy for all arrears of rent to the time of the execution of such judgment or decree (a) as such landlord might have had if possession had not been obtained under such judgment or decree (b).

When tenancy is determined

(a) The preservation of the landlord's remedy for his rent, by this section, "to the time of the execution of such judgment or decree," seems to imply that the tenancy is not determined until that event. This has been decided to be so by GIBSON, J., in the case of a holding which was not within the Land Acts: *Kennedy v. Gannon*, 1 N. I. J. R. 147; following a decision of the Court of Common Pleas under the repealed ejectment Statutes: *Bailey v. Mason*, 2 I. C. L. R. 582. A similar decision has been made by the Court of Appeal in the case of ejectment on title for the recovery of holdings within the 20th Section of the Land Act, 1881: *Montgomery v. O'Hara* (24 I. L. T. R. 2), affirming the decision of the Queen's Bench Division (22 L. R. Ir. 608). See also *Conroy v. Dragheda* [1894], 2 I. R. 590; 28 I. L. T. R. 59. But in *Russell v. Moore* (8 L. R. Ir. 318), which was decided before the passing of the Land Act, 1881, but which would still apply to holdings not within that Act, it was held that the plaintiff's title, upon execution of a writ of *habere* in an ejectment for non-payment of rent, related back to the commencement of the action. This would seem to imply that the tenancy was determined at latest at that date, and in *Hall v. Flanagan* (I. R. 11 C. L. 470), FITZGERALD, B., treated the tenancy as having been determined when the last gale of rent accrued due, in respect of which the ejectment was brought. See further upon this subject, judgment of GIBSON, J., in *Wilson v. Burne*, 24 L. R. Ir. at p. 37, and notes to Land Act, 1881, Sec. 20, *post*.

Remedies by action for rent and by ejectment distinct.

(b) As the remedy of the landlord for his rent by personal action is, by the express terms of this section, *not prejudiced* by recovery of possession under an ejectment, so his right to recover possession in ejectment for non-payment of rent is not prejudiced by his having previously obtained a personal judgment for the rent for the non-payment of which possession is sought to be recovered: *Wakefield v. Smythe*, 16 I. C. L. R. 173; 9 Ir. Jur. N. S. 391.

The remedies of the landlord by personal action for the rent, and by ejectment for the same cause, though distinct, may be combined in one action (Rules of Supreme Court, 1891, Order XVIII., rule 2), and, if judgment is recovered upon both causes of action, separate writs of execution may be issued for possession and for the rent (Order XLVII., rule 12). Where, however, possession on the ground of non-payment of rent only was claimed in the writ, and a statement of claim was

delivered claiming rent and mesne rates, and claiming a larger sum for rent than that endorsed upon the writ, it was held to be irregular: *Crosthwaite v. Smith*, 16 I. L. T. R. 103. But *quære* whether this would be so under the Rules of 1891, for a plaintiff may now in his statement of claim "alter, modify, or extend his claim, without any amendment of the endorsement of the writ" (Order XX., rule 3). Sects. 66-70.

67. (*As to writ of error. Repealed by Stat. Law Rev. Act, 1893.*)

68. Every decree or dismiss, or dismiss without prejudice, made or pronounced by any Chairman in any action or proceeding under this Act, shall be subject to appeal, and under the same restrictions and regulations as other cases of civil bills, unless so far as the said regulations shall be inconsistent with the provisions of this Act. Appeal from Civil Bill decree.

69. In any civil bill ejectment for non-payment of rent, in case there shall be a decree for possession pronounced by the Chairman therein, execution of such decree shall not be stayed by reason of any appeal, unless the defendant shall deposit with the Clerk of the Peace of the County the amount of the rent proved to be due on the hearing of such civil bill, and the costs thereof; and such deposit shall be in lieu of a recognizance in ordinary cases of appeal, and shall be disposed of as the Court shall direct. Appeal not to stay execution unless rent lodged.

Appeals from the County Court to the Judge of Assize are now chiefly regulated by Sec. 4 of 45 & 46 Vic., c. 29, commonly called Findlater's Act. See Dixon's Carleton's C. C. Practice, p. 1041, *et seq.*

The County Court Judge has power under the Rules to stay execution in all cases of decrees in ejectments (County Court Rules, 1890, Order XVII., rule 5). See *Sullivan v. Staples*, 14 I. L. R. Ir. 131. And a stay has been granted where the tenant sought to claim compensation for disturbance under Sec. 9 of the Land Act, 1870: *Revington v. Kelly*, 14 I. L. T. R. 34. But HARRISON, J., refused on appeal to put a stay upon an ejectment decree where the tenant had had a fair rent fixed, upon the ground that the non-payment of rent was a breach of a statutory condition: *Lanesborough v. M'Clean*, 17 I. L. T. R. 75, MacD. 382. There is also power to put a stay of execution upon a civil bill ejectment decree in certain cases under Land Act, 1887, Sec. 30. See that section and notes thereto, *post*. Stay of execution.

70. In case the defendant in any ejectment for non-payment of rent, and the persons interested in the lease or other contract of tenancy, (a) shall suffer a decree of possession or writ of habere facias possessionem to be executed, putting the landlord into possession of the premises, without paying the rent and arrears thereof, (d) with full costs, (e) or lodging the same in the Superior Court in which the ejectment was brought or, in case of a civil bill ejectment lodging the same with the Clerk of the Peace of the County within six Restitution to be applied for within six months.

Sects. 70-71. months after the execution of the said decree of habere or writ of possession, and also making an application to be restored to the said possession to the Court out of which such decree or writ shall have issued, or to a Judge thereof, within the said period of six months, or at the earliest opportunity after on which application can be reasonably made (c) (and of which application the landlord shall receive due notice), in every such case, or in case the said Court or a Judge shall upon such application, decline to make an order for restitution thereon, (f) the said defendant, and all other persons interested in the lease or other contract of tenancy, shall be debarred from all relief or remedy in law or in equity, other than by bringing an appeal from the said decree of the Assistant Barrister, or a writ of error to reverse such judgment of the Superior Court in case such decree or judgment shall be erroneous, and the said landlord shall from thenceforth hold the demised premises discharged from such lease or tenancy (g); provided that nothing herein contained shall affect the right of redemption now by law reserved to any existing mortgagee claiming under a duly registered mortgage (h).

Proviso.

As this and the following section must be read together, the notes to both have been collected together at the end of the latter. See next page.

Court may award restitution of possession in certain cases

71. It shall be lawful for the said Chairman, in case of any decree for possession for non-payment of rent, and for the said Superior Court of Law in which any such judgment in ejectment for non-payment of rent in favour of any landlord shall have been given and executed as aforesaid, or a Judge thereof, on the application of the defendant or any other person having a specific interest in the lease or other contract of tenancy, (a) and made within the period aforesaid, and after such payment or lodgment of the rent, (d) arrears, and costs (e) as aforesaid, to hear and determine in a summary manner the claim of such defendant to be restored to the possession of the premises so recovered, and to give such relief therein as a Court of Equity might have done, (f) and to award a writ of restitution, or to refuse such application; provided that the order or decision of a single Judge in chamber may be reversed or varied by the Court, and that it shall be lawful for any person aggrieved by any such order or decision of any Chairman to appeal therefrom to the next going Judge of Assize for the County, on payment of the costs already incurred, and entering into security by recognizance in the sum of three pounds to abide by the order of the

said Judge on such appeal, and such Judge of Assize shall, upon such appeal, have authority to make such order touching the application as shall seem to be just. Sect. 71

These two sections, as modified by Sec. 13, Sub-sec. 3 of the Land Act, 1831, and Sec. 7, Sub-sec. 3, and Sec. 30, Sub-sec. 2 of the Land Act, 1837, and Sec. 16 of the Land Act, 1896, now regulate the rights of tenants ejected for non-payment of rent to redeem their holdings. Formerly the remedy was by Bill in Equity, but that procedure has become obsolete since the passing of this Act. Persons entitled to redeem.

(a) The persons entitled to redeem are described in Sec. 71 as those "having a specific interest in the lease or other contract of tenancy." The same words are used in Secs. 63 and 64 in reference to the right to tender the rent and costs before execution of *habere*, so that the same persons have the right to take advantage of all these provisions. These are, in addition to the tenant himself, an assignee of his interest (*Yanston v. Greer*, 16 W. R. 86), even one who becomes such after the execution of the writ of possession or decree (*Brinckley v. Donohoe*, 11 I. J. N. S. 96), or one who has had assigned to him a part only of the demised premises: *Murphy v. Davey*, 14 L. R. Ir. 23, a sub-tenant (*Berney v. Moore*, 2 Ridg. Parl. Cas. 310), who must, however, if he redeems, pay the full rent and costs, not merely his own rent (*Malone v. Geraghty*, 1 H. L. C. 81, 5 Ir. Eq. R. 549, 3 Dr. & W. 239). But a sub-tenant's tenancy in an agricultural holding is not now affected by an ejectment for non-payment of rent of his immediate landlord, unless the non-payment of rent was due to the sub-tenant's default (Land Act, 1896, sec. 12, *post*). It seems doubtful, therefore, whether a sub-tenant of such a holding would now be entitled to redeem as formerly. The plaintiff in an administration suit of the estate of a deceased tenant is entitled to redeem by leave of the court, in the name of the personal representative: *Byrne v. White* [1835], 1 I. R. 185. Also, "a person having an equitable estate, or even an equitable lien, upon the premises comprised in the lease:" *per* PALLES, C.B., *Herbert v. Rae*, I. R. 9 C. L., at p. 544; but not one of the next-of-kin of a deceased tenant, notwithstanding that he was a defendant in the ejectment proceedings, *Herbert v. Rae*, I. R. 9 C. L. 539, nor a person claiming as heir-at-law of the owner of a freehold lease, if there is a will in existence, which has not been set aside, but which he alleges to be invalid: *Stavely v. Hedderman*, 14 I. L. T. R. 112. Assignees
Sub-tenants.
Representatives of deceased tenant.

Mortgagees are also entitled to redeem, *Nesbitt v. Tredennick*, 1 B. & B. 29; so also a judgment mortgagee, even if he did not register his judgment as a mortgage until after the execution of the *habere*: *Caulfeld v. Walshe*, I. R. 2 C. L. 492; similarly an equitable mortgagee by deposit of deeds, and any other person having an equitable interest in an evicted lease: *Malone v. Geraghty*, 1 H. L. C. 81; 5 Ir. Eq. R. 549; 3 Dr. & W. 239. But a mere judgment creditor who has seized under a writ of *fi. fa.* is not entitled to redeem, except with the landlord's consent: *Warnock v. Leslie*, 10 L. R. I. 68. Mortgagees

(b) Mortgagees, under 8 Geo. I., cap. 2, sec. 4 (Ir.), could redeem at any time within nine months of the taking of possession: *Nesbitt v. Tredennick*, 1 B. & B. 29, sec. 70, preserved this right in the case of mortgages executed before the 1st of January, 1861, and duly registered; although the 8 Geo. I., c. 2, is repealed by Sec. 104, *post*. It would appear to be doubtful, having regard to the words of Sec. 7, Sub-sec. 3, of the Land Act, 1837, "at the end of the period of six months from the service of the notice determining the tenancy all right of redemption in the holding shall be at an end," whether this right is still preserved in cases

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Substantial compliance with section sufficient. (c) "When a substantial compliance with the Act is shown, the tenant and the other persons interested in the contract of tenancy are entitled to the relief contemplated by the statute:" *per* HARRISON, J., *Holmes v. Flaherty*, 18 L. R. Ir. at p. 313. It is not necessary that the application for a writ of restitution should be actually made within six months; it is sufficient that the rent and costs should be paid or lodged within that period, and that the application should be made "at the earliest opportunity after, on which application can be reasonably made:" *Wybrants v. Crawford*, I. R. 1 C. L. 87; *Fitzmaurice v. Haughney*, 26 I. L. T. & S. J. 511; *Huntingdon v. Cowan*, 33 I. L. T. R. 124. Where the proper sum was tendered, but not accepted, within the six months, on an application made to the Court a short time after, it was held by the Common Pleas Division (MORRIS, C.J., *dubitante*) that a writ of restitution should issue (although the money had not previously been lodged), on payment into Court of the amount tendered: *Holmes v. Flaherty*, 18 L. R. Ir. 310. It is doubtful, however, how far this decision can now be relied upon. In *Hogg v. Smith* (32 L. R. I. 191), WALKER, C., and BARRY, L.J., both expressed strong doubts as to the correctness of the decision, and concurred in the remarks of MORRIS, C.J. It did not, however, become necessary to actually decide the question, as the Court held that the tender relied upon in the case then before them was informal and bad, and that the application for a writ of restitution should in any event be refused.

Time for redemption.

In computing the time within which the rent and costs should be lodged in Court the day on which the *habere* is executed is not included: *O'Farrell v. Cloran*, I. R. 5 C. L. 442. The sheriff's return is not conclusive evidence against a tenant of the date of the execution of the *habere*: *Fitzgerald v. Hussey*, 3 I. Eq. R. 319. But where a tenant had re-taken possession of a farm from which he was evicted under a decree in ejectment for non-payment of rent, and the decree was subsequently renewed and re-executed, the tenant was held to be estopped from disputing the legality of the original decree, and his time to redeem was held to run from that date and not from the date of the execution of the renewal: *Marsh v. Moreland*, 15 I. L. T. R. 112, MacD. 464.

The Court has power to enlarge the time for redemption, when the sale of a tenancy is delayed, under Sec. 13, Sub-sec. 2, of Land Act, 1881. See notes to that section, *post*.

The time for redemption in cases coming within Sec. 7 of the Land Act, 1887, is six months from the service of the notice prescribed by that section; and in cases where a stay is put upon the execution of a judgment or decree for possession under Sec. 30 of that Act, if default is made and a writ or decree executed more than six months after the recovery of the judgment, all right of redemption is at an end: Land Act, 1887, Sec. 30, Sub-sec. 3.

In cases of fee farm grants and mortgages.

In ejectments for non-payment of a fee-farm rent reserved by a grant made under the Renewable Leasehold Conversion Act (12 & 13 Vic., c. 105), the period for redemption by persons having an estate or interest in the lands forfeited is still nine months from the execution of the writ of possession, for Sec. 21 of that Act (see App., *post*), which allows that period, is not repealed or affected by the present Act: *Dennis v. Fosberry*, 22 L. R. Ir. 149. Mortgagees under mortgages existing on the 1st Jan., 1861, and duly registered, have also the right conferred by 8 Geo. I., c. 2, sec. 4, to redeem within nine months preserved to them by the concluding words of Sec. 70. But *quære* whether they have the same right under the 7th Section of the Land Act, 1887 (see that section, *post*).

(d) Now, it is not necessary in the case of agricultural holdings to lodge full rent, if more than two years' arrears are due. A tenant is entitled to restitution on payment or lodgment of two years' rent: Land Act, 1896, Sec. 16 (see that sec. and notes thereto, *post*). Sect. 71.
Amount to be lodged.

If additional rent has accrued since the execution of the judgment it is not necessary that this should be lodged. In *Trant v. Irwin*, 8 Ir. Jur. N. S. 309, the defendant lodged the amount marked upon the *habere* with costs, and the Court granted a writ of restitution upon his undertaking to pay such further sum as the Master should award for the subsequent gale of rent, allowance being made for the landlord's profits in the meantime. But the Court will not make an order for restitution unless the tenant pays or undertakes to pay any rent which has fallen due before the making of the order, even though it did not accrue until after the service of notice of motion. Time, however, may be allowed for such payment: *M'Dougall v. Nolan*, 15 I. L. T. R. 48. Rent subsequently accruing.

A defendant cannot take advantage of a payment by a third party not in privity with him to ground a claim for a writ of restitution *Busby v. M'Blaine*, 32 I. L. T. R. 92. Payment by a third party.

(e) As to costs, it has been held that in case of a judgment of ejectment for non-payment of rent in the Superior Courts of a holding let at a rent under £100 per annum, where the plaintiff is not declared entitled to costs under Sec. 51 of the Land Act, 1881, the defendant is not bound, in order to redeem, to lodge the costs in addition to the rent, but is entitled to a writ of restitution without paying them: *Sully v. Mandeville*, 10 L. R. Ir. 327. Nor is it necessary to lodge the sheriff's fee for executing a civil bill decree: *Taylor v. Willis* (unreported, but referred to in Dixon's Carleton's C. C. Practice, at p. 853). The costs of service of caretaker notice and posting summary under Sec. 7 of the Land Act, 1887, are not provided for by any Rules. A landlord is not entitled to claim them upon restitution: *M'Creary v. Harvey*, 28 I. L. T. R. 150. Costs of ejectment.

(f) The Court will not refuse to grant a writ of restitution merely on the ground that the party applying for it holds under an assignment that might be set aside in equity: *Vanston v. Greer*, 16 W. R. 86. Nor will it allow extrinsic considerations, such as the committal of waste, or breaches of covenants in the lease, to be brought forward by the lessor to affect the tenant's equity of redemption: *Swanton v. Biggs*, 2 Moll. 14; *Mulloy v. Goff*, 1 Ir. Ch. R. 27; *Hall and Singleton v. Doherty*, 11 I. L. T. R. 34.

For a form of order upon an application for a writ of restitution, see *O'Farrell v. Cloran*, I. R. 5 C. L. 442.

A reference is made to the Master, if required, to take an account of what the landlord has made, or without wilful default might have made out of the lands during the period he was in possession, but the landlord is entitled to set off against his profits all expenses actually incurred, including extra expenditure incurred by reason of his having been boycotted: *Chester v. Farrell*, 17 I. L. T. R. 73. Account to be taken.

The tenant has only, however, an equitable claim for an account as against the landlord in possession under a judgment or decree. "In the absence of unfair dealing or express stipulation, the redeeming tenant cannot enforce an account if he pretermits requiring it on the occasion of redemption . . . A tenant wishing to redeem, if he intends to claim credit against rent for profits received by the landlord, must agree with the latter as to the amount, and settle the account accordingly. If they cannot agree, the account and redemption must be carried out in Court. If, without saying anything as to an account or credit, he gets

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the landlord to accept rent and costs, and thereby redeems the eviction, by so doing he ought to be deemed to have waived any account" (*per GIBSON, J., Wilson v. Burne*, 24 L. R. Ir. at pp. 37, 38), so that a tenant cannot set off the supposed value of the landlord's profits during the period he was in possession against rent which accrued due after the restitution of the tenant to possession: *Wilson v. Burne*, 24 L. R. Ir. 14, 23 I. L. T. R. 73.

Costs of the application.

As to the costs of the application and order for restitution, these must ordinarily be borne by the tenant (see *per GIBSON, J., Wilson v. Burne*, 24 L. R. Ir., at p. 38), for the Court is to "give such relief therein as a Court of Equity might have done," and that was the general rule in equity (*Newenham v. Mahon*, 3 Ir. Eq. R. 304), and where an account is necessary the landlord is generally entitled to the costs of taking same *Brinckley v. Donohoe*, 11 I. J. N. S. 96. The 7th Section of the Land Act, 1887, however, provides that the application for restitution in cases within it, shall be "subject to power to the Court to award the costs thereof against the plaintiff (*i.e.*, the landlord) if the application became necessary by reason only of the unreasonable conduct of the plaintiff." Even prior to this Act the Court had jurisdiction to make the landlord pay the costs in a redemption suit, if it was his unreasonable conduct that rendered it necessary: *Malone v. Geraghty*, 1 H. L. C. 81, 5 Ir. Eq. R. 549, 3 Dr. & W. 239, *Vanston v. Greer*, 16 W. R. 86.

In *Fitzgerald v. Hussey*, 3 Ir. Eq. R. 319, a decree for redemption in an equity suit was made without costs being allowed to the landlord, he having within the six months refused a tender of the rent and costs of the ejection; and in *Newenham v. Mahon*, 3 Ir. Eq. R. 304, the landlord was actually ordered to pay to the tenant the costs of the suit subsequent to the order to lodge the money in Court, upon the ground of his unreasonable conduct towards the tenant. In giving judgment in that case, FOSTER, B., says, "It is, certainly, very unusual to make such a decree in a redemption suit, the general rule being that the tenant must pay the costs of the suit to the landlord, and that a mere mistake of the landlord as to his rights shall not dis-entitle him to costs. But I cannot admit that that rule applies to a case where the landlord, without any just cause or pretence, but merely for the purpose of working a forfeiture of his tenant's interest, refuses to accept of the rent and costs, and puts his tenant to the expense of an equity suit." (3 Ir. Eq. R., at pp. 315-6.)

So, also, under this Act, where there was no account to be taken, the landlord opposing the application was not allowed his costs: *Caulfield v. Walsh*, I. R. 2 C. L. 492. See, also, *Vanston v. Greer*, 16 W. R. 86.

Procedure in County Court.

As to the procedure in the County Courts upon an application for a writ of restitution, see Rules of 1890, Order XXIII., *post*. If the tenant seeks to charge the landlord with the profits of the lands while he was in possession, he must in the notice of application inform him that he will be called on to account for such (Order XXIII., rule 8). If the landlord intends to claim rent which has become due since the decree, he must give two days' notice to the party applying for restitution (Order XXIII., rule 6).

Nature of interest, pending redemption.

Forms of a notice of application for restitution and of a writ of restitution are provided by the Rules of 1890. See County Court Forms Nos. 50 and 51, *post*.

As to the nature of an evicted tenant's interest in the holding, pending redemption, it has been laid down, that it "is not, strictly speaking, an equity of redemption, it is no estate or interest, it is something even less tangible than an equity of redemption under a deed" (*per FITZGIBSON, L.J., O'Riordan v. Kelly*, 16 L. R. Ir. at p. 488), and such an interest consequently is incapable of being seized or

assigned by a sheriff under a writ of *feri facias*: *O'Riordan v. Kelly*, 16 L. R. Sect I. 263, 484.

The effect of a writ of restitution obtained on the application of the tenant or of any other person having a specific interest in the tenancy or fee-farm grant, evicted for non-payment of rent, is to vacate the judgment in ejectment and to set up the lease or grant and all interests derived thereout. When, therefore, the immediate lessee or grantee redeems, all sub-tenancies are restored, and this may take place, even against the will of the sub-tenants: *Lombard v. Kennedy*, 21 L. R. Ir. 201; *Sheridan v. Dawson*, 1 Jones, Ex. R., 256.

"Acceptance of the rent and costs in redemption has the same efficacy in reviving and restoring an evicted tenancy as a decree in a redemption suit" *per* GIBSON, J., *Wilson v. Burne*, 24 L. R. I. at p. 36. This form of redemption out of Court, or *in pais* as it is called in that case, has exactly the same operation as a decree in a redemption suit, by it the interest of the lessee is re-vested and continued as of his former estate "on the terms not only of payment of the rent and costs in the ejectment, but also that he is liable for and bound to pay all rent accruing after the rent in the ejectment, and is also given an account against the lessor or landlord for the rents and profits:" *per* JOHNSON, J., *Wilson v. Burne*, 24 L. R. Ir., at p. 28. This may be so, even where part only of the rent due is paid and accepted: *Thompson v. Templetown*, 27 I. L. T. R. 55. See also *Sheridan v. Dawson*, 1 Jones Ex. R. 256, *Kenmare v. Supple*, V. & S. 1, and *Hogg v. Smith*, 32 B. R. I. 191.

If a mortgagee who, under the concluding clause of Sec. 70, has a special privilege of redeeming within nine months, does so after the six months allowed for redemption to other parties has expired, the effect of the redemption is the same as in other cases, *i.e.*, the lease is set up not only for the benefit of the mortgagee, but also for that of the lessee and of all persons deriving under him. This was held by the House of Lords in *O'Reilly v. Fetherstone*, 4 Bli. Parl. Cas. N. S. 161, overruling the decision of Lord MANNERS to the contrary effect: *Nesbitt v. Tredennick*, 1 Ba. & B. 29.

Persons having a derivative interest who have redeemed a tenancy are salvage creditors upon it. The advances made by them are the first charge upon the tenant's interest, in priority to incumbrances of an earlier date: *Locke v. Evans*, 11 I. E. R. 52; and they are entitled to a decree for the sale of the estate in order to raise the amount they have paid, with interest: *O'Gran v. M'Swiney*, I. R. 8 Eq. 500, 624; *Warnock v. Leslie*, 10 L. R. Ir. 68. They may, also, recover the amount in a personal action against the persons primarily liable as money paid to their use. *Murphy v. Davy*, 14 L. R. Ir. 28; *Ryan v. Byrne*, 17 I. L. T. R. 102.

"Three conditions are necessary to constitute a good salvage payment. (1.) It must have had the effect of saving for the benefit of everyone interested property which would otherwise have been lost; (ii.) it must be made by a person having a charge on or an interest carved out of the estate of the ultimate owner of such property; (iii.) the salvager must make it voluntarily for his own advantage, and not in pursuance of an obligation or in the performance of a duty, or as the agent of another. Where these conditions exist, I am of opinion that neither a request from, nor notice to, persons having prior interests is required to give it priority" (*per* HOLMES, L.J., *In re Power's Policies* [1899], 1 I. R., at p. 27). A lessee, who has parted with the premises demised by the lease to an assignee, and who has been obliged to pay the rent under the covenant in the lease, has, accordingly, no lien, by way of salvage claim upon the premises. His

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Effect of failure to redeem. (g) If a tenancy is not redeemed within the period allowed, the whole interest in it is gone, "and the land as free from it as if it had never existed:" per MORRIS, C.J., *In re M'Carthy*, 19 L. R. Ir., at p. 379. Even where a sub-tenant who had undertaken to pay the head rent, fraudulently omitted to do so, it was held that this was so; and that a new lease taken out by the sub-tenant to himself was not a waiver of the forfeiture in favour of the mesne tenant: *Dowding v. Commissioners of Charitable Donations*, 12 I. Ch. R. 361. But it would appear that if a landlord desires to revive the tenancy after the period for redemption has expired he can do so. See on this point, *Land Act, 1881, Sec. 20 (2)*.

If a portion of lands not included in a judgment are wrongfully taken possession of under an *habere*, it would appear that a writ of restitution may issue to restore the tenant to possession of such portion, but the application must be made without unnecessary delay: *Rochfort v. Bermingham*, I. R. 7 C. L. 508.

Ejectment for overholding.
Overholding of tenements under one hundred pounds Civil Bill Ejectment.

72. If any tenant of any lands holden at a rent not exceeding the rate of one hundred pounds per annum shall neglect or refuse (a) to give possession of the same after the determination of his interest, either by notice to quit or otherwise, (b) it shall be lawful for such landlord to proceed by civil bill ejectment against such tenant and such other person, if any, as shall be in the actual possession of the said premises, *which civil bill may be according to the form No. 3 in the schedule (A) to this Act annexed,** (f) and thereupon to serve with civil bill process (d) such tenant (e) or other persons, and in the like manner as hereinbefore required in cases of ejectment for non-payment of rent, (g) requiring such persons to appear to answer the bill of the said landlord, praying to be put into possession thereof; and it shall be lawful for the Chairman, upon such civil bill and proof of the service or affixing of such process in manner aforesaid, and that the premises had been holden of the said landlord by the tenant, or the person under whom the party in possession derives, at a rent not exceeding the rate of one hundred pounds per annum, (c) and that the interest of such tenant has ended or determined by efflux of time, notice to quit or otherwise, to decree the said landlord to be put into the possession of the said premises.

Estoppel of tenant.

Although an ejectment for overholding, by the very nature of the case, implies that the relation of landlord and tenant between the parties has ceased to exist, still the principle that a tenant is estopped from disputing his landlord's title is held to be applicable in such cases: *London and North Western Railway v. West*, L. R. 2 C. P. 553. "And the estoppel which prevents a tenant denying his landlord's title extends to undertenants:" (per KEATING, J., L. R. 2 C. P., at p. 555). So that a plaintiff may recover in an ejectment for overholding, even though he has no title: *Ward v. Ryan*, I. R. 10 C. L. 17, Exch. Chamb., reversing Com. Pleas,

*The words in italics are repealed by Stat. Law Rev. Act, 1893 (No. 1).

Ir., 9 C. L. 51. But "a tenant is not estopped from showing that his landlord's estate has ceased:" *per* FITZGERALD, B., *Hayes v. Fitzgibbon*, I. R. 4 C. L., at p. 506. It is necessary, however, for him to show that it ceased since the commencement of the tenancy, otherwise the estoppel will apply: *London and North Western Railway v. West*, L. R. 2 C. P. 553.

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Although a tenant who has been let into possession of land by a lessor is estopped from disputing his lessor's title, third persons, not claiming possession of the land under the tenant, are not so estopped: *Tadman v. Henman* [1893], 2 Q. B. 168.

It appears to be necessary for a landlord in an ejectment for overholding to prove, not only the contract of tenancy and its expiration, but also that the possession of the defendant is in some way connected with the tenancy. In *M'Grath v. Dwyer* (12 L. R. Ir. 17), a plaintiff proved merely the execution of a lease and its expiration, and that she was heiress-at-law to the lessor. The original lessee was not a defendant, nor in possession at the time the action was brought. The Common Pleas Division held that this evidence was sufficient, and that the plaintiff was entitled to succeed upon the ground that it was not incumbent on her to connect by affirmative evidence the possession of the defendants with that of the lessee; but this decision was reversed on appeal. (Unreported. See Murray & Dixon's Digest, col. 789.)

Necessary proofs by landlord.

(a) No demand of possession is necessary before commencing an ejectment for overholding (*Malton v. M'Guire*, I. R. 11 C. L. 4; *Lord Talbot de Malahide v. Odium*, I. R. 5 C. L. 302), unless the tenant holds under a tenancy at will, in which case a demand may be necessary to determine the tenancy at will *Ward v. Ryan*, I. R. 10 C. L. 17, 9 C. L. 51. Although this section speaks of a tenant neglecting or refusing to give up possession, and the form of civil bill originally prescribed by it averred that a demand for possession had been made, it is not necessary even in the civil bill court to give evidence of any such demand (*Malton v. M'Guire*, I. R. 11 C. L. 4), and the form now in use omits that averment (County Court Rules, 1890, Form 6). See also Sec. 53, *ante*, p. 109.

Demand of possession.

(b) A tenancy may be determined in five different ways so as to give rise to an ejectment for overholding—

(1) By demand of possession, if the interest of the tenant be only a tenancy at will: *Ward v. Ryan*, I. R. 10 C. L. 17, 9 C. L. 51.

(2) By service of a notice to quit, if the tenancy be one from year to year, and not a "present tenancy," within the Land Act, 1881.

As to determination by notice to quit, see notes to Notice to Quit Act, 1876 (39 & 40 Vic., c. 63), *post*, and Land Act, 1881, Secs. 5 and 13, *post*.

(3) By forfeiture for breach of covenant or conditions (an ejectment for which has been held by MORRIS, J., to be one for overholding), *Lord Talbot de Malahide v. Odium*, I. R. 5 C. L., at p. 308. As to ejectments for forfeiture, see notes to Secs. 10, 18, and 43, *ante*, and to Land Act, 1881, Sec. 13 (3) *post*.

(4) By efflux of time, in the case of a lease for a term, which is not within Sec. 21 of the Land Act, 1881.

(5) By the death of the last *cestui que vie* in the case of a lease for lives, where there is no right to a renewal of the lease.

If an ejectment be brought upon the expiration of a lease for lives, the onus lies upon the landlord of proving the death of the *cestui que vie*, for the presumption of law is in favour of life: *Aylward v. Jones*, 18 I. L. T. R. 111; *Gill v. Manly*, 16 I. L. T. R. 57. Persons, however, who are absent for seven years, and unheard of for that period, are presumed to be dead: 7 Wm. III., c. 8 (Ir.); see

Presumption as to death of *cestui que vie*.

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App., *post*. But the Court or the jury is bound to consider the circumstances of the particular case, in order to see whether the presumption is rebutted, or rather whether it fairly arises (*M'Mahon v. M'Elroy*, I. R. 5 Eq. 1), "and the amount of emigration of entire families as well as of individuals has so greatly increased that the Courts must be much more cautious in applying the rule than they need have been formerly." *per* CHATTERTON, V.C., I. R. 5 Eq., at p. 12. The presumption of death is, therefore, in common-law actions, a question for the jury and not a subject of direction. *Nesbitt v. M'Manus*, 3 I. C. L. R. 600. And, in order to rebut it, it is sufficient to prove that letters have been received written by the person in question in reply to others addressed to him: *Crofton v. Smith*, 9 I. L. T. R. 120.

Quære whether the death of a *cestui que vie* in a lease would be a matter of pedigree as to which family reputation would be admissible evidence. See *Palmer v. Palmer*, 18 L. R. Ir. 192, 16 L. R. Ir. 357; *Haines v. Guthrie*, 13 Q. B. D. 818; *Bishop of Cork v. Porter*, I. R. 11 C. L. 94; and *Secretary for War v. Booth* [1901], 2 I. R. 692.

Although the law presumes the death of a person who has been unheard of for seven years, there is no presumption that he died at any particular date during that period: *Reg. v. Lumley*, L. R. 1 C. C. R. 196. If it be important to establish death at any particular date, this must be proved by evidence of some sort, as an ordinary matter of fact. *Nepean v. Doe and Knight*, 2 M. & W. 894; 2 Sm. L. C.; *Goods of Connor*, 29 L. R. Ir. 261.

The plaintiff, in an ejectment for overholding, may interrogate a defendant as to the date of the death of a *cestui que vie*, and also as to the family reputation on the subject. *Bead v. M'Jennett*, I. R. 6 C. L. 267. The Court will not, however, allow interrogatories to be delivered for the purpose of discovering a forfeiture:

Tenantry Act. *Browne v. Davis*, 2 L. R. I. 434.

If a lease contains a covenant for perpetual renewal the landlord cannot eject for overholding upon its expiration, even if the tenant neglects to take out a renewal unless he first demands the fines that are payable, and calls upon the tenant to renew the lease: 19 & 20 Geo. III., c. 30 (*App., post*). As to what is a sufficient demand within the Tenantry Act, see *Ex parte Peyton*, 21 L. R. Ir. 371. The tenant has a reasonable time within which to comply with the demand, the length of which depends upon the special circumstances of each case: *Dyott v. Massareene and Ferrard*, I. R. 9 Eq. 149. The Act, it has been held, applies to leases for terms of years which are renewable as well as to leases for lives, although the former are not directly within its terms: *M'Dermott v. Caldwell*, I. R. 10 Eq. L. 504. And also to renewable leases for lives, where no renewal fines are reserved, *Bond v. Slator*, 10 Ir. Ch. R. 472; for the Act was only declaratory of the equity to a renewal which existed long prior to it: *per* CHATTERTON, V.C., *M'Dermott v. Caldwell*, I. R. 10 Eq., at p. 509. It does not, however, apply to a covenant to renew during a limited period only, on the tenant nominating a new life within a specified time; and time is, in such a case, of the essence of the contract: *Hussey v. Domville* [1900], 1 I. R. 417.

As to how far a tenant under a renewable lease is bound to renew, where there is no covenant on the part of the lessee to do so, see notes to Sec. 21 of Land Act, 1881, *post*; *Pilson v. Spratt*, 25 L. R. Ir. 5, and *Ward v. M'Roberts*, 25 L. R. Ir. 224. A covenant may be implied on the part of a lessee to accept a renewal in such a case. *Foley v. Roland* [1898], 1 I. R. 311; *Hickey v. Ronayne*, 35 I. L. T. R. 208.

Procedure in actions in Superior Courts.

As to mode of service of writ, &c., in actions for recovery of land for overholding in the Superior Courts, see Rules of Supreme Court, 1890, Order IX., Rules 12

to 15. The writ need only be served upon the persons in actual possession of the lands as tenants or under-tenants (Order IX., Rule 12); in other actions for the recovery of land, it is necessary to serve also the persons in receipt of the rents and profits (Order IX., Rule 13). In case of vacant possession, service is effected by posting a copy of the writ upon the door of the dwelling-house or other conspicuous place (Order IX., Rule 15).

Sect. 72.

In cases of overholding, the writ may now be specially endorsed (Order III., Rule 6) and an order for final judgment obtained (Order XIV., Rule 1). The assignee of a landlord may obtain final judgment on motion for possession of premises overheld: *Kane v. Brownrigg* [1897], 2 I. R. 55; 2 I. W. L. R. 184 (Exch. D.); *Burgess v. M'Craith* (C. A.) (unreported); though the English practice appears to be different: *Casey v. Hellyer*, 17 Q. B. D. 97. The writ, however, in order to be specially endorsed should aver that a contract of tenancy existed between plaintiff and defendant: *Cullen v. Jackson* [1894], 2 I. R. 17 (note); 27 I. L. T. R. 81. As to motions for final judgment in ejectments for non-payment of rent, see note (h) to Sec. 52, *ante*, p. 104.

Final judgment

A tenant may set up as a defence to an ejectment for overholding "any defence at law or in equity." See Sec. 59, *ante*, and notes thereto, p. 113, and C. L. P. Act, 1856, Sec. 85. Such, for instance, as a parol agreement for a new lease, of which there has been part performance on his part: *M'Carthy v. Barry*, I. R. 9 C. L. 59; or the fact that the landlord has, by his conduct, created a new tenancy, as to which see notes to Sec. 3, *ante*, p. 7; *O'Keeffe v. Walsh*, 8 L. R. Ir. 184, 6 L. R. Ir. 348; and *Cusack v. Farrell*, 20 L. R. Ir. 56; 18 L. R. Ir. 494. A new tenancy is not, however, created by the payment and acceptance of rent after the death of a *cestui que vie* if both landlord and tenant are ignorant of the fact: *Hurly v. Hanrahan*, I. R. 1 C. L. 700; *Gill v. Manly*, 16 I. L. T. R. 57. See, however, *Nesbitt v. M'Manus*, 3 I. C. L. R. 600. And the mere promise of a new tenancy is not a good defence: *Kenna v. Brien*, I. R. 6 C. L. 307.

Defences to
ejectment for
overholding.

As to what amounts to a good equitable defence, see notes to Sec. 59, *ante*, p. 113.

"If a person claiming an interest in lands sought to be recovered in an ejectment file a defence in the name of another, who, although served with the ejectment, claims no interest in the premises, the Court has jurisdiction to set aside the defence unless the person really defending shall appear and carry on the defence in his own name:" *per* FALLES, C.B., *Bowen v. Barlow*, I. R. 9 C. L., at p. 58.

As to the effect of the overholding by a sub-tenant against the will of the lessee, see *Henderson v. Squire*, L. R. 4 Q. B. 173; *London and North Western Railway v. Hill*, 12 L. R. Ir. 140, 17 I. L. T. R. 70, and notes to Sec. 77, *post*.

A landlord of licensed premises who obtains possession by ejectment for overholding is not an "assignee" of his previous tenant within the meaning of 6 Geo. IV., c. 81, or 18 & 19 Vic., c. 114, so as to entitle him to a transfer of the license: *Reg. (O'Brien) v. Chairman and Justices of Tipperary*, 6 L. R. Ir. 129, 4 L. R. I. 259, 4 I. L. T. R. 19.

(c) The County Court has jurisdiction under this section in ejectments for overholding in all cases where the rent does not exceed £100 per annum. In ordinary cases of ejectment on title it has only jurisdiction where the annual value of the premises does not exceed £30 (37 & 38 Vic., c. 66, Sec. 1, as extended by 40 & 41 Vic., c. 56, Sec. 53). An ejectment for overholding is, however, an ejectment on the title, and may, in a fit case, if commenced in the County Court, be removed into the High Court under 37 & 38 Vic., c. 66, Sec. 2: *Nolan v. Cullen* [1901], I. R. 628; 1 N. I. J. R. 80 (K. B. D.), 132 (C.A.), 35, I. L. T. R. 45.

County Court
jurisdiction.

(d) The process must be signed by the solicitor *propria manu*, or by his clerk in

Sects. 72-73. his presence: *Bridges v. Doyle*, 19 I. L. T. R. 63; *Dunne v. Mulrony*, 15 I. L. T. & S. J. 118; *Baird v. Kirk*, 9 I. C. L. R., App. iv.

(e) It has been held in County Court decisions that the tenant, whether in occupation or not, must be a party to the process: *Herbert v. Eager*, 2 I. L. T. & S. J. 7; *Shea v. Johnstone*, 2 I. L. T. & S. J. 575. But *quære* whether these cases are now binding, having regard to the decision of *M'Carthy v. Connors*, 28 I. L. T. R. 137. In the Superior Courts it is sufficient to name any person in actual possession of the property as a defendant (Order II., Rule 8).

(f) Although the form of civil bill process, prescribed by this section, avers that a demand of possession has been made, it has been held that such a demand is unnecessary even in a civil bill ejectment for overholding: *Malton v. M'Guire*, I. R. 11 C. L. 4. It was required by 14 & 15 Vic., c. 57, Sec. 72, now repealed. The new forms both of civil bill process and decree do not contain the averment. See County Court Rules, 1890, Forms 6 and 20. If lands are situated in two counties, ejectment may be brought in the County Court of either (Sec. 98).

Claim for part of the premises overheld.

A plaintiff may in the County Court confine his ejectment for overholding to portion of the premises formerly held under the tenancy. *King-Harman v. Armstrong*, 21 I. L. T. R. 48. Although if he claims the whole it appears that he cannot recover possession of part, having failed to establish his right to the whole: *Morony v. Morony*, I. R. 8 C. L. 174. And one tenant in common cannot recover his share of the premises in an ejectment for overholding in the County Court, though he can do so in the Superior Courts. *per* MORRIS, J., *Morony v. Morony*, I. R. 8 C. L., at p. 176.

(g) A tenant is entitled in the County Court to the same legal and equitable defences in an ejectment for overholding as in an ejectment for non-payment of rent (see Secs. 59 and 73).

A claim for rent or mesne rates may be joined in a process with a claim for possession for overholding: *Greville v. Kirk*, 10 L. R. I. 41, County Court Rules, 1890, Order II., Rule 1. See, as to mesne rates generally, notes to Sec. 77, *post*.

Costs.

If a landlord brings an ejectment for overholding in the Superior Courts, which he might have brought in the County Court, he is not entitled to costs except by special order (*Land Act, 1881, Sec. 51*); and the rule is the same, even though a claim for mesne rates is joined with the claim for possession: *Greville v. Kirk*, 10 L. R. Ir. 41, MacD. 351.

If there is more than one defendant in a civil bill ejectment, the costs may be ordered to be recovered against any one or more by name, and not against the others (Sec. 90, *post*).

As to the time for which a decree for possession remains in force, and in what cases it can be renewed, see notes to Sec. 95, *post*.

Defence and Appeal in Civil Bill.

73. Every such civil bill ejectment for overholding shall be subject to the like defence and appeal as in case of a civil bill ejectment for nonpayment of rent, and it shall not be necessary to make any affidavit verifying the contents of any civil bill ejectment, whether for non-payment of rent or otherwise.

See Sections 59 & 68, *ante*. This section repeals Sec. 83 of 14 & 15 Vic., c. 57, so far as the latter requires an affidavit verifying the contents of a civil bill ejectment to be filed in any case. By Sec. 104, *post*, the latter Section is repealed, so far as it relates to proceedings between landlord and tenant, but the present section applies to all ejectments whether between landlord and tenant or otherwise: *Shuter v. M'Curdy*, I. R. 8 C. L. 577.

74. (*Repealed. Stat. Law Rev. Act, 1893. No. 1.*)

Sects. 74-75.

Security from
overholding
tenant in
ejectment

75. In any case in which the term or interest of any tenant under any lease of any lands for any term or number of years certain, or from year to year, or at the will and pleasure of the parties, shall have expired, or shall expire or be determined by notice to quit, given either by the landlord or the tenant, and such tenant, or any one holding or claiming by or under him, shall refuse to deliver up possession accordingly, after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord shall proceed by action of ejectment for the recovery of the possession of the premises, it shall be lawful for him, at foot of the summons and plaint, (c) to address a notice to such tenant or person of an application to the Court in which the action shall be pending, that the defendant be required to find bail for such purposes as are hereinafter mentioned; and upon the appearance of the party on such motion, (d) or in default of such appearance, on making the usual affidavit of the service of the summons and notice, it shall be lawful for the landlord producing the lease or other instrument regulating the terms of the tenancy, or some counterpart or duplicate thereof, and proving the execution of the same, and that the premises have been actually enjoyed under such lease or instrument in writing, (a) and that the interest of the tenant has expired or been determined by a regular notice to quit, and that possession has been lawfully demanded, to move the Court, or a judge thereof, that the tenant or other person shall, within six days from the date of such application, enter into a recognizance by himself and two sufficient sureties in a reasonable sum, conditioned to pay the costs and damages and mesne profits which shall be recovered by the plaintiff in the action; and it shall be lawful for the Court or a judge to make such order thereon as shall seem to it to be just; (b) and in case the tenant or other person shall refuse or neglect to comply with such order within the period aforesaid, then, upon an affidavit of the service thereof, the plaintiff shall be at liberty, notwithstanding any defence or demurrer filed by such defendant, to enter up judgment in ejectment for the recovery of the possession of the premises and his costs of suit.

Rules were made, and a form of notice prescribed, under this section by General Order of 29th May, 1863. (See Bewley and Naish, C. L. P. Acts, App. lxxi.) But

Rules as to
security for costs.

Sects. 75-76. these appear to have been repealed by the Rules of the Supreme Court, 1891 (see App. R.), unless they are preserved by Order LXXXV., Rule 2, which provides that where no other provision is made, the present procedure and practice remain in force. The Rules of 1891 contain no reference to this section, but Order XXIX. deals with security for costs generally, and would probably be held to apply, if an application were made under this section. Such applications have, however, recently been seldom made, and they are not likely to be revived, now that an order for final judgment may be obtained in an ejection for overholding under Order XIV., Rule 1.

It has been held that an order will not be made to compel a defendant to give security for costs under this section, where there is a *bona fide* question of title to be tried (*Pentland v. Murtagh*, 12 I. C. L. R., App. xi.), or where it is not clearly shown that title of the lessor has become vested in the plaintiff: *Armstrong v. Massy*, I. R. 5 C. L. 325.

The section applies only where the tenant's interest has absolutely determined, and not to a case of alleged forfeiture for breach of covenant: *King v. Williams*, 16 I. C. L. R., App. vi.

(a) The tenant must have held under a lease or agreement *in writing*: *Vernon v. Jordan*, 12 I. C. L. R., App. xiv. But a written agreement to take premises for three months is within this section: *Lord Dunsandle v. —*, 12 I. C. L. R., App. xv. The agreement or lease must be signed by the landlord, as well as by the tenant, to bring the case within the section: *Domville v. Brack*, 16 I. C. L. R. 167, 9 Ir. Jr. N. S. 266. And the lease or counterpart thereof must be actually produced at the hearing of the motion: *Bell v. Bell*, 13 I. C. L. R., App. xlviii., 8 I. J. N. S. 152; *Eyre v. Conran*, 7 I. J. N. S. 325.

(b) As the power to compel security for costs to be given under this section is discretionary, it appears that it will not be exercised by the Court where the terms of the lease are oppressive: *Domville v. Brack*, 16 I. C. L. R. 167, 9 Ir. Jr. N. S. 266.

(c) The notice prescribed by the section must be at the foot of the writ and upon the same paper: *Meehan v. Duane*, 16 I. C. L. R., App. viii., 11 Ir. Jur. N. S. 35.

(d) The application was required by the Rules of 1863 to be on notice, given for a day certain (*Stannus v. Keshan*, 7 Ir. Jur. N. S. 264), and served six clear days beforehand (Rule 2). An application to discharge the motion was also required to be on notice: *Aird v. Kirby*, 7 Ir. Jur. N. S. 264.

Action for
double rent for
overholding.

76. In case any tenant (a) of any lands, or any person who shall come into possession by or under or by collusion with such tenant, shall wilfully (b) hold over any lands or premises, or part thereof, after the determination of the tenancy, whether by notice to quit given by the landlord or by the tenant, or otherwise, and after a demand of the possession made in writing by the landlord or his agent, such tenant or other person shall pay to the landlord for such time as he shall so hold or keep the possession double the rent (c) or sum which he should otherwise have paid, to be recovered at the same times and in the same manner as the single rent or sum could have been recovered during the term.

(a) Where a tenant of stores under a three months' tenancy was served, on expiration of his tenancy, with a demand for possession, stating the intention of

the landlord to make a daily charge for grain stored therein, and to claim damages Sects. 76-77 for the period during which the premises were overheld, *FITZGERALD, B.*, held that he was liable to pay double rent under this section: *Beck v. Creggan*, 13 I. L. T. R. 79.

As to the liability of a tenant for overholding by his under-tenant, see notes to Sec. 77, *post*.

(b) A tenant holding over after his lease has expired has been held not to be within the penalty imposed by 4 Geo. II., c. 28, Sec. 1 (Eng.), unless he holds over wilfully and contumaciously, and *with a consciousness that he has no right to do so*: *Swinfen v. Bacon*, 6 H. & N., 184, 846, 30 L. J. Ex. 33, 368. The English statute 4 Geo. II., c. 28, corresponds to 15 Geo. II. c. 8 (Irish); Sec. 9 of which, now repealed, is substantially re-enacted by this section.

(c) A claim for double rent under this section may be joined with an action for the recovery of land. (Order XVIII., Rule 2).

77. In case of any ejectment for non-payment of rent or for overholding any premises, in any of the Superior Courts of Law where the summons and plaint shall include a claim for rent or mesne profits, (b) the plaintiff, on proof of his right, may recover the possession of the whole or some part of the premises mentioned in the summons and plaint in ejectment and the rent or mesne profits claimed thereby, and also the further mesne profits thereof which might have accrued from the day to which the mesne rates claimed have been calculated, or from the day on which the rent for the non-payment of which the ejectment shall be brought fell due, to the day of such trial, (a) or some preceding day to be specified.

Mesne profits may be recovered in ejectment to the day of trial.

(a) This section applies only to cases in which the ejectment actually comes to trial. Where the defendant does not appear at the trial the plaintiff is entitled to a verdict without proof of his title, and can then give evidence of the amount of damages for mesne rates to which he is entitled, and have a verdict for same (Order XXXVI., Rule 26). But, *quære*, is it necessary for him in such a case, if he desires to recover mesne rates to the day of the trial, to give "proof of his right" to possession under this section?

(b) A plaintiff is not entitled to judgment for mesne profits in an ejectment in case of default, either of appearance (Order XIII., Rule 9), or of defence (Order XXVII., Rule 8: C. L. P. Act, 1853, sec. 201), even though a claim for mesne profits is joined in the writ; but he may proceed by a separate action to recover such. The judgment by default in the ejectment is evidence of the plaintiff's title against all who are parties or privies to it, but not against strangers: *Denn v. White*, 7 T. R. 112. It is also, apparently, *prima facie* evidence of the defendant's possession of the premises at the date of the writ, but not of his possession for the whole period during which the plaintiffs claim title: *Pearse v. Coaker*, L. R. 4 Exch. 92.

Judgment in default of appearance or defence.

The claim for mesne profits is a claim in tort, founded upon the wrongful possession of the defendant; it must, therefore, be shown that there was no consent on the part of the landlord to the defendant overholding. In cases of ejectment for forfeiture caused by assignment in breach of covenant, mesne rates can only be recovered from the date upon which possession was demanded; as, even though

Nature of mesne profits.

Sects. 77-7E. the assignment may have been void, possession under it up to that date, was at least lawful: *Meares v. Redmond*, 4 L. R. Ir. 533 (see p. 546).

The amount recoverable as mesne rates is the value of the premises for the period, usually measured by the rent: *Pearse v. Coaker*, L. R. 4 Ex. 92.

The costs of the action of ejectment may also be recovered: *Doe v. Filliter*, 13 M. & W. 47. And in certain cases, other special damage, such as that caused by deterioration of the premises. But such special damage must be specified in the statement of claim. See Cole on Ejectment, p. 830.

Against whom claim lies.

An action for mesne rates lies only against such persons as have been actually or virtually in possession of premises at the time when the plaintiffs were rightfully entitled thereto: *London and North Western Railway v. Hill*, 12 L. R. I. 140, 17 I. L. T. R. 70. But if a sub-tenant overholds, against the will of the tenant, even portion of the premises, the tenant is liable to the landlord for the value of the *whole premises* for the time he is kept out of possession, and for the costs of ejecting the sub-tenant: *Henderson v. Squire*, L. R. 4 Q. B. 170. This liability is, however, strictly speaking, a liability not for mesne rates, but for breach of contract to give up possession. (See judgment of JOHNSON, J., *London and North Western Railway v. Hill*, 12 L. R. Ir., at pp. 146-7). The personal representative of a deceased tenant is not personally liable for mesne rates, by reason only of a sub-tenant refusing to give up possession, although the assets of the deceased would, in such a case, be liable for breach of contract to give up possession: *London and North Western Railway Company v. Hill*, 12 L. R. I. 140, 17 I. L. T. R. 70.

In the County Court, a claim for mesne rates may be joined with a claim for possession in an ejectment for overholding. County Court Rules, 1890, Order II., Rule 1, *Greville v. Kirk*, 10 L. R. Ir. 41. This course is, however, seldom followed, as it is considered more convenient to issue separate processes for possession and for mesne profits.

Ejectment for deserted tenements.

Civil Bill ejectment for deserted tenements.

78. In case it shall happen that a half-year's rent shall be in arrear of any lands or premises holden under any lease or other contract of tenancy, or from year to year, and the tenant thereof shall desert or otherwise abandon such lands or premises, leaving the same unoccupied, or the lands or the greater portion of them uncultivated or unemployd, and without sufficient distress, contrary to the course of husbandry, or carry off the stock or crop thereof, it shall be lawful for the landlord thereof to proceed by civil bill ejectment before the Chairman of the county in which the lands or any part of them shall be situate, to recover the possession of them, *and such civil bill may be according to the Form No. 4 in the Schedule (A.) to this Act annexed*;* such landlord having first obtained a certificate of desertion in the manner hereinafter provided, and serving a copy of the same, together with such civil bill process, on the tenant against whom such proceedings shall be had, in the manner hereinbefore provided in respect of ejectments for non-payment of rent, requiring such tenant or other person to appear

*The words in italics are repealed by Stat. Law. Rev. Act, 1893 (No. 1).

to answer the bill of the said landlord, praying to be put into possession thereof; and it shall be lawful for the Chairman, on proof of the due execution of such certificate by any person who may have witnessed the execution of the same, and that one half-year's rent of the said premises was due to the landlord when such certificate was granted, and that such civil bill process and copy of such certificate were duly served in manner aforesaid, and upon hearing the tenant, in case he shall appear, and such evidence as he may offer, to decree the said landlord to be put into possession of the said premises. Sects. 78-79.

79. In case any lands or premises shall be deserted or abandoned by the tenant thereof, and the premises left unoccupied, or the lands or the greater portion thereof suffered by the tenant to remain uncultivated or unemploye, contrary to the course of husbandry, or the stock or crop thereof removed from the said premises, it shall be lawful for any two or more justices of the peace of the county in which such lands or premises or any part thereof shall be situate, and being in no way interested in the said lands or premises, at the request of the landlord thereof, or of his agent or receiver, to go upon and view the same between the hours of ten o'clock in the morning and four o'clock in the afternoon, and having fully ascertained to their satisfaction, by examination of witnesses or by their own view, that the premises are so deserted or abandoned by the tenant, and left unoccupied or uncultivated or unemploye, contrary to the course of husbandry, or that the crops or stock have been removed, to certify to the Chairman of the county, under their hands and seals, that they have together viewed the said premises, fully describing the same, and that the same appeared to them to be deserted and unoccupied or uncultivated or unemploye, contrary to the course of husbandry, or that the stock or crops have been so removed from the premises, and such certificate *may be according to the Form No. 5 in the schedule (A.) to this Act annexed, and** shall be evidence of the facts stated therein, unless the same shall be disproved to the satisfaction of the Chairman or the Judge of Assize on appeal. Certificate of
desertion.

The jurisdiction of the County Court in ejectments for deserted premises is unlimited.

For mode of service of civil bill processes, see Sec. 57, *ante*, p. 112.

*The words in italics are repealed by Stat. Law. Rev. Act, 1893 (No. 1).

Sects. 80-81.

Civil Bill
Ejectment
against Parties
signing Acknowledgment on
execution of
habere.

80. It shall be lawful for the Chairman of any county and he is hereby authorized to hear and determine by way of civil bill, within his jurisdiction, all disputes relating to the possession of lands or premises holden under any acknowledgment (a) made upon the execution of any writ of habere or civil bill decree between the plaintiff in any action of ejectment or civil bill ejectment, or any person claiming under him, and any occupier (b) who shall have signed such acknowledgment in the manner hereinafter provided, or any person claiming or deriving under him, and to make an order or decree for the delivery of the possession of the said lands to the party entitled thereto; and the civil bill process (c) therein shall be served upon every person in the actual possession of the lands claimed by such civil bill, and if there be no person in actual possession, then the same shall be served by affixing such civil bill on some conspicuous part of the premises, and also on the usual place for posting notices in the nearest market town to the premises.

Attornments and
acknowledgments.

(a) Sec. 94, *post*, provides for the signing of an "acknowledgment" or "attornment" by under-tenants or occupiers when a writ or decree for possession is being executed. Form No. 6 or No. 7 in App. A., *post*, should be used. An attornment differs from an acknowledgment in that it creates a tenancy between the sub-tenant or occupier and the plaintiff, which must be legally determined before possession can be recovered, but the acknowledgment, at most, creates a tenancy at will. In the case of an acknowledgment the writ or decree may be renewed, and again executed within six months (Sec. 95), so that it is only after that period has elapsed that a civil bill need be issued under this section. It does not appear that any demand of possession is necessary before proceeding under this section, although the form of acknowledgment seems to create a tenancy at will. See Sec. 53, *ante*, p. 109.

(b) It appears to be doubtful whether an acknowledgment can properly be signed by the *original tenant* against whom the decree has been obtained, so as to give the landlord the right to proceed under this section (see judgment of ANDREWS, J., *Corr v. Harris*, 23 I. L. T. R., at p. 83), though the signing of such a document by him would constitute a surrender by operation of law of the tenancy previously existing, and the creation of a new tenancy at will, upon the determination of which, the landlord could proceed by ordinary ejectment upon title: *Corr v. Harris*, 23 I. L. T. R. 82. (The head note of this case appears, however, to go further than is warranted by the judgments.)

(c) For form of Civil Bill in cases under this section, see County Court Forms of 1890, No. 10.

Cottier
tenancies under
this Act.

81. Where any landlord shall by any agreement or memorandum in writing let a tenement, wherever situate, consisting of a dwelling-house or cottage without land, or with any portion of land not exceeding half an acre statute measure, at a rent not exceeding the rate of five pounds by the year, for one month

or from month to month, (a) or in like manner for any lesser period of time, and shall thereby undertake to keep and maintain the said dwelling-house or cottage in tenantable condition and repair, (c) such tenancy shall constitute and be deemed to be a cottier tenancy (b) within the meaning of this Act, and shall be subject to the provisions hereafter contained in respect thereof. Sects. 81-84

The advantage to the landlord of creating a cottier tenancy is that he can proceed before the magistrates for recovery of possession, when he is entitled to same, and thus save the expense and delay of ejectment proceedings in the County Court (see Secs. 84, 85 & 86, *post*, and notes to Sec. 86).

The magistrates have also jurisdiction under the 15th Section of the Summary Jurisdiction Act, 1851 (14 & 15 Vic., c. 92), in ejectments for small tenements "situate in any city, town, borough, or village in which any fair or market is usually held," and let for any term not exceeding one month, at a rent not exceeding one pound per month (see Molloy's Justice of the Peace, p. 593, *et seq.*). By the 10th Section of 34 & 35 Vic., c. 76, this jurisdiction is extended to all towns or townships situate within the police district of Dublin metropolis, although no fair or market may be held therein. Ejectments for small holdings in towns.

(a) A tenancy from month to month is also within the jurisdiction of the magistrates under the 15th Section of the Summary Jurisdiction Act, 1851: *Blue v. Fullerton*, I. R. 10 C. L. 233, 10 I. L. T. R. 138.

(b) By the Cottier Tenant, Ireland, Act, 1856 (19 & 20 Vic., c. 65), the magistrates have similar jurisdiction in the case of cottier tenements, wherever situated, if held under a written agreement in the form prescribed by that Act, at a rent not exceeding twelve shillings a month; but as the Act requires the proof at the hearing before the Justices that the tenement had a number of requisites at the commencement of the tenancy (Sec. 2), most of which are not usually found in Irish cottages, it has been seldom taken advantage of. Wherever the rent is under five pounds per annum, the simpler requirements of this section are usually preferred. Under both Acts the land occupied with the cottage must not exceed half an acre in extent (see generally as to this subject, Molloy's Justice of the Peace, p. 388, *et seq.*, and notes to Secs. 86 and 87, *post*). Cottier Tenant Act, 1856.

(c) An undertaking to keep a house thatched is not a sufficient undertaking to repair to make the tenancy a cottier tenancy within the meaning of this section: *Reg. (Connor) v. Justices of Londonderry*, 28 I. L. T. R. 92. As to the obligation of the landlord to repair a cottier tenement, see Sec. 83, *post*; see also Sec. 75 of the Housing of the Working Classes Act, 1890 (53 & 54 Vic., c. 70), referred to in notes to Sec. 41, *ante*, p. 76.

82. In case any such tenancy shall be determined by notice to quit, served by the landlord, the said landlord shall pay to the tenant a fair compensation for any crops which may be growing on the land belonging to such tenement, or any benefit accruing from the manuring of such land, to be recovered by civil bill process before the Chairman of the county or riding in which the premises may be situate, which civil bill proceeding shall be subject to the same right of appeal as ordinary civil bill actions now are or hereafter shall be. When cottier tenancy determined by landlord, compensation to be made for crop

Sects. 82-85. As to procedure under this section, see County Court Rules, 1890, Order VI., Rules 7, 8, and 10, *post*.

Cottier tenements to be repaired by landlord.

83. The landlord of such cottier tenement shall be bound to keep and maintain the dwelling-house in tenantable condition and repair; and in case it shall be proved that the said dwelling-house was, by the landlord's default, unfit for occupation by reason of the want of such repairs, no rent or compensation for the occupation of the said tenement during the time it shall continue in such state and condition shall be recoverable.

In ordinary cases of the letting of houses, there is no obligation upon the landlord to repair, and no implied contract that the house is fit for habitation: *Murray v. Mace*, I. R. 8 C. L. 396. But under Sec. 75 of the Housing of the Working Classes Act, 1890 (53 & 54 Vic., c. 70), where a house or part of a house is let at a rent not exceeding (in Ireland) £4 per annum, there is a condition implied in the letting that the house is, at the commencement of the tenancy, "reasonably fit for human habitation." See notes to Sec. 41, *ante*, p. 76.

Summary recovery of possession of tenements for waste.

84. In case any such cottier tenant, or any tenant for a shorter period of time than a month, or at will, or by sufferance, shall maliciously or wilfully injure or destroy, or permit to be injured or destroyed, any part of the premises holden by him, and which the landlord is bound to keep in repair, it shall be lawful for the landlord to make his complaint before any one or more Justices of the Peace for the County, not being interested in the said premises, at Petty Sessions, and such Justice or Justices shall summon the tenant before him or them, and hear and determine such complaint; and if it shall be proved to his or their satisfaction that such tenant committed or permitted such injury or destruction upon the said premises, the said Justice or Justices shall, by their warrant in writing, direct any person to be therein named as special bailiff on the part of the landlord to deliver possession of the said premises to the said landlord or owner; and such warrant shall be obeyed and executed by such special bailiff, who shall have full power and authority so to do.

Summary recovery of possession for non-payment of rent.

85. In case any gale of rent or compensation reserved or payable upon any such cottier tenement shall be in arrear for the space of forty days, (a) it shall be lawful for the landlord of the premises to exhibit his complaint in respect thereof before a Justice or Justices of the Peace in Petty Sessions, and to cause the said tenant to be served with a summons in writing, signed by a Justice or Justices having jurisdiction in the place in which the premises shall be

situate, to appear before two or more Justices at the Petty Sessions Sects. 85-86.
 or other place in which such Justices usually meet for the despatch
 of public business, to show cause why possession of the said premises
 should not be delivered up to his landlord, or his agent or receiver,
 and such Justices, or any two or more of them, shall, in the presence
 of such tenant, or on proof of the service of the said summons on
 the said tenant personally, or by leaving a copy of the same at his
 usual place of abode, determine the matter; and if it shall appear to
 the said Justices that at least one gale of such rent, over and above
 all just credits and allowances, and any valid set-off (b) claimed by
 the tenant, is in arrear for the space of forty days aforesaid, the said
 Justices shall cause their warrant to be prepared, directing possession
 of the said premises to be delivered to the landlord, and to be
 executed by any special bailiff therein named, and such warrant
 shall be obeyed and executed by such bailiff, who shall have full
 power and authority so to do.

(a) An ordinary ejectment for non-payment of rent cannot be brought under
 Sec. 52 in respect of a monthly or a weekly tenancy, even if a year's rent is
 due: *O'Sullivan v. Ambrose*, 32 L. R. Ir. 102; 27 I. L. T. R. 45 (Q. B. D.); *Batt v.*
Carr, 1 I. W. L. R. 22 (Exch. D.); overruling *Dale v. Conolly*, 22 I. L. T. R. 53.
 See also, *Wyse v. Lyons*, 21 I. L. T. R. 48.

(b) As to a tenant's right to set off generally in an ejectment for non-payment of
 rent, see notes to Sec. 52, *ante*, p. 107.

86. In case the term or interest of any tenant in any such Summary
recovery of
possession of
tenements
over-holden.
 cottier tenement shall have ended, or shall have been duly deter-
 mined by a notice to quit, and such tenant or any person by whom
 the premises or any part of them shall be then actually occupied shall
 neglect or refuse to deliver up the possession of the same, or in case
 any person shall have been put or shall be put into possession of
 any lands or premises by permission of the owner, as servant, herds-
 man, or caretaker, (a) and shall refuse or omit to quit and deliver up
 the possession of the premises, on demand made (b) by the owner
 thereof, or his known agent or receiver, it shall be lawful for the
 landlord or owner of the said premises, or his heirs, executors, or
 administrators, or his known agent or receiver, to cause the person
 so neglecting or refusing to quit or deliver up the possession to be
 served (c) with a summons in writing, signed by a Justice or Justices
 not interested in the said premises, but having jurisdiction in the
 place in which the premises shall be situate, to appear before two or
 more justices at the Petty Sessions, (d) town hall, or divisional
 justice room, or other place in which such Justices usually meet for

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the despatch of public business of such city, town, district, or other place, to show cause why possession of the said premises should not be delivered up to such landlord or owner, or his agent or receiver as aforesaid; and if the said tenant or occupier shall not appear at the time and place appointed, or if such tenant or occupier shall appear and shall not show to the satisfaction of such Justices reasonable cause why possession should not be given, (c) and shall still neglect or refuse to deliver up possession of the said premises, or such part of them as was in his actual occupation at the time of the service of such summons, to the said landlord or owner, or his agent or receiver, it shall be lawful for such Justices or any two or more of them, not interested as aforesaid, on proof being made before them of the holding or permissive possessions (*sic*), as the case may be, and of its end or determination, and the time and manner thereof, and where the title of the landlord shall have accrued since the letting of the premises, the right by which he claims the possession, to issue a warrant, (d) under their hands and seals, (e) to any person as a special bailiff (f) in that behalf, on the part of the landlord or owner, requiring and authorizing him, within a period to be therein named, and not less than seven or more than fourteen clear days (g) from the date of such warrant, to give the possession of the said premises to the said landlord, or his agent or receiver, and such warrant shall be a sufficient authority to the said bailiff to enter upon the said premises, with such assistants as he shall deem to be necessary, and to give possession accordingly: Provided that no entry shall be made under such warrant on any Sunday, Good Friday, or Christmas Day, or at any time except between the hours of nine in the morning and four in the afternoon (h): Provided also, that nothing herein contained shall prejudice or affect the right of any owner of property entrusted to the care of any servant or caretaker peaceably to resume the possession (i) thereof without process of law, if he shall so think fit.

Jurisdiction of
Magistrates in
ejectments.

Magistrates have jurisdiction to order the summary recovery of possession of tenements in the five following cases.—

- (1) Cottier tenements, wherever situated, held under written agreements at rents not exceeding £5 a year, which comply with the conditions laid down in Sec. 81, *ante*, when the tenancies have been determined by notice to quit.
- (2) Cottier tenements, wherever situated, held under written agreements, at rents not exceeding 12s. per month, where the agreements are in the form prescribed by 19 & 20 Vic., c. 65, and the conditions of that Act are otherwise complied with, and the tenancies have been duly determined by notice to quit.
- (3) Houses or parts of houses situated in any city, town, borough, or village, in

which any fair or market is usually held (14 & 15 Vic., c. 92, sec. 15), or in any own or township within the police district of Dublin metropolis, although no fair or market be held therein (34 & 35 Vic., c. 76, sec. 10), which houses or parts of houses are held for any term not exceeding one month, or from month to month (*Blue v. Fullerton*, I. R. 10 C. L. 233, 10 I. L. T. R. 138), at a rent not exceeding £1 a month, where the tenancies have been similarly determined by notice to quit (14 & 15 Vic., c. 92, sec. 15).

(4) Premises occupied by any servant, herdsman, caretaker, or other permissive occupier, who has been put into possession as such under this section, and from whom possession has been demanded.

(5) Premises occupied by persons who were formerly tenants thereof, but who have been converted into caretakers by service of the notice prescribed by Sec. 7 of the Land Act, 1887. The procedure, as to service of summons, &c., is slightly different in such cases from that provided for other cases under this section (see below and notes to Sec. 87, *post*).

(a) In the case of caretakers or other permissive occupants, whether under the Land Act, 1887, or otherwise, the County Court has also jurisdiction to order possession to be given up under 14 & 15 Vic., c. 57, sec. 82 (see Dixon's *Carleton's J. C. Practice*, pp. 776-9). A caretaker's agreement need not be stamped: *Reg. (Houlihan) v. Justices of King's County*, 6 I. W. L. R. 56.

Where a party served with an ejectment for non-payment of rent is put out of possession and afterwards re-admitted as a caretaker, he is estopped from disputing the regularity of the proceedings in the ejectment: *Ford v. Byrne*, 8 Ir. Jur. N. S. 65.

(b) The demand of possession required by this section need not be personally made either by the landlord or his agent. Where an agent signed a written demand of possession, which was personally served upon the caretaker by a bailiff who was authorised in writing to take over possession of the lands, it was held that there was a sufficient demand of possession to enable the Justices to issue a warrant *fassereens v. Bellew*, 24 L. R. Ir. 420, 24 I. L. T. R. 74. The demand and refusal of possession must both have occurred before the issue of the summons, and must be alleged in it: *Reg. (Houlihan) v. Justices of King's County*, 6 I. W. L. R. 56.

Demand of possession.

(c) As to the mode in which the summons should be served, see Sec. 87 and notes hereto, p. 145, *post*.

The summons under this section must be heard at Petty Sessions before two justices. A single Justice sitting at Petty Sessions has jurisdiction to issue a warrant for possession under 14 & 15 Vic., c. 92, sec. 15, in cases coming within that section: *Blue v. Fullerton*, I. R. 10 C. L. 233.

"The summary jurisdiction of magistrates is excluded, as a general rule, where it appears that a *bona fide* claim to title in lands is involved in the question submitted to their adjudication:" *per* MAY, C.J., *Reg. (Quinn) v. Justices of Tipperary*, 3 L. R. Ir., at p. 398.

Question of title.

But their jurisdiction is not ousted by a question of title, if that question of title is an essential element in the very matter which the magistrates are called upon to decide: *Reg. (Power) v. Justices of Tipperary*, 1 I. W. L. R. 173; and the mere allegation of a title by a person in possession as a caretaker is not sufficient to oust the jurisdiction of the justices. Thus, where an evicted tenant, who had been replaced in possession as a caretaker, alleged a subsequent agreement for a new tenancy, which was denied by the owner, it was held that the Justices had jurisdiction to determine, as a matter of fact, whether there was such an agreement: *Reg. (Quinn) v. Justices of Tipperary*, 12 L. R. Ir. 393. "The circumstances," says MAY, C.J.,

Sect. 86.

"that the occupier alleged a binding agreement for a subsequent tenancy could not, I think, deprive the magistrates of their jurisdiction in the case. It was for them to consider whether grounds were adduced in support of this alleged tenancy satisfactory to their minds. The jurisdiction under the statute having attached, it became the duty of the Justices to inquire into and determine upon the matters of fact alleged by the respondent as warranting his refusal to deliver the premises. The alleged agreement for a new tenancy in the present case was simply a question of fact alleged on one side, but denied on the other. Upon this question of fact I think the Justices were authorized to determine, even though it involved the creation of a new tenancy." 12 L. R. Ir., at pp. 398-9. See also *Ex p. Vaughan*, L. R. 2 Q. B. 114.

As to what remedies are available to the parties, if the magistrates act wrongly under this section, see notes to Sec. 100, *post*.

(d) Where a petty sessions district comprises parts of two counties, a Justice of one county may adjudicate as to lands in the other county, provided they are within the district: 14 & 15 Vic., c. 93, sec. 7 (4): *Reg. (Houlihan) v. Justices of King's County*, 6 I. W. L. R. 56.

The adjudication on the case by the Justices and the issuing of the warrant for possession need not necessarily take place at the same time. Where after a summons had been heard, the defendant's solicitor applied to have a case stated under 20 & 21 Vic., c. 43, and the Justices agreed to state it, and the defendant then neglected to proceed with the case, it was held by the Court of Appeal, affirming the order of the Queen's Bench Division that as there had been a final adjudication upon the summons at the hearing, although no warrant had been then issued, an application to sign a warrant was an application to do merely a ministerial act, consequent on the previous adjudication; and the Justices who had so refused to issue a warrant were ordered by writ of mandamus to do so: *Reg. (Byrne) v. Knox*, 22 L. R. Ir. 599.

Case stated
under 20 & 21
Vic., c. 43.

There is no appeal from the order of the Justices either granting or refusing a warrant. But either party may apply within three days after the hearing and determination of the case to have a case stated for the opinion of the High Court (20 & 21 Vic., c. 43, sec. 1). And the Justices, unless they consider the application frivolous, are bound to state a case accordingly (Sec. 2). For particulars as to the procedure in such cases, see *Molloy's Justice of the Peace*, p. 286, *et seq.* If the Justices agree to state a case upon the application of a defendant, their proper course is to make an order to put the landlord or owner into possession, but *not* to issue a warrant; for if they issue a warrant at once, as it only remains in force fourteen days in ordinary cases, and two months in cases under the 7th Section of the Land Act, 1887, it will probably be out of date before the case stated is disposed of. After the decision of the case stated, they have authority to enforce any order made by the Superior Court (20 & 21 Vic., c. 43, sec. 9); and if the case is not proceeded with by the appellant, they have also jurisdiction if they have previously made a final adjudication to issue a warrant subsequently: *Reg. (Byrne) v. Knox*, 22 L. R. Ir. 599.

(e) The warrant is to be issued by the Justices under their hands and seals. How far sealing is necessary to the validity of the warrant seems to be doubtful. In *Keppel v. Ryan* (20 L. R. Ir. 575), it was held that a warrant to a collector of Grand Jury Cess, which, by 19 & 20 Vic., c. 63, sec. 4, is required to be issued by the county treasurer under his hand and seal, was void until it was sealed, but this decision has been overruled by the Court of Appeal in *Grove v. M'Elhinney*, 30 L. R. Ir. 53.

(f) The warrant is directed by this section to be issued to a special bailiff. In cases coming within the 7th Section of the Land Act, 1887, the Justices may, at the request of the landlord, issue the warrant to the sheriff of the county instead of a special bailiff. See Sub-sec. 2 of that section, *post*. Sects. 86-87.
Warrants under
Land Act, 1887,
Sec. 7.

(g) In cases under Sec. 7 of the Land Act, 1887, the warrant may be executed within two months from the date of its issue, instead of fourteen days as here provided: Land Act, 1887, Sec. 7, Sub-sec. 2.

(h) The warrant must be executed on some day not a Sunday, Good Friday, or Christmas Day, after 9 a.m., and before 4 p.m. It must also be executed at least two hours before sunset (see 11 & 12 Vic., c. 47, sec. 1, App., *post*).

As to the power to put a stay upon the execution of the warrant, see Sec. 88, *out*, and Land Act, 1887, Sec. 7, Sub-sec. 2, and notes thereto, *post*.

(i) An owner who is entitled to possession is always entitled to enter peaceably, and he can do so. Even if he enters by force and with strong hand, no civil action can be maintained against him by a person who was previously in possession without title (*Beattie v. Mair*, 10 L. R. Ir. 208), though he may be liable to indictment under the statutes against forcible entry: 5 Ric. II., Stat. 1, c. 8; & 10 Car. I., c. 3, c. 13 (Ir.).

Where lands are in possession of the Court, and a person becomes caretaker under the Land Judge, delivery of possession on demand made may also be enforced by attachment: *Wren v. Stokes*, 27 I. L. T. R. 26.

87. Such summons as last aforesaid may be served either personally or by leaving the same with some person being in occupation (a) of such house or part of a house or tenement, and where the tenant of such house or part of a house or tenement shall not reside therein, by serving the same personally or by leaving the same at the place of abode of the tenant so holding over as aforesaid four clear days before the day appointed for the hearing of the matter of the said summons: provided that if the person so holding over cannot be found, (b) and admission into the premises so overholden cannot be obtained, and the place of abode of such person shall not be known, the posting of such summons on some conspicuous part of the premises so holden over shall be deemed to be good service of such person. Service of the
summons.

In cases coming within Sec. 7 of the Land Act, 1887, the summons may be served either in the way prescribed by this section, or by transmitting it by post as a registered letter, addressed to the person to be served, at his usual residence, at least seven days before the Petty Sessions. If the summons is sent by post, a copy must also be posted on the Petty Sessions or other Courthouse in the district, seven days before the day upon which the defendant is required to appear. (See Rules of Supreme Court, 1891, Order XLVII., Rule 9, *post*, and County Court Rules, 1890, Order XXIV., Rule 14, *post*).

(a) It has been held under the Summary Jurisdiction Act, 1851, that the Justices of Petty Sessions have no jurisdiction to make a decree for possession unless a summons has been served upon the occupier, even though the landlord was not aware of the circumstances under which he came into occupation, and had served a summons upon another person whom he had accepted and dealt with as tenant of the premises: *Reg. (Hennigan) v. Justices of Cork*, I. R. 9 C. L. 203. Occupier must
be served.

Sects. 88-89. (b) The words "cannot be found" (for service of summons), have been held, under 14 & 15 Vic., c. 92, sec. 15 (3), to mean "cannot after due diligence has been used be so found that the service contemplated by the section can be effected." They do not mean "cannot be found in Ireland:" *Blue v. Fullerton*, I. R. 10 C. L. 233.

Stay of execution of warrant on undertaking to give possession in fourteen days.

88. If any tenant so summoned to give up possession shall appear before the said Justices and give an undertaking (to be entered in writing by the clerk of the court) quietly and peaceably to deliver up, within fourteen days from the date thereof, the possession of the premises of which he is such tenant or occupier, in good order and repair to the landlord, or his agent or receiver, and in the meantime to pay all rent and arrears claimed by such landlord in respect of such tenement, in such case the said Justices shall not issue their warrant for giving up the possession until after the expiration of such period of fourteen days; and if the said tenant shall at the expiration of such period continue in possession otherwise than by permission of the landlord, or his agent or receiver, it shall be lawful for such Justices to issue their warrant for giving possession of the same forthwith, and such warrant shall be executed accordingly, without further notice to such tenant.

In the case of proceedings against caretakers under Sec. 7 of the Land Act, 1887, the Justices may also put a stay upon the issue of the warrant for any time not exceeding one month, by reason of illness or other sufficient cause. See Sub-sec. 2 of that section, *post*.

Irregularity in the Proceeding not to make a party a trespasser.

89. Where the landlord applying for such warrant has at the time of the granting of it some lawful right to the possession of the premises or of the part so holden over, the said landlord, or his agent or receiver, or other person acting on his behalf shall not be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may bring an action for such irregularity or informality, in which the damages alleged to be sustained shall be specially laid, and may, unless such party shall have tendered sufficient amends before the commencement of such action, recover therein full satisfaction for such special damage, with costs of suit; but in case such special damage laid as aforesaid be not proved, the defendant shall be entitled to a verdict, and in case the said plaintiff shall recover no greater sum than five shillings for such special damage, he shall be entitled to no greater sum for costs than the amount of the damages so recovered, unless the Judge before whom the cause is tried shall certify on the back of the record that in his opinion full costs ought to be allowed.

90. The Chairman, upon the hearing of any civil bill ejectment where there is more than one defendant, may, upon pronouncing his decree, order the costs of such proceedings to be paid by and recovered against any one or more of the defendants by name, and not against the other or others of them.

Sects. 90-94.
General Provisions
Costs may be awarded against one defendant in ejectment in civil bill court.

91. The Chairman shall in all cases of civil bill ejectment under this Act, upon request of either party or his attorney, tax the costs between party and party, and include the same in his decree or dismissal, and shall, at the like request, tax the costs between attorney and client; and no costs shall be recovered in respect of any proceedings in ejectment in the court of the Chairman, or preparatory thereto, unless the same shall have been taxed as aforesaid; and the said Chairman may examine upon oath, which oath he is hereby authorized to administer, any attorney seeking to establish a charge against his client as to all matters necessary to ascertain the right to such costs.

Taxation of costs in civil bill ejectment.

92 and 93. (*Repealed by 27 & 28 Vic., c. 99.*)

94. The sheriff or his officer or bailiff may, with the consent in writing of the plaintiff or his attorney, execute any writ of habere facias possessionem or civil bill decree for possession in ejectment, without removing from the possession of the lands or premises any under-tenant (a) or occupier (b) who shall at the time of such execution sign with his name or mark an attornment or acknowledgment, in or substantially according to the Forms No. 6 or No. 7 in the schedule (A) to this Act annexed, attested by such sheriff, officer, or bailiff, which attornment or acknowledgment shall be annexed to such writ or decree, and a copy thereof given to the plaintiff or his attorney, and such execution shall be as valid as if such persons were not in occupation, or as if such writ or decree had been executed in common form of law.

Habere and decree may be executed without disturbing possession of under-tenants.

Sections 92 and 93 are repealed by 27 & 28 Vic., c. 99, which provides that all decrees for possession of land are to be executed by the sheriff or his bailiffs, and by no other person (Sec. 19). Special bailiffs cannot be appointed to execute ejectment decrees (34 & 35 Vic., c. 99, sec. 5). The sheriff is bound to execute them within one month after they are delivered to him (27 & 28 Vic., c. 99, sec. 19).

Attornments and acknowledgments.

It is more usual, upon the execution of writs or decrees for possession, to get occupiers to sign attornments at nominal rents, rather than acknowledgments under this section. Why landlords prefer the former course, unless a substantial rent is stipulated for, it is difficult to see, for by an attornment a new tenancy is created, which must be regularly determined in the same manner as an ordinary tenancy, and fresh proceedings instituted if the landlord desires actually

Sects. 94-95. to resume possession; while an acknowledgment creates at most a tenancy at will, and if it is signed, a renewal of the writ of possession or decree may be obtained at any time within six months under Sec. 95. The persons who have signed the acknowledgment may also be proceeded against by the special form of civil bill ejectment provided by Sec. 80, *ante*, p. 138. And this proceeding may apparently be taken at any time, provided, of course, a title by the Statute of Limitations has not been acquired.

(a) A judgment for possession for non-payment of rent, in the case of an agricultural holding, does not now affect under-tenants, unless the non-payment of rent was due to their default, and the judgment cannot be executed against them. They become tenants to the plaintiff under Sec. 15 of the Land Act, 1881: See Land Act, 1896, Sec. 12, *post*.

(b) In *Corr v. Harris* (23 I. L. T. R. 82) a question was raised whether a civil bill decree in ejectment was properly executed where the *original tenant*, against whom the decree was obtained, signed an acknowledgment under this section. The Judges of the Exchequer Division, before whom the question arose, did not find it necessary to decide it; but they held that, at all events, an acknowledgment so signed constituted a surrender of the tenancy by operation of law, and the creation of a new tenancy at will between the parties, which latter tenancy, as being for temporary convenience, was not within the 69th Section of the Land Act, 1870, and did not require a notice to quit to determine it.

Sick person in possession.

If the sheriff, when he comes to execute a writ of *habere*, finds a sick person in occupation of portion of the premises, he may give possession of all the premises except the portion actually in the occupation of the sick person, and it appears that to do so would be a good delivery of possession, even though no attornment or acknowledgment be signed under this section: *Ulster Bank v. Woolsey*, 24 I. L. T. R. 65.

Where a writ of *habere* was returned by the sheriff in an ejectment for non-payment of rent, and the plaintiff moved to take it off the file upon the ground that full possession of the lands had not been given, it was held that the motion was unsustainable, and that the proper remedy was by action against the sheriff for a false return: *Keating v. Hanly*, 14 I. L. T. R. 49.

Renewal of the writ after such partial execution;

95. It shall be lawful for any plaintiff who shall have executed any such writ or decree as aforesaid without disturbing the possession of any under-tenant or occupier who shall have made such acknowledgment in the Form No. 7 aforesaid, and shall not have attorned as tenant in manner aforesaid, and for the heirs, executors, administrators, or assigns of such plaintiff, at any time within six calendar months after such execution of the writ or decree, on application to the Chairman or Court from which such writ or decree shall have issued, to obtain a renewal of the same, to be again executed at the cost of such plaintiff or his representative or assignee in common Form of Law, as to the whole or any part of the said lands, and such renewal shall be without prejudice to any right or interest vested in the said party by virtue of the first execution of the said writ or decree: Provided, however, that in case of

an ejectment for non-payment of rent no such renewal shall take place in case the tenant's interest in the lease or other contract of tenancy shall have been redeemed in the meantime. Sects. 95-96,

A writ of *habere* remains in force, if unexecuted, for one year only, but it may be renewed at any time before its expiration by leave of the Court (Rules of Supreme Court, 1891, Order XLII., Rule 21). If the application is made after the expiration of a year, the plaintiff must satisfactorily explain his delay: *Keogh v. Perse*, I. R. 5 C. L. 54. And he must satisfy the Court that no change has taken place in the position of the parties: *Shea v. M'Donnell*, 7 Ir. Jur. N. S. 366; *Moriarty v. Landers*, 17 I. L. T. & S. J. 635. Renewal of habere before execution.

The writ may also be renewed by leave of the Court after it has been executed, if it appears to be just that it should be re-executed (Order XLII., Rule 22). Such renewal will generally be allowed if possession has been forcibly re-taken: *Stacpoole v. Walsh*, 6 L. R. Ir. 444. But the application must be made promptly: *Smith v. Connell*, I. R. 1 C. L. 565. And upon notice: *Ganley v. Doyle*, 17 I. L. T. R. 100. In an exceptional case, it was granted two years after the writ was issued: *Ganley v. Doyle*, 17 I. L. T. R. 100. After execution.

The practice in the Exchequer Division, where possession was forcibly retaken, appears to have been to issue a writ of attachment against the party so taking possession, and not to renew the writ of *habere*: *Costello v. Costello*, 15 I. L. T. & S. J. 140 (referred to in *Stacpoole v. Walsh*, 6 L. R. Ir. 444).

A civil bill decree for possession of lands remains in force for one year from its date (14 & 15 Vic., c. 57, sec. 139). It cannot be renewed except for costs (*ibid.*), or where the defendant unlawfully retakes possession within six months after the execution of the decree (27 & 28 Vic., c. 99, sec. 44). Where the decree is made payable by instalments under Sec. 30 of the Land Act, 1887, it may, however, be executed after the expiration of a year. See notes to that section, *post*, and *Draper's Co. v. Bradley*, 22 L. R. I. 483, 22 I. L. T. R. 70. Renewal of civil bill decree.

96. In any case in which any such writ or decree shall have been executed as last aforesaid, and any such former tenant or occupier shall, within the said period of six months from the date of such execution without lawful authority, re-enter into or resume the possession of the said premises or any part of them, upon an application made to any Justice of the Peace of the county at Petty Sessions, and upon proof made before him to his satisfaction of the due service of a summons or notice of such intended application, and of the facts of such execution and unlawful re-entry, upon affidavit or on oath (which affidavit or oath such Justice is hereby authorized to take or administer), it shall be lawful for such Justice and he is hereby required to certify in writing under his hand that in his opinion in such case a sufficient cause had been shown for having the said writ or decree executed anew as to the part or parts of the premises of which the possession shall have been resumed as aforesaid, and upon the production of such certificate on the part of the plaintiff in such action or civil bill, or his heir, executor, administra- Fresh execution of writ on Justice's certificate.

Sects. 98-99. tor, or assignee, the writ or decree shall be executed anew by the sheriff or his special bailiff as to the part or parts of which the possession shall have been resumed as aforesaid.

*Registry of
decree or order
for ejection.*

97. The clerk of the peace of the county in which any civil bill decree shall be made under this Act shall, on the application of any person interested, and on payment of a fee of two shillings and sixpence, enter in a book to be kept in his office for that purpose a memorandum of any judgment or decree in ejection or order for restitution which shall be made under this Act, and also of any summary order for delivery of the possession of any lands or premises made by any Justice or Justices of the Peace under this Act, and of the return of any sheriff of the execution of any habere, decree, or order, which entry shall specify the names of the plaintiff and defendant, and of the lands recovered, and the nature and date of the decree or order, and the date of the execution thereof.

*Where lands are
situate in two or
more counties,
proceedings may
be taken in
either.*

98. In case any lands or premises respecting which any proceeding by way of civil bill shall be brought under this Act shall be situate partly in two or more counties, such proceeding by way of civil bill may be brought in any or either of them, and the sheriffs of the respective counties in which any part of such lands or premises shall be situate shall, so far as relates to the portion of the premises within their respective jurisdictions, execute such decree as may be made on delivery to each of them of a copy of such decree, signed by the Chairman who shall have made the same: Provided that where any lands shall be situate partly or wholly within a place which is a county of a city or county of a town of itself (except the county of the city of Dublin), the assistant barrister of the county at large and the Justices of the Peace of the said county at large shall have the same jurisdiction and exercise the like powers respecting such premises as if the same had been situate in the county at large.

See notes to Sec. 52, *ante*, p. 100. Local venues in the Superior Courts are now abolished by the Judicature Act, 1877, Sec. 33. See *Cussen v. Moloney*, 2 L. R. I. R. 188, 12 I. L. T. R. 65. As to the practice before that Act where lands held under one contract of tenancy were situated in different counties, see *Gray v. Lawder*, I. R. 8 C. L. 193.

*Where Chairman
interested, pro-
ceedings may be
taken in an
adjoining county*

99. In any case in which the Chairman of the county shall happen to be the landlord or tenant, or claim to be entitled to the possession of any lands or premises situate in any one or more than

one county, and the same or any part thereof shall be situate within his own jurisdiction, and he or any other person shall be desirous to institute proceedings in respect of the said lands or premises under this Act on behalf of or against such Chairman, such proceedings may be had in some adjacent county without the jurisdiction of the said Chairman, or in the county in which the other part of the lands are situate; and the Chairman of such adjacent county shall have the like jurisdiction therein as if the said lands or the entire of them were situate in the said adjacent county, and an appeal shall lie therefrom in the like manner, and any decree or dismissal shall be executed by the sheriff of the county in which the lands are situate, as if it were a decree of the Chairman of such county.

Sects.
99-100.

100. No action shall be brought or prosecuted against any Justice or other person hereby authorized, by whom any precept or warrant shall be issued or certificate shall be granted, nor against any constable or bailiff by whom such precept or warrant may be executed under and by virtue of this Act, by reason that the person on whose application the same shall be granted had not lawful right to recover the rent or the possession of the premises therein mentioned, or to prohibit the act therein prohibited.

No action against
Justice for
granting warrant.

A precept may be issued by any Justice of the Peace to restrain waste under Sec. 35, and a warrant for the summary recovery of possession of premises held by cottier tenants, servants, or permissive occupants, by two or more Justices at Petty Sessions under Sec. 85 or Sec. 86. See notes to those sections, *ante*, pp. 141 and 142.

The Justices Protection Act (12 Vic., c. 16) prevents any action being brought against a Justice of the Peace for any act within his jurisdiction, unless done maliciously and without reasonable and probable cause (Sec. 1), or for any act done without jurisdiction or in excess of jurisdiction, until the order has been quashed either upon appeal, or by the Queen's Bench Division upon *certiorari* (Sec. 2). See, generally, as to actions against magistrates, Molloy's Justice of the Peace, p. 470, *et seq.*

Justices Pro-
tection Act.

An order wrongfully made by Justices under this Act may, however, be quashed on *certiorari*. See *Reg. (Quinn) v. Justices of Tipperary*, 12 L. R. Ir. 393. And if Justices refuse to do an act which it is clearly their duty to do, under this Act, they may be compelled to do it, either by writ of mandamus or by a rule in the nature of a mandamus under Sec. 5 of the Justices Protection Act (12 Vic., c. 16). See *Reg. (Byrne) v. Knox*, 22 L. R. Ir. 599. But where magistrates have a discretion under any Act of Parliament, the Queen's Bench Division will not review or control this discretion by mandamus. The Court will direct them to hear and determine, but not to determine in any particular way. See *Reg. v. Justices of King's County*, 8 I. C. L. R. 50; *In re Armstrong*, 14 I. C. L. R. 97; and Molloy's Justice of the Peace, p. 17, *et seq.* Where, however, the Justices have already

Discretion of
Justices how far
controlled.

**Sects.
100-104.**

adjudicated, and all that remains to be done is a mere ministerial act, such as the issuing of a warrant under Sec. 86, *ante*, they may be compelled to act, upon their refusing to do so, by a rule in the nature of a mandamus: *Reg. (Byrne) v. Knox*, 22 L. R. Ir. 599.

Title to lands not to be drawn in question.

101. The title to any lands or premises shall not be drawn into question in any proceeding by way of civil bill under this Act.

The County Court has now jurisdiction, where a question of title to lands is involved, provided the Government valuation does not exceed £30. (37 & 38 Vic., c. 66, sec. 1, as amended by 40 & 41 Vic., c. 56, secs. 53 & 54, see Dixon's Carleton's County Court Practice, 926.)

Technical errors not to defeat proceedings.

102. No civil bill proceeding under this Act shall be defeated by reason of any technical objection whatsoever, or of any mistake, variance, or omission which is not manifestly calculated to mislead and injuriously prejudice the opposite party in the merits of his case.

Schedules to be part of the Act.

103. The schedules to this Act annexed shall be deemed and taken to be a part of this Act, and the forms therein contained, or any other forms to the like effect, may be used in the respective cases to which they are applicable.

Forms, how far obligatory.

This section "does not bind the parties to follow exactly the forms annexed to the Act, but makes it only necessary to use them so far as they apply:" *per DEASY, B., Malton v. M'Guire*, I. R. 11 C. L., at p. 6. And it is not necessary to prove a fact, simply because it is averred in one of the forms. Thus, in a civil bill ejectment for non-payment of rent, although the form prescribed by the Act avers that the defendant, or one of the defendants, holds the lands as tenant to the plaintiff, &c., it is not absolutely necessary that the tenant should be named as a defendant, if he is out of occupation, and has sub-let the lands to others. This form, however, has now been repealed by Stat. Law Rev. Act, 1893 (No. 1). See notes to Sec. 54, *ante*, p. 110.

Nor, again, is it necessary to prove a demand of possession in a civil bill ejectment for overholding, although the fact that it has been made is averred in the form contained in Sch. A (No. 3). This form has also been repealed by the same Act; and the averment is omitted from the corresponding form attached to the County Court Rules of 1890 (Form 6).

Repeal of Acts and parts of Acts as in Schd. (B).

104. From and after the commencement of this Act, the several Acts and parts of Acts set forth in the schedule (B) to this Act annexed, so far as the same refer to the relation of landlord and tenant in *Ireland*, but not otherwise, and to the extent to which such Acts or parts of Acts are by such schedule expressed to be repealed, and not further or otherwise, shall be and are hereby repealed, except so far as may be necessary to support or enforce any lease made or contract entered into, or as to anything hereto-

fore done, or any right acquired (a) or liability incurred, and except so far as any of the said Acts or parts of Acts repeal any former Act or part of an Act, and except so far as may be necessary for the purpose of supporting and continuing any proceeding heretofore taken or to be taken after the commencement of this Act, upon any proceeding commenced before the commencement of this Act, and except as to the recovery and application of any penalty for any offence which shall have been committed before the commencement of this Act.

Sects.
104-105.

(a) The words "any right acquired" in this section refer only to antecedent completed events, and do not "aim at the quality, character, or legal effect of future dealings or transactions," in respect of leases which were made prior to the passing of the Act: *per* BALL, C., *Foley v. Gallagher*, 2 L. R. Ir., at p. 401. The chance that one joint tenant of lands may, by right of survivorship, take the whole, is not a "right acquired" before the passing of the Act within the meaning of this section, so as to render invalid a partition deed executed after the passing of the Act which would have been void under the 9th Section of 2 Will. IV., c. 17, in consequence of the lease containing a covenant against alienation: *Foley v. Gallagher*, 2 L. R. Ir. 35, 389. See further as to the effect of this section in the case of leases containing covenants against assignment and sub-letting made while the repealed statutes, 7 Geo. IV., c. 29, and 2 Will. IV., c. 17, were in force, judgment of WATTSIDE, C.J.: *Donoughmore v. Forrest*, I. R. 5 C. L., at p. 475, and notes to Sec. 10, *ante*, p. 30.

The 4th, 5th, 6th, and 7th Sections of 10 Geo. I., c. 5, which provided that owners of the reversion of lands let in fee-farm or for lives, renewable for ever or for long terms of years, might open and work mines upon the demised lands, making compensation for damage done, are repealed by this section. But they are repealed in such a way that their application to grants or leases made prior to the passing of the Act is preserved, and similar provisions are contained in Sections 32 & 33, *ante*, as regards leases and grants made after the passing of the Act. See notes to those sections, *ante*, pp. 65-66, and *Fishbourne v. Hamilton*, 25 L. R. Ir. 483.

105. This Act shall come into operation on the first day of January one thousand eight hundred and sixty-one.

Commencement
of Act.

SCHEDULES TO WHICH THIS ACT REFERS.

Sch. (A).

SCHEDULE (A).*

No. 1.

FORM OF PRECEPT TO RESTRAIN WASTE.

County of *M.* }
to wit. } To *C.D.* and *E.F.*, and all persons whom it may concern.

WHEREAS information on oath has been this day laid before me, being one of Her Majesty's Justices of the Peace for the county of *M.*, that you, *C.D.* and *E.F.*, being the occupiers of [*or acting under the authority of and in collusion with one M.N., being the occupier of*] a certain dwelling house [*or farm of lauds*] situated at *N.*, in the barony of *O.* and county of *M.* aforesaid, and held by you as [*tenant from year to year, or otherwise, as tenant or caretaker, as the case may be,*] to *A.B.*, do intend and are about to commit or suffer [*or are in the act of committing or suffering*] certain unlawful waste and injury to the premises by [*state the nature of the waste, injury, alteration, or removal which is apprehended or actually being done*], contrary to the statute in that case made and provided.

These are, therefore, to command and firmly enjoin you and each of you, and all other persons whomsoever, not to proceed to [*state again the waste, &c., apprehended or being done*], or to continue the same, or otherwise to injure the said premises, or any part of them, until special leave, licence, and authority in writing for that purpose shall be first procured from and given by me, the said justice, or until the matter of the said information shall be first inquired into at the petty sessions of the peace to be holden at on the day of next, and this my precept lawfully annulled or altered in that behalf [*or until the day of next, naming a particular day, or further order*].

And in case you shall disobey this my precept, you and each of you, and all persons wilfully aiding, abetting, or assisting you in so doing, will be punished in pursuance of the statute in that case made and provided.

And all constables of police, and others, are hereby required to prevent such waste or injury, and to apprehend and bring to justice all persons present and aiding or assisting in such unlawful acts, to be dealt with according to law.

Given under my hand and seal, this day of , in the year 18 .

G. H.,

Justice of the Peace for the county of *M.*

*As to how far it is necessary to comply with the forms provided in this schedule, see notes to Sec. 103, *ante*, p. 152.

(Forms Nos. 2, 3, 4, and 5 are repealed by Stat. Law Rev. Act, 1893, No. 1.)

Sch. (A.)

No. 6.

FORM OF ATTORNMENT BY UNDER-TENANTS OR OCCUPIERS OF LANDS RECOVERED IN EJECTMENT UPON THE EXECUTION OF A WRIT OR CIVIL BILL DECREE FOR DELIVERING POSSESSION WHERE THE UNDER-TENANTS ATTORN AS TENANTS TO THE PLAINTIFF.

WHEREAS *A.B.* of hath lately recovered judgment in ejectment [*or obtained a civil bill decree*] for the lands and tenements in the tenancy or occupation of the persons under-named respectively: Now we whose names are hereunder subscribed, upon the execution of the writ of possession [*or decree, if by civil bill*] in the said cause, according to the statute in that behalf, with the assent of the said *A.B.* [*or the attorney for the plaintiff*] in the said cause, testified by the said attorney for the plaintiff signing these presents, do hereby severally and respectively attorn and become tenants to the said *A.B.* of the several farms, lands, and tenements situate at the several places, and for the terms and commencing at the times mentioned and set opposite to our respective names in the schedule hereunder written, and do hereby severally agree to pay such respective rents for the same, and from such several periods or times as in the said schedule expressed; and we have severally given unto the said *A.B.*, or his agent, the sum of *one penny*, in the name of attornment and in part of the said rents.

*Provided always, that if the said lands and tenements shall in due course of law be redeemed in pursuance of the statutes in such case made and provided, these presents shall thenceforth be void.]

As witness our hands, this day of 18 .

*This proviso to be added where the ejectment or civil bill ejectment shall have been for non-payment of rent.

Tenant's Names	Farm or Tenement	Yearly Rent or as the case may be	When Due	Term of the Holding, as the case may be	Commencement of the Term
<i>C. D.</i>	..	£ s. d. 5 0 0	May 1 and November 1	One Year	1 November or 29 September [or such days may be agreed on]
<i>E. F.</i>	March 25 and September 29		
<i>G. H.</i>	..	1 per acre	May 1 and November 1		

Witness,

Attorney for the plaintiff.
Sheriff
or
Sheriff's Officer.

No. 7.

FORM OF ACKNOWLEDGMENT BY OCCUPIERS OF LANDS RECOVERED IN EJECTMENT UPON THE EXECUTION OF A WRIT OR CIVIL BILL DECREE FOR DELIVERY OF POSSESSION, WHERE THE PARTIES DO NOT AGREE TO AN ATTORNMENT AS TENANTS.

WE, whose names are hereunder subscribed, upon the execution of the writ of possession [*or decree*] in this cause, with the assent of the said *A.B.*

Sch. (A.)

[or the attorney for the plaintiff] in the said cause, testified by the said attorney signing these presents, hereby acknowledge that we respectively occupy the lands by the licence and at the will of the said *A.B.*, and that we will severally and respectively, when required by the said *A.B.* or his authorised agent or receiver, deliver up to the said *A.B.* or his authorized agent or receiver the possession of the said lands and premises in our respective occupation as set opposite to our respective names in the schedule hereunder written. [*Provided always, that if the said lands and premises shall in due course of law be redeemed in pursuance of the statutes in such case made and provided, these presents shall thenceforth be void.]

As witness our hands, this day of .

Occupiers' Names	Farms or Lands
<i>C. D.</i> - - - - -	Blackacre
<i>E. F.</i> - - - - -	Whiteacre
<i>G. H.</i> - - - - -	House and garden in Whiteacre

Witness,

Attorney for the plaintiff.
 Sheriff
or
 Sheriff's officer.

*This proviso to be added where the ejectment or civil bill ejectment shall have been for non-payment of rent.

SCHEDULE (B).*

Sch. (B).

ACTS AND PARTS OF ACTS REPEALED, SO FAR AS THE SAME RELATE TO THE RELATION OF LANDLORD AND TENANT IN IRELAND, AND AS BY THE FOREGOING ACT IS DECLARED.

Date of Act	Title of Act	Extent of Repeal
ACTS OF THE PARLIAMENT OF IRELAND.		
15 Edw. 4, cap 1	An Act prohibiting Distresses to be taken contrary to the Common Law	The entire Act
18 Edw. 4, cap. 1	An Act whereby Distresses taken for Rent may be sold	The entire Act
33 Hen. 8, s. 1, cap. 7	An Act for all Lords to distrain upon the Lands of them holden, and to make their Avowrie, not naming the tenant, but the Land	The entire Act
10 Car. 1, s. 2, cap. 4	An Act concerning Grantees of Reversions, to take advantage of Breaches of Conditions, &c.	The entire Act
10 Car. 1, s. 2, cap. 5	An Act for Recovery of Arrears of Rents by Executors of Tenant in Fee Simple	The entire Act
10 & 11 Car. 1, cap. 7	An Act of Explanation of a Statute made in this Realm in the Eighteenth Year of the Reign of the late King Edward the Fourth. intituled "An Act whereby Distresses taken for Rent may be sold"	The entire Act
7 Wm. 3, cap. 12	An Act for Prevention of Frauds and Perjuries	Sec. 1
11 Anne, cap. 2	An Act for the more effectual preventing of Frauds committed by Tenants	The entire Act except Sec. 7; Sec. 8 being already repealed
4 Geo. 1, cap. 5	An Act to explain and amend an Act, intituled "An Act for the more effectual preventing of Frauds by Tenants"	The entire Act except Sec. 1
8 Geo. 1, cap. 2	An Act for amending an Act, intituled "An Act to explain and amend an Act, intituled "An Act for the more effectual preventing of Frauds committed by Tenants"	The entire Act except Secs. 8, 9, 10
10 Geo. 1, cap. 5	An Act for the further Encouragement of finding and working Mines and Minerals within this Kingdom	Secs. 4, 5, 6, and 7
5 Geo. 2, cap. 4	An Act for the further explaining and amending the several Laws for preventing Frauds committed by Tenants, and for the more easy Renewal of Leases, and for the further amendment of the Law in certain Cases therein mentioned	Secs. 1, 2, 3, and 4

*See note at foot of p. 159.

Sch. (B.)

Date of Act	Title of Act	Extent of Repeal
11 Geo. 2, cap. 5	An Act to explain and amend an Act, intitled, "An Act for preventing inconveniences that may happen by Privilege of Parliament"	Sec. 3
*51 Geo. 2, cap. 8	An Act for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants	Section 9
17 Geo. 2, cap. 10	An Act to prevent the pernicious Practice of burning Land, and for the more effectual destroying of Vermin	The entire Act
25 Geo. 2, cap. 13	An Act for explaining, amending, and making more effectual the Laws relating to Landlord and Tenant	Secs. 1, 2, and 3
1 Geo. 3, cap. 17	An Act for reviving, continuing and amending several temporary Statutes, and for other Purposes therein mentioned	Secs. 2, 3, 4, and 5
3 Geo. 3, cap. 29	An Act for the more effectual preventing the pernicious Practice of burning Land	The entire Act
5 Geo. 3, cap. 10	An Act for the more effectually carrying into execution the Laws heretofore made to prevent the pernicious Practice of burning Land	The entire Act
15 & 16 Geo. 3, cap. 27	An Act to amend the several Acts of Parliament made in this Kingdom for the more effectual preventing of Frauds by Tenants	The entire Act
23 & 24 Geo 3, cap. 46	An Act for the Apportionment and more easy Recovery of Rents in certain Cases	The entire Act
31 Geo. 3, cap. 40	An Act for the Preservation of Shrubs and Trees	The entire Act
40 Geo. 3, cap. 24	An Act for more effectually preventing the burning of Land	The entire Act
STATUTES OF THE PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.		
46 Geo. 3, cap. 71	An Act to amend several Acts for the Encouragement of finding and working Mines and Minerals within Ireland	Secs. 2 and 3
56 Geo. 3, cap. 88	An Act to amend the Law of Ireland respecting the Recovery of Tenements from absconding, overholding, and defaulting Tenants, and for the Protection of the Tenant from undue Distress	Sec. 14, being the Residue of the Act unrepealed
1 Geo. 4, cap. 41	An Act to extend the Benefit of Two Acts made in the Fifty-sixth and Fifty-eighth Years of the Reign of his late Majesty King George the Third, for amending the Law of Ireland respecting the Recovery of Tenements from absconding, overholding, and defaulting Tenants	Sec. 2

*This is a clerical error for 15 Geo. 2, Cap. 8. See Irish Statutes Revised, p. 469, note (a).

Date of Act	Title of Act	Extent of Repeal	Sch (B)
4 Geo. 4, cap. 89	An Act to limit and regulate the expense of certain proceedings in the Courts of Justice in Ireland in the Particulars therein mentioned	Sec. 1	
7 Geo. 4, cap. 29	An Act to amend the Law of Ireland respecting the Assignment and Sub-Letting of Lands and Tenements	The entire Act except as to Leases, Instruments, and Agreements for Leases made between the 1st day of June 1826 and the 1st day of May 1832	
4 & 5 Wm. 4, cap. 22	An Act to amend an Act of the Eleventh Year of King George the Second, respecting the Apportionment of Rents, Annuities, and other periodical payments	Secs. 2 and 3	
8 & 9 Vict., cap. 106	An Act to amend the Law of Real Property	Sec. 3, save so far as same relates to Feoffments, Partitions, and Exchanges	
9 & 10 Vict., cap. 111	An Act to amend the Law in Ireland as to Ejectments and Distresses, and as to the Occupation of Lands	Secs. 1, 2, 3, 4, 5, 6, 7, 8, and 9	
14 & 15 Vict., cap. 25.	An Act to improve the Law of Landlord and Tenant in relation to Emblements and growing crops seized in Execution	Sec. 1, so far as regards Ireland	
14 & 15 Vict., cap. 57	An Act to consolidate and amend the Laws relating to Civil Bill and other Courts of Quarter Sessions in Ireland, and to transfer to the Assistant Barrister certain Jurisdiction as to Insolvent Debtors	Secs 81, 84, 85, 86, 87, 92, 94, and 96, so far as they relate to Proceedings between Landlord and Tenant, and to Persons in occupation who shall have signed Acknowledgments pursuant to the Act	

N.B.—Portions of this schedule are repealed by Stat. Law Rev. Acts, 1874 and 1892, the sections referred to being also repealed by those Acts. The schedule is printed above as revised.

LANDLORD AND TENANT (IRELAND) ACT, 1870.

(33 & 34 VIC., CAP. 46.)

AN ACT TO AMEND THE LAW RELATING TO THE OCCUPATION AND OWNERSHIP OF LAND IN IRELAND. [1st August, 1870.]

[The preamble is repealed by Stat. Law Rev. Act, 1893, No. 2.]

PART I.

LAW OF COMPENSATION TO TENANTS.

Claim to Compensation.

Sect. 1.
Legality of
Ulster tenant-
right custom.

1. The usages prevalent in the province of Ulster, which are known as, and in this Act intended to be included under, the denomination of the Ulster tenant-right custom,^(a) are hereby declared to be legal,^(b) 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.^(c)

Where the landlord has purchased or acquired or shall hereafter purchase or acquire^(d) from the tenant the Ulster tenant-right custom to which his holding is subject, such holding shall thenceforth cease to be subject to the Ulster tenant-right custom.

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;^(e) 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, except the section relating to compensation in respect of payment to incoming tenant; and where such last-mentioned claim has been made, and allowed, such holding shall not be again subject to the Ulster tenant-right custom.

The sections of this Act and of the Land Act, 1881, especially dealing with holdings subject to the Ulster custom and with holdings not in Ulster, but subject to a usage corresponding to the Ulster custom, are—of this Act:—Sec. 1 (legality of the custom); Sec. 2 (legality of other tenant customs); Sec. 8 (away-going crops); and Secs. 12, 18, and 20. Of the Act of 1881:—Sec. 1 (12), (13) (sale of tenancies);

Sec. 20 (4) (determination of tenancy); Sec. 21 (existing leases); Sec. 22 (contract inconsistent with Act). Of the Act of 1896:—Sec. 49 (nothing in the Act to affect rights, &c., under the custom). See also the Amending Act, 34 & 35 Vic., c. 92, *post*.

Sect. 1.

(a) There is no definition in this Act of the Ulster custom; and the use of the plural in the word "usages" in this section points to the reason of this—viz., that the Ulster custom varies not only in different counties but also on different estates in the same county, and cannot, therefore, be defined. "Everyone who knows anything about the Ulster tenant-right custom knows that it varies very much on estates a very few miles from each other. I have heard these variances proved in the Rolls over and over again:" *per SULLIVAN, C.*, in *M'Elroy v. Brooke*, 16 L. R. Ir., at p. 69. And in *Lendrum v. Deasley*, 4 L. R. Ir., at p. 645, *BALL, C.*, says, "The Ulster tenant-right custom is not uniform; it exists and manifests itself with a variety of usages. Therefore, when a claim founded upon it is made in respect of a particular holding, we must, in the first instance, ascertain what is the usage applicable to the holding." But there are certain elements essential to the custom. "Now, it seems to me," says *PORRER, M.R.*, in *M'Elroy v. Brooke*, 16 L. R. Ir., at pp. 74, 75, "that it is a question of law what are the essential elements of tenant-right custom, for the Land Act of 1870 contains no definition of the Ulster tenant-right custom referred to in its first Section. The use of the plural in the word 'usages' in that Section has often been referred to. . . . It seems to me, therefore, that the Court must be prepared to determine, as a matter of law, what are these essential particulars, otherwise there might be in one Court one principle governing the decision and a different one in the next; and it seems to me that these two Sections presuppose, on the part of the Court, a knowledge of what are the essential particulars of the Ulster tenant-right custom. Speaking for myself, it seems to me that the important essentials of the custom are the right to sell, to have the incoming tenant, if there be no reasonable objection to him, recognised by the landlord, and to have a sum of money paid for the interest and the tenancy transferred. I think if any of these ingredients are absent, the essentials of the Ulster tenant-right custom are wanting" (*M'Elroy v. Brooke*, 16 L. R. Ir., at pp. 74 and 75). See also as to the nature of the custom generally: *Harper v. Dufferin*, 1 Greer, 253; *Upton v. Dufferin*, 32 I. L. T. R.; 118; *Gosford v. Lyons*, 33 I. L. T. R., 83; and *Norris v. Lyle*, 1 Greer, 323. In *Graham v. Earl of Erne*, *Donnell's R.*, p. 405, *Mr. BLAKE, Q.C.* (C.C.J. of the county of Fermanagh), states the "five leading features" of the custom as follows:—

Essentials to
Ulster custom.

"1st.—The right or custom in general of yearly tenants, or those deriving through them, to continue in undisturbed possession so long as they act properly as tenants and pay their rents.

"2nd.—The correlative right of the landlord periodically to raise the rent, so as to give him a just, fair, and full participation in the increased value of the land, but not so as to extinguish the tenant's interest by paying a rack rent.

"3rd.—The usage or custom of the yearly tenants to sell their interest, if they do not wish to continue in possession, or if they become unable to pay the rent.

"4th.—The correlative right of the landlord to be consulted and to exercise a potential voice in the approval or disapproval of the proposed assignee.

"5th.—The liability of the landlord, if taking land for his own purposes from a tenant, to pay the tenant the fair value of his tenant-right."

In *Stevenson v. Leitrim*, I. R. R. & L. A. 121, 7 I. L. T. R. 34, *Donn*, 340, it was said that the custom was not excluded by a special written contract entered into between the landlord and the tenant some years previously which stringently pro-

Sect. 1. hibited alienation by the tenant, and that the tenant having been ejected upon a notice to quit was entitled to compensation for loss of his tenant-right under this Section.

Right of landlord to raise rent. The right of the landlord to periodically increase the rent was, until the passing of the Land Act, 1881, recognised as a legal incident of the custom: *Moody v. Rotten*, Donn. 483, and in *Clarke v. Rotten*, 9 I. L. T. R. 95, Donn. 485. PALLES, C.B., in the last case held that if the new rent demanded had been a fair one there would have been no breach of the tenant-right, but that, as the new rent demanded was unfair, there had been a breach, and he awarded compensation to the tenant who had been served with a notice to quit to enforce payment of the increased rent. See also *Jolly v. Archdall* (C. C.), Donn. 327, and *Thompson v. Hamilton* (C. C.), Donn. 314. In determining whether the increased rent demanded was fair or unfair, it was held that the land should be valued irrespective of the tenant's improvements: *Carraker v. Bond* (C. C.), 6 Ir. L. T. R. 19, Donn. 319; *Bennett v. Jones* (C. C.), 8 I. L. T. R. 94, Donn. 514.

How holding transferred under custom. The transfer of a holding under the custom from one tenant to another is effected by surrender by operation of law of the old tenancy, and the creation of a new tenancy between the landlord and the incoming tenant, and not by assignment; "but though the transaction between the outgoing and incoming tenant was called a sale, there was not what strictly should be called a sale, nor was there any conveyance to be executed by the old to the new tenant; the process was, that the new tenant, having been approved of by the landlord or his agent, the sum to be paid was deposited by him with the agent in the office: thereout was paid in the first instance all rent due to the landlord, and any other sums properly payable by the outgoing tenant; and thereupon the balance of the purchase-money was paid to the outgoing tenant; and thereupon the new tenant was substituted as the tenant of the farm instead of the old tenant." *per* MONAHAN, C.J., *Stevenson v. Leitrim*, I. R. R. & L. A., at p. 158; and see *Hillock v. Cope*, 9 I. L. T. R. 77, Donn. 480, *Hart v. McGeough*, 13 I. L. T. R. 19; *Martin v. Smyth*, Greer Leading Cases, App. 50; *Boyle v. Cunningham*, 27 I. L. T. R. 111; and *Mullan v. Traill*, Greer Leading Cases, App. 96.

Consent of landlord, how far necessary. In *Lyons v. Martin*, 33 I. L. T. R. 83, PALLES, C.B., held that, in the case of a sale under the custom and irrespectively of Sec. 1 of the Land Act of 1881, of a holding on an Ulster custom estate, if the landlord is not served with the prescribed notice of the sale he may refuse to accept the purchaser as tenant; and the only remedy of the vendor is an action for damages for breach of contract. In giving his decision he said, "I will treat it as if the Act of 1881 had never been passed, and my opinion is that that Act not having been passed, you had no right to sell at all without the consent of the landlord. You could never make him create new tenancies unless he consented." . . . "The legal usage was that under the Ulster custom an assignment of a tenancy took place by the surrender of an old tenancy and the creation of a new tenancy by the landlord. The essence of the transaction was that the landlord should be a party. There was no custom that bound the landlord to grant an estate to a new tenant. It never could be specifically performed."

In *Lindsay v. Corry*, 34 I. L. T. R. 204, MERRITT, J., held that where the tenant of a holding, subject to the Ulster custom, sold his holding and conveyed it to a purchaser without giving any notices to the landlord under Sec. 1 of the Act of 1881, and the landlord refused to recognize the purchaser as tenant until such notices were given, the conveyance did not vest the holding in the purchaser, and the purchaser could not have a fair rent fixed under the Act of 1881.

In *Browne v. Bruce*, Donn. 488, FITZGERALD, B., held that an estate rule limiting the compensation for the tenant-right to five years' purchase, which had only been put in force since 1862 (the tenant-right custom having existed previously), was not binding. In *Austin v. Scott*, Donn. 184, 5 I. L. T. R. 173, where a similar estate rule had prevailed since 1848, MONAHAN, C.J., reserved the point for the Court for Land Cases Reserved, but it does not appear that the case went further. See also *Henry v. Paul*, 10 I. L. T. R. 88, 177 n.; *M'Loughlin v. Lyle*, 10 I. L. T. R. 176; *Loughran v. M'Geough*, Donn. 383, 404. In *Colbert v. Stewart*, Donn. 490, DEASY, B., held a custom limiting the compensation to ten years' rent proved and reduced the decree accordingly; and see *Gilmore v. Stewart*, 11 I. L. T. R. 65, *M'Groggan v. Montgomery*, 13 I. L. T. R. 77, and *Graham v. Erne*, Donn. at p. 410, where BLAKE, C.C.J., stated that such estate rules, "if of long standing and well recognized," are binding.

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Estate rules
restricting
custom.

As to the effect of the Ulster custom on the right to improvements and on the presumption as to whom improvements belong in the fixing of fair rents, see notes to Land Act, 1896, Sec. 49, *post*, pp. 595-6.

After some doubt it has now been clearly decided that the tenant-right custom may apply to holdings held under lease, see *Austin v. Scott* (MONAHAN, C.J.), Donn. 184, 5 I. L. T. R. 173; *Stevenson v. Leitrim*, I. R. R. & L. A. 121, Donn. 340, 7 I. L. T. R. 34. "*Austin v. Scott* before Chief Justice MONAHAN, and *Stevenson v. Lord Leitrim* before the Judges in the Court for Land Cases Reserved, have settled the point that there is such a thing as leasehold tenant-right without referring to several other cases:" *per* Mr. Commissioner LITTON in *M'Elroy v. Brooke*, 16 L. R. Ir., at p. 62. And see Sec. 21 of the Land Act, 1881, *post*, whereby certain leaseholders are expressly declared entitled to claim under the custom except as therein mentioned. In short, the question as to whether the custom applies to any particular leasehold holding now is one of fact, not of law; and in each case, whether leasehold or yearly tenancy, the existence of the custom must be proved or admitted.

As to the appli-
cation of the
custom to
leaseholds.

As to the nature of the evidence necessary to establish the custom, see *Allen v. M'Geough*, 10 I. L. T. R. 171; *M'Laughlin v. Lyle*, 10 I. L. T. R. 178; *M'Nown v. Beauclera*, 7 I. L. T. R. 185, Donn. 227; *Ellison v. Mansfield*, 6 I. L. T. R. 133, Donn. 198; *Burns v. Ranfurly*, Donn. 200; *Blakeley v. Gray*, 11 I. L. T. R. 79; *Vorris v. Lawrence*, Donn. 476; *Moore v. Mowbray*, 14 I. L. T. R. 33; *Eaton v. Archdale*, *ibid.* 34; *M'Cann v. M'Cann*, 13 I. L. T. R. 120; *Turner v. Nolan*, Donn. 496; *Matchett v. Morton*, 13 I. L. T. R. 128 (FITZGERALD, B.). All these cases seem to show that both as to yearly tenancies and leaseholds evidence of the existence of the custom on the same estate is admissible, but that evidence of the custom on other surrounding estates can only be admitted after some evidence has been given of the existence of the custom on the estate in question. See also *Austin v. Scott*, 5 I. L. T. R. 173, Donn. 184, and *Turner v. Nolan*, Donn. 496. And, as to admitting evidence of the custom on surrounding estates in the case of small estates, see *Nelson v. Caldwell*, 5 I. L. T. R. 116, Donn. 263; *Moor v. Watson*, Donn. 264; *Lynn v. Knox*, Donn. 265. In *Allen v. M'Geough*, 10 I. L. T. R. 171, ALLES, C.B., held that, in the absence of special circumstances to the contrary being proved, a previous decree for compensation as to another holding on the same estate was evidence of the general custom of the estate.

(b) Before the passing of this Act the tenant-right custom was not legal, and could not be enforced at law or equity. "Customs have been legalized by this Act, which, before it passed, could not have been recognized by the Courts as legal customs, because they were inconsistent with the contract and uncertain:" *per*

Custom not
legal before
Act.

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LAWSON, J., *Stevenson v. Leitrim*, I. R. R. & L. A., at p. 135; and see, also, *The Marquis of Waterford's Estate*, I. R. 5 Eq. 59, 434, 5 I. L. T. R. 125, in which the question was, whether a Landed Estates Court conveyance which set out certain tenancies in its schedule, but did not state that the tenancies were subject to the Ulster custom, destroyed the custom as regards the tenancies. The differences of opinion among the Judges in that case led to the passing of the Amending Act, 34 & 35 Vic., c. 92, *post*, which preserves the custom and other rights under this Act, where property is conveyed under the Landed Estates Court Act subject to tenancies, although such rights are not referred to in such conveyance. See, however, *Barron v. Stephenson*, 9 I. L. T. R. 145.

Effect of 34 & 35 Vic., c. 92.

Nature of Ulster custom.

The Ulster custom is somewhat analogous to, but is different in its nature from, the "customs of the country" referred to in *Wigglesworth v. Dallison*, 1 Smith's L. C. and like cases. The Ulster custom may be, and often is, inconsistent with some of the terms of the contract of tenancy. Thus, in *Stevenson v. Leitrim*, I. R. R. & L. A. 121, 7 I. L. T. R. 34, Donn. 340, the tenant, prior to 1867, held from year to year, and his holding was subject to the custom, and in 1867, being under notice to quit, he and the landlord executed an agreement of letting from year to year containing (*inter alia*) a stringent provision against assignment, and it was held by the Court for Land Cases Reserved (*dis. CHATTERTON, V.C., and MORRIS, J.*) that the custom was not excluded by the agreement; that the holding remained subject to the custom; and that the tenant having been evicted upon a notice to quit was entitled to compensation for the loss of the tenant-right. See, also, *Breen v. Hutton (C. C.)*, 7 I. L. T. R. 22, where the claim failed, as the custom was not proved, and *Henegan v. Kenmare*, 14 I. L. T. R. 120.

Clause against sub-letting.

The question whether, where there is a clause in the contract of tenancy or a usage of the estate against sub-letting, the violation of such clause or usage forfeits the right to claim under this section appears to be a question of fact as to what is the particular usage on the estate. In *Friel v. Leitrim*, I. R. R. & L. A. 101, Donn. 335, 7 I. L. T. R. 1, it was held by the Court for Land Cases Reserved (*dis. WHITESIDE, C.J., and MORRIS, J.*) that sub-division will not disentitle a claimant to the benefits of the custom, where the usage is to require the person who came in by the sub-division to sell to the other occupier, and it is not proved that the landlord made such a requirement. See, also, *Fleck v. O'Neill*, Donn. 188; but see, *contra Armstrong v. Ellis*, 6 I. L. T. R. 63, Donn. 195, where HUGHES, B., held that the consent of the landlord to sub-division is an essential incident of the custom. As to the effect of sub-division on the right to make a claim under the Ulster tenant-right custom, see, further, *Scott v. Cunningham*, 26 I. L. T. & S. J. 389.

As to the amount of compensation for the tenant-right see *Friel v. Leitrim*, 5 I. L. T. R. 187, Donn. 278; *Johnson v. Patten*, 5 I. L. T. R. 159, Donn. 178; *Lindsay v. Kennedy*, 11 I. L. T. R. 58, in which case LAWSON, J., took the value of a quarry on the holding into consideration.

(c) That is to say, by serving a claim for compensation for the loss sustained by any breach of the custom. See Sec. 16 of this Act, *post*.

When landlord "acquires" the tenant-right custom.

(d) In *Lendrum v. Deasley*, 4 L. R. Ir. 635, 13 I. L. T. R. 111, it was held by the Court of Appeal that where a landlord resumes possession from a tenant, not with a view to retention thereof permanently, but only until such time as a new tenant should be substituted, he does not "acquire" such custom from the tenant within the meaning of this Section, and that the custom will still continue to attach to the holding. See, also, *Magee v. Bath*, 8 I. L. T. R. 219, Donn. 477; *Johnson v. Beatty*, 10 I. L. T. R. 93; *Killeen v. Coates*, 10 I. L. T. R. 159; *Irvine v. M'Kelve* Donn. 380; and *Fyrne v. Arran*, Donn. 487: Greer Leading Cases, 532.

(e) Some of the County Court Judges have allowed alternative claims under this Section and under Sections 3 or 4, and have allowed the tenant, if he failed to prove the existence of the custom to proceed under Section 3 or 4, *post*, see *Traham v. Erne* (Donn. 405), *Fegan v. Waring* (5 I. L. T. R. 39), *Thompson v. Cilmorey* (5 I. L. T. R. 117), *Doran v. Cummins* (5 I. L. T. R. 145, Donn. 411). In *Faddell v. Rice*, 10 I. L. T. R. 152, where, on appeal, the claim under the custom was dismissed, FITZGERALD, B., offered to remit the alternative claim to the chairman for hearing. On the other hand, in *M'Stays v. Love*, 10 I. L. T. R. 184, and *M'Comiskey v. Carter*, 6 I. L. T. R. 15, it was held that before the hearing the tenant must elect whether he claims under or against the custom, and that he is bound by his election.

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2. If, in the case of any holding not situate within the province of Ulster, it shall appear that an usage prevails which in all essential particulars corresponds with the Ulster tenant-right custom, it shall in like manner, and subject to the like conditions, be deemed legal, and shall be enforced in manner provided by this Act.

Legality of tenant custom other than Ulster custom.

Where the landlord has purchased or acquired or shall hereafter purchase or acquire from the tenant the benefit of such usage as foresaid to which his holding is subject, such holding shall thenceforth cease to be subject to such usage.

A tenant of any holding subject to such usage as aforesaid, and who claims the benefit of the same, shall not be entitled to claim compensation under any other section of this Act, but a tenant of a holding not claiming the benefit of such usage 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; and where such last-mentioned claim has been made and allowed, such holding shall not be again subject to such usage as aforesaid.

See notes to Sec. 1, *ante*.

3. (a) Where the tenant of any holding held by him under a tenancy (b) created after the passing of this Act is not entitled to compensation under sections 1 and 2 of this Act, or either of such sections, or if entitled does not seek compensation under said sections or either of them, and is disturbed (c) in his holding by the act of the landlord, he shall be entitled to such compensation or 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 (d) so that the sum awarded does not exceed the scale following; that is to say:

Compensation in absence of custom.

In the case of holdings valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of—

²The portions of this Section in italics were repealed by the 6th Section of the 6th Act, 1881; but the repealing portion of the latter Section has now been repealed by Stat. Law Rev. Act, 1894. A higher scale of compensation is, however, provided by the unrepealed portion of the 6th Section of the Act of 1881.

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- (1.) *£10 and under, a sum which shall in no case exceed seven years' rent ;*
- (2.) *Above £10 and not exceeding £30, a sum which shall in no case exceed five years' rent ;*
- (3.) *Above £30 and not exceeding £40, a sum which shall in no case exceed four years' rent ;*
- (4.) *Above £40 and not exceeding £50, a sum which shall in no case exceed three years' rent ;*
- (5.) *Above £50 and not exceeding £100, a sum which shall in no case exceed two years' rent ;*
- (6.) *Above £100, a sum which shall in no case exceed one year's rent ; But in no case shall the compensation exceed the sum of £250.*

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum to which he would be entitled under such lower class on the assumption that the annual value of his holding is reduced to the sum (or where two sums are mentioned, the highest sum) stated in such lower class, and that his rent is proportionally reduced.

*Provided that no tenant of a holding valued at a yearly sum exceeding £10, and claiming under this Section more than four years' rent, and no tenant of a holding valued at a yearly sum not exceeding £10, and claiming as aforesaid more than five years' rent, shall be entitled to make a separate or additional claim for improvements other than permanent buildings and reclamation of waste land.**

Provided that—

- (1.) *Out of any moneys payable to the tenant under this section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, (e) may be deducted by the landlord, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord :*
- (2.) *A tenant of a holding who at any time after the passing of this Act sub-divides such holding, or sub-lets the same or any part thereof without the consent of the landlord*

*The portions of this Section in italics were repealed by the 6th Section of the Land Act, 1881; but the repealing portion of the latter Section has now been repealed by Stat. Law Rev. Act, 1894. A higher scale of compensation is, however, provided by the unrepealed portion of the 6th Section of the Act of 1881.

in writing, or, after he has been prohibited in writing by the landlord or his agent from so doing, lets the same or any part thereof in con-acre save for the purpose of being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not, nor shall any sub-tenant of or under any such tenant as last aforesaid, be entitled to any compensation under this section:

- (3.) A tenant of a holding under a lease made after the passing of this Act, and granted for a term certain of not less than thirty-one years, shall not be entitled to any compensation under this section, but he may claim compensation under Section 4 of this Act.

The tenant of any holding valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not more than one hundred pounds, and held by him under a tenancy from year to year existing at the time of the passing of this Act, shall, if disturbed by the act of his immediate landlord, be entitled to compensation under and subject to the provisions of this Section.

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this Section shall, so far as relates to such claim, be void, both at law and in equity; this provision shall be subject to the enactment contained in the Section of this Act relating to the partial exemption of certain tenancies, and remain in force for twenty years from the first day of January one thousand eight hundred and seventy-one, and no longer, unless Parliament shall otherwise determine (*f*).

(a) The parts of this Section in italics were expressly repealed by Section 6 of the Land Act, 1881, *post*, but the repealing portion of the latter Section has now been repealed by Stat. Law Rev. Act, 1894. There are also certain classes of tenancies which do not come within the exceptions from this Act and which do come within the exceptions from the Land Acts, 1881 and 1896, and, owing to the opening words of Sec. 58 of the Act of 1881, and to the decision in *Fawcett v. Collum* [1901], 1 Ir. R. 129, 135, it may yet become necessary to decide whether there is any scale of compensation or any compensation for disturbance in the cases of holdings within the Act of 1870 but excepted from the Acts of 1881 and 1896.

In the case referred to of *Fawcett v. Collum* [1901], 1 I. R. 129, the tenant had held under a letting which was for "temporary convenience," and having been made before the Act of 1881, was excluded from that Act, although the purpose of the letting was not expressed (see Sec. 58 (7), Act of 1881). The holding, however, was

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not excluded from this Act, as it was not expressed to be let for "temporary convenience" (see Sec. 15 (4) of this Act, *post*). The landlord having served notice to quit, the tenant, on so claiming, was awarded compensation for improvements and for disturbance on the scale set out in Sec. 6 of the Act of 1881, and on a scale higher than that allowed by Sec. 3 of this Act, and the Land Commission affirmed this decision. The landlord appealed from the award of compensation for disturbance, but consented to allow the tenant compensation for improvements, and the maximum compensation for disturbance under Sec. 3 of this Act. The Court of Appeal (ASHBOURNE, L.C., FITZGIBBON, and HOLMES, L.J.J., *dissentiente* WALKER, L.J.) held that Section 6 of the Act of 1881 and the scale in that Section did not apply to the case, and that no part of the Act of 1881 applied to the case. As the landlord consented to the tenant being allowed compensation under the scale in Sec. 3 of this Act, it was not necessary to decide the point whether Sec. 3 applied to the case or would apply to such a case, but ASHBOURNE, L.C. (see pp. 139, 140), and HOLMES, L.J. (see p. 150) were prepared to decide that Sec. 3 did apply to the case and would apply to such cases, while FITZGIBBON, L.J., expressly reserved his decision on the point (see p. 140). In this connection the definition of "Land Law Acts" contained in Sec. 43 of the Act of 1896 should be referred to. The point is not an unimportant one, as the excluding clauses of Sec. 58 of the Act of 1881 and Sec. 5 of the Act of 1896 are wider than the excluding clauses of this Act (see Sec. 15), and future tenants who are excluded from the fair rent provisions of the Act of 1881 can apply for compensation for disturbance.

When section applies.

The number of claims under this Section has been greatly diminished, as a tenant holding under a statutory tenancy under the Land Act, 1881, cannot be compelled to quit his holding except for a breach of a statutory condition (Land Act, 1881, Sec. 5), in which case he is not entitled to compensation for disturbance (Sec. 13, Sub-sec. 6); but a future tenant who does not accept an increase of rent demanded, and is compelled to quit, can apparently claim under this Section. See Sec. 4 (3) of the Land Act, 1881, *post*.

(b) This Section is, by its own provisions, confined to tenancies—(1) From year to year, created after August 1st, 1870; (2) Under lease made after August 1st, 1870, for terms of less than thirty-one years or for a life or lives; (3) From year to year, existing at the 1st August, 1870, the annual value of the holding not exceeding £100.

In *O'Donovan v. Kenmare*, 1896, 2 Ir. R. 512 & 521, the Land Commission held that the executor of a tenant, who held under a lease for her own life, was entitled to compensation for both improvements and disturbance, but, on appeal, the Court of Appeal (ASHBOURNE, L.C., FITZGIBBON, and BARRY, L.J.J., *dissentiente* WALKER, L.J.) held that the executor was not entitled to compensation for disturbance.

What amounts to disturbance.

(c) No definition of "disturbance" is given; but Rule 4 of the Judges' Rules of 1870, *post*, states that the tenant may serve his claim "as soon as he shall have been served by his landlord with notice to quit or with an ejection, or disturbed by any act of the landlord within the meaning of the said statute." But "disturbance" must mean "disturbance of possession in fact." *Per* FITZGIBBON, L.J., *O'Donovan v. Kenmare* [1896], 2 I. R. at p. 526. In *Flynn v. Vernon*, 9 I. L. T. R. 50, Donn. 457, DEASY, B., said, "I do not think it was ever intended by this Act that the mere fact of the service of a notice to quit should, of itself, amount to a disturbance." It was not necessary to decide this in the case as an ejection for non-payment of rent had been served and a decree obtained. See, also, *Fitzsimons v. Clive* (C. C.), 12 I. L. T. R. 12.

Sections 9 and 18 of this Act, *post*, point out some acts of the landlord which are not to be considered disturbance of the tenant.

(d) The amount of compensation to be awarded depends on the particular facts and circumstances of each case. In *Ward v. Walker*, Donn. 391, FITZGERALD, J., says, "The maximum compensation should only be given where capricious eviction takes place, or where some act of misconduct has been committed by the landlord—s, for instance, where an improving tenant, paying the best rent to be obtained for the land, is capriciously ejected. Such a tenant would be entitled to the maximum compensation." Non-residence may be a ground for diminishing the amount of compensation: *Connolly v. Hemphill*, 5 I. L. T. R. 144; *McNeill v. Adams*, 8 I. L. T. & S. J. 501. In the following cases the maximum amount was awarded:—*M'Donald v. Granlees*, 9 I. L. T. R. 73, Donn. 458 (FITZGERALD, J.); *Murphy v. Deane*, 10 I. L. T. R. 149 (FITZGERALD, J.); *Moran v. Drought* (C. C.), 10 I. L. T. R. 43; *Forsythe v. Darby* (C. C.), 5 I. L. T. R. 35; *Kehee v. Croker* (C. C.), 5 I. L. T. R. 56; *M'Cullagh v. Weir* (C. C.), 5 I. L. T. R. 115; *Walsh v. Keefe*, 12 I. L. T. R. 107 (PALLES, C.B.). And see, also, *O'Brien v. Hurley*, I. L. T. R. 373, Donn. 463, and *Logan v. Hill*, 10 I. L. T. R. 175.

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Amount of
compensation.

(e) For covenants implied on the part of a lessee, see Sec. 42 of 23 & 24 Vic., s. 154, *ante*, p. 76.

(f) See Sec. 12, *post*, and Sec. 22 of the Land Act of 1881. As to the mode and time of making the claim under this Section, see Sec. 16 of this Act, Rules 3 to 9 of the Judges' Rules, 1870, and Forms I. and III., *post*, pp. 657-8 and 671-2.

4. Any tenant of a holding who is not entitled to compensation under Sections one and two of this Act, or either of such Sections, or if entitled does not make any claim under the said Sections, or either of them, may on quitting his holding (a) and subject to the provisions of Section three of this Act, claim compensation to be paid by the landlord under this Section in respect of all improvements (b) on his holding made by him or his predecessors a title (c).

Compensation
in respect of
improvements.

Provided that—

(1.) A tenant shall not be entitled to any compensation in respect of any of the improvements following; that is to say,—

Exception of
certain improve-
ments.

a. In respect of any improvement made before the passing of this Act and twenty years before the claim of such compensation shall have been made, except permanent buildings and reclamation of waste land; or,

b. In respect of any improvement prohibited in writing by the landlord as being and appearing to the Court to be calculated to diminish the general value of the landlord's estate, and made within two years after the passing of this Act, or made during the unexpired residue of a lease granted before the passing of this Act; or,

c. In respect of any improvement made either before or after the passing of this Act in pursuance of a con-

Sect. 4.

tract entered into for valuable consideration therefor; or,

d. (Subject to the rule in this Section mentioned as to contracts) in respect of any improvement made, either before or after the passing of this Act, in contravention of a contract in writing not to make such improvement; or,

e. 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:

Exception of certain tenancies.

- (2.) A tenant of a holding under a lease or written contract made before the passing of this Act shall not be entitled on being disturbed by the act of the landlord in or on quitting his holding to any compensation in respect of any improvement, his right to which compensation is expressly excluded by such lease or contract:
- (3.) A tenant of a holding under a lease made either before or after the passing of this Act for a term certain of not less than thirty-one years (*d*), or in case of leases made before the passing of this Act for a term of a life or lives with or without a concurrent term of years, and which leases shall have existed for thirty-one years before the making of the claim, shall not be entitled to any compensation in respect of any improvement unless it is specially provided in the lease that he is entitled to such compensation, except permanent buildings and reclamation of waste land, and tillages or manures, the benefit of which tillages or manures is unexhausted at the time of the tenant quitting his holding:
- (4.) A tenant of a holding, who is quitting the same voluntarily, (*e*) shall not be entitled to any compensation in respect of any improvement when it appears to the Court that such tenant has been given permission by his landlord to dispose of his interest in his improvements to an in-coming tenant upon such terms as the Court may deem reasonable, and the tenant has refused or neglected to avail himself of such permission: (*e*)
- (5.) Out of any moneys payable to the tenant under this Section, all sums due to the landlord from the tenant or his pre-

decessors in title in respect of rent, or in respect of any deterioration of the holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, may be deducted by the landlord, (*f*) and also any taxes payable by the tenant due in respect of the holding and not recoverable by him from the landlord.

Any contract between a landlord and a tenant whereby the tenant is prohibited from making such improvements as may be required for the suitable occupation of his holding and its due cultivation shall be void both at law and in equity, but no improvement shall be deemed to be required for the suitable occupation of a tenant's holding and its due cultivation which appears to the Court to diminish the general value of the estate of the landlord, nor shall anything in this Act contained authorize or empower any tenant or occupier, without the previous consent in writing of the landlord, to break up or till any land or lands usually let, occupied, or used as grazing or grass lands, or let expressly as grazing or meadow land, or to cut timber without the consent of the landlord; provided that the tenant may cut timber planted and registered by him or his predecessors in title (*g*).

Any contract made by a tenant by virtue of which he is deprived of his right to make any claim which he would otherwise be entitled to make under this Section shall, so far as relates to such claim, be void both at law and in equity, subject, however, to the enactment contained in the Section of this Act relating to the partial exemption of certain tenancies, (*h*) and to the provision in this Section as to any improvement made in pursuance of a contract entered into for valuable consideration therefor.

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.

On claims for compensation for improvements, the law appears now to be that this Act is to be construed as one with the Act of 1881 (see Section 57 of that Act, *post*), and, therefore, Sections 7 and 8 (*g*) of that Act, *post*, should be referred to

- Sect. 4.** on such claims. See, also, the case of *Fawcett v. Collum*, 1901, 1 Ir. R. 129, 135. In the fixing of fair rents under the Acts of 1881, 1887, 1891, and 1896, this Section can only apply to the limited extent authorised by Sec. 1 (7) and Sec. 48 (definition of 'Land Law Acts'), and Sec. 50 (3) of the Act of 1896, which see, *post*.
- (a) As to when and how the notice of claim should be served see Sec. 16 of this Act, Rules 3 to 9 of the Judges' Rules, 1870, and Form II., *post*. The particulars of each item claimed should be given. As to procedure in case of a claim for compensation both for disturbance and improvements, see *Gordon v. Murphy*, 8 I. L. T. R. 174.
- (b) Improvements are defined by Sec. 70 of this Act, *post*. See also notes to Sec. 8 (9) of the Act of 1881, *post*, and the judgments in *Adams v. Dunseath*, 10 L. R. Ir. 109, 16 I. L. T. R. 59, R. & D. 135, MacD. 1. The following are some of the decisions on compensation for the different kinds of improvements:—In *Battersby v. Darnley*, 11 I. L. T. & S. J. 283, MORRIS, C.J., disallowed a claim for laying down and leaving a large part of the farm in grass. In *Kelleher v. Jackson*, Donn. 392, PIGOR, C.B., hinted that the droppings of cattle should be treated as manure; but in *Sweetman v. Pratt*, 7 I. L. T. R. 96, Donn. 463, WHITESIDE, C.J., throws doubt on this. And in *Leinster v. Cooke*, 15 I. L. T. R. 58, ORMSBY, J., held that a tenant was not entitled to compensation for unexhausted manures being droppings of cattle not produced by artificial food or food brought on the land where no greater number of cattle had been fed than the land could properly maintain. In *Townsend v. King*, and *Feery v. King*, 9 I. L. T. R. 56, JELLET, Q.C., G.C.J., allowed for manures on the following scale:—For bone manures imported within three years, diminishing one-third each year; and for superphosphate and guano, diminishing one-half each year, and expended within two years. In *Logan v. Hall*, 10 I. L. T. R. 175, PALLES, C.B., refused compensation for crops put into the ground after the notice to quit had expired. And see *Hope v. Cloncurry*, 9 I. L. T. R. 58; *Trye v. Leinster*, 7 I. L. T. R. 138; *Bergin v. Casey*, 7 I. L. T. R. 154. Trees planted and registered by the tenant under 23 & 24 Geo. III., c. 29, can now be claimed for by certain leaseholders. See 51 & 52 Vic., c. 37, *post*.
- (c) In reference to the meaning of the words "predecessors in title," this Section has been amended by Sec. 7 of the Land Act of 1881. See notes thereto, *post*. Before the Act of 1881 it had been held that the expression meant predecessors in the same title or tenancy. See *Darragh v. Murdock*, 5 I. L. T. R. 38, 69; *Holt v. Harburton*, I. R. R. & L. A. 82, 6 I. L. T. R. 1, Donn. 175. But the effect of Sec. 7 of the 1881 Act, as interpreted in *Adams v. Dunseath* (10 L. R. Ir. 109; 16 I. L. T. R. 59), is that the expression is no longer limited to predecessors in the same title or tenancy, but denotes a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding whatever those tenancies or titles may be, or whatever changes they may have undergone. It must be remembered, however, that in *Adams v. Dunseath* it was held by a majority of the Court of Appeal on the particular circumstances of the case that the tenant was not entitled to the house which he had built before taking out the lease of 1846. In *Walsh v. Limerick* (Land Com.), 23 I. L. T. R. 17, where a tenant from year to year made the buildings on the holdings, and sold the holding to D. in 1874, and in 1877 D. took a lease of the same holding from the landlord, which demised the lands with the buildings thereon, it was held that *Adams v. Dunseath* has not decided that the taking of a lease by a tenant precludes him, in fixing a fair rent, from being regarded as having an interest in the buildings or other improvements previously made by him or his predecessors in title, and that whether or not the tenant in such a case has lost his right to the improvements is

Unexhausted manures.

Trees.

Predecessors in title.

Where a new lease is granted.

a question of fact to be determined by considering the circumstances of each particular case. In this particular case, as there was no evidence of any transaction which could be held to amount to a surrender by the tenant of his right to compensation for the improvements, no rent was put upon the buildings. In *Murphy v. Mahony*, 14 I. L. T. R. 87, LAWSON, J., also held that a yearly tenant who took a lease at an increased rent did not thereby lose his right to compensation for improvements previously made.

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(d) In *Kepple v. Pike*, 24 I. L. T. R. 54 (L. C.), it appeared that the tenant held under a lease dated 28th September, 1870, for the term of thirty-one years from the 25th March, 1870, and it was held that this was not a lease "for a term certain of not less than thirty-one years," as its duration would be six months less than thirty-one years, and that, therefore, the tenant, on a fair rent being fixed, was entitled to have all his improvements taken into consideration. Thirty-one years' term.

(e) By Sec. 9, *post*, a tenant who is ejected for non-payment of rent, or for breach of any condition against assignment, sub-letting, bankruptcy, or insolvency, is in the same position as if he were quitting voluntarily, subject to certain provisos therein mentioned. In *Cassidy v. Richardson*, 15 I. L. T. R. 13, 42, where the landlord gave a general permission to the tenant to sell and the tenant had not availed himself of it, the claim was dismissed by LAWSON, J. In *Massereene v. Kelly*, 26 L. R. Ir. 199, it was held by the Court of Appeal (O'BRIEN, C.J., FITZGIBBON and BARRY, L.J.J.), affirming the decision of the Land Commission that a tenant evicted for non-payment of rent does not lose his right to compensation for improvements by reason of the power of sale conferred by the Land Law (Ireland) Act, 1881. "The whole argument of the appellant's counsel," says BARRY, L.J., "was based on this, that the first Section of that Act gives a general power of sale to a tenant on the conditions there specified, and therefore that the permission which the landlord was bound to give is no longer necessary to disentitle the tenant to claim for improvements. That is a startling proposition. In my opinion, the permission to sell the interests in the improvements mentioned in the 4th Sub-section is not a permission to sell the tenancy; the Sub-section deals with two separate things, namely, the interest in the improvements, which is a chose in action, and the holding itself" (26 L. R. Ir. at pp. 208, 209). And he also says: "The Land Commission have held that the *onus* rests with the landlord, not only of showing that he has given the permission, but also of specifying the incoming tenant whom he is prepared to accept. But I agree with Lord Justice FITZGIBBON that it is not necessary to lay down that proposition in the present case. The landlord may be at liberty, under Sub-section 4, to give permission in general terms, as was done in *Cassidy v. Richardson*; in many cases the market is open and there would be no difficulty in obtaining a purchaser, and I am not prepared to say that it would be necessary then for him to designate the specific purchaser" (at p. 208). "While I agree," says FITZGIBBON, L.J., "that it rests upon the landlord to show that he has given an effective permission, I decline to lay down a rule that he must prove that there was some particular person at hand whom he was willing to accept as a tenant, or that he must take the initiative in hunting up an incoming tenant." Effect of right of sale conferred by Land Act, 1881.

. . . . "On the other hand, to tell a tenant under eviction in general terms, 'I give you permission to dispose of your interest in your improvements to an incoming tenant,' would not in all cases be sufficient; in some cases—for example, in the very case where the eviction was brought about by means of an 'impossible rent'—there might be no possibility of getting any one to take the holding; for the 'incoming tenant,' presumably, is to take the holding at the old rent. I think the landlord must show that he has given a permission of which it is possible for the What amounts to permission to sell.

Sects. 4-5.

tenant to avail himself; and if the tenant then lies by, and neglects to take all reasonable steps to avail himself of that permission and to dispose of his holding to an incoming tenant, I see no reason for holding that he does not come within the Sub-section" (*Ibid.*, p. 205). And O'BRIEN, C.J., after reading Sub-section 4, says, at p. 202, "How was the outgoing tenant deprived under that Sub-section of his right to compensation? By the landlord showing—1st, that he has given permission to the outgoing tenant to dispose of his interest in his improvements to the incoming tenant; 2ndly, that he, the landlord, had consented that the sale should take place on reasonable terms; 3rdly, that the outgoing tenant had refused or neglected to avail himself of the permission offered." See further on this subject decision of Court of Appeal in *Barry v. Kenmare*, 15 I. L. T. & S. J. 116, referred to in the notes to Sec. 7, *post*.

(f) Under Rule 10 of the Rules of 1870, *post*, the landlord must serve a notice of set-off. See Form V., *post*. The Land Commission, on the hearing of an appeal from a decree for compensation by a County Court Judge, will not allow a landlord to set off rent or mesne rates in respect of the period of time which has elapsed since the date of the original hearing, as their duty is to make such a decree as the County Court Judge ought to have made. *O'Connor v. Perry*, 30 L. R. Ir. 388, 26 I. L. T. R. 48. But if the amount of compensation awarded is lodged in Court, the County Court Judge may allow mesne rates to the landlord for this period out of it: *O'Connor v. Perry*, 27 I. L. T. & S. J. 135. See, further, as to set-off, Sec. 18 of this Act, *post*; *Begley v. Downshire*, 9 I. L. T. R. 146, Donn. 525; *Halfpenny v. Carter*, 6 I. L. T. R. 17.

(g) See as to such timber, notes to Sec. 31 of the Landlord and Tenant Act, 1860, *ante*, p. 62, and the Timber Act, 1888, Sec. 2, *post*.

(h) See Sec. 12 of this Act and Sec. 22 of the Act of 1881, *post*.

As to sub-tenants claiming under this Section against the head landlord, on the expiration of the middleman's interest, for improvements made by them, see Sec. 20 of this Act, *post*, and notes to that Section, and Sec. 16, *post*.

As to the proper means of enforcing payment of compensation when awarded, see Sec. 23, *post*.

Under Sec. 42, *post*, advances may be made to the landlord by the Board of Works to enable him to pay compensation for improvements.

In *Brew and Glynn v. Stackpoole*, 1896, 2 I. R. 29, 30 I. L. T. R. 38, the Court of Appeal, reversing the Land Commission, held that where a tenant had obtained a loan from the Commissioners of Public Works under Section 31 of the Land Law (Ireland) Act, 1881, for the purpose of effecting drainage and erecting farm offices, and had executed a deed charging all his tenancy, estate, and interest in the lands with the payment of the loan and interest to the Commissioners, and his successors in title on surrendering the holding to the landlord had been awarded compensation for improvements on the holding, the Commissioners of Public Works, who had been allowed to intervene, were entitled under the deed to a charge on the compensation money, and, as the amount of the loan exceeded the compensation money, to have all the compensation money paid to them.

Presumption in respect of improvements.

5. For the purposes of compensation under this Act in respect of improvements on a holding which is not proved to be subject either to the Ulster tenant-right custom or to such usage as aforesaid, or where the tenant does not seek compensation in respect of such custom or usage, all improvements on such holding shall,

until the contrary is proved, be deemed to have been made by the tenant or his predecessors in title, except in the following cases where compensation is claimed in respect of improvements made before the passing of this Act:

- (1.) Where such improvements have been made previous to the time at which the holding in reference to which the claim is made was conveyed on actual sale to the landlord, or those through whom he derives title:
- (2.) Where the tenant making the claim was tenant under a lease of the holding in reference to which the claim is made:
- (3.) Where such improvements were made twenty years or upwards before the passing of this Act:
- (4.) Where the holding upon which such improvements were made is valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of more than one hundred pounds:
- (5.) Where the Court shall be of opinion that in consequence of its being proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to make such improvements, such presumption ought not to be made:
- (6.) Where from the entire circumstances of the case the Court is reasonably satisfied that such improvements were not made by the tenant or his predecessors in title:

Provided always, that where it is proved to have been the practice on the holding, or the estate of which such holding forms part, for the landlord to assist in making such improvements, such presumption shall be modified accordingly.

Prior to the passing of the Act of 1896, the provisions and limitations of this Section applied to applications to fix fair rents under the Acts of 1881 and 1887, but now, by Sec. 1 (10) of the Act of 1896, Sub-sections (2) and (4) of this Section, and in the case of sales after the passing of this Act, Sub-section (1) of this Section are not to apply to applications to fix fair rents. And, further, by the Act of 1896, the application of this Act to applications to fix fair rents is limited (see Section 48 (definition of 'Land Law Acts' and Sec. 50 (3) of the Act of 1896, *post*).

In cases where there is no presumption of law in favour of the tenant under this Section, there may, however, be a presumption of fact, so as to establish his claim to the improvements without strict proof of their having been made by him or his predecessors in title. Thus, where buildings from their age appear not to have been erected before the commencement of the tenancy, the Court may presume that they were erected by the tenant: *Wall v. Trustees of Foy's School*, MacD. 384.

As to the presumption in cases where improvements have been made on holdings subject to the Ulster custom, see *Boyle v. Richardson*, 28 I. L. T. R. 153; *Upton v*

176 *Landlord and Tenant (Ireland) Act, 1870.*

Sect. 6. *Dufferin*, 32 I. L. T. R. 118: 1 Greer 48; *Harper v. Dufferin*, 1 Greer 253 (S. C.), 272 (L. C.), and notes to Land Act, 1896, Sec. 49, *post*.

Permissive
registration of
improvements.

6. Any landlord or tenant who may be desirous of preserving evidence of any improvements (a) made by himself or by his predecessors in title (b) before or after the passing of this Act, may at any time (subject to the provisions hereinafter contained) file a schedule in the Landed Estates Court specifying such improvements, (d) and claiming the same as made by himself or his predecessors in title, and such schedule so filed shall be prima facie evidence that such improvements were made as therein mentioned: Provided always, that notice in writing of the intention to file such schedule, together with a copy thereof, shall be given by the landlord to the tenant for the time being of the holding on which such improvements shall have been made (or by the tenant to the landlord, as the case may be), within the prescribed time (c) before applying to the Landed Estates Court to file the same; and if the person receiving such notice shall dispute the claim made by such schedule, either wholly or in part, he shall be at liberty within the prescribed time, and in the prescribed manner, (c) to apply to the Civil Bill Court to determine the matter in difference, and in such case such schedule shall not be filed unless or until leave shall have been given to file the same, either in its original or in any amended form by the Civil Bill Court; provided also, that before filing any such schedule proof shall be made in the Landed Estates Court by statutory declaration that the notice hereby required has been duly given, and that no application has been made within the prescribed time by the party receiving such notice to the Civil Bill Court, or (if any such application has been made) that leave has been given by the Civil Bill Court to file such schedule.

(a) For definition of improvements, see Sec. 70 of this Act, *post*, and see *Adams v. Dunseath*, (10 L. R. Ir. 109; 16 I. L. T. R. 59).

(b) For the meaning of this expression now, see notes to Sec. 4 of this Act, *ante*, p. 172, and see Sec. 7 of the Land Act, 1881, *post*.

(c) For procedure under this Section, see Rules 13, 16, 17, 18 and 19 of the Rules of 1870, *post*, and the Rules of February, 1873.

(d) The improvements must be such as are suitable to the holding or they should not be registered, see Sec. 70 of this Act, *post*: *Carr v. Nunn*, I. R. R. & L. A. 89, Donn. 351, 7 I. L. T. R. 26; *Connor v. Sweetman*, 8 I. L. T. R. 103, Donn. 468; *Hope v. Cloncurry*, 9 I. L. T. R. 58. It would appear from *Holt v. Harberton*, I. R. R. & L. A. 82, 6 I. L. T. R. 1, Donn. 175, that it is a statement of the improvements actually made and not of their cost or estimated value which should be registered.

7. Where any tenant of a holding does not claim or has not obtained compensation under Sections one, two, or three of this Act, and it is proved to the satisfaction of the Court that any such tenant or that his predecessors in title on coming into his holding paid money or gave money's worth with the express or implied consent of the landlord on account of his so coming into his holding, the Court shall award to such tenant on quitting his holding in respect of the sum so paid such compensation as it thinks just, having regard to the circumstances of the case; but such tenant shall not be entitled to any compensation under this Section when it appears to the Court that such tenant has been given permission by the landlord to obtain such satisfaction from an incoming tenant in respect of the money so paid, or the money's worth so given by him, and on such terms as the Court may think reasonable, and such tenant has refused or neglected to avail himself of such permission; moreover where the money or money's worth paid or given by any tenant claiming compensation under this Section on coming into his holding was paid or given in whole or in part in respect or as covering the value of any improvements on the holding, care shall be taken that such tenant shall not receive compensation in respect of the same improvements under this Section and also under some other Section of this Act; provided that out of any moneys payable to the tenant under this Section all sums due to the landlord from the tenant or his predecessors in title in respect of rent, or in respect of any deterioration of a holding arising from non-observance on the part of the tenant of any express or implied covenant or agreement, and also any taxes payable by the tenant due in respect of the holding, and not recoverable by him from the landlord, may, if not deducted under the provisions of Section four of this Act, be deducted by or on behalf of the landlord: Provided always, that this Section shall not apply when such money or money's worth has been paid during the existence of a lease made before the passing of this Act.

Sects. 7-9.
Compensation
in respect of
payment to
in-coming
tenant.

It was held by the Court of Appeal on the construction of this Section that a landlord who served a notice to quit could bar the tenant from compensation for an incoming payment by offering him permission to sell his goodwill to an incoming tenant on reasonable terms; but that if the notice was not reasonable the tenant would be entitled to compensation: *Barry v. Kenmare*, 15 I. L. T. & S. J. 116.

8. Where a holding is proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, and where the tenant claims under such custom or usage, and such custom or usage extends to

Compensation
in respect of
crops.

Sects. 8-9.

away-going crops,^(b) the compensation payable in respect of away-going crops^(b) shall be dealt with according to the custom or usage, but the tenant of every other holding, which is not proved to be subject to the Ulster tenant-right custom or such usage as aforesaid, or in respect of which no claim is made under such custom or usage, shall, in the absence of any agreement in writing to the contrary, on quitting his holding,^(a) be entitled to all his away-going crops,^(b) or at the option of the landlord to be paid the value of the same.

In case of a tenant evicted for non-payment of rent.

(a) In *Russell v. Moore*, 8 L. R. Ir. 318, 15 I. L. T. & S. J. 139, PALLES, C.B., held that a tenant evicted for non-payment of rent was to be considered as a tenant "quitting his holding" within the meaning of this Section, and was, therefore, entitled to the away-growing crop or its value. The other members of the Court, however, expressed no opinion on the point, basing their decisions upon different grounds. And in *Chester v. Farrell*, 17 I. L. T. R. 73, MORRIS, C.J., expressed a strong opinion against the Chief Baron's view.

What are "crops."

(b) Artificial grasses for the first year after they are sown appear to constitute "crops" within the meaning of this Section. See judgment of PALLES, C.B., *Donoghue v. Dean*, 19 I. L. T. R. 39. After the first year they are not considered to be a crop, but are treated as the permanent grass of the land: *Flanagan v. Seaver*, 9 Ir. Ch. R. 230.

As to a tenant's rights in lieu of emblements, see *Landlord and Tenant Act, 1860*, Sec. 34, *ante*, pp. 66-67.

Limitation as to disturbance in holding.

9. For the purposes of this Act, ejectment for non-payment of rent, or for breach of any condition against assignment, ^(a) subletting, 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, or for breach of any such condition as aforesaid, and is not disturbed by act of the landlord within the meaning of this Act, shall stand in the same position in all respects as if he were quitting his holding voluntarily; provided that in the case of a person claiming compensation on the determination by ejectment for non-payment of rent of a tenancy existing at the time of the passing of this Act, and continuing to exist without alteration of rent up to the time of such determination, the Court may, if it think fit,^(b) treat such ejectment as a disturbance if the arrear of rent in respect of which it is brought did not wholly accrue within the three previous years, and if any earlier arrear remained due from the tenant at the time of commencing the ejectment, or, if in case of any such tenancy of a holding held at an annual rent not exceeding fifteen pounds, the Court shall certify that the non-payment of rent causing the ejection

on has arisen from the rent being an exorbitant rent; provided Sects 9-12.
 that no tenant who shall have given notice of surrender, and afterwards refuse to give up possession in pursuance of such notice, shall be entitled to any compensation under Section three of this Act, although evicted by the landlord in a suit founded on such notice.

(a) See Landlord and Tenant Act, 1860, Secs. 10 and 18, and notes thereto, *ante*, p. 29 and 46. As to what constitutes an assignment within the Section, see, also, *Robbie v. Lynch*, 7 I. L. T. R. 174.

(b) *LAWSON, J.*, refused to hold that an ejectment for non-payment of one and a half year's rent which had accrued within the three previous years was a "disturbance" within the meaning of this Section, where the landlord had offered permission to the tenant to sell his tenant-right interest: *Cassidy v. Richardson*, 15 I. L. T. R. 42. See, also, *Revington v. Kelly*, 14 I. L. T. R. 34.

10. Any landlord may, after six months' notice in writing, to be served upon the tenant, or left at his house, resume possession from a yearly tenant of so much land (not to exceed in the whole one twenty-fifth part of any individual holding) as he may require for the bona fide purpose of erecting thereon one or more labourers' cottages, with or without gardens attached, and such resumption of land shall not, unless the Court shall be of opinion that same is unreasonable, be deemed a disturbance of the tenant within the meaning of this Act, and shall not subject the landlord to any claim for compensation, except in respect of improvements, beyond an abatement of rent proportionate to the annual value of the land taken by the landlord.

Exception in case of lands required for labourers' cottages.

As to resumption for labourers' cottages, see, also, Notice to Quit Act, 1876, c. 3, and Land Act, 1881, Sec. 5, *post*.

11. For the purposes of this Act a tenant shall be deemed to have derived his holding from the preceding tenant if he has paid to such preceding tenant any money or given to him any money's worth in respect of his holding, or has taken such holding by assignment or operation of law from the preceding tenant; and where a succession of tenants have derived title each from the other, the earlier in such succession shall be deemed to be the predecessor of the later, and the later in such succession shall be deemed to be the successor of the earlier.

Derivative title of tenant.

See notes to Landlord and Tenant Act, 1860, Sec. 9, *ante*, p. 26, and to Land Act, 1881, Secs. 7 and 8, *post*, pp. 260-262 and 270.

12. A tenant of a holding which is not proved to be subject to a partial exemption of certain tenancies, or to the Ulster tenant-right custom or such other usage as aforesaid,

Partial exemption of certain tenancies.

Sects. ~~12-14~~ whose holding, or the aggregate of whose holdings,^(a) in Ireland is valued under the Acts relating to the valuation of rateable property in Ireland at an annual value of not less than fifty pounds, shall not be entitled to make any claim for compensation under any provision of this Act in cases where the tenant has contracted in writing with his landlord that he will not make any such claim.

The 22nd Section of the Land Act, 1881, renders void any provision in a lease made after the passing of that Act inconsistent with any of the provisions of this Act. See, however, *Cagney v. Roche*, 30 L. R. Ir. 108, where it was held by the Queen's Bench Division, that a tenant might still enter into a valid contract to pay the whole of the grand jury cess, even in case of a tenancy which came within Sec. 65 of this Act. "All the purpose of the 22nd Section of the Land Act of 1881," says O'BRIEN, J., "was to enlarge the amount of valuation mentioned in the 12th Section of the Act of 1870 from £50 to £150" (30 L. R. Ir., at p. 110). Section 65 of this Act is now repealed by Sec. 110 and Schedule 6 of the 61 & 62 Vic., c. 57, but this decision is still useful on the construction of this Section and Sec. 22 of the Act of 1881.

(a) As to the construction of the words "aggregate of whose holdings," see notes to Land Act, 1881, Sec. 22, and Land Act, 1887, Sec. 30 (3), *post*, and *Bank of Ireland v. Watkins*, 26 L. R. Ir. 258, 24 I. L. T. R. 81.

13. [*Repealed by Land Act, 1881, Sec. 6.*]

14. 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 (a) 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; or where the tenant of any holding so held as last aforesaid at the time of the passing of this Act is evicted by the landlord by reason of the tenant's unreasonable refusal to allow the landlord, or any person or persons authorized by him in that behalf, he or they making reasonable amends and satisfaction for any injury to be done or occasioned thereby, to enter upon the holding for any of the purposes following, that is to say,

- Mining or taking minerals;
- Quarrying or taking stone, marble, gravel, sand, or slate;
- Cutting or taking timber or turf;
- Opening or making roads, drains, and watercourses;
- Viewing or examining the state of the holding and all buildings or improvements thereon;
- Hunting, shooting, or fishing, or taking game or fish;

Eviction in certain cases not to be deemed a disturbance

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. Sects. 14-15

Under Sec. 5 of the Land Act, 1831, tenants may still be evicted for very much the same causes as are here specified, even though they have had fair rents fixed. See notes to that Section, *post*.

A landlord, in order to secure to himself the benefit of this Section, should specifically aver the cause of the eviction in the notice to quit: *Reilly v. Corr*, 4 I. L. T. R. 13.

The Section appears not to apply to claims under the Ulster Custom: *Algeo v. Leitrim*, 10 I. L. T. R. 168; *Gallagher v. Leitrim*, 10 I. L. T. R. 168 (note).

(a) The "right" here referred to does not mean or include any particular mode of tillage or cultivation, but means a right such as a right of way, or of turbary, or of killing game: *Hutchinson v. Middleton*, 7 I. L. T. R. 183 (FITZGERALD, B.).

15. No compensation shall be payable under the preceding provisions of this Act in respect of—

Exemption of certain lands.

- (1.) Any demesne land, (a) or any holding ordinarily termed "town-parks," (a) 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, or any holding let to be used wholly or mainly for the purpose of pasture, (a) and valued under the Acts relating to the valuation of property in Ireland at an annual value of not less than fifty pounds, or any holding let to be used wholly or mainly for the purposes of pasture the tenant of which does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides: 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 four, five, and seven of this Act; or,
- (2.) Any holding which the tenant holds by reason of his being a hired labourer or hired servant; or,
- (3.) Any letting in conacre or for the purposes of agistment or for temporary depasturage; or,
- (4.) Any holding let and expressed in the document by which it is let to be so let for the temporary convenience or to meet a temporary necessity either of the landlord or tenant, and

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Secs 15-16

the letting of which has determined by reason of the cause having ceased which gave rise to the letting:

(5.) Any cottage allotment not exceeding a quarter of an acre.

This Section deals with very much the same class of holdings as are excluded from the Land Acts by Land Act, 1881, Sec. 58, and Land Act, 1896, Sec. 5. Home farms, however, are not mentioned in it. Holdings which are not agricultural or pastoral, though not here specified, are entirely excluded from the Act by Sec. 71, *post*.

Section applies only to claims for compensation.

The exclusions of this Section are far less general in terms than those of the corresponding 58th Section of the Act of 1881, and 5th Section of the Act of 1896. It is only from the provisions as to compensation that any classes of holdings, except those which are not agricultural or pastoral, are excluded by the present Act.

If a holding is not excluded by this Section, but is excluded by Sec. 58 of the Act of 1881 or Sec. 5 of the Act of 1896, then none of the provisions of the Act of 1881 applies to the holding on a claim for compensation for disturbance, and consequently the scale of compensation in Sec. 6 of the Act of 1881, which is higher than the scale in Sec. 3 of this Act, does not apply (see *Fawcett v. Collum*, 1901, 1 I. R. 129, 135, and note (a) to Sec. 3 of this Act, *ante*). But it would appear that the Scale in Sec. 3 of this Act still applies to such a case, though it was not necessary to decide the point, as the landlord consented to the application of that scale (see the judgments of ASHBOURNE, L.C., and HOLMES, L.J., in *Fawcett v. Collum*, at pp. 139, 140, 150). FITZGERALD, L.J., reserved his decision on this point (see p. 140 of report of that case).

Proviso as to compensation for improvements

(a) Demesne lands, town parks, and pasture lettings are, by the proviso at the end of Sub-sec. 1, brought within the provisions of the 4th Section as regards claims for compensation for improvements: *Guardians of Newtownlimavady Union v. Tyler*, 6 I. L. T. R. 134, Donn. 460. Lettings in conacre, lettings for temporary convenience, &c., are, however, apparently not within this proviso, and tenants of such holdings cannot claim either for improvements or disturbance. In *Ward v. Walker*, Donn. 391, FITZGERALD, J., held, however, that a tenant under a Chancery letting pending the cause was entitled to compensation for improvements. The grounds of this decision do not appear from the report of the case, and such lettings have always been held to be for temporary convenience under the Act of 1881. See notes to Sec. 58, Sub-sec. 7, of that Act, *post*.

As the decisions under this Section are so closely connected with those under the 58th Section of the Land Act, 1881, and the 5th Section of the Act of 1896, it has been deemed convenient to deal with them in the notes to the latter Sections. Those of them which are still of binding authority will be found there cited. Many, however, are of little value, as they have been practically overruled by the decisions of courts of superior authority under the latter Acts, but it should be noted that excluding clauses of Sec. 58 of the Act of 1881 and Sec. 5 of the Act of 1896 differ in several instances from the excluding clauses of this Section.

Proceedings in respect of Claims.

Proceedings by tenant in respect of claims.

16. Every tenant entitled under this Act to make any claim in respect of any right or for payment of any sums due to him by way of compensation, and about to quit his holding, may within the prescribed time serve a notice of such claim on his landlord, or in his

absence his known agent; the notice shall be in writing in the prescribed form, and shall state the particulars of such claim, subject to such amendment as the Court may allow, together with the dates at which and the periods within which such particulars are severally alleged to have accrued, and, where such claim or any part of the same is in respect of compensation under the provisions of Section three of this Act, the number of years' rent claimed shall be specified.

Sects. 16-18.

See Rules of 1870 under this Act, Nos. 1 to 12, and Forms I. to IV., *post*.

The latest time for service of a claim is one month after the tenant quits possession, unless the time is extended by the County Court Judge; as to which, see Rule 12 and notes thereto, *post*; and for cases in which the time for service of a claim has been extended, see *Smyth v. Hogg* (C. C.), 27 I. L. T. R. 103; *Walsh v. Fitzgerald*, 21 I. L. T. R. 82.

17. On the receipt of the notice the landlord shall be deemed to have admitted the claim made by the tenant, unless within the prescribed time and in the prescribed manner he serves a notice on the tenant, stating that he disputes the whole or some portion of the claim made by the latter, and upon service of such notice by a landlord on the tenant a dispute shall be deemed to have arisen between the landlord and the tenant as to the whole or a portion of such claim, and such dispute shall be decided by the Court, unless within the time and in the manner prescribed in that behalf such dispute shall have been settled by agreement between the landlord and tenant.

Proceedings by landlord in respect of claims

See Rules of 1870, *post*, Nos. 10 and 11, as to service of notices of dispute, and Forms Nos. V. and VI.

The notice should be served within twenty-one days of the service of the notice of claim (Rule 10), unless the County Court Judge extends the time under Rule 12.

The Recorder of Derry (OVEREND, K.C.) has held that where a claim for compensation for disturbance, and a notice of dispute by the landlord, have been served, the Court is bound to adjudicate upon the claim, even though the landlord subsequently withdraws the notice to quit, as a "dispute" has arisen within the meaning of this Section: *Brolly v. Biggar*, 26 I. L. T. & S. J. 659.

18. On the hearing of any dispute between landlord and tenant under this Act, either party may make any claim, urge any objection to the claim of the other, or plead any set-off such party may think fit (including in the case of a landlord any moneys paid on account of the purchase of the right of the tenant under the Ulster tenant-right custom or such usage as aforesaid), and the Court shall take into consideration any such claim, objection, or set-off (a), also

Equities between landlord and tenant.

Sect. 13

any such default or unreasonable conduct (b) of either party as may appear to the Court to affect any matter in dispute between the parties, and shall admit, reduce, or disallow altogether any such claim, objection, or set-off made or pleaded on behalf of either party as the Court thinks just, giving judgment on the case with regard to all its circumstances, including such consideration of conduct as aforesaid, and the Court shall have jurisdiction at the hearing of any such dispute to ascertain what sums, if any, shall be deemed due by the tenant to the landlord under Sections three, four, and seven of this Act, or any set-off in respect of unliquidated or liquidated damages under said Sections, or any of them (c); and in any case in which compensation shall be claimed under Section three 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, (d) and that such terms have been and are unreasonably refused by the tenant, the claim of the tenant to such compensation shall be disallowed.

Set off for rent
or deterioration.

(a) The Land Commission, in exercising the appellate jurisdiction, conferred on the Judge of Assize by Sec. 24, *post*, and now transferred to them by Sec. 47 of the Land Act, 1881, will not allow a landlord to set-off under this Section a claim for rent which accrued due after the hearing by the County Court Judge, or a claim in respect of the deterioration of the holding, alleged to have taken place since that date: *O'Connor v. Perry*, 30 L. R. Ir. 388, 26 I. L. T. R. 48. See, however, Sec. 21, *post*, which enables the County Court Judge to deal with such claims, if the compensation awarded is lodged in Court under that Section.

Unreasonable
conduct

(b) As to "unreasonable conduct" see *Bergin v. Casey*, 7 I. L. T. R. 154; *O'Brien v. Hurley*, 7 I. L. T. R. 175; and notes to Land Act, 1881, Sec. 3, *post*. So far as it is possible to judge from the absence of reported decisions the conduct of tenants has not recently been "unreasonable" either under this Act or the Act of 1881.

In *Bustard v. Collum*, 14 I. L. T. R. 16, DEASY, L.J., disallowed compensation to a tenant who had overmeadowed land and allowed the rent to fall into arrear on the ground that his conduct was unreasonable. And in *Larkin v. Tuohy*, 7 I. L. T. R. 95, DONN. 461, FITZGERALD, B., held that the pulling down of a good house unnecessarily, and the erection of another instead, for the purpose of establishing a claim for improvements, was "unreasonable." See, also, *Cambie v. O'Keefe*, 7 I. L. T. R. 182, DONN. 467; *Doolin v. Leitrim*, DONN. 210; and *Wallace v. McClelland*, *ibid.* 212; *Kinnerk v. Hall*, 8 I. L. T. R. 150.

Liability of
tenant for mesne
rates.

(c) In *Fitzgerald v. Walsh*, 1894, 2 Ir. R. 731 (L. C.), it was held that where a caretaker's notice had been served on a tenant under Sec. 7 of the Land Law (Ireland) Act, 1887, and the tenant had, after such service, continued in beneficial occupation of the holding, the tenant was liable to pay mesne rates to the landlord from the service of the notice until the tenant was paid the compensation awarded to him under this Act, or until such compensation was lodged in Court, and that, the compensation money having been lodged in Court, the landlord was entitled to have the amount due for mesne rate set-off against the compensation money.

O'Connor v. Perry (C. C.), 27 I. L. T. & S. J. 135, it was held that the landlord is entitled to have the amount of meane rates due from the time of the issuing of the writ of *habere* until he was put into possession of the holding deducted from the amount of compensation which had been lodged in Court. Sect. 19, 20.

(d) Under this proviso a tenant does not forfeit his claim to compensation for disturbance, unless the willingness by the landlord continue, and the refusal by the tenant be persisted in until the hearing of the claim: *Haydock v. Rynd*, I. L. T. R. 9 (PALLES, C.B.).

19. In every case of dispute between landlord and tenant heard before the Civil Bill Court, the order of the Court shall be reduced into writing in the form of a decree or award (as the case may be), and shall state the items of claim allowed, that is to say, the particulars of loss sustained by the tenant in quitting his holding, and of the improvements and payment to his predecessors in title in respect to which compensation may have been awarded to the tenant under the third, fourth, and seventh Sections, and also the particulars of any set-off, objection, default, or conduct allowed or taken into account; such decree or award to be made in the prescribed form. Order of Court to be in writing.

See Forms VII. to X., Judges' Rules under this Act, *post*, pp. 673-674.

20. Where in the case of any holding there are several persons standing in the relation to each other of landlord and tenant, and in the circumstance of any one of such tenants quitting his holding by reason of disturbance or otherwise involves the interest of any of such persons other than the tenant quitting his holding, the Court shall determine the whole amount payable under this Act on the occasion of such tenant quitting his holding, and shall direct payment of the same by such person, and to such one or more of the persons interested, (a) and in such manner, as the Court thinks just; provided that this Section shall not affect the Ulster tenant-right custom or such usage as aforesaid to which any holding is proved to be subject. Provision in case of derivative estates in the same holding.

Claimants are not obliged to avail themselves of this Section. The middleman and sub-tenant may bring separate claims at different times in respect of improvements effected by each of them respectively: *Walsh v. Fitzgerald*, 21 I. L. T. R. 82 (C.).

(a) As to bringing other "persons interested" before the Court, see Judges' Rules under this Act, No. 22, *post*, and as to who are persons interested see *Brew and Lynn v. Stackpoole*, 2 I. R. 29, 30 I. L. T. R. 38.

As to the rights of sub-tenants upon the determination of the middleman's tenement, see, now, Land Act, 1881, Sec. 15, Land Act, 1896, Sec. 12, and notes *hereto*, *post*, pp. 552-553.

Sect. 21.
Restriction on
eviction of
tenant.

21. A tenant who may be decided by the Court to be entitled to compensation to be paid by any landlord shall not be compelled by process of law to quit his holding until the amount of compensation due to him has been paid or deposited in manner hereinafter mentioned. A landlord shall in all cases have the option of depositing in the manner prescribed the amount of compensation due; and if at any time after the making of a claim for compensation as hereinbefore directed, and before finally giving up possession of his holding, a tenant shall be alleged to have done any damage to his holding, or the buildings thereon, the Court shall inquire into the same, and allow to the landlord out of the money so deposited such compensation as it may deem just, including mesne rates (a). In no case shall a tenant, except by special leave of the Court, be entitled to receive the money so deposited until he shall have given up possession of his holding. Where compensation is awarded in respect of any holding to be paid by any landlord who is himself a tenant of such holding, the tenant to whom such compensation is awarded shall not by reason of such compensation not being paid or deposited in manner aforesaid by such landlord be entitled under this Section, as against a superior landlord not liable to such compensation, to retain possession of the holding after the expiration or determination of the title thereto of the landlord by whom such compensation was so awarded to be paid as aforesaid.

As to procedure under this Section, see Judges' Rules, Nos. 34 to 37, *post*, p. 665. Landlords are enabled by Sec. 42, *post*, to borrow money from the Board of Works for the purpose of paying compensation, if they have not "disturbed" the tenants who are entitled to be paid same.

In *Judge v. Belton*, I. R. 9 C. L. 414, proceedings were stayed by the Court in an ejectment on title, until the landlord paid the sum awarded as compensation to the tenant, the latter undertaking upon payment to give up possession of the holding.

Where money awarded as compensation had been by consent deposited in the hands of a third person, the consent itself providing for the application of the money, it was held by FITZGERALD, J., that the chairman had no jurisdiction to order a payment into Court, or to award damages to the landlord for waste subsequently committed on the holding by the tenant: *M'Greavy v. M'Donald*, 10 I. L. T. R. 164. See note (c) to Sec. 18, *ante*, as to mesne rates and claims against the compensation money when lodged in Court.

Set-off for mesne
rates.

(a) Mesne rates may be allowed to a landlord under this Section as a set-off against the amount awarded for compensation even for a period after the tenant has been converted into a caretaker by service of the notice prescribed by the 7th Section of the Land Act, 1887: *Fitzgerald v. Walsh* [1894], 2 I. R. 731. 27 I. L. T. R. 104. And for the period pending the hearing of an appeal as to the amount of compensation, *O'Connor v. Perry*, 27 I. L. T. & S. J. 135 (C. C.). Affirmed by the Land Commission, but unreported.

*Court to award Compensation.***Sects. 22-28**

22. For the purposes of this part of this Act the Court shall mean one or other of the tribunals following; that is to say,

Court to mean
Civil Bill Court
or Court of
Arbitration.

The Civil Bill Court of the county where the matter requiring the cognizance of the Court arises; or,

The Court of Arbitration constituted as in this Act mentioned.

Where a matter requiring the cognizance of the Court arises in respect of a holding situate within the jurisdiction of more than one Civil Bill Court, any Civil Bill Court within the jurisdiction of which any part of the holding is situate may take cognizance of the matter.

The Land Commission has no original jurisdiction under this Act: *Knipe v. Armstrong*, 15 I. L. T. R. 64, MacD. 413; *O'Connor v. Perry*, 30 L. R. I. 388; 26 I. L. T. R. 48, though an appeal from the decision of the Civil Bill Court now lies to it, instead of to the Judge of Assize (Land Act, 1881, Sec. 47, *post*).

23. The Judge of the Civil Bill Court (hereinafter called the Chairman) shall in all cases brought before him under the provisions of this Act have power to take evidence upon oath, and to compel the attendance of witnesses, and shall have all and the same powers, jurisdiction, and authority as in cases of Civil Bill ejectment coming within his jurisdiction as such Judge: Provided always, that the Judge shall himself, without a jury, decide any question of fact arising in any case brought before him under this Act.

Civil Bill Court.

The Chairman may, with the consent of both parties, hear and determine any case brought before him under this Act in chamber, if he so thinks fit, and when so sitting in chamber he shall have all and the same powers, jurisdiction, and authority in respect to cases so heard as if sitting in open court.

The Chairman may, within the prescribed time (*a*) after making any order, review or rescind or vary any order previously made by him, but, save as aforesaid, and as provided by this Act with respect to appeal, every order of the Civil Bill Court shall be final.

Any order made by the Chairman under this Act may be enforced by attachment or otherwise in the same manner as if it were the order of any of the Superior Courts of Common Law at Dublin, and if such order made by the Chairman be for the payment of money, it may also be enforced in the same manner as civil bill decrees for money demands made by such Chairman (*b*).

(*a*) See as to the time within which an order may be varied, Rules of 1870, No. 23, *post*, p. 662.

Sects. 23-25. (b) A decree for compensation under this Act, if for a sum exceeding £20, may be removed on *certiorari* under 27 & 28 Vic., c. 99, s. 9, and given the effect of a judgment of a superior court: *Gracey v. Harrison*, 8 L. R. Ir. 20; 15 I. L. T. & S. J. 117. Where an appeal is taken to the Land Commission, and the decree for compensation is simply affirmed by that court, the mode of recovering the amount awarded is by executing the original decree; but the costs of the appeal are enforced by a writ of *fi. fa.* issued by the Land Commission under the Rules of January, 1897, Nos. 96 and 97, *post*; *O'Brien v. Leader*, 30 L. R. Ir. 531.

24. [*As to Appeals. Repealed by Land Act, 1881, Sec. 47.*]

Court of
Arbitration.

25. Where the parties to any such dispute as aforesaid respecting any holding are desirous that such dispute should be settled by arbitration, they shall, in the prescribed manner and within the prescribed time, refer the same to an arbitrator or arbitrators, with an umpire to be appointed in manner appearing in the schedule annexed hereto, and the tribunal so selected shall be deemed in respect of such dispute the Court of Arbitration under this Act.

The Court of Arbitration shall, in all cases brought before it under this Act, have all and the like powers, jurisdiction, and authority as a Civil Bill Court under this Act, with this exception, that the Court of Arbitration shall have no power to punish persons for contempt, or to enforce its awards; but it may report to the Civil Bill Court the name of any person refusing to give evidence, or to produce documents, or guilty of contempt of the Court when sitting judicially; and the Civil Bill Court may, upon such report, punish the offender in the same manner as if the offence had been committed in, or in respect of a matter under the cognizance of, the Civil Bill Court.

The award of the Court of Arbitration may, at the instance of either party, be recorded in the prescribed manner and within the prescribed time in the Civil Bill Court, and when so recorded shall be enforceable as if the same were an order of said Court.

No such award shall, so far as relates to the dispute under this Act, be held to be invalid by reason of the violation of or non-compliance with any technical rule of law respecting awards, where such award substantially decides the dispute referred to the Court of Arbitration.

No appeal shall lie from an award of the Court of Arbitration, nor shall any such award be removable by *certiorari*.

As to procedure under this Section, see Judges' Rules, Nos. 41 to 45, *post*, and Form No. XI., *post*, pp. 666-667 and 674.

This Section is specially incorporated by the 38th Section of the Land Act, 1881. See as to arbitration under that Act, Sec. 40, and Rules of January, 1897, Nos. 152 to 155, *post*, pp. 756-757.

Powers of Limited Owners.

Sects. 26-27

26. The expression "limited owner" shall in this Act mean as follows: Interpretation of "limited owner."

- (1.) Any person entitled under any existing or future settlement at law or in equity, for his own benefit and for the term of his own life, to the possession or receipt of the rents and profits of land, whether subject or not to incumbrances, in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates:
- (2.) Any body corporate, any corporation sole, ecclesiastical, or lay, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, in the case of freehold land, to an estate in fee simple or fee farm, and in the case of leasehold land to a lease for an unexpired residue of not less than thirty-one years, or for a term of years or of lives renewable for ever, or renewable for a period of not less than thirty-one years.

As to the powers of limited owners under this Act, see Secs. 27, 28, and 29, *post*; and as to their powers under the Land Act, 1881, see Secs. 10 and 23 of that Act, *post*. See, also, the Sections of the Settled Land Act, 1882, in the Appendix, *post*.

As to the powers of trustees for charitable purposes, see Land Purchase Act, 1891, sec. 14, *post*, and *Finnegan's Estate*, MacC. 29.

27. A landlord, being a limited owner, shall have power to agree with a tenant as to the amount of compensation payable to him under this Act, and on payment of the same to the tenant may apply to the Civil Bill Court for an order charging the holding with an annuity in respect of such payment, and the Court, upon being satisfied of such payment having been made, shall charge the holding with an annuity of five pounds for every one hundred pounds of the sum so paid to the tenant, and so on in proportion for any less sum, such annuity to be limited in favour of the limited owner, his executors, administrators, and assigns, and to be payable for a term of thirty-five years on the anniversary of such date: Provided that no such order shall be made by the Court unless notice of the application for the same shall have been given in the prescribed form to the person for the time being entitled to the Agreement by limited owner.

Sects. 27-28. first estate of inheritance, if any, expectant upon the determination of the estate of the limited owner, or if such person shall be a married woman, infant, or lunatic, to his or her husband, guardian, or committee respectively. Any annuity created under this Section shall be a charge upon the holding having priority over all estates and interests subsequent to the estate or interest of the limited owner, but subject to any estates, mortgages, or other interests having priority over or charged on the estate of the limited owner.

See Rules of 1870, under this Act, Nos. 47 to 58, *post*, pp. 667-669.

owner of limited
owner to grant
leases.

28. Any limited owner shall have power to grant agricultural leases for any term of years absolute, or determinable at fixed periods, subject to the following restrictions :

- (1.) The term of any lease shall not exceed thirty-five years :
- (2.) The power of leasing conferred by this Act shall not include any mansion house or demesne lands :
- (3.) The lease shall take effect in possession, or within one year after the execution thereof, and not in reversion, and there shall be reserved thereby a fair yearly rent to be incidental to the immediate reversion of the holding, without taking anything in the nature of a fine, premium, or foregift ; and in estimating such yearly rent it shall not be necessary to take into account against the tenant the increase (if any) in the value of the holding arising from any improvements executed by him or his predecessors in title :
- (4.) The lease shall imply a condition of re-entry for non-payment of the rent thereby reserved :
- (5.) The lease, if it includes any building, shall contain a clause declaring whether the landlord or the tenant is bound to rebuild such building in the case of the same being destroyed during any part of the tenancy by fire, lightning, or tempest, and whether the landlord or the tenant is bound to keep the same in repair :
- (6.) The lessee shall execute a counterpart of every lease, and shall thereby covenant for the due payment of the rent reserved :

Upon the application of any landlord or tenant the Civil Bill Court may confirm any lease (a) granted or proposed to be granted under this Act, and such Court may, if it thinks just, confirm or refuse to confirm such lease with or without modifications, and the confirmation of any such lease shall be deemed conclusive evidence of the lease being within the powers of this Act ; the confirmation of a lease shall be certified in the prescribed manner.

more extensive powers of leasing are now conferred on limited owners by the Septs. 28-33.
Landed Land Act, 1862, Secs. 6 and 65 (10). See the latter Section, App., *post*.

) For procedure in order to have a lease confirmed by the Civil Bill Court, see
Septs, 1870, under this Act, Nos. 54 to 57, *post*. "The application to confirm may
be made either before the grant or after the lease has been granted:" *per* FITZ-
GERALD, J., *O'Keefe v. Walsh*, 4 L. R. Ir., at p. 420.

Confirmation by the Civil Bill Court is not essential to the validity of a lease
under this Section: *O'Keefe v. Walsh*, 4 L. R. Ir. 417.

29. Any lease granted in pursuance of this Act by an individual Effect of lease by
limited owner.
limited owner shall be valid against the person granting the same,
and against all persons entitled to any estate or interest subsequent
to the estate or interest of such limited owner; and any lease
granted in pursuance of this Act by any limited owner, being a
body corporate, corporation sole, trustees for charities, commissioners
or trustees for ecclesiastical, collegiate, or other public purposes,
shall bind all the estate and interest of such last-mentioned limited
owner; but no lease granted by an owner holding himself under a
lease shall continue after the expiration of the term granted by
the owner's lease.

As to the effect of leases by limited owners under powers of leasing, and other-
wise, see notes to L. & T. Act, 1860, *ante*, p. 14; and as to the jurisdiction in equity
in the defective execution of powers, see 12 & 13 Vic., c. 26; 13 Vic., c. 17, s. 5,
Moffett v. Lord Gough, 1 L. R. Ir. 331 (C.A.).

30. All powers of leasing given by this Act shall be deemed to Leasing power
of Act to be
cumulative.
be in addition to any other powers any limited owner may possess,
and such owner may exercise any other power of leasing vested in
him in the same manner as if this Act were not passed.

1. [This Section is repealed by Statute Law Revision Act, 1883.]

PART II.

Sale of Land to Tenants.

2. Subject to the restrictions hereinafter mentioned, the land- Application to
"the Court" for
sale to tenant of
holding.
lord and tenant of any holding in Ireland may agree for the sale of
the holding to the tenant at such price as may be fixed between
them; and upon such agreement being made they may jointly, or
either of them may separately with the assent of the other, apply
to the Landed Estates' Court, in this part of this Act referred to as
"the Court," for the sale to the tenant of his holding.

3. No sale shall be made under this part of this Act unless the Restrictions on
sale of holding.
landlord is the absolute owner of the land which forms the holding
of the tenant, or such tenant for life or other limited owner as is in
the Section mentioned.

Sects. 33-34. "Absolute owner" shall in the case of freehold land mean the owner in fee simple or in fee farm, or person capable of appointing or disposing of the fee, whether subject or not to incumbrances, and in the case of leasehold land mean the owner or person capable of disposing of the whole interest in the lease under which the land is held, whether subject or not to incumbrances.

No holding of leasehold tenure shall be sold under this part of this Act unless the lease under which the landlord is possessed of the land which forms the holding is a lease for lives or years renewable for ever, or a lease for a term of years of which not less than sixty are unexpired at the time of the sale being made; and no sale shall be made under this part of this Act by a landlord being the owner of a leasehold under a lease containing a prohibition against alienation unless such prohibition has determined or is waived.

"Tenant for life" shall, for the purposes of this part of this Act, mean any person entitled under any existing or future settlement at law or in equity for his own benefit and for the term of his own life to the possession or receipt of the rents and profit of land, whether subject or not to incumbrances, in which the estate for the time being, subject to the trusts of the settlement, is an estate in fee simple or fee farm, or a lease of such duration as is in this Section mentioned.

"Other limited owner" shall mean any body corporate, any trustees for charities, and any commissioners or trustees for collegiate or other public purposes, having an estate in fee simple or fee farm, or possessed of such leasehold as is in this Section mentioned, whether subject or not to incumbrances.

See Land Purchase Act, 1891, Sec. 14, and notes thereto, *post*, p. 469.

As to the sale of holding by the Court.

34. The application shall be accompanied by a deposit of such sum (if any), to be deposited by the landlord by way of security for costs as the Court may require. Upon the foregoing conditions being complied with, the Court shall make such inquiries as to the circumstances of the holding in respect of which the application is made, and as to the parties interested therein, either as incumbrancers, owners, or otherwise, and as to the sufficiency of the price and of the capacity of the landlord to sell the same, as the Court may think fit, and if the Court approve of the application it shall carry such sale into effect accordingly, and execute the necessary conveyance to the tenant.

35. [Repealed by 59 & 60 Vict., c. 47, s. 52, and second Schedule.] **Sects. 35-37.**

36. The following charges and interests shall not be deemed Certain charges not incumbrances incumbrances within the meaning of this part of this Act; that is to say,

- (1.) Quitrents and rentcharges in lieu of tithes.
- (2.) Rights of common, rights of way, watercourses, and rights of water and other easements:
- (3.) Heriots, manorial rights of all descriptions, and franchises:
- (4.) Charges for drainage, or other charges (a) created under Act of Parliament, and to be specified in the conveyance.

And every holding sold under this part of this Act shall, unless the contrary is expressed, be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

(a) See as to the incidence of drainage charges: *Attorney-General v. Ireland*, 15 L. R. Ir. 145, 11 L. R. Ir. 401; *In re Whites, Minors*, 25 L. R. Ir. 418; *Attorney-General v. Fetherstone*, 32 L. R. Ir. 614; and *Board of Works v. Symes*, 32 L. R. 1. 598.

The following are the principal Acts constituting what is commonly called the Irish Drainage Acts. Irish Drainage Code:—5 & 6 Vic., c. 89; 10 Vic., c. 32; 26 & 27 Vic., c. 88; 27 & 28 Vic., c. 72; 28 & 29 Vic., c. 52; 29 & 30 Vic., c. 49; 32 & 33 Vic., c. 72, 35 & 36 Vic., c. 31; 37 & 38 Vic., c. 32; 41 & 42 Vic., c. 59; 43 & 44 Vic., c. 27; 51 & 52 Vic., c. 39; and 52 & 53 Vic., c. 71.

37. The Court shall determine the rights and priorities of the As to the distribution of purchase money. several persons entitled to or having charges upon or otherwise interested in any holding sold in pursuance of this Act, and shall distribute the purchase money in accordance with such rights and priorities.

Where any moneys arising from a sale under this part of this Act are not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Court thinks it expedient for the protection of the rights of the parties interested, the Court may order the moneys to be lodged in Court or in the prescribed bank to the prescribed account, and may by its order declare the trusts affecting such moneys, so far as the Court has ascertained the same, or state the facts or matters found by it in relation to the rights and interests in such moneys; and the Court may from time to time make such orders in respect to any such moneys, and the investment or application thereof, or the payment thereof to the parties interested, as the circumstances of the case may require.

Sects. 38-41.

Costs of sale.

38. There shall be charged, in respect of any sale made in pursuance of this part of this Act, such percentage fee on the price paid as the Treasury may prescribe, and the fee so charged shall be paid in to the receipt of Her Majesty's Exchequer, and carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

Costs of distribution of purchase money.

39. Where any purchase moneys have been so lodged in Court or in the prescribed bank, provision shall be made in the prescribed manner with the sanction of the Treasury for the payment without cost to the persons entitled to any estate or interest in or having charges upon the holding so sold of any principal or interest moneys to which such persons may be entitled in respect of such estate and interest: Provided that any provision so made shall not extend to any expense caused by disputed titles, or any expense incurred by the failure of any person to comply with the rules for the time being in force relating to the distribution of such purchase moneys.

General powers of Court in conduct of sale of land.

40. The Court shall have full power to apportion charges, rents, and covenants, and decide all questions whatsoever, which it may be necessary to decide for the purposes of this Act, and shall not be subject to be restrained in the due execution of their powers under this Act by the order of any Court.

The Land Judges have power under this Section and *Sec. 46, post*, to apportion the rents of yearly tenants for the purpose of facilitating other occupying tenants on the estate in purchasing their holdings: *Roche's Estate*, 5 L. R. Ir. 267. But see *Domville's Estate*, 6 I. L. T. R. 62.

Rules carrying second part of this Act into effect.

41. The Privy Council in Ireland may from time to time make, and when made may rescind, annul, or add to, rules with respect to the following matters:—

- (1.) The proceedings to be had under this part of this Act:
- (2.) The circulation of forms and directions as to the mode in which this part of this Act is to be carried into execution:
- (3.) The scale of costs and fees to be charged in carrying this part of this Act into execution, and the taxation of such costs, and the persons by whom such costs and fees are to be paid, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged:
- (4.) The giving of notices to incumbrancers and other persons interested, and the service of such notices and any other matter by this part of this Act directed to be prescribed:

(5.) As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be expedient to make rules for the purpose of carrying this part of this Act into execution: 'Secfs. 41-42.'

In framing rules under this Section the Privy Council shall provide that notice of any sale to be made under this part of this Act shall be served upon every registered incumbrancer, by sending it through the post, in a prepaid letter addressed to such incumbrancer, and in proving service of any such notice it shall be sufficient to prove that such notice was properly directed to the incumbrancer at his last known place of abode, and that it was put as a prepaid letter into the post office.

Any rules made in pursuance of this Section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this Section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

Rules were made by the Privy Council under this Section, but they have now been practically superseded by the Rules under the Land Purchase Acts, *post*.

PART III.

Advances by and Powers of Board.

42. Where any sums are due in respect of compensation under this Act from a landlord to a tenant who is quitting his holding, (a) Advances to landlords for compensation for improvements. if the tenant has not been disturbed by his landlord, the Commissioners of Public Works in Ireland, in this Act referred to as the Board, may, upon the application of such landlord, advance to the tenant on behalf of the landlord the whole or such portion of the sum so due as they may think expedient, and upon an order being made to that effect by the Civil Bill Court, and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity (b) to be limited in favour of the Board, and to be declared to be payable within a term of thirty-five years.

See now Land Purchase Act, 1885, Sec. 4, *post*, which provides that advances so made under this Act are to be repaid by an annuity of 4 per cent. for 49 years.

(a) This Section only applies to advances for payment of compensation, such, *et c.*,

Sects. 42-44. as compensation for improvements under Sec. 4, *ante.* an advance to enable a limited owner to pay for the surrender of a lease to him cannot be made under it: *Domville's Estate*, 7 I. L. T. R. 55, Donn. 394.

(b) See Sects. 48 to 51, *post*, as to the priority of the annuity, &c.

Advances of
landlords for
improvement of
waste land

43. The Board may from time to time upon such security as they may approve advance such sums as they may think fit to any landlord in Ireland for the purpose of enabling him to reclaim waste lands; and where any landlord has contracted for the sale of any waste land the Board may advance upon security jointly given by the vendor and purchaser such sums as they may think fit, not exceeding a moiety of the purchase money contracted to be paid; and such waste land, and any other lands included in any such security, shall, upon an order being made to that effect by the Civil Bill Court, and upon such advance being made by the Board, be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable within a period of thirty-five years.

See Land Purchase Act, 1885, Sec. 4, *post*, which provides that the annuity is to be for 49 years at 4 per cent.

Advances to
tenants for pur-
chase of holding.

44. The Board, (a) if they are satisfied with the security, may advance to any tenant for the purpose of purchasing his holding in pursuance of this Act any sum not exceeding two-thirds of the price of such holding, and upon an order being made by the Civil Bill Court to that effect, and upon such advance being made by the Board, such holding shall be deemed to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable in the term of thirty-five years. (b)

No purchaser, or person deriving title through him, of any holding to whom any advance has been made under this Section shall, without the consent of the Board, alienate, assign, sub-divide, or sublet his holding (c) during such time as any part of the annuity charged on such holding remains unpaid, and any part of such holding alienated, assigned, sub-divided, or sublet in contravention of this Section shall be forfeited (d) to the Board, to be held by them for public purposes.

(a) Now the Land Commission. See Land Act, 1881, Sec. 35, *post*.

(b) This Section is amended by 35 & 36 Vic., cap. 32, *post*, power being given to

the Landed Estates Court, in certain cases, to charge the annuity authorized to be charged in respect of advances. The annuity is now made repayable in 49 years at 4 per cent., Land Purchase Act, 1885, Sec. 4, *post*. Sects 44-45

Provision is also made for a reduction of interest on loans under the Section by Sec. 24 of the Land Act, 1887, *post*, and Sec. 25 of the Land Act, 1896.

(c) "There is nothing in these Acts (viz., the L. & T. Acts, 1870 and 1872) to prohibit the charging of lands either at law or in equity. A rent-charge might be granted issuing out of them, or a principal sum might be charged upon them by way of equitable charge." (*per* MAX, C.J., *Flood's Estate*, 7 L. R. Ir. at p. 552). Power to charge lands subject to advances

The registration of a judgment mortgage also creates a valid charge (provided it is not collusive), and the judgment mortgagee is entitled, without the consent of the Commissioners, to proceed to a sale of the lands in the Chancery Division, but the lands will be sold subject to the annuity and all its incidents. *Flood's Estate*, 7 L. R. Ir. 545 (C. A.).

There is no restriction upon alienation (though there is upon sub-division and sub-letting) in the case of holdings sold under the Land Act, 1881, and the Land Purchase Acts, 1885 to 1901, see Land Act, 1881, Sec. 30, *post*. The Board have power under the last clause of that Section to release a holding from the conditions of this Section, and render it liable only to the conditions of the latter Acts. Corresponding restrictions under Land Purchase Acts.

Sub-letting to agricultural labourers is permitted by the L. & T. Amendment Act, 1872, Sec. 1, Sub-sec. 4, *post*.

It would appear that a forfeiture under this Section affects not merely the tenant's estate, but the absolute interest in the lands, and that it extinguishes all rent-charges and annuities charged thereon. *In re Scott and Pennfather's Estate*, 1. R. 6 Eq. 260. Forfeiture

Under the 2nd Section of the Amending Act, 1872, *post*, the Board may, notwithstanding a forfeiture, proceed to a sale. And by Sec. 26 of the Land Act, 1887, *post*, they may make an order releasing a holding from a forfeiture.

45. Where an absolute order for the sale of any estate has been made by the Landed Estates Court, and the tenant of any holding forming part of such estate is desirous to purchase such holding, he may apply to the Board in the prescribed manner to advance any sum not exceeding two-thirds of the amount he may pay for the purchase of the same, and the Board may subject to such conditions as to the price to be paid for such holding and to any matter relating to such purchase, as they think fit, agree with such tenant to make such advance. Advances to tenants for purchase of holdings in Landed Estates Court.

When any such tenant has been declared the purchaser of a holding, and has paid one-third or any greater part of the purchase money, the Board may pay the balance of such purchase money instead of such tenant, and upon such payment being made by the Board the Landed Estates Court shall by order declare such holding to be charged with an annuity of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable in the term of thirty-five years.

Sects. 45-46. Any holding charged by order of the Landed Estates Court in manner aforesaid shall not, without the consent of the Board, be alienated, assigned, subdivided, or sublet during such time as any part of the annuity charged on such holding remains unpaid, and any part of such holding alienated, assigned, subdivided, or sublet in contravention of this Section shall be forfeited to the Board, to be held by them for public purposes.

See notes to Sec. 44, *ante*, and Sec. 46, *post*.

Landed Estates Court to afford facilities for purchase by occupying tenants.

46. The Landed Estates Court shall on the sale of estates by said Court, so far as is consistent with the interests of the persons interested in the estates or the purchase money thereof, afford, by the formation of lots for sale or otherwise, all reasonable facilities (a) to occupying tenants desirous of purchasing their holdings under the provisions of this Act, and for that purpose shall hear any application in that behalf made by the Board (b) or any such occupying tenant

The rights of owners to have their estates sold to the best advantage are unaffected by this Section; and notwithstanding that on the settlement of the rental, the Examiner may have sub-divided an estate into lots co-extensive with the holdings of the occupying tenants, and have imposed on each of the tenants a condition to bid at a public auction a certain sum for his holding, no tenant has an absolute right to purchase, nor is the Court, except in cases coming within Sec. 40 of the Land Act, 1896 (which see, *post*), bound to sell in such lots, or by public auction, if it is more advantageous for the owners or incumbrancers to sell in one lot or by private contract: *Domville's Estate*, 1 L. R. 11, Eq. 1, 13; 9 I. L. T. R. 134 (Ch. App. affirming FLANAGAN, J.); *Sherlock's Estate*, 8 I. L. T. & S. J. 544. See, also, *Pemberton's Estate*, 1 L. R. Ir. 242, reported on appeal as *Havenc's Estate*, 1 L. R. Ir. 428.

(a) The Land Judges have power, under this and the 40th Section, to apportion the rents of yearly tenants for the purpose of facilitating other occupying tenants on the estate in purchasing their holdings: *Roske's Estate*, 5 L. R. Ir. 267.

In *Tisdall's Estate*, 1 L. R. 7 Eq. 518, Donn. 395, an occupying tenant who had been declared the purchaser of a lot, of which his holding formed only a portion, obtained leave to have the lot divided, the purchase money apportioned, and two separate conveyances executed.

FLANAGAN, J., held in *Preston's Estate* (1 L. R. Ir. 43) that the Court should have regard to the social position of the occupying tenant, and should not grant the same facilities to gentlemen of property as to other tenants; but in the subsequent case of *Havenc's Trustees's Estate*, 1 L. R. Ir. 428, 13 I. L. T. R. 149, the Court of Appeal held, on the contrary, that there was nothing in the language of the Section to exclude tenants of large holdings or of a superior rank of life from the benefits it conferred. An appeal was taken from this decision to the House of Lords by certain of the tenants interested; but it was dismissed upon the grounds that the appellants had no *locus standi*, not having been formal parties to the suit below: *Havenc's Estate* 3 L. R. Ir. 344. Weekly Notes, 1879, p. 156.

(b) Now the Land Commission. See Land Act, 1881, Sec. 35.

47. Where the landlord of an estate is willing to contract for the sale under the second part of this Act of his estate in its entirety but not in part, and the tenants of the holdings comprising four-fifths in value of such estate are willing to purchase their holdings, and other purchasers can be found to buy the residue of such estate, and to pay one-half of the purchase money payable in respect of such residue, such sale may be made accordingly under the second part of this Act in the same manner as if the whole of the purchasers of the estate were tenants of the landlord, and the Board (a) may advance to such other purchasers one-half of their purchase money upon the security of the residue of the estate, and such advance may, at the discretion of the Board, (a) be made to such purchasers collectively on the security of the whole of the residue of such estate, or to such purchasers severally on the security of the portions bought by them respectively, or partly in one way and partly in the other. Where any advance is made to purchasers or a purchaser under this Section, the land bought by such purchaser or purchasers shall, on an order made to that effect by the Civil Bill Court, (b) be charged with an annuity of five pounds for every one hundred pounds of such advance, (c) and so in proportion for any less sum, such annuity to be limited in favour of the Board, and to be declared to be repayable within the term of thirty-five years.

Revs. 47-48
 Advance to
 facilitate pur-
 chase of entire
 estates.

(a) Now the Land Commission. See Land Act, 1881, Sec. 35.

(b) Or Landed Estates Court. See 35 & 36 Vic., c. 32, Sec. 1, Sub-sec. 2, *post*.

(c) The annuity is now made repayable at 4 per cent. See Land Purchase Act, 1885, Sec. 4, and Land Act, 1896, Sec. 25, *post*.

See further as to facilities for the purchase of entire estates, Land Act, 1881, Sec. 34, and Land Purchase Act, 1885, Sec. 5, *post*.

48. Every annuity created in favour of the Board (a) in pursuance of this Act shall be a charge on the land subject thereto having priority over all existing and future estates, interests, and incumbrances, with the exception of quitrents and other charges incident to the tenure, to rentcharges in lieu of tithes, and any charges created under any Act authorizing advance of public money, or under any Act creating charges in respect of improvements on lands, (b) and passed before this Act, with the exception also (in cases where the lands are subject to a fee-farm rent, or sold under a lease reserving rent) of such fee-farm rent or rent reserved as aforesaid. The term during which every such annuity shall be payable shall be computed from the date of the advance

Advances
 charged on
 estates by way
 of annuity

Sects. 49-51 in respect of which the same shall be charged, and every such annuity shall be payable in equal half-yearly payments on every first day of May and every first day of November during the said term of thirty-five years, (c) with such apportionment, if any, as may be necessary in respect of the first and last of such payments.

(a) Or the Land Commission. See Land Act, 1881, Sec. 35, *post*.

(b) See Landed Property (Ireland) Improvement Act, 1860 (23 & 24 Vic., c. 153); and the various Acts constituting the Irish Drainage Code, a list of which is given in the notes to Sec. 36, *ante*, p. 193.

(c) The annuity is now made payable at 4 per cent. Land Purchase Act, 1885, Sec. 4, and Land Act, 1896, Sec. 25, *post*.

Recovery of annuity.

49. Every annuity created in pursuance of this Act shall be recoverable by the Board (a) or by or in the name of the Attorney-General for Ireland in manner in which rentcharges in lieu of tithes (b) are recoverable in Ireland; a certificate purporting to be under the hand of a member for the time being of the Board (c) shall be evidence that the amount of any annuity or arrears of annuity stated therein to be due under this Act from any person named therein is due to the Board from such person.

(a) Or by the Land Commission. See Land Act, 1881, Sec. 35, *post*.

(b) As to the means of recovering tithe rent-charge, see 1 & 2 Vic., c. 109, Secs. 27 to 30.

(c) A similar certificate may be granted under Land Act, 1887, Sec. 28, *post*.

Arrears of Annuity

50. No arrears of any annuity charged on land in pursuance of this Act shall be recoverable after the expiration of two years from the date at which the sum in arrear became due; and as between owners having successive interests in any land so charged it shall be the duty of the owner for the time being in possession or in receipt of the rents and profits of such land to prevent such arrears arising, and if he make default in doing so, and the owner next entitled in possession pay any arrears caused by such default, the amount so paid shall be a debt due to the owner who has paid the same from the owner by whose default it became necessary to make such payments.

This Section does not apply to an annuity created under the Arrears of Rent (Ireland) Act, 1882, Sec. 16, and, therefore, the amount of such arrears recoverable is not limited to two years: *Irish Land Commission v. Stokes*, 29 I. L. T. & S. J. 317; 1 I. W. L. R. 81.

Power of owner to redeem annuity.

51. Where any land is charged with an annuity in favour of the Board, (a) it shall be lawful for any person liable to pay such annuity to redeem the said annuity, or so much thereof as may at

(a) Or the Land Commission. See Land Act, 1881, Sec. 35.

any time remain unexpired, by payment to the Board (a) of a sum Sects. 51-55,
 of money equivalent to the then value of the said annuity, such
 value to be calculated according to the table in the schedule annexed
 hereto.

52. Where any person is entitled to receive any principal moneys Power of Board
to commute and
compromise.
 in pursuance of the sale of any holding made by them in pursuance
 of this Act, the Board (a) may, on the application of such person,
 commute such principal moneys for the payment of an annuity of
 equivalent value, the value of money being reckoned at three
 pounds ten shillings per cent. per annum; and where any such
 person as aforesaid is entitled to the payment of a sum annually,
 the Board (a) may commute the same for the payment of a princi-
 pal sum of equivalent value, the value of money being reckoned at
 three pounds ten shillings per cent. per annum.

The Board (a) may also, with the assent of the claimant, com-
 promise by the payment of any principal or annual sum any post-
 poned contingent or doubtful or other claim of any person to any
 share or interest in the purchase money arising from the sale of any
 holding under this Act.

53. The Board (a) shall in making advances, in the mode of Control of Board
by Treasury.
 investing and dealing with the funds that come into their possession,
 and in the mode of accounting for the same, and generally in the
 performance of their duties under this Act, conform to any
 directions, whether given on special occasions or by general rule or
 otherwise, which may from time to time be given to them by the
 Treasury, and shall report within such time and in such manner as
 the Treasury may direct to the Treasury all matters that may be
 sanctioned by the Board. (a)

54. There shall be issued to the Board (a) for the purposes of As to issues of
moneys to the
Board by
Treasury
 this Act, at such times and in such sums and in such manner as the
 Treasury may determine, any sums of money not exceeding in the
 whole one million pounds, and the Treasury may from time to time
 issue to the said Board (a) the said sum of one million pounds out
 of the Consolidated Fund or the growing produce thereof.

55. All repayments to the Board (a) of principal sums or by way Repayment to
Consolidated
Fund of moneys
advanced.
 of annuities in respect of advances made by them shall from time to
 time be paid back to the Consolidated Fund in such manner as the
 Treasury may direct.

(a) Or the Land Commission. See Land Act, 1881, Sec. 35.

Sects. 56-58.
Duty of Civil
Bill Court as to
charging orders.

56. The Civil Bill Court shall, on the application of any person entitled to an annuity by this Act directed to be charged by order of the Civil Bill Court (*b*) make an order charging the same accordingly, and the clerk of the peace of the county in which such Court has jurisdiction shall keep an alphabetical registry in his office of all charging orders so made by the Court, and shall allow any person to inspect the same at all reasonable times on the payment of one shilling.

For the purpose of making charging orders in respect of any holding the Civil Bill Court of the county in which such holding or any part thereof is situate shall be deemed to have jurisdiction over such holding

(*b*) See Secs. 43 and 44, *ante*, and Landlord and Tenant Amendment Act, 1872, Sec 1, Sub-sec. 2, *post*.

PART IV.

SUPPLEMENTAL PROVISIONS.

As to Legal Proceedings and Court.

Stamp duty on
notice to quit

57. There shall be paid in respect of every notice to quit to be served on a tenant of a holding as defined under this Act a duty of two shillings and sixpence, and such payment shall be denoted by a stamp on the notice.

The stamp must be the impressed stamp specially provided for the purpose, otherwise the notice will not be deemed "duly stamped" (Stamp Act, 1891, Sec: 10, Sub-sec. 2, which is identical in terms with Sec. 9, Sub-sec 2, of the repealed Stamp Act, 1870). An adhesive stamp is improper. *Ryan v. Ryan*, 7 I. L. T. R. 96 (FITZGERALD, B.).

One stamp is not sufficient if the notice is to quit more than one holding. There must be separate notices and separate stamps for each. *M'Donnell v. Corbett*, 4 L. R. Ir. 336, 11 I. L. T. & S. J. 296. See notes to Sec. 58, *post*

A stamped notice is required even in the case of a tenancy created before the passing of the Act. The Section is, to that extent, retrospective. *Vernon v. Rae*, I. R. 9 C. L. 448

It is the original notice to quit which is actually served upon the tenant which should be stamped. *Beaulerk v. Johnston*, 6 I. L. T. R. 18 (C. C.).

Regulations as to
notice to quit

58. No notice to quit (*a*) shall be valid unless it is printed or written, or partly in print and partly in writing, and signed by the landlord or his agent (*b*) lawfully authorized thereunto, nor unless such notice at the time of the service thereof is duly stamped with a stamp (*c*) denoting the payment of a duty of two shillings and sixpence. A notice to quit shall not in the case of a tenant from year to year take effect until after the expiration of a period of

not less than six calendar months from the date of the service of the notice, such period of six calendar months, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year. (d)* Any person serving on a tenant a notice to quit that is not in conformity with this section shall incur a penalty not exceeding forty shillings, to be recovered summarily under the provisions of the Petty Sessions (Ireland) Act, 1851.

Sect. 56

In any proceedings between landlord and tenant, where the due service of a notice to quit has been proved, such notice to quit shall, until the contrary is proved, be deemed to have been duly stamped (e)

As holdings which are not agricultural or pastoral in character are entirely excluded from this Act by Sec. 71, *post*, a stamped notice to quit is only required in the case of agricultural holdings; but these include, it must not be forgotten, town parks, demesne lands, &c, which though excluded from the compensation clauses of this Act by Sec. 15, *ante*, and from the Land Act, 1881, by Sec. 58 of that Act and Sec. 5 of the Act of 1896, are still agricultural in character. In such cases the provisions of this Section, and of Sec. 1 or Sec. 6 of the Notice to Quit Act, 1876, *post*, must be complied with *Wilkinson v. Sullivan*, 24 I. L. T. R. 16 (C. C.). But a holding of 1 rood and 35 perches situated in a village and used as a garden was held not to be agricultural so as to require a stamp on the notice to quit for it. *Pakenham v. Bawn*, 32 I. L. T. R. 107 (JOHNSON, J.). See, however, *contra, Fitzgerald v. Shanahan*, 16 I. L. T. R. 37; MacD. 209.

Stamped notice when required.

The Section is retrospective in so far as it requires a stamped notice to determine contracts of tenancy made before the passing of the Act: *Vernon v. Rae*, I. R. 9 C. L. 448.

Notice of surrender by tenant

(a) The term "notice to quit" in this Section is used apparently as meaning solely a notice served by a landlord, so that a notice of surrender by a tenant does not require a stamp. (See judgment of PALLES, C.B., *M'Donnell v. Blake*, 28 L. R. I. at p. 400) A notice of surrender by a tenant has, however, been held to be a notice to quit within the meaning of the Notice to Quit Act, 1876 *In re O'Brien*, 19 L. R. I. 429.

A notice to quit means a notice to determine a tenancy from year to year. Where an agreement was made to let lands for a year certain, with a proviso that unless either party should give to the other notice in writing of his intention to determine the tenancy, three months prior to the end of the year, the tenancy should be continued from year to year, it was held by the Court of Appeal reversing the decision of the Queen's Bench Division that the notice served by the landlord in accordance with this proviso was not a notice to quit within the meaning of this Section, and that it did not require a stamp. *Charles v. Hull*, 26 L. R. Ir. 603. But where, by an agreement made in 1862 for the letting of lands from year to year, it was provided that the tenant should give up possession upon getting one month's previous notice in writing, it was held that such a notice required to be stamped: *Vernon v. Rae*, I. R. 9 C. L. 448.

Special notice under agreement.

(b) If the notice is signed by an agent, it is not necessary to set out in the body of it that it is signed by him as agent Nor is it necessary that the agent should be

Agent's signature

* The portion of the Section in italics is repealed by 39 & 40 Vic, cap. 63, Sec. 6.

Sects. 58-59. authorized in writing *Stackpoole v. Parkinson*, I. R. 8 C. L. 561. "This Section, whilst it renders signature by the landlord, or his agent lawfully authorized, essential to a notice to quit, does not otherwise affect the form of the notice. That which would have been sufficient prior to the statute is sufficient notwithstanding the statute, provided it be in writing and be signed in the prescribed manner." (*Per PALLES, C.B., ibid.*, I. R. 8 C. L. at p. 566). As to what agents are authorized to serve notices to quit, and as to the requirements of such notices generally, see notes to Sec. 1 of the Notices to Quit Act, 1876, *post*, pp. 216-218.

A notice to quit may be signed in an agent's own name, without any reference to the landlord, if the agent's authority is general; but if his authority is special only, the agent's authority should appear on the face of the notice: *Maguire v. Rogers*, 27 I. L. T. R. 19 (*PALLES, C.B.*).

Stamp
necessary.

(a) The stamp must be the impressed stamp specially appropriated for notices to quit; otherwise the notice will not be deemed to be "duly stamped." (Stamp Act, 1891, Sec. 10, Sub-sec. 2.)

Where two agricultural holdings are held under separate contracts of tenancy, although by the same tenant under the same landlord, there must be two separate notices to quit, each stamped in compliance with this Section, though both notices may be contained upon the same paper: *M'Donnell v. Corbett*, 4 L. R. Ir. 336; 11 I. L. T. & S. J. 296. In the case of non-agricultural holdings, where the notice to quit does not require to be stamped, a single notice for two separate holdings is sufficient. See notes to Notice to Quit Act, Sec. 1, *post*, p. 216.

(d) The portion of the Section in italics was repealed by the 6th Section of the Notices to Quit Act, 1876, and more easily construed provisions were substituted therefor. See that Section, *post*. Upon the construction of the repealed clause there were many conflicting decisions, which are now no longer of importance. See, for instance, *Ashtown v. Larke*, I. R. 6 C. L. 270; *Ferguson v. Daly*, I. R. 8 C. L. 216; *Fitzwilliam v. Dillon*, I. R. 9 C. L. 251; 9 I. L. T. R. 105; *Murphy v. M'Cor-mick*, 2 L. R. Ir. 415; I. R. 10 C. L. 326; *Representative Church Body v. M'Quinn*, I. R. 11 C. L. 218.

(e) The last clause seems to have been introduced to meet the case of the tenant destroying the notice to quit, for it is the notice actually served which should bear the stamp. *Beauclerk v. Johnston*, 6 I. L. T. R. 18. See, also, notes to Sec. 4 of the Notice to Quit Act, 1876, *post*, p. 224.

Administration
on death of
tenant.

59. The Civil Bill Court in any county on being satisfied that a tenant in such county has died, and that there is no legal personal representative of such tenant or no legal personal representative whose services are available for the purposes of this Act, may, if a legal representation of the tenant is required for the purposes of this Act, by order appoint such person as it thinks best entitled to be administrator of the deceased tenant limited to the purposes of this Act, and any such limited administrator shall for all the purposes of this Act represent the deceased tenant in the same manner as if the tenant had died intestate, and administration had been duly granted to such limited administrator of all the personal estate and effects of the tenant.

This section is incorporated by the 38th Section of the Land Act, 1881, and the Sects. 59-61 4th Section of the same Act is *in pari materia*. For the cases in which orders will be made appointing limited administrators, see notes to the latter Section, and see, also, *M'Creanor v. Heron*, 6 I. L. T. R. 63, Donn. 197; *Friel v. Leitrim*, Donn. 209; *Powell v. Rotten*, 9 I. L. T. R. 96, Donn. 497; and Rules of 1872, *post*. Where, after the appointment of a limited administrator under this Section, and an award of compensation, another person took out general administration to the deceased tenant, it was held that the amount awarded could not be paid out to the limited administrator. *Canny v. Harvey*, 11 I. L. T. R. 178 (PALLES, C.B.).

60. A married woman entitled to her separate use, and not Provision as to married women. restrained from anticipation, shall for the purposes of this Act be deemed a feme sole, but where any other married woman is desirous of making any application, giving any consent, or doing any act, or becoming party to any proceeding under this Act, in relation to any holding, her husband's concurrence shall be required, and she shall be examined by the Civil Bill Court of the County where she may or the time being be, or of the county where the holding is situate, apart from her husband touching her knowledge of the nature and effect of the application or other act, and it shall be ascertained that she is acting freely and voluntarily.

This Section is incorporated by Land Act, 1881, Sec. 38.

61. Where any person who (if not under disability) might have Provision as to other persons under disability made any application, given any consent, done any act, or been party to any proceeding in relation to any holding under this Act, as a minor, idiot, or lunatic, the guardian or committee of the estate respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such person respectively, if free from disability, might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act; where there is no guardian or committee of the estate of any such person as aforesaid, being infant, idiot, or lunatic, or where any person the committee of whose estate if he were idiot or lunatic would be authorized to act for and represent such person under this part of this Act is of unsound mind or incapable of managing his affairs, but has not been found idiot or lunatic under an inquisition, it shall be lawful for the Civil Bill Court of the county in which the holding is situate to appoint a guardian of such person for the purpose of any proceedings under this part of this Act, and from time to time to change such guardian; and where such Civil Bill Court sees fit it may appoint a person to act as the next friend of a married woman for the

Sects. 61-69. purpose of any proceeding under this Act, and from time to time to remove or change such next friend.

This Section is incorporated by Land Act, 1881, Sec. 38.

Additional sitting of Civil Bill Courts

62. For the purposes of carrying into effect the provisions of this Act the Judges of Civil Bill Courts in Ireland shall, in addition to the Civil Bill Courts now by law directed, hold such Courts in such places within their respective jurisdiction as may be prescribed by the Privy Council in Ireland.

63. [*This section is repealed by 56 & 57 Vict., c. 54.*]

Power to appoint a substitute in Civil Bill Court if judge cannot attend.

64. In case it shall appear to the Lord Chancellor that from any reasonable cause the Judge of any Civil Bill Court cannot conveniently hold the Courts prescribed under this Act, he may appoint any other Judge of a Civil Bill Court to hold such Courts in his stead, and thereupon the Judge so appointed shall hold such Courts as aforesaid, and shall for the purposes thereof have all and every the powers, authority, and jurisdiction of the Judge in whose stead he shall have been appointed, and so long as he shall continue to act in his stead there shall be paid to him instead of to the said Judge the additional salary payable to the said Judge under this Act.

PART V.

Miscellaneous.

65, 66, 67. [*These three sections, which dealt with the incidence of Grand Jury Cess, now abolished, are repealed by Local Government Act, 1898, sec. 110, and 6th schedule.*]

Non-liability for rent for lands covered by public roads.

68. Any person who, after the passing of this Act, shall take at an acreable rent land adjoining or intersected by any public road or public roads, shall not, in the absence of an agreement to the contrary, be liable to rent for any portion of such land as may be contained in the public road or roads.

Tenancies at will.

69. Where any tenancy at will, (a) or less than a tenancy from year to year, (c) is created by a landlord (b) after the passing of this Act, the tenant under such tenancy shall on quitting his holding be entitled to notice to quit and compensation in the same manner in all respects as if he had been a tenant from year to year: Provided that this Section shall not apply to any letting or contract

or the letting of land made and entered into bonâ fide for the temporary convenience or to meet a temporary necessity either of the landlord or tenant. (d) Secta. 69-70.

(a) This Section does not apply to tenancies at will created before August 1st, 1870; *Chaine v. Croker*, 12 L. R. Ir. 151 (C. P. D.). In that case it was held that notice to quit was not necessary to determine a tenancy under an agreement in writing, made in 1867, whereby it was provided that the defendant should be tenant at will of the plaintiff at a rent of £100 a year.

(b) Nor does the Section apply to a tenancy at will created, not by the act of the parties, but by operation of law, as where a mortgagor remains in possession of land after the execution of a mortgage. *Rice v. M'Quade*, I. R. 9 C. L. 101. See, also, judgment of MORRIS, J., in *Ward v. Ryan*, I. R. 9 C. L., at pp. 54, 55. Tenancies at will,
by operation of
law.

A letting by parol for a term of years, void under the Statute of Frauds and the Landlord and Tenant Act, 1860, Sec. 4, may create a tenancy at will; but such would appear not to be within this Section. *Ward v. Ryan*, I. R. 10 C. L. 17; C. L. 51. See judgment of WHITMAN, C.J., I. R. 10 C. L., at p. 20.

A tenancy at will is an estate or interest in lands against which a judgment mortgage is capable of being registered. *Devlin v. Kelly*, 20 I. L. T. R. 76 (J. B. D. & C. A.).

(c) The word "less" here means "less in point of duration," and not merely less in quantity of estate; so that a tenancy under a tenancy, created after the passing of the Act for a number of months certain, less than twelve, cannot be terminated at the expiration of the term without notice to quit. *Brew v. Conole*, I. R. 9 C. L. 151. Tenancies less
than tenancies
from year to year

On the other hand, it was held by the Exchequer Chamber in *Wright v. Tracey*, I. R. 8 C. L. 478, affirming the decision of the Common Pleas (I. R. 7 C. L. 134), that a tenancy for a year certain was not "less than a tenancy from year to year," and that, in case of such a tenancy, a notice to quit was not required under this Section. The 16th Section of the Land Act, 1881, now, however, provides that a tenancy for a year certain created after 22nd August, 1881, is to be deemed to be a tenancy from year to year. Tenancies for a
year certain

(d) As to lettings for temporary convenience, see note to Land Act, 1881, Sec. 16, and Sec. 58 (7), *post*. In such cases no notice to quit is necessary under this Section. *Chaine v. Croker*, 12 L. R. Ir. 151; *Corr v. Harris*, 23 I. L. T. R. 82. Lettings for
temporary con-
venience.
The Section, of course, has no application to lettings in conacre or agistment contracts, as to which see notes to Land Act, 1881, Sec. 2, and Sec. 58 (8), *post*.

Definitions.

70. In the construction of this Act the following words and expressions shall have the force and meaning hereby assigned to them, unless there be something in the subject or context repugnant thereto: General
definitions.

The term "person" or "party" shall extend to and include any body politic, corporate, or collegiate, whether aggregate or sole, and any public company:

The term "county" shall extend to and include county of a city,

Sect 70

and county of a town, and a riding of a county, where such county of a city, county of a town, or riding of a county is appointed for civil bill purposes:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "lease" shall include an agreement for a lease:

The term "settlement" as used in this Act shall include any Act of Parliament, will, deed, or other assurance or connected set of assurances whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon; and every estate and interest created by appointment made in exercise of any power contained in any settlement or derived from any settlement shall be considered as having been created by the same settlement; and an estate or interest by way of resulting use or trust to or for the settlor, or his heirs, executors, or administrators, shall be deemed to be an estate or interest under the same settlement:

The term "landlord" in relation to a holding shall include a superior mesne or immediate landlord, or any person for the time being entitled to receive the rents and profits or to take possession of any holding:

The term "tenant" in relation to a holding shall mean any tenant from year to year and any tenant for a life or lives or for a term of years under a lease or contract for a lease, whether the interest of such tenant has been acquired by original contract, lawful assignment, devise, bequest, or act and operation of law; and where the tenancy of any person having been a tenant under a tenancy which does not disentitle him to compensation under this Act is determined or expiring, he shall, notwithstanding such determination or expiration, (a) be deemed to be a tenant until the compensation, if any, due to him under this Act has been paid or deposited as in this Act provided:

The term "improvements" shall mean in relation to a holding,—

- (1.) Any work which being executed adds to the letting value of the holding on which it is executed, and is suitable to such holding (b); also,
- (2.) Tillages, manures, or other like farming works, the benefit of which is unexhausted at the time of the tenant quitting his holding.

This definition Section must be read with the corresponding Sections of the L. & T. Sects. 70-73 Act, 1860 (Sec. 1), and of the Land Act, 1881 (Sec. 57); for, as was remarked by PALLES, C.B., in *Ireland v. Landy*, "the Landlord and Tenant Act of 1860 is *in pari materia* with the Acts of 1870 and 1881, and all three must be construed together as one harmonious whole. Words which, in the former Acts, must be interpreted in any particular case, unless there is something to the contrary in the subject-matter to which they are applied by the latter Acts, or in the context, in which they are found, ought to be construed in these latter Acts in the same sense" (22 L. R. Ir. at p. 421).

(a) As to the effect of this provision, see judgments of BEWLEY, J., in *Fitzgerald v. Walsh* [1894], 2 I. R. at p. 734; and of FITZGERBON, L.J., in *O'Donovan v. Kenmare* [1896], 2 I. R., at p. 527.

(b) Even though an improvement is not "suitable" to the holding, no rent can now be put upon it, if it has been made by the tenant. Land Act, 1896, Sec. 1 (3), *post*.

71. This Act shall not apply to any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral; and the term "holding" shall include all land of the above character held by the same tenant of the same landlord for the same term and under the same contract of tenancy.

Agricultural or pastoral holdings only subject to this Act.

The character of a holding, with reference to this Section, cannot be determined by any general rule, but depends upon the special circumstances of each case; and in ascertaining it, the object with which the tenancy commenced, the quantity of land comprised in the holding, and the use to which it has been applied, are material: *Carr v. Nunn*, I. R., R. & L. App. 89; 7 I. L. T. R. 26, Donn. 351. This case, and that of *Doyle v. Campbell*, I. R. 9 C. L. 95; 8 I. L. T. R. 101, Donn. 456, are the two most important cases decided under the Section. The facts of each will be found fully stated in the notes to Sec. 5 of the Land Act, 1896, where the cases decided under this and the corresponding Section of the Land Act, 1881, are collected. See *post*, pp. 519-526.

Where a farm of 32 acres was originally let at £25 a year, and a valuable supply of building stone having been discovered under the surface, the tenant agreed to pay an additional £20 a year rent for the right to work the stone, it was held, nevertheless, by LAWSON, J., that the holding continued to be an agricultural holding, and within the provisions of this Act: *Lindsay v. Kennedy*, 11 I. L. T. R. 58.

72. This Act may be cited for all purposes as "The Landlord and Tenant (Ireland) Act, 1870."

Short title.

73. This Act shall apply to Ireland only.

Application of Act

Schedule

SCHEDULE.

Arbitrations.

- (1.) If both parties concur a single arbitrator may be appointed.
- (2.) If the single arbitrator dies or becomes incapable to act before he has made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if no appointment of an arbitrator had taken place.
- (3.) If both parties do not concur in the appointment of a single arbitrator, each party on the request of the other party shall appoint an arbitrator.
- (4.) An arbitrator shall in all cases be appointed in writing, and the delivery of an appointment to an arbitrator shall be deemed a submission to arbitration on the part of the party by whom the same is made, and after any such appointment has been made neither party shall have power to revoke the same without the consent of the other.
- (5.) If for the space of fourteen days after the service by one party on the other of a request made in writing to appoint an arbitrator such last mentioned party fails to appoint an arbitrator, then upon such failure the party making the request may apply to the Court, and thereupon the dispute shall be decided by the Court according to the provisions of this Act. (a)
- (6.) If any arbitrator appointed by either party dies or becomes incapable to act before an award has been made, the party by whom such arbitrator was appointed may appoint some other person to act in his place, and if for the space of fourteen days after notice in writing from the other party for that purpose he fails to do so the remaining or other arbitrator may proceed ex parte.
- (7.) If where more than one arbitrator has been appointed either of the arbitrators refuses or for fourteen days neglects to act, the other arbitrator may proceed ex parte, and the decision of such arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.
- (8.) If, where more than one arbitrator has been appointed, and where neither of them refuses or neglects to act as aforesaid, such arbitrators fail to make their award within twenty-one days after the day on which the last of such arbitrators was appointed or within such extended time (if any) as may have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as hereafter mentioned.
- (9.) Where more than one arbitrator has been appointed, the arbitrators shall, before they enter upon the matters referred to them, appoint by writing under their hands an umpire to decide on any matters on which they may differ.
- (10.) If the umpire dies or becomes incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the arbitrators shall forthwith after such death, incapacity, or refusal appoint another umpire in his place.
- (11.) If in any of the cases aforesaid the said arbitrators refuse, or for fourteen days after request of either party to such arbitration neglect, to appoint an umpire, the Civil Bill Court, as defined by this Act, shall, on the application of either party to such arbitration, appoint an umpire.
- (12.) The decision of every umpire on the matters referred to him shall be final
 - (a) This provision applies in the case of the apportionment and redemption of "superior interests" under Land Act, 1896, Sec 31; and enables the Land Judge to fix the price of a rentcharge issuing out of an estate sold under the Land Purchase Acts in his court, one of the parties refuses to appoint an arbitrator. *West's Est.* Ross, J., 3 Mar., 190. (Affirmed by C. A., but not yet reported.)

THE
LANDLORD AND TENANT (IRELAND) AMENDMENT
ACT, 1871.

(34 & 35 VIC., CAP. 92.)

AN ACT TO AMEND THE LANDLORD AND TENANT (IRELAND) ACT,
1870. [21st August, 1871.]

WHEREAS doubts have been entertained whether rights secured by the Landlord and Tenant (Ireland) Act, 1870, to tenants in Ireland may not be endangered by the omission to specify or refer to such rights in conveyances, assignments, and declarations of title executed after the passing of the said Act by the Judges of the Landed Estates Court in Ireland:

Be it declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In every case in which a sale, conveyance, or declaration of title has been or shall be made, under the provisions of the Act twenty-first and twenty-second Victoria, chapter seventy-two, intituled "An Act to facilitate the sale and transfer of Land in Ireland," subject to any tenancy, the tenant and those claiming under him shall have all rights which are declared to be legal, or which he or they is or are or may become entitled in respect of such tenancy under the first part of the Landlord and Tenant (Ireland) Act, 1870, and the sale, conveyance, or declaration shall be subject to all such rights, although such rights may not be specified or referred to in the conveyance or assignment executed or declaration signed by the Judge of the Landed Estates Court; and the word "tenant" shall in this Act have the same meaning as that assigned to it in Section seventy of the Landlord and Tenant (Ireland) Act, 1870. Nothing in this Act contained shall in any manner impair or affect the provisions of "The Landlord and Tenant (Ireland) Act, 1870."

Sect 1.

Saving certain
right of tenants
under Act, 33 &
34 Vic c. 46.

This Act was passed to remove the doubts caused by the difference of opinion between the Judges in the Court of Chancery Appeal in the *Marquis of Waterford's Case*, I. R. 5 Eq. 434, 5 I. L. T. R. 125. See, also, *Patton v. Johnston*, 5 I. L. T. R.

LANDLORD AND TENANT (IRELAND) AMENDMENT
ACT, 1872.

(35 & 36 VIC., CAP. 32.)

AN ACT TO EXPLAIN AND AMEND THE LANDLORD AND TENANT
(IRELAND) ACT, 1870, SO FAR AS RELATES TO THE PURCHASE BY
TENANTS OF THEIR HOLDINGS. [18th July, 1872]

WHEREAS it is expedient to amend the Landlord and Tenant
(Ireland) Act, 1870, in this Act called "the principal Act," so far
as relates to the purchase by tenants of their holdings: .

Be it enacted by the Queen's most Excellent Majesty, by and with
the advice and consent of the Lords Spiritual and Temporal, and
Commons, in this present Parliament assembled, and by the
authority of the same, as follows:

- Sect. 1.** 1. The following regulations shall be enacted with respect to
regulations with respect to pur-
chase of their
holdings by
tenants purchases of their holdings by tenants:
- (1.) Every application under the principal Act by a tenant to
the Board for an advance for the purchase of his holding
may be made before or after such tenant has entered into
any agreement for the purchase or has been declared the
purchaser of the holding in respect of which such advance
is required, and the Board may agree to advance to such
tenant any sum not exceeding two third parts of the value
of such holding as assessed by the Board:
 - (2) Where any sale of his holding is made to a tenant
pursuance of the principal Act, by or through the mediation
of the Landed Estates Court, that court, and not the Civil
Bill Court, shall have the power to charge the annuity
authorised to be charged by the principal Act, in favour
of the Board, in respect of advances by the Board; and
the forty-fourth and forty-seventh sections of the principal
Act shall be amended accordingly by the substitution
therein of the expression "Landed Estates Court" for
the expression "Civil Bill Court: "

- (3.) Notwithstanding the sale to a tenant by his landlord of his holding may not have been made in or through the medium of the Landed Estates Court, the Board may, if satisfied of the value of the security, agree to advance to such tenant for the purpose of purchasing his holding any sum not exceeding two-third parts of the value of such holding, as assessed by the Board, and may take as security for the repayment of such advance a charge on such holding of an annuity of the same duration and amount as would have been charged thereon if the sale had been made in the Landed Estates Court; but no such advance shall be actually paid to the tenant until the Board are satisfied with the title of the tenant, and have taken from him a charge on the holding in such form and with such powers of sale and covenants for payment as the Board may be advised will effectually secure the annuity charged in their favour, and with the like powers for the recovery of such annuity as are contained in the principal Act in respect to the recovery of annuities under the said Act.
- (4.) If while any holding is charged with the payment of an annuity to the Board under the principal Act and this Act, any part of such holding is let to agricultural labourers bonâ fide required for the cultivation of such holding, for cottages or gardens not exceeding half an acre in each case, such letting shall not be deemed to be nor shall the same be a cause of forfeiture.

Sects 1-2.

2. In every case in which an advance shall be made after the passing of this Act for the purchase of a holding under the provisions of this or the principal Act, notwithstanding the provisions as to forfeiture in the said principal Act contained, the Board shall have power to sell the holding or any part thereof, and to convey the same to a purchaser, in the event of such holding, or any part thereof, having been alienated, assigned, sub-divided, or sublet without the consent of the Board while any portion of the annuity remained unpaid: and the Board may sell the said holding, or any part thereof, by public auction, due notice being given by the Board of the time, place, terms, and conditions of such sale; and the Board shall apply the proceeds derived from such sale in the first instance to the payment of all moneys due on foot of such

In certain cases where advances made for purchase of a holding notwithstanding forfeiture, Board may proceed to a sale

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Sects. 2-5. annuity, and in redemption of so much of the said annuity as shall at the time of such sale remain charged on said holding, and of all costs and expenses incurred by the said Board in relation to such sale, or otherwise in respect of such holding, and shall pay the balance to the person entitled by law to receive the same.

See notes to Landlord and Tenant Act, 1870, Sec. 44, *ante*, p. 196.

Short title and
construction of
Act.

3. This Act shall be construed as one with the principal Act, and may be cited for all purposes as the Landlord and Tenant (Ireland) Act, 1872.

THE NOTICE TO QUIT (IRELAND) ACT, 1876.

(39 & 40 VIC., CAP. 63.)

AN ACT TO RENDER NECESSARY IN IRELAND A YEAR'S NOTICE TO QUIT TO DETERMINE A TENANCY FROM YEAR TO YEAR, AND OTHERWISE TO AMEND THE LAW AS TO NOTICES TO QUIT. [15th August, 1876.]

(Preamble Repealed, Stat. Law Rev. Act, 1894.)

1. In any letting which shall take place after the passing of this Act a year's notice to quit, (a) expiring on any gale day of the calendar year on which the rent becomes due and payable in respect of the holding, irrespective of the period of the year when such tenancy commenced, shall in all cases be necessary and sufficient to determine a tenancy from year to year of any holding in Ireland, where a notice to quit is now by law necessary for the determination of the same, except in the case when a tenant shall be adjudged a bankrupt, or shall have filed a petition for a composition or arrangement with his creditors, and in that case a half year's notice expiring on any gale day, irrespective of the period of the year when such tenancy commenced, shall be sufficient; but nothing in this section shall extend to the case of a tenancy from year to year where there is or may be an express agreement in writing as to the time and mode of determining such tenancy. (b)

Sect. 1.

A year's notice to quit shall be necessary and sufficient to determine a tenancy from year to year

This Section, as well as the remainder of the Act to which it belongs, applies only to agricultural holdings (Sec. 6, *infra*). As to what constitutes an agricultural holding, see notes to Land Act, 1896, Sec. 5, Sub-sec. 1, *post*. It must not, however, be forgotten that many holdings are agricultural in character though they are excluded from the provisions of the Land Acts, 1881 to 1896, and to them this Act applies. If the letting was made after the 15th August, 1876, they come under the present Section; and if it was made before that date, under Sec. 6, *post*. See *Wilkinson v. Sullivan*, 24 I. L. T. R. 16.

Act applies only to agricultural holdings.

(a) The term "notice to quit" in this Section includes a notice of surrender served by a tenant: *In re O'Brien*, 19 L. R. I. 429. Though a notice of surrender does not, it would appear, require a stamp under the 58th Section of the Land Act, 1870. See judgment of FRYGEBON, L.J., in that case (19 L. R. Ir. at p. 431), and *McDonnell v. Blake*, 28 L. R. Ir. at p. 400.

Notice of surrender by tenant.

Sec. 3 of the present Act is also in terms confined to notices served by the landlord. But unless there is something to limit its signification in the context, the term "notice to quit," when used in an Act of Parliament, applies to a notice

- Sect 1.** served by a tenant as well as to one served by a landlord. See judgment of BARRY, L.J., *In re O'Brien*, 19 L. R. Ir. at p. 432.
- Where, however, a letting was made for one year certain by a written agreement, which provided that unless either party should give to the other, three months prior to the expiration of the year, notice in writing of his intention to determine the tenancy, the said tenancy should be continued on from year to year, it was held that a notice served by the landlord, in compliance with this provision, was not a "notice to quit" within the meaning of this Act, and did not require a stamp under Sec. 58 of the Land Act, 1870. *Charles v. Hill*, 26 L. R. Ir. 603.
- Verbal notices to quit.** A notice to quit, though usually in writing, was not, until recently, in any case required to be so. A verbal notice, if clear and unambiguous in its terms, was held to be sufficient. *Doe d Macartney v. Crick*, 5 Esp. 196. And this is still the law in the case of non-agricultural holdings, but in the case of agricultural holdings, a notice to quit, if served by a landlord, must now be either in writing or print, and signed by the landlord "or his agent lawfully authorized thereunto," Land Act, 1870, Sec. 58. See notes to that Section, *ante*, p. 203.
- Notice to quit must be definite.** A notice to quit must be clear and definite. *Gardner v. Ingram*, 61 L. T. Rep. (N. S.) 729. If, when served by a landlord, it "does not definitely state that the landlord will no longer require the rent, and treat the person to whom it is sent as tenant under the then existing tenancy, after the day named, undoubtedly it is bad." *per* CORRON, L.J., *Ahearn v. Bellman*, 4 Exch. Div. at p. 212. But a notice to quit is not rendered ineffectual because it is accompanied by an offer for a new tenancy, even though both are contained in the one document. Thus, where at the end of a regular notice the landlord added—"And I hereby further give you notice that should you retain possession of the premises after the day before mentioned, the annual rental of the premises now held by you from me will be £160," it was held by the Court of Appeal, notwithstanding the dicta of Lord MANSFIELD, in *Doe v. Jackson*, Dougl. 175, that the notice was not rendered invalid by the additional clause giving an option to the tenant to continue in possession on different terms. *Ahearn v. Bellman*, 4 Ex. Div. 201; 40 L. T. Rep. (N. S.) 711. See also, *Bury v. Thompson* [1895], 1 Q. B. 231.
- Must extend to whole holding.** The notice must extend to all the premises which are included in the letting. A notice to quit a part only is bad. *Cole Eject*, 46, *Right d Fisher v. Cuthell*, 5 East 498; except in cases specially provided for by Sec. 3, *post*.
- One notice for several holdings, when good.** Where there are several holdings, if they are agricultural, there must be a separate notice for each. *M'Donnell v. Corbett*, 4 L. R. Ir. 336, 11 I. L. T. & S. J. 296; but if they are not agricultural in character, so as to render a stamped notice to quit necessary, one notice for all is sufficient, even though they are held under different tenancies, commencing at different times. *Doe d Williams v. Smith*, 5 A. & E. 350.
- Misdescription of premises.** A misdescription of the demised premises does not invalidate the notice, if the tenant is not thereby misled: *Doe d Cox v. —*, 4 Esp. N. P. C. 185. And the onus lies on him of showing that he was misled, and not on the plaintiff of showing that he was not. *Doe d Armstrong v. Wilkinson*, 12 A. & E. 743. In that case the premises were described as being situated in the wrong parish. The notice was however, held good, upon the grounds that, as the tenant only held one farm under the plaintiff, he could not have been misled by the error.
- Length of notice required.** As to the length of the notice, the rule varies according to the nature of the tenancy.
- In case of agricultural tenancies.** Where the tenancy is an agricultural one, and was created before the 15th of August, 1876, six calendar months' notice, terminating on the last gale day of

any year, is required, in cases where by law such tenancies may still be determined. And this is so, no matter at what period of the year the tenancy originally commenced, unless there is some special agreement in writing as to the mode of determining the tenancy. See Sec. 6, and notes thereto, *post*, p. 225.

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In the cases of agricultural tenancies created after the 15th of August, 1876, in the absence of any express agreement in writing to the contrary, a year's notice, expiring on any gale day, is required by this Section, unless where the tenant becomes bankrupt or compounds with his creditors, in which case a half-year's notice, expiring on any gale day, is sufficient.

If created after
15th Aug., 1876

In the case of tenancies which are not of an agricultural or pastoral character, and to which, therefore, neither this Act nor the Land Act, 1870, applies, the law requires half a year's notice, expiring at the end of the first or some other year of the tenancy: *Cole on Eject.*, 48; *Year Book 13 Hen. VIII.* 156. This rule applies whether the tenancy was created by express agreement or implied by law from the payment of rent or other circumstances: *Doe d Wawm v. Horn*, 3 M. & W. 333; *Doe d Cats v. Somerville*, 6 B. & C. 132.

In case of non-
agricultural
tenancies

The notice should expire at the end of some year of the tenancy, *i.e.*, it should be served for some anniversary of the day on which the letting began, not for any intermediate gale day *Marshall v. Wilson*, 1 I. W. L. R. 85, 146 (Q. B. D.); *Sidebotham v. Holland* [1895], 1 Q. B. 378; *Poole v. Warren*, 8 A. & E. 587, except in cases coming within Sec. 6, *post*. A notice to quit in the middle of the year is bad. But an alternative notice to quit on a certain day, "or at the end of the year of your tenancy which shall expire next after the end of half a year from the date hereof," is good *Ashtown v. Larke*, I. R. 6 C. L. 270; *Doe d Flower v. Darby*, 1 T. R. 159.

The notice need not mention the particular day on which the tenancy is to expire. A notice to quit "at the expiration of the current year of the tenancy" is good: *Doe d Phillips v. Butler*, 2 Esp. 589; *Doe d Baker v. Wombwell*, 2 Camp. 559; similarly, one to quit "at the expiration of the present year's tenancy" is sufficient: *Doe d Gorst v. Timothy*, 2 C. & K. 351.

"Where a tenant enters in the middle of a quarter, and pays rent for the broken period to the next regular quarter day, and subsequently pays his rent from quarter to quarter, his tenancy will be deemed to have commenced, not when he first entered, but at the ensuing quarter day, and notice to quit should be given accordingly." *Woodfall. L. & T.*, 14th ed., p. 366.

Where the date of the commencement of the tenancy is unknown, the notice should be for the last gale day of the calendar year, for by 23 & 24 Vic., c. 154, s. 6, every tenancy from year to year is presumed to have commenced on the last gale day of the calendar year, "until it shall appear to the contrary." And this applies both to agricultural and non-agricultural holdings. See *ante*, p. 19.

Where date of
commencement
of tenancy is
unknown.

The half-year's notice which is necessary to determine a yearly tenancy must be distinguished from a "six months' notice" by agreement of the parties. The half-year, in general, must be the full period of 183 days: *Doe d Spicer v. Lea*, 11 East. 312. But where a tenancy is computed from a well-known feast day, it means a customary half-year, that is from one of the usual quarter-days to the quarter-day next but one following, though this period should exceed or fall short of the number of days which constitute a half-year: *Morgan v. Davies*, 3 C. P. D. 260. Thus a notice to quit on Lady Day (25th of March) is sufficient if served on or before the preceding Michaelmas Day (29th of September): *Roe d Durant v. Doe*, 5 Bing. 574. And so a notice to quit on the 24th of June is sufficient if served on the preceding Christmas Day: *Doe d Buddle v. Lewis*, 11 Q. B. 402. And conversely a notice

- Sect. 1.** served on the 26th of March to quit on the 29th of September is not a valid notice: *Morgan v. Davies*, 3 C. P. D. 260.
- As to the length of the notice required to determine tenancies less than tenancies from year to year, see notes to Sec. 2, *post*, p. 221.
- By whom to be given.** A notice to quit may be given not only by the landlord himself, but by his agent, provided that the agent has a general authority to determine tenancies: *Earl of Erne v. Armstrong*, I. R. 6 C. L. 279. The authority need not be in writing: *Wynne v. M'Eniry*, 1 I. C. L. R. 435; *Lord Stigo v. Davitt*, 3 I. L. R. 146. A notice to quit signed by an agent in his own name is good, if he has such authority: *Earl of Erne v. Armstrong*, I. R. 6 C. L. 279. And it is not necessary that the notice should itself state that it is signed by him as such agent if he has a general authority to give notices to quit: *Jones v. Phipps*, L. R. 3 Q. B. 567, *Lord Stigo v. Davitt*, 3 I. L. R. 146. "But in the case of a special authority the law directs that as an essential to the validity of the notice the agent's authority should be stated on the face of the notice itself." (*Per PALLES, C.B., Maguire v. Rogers*, 27 I. L. T. R., p. 19.)
- Agent's Authority.** A mere agent for the receipt of rents has not, however, as such, any authority to serve a notice to quit. *Frewen v. Ahern*, 4 I. L. R. 181. And the subsequent ratification by the landlord does not render valid a notice previously served: *Frewen v. Ahern*, 4 I. L. R. 181. "Unless, perhaps, that recognition takes place six months before the time limited for giving up the possession; so that the tenant may have six months' notice to quit, upon which he may act with certainty" *per PENNEFATHER, B., Keating v. Cleary*, 6 I. L. R. 231.
- Cestus que trust.** A *cestus que trust* who has been allowed by the trustees to have the entire management of the trust estate, can give a notice to quit in his own name as landlord, as he is deemed to be in the position of a general agent for the trustees: *Jones v. Phipps*, L. R. 3 Q. B. 567.
- Tenant for life.** A tenant for life can serve a notice to quit, and the reversioner may bring an ejectment, relying on such notice, notwithstanding the death of the tenant for life during its currency. *Curoe v. Gordon*, 26 I. L. T. R. 95.
- Receiver.** A Receiver, appointed by the Court of Chancery, may give a notice to quit in his own name. *Wilkinson v. Colley*, 5 Burr. 2694, *Doe v. Read*, 12 East. 57; *Keating v. Cleary*, 6 I. L. R. 221.
- Mortgagor.** A mortgagor may now, if in receipt of the rents, serve a notice to quit in his own name, Jud. Act, 1877, Sec. 28, Sub-sec. 5. Formerly he could only do so where he had a general authority from the mortgagee to determine tenancies: *Stackpoole v. Parkinson*, I. R. 8 C. L. 561, *Miles v. Murphy*, I. R. 5 C. L. 382.
- Mortgagee.** "A mortgagee, subsequent to a yearly tenancy created by the mortgagor, may, as an assignee of the reversion, give the usual notice to quit to the tenant. A prior mortgagee is not bound by any after dealings of the mortgagor without notice or demand." *De Moleyns' Landowners' Guide*, 6th ed., p. 67. But see, now, Land Act, 1896, Sec. 10, and notes thereto, *post*, p. 550.
- Co-owner.** One of two joint tenants may alone give a valid notice to quit, but a notice signed by one of two tenants in common at most puts an end to half the tenancy only. *Morony v. Morony*, I. R. 8 C. L. 174; *Duncan v. Couch*, Ir. Cir. Rep. 573. Where three persons let premises to a tenant by a written agreement which provided that the tenancy was determinable by "either of the said parties giving to the other" twelve months' notice, &c. It was held by PALLES, C.B., that a notice to quit signed by one of them alone was bad, even to determine his share: *Hamill v. Toomey*, 34 I. L. T. R. 163.

Service of a notice to quit need not be personal; if made at the house of the tenant upon a person whose duty it would be to deliver the notice to the tenant, the service is sufficient, although, in fact, the notice was never delivered to the tenant. Thus, where a notice to quit addressed to a tenant was served at his house by delivering it to his daughter, who never gave it to him, but burned it, the House of Lords held the service to be sufficient: *Tanham v. Nicholson*, L. R. 5 H. L. 561; I. R. 6 C. L. 188; I. R. 4 C. L. 185. Service through the Post Office is sufficient, if it be proved that the notice actually reached the person served, in sufficient time: *Papillon v. Brunton*, 5 H. & N. 518; 29 L. J. (Exch.) 265.

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Personal service unnecessary.

Where there are several tenants it is doubtful whether it is necessary to serve all, or whether service upon one on behalf of the others is sufficient. In *Doe d. Macartney v. Crick*, 5 Esp. 196, LORD ELLENBOROUGH held that where two tenants held premises in common, a notice to quit to one of them was sufficient to determine the tenancy, but in *Biggar v. Piers*, 13 I. L. T. R. 127 FITZGIBBON, L.J., held that a notice to quit addressed to one of two joint tenants only, and served upon him alone, was not sufficient to determine the tenancy. This may have been in consequence of the form of the notice, however, not of the service, for in *Pollok v. Kelly*, 6 I. C. L. R. 367, the Court of Common Pleas held that the service of a notice to quit upon one of several joint tenants was *prima facie* evidence of service upon them all.

Service upon one of two joint tenants.

As to the course to be pursued where a tenant has died, and it is uncertain in whom his tenancy has vested, see Sec. 4, *post*, and notes thereto, p. 223.

As to the effect of a notice to quit in determining a tenancy, see notes to Land Act, 1881, Sec. 13, and Sec. 20, *post*, pp. 285 and 296.

There is a popular notion that a notice to quit cannot now be served in the case of an agricultural tenancy, but it is only where a statutory term has been created in a holding that such is the case (see Land Act, 1881, Sec. 5, *post*). Where an application has been made for the fixing of a judicial rent, there is also power to stay proceedings (Land Act, 1881, Sec. 13, Sub-sec. 3. But a "future tenancy" may apparently be determined by a notice to quit under this Section (see Land Act, 1881, Sec. 4, and notes thereto, *post*), and even in the case of statutory tenancies, a notice to quit may be served for breach of a statutory condition (Land Act, 1881, Secs. 5 and 13). All classes of tenancies excluded from the Land Acts, 1881 to 1896, can also be similarly determined by notice to quit under this Sec. or Sec. 6, *post*. See, for instance, as to demesne lands: *Wilkinson v. Sullivan*, 24 I. L. T. R. 16.

Effect of Land Act, 1881, upon notices to quit.

"There is nothing unlawful in the parties to the contract of tenancy agreeing to withdraw a notice to quit; one of them who has served the notice may tell the other, or give the other to understand, that he has changed his mind, and thereupon the notice may be treated by both as abandoned. This cannot be done without the consent of both; but if both agree, the old tenancy may go on as if there never had been a notice:" *per FITZGIBBON, L.J., Inchiquin v. Lyons*, 20 L. R. Ir. at p. 483. Whether or not a notice to quit has been waived is a question of fact to be determined by the jury: *Blyth v. Dennet*, 13 C. B. 178; *Vance v. Vance*, I. R. 5 C. L. 363. Where a landlord refused to allow a tenant to withdraw a notice to quit which he had served, but permitted him to continue in occupation after its expiration, and accepted rent from him at the old rate for the following year, it was held by the Court of Appeal that by his conduct he had agreed to the waiver of the notice, and that the old tenancy continued to exist: *M'Donnell (T.) v. Blake (L.)*, 28 L. R. Ir. 395. See, also, *Croes v. Gordon*, 26 I. L. T. R. 95.

Withdrawal notice by consent.

Waiver by conduct.

It is not, however, a waiver of a notice to quit for the landlord who has served it to commence an ejectment for non-payment of rent during its currency, even if he

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Effect of ejectment for non-payment of rent upon notice to quit

recovers judgment and possession, and allows a mortgagee of the tenant's interest to redeem. *Earl of Listowel v. Kelly* (C. A.), 17 I. L. T. & S. J. 285, reversing the decision of the Common Pleas Division, 17 I. L. T. R. 26. (The judgment of FITZGIBBON, L.J., in this case, though not reported, is quoted by himself in *Inchiquin v. Lyons*, 20 L. R. Ir. at p. 482.)

In *Hall v. Flanagan*, I. R. 11 C. L. 470, it was held by the Court of Exchequer that a notice to quit served during the pendency of an ejectment for non-payment of rent, under which possession was subsequently recovered, was not effectual to determine the tenancy, but this was upon the ground that the tenancy was determined by the ejectment for non-payment of rent as from the last gale day previous to the issue of the writ, and it is doubtful how far it can now be considered an authority, at least in the case of agricultural tenancies, having regard to the 20th Section of the Land Act, 1881. See notes to that Section, *post*, and notes to L. & T. Act, 1860, Sec. 66, *ante*, p. 120.

Special agreement as to determination of tenancy

(b) As to what amounts to "an express agreement in writing as to the time and mode of determining a tenancy," see *Leinstcr v. Patterson*, 8 L. R. Ir. 101, *Charles v. Hull*, 26 L. R. Ir. 603, and notes to Sec. 6, *post*, p. 225.

Where it is specially provided by an agreement for a tenancy from year to year that it is to be determinable upon six months' notice to quit, the "six months" are six lunar months, not six calendar months *Rogers v. Dock Co. at Kingston-upon-Hull*, 34 L. J. (Ch.) 165, *Barlow v. Teal*, 15 Q. B. D. 403, 501. But the notice must expire on some anniversary of the day on which the letting began *Marshall v. Wilson*, 1 I. W. L. R. 85, 146 (Q. B. D.).

Agreement not to serve notice to quit

An agreement not to determine a tenancy by service of notice to quit, so long as the rent is paid, is a valid agreement to which effect will be given *Wood v. Davis*, 6 L. R. Ir. 50; *In re King's Leaschold Estates*, L. R. 16 Eq. 521; *Holmes v. Day*, I. R. 8 C. L. 235. As to the effect of such an agreement, see notes to L. & T. Act, 1860, Sec. 3, *ante*, p. 5. See, however, *contra*, *Cheshire Lunas Committee v. Lewis*, 50 L. J. (Q. B.) 121, and *March v. Wilson*, 29 I. L. T. R. 133.

A year's notice to quit not necessary in certain tenancies.

2. No notice to quit, other than what was at the time of the passing of this Act required by law, shall be necessary to determine a tenancy at will, or a tenancy less than a tenancy from year to year.

By the 69th Section of the Land Act, 1870, the tenant of a tenancy at will or a tenancy less than a tenancy from year to year, created after 1st August, 1870, in an agricultural holding, is entitled to notice to quit, in the same manner as if he had been a tenant from year to year (see *ante*, p. 207). A tenancy for a year certain was on the construction of that Section, held not to be "less than a tenancy from year to year" (*Wright v. Tracey*, I. R. 8 C. L. 478, 7 C. L. 134); but the 16th Section of the Land Act, 1881, now provides that such a tenancy, if created after the 22nd August, 1881, is to be "deemed to be a tenancy from year to year." Neither Section applies if the holding is let for temporary convenience.

Tenancies, less than tenancies from year to year.

The words "less than a tenancy from year to year," mean less in point of duration as well as less in character, and consequently the tenant of an agricultural tenancy for a number of months certain, less than twelve, created after the passing of the Land Act, 1870, cannot be evicted at the expiration of the term, without notice to quit: *Brew v. Conole*, I. R. 9 C. L. 151.

Tenancies at will, by operation of law

Tenancies at will created by operation of law, as *e.g.*, where a letting is void under any of the provisions of the Landlord and Tenant Act, 1860, are apparently

not within Section 69 of the Land Act, 1870, and no notice to quit is necessary in order to determine them. See judgment of MORRIS, J., in *Ward v. Ryan*, I. R. 9 C. L. at p. 54. The decision in the Court of Common Pleas in this case was afterwards reversed in the Exchequer Chamber (I. R. 10 C. L. 17), but the judgment of MORRIS, J., upon this point must for the purposes of the reversal have been affirmed, though it is not referred to in the report of the case.

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It would appear from the wording of the 69th Section of the Land Act, 1870, that a tenancy at will in an agricultural holding may still be determined by the tenant without the service of any notice to quit; and that, similarly, a tenancy less than a tenancy from year to year may be determined by the tenant in the same way as before the passing of the Act; or, in other words, that the length of the notice required is that which is still necessary in the case of non-agricultural holdings when determined either by the landlord or the tenant.

Determination of tenancy at will by tenant.

Apart from recent legislation in reference to agricultural holdings the rule in the case of these short tenancies is that "the time for which a person takes premises is his own agreed measure of convenience as to the notice that is necessary to be given to him." *per O'BRIEN, J., Beamish v. Cox*, 16 L. R. Ir., at p. 276. Thus, a month's notice is always sufficient to put an end to a monthly tenancy, and a week's notice to a weekly tenancy (*ibid.*), and the rights of the landlord and tenant are reciprocal as regards the length of the notice. In *Beamish v. Cox*, 16 L. R. Ir. 270, 458, it appeared that the landlord, on the 25th September, served notice on a monthly tenant to quit on the 1st November following. The Judge, at the trial, left the question to the jury whether the notice was reasonable; and it was held by the Court of Appeal affirming the decision of the Queen's Bench Division that he ought not to have done so, for that the tenancy being a monthly one was, *as a matter of law*, determined by a month's notice. See, also, *Doe d Peacock v. Raffan*, 6 Esp. 4; *Doe d Parry v. Hazell*, 1 Esp. 93. Strictly speaking, in such cases, the law only requires a *reasonable notice* to determine the tenancy, so that though a notice as long as the period of the tenancy is always sufficient, a shorter notice may be so, too, if held to be reasonable *Jones v. Mills*, 10 C. B. 788; 31 L. J. (C. P.) 66; *Huffell v. Armistead*, 7 C. & P. 56. Thus where a tenant held premises at a weekly rent payable on each Thursday, it was held that a notice served on Thursday, 5th Nov., to quit "on or before Friday, 13th Nov.," was sufficient to determine the tenancy: *Harvey v. Copeland*, 30 L. R. Ir. 412; 26 I. L. T. R. 105 (Q. B. D.).

Length of notice. In case of monthly and weekly tenancies.

The parties to a tenancy may, validly, contract for a different notice—either that a longer notice shall be necessary, or that a shorter notice shall be sufficient (Cole, Eject., 31, 32, *Cornish v. Stubbs*, L. R. 5 C. P. 334); or even that no notice whatever shall be necessary. *Bethell v. Blencowe*, 3 M. & G. 119, 3 Scott, N. R. 568.

Special agreement as to length of notice.

Lettings in conacre and agistment contracts, or lettings of the grazing of land, do not create "tenancies" of any kind in the land, and, consequently; they do not come within any of the statutory provisions in respect of notices to quit. See, in reference to the nature of such contracts, *Drase v. O'Reilly*, 8 I. L. R. 52; *Mulligan v. Adams*, *ibid.*, 132; *Booth v. M'Manus*, 12 I. C. L. R. 418; and notes to Land Act, 1881, Sec. 2, *post*.

Conacre and grazing lettings.

3. Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes:

Resumption for improvements.

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The providing of gardens for existing farm labourers' cottages or other houses;

The allotment for labourers of land for gardens or other purposes;

The planting of trees;

Turbary;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connexion therewith;

The obtaining of brick earth, gravel, or sand:

The making of a watercourse or reservoir,

The making of any road, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice to quit so states, then it shall by virtue of this Act be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of "The Landlord and Tenant (Ireland) Act, 1870," respecting compensation, shall apply to the extent of the premises mentioned in the notice to quit as on determination of a tenancy in respect of the entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit and in respect of any depreciation of the value to him of the residue of the holding caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled under "The Landlord and Tenant (Ireland) Act, 1870," as in case of compensation. The forms already in use under the Land Act may be used so far as the same may be applicable.

In any case where the land comprised in a notice to quit under the provisions of this section shall exceed in the whole one twenty-fifth part of any individual holding, or shall seriously interfere with the dwelling-house or farm buildings of such holding, the tenant shall further be entitled at any time within twenty-eight days after the service of the notice to quit to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, and the notice to quit shall have effect accordingly; but such notice to quit shall not be deemed a disturbance of the tenant within the meaning of "The Landlord and

Tenant (Ireland) Act, 1870," if the Court shall be of opinion that the tenant was unreasonable in giving such notice in writing. Sects. 3-4

Provided always, that nothing contained in this Section shall interfere in any respect with the rights and privileges of the landlord under the fourteenth Section of "The Landlord and Tenant (Ireland) Act, 1870."

See now, also, Land Act, 1881, Secs. 5 and 8 (3), *post*, under which "the Court" (*i.e.*, either the Land Commission or Civil Bill Court) may, on certain conditions, authorise the resumption by the landlord of part of a holding, during the continuance of a statutory term, for purposes somewhat similar to those set out in this Section.

4. In any case where a tenant has died or shall die intestate, and no administration has been taken out to his estate, or in case a tenant has died or shall die leaving a will which has not been proved, it shall be sufficient to address a notice to quit "to the representatives of, and all persons claiming to represent (naming the tenant), deceased," and it shall not be necessary to otherwise set out or describe who such representatives are; and such notice to quit so addressed shall be deemed to be sufficiently served by leaving one copy (*a*) of such notice at the former dwelling-house of the deceased tenant or posting it on some conspicuous part of the holding, and sending another copy (*a*) of such notice in a pre-paid registered post letter addressed in manner above mentioned and directed to the townland and county in which the holding, or any part thereof, is situated, and such notice shall be good and effectual notwithstanding any subsequent administration or probate granted to any person or persons whatsoever. Service of notice to quit in case of tenant's intestacy

Independently of this Section, which applies only to agricultural holdings (Sec. 5, *post*), the landlord may, on the death of a tenant, from year to year, in the absence of a legal personal representative, treat the party in possession as the tenant. *Rees v. Perrott*, 4 Q. & P. 230; *Armstrong v. Loughane*, 2 I. C. L. R. 72. And a notice to quit served upon such a person as, for instance, the widow of deceased, is effectual to determine the tenancy, even as against a legal personal representative subsequently raised: *Sweeny v. Sweeny*, I. R. 10 C. L. 375; 10 I. L. T. R. 101; *Jones v. Murphy*, 2 J. & Sym. 232. An ordinary notice to quit, addressed to the person upon whom it is served, without in any way describing him as a representative of the deceased, is sufficient: *Rowland v. Holland*, 4 L. R. I. 421; 13 I. L. T. R. 143. Landlord may treat person in possession as tenant.

Even in the case of an agricultural tenancy where a landlord may avail himself of the terms of this Section, he is not bound to do so, and it will be sufficient for him to serve a notice to quit on the person in possession. Thus where, on the death of a tenant intestate, one of his nephews continued on in possession and paid the rent, and the landlord served him with a notice to quit, addressed to him alone, it was held to be effectual to determine the tenancy notwithstanding that there Landlord not bound to proceed under this section.

Sects. 4-6 were in occupation also another nephew and a niece of deceased, who had not been named in, or served with, the notice to quit *Rowland v Holland*, 4 L. R. I. 421; 13 I. L. T. R. 143.

But although a landlord is entitled to treat the person in possession as tenant, he can only do so as long as he remains in possession; if on the death of such person he wishes to determine the tenancy by a notice under this Section, he must address the notice to the representatives of the original tenant. Thus where, after the death of a tenant, his widow continued in possession, paying rent to the landlord, and, after some years getting receipts in her own name, it was held that a notice to quit served, after her death, and addressed to her representatives in the manner prescribed by this Section, was ineffectual to determine the tenancy of the original tenant *M'Neill v. M'Laughlin*, 12 L. R. Ir. 260, 17 I. L. T. R. 58.

(a) It would appear from the concluding words of this Section that copies only of the special notice here prescribed should be served, and that the original stamped notice should be retained by the landlord. In ordinary cases it has been held that the proper course is to serve the original stamped notice to quit, and to retain a copy merely. *Beauclerk v. Johnston* (Co. Court), 6 I. L. T. R. 18. See Landlord and Tenant Act, 1870, Sec. 58, and notes thereto, *ante*, p. 203.

Agricultural or pastoral holdings only subject to this Act

5. This Act shall not apply to any holding which is not agricultural or pastoral in its character, or partly agricultural and partly pastoral, and the term "holding" shall include all land of the same character held by the same tenant of the same landlord for the same term, and under the same contract of tenancy.

As to what constitutes an agricultural or pastoral holding, see notes to Land Act, 1896, Sec. 5, Sub-sec. 1, *post*.

Repeal of portion of the 58th Sec of the Landlord and Tenant (Ireland) Act, 1870.

6. *So much of the fifty-eighth Section of "The Landlord and Tenant (Ireland) Act, 1870," as enacts that "a notice to quit shall not, in the case of a tenant from year to year, take effect until after the expiration of a period of not less than six calendar months from the date of the service of the notice, such period of six calendar months, in the absence of agreement to the contrary, to terminate on the last gale day of the calendar year," shall be and the same is hereby repealed, save and except as to notices to quit served before the passing of this Act. In lieu of the words so repealed, it is hereby enacted that** in all cases of tenancies from year to year existing at the time of the passing of this Act, unless there be a special agreement in writing (c) as to the time and mode of determining such tenancy, the tenancy shall only be determinable by a notice to quit expiring on the last gale day of any year and served six calendar months previously (a); and every notice to quit so served and requiring the tenant to give up possession on such gale day shall be sufficient to determine the tenancy, irrespective of the period of the year at

* The portion of this Section in italics is repealed by Stat. Law Rev. Act, 1894.

which such tenancy commenced, (b) and such tenancy shall be determined on the day named in such notice (d) in the same manner as if the tenancy had originally commenced upon a day of the year corresponding to such day.

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As almost all the holdings to which this Section applies are now "present tenancies" under the Land Act, 1881, the Section is comparatively unimportant. Its provisions must, however, be followed—(1) In the case of demesne lands, town parks, and all other classes of agricultural holdings excluded from the Land Acts, 1881 to 1896. See *Wilkinson v. Sullivan*, 24 I. L. T. R. 16. (2) In case a notice of surrender is served by a tenant of any agricultural tenancy created before the 15th August, 1876; for the term "notice to quit" in this Act includes a notice of surrender. *In re O'Brien*, 19 L. R. Ir. 429. *Quere*, however, whether the words at the end of the Section "and every notice to quit so served and requiring the tenant to give up possession," &c., do not restrict its application to notices served by the landlord.

To what holding this section applies

(a) This Section requires six calendar months' notice to be given in all cases coming within it. Where, by the agreement of the parties, "six months' notice to quit" is required to determine a tenancy, it has been held to be sufficient if notice be given six lunar months prior to the expiration of the year: *Rogers v. Dock Co. at Kingston-upon-Hull*, 34 L. J. (Ch.) 165; *Barlow v. Teal*, 15 Q. B. D. 403, 501.

Calendar months

(b) A notice to quit under this Section must expire on the last gale day of the year, "irrespective of the period of the year at which such tenancy commenced. In the case of non-agricultural holdings, the law requires a half-year's notice to quit, expiring at the end of some year of the tenancy. See notes to Sec. 1, *ante*, p. 217, and judgment of BRETT, M.R., *Barlow v. Teal*, 15 Q. B. D., at p. 503. A tenancy is, however, presumed, in the absence of evidence to the contrary, to have commenced on the last gale day of the calendar year. (Landlord and Tenant Act, 1860, Sec. 6, *ante*, p. 19). But if it be proved, as a matter of fact, that a tenancy originally commenced on the 25th of March or 1st of May, it cannot then, unless it is an agricultural one, be determined by a notice to quit on the 29th of September or 1st of November. A notice to quit in the alternative for one of those dates, or for the gale day succeeding, in case the tenancy commenced at that time of the year, in the form used in *Ashton v. Larke*, I. R. 6 C. L. 270, is not applicable to an agricultural holding coming within this Section, which requires that the gale day on which the tenant is to give up possession should be indicated, and should be the last gale day of the calendar year: *Aronmore v. Hobbs*, 31 I. L. T. R. 53. See, also, *Ferguson v. Daly*, I. R. 8 C. L. 216, and notes to Sec. 1, *ante*, p. 217.

Immaterial when tenancy commenced.

Alternative notice to quit.

(c) As to what constitutes "a special agreement in writing as to the time and mode of determining the tenancy," see *Leinster v. Patterson*, 8 L. R. I. 101, where it was held by the Court of Appeal reversing the decision of the Common Pleas Division, that a proviso that a tenancy should be "determinable either by the usual six months' notice to quit, or at the death of" (the tenant), was such; and, consequently, that the tenancy having commenced in March it could not be determined under this Section by a notice to quit expiring in September.

Special agreement as to determination of tenancy.

(d) The last words of the Section were introduced apparently in consequence of the decision of the Court of Exchequer in *Fitzwilliam v. Dillon*, I. R. 9 C. L. 251, upon the construction of the repealed clause of the 58th Section of the Land Act,

- Sects. 6-8. 1870, where it was held by FALLES, C.B., and FITZGERALD, B, that in the case of a tenancy originally commencing in March, a notice to quit should be served six months before the last gale day of the year, *but that the tenancy would not be determined* until the end of its current year—*i.e.*, until the March following. This Section now provides that in such a case the tenancy is to be determined on the day named in the notice, no matter when it originally commenced *Aronmor v. Hobbs*, 31 I. L. T. R. 53.

Not to affect
pending notice

7. Nothing in this Act shall affect or invalidate notices to quit served before the passing of this Act.

Short title

8. This Act may be cited as "The Notices to Quit (Ireland) Act, 1876," and shall be construed as one Act with "The Landlord and Tenant (Ireland) Act, 1870," save so far as it repeals or is inconsistent with said Act

III
LAND LAW (IRELAND) ACT, 1881.
(44 & 45 VIC., CAP. 49.)

AN ACT TO FURTHER AMEND THE LAW RELATING TO THE OCCUPATION
AND OWNERSHIP OF LAND IN IRELAND, AND FOR OTHER PURPOSES
RELATING THERETO. [22nd August, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

ORDINARY CONDITION OF TENANCIES.

1. The tenant for the time being of every holding, not hereinafter specially excepted (*a*) from the provisions of this Act, may sell (*b*) his tenancy for the best price that can be got for the same, subject to the following regulations (*c*) and subject also to the provisions in this Act contained with respect to the sale of a tenancy subject to statutory conditions: (*d*) Sect. 1.
Sale of Tenancy: a

- (1.) Except with the consent of the landlord, the sale shall be made to one person only :
- (2.) The tenant shall give the prescribed notice (*e*) to the landlord of his intention to sell his tenancy :
- (3.) On receiving such notice the landlord may purchase the tenancy (*f*) for such sum as may be agreed upon, or in the event of disagreement may be ascertained by the Court to be the true value (*g*) thereof :
- (4.) Where the tenant shall agree to sell his tenancy to some other person than the landlord, he shall, upon informing the landlord of the name of the purchaser, state in writing therewith the consideration agreed to be given for the tenancy (*h*) :
- (5.) If the tenant fails to give the landlord the notice or information required by the foregoing sub-sections, the court may.

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if it think fit and that the just interests of the landlord so require, declare the sale to be void (*i*):

- (6.) Where the tenancy is sold to some other person than the landlord, the landlord may within the prescribed period refuse on reasonable grounds (*j*) to accept the purchaser as tenant:

In case of dispute the reasonableness of the landlord's refusal shall be decided by the court: Provided that the landlord's objection shall be conclusive in the case of any tenancy in a holding where the permanent improvements in respect of which, if made by the tenant or his predecessors in title, the tenant would have been entitled to compensation under the provisions of the Landlord and Tenant (Ireland) Act, 1870, as amended by this Act, have been made by the landlord or his predecessors in title, and have been substantially maintained by the landlord (*k*) and his predecessors in title, and not by the tenant or his predecessors in title: (*l*)

- (7.) Where the tenancy is subject to any such conditions as are in this Act declared to be statutory conditions, (*m*) and the sale is made in consequence of proceedings by the landlord for the purpose of recovering possession of the holding by reason of the breach of any of such conditions, the Court shall grant to the landlord out of the purchase-moneys payment of any debt, including arrears of rent, due to him by the tenant and compensation by way of damages for any injury he may have sustained from the tenant by breach of any of such conditions, except the condition relating to the payment of rent:
- (8) Where permanent improvements on a holding have been made by the landlord or his predecessors in title solely or by him or them jointly with the tenant or his predecessors in title, or have been paid for by the landlord or his predecessors in title, and the landlord, on the application of the tenant, (*n*) consents that his property in such improvements shall be sold along with the tenancy, and the same is so sold accordingly, the purchase-money shall be apportioned by the Court as between the landlord's property in such improvements, and the tenancy, and the part of the purchase-money so found to represent the landlord's

property in such improvements (but subject to any set-off claimed by the tenant) shall be paid to the landlord; and such improvements so sold shall be deemed to have been made by the purchaser of the tenancy:

- (9.) Where a tenant sells his tenancy to any person other than the landlord, the landlord may at any time within the prescribed period (*o*) give notice both to the outgoing tenant and to the purchaser of any sums which he may claim from the outgoing tenant for arrears of rent or other breaches of the contract or conditions of tenancy. And

a If the outgoing tenant does not within the prescribed period give notice to the purchaser that he disputes such claims or any of them the purchaser shall out of the purchase-moneys pay the full amount thereof to the landlord; and

b If the outgoing tenant disputes such claims or any of them, the purchaser shall out of the purchase-moneys pay to the landlord so much (if any) of such claims as the outgoing tenant admits, and pay the residue of the amount claimed by the landlord into court (*p*) in the prescribed manner.

Until the purchaser has satisfied the requirements of this sub-section, it shall not be obligatory on the landlord to accept the purchaser as his tenant:

- (10.) Where any purchase-money has been paid into court it shall be lawful for the landlord and also for the outgoing tenant and for the purchaser respectively to make applications to the court in respect of such purchase-money; (*q*) and the court shall hear and determine such applications and make such order or orders thereupon as to the court may seem just:
- (11.) A tenant who has sold his tenancy on any occasion of quitting his holding shall not be entitled on the same occasion to receive compensation for either disturbance or improvements (*r*); and a tenant who has received compensation for either disturbance or improvements on any occasion of quitting his holding shall not be entitled on the same occasion to sell his tenancy:
- (12.) The tenant of a holding subject to the Ulster tenant-right custom or to a usage corresponding to the Ulster tenant-right custom (*s*) may sell his tenancy either in pursuance of

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- that custom or usage, or in pursuance of this Section, but he shall not be entitled to sell partly under the custom or usage and partly under the provisions of this Section: (*l*)
- (13.) If the tenant of a tenancy subject to the Ulster tenant-right custom or to a usage corresponding to the Ulster tenant-right custom sells his tenancy in pursuance of this section, the tenancy, unless purchased by the landlord, shall continue to be subject to such custom or usage:
- (14) Where a sale of a tenancy is made under a judgment or other process of law against the tenant (*u*) or for the payment of the debts of the deceased tenant, the sale shall be made in the prescribed manner, subject to the conditions of this Section, so far as the same are applicable:
- (15) Any sum payable to the landlord out of the purchase-moneys of the tenancy under this Section shall be a first charge upon the purchase-moneys.
- (16) A landlord, on receiving notice of an intended sale of the tenancy, may, if he is not desirous of purchasing the tenancy otherwise than as a means of securing the payment of any sums due to him for arrears of rent or other breaches of the contract or conditions of tenancy, give notice within the prescribed time of the sum claimed by him in respect of such arrears and breaches, such sum failing agreement between the landlord and tenant to be determined by the court, and should the tenant determine to proceed with the sale, may claim to purchase the tenancy for such sum if no purchaser is found to give the same or a greater sum; and the landlord, if no purchaser be found within the prescribed time to give the same or a greater sum, shall be adjudged the purchaser of the tenancy at that sum (*v*)

This Section is more general in its application than Sec. 8, which deals with the fixing of fair rents, as it applies to both "future" and "present" tenancies (for definitions of which see Sec. 57), to tenancies less than yearly tenancies (see Sec. 16, and Land Act, 1870, Sec. 65), and to tenancies for a year certain, which, when created before the passing of the Act, have been decided to be "yearly tenancies," and therefore not "specially excepted" under Sec. 21. *Ryan v. Chadwick*, 14 L. R. Ir. 353; and when created after the passing of the Act are, by Sec. 16, to be deemed to be tenancies from year to year. It applies to a sale of a portion of a holding as well as to a sale of the whole. *Murtagh v. Allen*, 27 L. R. Ir. 118 (L. C.). It applies, however, only to persons who are tenants for the purpose of the Land Acts, and to holdings which are within the Acts. It has no application, therefore,

to tenants who are not in occupation of their holdings *Meath v. Megan* [1897], 2 I. R. 39, 477; 31 I. L. T. R. 28, 93 (C. A.). Sect. 1.

(a) The holdings "hereinafter specially excepted," to which, therefore, this Section does not apply, are—

- (1) Holdings under judicial leases, excluded by Sec. 10. Holdings excepted.
- (2) Fixed tenancies, excluded by Sec. 11.
- (3) Non-agricultural holdings, demesne lands, pasture lettings, town parks, &c., excluded from the Act by Sec. 58 of this Act and Sec. 5 of the Land Act, 1896.
- (4) In a qualified way, holdings under leases, which were existing at the date of the passing of the Act. The 21st Section provides that such holdings are, during the currency of the leases, to be "regulated by the lawful provisions contained in the said leases, and not by the provisions relating to tenancies in that behalf contained in this Act." Leaseholds.

It was held by the Land Commission that the service of an originating notice under the Land Act, 1887, at once, brings an "existing lease" within the provisions of this Section, even before any order is made by the Court upon the notice. *Smyth v. Fletcher Moore*, 26 I. L. T. R. 66 (L. C.). But upon a case being stated for the opinion of the Court of Appeal, the latter Court held that the service of the notice has no such effect unless and until the tenant obtains an order of the Court upon his application either fixing a fair rent or declaring him to be a present tenant. *Smyth v. Moore*, 32 L. R. I. 129. How affected by Land Act, 1887.

There is no restriction, however, independently of the Act, on the right of a tenant to sell or alienate his tenancy (see judgment of PALLES, C.B., *Adams v. Dumscath*, 10 L. R. I. at p. 161), except in the cases of leases with a covenant against alienation, or leases executed between 1st June, 1826, and 1st May, 1832, not containing an express clause sanctioning alienation (7 Geo. IV., c. 29). It would appear from the decision of the Court of Appeal in *Smyth v. Moore*, referred to above, that on the sale of subsisting leasehold interests, the formalities required by this Section need not be complied with, unless the lessee has had a fair rent fixed under Sec. 1 of the Land Act of 1887.

(b) "Sale," "sell," and cognate words, include "alienation, and alienate, with or without valuable consideration" (Sec. 57). In spite of the generality of these words, it was always considered doubtful whether the provisions of this Section applied to transfers which were really gifts, and not sales at a price. See judgment of FITZGIBBON, L.J., *Meath v. Megan* [1897], 2 I. R., at p. 480. And it was held by CHATTERTON, V.C., that they did not apply to mortgages: *Fisher v. Coan* [1894], 1 I. R. 179. But now the 19th Section of the Land Act, 1896, provides that the alienation to one person only by way of mortgage or family settlement, or otherwise than for money, shall be a sale, but that the provisions of this Section, other than regulation 6, shall not apply thereto. The landlord has, therefore, no right to pre-emption in such cases, and no notice need be served upon him. See that Section, and notes thereto, *post*. What constitutes a sale.
Mortgages and family settlements.

This Section enables a tenant from year to year to sell his tenancy, even though he holds under a written agreement which contains a clause against assignment: *Hughes v. Higgins*, 29 I. L. T. R. 82 (Exch. D.). But the benefit of the Section is confined to occupying tenants: *Meath v. Megan* [1897], 2 I. R. 39, 477; 31 I. L. T. R. 28, 93. Effect of covenant against alienation.

It would appear, however, that a clause against alienation in a lease existing at the passing of this Act would still be effective during the currency of the lease under Sec. 21, *post*; but that a similar clause in a lease made after that date, in the case of a tenancy to which the Act applies, would be now, under Sec. 22,

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absolutely void, unless the valuation of the tenant's holdings be not less than £150 per annum. And it has been held by CHATTEERTON, V.C., that a covenant against alienation in a lease does not attach to the statutory term created under Sec. 1 of the Land Act, 1887, so as to prevent a tenant selling under the provisions of this Section *Re Wright and Tuttle Contract*, 29 L. R. Ir. 111. See, also, on this point, judgment of BEWLEY, J., in *Smyth v. Fletcher Moore*, 26 I. L. T. R., p. 66, and *Meath v. Megan* [1897], 2 I. R. 39, 477.

The right of assignment, which existed before the Act, was somewhat curtailed by the 13th Section of the Landlord and Tenant Act, 1870; which Section, however, has been repealed by Sec. 6 of the present Act.

Sale notwithstanding judgment for possession

A tenant may sell his tenancy, notwithstanding its determination by notice to quit and judgment or decree for possession, at any time before possession is actually taken; and in the case of ejectments for non-payment of rent, at any time before the period for redemption expires see Sec. 13, and cases there cited; and Sec. 7 of the Land Act, 1887. As to the rights of the tenant where a judgment or decree in ejectment was obtained before the passing of the Act, see *Laverty v. Moore*, 15 I. L. T. R. 105.

(c) The sale or assignment is subject, not only to the conditions prescribed by this Section, but also to the existing rules of law regulating the same. See on this subject, L. & T. Act, 1860, Sec. 9, and notes thereto, *ante*, pp. 24 to 27. An alteration in the receipts for rent by the landlord or his agent does not, unless shown to have been assented to by all parties interested, afford any evidence from which can be inferred either a change of tenancy or a transfer of the legal rights. *Bourke v. Bourke*, I. R. 8 C. L. 221. For forms of conditions of sale of a judicial tenancy, see *In re Priestley and Davidson's Contract*, 31 L. R. Ir. 122. Questions arising upon their construction can be determined on summons under V. & P. Act, 1874 (*ibid.*).

Sale by Land Judges.

A tenancy from year to year will now be sold by the Land Judges of the Chancery Division *Re Macalester*, 19 L. R. I. 149. But such a sale does not warrant the landlord's title. See *Kennedy v. Woods*, I. R. 2 C. L. 436. If made on the petition of an incumbrancer, the procedure prescribed by Sub-sec. 14 must be adopted. *Haines' Estate* [1898], 1 I. R. 267.

(d) The sale of a tenancy subject to statutory conditions was formerly regulated by Sec. 8 (5), but this Sub-sec. is now repealed by Land Act, 1896, Sec. 20. See as to statutory conditions generally, Sec. 5, *post*

Service of notices, how far necessary.

(e) Rules of January, 1897, Nos. 98 to 122, regulate the sale of tenancies in all cases. The "prescribed notice" should be in accordance with Form No. I. It may be served by the tenant a considerable time before the sale takes place; and "so long as he is *bona-fide* endeavouring to carry into effect his original intention to sell, expressed in the notice, there is not any necessity to serve any fresh notice, even though there may have been several abortive attempts to sell" *per* BEWLEY, J., *M'Farlane v. Cinnamon*, 25 I. L. T. R. at p. 47. Compliance with the regulations of this Section is not, however, a condition precedent to the transfer of the interest in the tenancy. *Per* BEWLEY, J., *Meath v. Megan* [1897], 2 I. R. at p. 48; *Fisher v. Coan* [1894], 1 I. R. 179. "A conveyance by a tenant from year to year, that would have been good at common law, is still valid and effectual unless or until it has been set aside by a competent tribunal." *Per* HOLMES, L.J., *Harvey v. Harkin* [1898], 2 I. R. at pp. 76, 77. See, also, *Hanson v. Mercer*, Greer Leading Cases, App. 28.

Withdrawal of notice of intention to sell

The tenant may, under special circumstances, be allowed to withdraw his notice to sell: *Garvagh v. Witherow*, 1 Greer 46 (L. C.), but he cannot do so after service

of an originating notice to fix the true value by the landlord. *Wilcox v. Slacke*, Greer Leading Cases 562 (L. C.); or even apparently after the landlord has made an offer to purchase, in exercise of his right of pre-emption. *Norris v. Byle*, 1 Greer 68 (L. C.).

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As to the power of the Court to set aside sales, in case of non-compliance with the prescribed conditions, see note (i), *post*, p. 235.

(f) If the landlord desires to purchase the tenancy he must, within one fortnight of the service of the tenant's notice of sale, serve an originating notice to that effect (Form No. 2) upon the parties prescribed by Rule 99 of the Rules of January, 1897, *post*. There is the same right of pre-emption upon the sale of a portion of a tenancy, with the landlord's consent, as upon a sale of the whole. *Murtagh v. Allen*, 27 L. R. Ir. 118. In *Collum v. Maguire*—decided by the Land Commission on 27th May, 1887, but *unreported*—a tenant served the usual notice to sell, and the landlord to purchase. The Sub-Commission fixed the true value, but after that nothing was done by either party for over a year. The landlord then called on the tenant to complete the sale, but the tenant said in reply that he did not now intend to sell at all, and the Court declined, after such a lapse of time, to enforce the notice requiring the tenant to sell.

Landlord's right of pre-emption.

An encumbered landlord has the same right of pre-emption as any other landlord, even though a Receiver has been appointed over his estate by the Land Judge. *Kelch v. Gormanston*, 30 I. L. T. R. 103.

The landlord must make a *bona fide* offer to purchase the tenancy before he serves an originating notice to have the "true value" fixed; but this offer may be without prejudice: *Clark v. Taylor* [1898], 2 I. R. 586; 32 I. L. T. R. 86; 4 I. W. L. R. 28, 105 (C. A.). And there must be an actual disagreement between the parties as to the price; though it is doubtful whether this disagreement need necessarily take place after service of the tenant's notice of intention to sell. *Mullan v. Traill* [1898], 2 I. R. 378 (L. C.); *Carroll v. Dartrey*, 2 Greer 187; *Balantine v. Gosford*, 3 Greer 75.

The effect of the service of the notice of intention to purchase upon the tenant and the Secretary of the Land Commission is to constitute the landlord at once the purchaser of the holding, under the statute, at a price to be ascertained by the Court: *Burns v. Graham*, MacD. 361. After the service of the notice the tenant cannot withdraw his notice of intention to sell, or defeat the right of the landlord to purchase; and any equitable charges created by the tenant cannot interfere with the landlord's rights: *Farrelly v. Waller*, 28 L. R. Ir. 122. Nor is it competent for the tenant to agree to sell to another party, and such a sale is invalid and inoperative: *Connor v. Gentleman*, 18 I. L. T. R. 28 (Sub-Com.). A statutory contract between the parties is created by the joint effect of the notice of intention to sell by the tenant, and the notice by the landlord to purchase at the "true value." This contract is subject to the ordinary rules of law governing such contracts; and it may be set aside for misrepresentation, if it is shown to have been procured thereby: *Balentine v. Johnston*, 1 N. I. J. R. 231. If the tenant dies after the service of these notices, an administrator limited for the purposes of the sale may be appointed on the application of the landlord, even though the tenant has left a will and named an executor: *Headfort v. Cochrane*, 26 I. L. T. R. 112. But in that case the executor had refused to take out probate, though after the order was made by the Sub-Commission he did so.

Effect of notice of intention to purchase by landlord.

The landlord, in case he exercises his right of pre-emption, is entitled to call upon the tenant to furnish an abstract and deduce title to the tenancy in the same way as any other purchaser: *Clark v. Taylor* [1899], 1 I. R. 449 (C. A.).

Tenant must make title.

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Although upon the service of notice by a landlord of his intention to exercise his right of pre-emption, the equitable estate in the tenancy passes to him (*per PALLES, C.B., Conroy v. Drogheda* [1894], 2 I. R. at p. 601), still, the tenancy continues, and the tenant remains liable for rent, until the "true value" has been fixed; and a good title to the tenancy shown, when possession should be given up to the landlord (*Carlsle v. Gosfort* (K. B. D., 19th June, 1902).

"True value" of tenancy, how determined

The originating notice to be served by the landlord is of an application to fix the "true value" of the tenancy. When this has been served by the landlord, another, to have a fair rent fixed, is unnecessary, as the Sub-Commissioners, in fixing the "true value," must take into account what the fair rent of each holding would be (*Duignan v. Magan*, MacD. 328, and the landlord cannot insist on an application previously served by the tenant to have a fair rent fixed being heard and determined if the tenant refuses to convey or give up possession to him, see note (r), *post*, p. 241, and Sec 48 (3), and notes thereto, *post*, p. 336

As to the means of enforcing the landlord's right of pre-emption in case the tenant refuses to convey or give up possession to him, see note (r), *post*, p. 241, and Sec 48 (3), and notes thereto, *post*, p. 336.

"True value" how to be ascertained.

(g) The "true value" of the tenancy is to be ascertained by the Court, in case the landlord elects to purchase the tenancy. As to how this "true value" should be ascertained there has been some difference of opinion. In the leading case of *Adams v. Dunseath*, 10 L. R. I. 109, 16 I. L. T. R. 59, R. & D. 135; MacD. 1, LAW, C., stated as his opinion that the true value of a holding meant "what it would *bona fide* bring in the open market, if sold to an unobjectionable purchaser" (10 L. R. Ir. at p. 125). SULLIVAN, M.R., however, strongly dissented from this view. "I cannot agree," said he, "with the reasoning of the Lord Chancellor, which relies on the right of sale conferred on the tenant by the early Sections of the Act of 1881. These Sections do not, in my opinion, give an absolute right of sale of all the improvements as they stand; if they did, it would seem to me to follow that the whole increased letting value caused by improvements becomes the absolute property of the tenant. The right of sale is, on the express enactment, a restricted one. The landlord can intervene, and then the Court must fix the true value. This value cannot be the market value, but what, having regard to the interest of landlord and tenant respectively under this code, would be the true estimate of price between them" (10 L. R. Ir. at p. 143). The question did not directly arise in the case, and was not decided by the Court. In the subsequent case of *Curneen v. Tottenham* [1896], 2 I. R. 37, 356; 30 I. L. T. R. 26; 2 I. W. L. R. 37. The Court of Appeal laid down, on a case stated by the Land Commission, that the "true value" of a holding is not restricted to the value of the improvements made by the tenant upon a holding, for which he would be entitled to compensation under the Act of 1870. "In substance," says FRIZZELL, L.J., in that case "the compensation for disturbance is just as much included in the tenant's interest as is the compensation for improvements" [1896], 2 I. R. at p. 361. Nor, in a case in which there are no improvements, is the amount of the true value necessarily restricted to the amount the tenant would be entitled to receive as compensation for disturbance. *Johnson v. Courtney*, 31 I. L. T. R. 117 (C. A.). The definition of "true value," given by TRENCHE, Q.C., in *Ager v. Sealy*, 27 I. L. T. & S. J. 63, is "what a thoroughly solvent and prudent man would give for the holding, intending to make the rent out of it, and a fair profit besides on his capital expended." This definition was approved of and adopted by the Court of Appeal in *Curneen v. Tottenham* [1896], 2 I. R. 356. "It seems to me," says FRIZZELL, L.J., "that the relations between the true value which the landlord must pay, and the full price which the tenant might get in the open market, is very similar to that which

Curneen v. Tottenham.

exists between the 'fair rent' which the Land Commission is bound to fix, and the 'competition rent' which the landlord is no longer at liberty to exact" [1896], 2 I. R. at p. 363. The same principles were adopted and applied by MEREDITH, J., in *Gosford v. Carlisle*, 34 I. L. T. R. 86.

In fixing the amount of the "true value," the Court will, of course, consider all the circumstances of the holding, and if it is in a deteriorated condition, will deduct from the sum that would otherwise be fixed the amount which it would be necessary to expend in order to bring it back to its normal condition *Dillon v. White*, 3 Greer 152. The Court will not hear an application to have a fair rent fixed, pending the true value proceedings: *Hughes v. Gosford*, 7 I. W. L. R. 85.

As to the amount of the "true value" in particular cases, and its relation to the selling value of the tenancy in the open market, see, also, *Earl of Enniskillen v. Willis*, 19 I. L. T. R. 25 (Sub-Com.); *Connor v. Gentleman*, 18 I. L. T. R. 28 (Sub-Com.); and *Lloyd v. Irwin*, 16 I. L. T. R. 126; MacD. 325 (Sub-Com.).

A Receiver, by way of equitable execution, may be appointed over the amount to be paid to the tenant for "true value" even before it has been fixed *Thackaberry v. O'Neill*, 35 I. L. T. R. 169; 7 I. W. L. R. 114.

Section 20 (3) provides that where a landlord purchases a tenancy, *in exercise of his right of pre-emption* under the Act, and not by the wish of the tenant, or in the open market, then, if the landlord re-lets the same holding to another tenant within 15 years from the passing of the Act, the new tenancy so created shall be subject to all the provisions of a present tenancy under the Act.

(h) See Rules of January, 1897, No. 100, and Form No. 3, *post*, pp. 741 and 774.

(i) If the tenant fail to serve notice (1) of his intention to sell, (2) of the name of the purchaser, and (3) of the consideration agreed to be given, "the Court may, if it think fit, and that the just interests of the landlord so require, declare the sale to be void." The construction put by the Court of Appeal upon similar words in the 21st Section would seem to give this clause a more imperative force than at first sight it appears to bear. *Sweeny v. Ashtown*, 14 L. R. I. 123. "No doubt," said LAW, C., in that case, "the particular words, 'the Court may declare such lease to be void' *per se* simply confer an authority, as such or similar words by themselves always do, and nothing more. But if, as in the present case, the legislature, besides conferring the requisite authority or justification, proceeds to specify the particular circumstances and conditions under which the authority or justification may be exercised, this context is naturally regarded as showing that it meant the authority to be exercised in those cases; and thus, by implication, a duty is imposed on those to whom the authority has been given to exercise it in favour of the persons and under the circumstances specified." But the Court will not set aside a sale, unless the landlord can show that his rights have been in some way prejudiced, as, for instance, that he intended to exercise his right of pre-emption, and was prevented from doing so: *Poole v. Prendergast*, 24 I. L. T. R. 12; or that a purchaser who would be non-resident, is being forced upon him. *King-Edwards v. Mitchell*, 34 I. L. T. R. 94. See, also, *Fitzgerald v. Sexton*, 4 Greer 92 (C.A.), and *Lloyd v. Irwin*, 16 I. L. T. R. 126, MacD. 325 (S.C.).

The Court has jurisdiction to set aside an agreement for a sale as well as a sale actually completed: *Poag v. Smith*, 1 Greer 222 (MEREDITH, J.).

The application under this Sub-section should be by originating notice to be served within one fortnight after the sale has come to the landlord's knowledge. See Rules of January, 1897, No. 101, *post*, p. 741, and *Crampton v. Bruce*, 33 I. L. T. R. 100.

Any landlord may serve such a notice, even though his estate is the subject of proceedings for sale at the suit of an incumbrancer, and a receiver has been appointed. Where landlord's estate is under receiver.

Seçt 1.

Sub-sec 5.

Sales, when set aside.

Sect. 1.

appointed over it by the Land Judge. The right in such a case may be exercised without obtaining any permission from the Land Judge *Kelch v. Gormanston*, 30 I. L. T. R. 103, Greer Leading Cases, 266; 1 Fitz. Irish Land Rep. 92.

The Court has no jurisdiction under this Sub-section to declare void a mortgage or voluntary settlement which comes within Sec 19 of the Land Act, 1896 *Fox v. Gloster* [1897], 2 I. R. 35.

Sales under
Ulster custom

If a sale purports to be made under the Ulster custom, and not under this Section, the Court has no jurisdiction to declare it void under this Sub-section *King-Edwards v. Mitchell*, 34 I. L. T. R. 94, 2 Greer 267. This does not, however, bind the landlord to accept the purchaser as tenant (*per* MEREDITH, J., *Norris v. Lyle*, 1 Greer, at p. 327). As to the landlord's rights and liabilities in such a case, see note (a), *post*, and *Harberton v. Crauford*, Greer Leading Cases, App. 98.

Effect of non-
compliance with
prescribed
conditions

Non-compliance with the prescribed conditions does not, however, make the sale *ipso facto* void, nor, in case of a statutory tenancy, is it a breach of the statutory conditions under Sec. 5. It is now well settled that even if the conditions of this Section are not complied with, "a conveyance by a tenant from year to year that would have been good at common law is still valid and effectual unless or until it has been set aside by a competent tribunal" (*per* HOLMES, J., *Harvey v. Harkin* [1898], 2 I. R. at pp. 76, 77). See, also, judgment of CHATTERTON, V.C., *Fisher v. Coan* [1894], 1 I. R. at p. 182. But where a tenant purported to sell under the Ulster custom, and failed to comply with the conditions of the custom, it was held by MEREDITH, J. (FITZGERALD, Q.C., *diss.*), that the legal conveyance made by him, by deed, to a purchaser, failed to vest the tenancy in the purchaser, the landlord having refused to accept him or recognise him as tenant. *Lindsay v. Corry*, 34 I. L. T. R. 204.

The effect of a sale declared void by the Court would appear to be very much the same as that of an assignment, without the written consent of the landlord, of lands held under a lease containing an agreement prohibiting same. (See Sec. 10 of the Landlord and Tenant Act, 1860, and notes thereto, *ante*, p. 30.) The landlord need not accept the purchaser as his tenant, nor will the latter apparently have any rights under the Act. The vendor will still continue tenant, may be sued for the rent, and will be liable in all respects as if the sale never took place. See on this point *Shine v. Dillon*, I. R. 1 C. L. 277. It is, therefore, for the interests of all parties that the requisite notices should be served, and the conditions of the Section strictly complied with.

Reasonable
grounds of
refusal to accept
a purchaser

(j) In the Bill, as originally drafted, the "reasonable grounds" on which a landlord might refuse to admit a purchaser were set out as follows.—

- (1) Insufficiency of means, measured with respect to the liability of the tenant.
- (2) The bad character of the purchaser.
- (3) The failure of the purchaser already as a farmer.
- (4) Any other reasonable and sufficient cause.

"Reasonable grounds" of refusal to accept a purchaser depend on the circumstances of each particular case, and no general rule can be laid down with regard to the matter *M'Menamin v. Stevenson*, 17 I. L. T. R. 48; MacD. 322. Non-residence on the part of the purchaser does not necessarily form a reasonable ground of objection. *M'Menamin v. Stevenson (ubi supra)*; though in some cases it may be so. *King-Edwards v. Mitchell*, 34 I. L. T. R. 94; 2 Greer 267. Nor is the fact that the purchaser has been put into possession of the holding before the sale was completed a valid objection to the sale: *O'Callagan v. Mahony*, MacD. 256. Previous insolvency of the purchaser, or the fact that he had taken the benefit of the Arrears Act, is a reasonable ground of objection by the landlord. *Healy v.*

Lord Lisimore, 18 I. L. T. R. 76 (note); *Lea v. Lord Massy*, 18 I. L. T. R. 75. If the tenant dispute the reasonableness of the landlord's objection, he must serve notice in Form No. 6. See Rules of Jan., 1897, No. 103, *post*, p. 742.

"The prescribed period" within which the landlord must refuse to accept the purchaser is "one fortnight after receiving the notice of the name of the purchaser." See Rules of Jan., 1897, No. 102, and Form No. 5, *post*, pp. 742 and 775.

The right to refuse upon reasonable grounds to accept a purchaser is preserved to the landlord in the case of mortgages, marriage settlements, voluntary assignments, &c., which are within the 19th Section of the Land Act, 1896, and exempted by that Section from the other regulations as to sales prescribed by this Section.

(k) Under this Sub-section the landlord has an absolute right to veto a sale in the case of what are called English-managed estates. By Sec. 8 (4), known as the Heneage Clause, English-managed farms are, in similar words, excluded from the jurisdiction of the Court in fixing a fair rent (see notes to that Section). "It is not sufficient that the improvements should be made by the landlord; it must be shown that the improvements were substantially maintained by him." *per* O'HAGAN, J., *Lord Ormathwaite's Estate*, MacD. 252. Trifling repairs by the tenant would not, however, prevent the landlord successfully contending that he had substantially maintained the improvements: *Breen v. Mahony*, MacD. 520. And where the landlord's attention has not been called to the need of repairs, or where, in fact, no repairs have become necessary by reason of the recent erection of buildings, no proof of maintenance of improvements is required *Breen v. Mahony (ubi sup.)*.

If the improvements have been made and substantially maintained by the landlord, the fact that the tenant has paid interest on the landlord's expenditure does not take the case out of this Sub-section. *Nicholson v. Jones*, MacD. 249. But the improvements must have been actually made by the landlord or his predecessor in title; it is not enough that the tenant has lost his right to compensation for them by efflux of time, as where (not being permanent buildings or reclamation of waste land) they have been executed by the tenant before 1870, and more than twenty years before the hearing of the case. *Russell v. Lord Leconfield*, 18 I. L. T. R. 28 (Sub-Com.). As to the manner in which questions between the landlord and tenant are to be determined under this Sub-section, see Rules of Jan., 1897, Nos. 104, 105, and 106, and Forms Nos. 7 and 8, *post*, pp. 742 and 775-6.

(l) For the meaning of the words "predecessors in title" see notes to Sec. 7, and *Adams v. Dunscaith*, 10 L. R. Ir. 109, 16 I. L. T. R. 59, R. & D. 135, MacD. 1. The phrase has the same meaning throughout the whole statute as in Sec. 7. See judgment of SULLIVAN, M.R., *Adams v. Dunscaith*, 10 L. R. Ir., at p. 141.

(m) For an enumeration of the statutory conditions, see Sec. 5. The sale may take place, notwithstanding the breach of a statutory condition, under Sec. 13, and if the landlord has served a notice to quit, the Court may restrain the proceedings thereon, and award the landlord damages in lieu of his right to recover possession. This Sub-section provides a ready method of recovering the amount of damages so awarded.

(n) See Rules of Jan., 1897, Nos. 107 and 108, and Forms Nos. 9 and 10. The Court has no jurisdiction, *on the application of the landlord*, to make an order, under this Sub-section, that the landlord's permanent improvements shall be sold with the tenancy, and that the purchase-money of the tenancy and of such improvements shall be apportioned. It is a condition precedent that the tenant should apply: *Meade v. Taylor*, 17 I. L. T. R. 116, MacD. 329 (L. C.). As to the meaning of the term "predecessors in title," see note to Sec. 7, *post*, p. 260.

Sect. 1.

Sub-sec 6
English-managed
estates.

Sub-sec. 7

Sub-sec. 8.

- Sect. 1.** (o) See Rules of Jan., 1897, Nos. 109, 110, and 111, and Forms Nos. 11 and 12.
- Sub-sec. 9** If no purchaser is found to give the same or a greater sum than is due to the landlord, the latter is entitled, under Sub-sec. 16, to be himself declared the purchaser of the tenancy at that sum.
- Sub-section 9 applies also to a case where an execution creditor is selling a tenant's interest in his holding under a *fi. fa.*, and the landlord is, in such cases, entitled to be paid, out of the proceeds of the sale, all arrears of rent due to him in priority to the demand of the execution creditor *Waldron v. Sutcliffe*, 26 L. R. Ir. 444.
- Payment into Court** (p) Payment into Court is effected by obtaining a docket, signed by the Accountant of the Land Commission (Form No. 68) or the Clerk of the Peace (Form No. 67) according as the Court having jurisdiction is the Land Commission or the Civil Bill Court, and by paying the money into the local branch of the Bank of Ireland (Rules of Jan., 1897, Nos. 66 to 71). The bank receipt must be transmitted by registered letter to the Clerk of the Peace if the Court having jurisdiction is the Civil Bill Court (Rule 68).
- Sub-sec 10** (q) Applications to draw out money so lodged must be on consent, or on notice to all the parties (Rules of Jan., 1897, Nos. 69 and 70).
- Sub-sec 11** (r) Sub-section 11 was relied on by O'BRIEN, C.J., in *Massareene v. Kelly* (26 L. R. Ir., 199), in order to show that this Act does not repeal the 4th Section of the Landlord and Tenant Act, 1870, and that a tenant evicted for non-payment of rent does not lose his right to compensation for improvements by reason of the power of sale conferred by this Section. See 26 L. R. Ir., at p. 203.
- Sales under Ulster custom** (s) An assignment of a tenancy under the Ulster custom takes place by the surrender of the old tenancy and the creation of a new tenancy between the landlord and the assignee. (*Per* PALLES, C.B., *Hillock v. Cope*, 9 I. L. T. R. 77, *Lyons v. Martin*, 33 I. L. T. R. 83), though such a surrender is not now deemed to be the determination of a tenancy (Sec 20, Sub-sec 1, *post*). A sale under the Ulster custom can, therefore, only be made with the landlord's consent. If such consent is improperly refused, the landlord cannot be forced to accept the assignee, the only remedy is for the tenant to take proceedings to obtain compensation under the Landlord and Tenant Act, 1870 *Lyons v. Martin*, 33 I. L. T. R. 83 *Norris v. Lyle*, 1 Greer 323; *O'Brien v. Scott*, Donn 495. Greer Leading Cases, 531, *King-Edwards v. Mitchell*, 34 I. L. T. R. 94. 2 Greer 257
- Usages restricting the right of sale** There may exist, also, on particular estates, in Ulster, usages restricting and limiting the right of sale under the custom, such as rules to restrict the amount of the purchase-money *M'Elroy v. Brooke*, 16 L. R. Ir. 46 (see judgment of PORTER, M.B., at pp. 75-76). *Lappin v. Coote*, 9 I. L. T. R. 72, *Gilmore v. Stewart*, 11 I. L. T. R. 65, *Norris v. Lyle*, 1 Greer 323. Or a rule providing that the price shall be fixed by arbitration *M'Groggan v. Montgomery*, 13 I. L. T. R. 77 (FITZGERALD, B.), or a rule prohibiting sales by auction. *Hillock v. Cope*, 9 I. L. T. R. 77 (PALLES, C.B.), *Mullan v. Trull*, Greer Leading Cases, App. 96 (BEWLEY, J.) Or a rule providing that preference should be given to adjoining tenants as purchasers *Boyle v. Conyngham*, 27 I. L. T. R. 110. *Donnelly v. Shield*, Donn. 486, Greer Leading Cases 529. Or a rule requiring an incoming tenant to reside on the holding. *Coleman v. Fry*, I. R. 7 C. L. 247.
- Whether a mortgagee of a tenancy who is not in possession can sell under the custom appears to be doubtful (see judgment of BEWLEY, J., *Mullan v. Trull*, Greer Leading Cases, App. at p 97).

If a sale of a tenancy purports to be made under the Ulster custom, and does not conform to the conditions of the custom, the landlord may refuse to accept the assignee as his tenant, and the latter cannot, in such a case, proceed to have a fair rent fixed: *Lindsay v. Corry*, 34 I. L. T. E. 204 (L. C.). On the other hand, if the landlord improperly refuses to accept an assignee he is liable to pay compensation to the tenant on quitting his holding under the 1st and 16th Sections of the L. & T. Act, 1870, "The foundation of the Ulster Tenant-right is the liability, on the part of the landlord, to pay the full value of the holding upon an eviction in breach of the custom" *per* FALLES, C.B., in *Adams v. Dunseath*, 10 L. R. Ir., at p. 162. A tenant holding under the Ulster custom may still have many advantages over other tenants. His landlord has no right of pre-emption in the case of a sale under the custom. And, further, he does not forfeit the benefit of the custom by breach of a statutory condition (Sec. 20, Sub-sec. 4), as another tenant would forfeit his right to compensation for disturbance (Sec. 13, Sub-sec. 6)

Sect. 1.
Effect of non-compliance with custom.

(t) A tenant holding under the Ulster custom can sell either under the custom or under this Section, but he must make his election in which way he is going to proceed. If the sale which purports to have been made under the custom is invalid for non-compliance with the rules, it cannot be supported under this Section. *Boyle v. Conyngham*, 27 I. L. T. R. 110 (BREWLEY, J.). And, on the other hand, if a tenant elects to sell under the Act, he cannot, after the landlord has served a notice to purchase at the true value, proceed to sell under the custom, so as to deprive the landlord of his right of pre-emption. *Wileox v. Slack*, Greer Leading Cases 562.

Option of sale under custom or Act

As to the power of the Court generally to declare sales void, see note (i), *ante*, pp. 235-6.

(u) Rules of Jan., 1897, Nos. 112 to 122 inclusive regulate the "prescribed manner" in which a sale of a tenancy under process of law is to be carried out. Under the Rules of 1881 the execution creditor was bound to serve notice of sale both on the landlord and tenant. The present Rules require notice to the landlord only (Rule 112). See *post*, pp. 744-746.

Sub-secs. 14 & 15

The sheriff can only seize a tenancy where the execution debtor has a legal estate in it; consequently, if a judgment mortgage has been registered against it, he cannot seize: *Rice v. M'Quade*, I. R. 9 C. L. 101. Nor can he seize the equity of redemption in premises evicted for non-payment of rent. *O'Riordan v. Kelly*, 16 L. R. Ir. 263, 484. Nor under a judgment against a man in his personal capacity can a farm be seized which he holds merely as executor of another. *Lord Talbot v. Malahide v. Moran*, 8 L. R. Ir. 307, 15 I. L. T. R. 63, or even as executor *de son tort*. *Kearney v. Ryan*, 2 L. R. Ir. 61; *Williams v. Williams*, 20 I. L. T. R. 46; *Williams v. Hippenstall*, 1 R. 7 C. L. 514. But under a judgment *de bonis testatoris* against an executor *de son tort*, the sheriff can seize and sell a farm of the testator if held for a term of years or under a yearly tenancy. *Doherty v. Nelson* [1895], 2 I. R. 90; 28 I. L. T. R. 146 (Q. B. D.).

Sale of tenancy by sheriff.

An agreement between a mortgagee of a tenancy and an execution creditor, to allow the tenant's interest to be sold by the sheriff under a *f. fa.* is void, and cannot enable the sheriff to sell. *Moher v. O'Grady*, 4 L. R. Ir. 54, 13 I. L. T. R. 146.

The sheriff should give sufficient notice of the sale. *Ryan v. Nolan*, 15 I. L. T. R. 91. And he should hold it as a general rule near the lands. *Horan v. Cookley*, 15 I. L. T. R. 19.

The landlord is entitled to be paid out of the proceeds of the sale all arrears of rent due to him, in priority to the demand of the execution creditor. *Waldron v.*

Landlord's right to rent.

Sect. 1. *Sutcliffe*, 26 L. R. Ir. 444, *Giblin v. Burke*, 30 I. L. T. R. 28, Fitz. Irish Land Repts. 25; 2 I. W. L. R. 35.

Service of notices presumed.

In an ejectment by the purchaser of a tenant's interest in a holding under an assignment from the sheriff, the Court will presume, in the absence of evidence to the contrary, that the notice required by the 112th Rule has been served, and that the sheriff complied with all necessary conditions. The onus of proving the non-service of notices or other irregularity lies on the defendant *Goddard v. Ryan*, 10 L. R. Ir. 309, MacD. 324. In such a case it is unnecessary for the purchaser to demand possession before commencing an action of ejectment on the title *Cloncurry v. Ryan*, 8 L. R. Ir. 392.

Demand of possession unnecessary.

The sheriff in selling an execution debtor's interest in a farm usually makes no enquiry as to his title, but sells his interest, "if any," in the lands. In case it afterwards turns out that he has no interest, or merely an equitable interest which does not pass to the purchaser, a question frequently arises as to the right of the purchaser to recover back his purchase-money. This is a question for the Court to determine upon the construction of the contract, depending upon whether the sheriff has sold merely a speculation or an existing tenancy. In the former case he cannot recover, in the latter he may. Thus where a legal mortgage was alleged to exist, notwithstanding which the sheriff sold, giving, however, full notice of the fact, it was held by the Court of Appeal that the purchaser could not recover the amount of his deposit *Ronan v. King* [1894], 2 I. R. 61, 648; 28 I. L. T. R. 6. And, where the sheriff sold and conveyed to a purchaser the interest of an execution debtor, "if any," in a leasehold interest, and it afterwards turned out that no estate passed in consequence of a forfeiture clause in the lease, it was held that the purchaser could not recover back his purchase-money in an action against the sheriff *Griffin v. Caddell*, I. R. 9 C. L. 488. And, similarly, where it turned out that the execution debtor's estate was a freehold *Murphy v. Sanders*, I. R. 10 C. L. 309. But, on the other hand, where the purchaser discovered a defect in the execution debtor's title before the conveyance was executed, it was held by the Court of Appeal, reversing the decision of the Common Pleas, that the purchaser was entitled to repudiate the contract and have his deposit returned *Kearney v. Ryan*, 2 L. R. Ir. 61, I. R. 10 C. L. 501.

What sheriff conveys.

When sale may be set aside.

The sale of a farm by a sheriff under a *fi. fa.* may be set aside, even after he has conveyed to the purchaser, if the sheriff did not take proper care to advertise the sale, and the farm was in consequence sold at an undervalue *Edge v. Kavanagh*, 24 L. R. Ir. 1. Especially if it was sold to the execution creditor *Fox v. Drake*, 20 I. L. T. R. 6. But the Court will not set aside the sale merely on the ground that it was at an undervalue, in the absence of collusive or improper conduct on the part of the sheriff *Cramer v. Murphy*, 20 L. R. Ir. 572 *Armytage v. Ludd*, 33 I. L. T. R. 54.

As to the procedure on sale of a tenancy by assignees in bankruptcy, see Rules of Jan., 1897, No. 118.

Where the interest in a tenancy is sold in an administration action in the Chancery Division, the Court will not in any way interfere with the landlord's rights or seek to fetter his free exercise of them *per* CHATTERTON, V.C., *M'Cracken v. M'Clelland*, I. R. 11 Eq., at p. 174. A similar rule is followed in the County Courts *Lyons v. Martin*, 33 I. L. T. R. 83 (FALLES, C.B.).

The sale of a yearly tenancy by the Land Judge, if made on the petition of an incumbrancer, is subject to the provisions of Sub-sec. 14, as a sale under process of law, and the required notices must be served *Haines' Estate* [1898], 1 I. R. 267; 4 I. W. L. R. 108; 1 Greer 44 (Ross, J.).

(v) See Rules of Jan., 1897, No. 119, and Forms Nos. 18, 19, and 20. A question Sects. 1-2.
 may arise as to the means by which an order adjudging the landlord a purchaser Sub-sec 1c
 under this Sub-sec. can be enforced. As to the powers of the Land Commission generally to enforce its own orders, see Sec. 48 (3), and notes thereto, *post*. Where a landlord had exercised his right of pre-emption, and the tenant refused to accept the sum fixed as the true value or to assign the tenancy, the Court, on the landlord's application, directed that the money should be lodged in Court, and ordered the tenant to execute an assignment. Upon his failing to do so within the specified time, an order was made under Sec. 33 of the Trustee Act, 1893, that the deed of assignment should be executed by the registrar, and that upon service of notice of the execution of the deed the tenant should deliver up possession *Faucett v. McKilligett*, 33 I. L. T. R. 71. *MERRITT, J.*, further intimated in this case that if the tenant failed to obey this order, the landlord might apply for an order directing the sheriff to put him into possession, and such an order was subsequently made [T. H. M.].

2. The tenant from year to year of a tenancy to which this Act Prohibition of subdividing and subletting
 applies shall not, without the consent (a) of the landlord in writing,
 subdivide (b) his holding or sublet (c) the same or any part
 thereof. (d)

Agistment or the letting of land for the purpose of temporary depasturage, (e) or the letting in conacre (f) of land for the purpose of its being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not be deemed a subletting for the purposes of this Act.

This Section applies to all yearly tenancies within the Act whether present or future. It is not, however, retrospective in its operation, and only applies to sub-divisions and sub-lettings made after the 22nd August, 1881.

A lessee of agricultural land, if his lease contains no covenant against sub-letting, may still, during the currency of his lease, make a valid sub-letting; and he can do so even after the service of an originating notice to have a fair rent fixed under Sec. 1 of the Land Act, 1887 *Johnson v. Egan* [1894], 2 I. R. 480; 28 I. L. T. R. 103 (Q. B. D.).

(a) It would appear from the decision of the Court of Appeal in *Robinson v. Wakrfeld* [1897], 2 I. R. 130, that a consent signed by an agent will satisfy this Section. The case was actually decided on the construction of 7 Geo. IV., c. 29 (which does not, like the L. & T. Act, 1860, expressly mention an agent), but the judgments seem to have more general application. "The general rule of law," says *WALKER, L.J.*, "applicable to the construction of a statute which requires the consent of a party, is that the maxim *qui facit per alium facit per se* applies, unless there is something in the words of the enactment to show that it must be signed by the party" [1897], 2 I. R., at p. 139. Consent by an agent.

It has been held by *BREWSTER, J.*, that where a landlord verbally consented to a sub-division he was afterwards estopped from relying upon the absence of his own consent in writing as invalidating it: *Boyd v. Trudenick* [1896], 2 I. R. 364; 30 I. L. T. R. 36; 1 Fitz. Irish Land Repts. 42.

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Sub-division.

(b) Sub-division, if made prior to the passing of this Act, does not prejudice a tenant's rights under the Act, provided all the persons in whom the interest in the tenancy is vested join in the application which is made, for the word "tenant" in the various Sections of the Act may, in relation to one tenancy, include a plurality of persons, even though they hold in severalty different parcels of lands. *Ireland v. Landy*, 22 L. R. Ir. 403; *Smyth v. Reid* [1901], 2 I. R. 61, 34 I. L. T. R. 155. As to sale in bankruptcy of a portion of a holding so sub-divided, see *In re McClay, a Bankrupt*, 1 N. I. J. R. 144.

Effect of sub-division in breach of section.

The assignment by a tenant from year to year, after the passing of the Act, of portion of his holding without the landlord's consent is null and void to all intents and purposes—not merely voidable at the option of the landlord. *Fogarty v. Shanahan* [1896], 2 I. R. 273, 30 I. L. T. R. 30; 2 I. W. L. R. 17; 1 Fitz. Irish Land Repts. 29. "It seems to me," says FITZGERBON, L.J., "to be quite impossible to hold that the words 'shall not' in the Act of 1881 are less effective than the words 'it shall not be lawful' in the Act of 1860" [1896], 2 I. R., at p. 289. As to the effect of the latter words, see note to L. & T. Act, 1860, Sec. 10, *ante*, pp. 30-31.

An attempted sale of portion of a tenancy, if made after the passing of this Act, is illegal, without the landlord's consent; and specific performance of an agreement to effect such a sale will not be enforced by the Court. *Murtagh v. Allen*, 27 L. R. Ir. 118.

Effect of sub-letting in breach of section.

(c) The effect of a sub-letting in breach of this Section would appear to be the same as that of a sub-letting contrary to agreement under the 18th Section of the Landlord and Tenant Act, 1860: see notes to that Section, *ante*, p. 47, and *Ormsby v. Crean*, 20 L. R. I. 526. A sub-letting in breach of agreement is simply null and void, and the person who sub-lets can recover possession by ejectment on title, without serving any notice to quit. *Jagoe v. Harrington*, 10 L. R. I. 335, *Golloghy v. Cannon*, 33 I. L. T. R. 88. Rent cannot be recovered from the sub-tenant, nor will an action for use and occupation lie against him at the suit of the tenant. *O'Kane v. Burns* [1897], 2 I. R. 591; 30 I. L. T. R. 102, 2 I. W. L. R. 129, 169. Such a sub-letting is, however, a license to occupy, which entitles the sub-tenant to remain in possession until the license is revoked and possession demanded by some person legally entitled to make such demand. While he so remains in possession he may maintain an action of trespass: *Littleton v. M'Namara*, I. R. 9 C. L. 417. And is entitled to the franchise *Glenn v. Brennan*, 29 I. L. T. R. 79.

Sub-letting before the passing of the Act.

A tenant who has sub-let without the landlord's consent, before the passing of the Act, is not within the definition of "tenant" in Sec. 57, and has no rights under the Act, unless the sub-letting comprises not more than one-eighth in value of the holding (Land Act, 1896, Sec. 7). His tenancy may be determined by notice to quit, and possession recovered at any time, and if the sub-letting took place after the passing of the Land Act, 1870 (1st August, 1870), without the written consent of the landlord, he has no rights to compensation for disturbance under 3rd Sec. of that Act.

Landlord's remedy.

It would appear from the last clause of Sec. 20 that a landlord has the same remedy for breach of the provision against sub-letting in this Section, if a statutory term has not been created in the holding, as he would have for breach of the effect of a sale of the tenancy for breach of statutory conditions, see Sec. 20. As to what the landlord's rights in such a case are, see Secs. 5 and 13, and as to statutory condition in Sec. 5, in case of a tenancy subject to statutory conditions. (last clause).

Sub-lettings made before the passing of the Land Act, 1887, in a holding not subject to statutory conditions, do not prevent a tenant being deemed in occupation of his holding where the sub-letting is for the use of labourers *bona fide* employed and required for the cultivation of the holding, provided the land comprised in each sub-letting does not exceed half an acre in extent. See Sec. 4 of that Act, and notes thereto, *post*. See, also, Sec. 18 of the present Act. Sects. 2-3
Land Act 1887.
Sec 4.

The sub-letting of any dwelling-house on a holding, not being the dwelling-house in which the tenant for the time being resides, is now also rendered valid whenever made by the 7th Section of the Land Act, 1896, and the sub-letting of other parts of a holding, not to exceed one-eighth in value of the whole, is also sanctioned in certain cases by the same Section. See this Section, and notes thereto, *post*. Land Act, 1896
Sec 7.

As to the sub-division and sub-letting of holdings which have been sold to tenants under the Land Purchase Acts, see Sec. 30, *post*, and Purchase of Land Amendment Act, 1888, Sec. 4, *post*, pp. 317 and 452.

(d) *Semble*, the comparative smallness of the portion sub-let does not prevent a sub-letting made during the continuance of a statutory term being a violation of this Section. *Machonchy v. Robertson*, 18 L. R. Ir. 483. As to a landlord's rights when a tenant sub-lets during the continuance of a statutory term, see notes to Sec. 5, *post*, and Land Act, 1896, Sec. 7 (2).

(e) "Agistment, or the letting of land for the purpose of temporary depasturage," is not, strictly speaking, a letting of the land at all. It merely confers a right of grazing, which is a *profit-a-prendre*, and gives no right whatever to the soil. *Connell v. Skahan*, MacD. 165. Nor does the possession of the land pass thereby. *Mulligan v. Adams*, 8 I. L. R. 132. Agistment.

(f) A letting in *conacre* consists of a letting of a small portion of land, at a stipulated price, for a single crop of potatoes or other tillage. See Furlong, *Landlord and Tenant*, 2nd ed., pp. 150, 217. "It would seem to me," says CRAMPON, J., in *Deane v. O'Reilly*, 8 I. L. R. 52, "that such a contract is not a demise of the land, but a sale of a profit to be derived from the land, a temporary easement and not an estate in the land." See, also, *Booth v. M'Manus*, 12 I. C. L. R. 418, *Close v. Brady*, Jones & C. 186. Money payable under such a contract is not "rent": *Allingham v. Atkinson*, 1898, 1 I. R. 239. Conacre

In an ejectment for breach of condition against sub-letting, the tenant put in evidence an agreement, in writing, which purported to be a letting by him in *conacre* of the demised premises to the party who was in occupation for fifteen successive years. It was held that, even assuming that the agreement could be construed simply as a letting in *conacre*, the tenant was not entitled to have a verdict directed for him, and that it was properly left to the jury to say whether, under all the circumstances, the transaction was or was not a *conacre* letting. *Evans v. Monaghan*, I. R. 6 C. L. 526. But an agistment letting may last for a number of years: *Muldoon v. Crean*, Greer Leading Cases, App. 16 (C. A.), *Templetown v. Boyd*, 1 Greer 352 (L. C.). See, further, notes to Sec 53 (c).

3. Where the tenant of a tenancy to which this Act applies has bequeathed his tenancy to one person only, (a) and the personal representatives of the tenant have assented to the bequest, such person shall have the same claim to be accepted as tenant by the landlord as if the tenancy had been sold to him by the testator. Evolution of
tenancies.

Where the tenant of any such tenancy has bequeathed his tenancy

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to more than one person or dies intestate, (b) then, if his personal representatives serve notice on the landlord nominating some one of the legatees or persons entitled under the Statutes of Distribution to his personal estate, to succeed to the tenancy, (c) such person shall have the same claim to be accepted by the landlord as if the tenancy had been sold to him by the testator or intestate, and in default of such notice the personal representatives shall, if the landlord requires a sale to be made, (d) within twelve months after the death of the tenant sell the tenancy, and in case of their default the landlord may sell the same under the direction of the Court

Where the tenant of a tenancy dies intestate and without leaving any person entitled to his personal estate, or any part thereof, such tenancy shall pass to the landlord, (e) subject, however, to the debts and liabilities of the deceased tenant.

Position of legatees

(a) A legatee has the same claim to be accepted by the landlord as if the tenancy had been sold to him by the testator. The landlord also can refuse to accept him as his tenant upon the same "reasonable grounds" as he may refuse to accept a purchaser of the tenancy. See Sec. 1 (6), *M'Menam v. Stevenson*, 17 I. L. T. R. 48, MacD. 322 (L. C.), *Healy v. Lord Lismore*, 18 I. L. T. R. 76, note (L. C.), and *Lea v Lord Massy*, 18 I. L. T. R. 75 (Sub-Com.).

Notice of the bequest of the tenancy to one person, and of the assent of the personal representative, must be served in Form 22. The landlord, if he refuses to accept the legatee, must serve notice in Form 23 or 24. The case then proceeds as when the tenancy is sold (Rules of Jan., 1897, No. 120).

Rights of minor children.

(b) As to the devolution of a tenancy on the death of a tenant intestate, and the rights and liabilities of his personal representatives, see notes to L. & T. Act, 1860, Sec. 9, ante, pp. 27 & 28. The children of the deceased tenant are not barred from asserting their rights to the tenancy until six years after they obtain their majority: *Mulhern v. Dorian*, 17 I. L. T. R. 74. Any person who enters into possession during their minority, with knowledge of their rights, may be treated as a trustee for them *Quinton v. Frith*, I. R. 2 Eq. 396, 494; *Graham v. Chambers*, 2 N. I. J. R. 194

(c) Notice of the nomination of one of several legatees, or next-of-kin, must be served in Form 21. The same rules apply as in the preceding case.

(d) The landlord may require a sale of the tenancy to be made, if neither of the foregoing notices are served. The sale is regulated by Rules of Jan., 1897, No. 117. If the personal representative fail to sell, the landlord may himself do so, proceeding under Rule 121. The forms necessary in each case are prescribed by these Rules. For the purpose of effecting the sale, the landlord may, in such case, apply to have an administrator limited for the purposes of a sale appointed under Sec. 14, post. *Duggan v. Coffee*, 28 I. L. T. R. 36.

Rights and duties of personal representative

As to the right of the personal representative to recover possession of the tenancy, see *Wallis v. Wallis*, 12 L. R. Ir. 63, and *Cosgrave v. Darcy*, 12 I. L. T. R. 27. While in possession he is personally liable for the rent *Nixon v. Quinn*, I. R. 2 C. L. 248. He is not bound to sell the tenancy, if the landlord does not require it, and there are no debts to be paid. It is lawful for him to convey to

the next-of-kin their respective shares, if they so desire *Bradley v. Flood*, 16 Ir. Ch. R. 238. He cannot, however, sub-divide, without the landlord's consent (Sec. 2, *ante*). Sects. 3-4

The right of a personal representative of a deceased tenant to recover possession of a farm which belonged to the deceased may, of course, be barred by the Statute of Limitations; and it is so barred by twelve years' possession of the next-of-kin or some of them in their own right, even though receipts have been given during that period to them as "representatives of so and so deceased". *M'Cormick v. Courtney*, 28 I. L. T. R. 66 (Q. B. D.); *M'Clure Deceased*, 33 I. L. T. R. 49 (V. C.); *Dwyer v. Whitelegge*, 33 I. L. T. R. 179 (Q. B. D.); *M'Glynn v. M'Glynn*, 35 I. L. T. R. 132; *Brown (deceased)*; *Coyle v. M'Fadden*, 1 N. I. J. R. 142 (Ross, J.). But an executor, named in a will, who enters into possession of a farm without proving the will, cannot rely upon a defence of the Statute of Limitations as against a legatee to whom administration is subsequently granted. *Molony v. Molony* [1894], 2 I. R. 1 (Q. B. D.). Claim of personal representative when barred by Statute of Limitations.

Where a sole next-of-kin, being in possession of a farm without taking out administration, sells and conveys it to a purchaser, he cannot afterwards, having taken out administration, repudiate the sale and recover possession *Hamill v. Murphy*, 12 L. R. Ir. 400.

In case no legal personal representative has been raised, or where there is none whose services are available, the Court has power under Sec. 14 to appoint a limited administrator for the purposes of sale. See *Duggan v. Coffee*, 28 I. L. T. R. 36. Where there is a will and an executor named, the Court will not, as a rule, grant limited administration *Mahony v. Carbery*, MacD. 396. But in some cases it may do so. See notes to Sec. 14, *post*, p. 287, and Land Act, 1896, Sec. 21, *post*, p. 560.

(e) This is a "reverter" within the meaning of Sec. 20, *post*. See *per PALLES*, C.B., *Conroy v. Drogheda* [1894], 2 I. R. at pp. 601-2.

4. Where the landlord demands an increase of rent from the tenant of a present tenancy (except where he is authorized by the Court to increase the same as hereafter in this Act mentioned), or demands an increase of rent from the tenant of a future tenancy (a) beyond the amount fixed at the beginning of such tenancy, then, Increase of rent to attract statutory conditions or enhance price on sale.

(1.) Where the tenant accepts such increase, until the expiration of a term of fifteen years from the time when such increase was made (in this Act referred to as a statutory term) such tenancy shall (if it so long continues to subsist) be deemed to be a tenancy subject to statutory conditions; with such incidents during the continuance of the said term as are in this Act in that behalf mentioned:

(2.) Where the tenant of any future tenancy does not accept such increase and sells his tenancy, the same shall be sold subject to the increased rent, and in addition to the price paid for the tenancy he shall be entitled to receive from his landlord the amount (if any) by which the Court may, on the application of the landlord or tenant, decide the

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selling value of his tenancy to have been depreciated below the amount which would have been such selling value if the rent had been a fair rent, together with such further sum (if any) as the Court may award in respect of his costs and expenses in effecting such sale :

- (3) Where the tenant does not accept such increase and is compelled to quit the tenancy by or in pursuance of a notice to quit, but does not sell the tenancy, he shall be entitled to claim compensation as in the case of disturbance by the landlord (b) :
- (4.) The tenant of a present tenancy may in place of accepting or declining such increase apply to the Court in manner hereafter in this Act mentioned to have the rent fixed.

Future tenants

(a) This Section deals chiefly with "future tenants," as to whose position there is still considerable uncertainty; there having been, as yet, few judicial decisions as to their rights and liabilities

Future tenancies, according to the definition in Sec. 57, may be divided into four classes—

(1) Tenancies created after the passing of the Act (22nd August, 1881) in holdings in which no tenancy was subsisting at the time of the passing of the Act.

(2) Tenancies created on or after 1st January, 1883, in holdings in which there were tenancies subsisting at the passing of the Act (as to how a present tenancy may be determined, see Sec. 20)

(3) Tenancies created by a landlord, who has bought the interest of a present tenancy in the open market, or on the application or by the wish of the tenant. But if a landlord bought a tenancy, in exercise of his right of pre-emption under Sec. 1, and re-let the same holding before the 22nd August, 1896, the new tenancy is a present tenancy. Section 20 (3)

(4) Tenancies which, although originally present tenancies, have been sold under Sec. 13 in consequence of an act or default of the tenant, which either is or would be a breach of a statutory condition. These, though not future tenancies in name, are placed by Sec. 20 in practically the same position, the purchaser having no right to have a fair rent fixed, or to acquire a second statutory term, if a rent has already been fixed.

Where a tenancy existing at the passing of the Act was determined, and the lands came into the landlord's possession in 1882 discharged from all previous tenancies, and a proposal in writing was made by a party to take a lease of the lands for 99 years, to commence on the 1st day of January, 1883, which proposal was accepted in writing by the landlord on the 12th December, 1882, and the proposed tenant put into possession under it a few days afterwards; it was held by the Land Commission that the tenancy was "created before the 1st day of January, 1883," that the tenant was a present tenant of the holding, and that consequently the lease, so far as it debarred him from having a fair rent fixed, was void under Sec. 22. The Court of Appeal, however, reversed this decision, and decided that the lessee was a future tenant, as the tenancy was not "created before the 1st day of January, 1883 " *Howell v. Briscoe*, 21 I. L. T. R. 73 (C. A.), 20 I. L. T. R. 15 (L. C.).

Prior to the passing of the Land Act, 1896, it was held that where a landlord, who had only a life estate in lands, died, leaving a tenant of his in possession, and the remainderman allowed the tenant to continue on in possession as tenant to him, this was the creation of a new tenancy, and not a continuance of the old one: *Monagan v. Hinds* [1895], 2 I. R. 689; *Wakefield v. Hendron*, 11 L. R. Ir. 505. Consequently, if the tenant for life died after Jan. 1st, 1883, all his tenants became *future tenants*, if the remainderman allowed them to continue in possession, even if they had acquired statutory terms under the tenant for life: *Sparrow v. Hepenstall*, 24 I. L. T. R. 65; *Peyton v. Gilmartin*, 28 L. R. Ir. 378. The law is now altered by the 10th Section of the Land Act, 1896, which provides that the Land Acts shall apply, and be deemed to have always applied, in the case of tenancies created by a limited owner or by a mortgagor or mortgagee in possession; and the tenancies shall not determine, or be deemed to have determined, by the cesser of the interest or possession of such limited owner, &c., except in certain events. A tenancy created by a tenant for life, therefore, before 1881, continues now to be a present tenancy as against a remainderman, no matter when the latter succeeds or succeeded to the estate. See the Section referred to, and notes thereto, *post*. Even before the passing of the Act of 1896 it was held that if the tenancy was created originally, not by the tenant for life, but by the original settlor when owner in fee, it was binding upon the remainderman, and continued to be a present tenancy. See judgment of HOLMES, J., *Peyton v. Gilmartin*, 28 L. R. Ir. at p. 394.

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Position of tenants, where landlord's life estate determines.

It is important to remember that every tenancy to which the Act applies is, by Section 57, presumed to be a present tenancy until the contrary is proved. In the case, therefore, of every tenancy created before the 1st of January, 1883, the onus lies on the landlord of proving that no tenancy was subsisting in the holding at the time of the passing of the Act.

(b) The Section makes no reference to the service of a notice to quit on the tenant of a future tenancy, without any demand of an increased rent, and it is presumed that the tenancy may be determined at any time in this way, unless a statutory term has been acquired under Sub-section 1 of this Section. A year's notice, expiring on any gale day of the calendar year, would be necessary in such a case under 39 & 40 Vic., c. 63, s. 1. See, *ante*, pp. 215, and *seq.*

Determination of future tenancies.

A proviso determining a future tenancy upon bankruptcy has been held to be good: *Maconchy v. Douglas*, 23 I. L. T. R. 12.

A future tenant, however, if compelled to quit his holding, would be entitled to compensation for disturbance under the higher scale provided by Section 6 of this Act, as well as to compensation for improvements under Section 4 of the Land Act, 1870. He could also apparently sell his tenancy under Section 13, but, if he took this latter course, the landlord could purchase at the "true value." See notes to Sec. 1, *ante*, pp. 233-235.

5. A tenant shall not, during the continuance of a statutory term (a) in his tenancy, be compelled to pay a higher rent (b) than the rent payable at the commencement of such term, and shall not be compelled to quit the holding of which he is tenant (c) except in consequence of the breach of some one or more of the conditions following (in this Act referred to as statutory conditions); that is to say,

Incidents of tenancy subject to statutory conditions

(1.) The tenant shall pay his rent at the appointed time (d):

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(2.) The tenant shall not, to the prejudice of the interest of the landlord in the holding, commit persistent waste (*e*) by the dilapidation of buildings or, after notice has been given by the landlord to the tenant not to commit or to desist from the particular waste specified in such notice, by the deterioration of the soil.

(3.) The tenant shall not, without the consent of his landlord in writing, subdivide his holding or sublet (*f*) the same or any part thereof, or erect or suffer to be erected thereon, save as in this Act provided, any dwelling-house (*g*) otherwise than in substitution for those already upon the holding at the time of the passing of this Act.

Agistment or the letting of land for the purpose of temporary depasturage, or the letting in conacre (*h*) of land for the purpose of its being solely used and which shall be solely used for the growing of potatoes or other green crops, the land being properly manured, shall not be deemed a subletting for the purposes of this Act.

(4.) The tenant shall not do any act whereby his tenancy becomes vested in an assignee in bankruptcy (*i*).

(5.) The landlord, or any person or persons authorized by him in that behalf (he or they making reasonable amends and satisfaction for any damage to be done or occasioned thereby), shall have the right to enter (*j*) upon the holding for any of the purposes following (that is to say).

Mining or taking minerals (*k*) or digging or searching for minerals;

Quarrying (*l*) or taking stone, marble, gravel, sand, brick clay, fire clay, or slate,

Cutting or taking timber or turf, save timber (*m*) and other trees planted by the tenant or his predecessors in title, or that may be necessary for ornament or shelter, and save also such turf (*n*) as may be required for the use of the holding;

Opening or making roads, (*o*) fences, drains, and water-courses;

Passing and re-passing to and from the sea shore with or without horses and carriages for exercising any right of property or royal franchise belonging to the landlord;

Viewing or examining at reasonable times the state of the holding and all buildings or improvements thereon;

Hunting, shooting, fishing, or taking game (*p*), or fish, and if the landlord at the commencement of the statutory term so requires, then as between the landlord and tenant the right of shooting and taking game, and of fishing and taking fish shall belong exclusively to the landlord, subject to the provisions of the Ground Game Act, 1880, and the provisions of ^{43 & 44 Vic., c. 47.} the Act twenty-seventh and twenty-eighth Victoria, chapter sixty-seven, shall extend where such right of shooting and taking game belongs exclusively to the landlord as though such exclusive right were reserved by the landlord to himself by deed. The word "game" for the purposes of this sub-section means hares, rabbits, (*q*) pheasants, partridges, quails, land-rails, grouse, woodcock, snipe, wild duck, widgeon, and teal;

And the tenant shall not persistently obstruct the landlord, or any person or persons authorized by him in that behalf as aforesaid, in the exercise of any right conferred by this sub-section.

During the continuance of a statutory term, all mines and minerals, coals and coal pits, subject to such rights in respect thereof as the tenant, under the contract of tenancy subsisting immediately before the commencement of the statutory term, was lawfully entitled to exercise, shall be deemed to be exclusively reserved to the landlord;

- (6.) The tenant shall not on his holding, without the consent of his landlord, open any house for the sale of intoxicating liquors (*r*).

Nothing contained in this Section shall prejudice or affect any ejection for non-payment of rent instituted by a landlord whether before or after the commencement of a statutory term, in respect of rent accrued due for a holding before the commencement of such term.

During the continuance of a statutory term in a tenancy, save as hereinafter provided, the Court may, on the application of the landlord, and upon being satisfied that he is desirous of resuming (*s*) the

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holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate, including the use of the ground as building ground (*t*), or for the benefit of the labourers in respect of cottages, gardens, or allotments, or for the purpose of making grants or leases of sites for churches or other places of religious worship, schools, dispensaries, or clergymen's or schoolmasters' residences, authorize the resumption thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his tenancy in the whole or such part to the landlord upon such terms as may be approved by the Court, including full compensation (*u*) to the tenant.

Provided that the rent of any holding subject to statutory conditions may be increased in respect of capital laid out by the landlord under agreement with the tenant to such an amount as may be agreed upon between the landlord and tenant.

(a) A statutory term may be created in five different ways—

- (1) By an agreement for an increased rent, in the case of either a present or a future tenancy (Sec 4 (1)).
- (2) By the fixing of a judicial rent by the Court in the case of a present tenancy (Sec 8 (1)).
- (3) By agreement between the parties as to a judicial rent, filed in Court (Sec. 8 (6) of this Act, and Sec 17 of the Land Act, 1896)
- (4) By reference to arbitration to fix a judicial rent (Sec. 40).
- (5) By agreement for the re-instatement of a tenant from whom possession has been taken (Sec 20 (2)).

Sec. 3 (1) of the Land Act, 1896, now provides that on the expiration of a statutory term in a present tenancy, the tenancy shall continue to be subject to the same rent and conditions as during the statutory term, until the tenancy is determined, or a new statutory term for the holding begins. See that Section, and notes thereto, *post*, pp 514-516.

A notice to quit served by a landlord during the currency of a statutory term is absolutely null and void, unless it is in consequence of the breach of a statutory condition; but there appears to be nothing in the Act to deprive a tenant of his right to surrender, and it seems that he may determine the tenancy, in this way, at any time during the continuance of a statutory term see *Torrans v. Cooke*, 22 L. R. I. 239, and judgment of HOLMES, J., in *Pryton v. Gilmartin*, 23 L. R. I., at p 393.

Effect of statutory term on previous rights of tenant.

As to the effect of the creation of a statutory term on the previous rights of the tenant to easements and *profits à prendre*, see *Ex p. Hutchinson*, 12 L. R. I. 79, 17 I. L. T. R. 27, and notes to Sec. 8, *post*, p. 268. As to his rights to cut turf for consumption on the holding, see *Knox v. Barter*, 19 L. R. I. 460, and note (*n*), *post*.

"All the terms of a contract of tenancy (in respect of which a fair rent is fixed), other than that of the amount of the rent, remain and regulate the rights of the parties after, as well as before, such fair rent has been fixed. The Land Commission has no jurisdiction to alter those terms."—Judgment of PALLES, C.B., *Bruce v. Steen*, 14 L. R. I. at p. 426. It has, however, been held that the covenant

for quiet enjoyment implied by law in a yearly letting of land does not extend to a statutory term created under this Act. *Kearns v. Oliver*, 24 L. R. Ir. 473. Sect. 5

In several cases tenants who were not entitled under the 65th Section of the Land Act, 1870 (now repealed), to deduct from their rent half of the Grand Jury cess paid by them in respect of their holdings, entered into agreements to pay increased rents, and by these agreements they were to be allowed to make the deduction. Subsequently, after the passing of the Land Act, 1881, they applied to have fair rents fixed. It was held that by so doing they superseded the special contracts into which they had entered, and that their right to the deduction of half the Grand Jury cess was abrogated thereby: *Rankin v. Mullan*, 18 I. L. T. R. 40; *Shulldham v. Black*, 17 I. L. T. R. 85; MacD. 366. It seems doubtful, however, whether these decisions are consistent with the decision of the Exchequer Division in *Bruce v. Steen*, 14 L. R. Ir. 408. See, also, *Hally v. Lane Fox*, 18 I. L. T. R. 54.

(b) A penal or additional rent, payable on breach of certain covenants, is not included in the term "rent" under this Section, and a tenant may be compelled to pay it, for breach of the covenants, in addition to the judicial rent fixed by the Land Commission: *O'Connor v. Smith*, 20 L. R. Ir. 393. As to penal rents generally, see notes to Landlord and Tenant Act, 1860, Sec. 45, *ante*, p. 87. As to grand jury cess
Penal rent.

The provisions of the Drainage (Ireland) Acts, 1863 and 1872, are not affected by this Section; and where works which form the subject of the award are wholly carried out after a fair rent order has been made, an "increased rent" may still be assessed by the Commissioners of Public Works upon the occupiers in respect of the drainage works under 26 & 27 Vic., c. 88, s. 56, and 35 & 36 Vic., c. 31, s. 2; which rent the tenant may be compelled to pay in addition to the judicial rent during a statutory term: *Enniskillen v. Reilly*, 32 L. R. Ir. 372, 27 I. L. T. R. 82 (Q. B. D.). Increased rent under Drainage Acts.

Where, however, during the currency of a lease, a landlord agreed to spend a certain sum on improvements, and the tenant agreed to pay interest on this sum, it was held by JOHNSON, J., that interest could not be recovered after a judicial rent had been fixed and a statutory term had been created *Blood v. Sheehy*, 27 I. L. T. R. 22. Interest on money spent on improvements.

(c) A statutory term will not be created so as to bar the right of the landlord to recover possession, if the Land Commission exceeded their jurisdiction in fixing a fair rent. Thus, where a tenant who held under a lease for lives which expired before the passing of the Land Act, 1881, remained in possession until the 29th September, 1881, under the 34th Section of the Landlord and Tenant Act, 1860, and had a fair rent fixed: in an ejectment on title it was held that there was no present tenancy subsisting at the passing of the Act, that the fixing of the fair rent was therefore *ultra vires*, and that the landlord was entitled to recover possession, notwithstanding the order creating a statutory term: *Hemphill v. Frazer*, 10 L. R. Ir. 87. "I admit," said LAWSON, J., in giving judgment, "that, so far as the fixing of the fair rent is concerned, that would be a decision binding in all cases between landlord and tenant, but the Commissioners had only jurisdiction to deal with cases between landlord and tenant" (10 L. R. Ir. at p. 94). "The fair rent order of the Land Commission can only be operative, on the assumption that the applicant has a right to fix a rent; that is, that the Land Court has jurisdiction, and that it is competent for it to fix a rent" (*per* MORRIS, C.J.) *Clarke v. Hall*, 22 L. R. Ir. at p. 388. See, also, judgment of Lord ASHBOURNE, C., on appeal, 24 L. R. Ir. at p. 319. When action of Land Commission is *ultra vires*.

Where, notwithstanding an order fixing a judicial rent, a decree for possession in an ejectment on title was granted by a County Court Judge and affirmed on appeal

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by a Judge of Assize, it was held by the Court of Appeal, reversing the decision of the Exchequer Division, that an interlocutory injunction should not be granted restraining the landlord from executing the decree, pending the hearing of a suit for declaration of title in the Superior Courts. *Gorman v. La Touche*, 26 L. R. Ir. 583, 24 I. L. T. R. 70. See, however, as to staying proceedings in an ejectment pending the hearing by the Land Commission of an application to fix a judicial rent Sec 13 (3), *post*, and *Clarke v. Nixon*, 21 I. L. T. R. 45.

Breach of statutory conditions.

Even for the breach of a statutory condition a tenant can only be compelled to quit his holding by ejectment founded on notice to quit, or, where the condition broken relates to the payment of rent, by ejectment for non-payment of rent. Sec. 13 (3) His right to compensation for disturbance is absolutely forfeited in either case. Sec. 13 (6) But, apparently, he is still entitled to compensation for improvements (see L. & T. Act, 1870, Secs 4 & 9) He may sell his tenancy under Sec. 13, at any time before its absolute expiration, by execution of the writ or decree in the case of ejectments on title, or within the six months allowed for redemption in the case of ejectment for non-payment of rent.

A tenant holding under the Ulster custom, or a corresponding usage, is still entitled to the benefit of such custom, notwithstanding the determination of his tenancy by breach of a statutory condition. Sec. 20 (4)

May be restrained by injunction

A court of equity may interfere by injunction to restrain the breach of a statutory condition, notwithstanding the remedy at law conferred by this Section. *Steele v. Tiernan*, 23 L. R. Ir. 583, *Richardson v. Murphy* [1899], 1 I. R. 248

Injunctions have been granted to prevent tenants erecting Land League huts on their holdings. *Brooke v. Mernagh*, 23 L. R. Ir. 86 (V. C.); *Brooke v. Kavanagh*, *ibid.*, 97 (M. R.); *Steele v. Tiernan*, *ibid.*, 583 (V. C.); or opening houses for the sale of intoxicating liquors. *Richardson v. Murphy* [1899], 1 I. R. 248.

Statutory term, upon whom binding

A statutory term can only last as long as the interest of the landlord under whom the tenancy was created lasts when that ceases it is at an end and determined, unless it is continued by force of Sec 15 or by the 10th Section of the Land Act, 1896. See remarks of PORTER, M.R., *Allen v. Derby*, 16 L. R. Ir. 351, 16 I. L. T. R. 48, and *Massy v. Norse*, 20 L. R. Ir. 57 Thus it was held to be no bar to the recovery of possession by a mortgagee where the tenancy was created by the mortgagor after the date of the mortgage. *Clarke v. Hall*, 24 L. R. Ir. 316, 22 L. R. Ir. 388. In that case, however, the order fixing the fair rent was not made until after the mortgagee had demanded possession and commenced proceedings in ejectment. Mere acquiescence also by the mortgagee in the mortgagor creating tenancies, it was held, did not render them binding on him. *O'Rourke's Estate*, 23 L. R. Ir. 497; *Clarke v. Nixon*, 21 I. L. T. R. 45.

Similarly, it was held that a statutory term created in respect of a tenancy under a tenant for life, not binding on the fee, ceased with the determination of the life estate. *Peyton v. Gilmartin*, 23 L. R. Ir. 378.

The 10th Section of the Land Act, 1896, now, however, makes all tenancies in holdings within the Land Acts, created by limited owners, or by mortgagors or mortgagees in possession, binding upon remaindermen, and mortgagees and mortgagors respectively. The cases above referred to have, therefore, now little application. See that Section, and notes thereto, *post*, pp. 548-550.

Where, however, a Presbyterian minister was in possession of land under a deed of trust which vested the land in trustees for the benefit of the congregation, and created a tenancy, in respect of which a fair rent was fixed, it was held that the tenancy was not binding upon the trustees, having been created merely by a permissive occupant, and that they were entitled to recover possession on the

death of the minister, notwithstanding the statutory term *Dull v. O'Ycell*, Greer **Sec. 5.**
 Leading Cases, App. 25 (FRZEBBON, L.J.).

A statutory tenancy, being in substance a tenancy for at least fifteen years, is not such a yearly tenancy as was contemplated by Sec. 121 of the Lands Clauses Act, 1845, and the magistrates have no jurisdiction to deal with it under that Section. *Reg. v. Justices of Cork* [1900], 2 I. R. 105.

A tenancy from year to year has obtained such permanence under this Section **Sales by Land Judges.**
 that it will now be sold by the Land Judges of the Chancery Division, on petition. *Re Macalister*, 19 L. R. I. 149. See notes to Sec. 1, *ante*, p. 232. When the landlord's interest is being similarly sold in the Court, the tenants should see that their tenancies, if subject to statutory conditions, are so described in the rental and conveyance. See *In re Marquis of Waterford's Estate*, I. R. 5 Eq. 59, 434, 5 I. L. T. R. 125.

(d) HARRISON, J., decided in a civil bill appeal, on circuit, that this Sub-section **Statutory conditions.**
 deprived a County Court Judge of his jurisdiction, under Rule 96 of the County Court Rules, 1877, to put a stay on an ejectment decree for non-payment of rent, where the defendant had acquired a statutory term in his holding *Lanesborough v. M'Clean*, 17 I. L. T. R. 75, MacD. 382. The 30th Section of the Land Act, 1887, however, expressly confers power to stay execution in any proceedings for the recovery of a holding for non-payment of rent when the valuation of the tenant's holdings does not exceed £50 a year, and also to put a stay upon the execution of a writ of *feri facias* as against the tenant's interest in his holding in similar cases. See that Section, *post*, pp. 440-441.

(e) "Waste is either *voluntary* by an act of commission, or *permissive* by matter **Waste.**
 of omission." "A tenant from year to year, or a tenant at will, is not liable for permissive waste. A tenant of a house, unless bound by express contract, could only have been required to use the demised premises with ordinary care by keeping them wind and water-tight, and to maintain them in tenantable repair by replacing doors and windows which have been broken, and if such tenants by neglecting to replace slates and tiles of the roof which had given way, suffered the rafters and floors of the house to be injured or destroyed, for want of necessary repairs, their negligence would have constituted waste under the Statute of Gloucester." Furlong, *Landlord and Tenant*, 2nd Ed., pp. 670, 674. The term "persistent waste" is new to the law. It means more than permissive or even voluntary waste, and appears to apply only where some positive acts are done by a tenant of a more serious character than ordinary or permissive waste. *Per O'BRIEN, J., Hamilton v. Black* [1899], 2 I. R., at p. 50.

(f) As to sub-division, see notes to Sec. 2, *ante*, p. 242, and *Ireland v. Landy*, **Sub-division and sub-letting**
 22 L. R. Ir. 403.

As to sub-letting, see notes to Sec. 2, *ante*, and Sec. 57, *post*, and Land Act, 1887, Sec. 4, and Land Act, 1896, Sec. 7. By the common law all tenants had a right to sub-let; the prohibition in this Act, therefore, is distinctly a derogation of their rights. It would appear by analogy to the decisions under Secs. 10 and 18 of the Landlord and Tenant Act, 1860, that a sub-letting in breach of the statutory condition is simply null and void except for the purpose of creating a forfeiture. *O'Kane v. Burns* [1897], 2 I. R. 591; 30 I. L. T. R. 102; *Golloghy v. Cannon*, 33 I. L. T. R. 88. These cases were decided under Sec. 2 of this Act, the wording of which is almost identical with this Sub-section, so that the same rule of construction would seem to apply. See, also, notes to L. & T. Act. 1860. Sec. 18 *ante*.

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Sub-letting of a
dwelling-house.

The sub-letting of any dwelling-house upon a holding, other than that in which the tenant for the time being resides, even during the continuance of a statutory term, is not now to be deemed a breach of the statutory condition, provided the house was not erected by the tenant in breach of his contract of tenancy or of a statutory condition. Land Act, 1896, Sec. 7 (2).

In cases not coming within Sec 7 of the Act of 1896, the comparative smallness of the portion sub-let is immaterial *Maconchy v. Robertson*, 18 L. R. Ir. 483; *Meredith v. Hungerford*, 14 L. R. Ir. 438. See, however, remarks of PORTER, M.R., in *Btamish v. Crowley*, 16 L. R. Ir. 287, 19 I. L. T. R. 46, and the notes to Sec. 57, *post*, pp. 345-347

As to landlord's remedies for sub-letting in violation of the statutory condition, see *Wright v. Whittaker*, 20 I. L. T. R. 28.

A void sub-letting may, however, be a license to occupy, giving the intended sub-tenant a right to remain in possession until demand by some person entitled, and even a right to bring an action for trespass *Luttliton v. M'Namara*, I. R. 9 C. L. 417.

(g) No additional dwelling-house can be erected "save as in this Act provided"—*see*, for labourers' cottages, by Sec 18. See notes to that Section and Land Act, 1887, Sec. 4 The tenant may be restrained by injunction from erecting dwelling-houses not *bona fide* intended for labourers *Steele v. T'ernan*, 23 L. R. Ir. 583. *Brooke v. Mernagh*, *ibid.* 86, *Brook v. Kavanagh*, *ibid.* 97.

(h) As to "agistment" and "conacre" lettings, see notes to Sec. 2, *ante*, p. 243, and Sec. 58 (6), *post*, p. 360.

Bankruptcy.

(i) The tenant shall not "do any act whereby his tenancy becomes vested in an assignee in bankruptcy." As to what amounts to an "act" by the tenant under this Section, see *James v. Earl of Rosse*, Donn. 412. The tenancy must become vested in the assignee in order to violate the condition. This does not take place by the mere act of filing the petition. Under Secs. 267 and 268 of the Irish Bankrupt and Insolvent Act, 1857 (20 & 21 Vic., c 60), a tenancy from year to year remains vested in the insolvent until the assignees elect to take same in the manner prescribed by Sec. 271, *Hanway v. Taylor*, I. R. 8 C. L. 254; *In re Ellis*, 10 I. J. (N. S.), 19. The assignees can, notwithstanding this condition, proceed to sell the tenancy if they elect to take same, and if the landlord serves notice to quit, in consequence of the breach of statutory conditions they can move under Sec. 13 (4) to restrain him from enforcing same. The tenancy, however, if a present tenancy, becomes, in the hands of the purchaser, completely altered in character, and practically equivalent to a future tenancy. See Sec. 20 (last clause) Rule 118 of the Rules of Jan., 1897, prescribes the mode of sale of a tenancy by assignees in bankruptcy.

Where a tenant became bankrupt after the service of an originating notice to have a *fa. r.* rent fixed, the Land Commission held that the proceedings might be continued by his assignees *Assignees of Cummins v. Porter*, 26 I. L. T. & S. J. 420.

Where a landlord recognised a bankrupt tenant as his tenant for many years after his bankruptcy, and gave him receipts in his own name, it was held by BEWLEY, J., that he could not set up the tenant's adjudication in bankruptcy as against his claim to have a fair rent fixed *Cagney v. Massy*, 28 I. L. T. R. 68.

Right of entry

(j) The right to enter conferred by this Sub-section is not merely a right to be exercised for an occasional or temporary purpose, it may be of a permanent character (*per* GIBSON, J., *Dolan v. Davis*, 32 L. R. Ir., at p. 395). The payment of "reasonable amends and satisfaction for any damage to be done" is not a condition precedent of the right to enter *Dolan v. Davis*, 32 L. R. Ir. 334; 27

I. L. T. R. 93. The statute does not direct in what manner this compensation is to be ascertained, when it is payable, or how it is to be recovered. GIBSON, J., suggests that it must be assessed by a jury (*Dolan v. Davis*, 32 L. R. Ir., at p. 395), apparently in an ordinary common law action. If the landlord resumes possession under Sub-sec. 6, the compensation is ascertained by the Land Commission Court or the Civil Bill Court, as the case may be. Sect. 5.
Compensation,
how to be
ascertained

(k) As to the meaning of "minerals," see notes to L. & T. Act, 1860, Secs. 26 & 32, *ante*, pp. 55 & 65. "The statute," says JOHNSON, J., in reference to this Sub-section, "recognises the continued existence (notwithstanding the statutory tenancy) of the landlord's proprietary rights in the minerals, stone, gravel, sand, and clay, under the holding, and preserves to the landlord, and those authorized by him, the right to enter (without being trespassers) and take these substances by the known and customary methods and processes, making compensation for injury thereby to the tenant, viz., by mining or sinking shafts and tunnelling for minerals ordinarily obtained by that means, and by quarrying, or open working from the surface, for limestone or other stones, or by sinking pits for gravel, sand, or clay, which are ordinarily obtained by those means": *Dolan v. Davis*, 32 L. R. Ir., at pp. 392-3. "The clause," says GIBSON, J., "enables a shaft to be sunk to get the minerals by underground working (M'Swiny on Mines, p. 273; *Durham Railway v. Walker*, 2 Q. B. 840); and possibly any necessary spoil may be placed on the surface: *Middleton v. Clarence*, I. R. 11 C. L. 499, *Lore v. Bell*, 9 App. Cas., at p. 302. It enables new mines to be opened and worked which were undiscovered at the original letting or at the commencement of the statutory term" *Dolan v. Davis*, 32 L. R. Ir., at p. 396. Minerals
New mines may
be opened.

(l) A landlord in exercise of the right conferred by this Sub-section to enter for the purpose of "quarrying" is not restricted to the working of quarries already open, but he may enter for the purpose of opening new quarries where none existed previously. Payment of compensation for damage done is not a condition precedent of his right to enter. *Dolan v. Davis*, 32 L. R. Ir. 384; 27 I. L. T. R. 93. Quarrying.

(m) As to the rights of tenants in respect of timber planted by themselves or their predecessors in title on their holdings, see 23 & 24 Geo. III., c. 39, and the other statutes relating to the registry of trees: App., *post*. See, also, Landlord and Tenant Act, 1860, Sec. 31, and notes thereto, *ante*, pp. 63-64. The Timber (Ireland) Act, 1888, confers a right to register trees upon all tenants who have statutory terms in their holdings under this Act. See that Act, *post*, p. 450. Timber

Where a lease expressly excepted timber in favour of the lessor, but contained no provisions as to cutting or removing same, or compensating the lessee for any consequent damage, GIBSON, J., held that the exception carried with it an implied easement or license to enter for the purpose of cutting and removing it; and even though a statutory term had been created, that the tenant was not entitled to compensation for damage necessarily done in giving effect to the exception, though he might have been entitled to damages for injury of a superfluous character. *Trimble v. Breconridge* [1895], 2 I. R. 452.

(n) A tenant has a right by Common Law as well as by the Landlord and Tenant Act, 1860, Sec. 29, to cut turf on his holding for *bona fide* consumption thereon *Howley v. Jebb*, 8 I. C. L. R. 435, 4 Ir. Jur. N. S. 184. This right, however, is subject to be controlled or excluded by contract, of which the conduct of the parties may furnish proof, as when the established usage on an estate, adopted and acquiesced in by the tenants, has been to disallow the cutting of turf, without a written license from the landlord: *Douglas v. M'Laughlin*, 17 I. L. T. R. 84, MacD. 393; *Lord Lifford v. Kearney*, 17 I. L. T. R. 30, MacD. 391. This Sub- Right to cut
turf.

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section has been held by the Exchequer Division to confer upon a tenant, during a statutory term, the right of cutting turf from the bog for the use of his holding, whatever the previous terms of the tenancy as to cutting turf may have been: *M'Geough v M'Dermott and Gologhy*, 18 L. R. Ir. 217. In that case a tenant from year to year of an agricultural holding, under a tenancy created in 1857, was in the habit of paying a bog rent for turf cut from a bog within the ambit of his holding for consumption on the holding, until a fair rent of the holding was fixed by agreement under the Land Act, 1881, without any condition as to the cutting of turf. The landlord having obtained a civil bill decree for a sum for turf cut for consumption on the holding after the agreement fixing the rent, and the tenant having appealed, a case was stated for the opinion of the Exchequer Division by the Judge of Assize. The majority of the Court (DOWSE, B., and ANDREWS, J., PALLES, C.B., expressing no opinion, on the facts) held that even assuming that by the original agreement the tenant was not entitled to cut turf for the use of his holding without paying the landlord an additional rent for the privilege, still that the operation of the agreement of 1882 was to confer upon the tenant during the statutory term the right of cutting turf from the bog for the use of his holding. "One of the incidents of this statutory term," said ANDREWS, J., in giving judgment, "is a right of entry, on the part of the landlord, for the purpose (amongst others) of cutting turf, save such turf as may be required for the use of the holding, which is all that he has done. Whatever the previous terms of the tenancy as to cutting turf may have been, the tenancy has now, in my opinion, by the agreement between the parties and by the operation of the Act, become subject to the incident I have mentioned as one of its terms, and, therefore, the tenant, in cutting such turf as was required for the use of his holding, was justified by one of the terms of his tenancy, and acted within his rights." This decision over-ruled the previous cases of *Lord Lifford v. Kearney*, 17 I. L. T. R. 30, and *Douglas v. M'Laughlin*, 17 I. L. T. R. 82, by which it was decided that the Act did not alter the previous position of the parties in this respect; but it has been practically over-ruled by the Court of Appeal in *Knox v. Baxter*, 19 L. R. Ir. 460. In this case an injunction had been granted by CHATTERTON, V.C., restraining a tenant from cutting turf on the holding without the permission of the landlord, although the tenant had obtained an order fixing a fair rent for his holding. This decision was affirmed by the Court of Appeal; ASHBOURNE, C., stating that in his opinion, the judgments of DOWSE, B., and ANDREWS, J., in *M'Geough v. M'Dermott*, were inconsistent with the cases of *Bruce v. Steen*, 14 L. R. Ir. 408, and *Ex p. Hutchinson*, 12 L. R. Ir. 79, and opposed to the true construction of the Act (19 L. R. Ir. at p. 478).

But where the contract of tenancy is silent as to turbary, the Act gives to the landlord a right of entry, for the purpose of taking turf, which he did not before possess *Townshend v. Cotter*, 31 L. R. Ir. 85 (C. A.), 29 L. R. Ir. 243; 26 I. L. T. & S. J. 324 (V. C.). As to the extent of this right, see, further, *Byrne v. Hynes*, 2 I. W. L. R. 164 (C. A.).

Opening or making roads

(o) This provision as to opening or making roads has been held not to extend to the creation of a right of way for the landlord, and any person authorised by him, across the land of the tenant where such a right did not previously exist *Feyton v. Molloy*, 21 I. L. T. R. 20 (C. C.). But GIBSON, J., seems to have disapproved of the reasoning in this case. *Dolan v. Davis*, 32 L. R. Ir., at p. 395, and other judges have refused to follow it when hearing Civil Bill appeals. See, for instance, *Wrench v. Brown*, 3 Greer 235 (JOHNSON, J.).

Game Prosecutions.

(p) A landlord of a judicial tenancy where game is reserved may prosecute for trespass in pursuit of game under 27 & 28 Vic., c. 67 s. 1, and 27 Geo. III., c. 35.

s. 10 (Ir.): *Hope v. Callaghan*, 24 I. L. T. R. 5. "But the Act (27 & 28 Vic., c. 67) does not authorize a complaint by a person in whom is vested the right to game as an incorporeal hereditament. To be within the Statute the complainant must not only have the right of game, but he must also be 'lessor or landlord' of the lands, and as such lessor or landlord have the right to game" (*per* PALLEs, C.B., *Powell v. Castletown*, 30 L. R. Ir. at p. 89). The landlord may, however, prosecute, as an informer or one of the public, under 27 Geo. III., c. 35, s. 10 (Ir.), even though the right to game has not been reserved to him by any written instrument *Bruce v. M'Allister*, 8 L. R. I. 195. And Sec. 7 of the Ground Game Act, 1880 (43 & 44 Vic., c. 47), provides that a person, not in occupation, who has the sole right of killing game on land, shall, for the purpose of any Act authorizing the institution of legal proceedings by the owner of an exclusive right to game, have the same authority to institute such proceedings as if he were such exclusive owner.

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Ground Game Act, 1880.

A reservation of game in a lease is a condition which attaches to a statutory tenancy created under the 1st Section of the Land Act, 1887. *Irvine v. Osborne*, 25 I. L. T. R. 36.

(q) Rabbits constitute game, for trespass in pursuit of which a landlord may prosecute, notwithstanding the Ground Game Act, 1880. *Hope v. Callaghan*, 24 I. L. T. R. 5. But this decision is confined to the case of judicial tenancies. Rabbits are not game within the meaning of 27 Geo. III., c. 35, or 27 and 28 Vic., c. 67. *Cleary v. De Vesce* [1895], 2 I. R. 704; 29 I. L. T. R. 6.

Rabbits.

(r) The statutory condition prohibiting a tenant from opening on his holding, without the consent of the landlord, any house for the sale of intoxicating liquors applies to a licence for the sale of liquors to be consumed off, as well as on, the premises: *Richardson v. Murphy* [1899], 1 I. R. 248 (V. C.).

Opening public houses.

(s) As to resumption of a holding by a landlord, see Rules of Jan., 1897, No. 123, and Form No. 27. The right of resumption on the expiration of a lease under Sec. 21, *post*, is more extensive than that conferred by this Sub-section, as restricted by Sec. 8 (3), *post*. The right on the expiration of a lease is a personal one in favour of the landlord. "Totally different considerations arise where a holding is being resumed for any of the purposes here specified, none of which are purely personal to the landlord for the time being, and all of which have reference to the improvement of the inheritance, or are of public utility." *Per* Lord ASHBOURNE, C., *Martin v. Martin* [1898], 1 I. R. at p. 120.

Landlord's right of resumption.

The right of resumption during the currency of the first statutory term is considerably restricted by Sec. 8 (3) of the present Act; and is entirely abolished in the case of lessees becoming present tenants under the Land Act, 1887, Sec. 1, except where the first statutory term begins after August 15th, 1896, and either the land resumed is demesne land or a town park, for which a fair rent is fixed by virtue of the Land Act, 1896 (see Sec. 2 of that Act, *post*).

(t) The Court will not make an order allowing a landlord to resume land for use as building ground, under this Sub-section, merely because it is shown that the land is capable of being so used. The expression "the use of the ground as building ground," means actual user as distinguished from possible user: *Archbold v. Charters* [1900], 2 I. R. 262, 1 Greer 375. "The landlord must satisfy us," says MEREDITH, J., in that case, "that he has a clear, settled, and definite purpose of converting the agricultural land which he is desirous to resume, and which is suitable for building upon, into building ground, if and when the order for resumption is made" [1900], 2 I. R. at p. 264. That intention not having been satisfactorily proved, the order for resumption was refused: *Archbold v. Charters* [1900], 2 I. R. 262. But where, on the other hand, it was shown that land was required by landlords to enlarge

For building ground.

- Secs 5-6.** their linen works and to erect cottages for their labourers and workers, an order for resumption was made by BAILEY, Assistant Commissioner *Wilson v. Kirkpatrick*, 34 I. L. T. R. 16; 2 Greer 45.
- Compensation** (a) The compensation which is to be paid to the tenant, under this Section, does not include compensation for disturbance. "Full compensation" means what would be got for the tenancy if sold in the open market at a fair rent. *Per O'HAGAN, J.: M'Farland v. Carr*, 17 I. L. T. 60, MacD. 338. See, also, *Connell v. Murray*, 21 I. L. T. R. 12 (Co. Ct.). The amount of the compensation, should not be fixed on the same basis as "true value" *Wilson v. Kirkpatrick*, 34 I. L. T. R. 16, 2 Greer 45 (Sub-Comm.).
- Paid by a tenant for life.** Whether a tenant for life who, on resumption under this Section, pays compensation to a tenant, can charge the inheritance with the amount or any part thereof seems to be doubtful. See judgments of LORD ASHBOURNE, C., and FITZGERISSON, L.J., *Martin v. Martin* [1898], 1 I. R. at pp. 120 and 122. He cannot do so in case of resumption at the expiration of a lease under Sec. 21 (*ibid*).

Amendment of Law as to Compensation for Disturbance.

Repeal of 33 & 34
Vic. c. 46, s. 3 (in
part) and s. 1d

6. *There shall be repealed so much of Section three of the Landlord and Tenant (Ireland) Act, 1870, as provides for the scale of compensation, and so much of the same Section as declares that in no case shall the compensation exceed the sum of two hundred and fifty pounds, and so much of the same Section as declares that a tenant in a higher class of the scale may at his option claim compensation under a lower class, and so much of the same Section as prohibits tenants of holdings valued at such sums as are in the said Section mentioned, and making such claims for compensation for disturbance as are in the said Section mentioned, from being entitled to make separate or additional claims for improvements other than permanent buildings and reclamation of waste land, and the said Section three shall hereafter be read as if from such Section were omitted the words "for the loss which the Court shall find to be sustained by him by reason of quitting his holding," so that the said Section shall be read as providing that the tenant therein mentioned shall be entitled to such compensation as the Court, in view of all the circumstances of the case, shall think just, subject to the scale of compensation hereinafter mentioned.**

The compensation payable under the said Section three in the case of a tenant disturbed (a) in his holding by the act of a landlord after the passing of this Act shall be as follows in the case of holdings—

Where the rent is thirty pounds or under, a sum not exceeding seven years' rent:

* The portions of this Section in italics are repealed by Stat. Law Rev. Act, 1894.

Where the rent is above thirty pounds and not exceeding fifty pounds, a sum not exceeding five years' rent :

Where the rent is above fifty pounds and not exceeding one hundred pounds, a sum not exceeding four years' rent :

Where the rent is above one hundred pounds and not exceeding three hundred pounds, a sum not exceeding three years' rent :

Where the rent is above three hundred pounds and not exceeding five hundred pounds, a sum not exceeding two years' rent :

Where the rent is above five hundred pounds, a sum not exceeding one year's rent.

Any tenant in a higher class of the scale may, at his option, claim compensation under a lower class, provided such compensation shall not exceed the sum to which he would be entitled under such lower class on the assumption that the rent of his holding was reduced to the sum (or where two sums are mentioned, the higher sum) stated in such lower class.

*From and after the passing of this Act the thirteenth Section of the Landlord and Tenant (Ireland) Act, 1870, shall be and the same is hereby repealed.**

Although this Section substitutes a new scale of compensation for disturbance under the Land Act, 1870, the old scale is still applicable in certain cases, *viz.*, where a tenancy is excluded from this Act by Sec. 53, but not excluded from the provisions relating to compensation for disturbance in the Act of 1870. Thus where a holding was admittedly let for temporary convenience prior to 1881, but the temporary convenience was not "expressed in the document" under which it was let, it was held by the Court of Appeal (WALKER, L.J., *diss.*) reversing the Land Commission, that the tenant was entitled to compensation according to the original scale provided by the 3rd Section of the Land Act, 1870, and not according to the scale substituted by this Section *Fawcett v. Collum* [1901], 1 I. R. 129; 35 I. L. T. R. 28; 3 Greer 91 (C. A.).

Section 22 also, in effect, amends the 3rd Section of the Act of 1870 by making the provision perpetual by which contracts made by a tenant depriving himself of the right to claim compensation are declared void, except in certain cases.

(a) As almost every present tenant is entitled to have a fair rent fixed, and can then only be "disturbed" in his holding within the meaning of the Land Act, 1870, for breach of a statutory condition (Sec. 5), and as in such a case he is deprived of his right to compensation for disturbance by Sec. 13 (6), it is, with a few exceptions, as above, only in the case of future tenants that any claims can arise. They, under Sec. 4, are entitled to compensation if compelled by notice to quit to leave their holdings.

* The portions of this Section in italics are repealed by Stat. Law Rev. Act, 1894.

Sect. 7

Amendment of
33 & 34 Vic., c
46, as to compen-
sation for im-
provements

Amendment of Law as to Compensation for Improvements.

7. A tenant on quitting the holding of which he is tenant shall not be deprived of his right to receive compensation for improvements under the Landlord and Tenant (Ireland) Act, 1870, by reason only of the determination by surrender or otherwise of the tenancy subsisting at the time when such improvements were made by such tenant or his predecessors in title, (a) and the acceptance by him or them of a new tenancy.

Where in tracing a title for the purpose of obtaining compensation for improvements (b), it appears that an outgoing tenant has surrendered his tenancy in order that some other person may be accepted by the landlord as tenant in his place, and such other person is so accepted as tenant, the outgoing tenant shall not be precluded from being deemed the predecessor in title of the incoming tenant by reason only of such surrender of tenancy by him.

The Court, in adjudicating on a claim for compensation for improvements made before any such change of tenancy or of tenants, shall take into consideration all the circumstances under which such change took place, and shall admit, reduce, or disallow altogether such claim as to the Court may seem just.

A flax scutching mill (c) otherwise suitable to the holding on which it is erected shall not be deemed to be unsuitable to the holding on which it is erected by reason only that it is available for purposes beyond those of the holding on which it is situate.

Predecessors in
title,
Meaning, before
this Act.

The object of this Section was, according to the decision of the majority of the Court of Appeal, in the leading case of *Adams v. Dunseath* (10 L. R. I. 109, 16 I. L. T. R. 59, R. & D. 135, MacD. 1), to counteract the ruling of the Court in the case of *Holt v. Harborton* (I. R., R. & L. App. 82, 6 I. L. T. R. 1, Donn. 175), and to provide that each successive occupant of a holding should be entitled to compensation for improvements thereon made by the tenant for the time being, and that he should not be barred from obtaining such compensation by reason only of breaks or interruptions in the tenancy, unless this right to compensation was, on the occasion of some change in the tenancy, surrendered by the tenant, or lost by some arrangement between the parties.

(a) In the construction of the 4th Section of the Land Act, 1870, the Courts had applied a strictly technical interpretation to the words *predecessors in title*. This expression, it was held, must mean predecessors in the same title. Thus, where improvements were made by the father of the claimant under a lease for his own life, and the claimant, on the death of his father, continued to hold the same farm as tenant from year to year it was held that as the lease and the yearly tenancy were entirely different titles, he could not claim for improvements made by his father during the currency of the lease. *Darragh v. Murdock*, 5 I. L. T. R. 38, 69. This construction of the term "predecessors in title" was confirmed by the decision of the Court for Land Cases Reserved in the case of *Holt v. Harborton*.

(*ubi supra*), where it was held that a tenant could not register improvements under Section 6 of the Land Act, 1870, which were made prior to the lease, and at a time when the tenant held only a portion of the lands afterwards demised by the lease.

Sect. 7.

Such continued to be the law until the passing of the Land Act, 1881, and the decision of the case of *Adams v. Dunseath*, 10 L. R. I. 103, 16 I. L. T. R. 59, R. & D. 135, MacD. 1. There it was held by the majority of the Court (MAY, C.J., MORRIS, C.J., and DEASY, L.J., *diss.*), that the effect of this Section was to give to the term throughout the Act a much wider and less technical signification than had previously been attached to it.

LAW, C., in giving judgment, said:—"The preceding tenants who are supposed to have made improvements under determined and extinct tenancies are called by the statute 'the predecessors in title' of the actual tenant, holding by a new tenancy since created. The expression, therefore, being used to describe these preceding tenants who held not by the now existing title, but by other titles since determined, and replaced by the new title of the actual tenant, it is manifest that in this Section the old, strict, technical interpretation, requiring the 'predecessor in title' to be predecessor in the *same* title, must be rejected, and the expression be taken to be here used by the legislature in a less technical and wider sense, as simply denoting a series of tenants who have transmitted from one to the other their respective tenancies or titles to the possession of a holding, whatever those tenancies or titles may be, or whatever changes they may have undergone," 10 L. R. I. at p. 120.

Since the Act.
Adams v.
Dunseath

"I think," said SULLIVAN, M.R., in concurring with this judgment, "that a tenant, on quitting his holding, was to be enabled to get compensation in respect of all existing improvements made on the holding by himself or any former occupant thereof, notwithstanding any change of tenancy of the holding, no matter how caused, provided there was nothing else to bar the right to such compensation," *Ibid.*, pp. 139, 140.

PALLES, C.B., went further, and laid down, in his judgment, what the essential element in a new tenancy was which alone would work an extinguishment of the right to claim compensation for improvements, thus:—

"Now the Legislature having declared that the determination of an old, and the acceptance of a new tenancy, shall not of itself extinguish the claim, it, in my opinion, necessarily follows that, in order to work that extinguishment, there must be that in the transaction which under the old law would have had that effect without a change of tenancy. I am not aware of any mode by which, under such circumstances, this could have been accomplished save by contract. In my opinion, therefore, the real question in every such case is now one of contract. *Did the landlord grant the new tenancy in consideration of the improvements, and did the tenant accept such new tenancy in satisfaction of such improvements?* In other words, the tribunal charged with determining the question has not to deal with what was in the landlord's mind, uncommunicated to the tenant, nor with the proposal of the landlord, unaccepted by the tenant, but ought, upon a review of all the facts to determine whether the transaction in itself amounted to an accord and satisfaction—an agreement to accept in satisfaction, and a giving and accepting in satisfaction, in pursuance of that agreement:" *ibid.*, pp. 167, 168.

As applied to the landlord, the term "predecessor in title" similarly does not necessarily involve the idea of one single estate continuing unbroken and undetermined throughout the whole line of succession, but is used as denoting the substantial devolution of title to the reversion from predecessor to successor. See judgment of LAW, C., *Adams v. Dunseath*, 10 L. R. Ir. at p. 123.

As applied to
the landlord

Sects 7-8

(b) The importance of this section chiefly arises from the fact that the extended meaning given to the term "predecessor in title" is not confined to the purpose of obtaining compensation for improvements under the Land Act of 1870, but applies throughout the whole of the present Act, and especially in Sec. 8 (9). "It is a sound rule of construction," says LAW, C., adopting the language of one of the Judges of the English Court of Exchequer in *Courtauld v. Leigh*, L. R. 4 Ex. 130, "to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document." *Adams v. Dunacath*, 10 L. R. Ir. at p. 121.

The Act contains further provisions preventing a tenancy from being determined by what would otherwise have been held to technically put an end to it. See Secs. 13 (5) and 20 (1).

A tenant is entitled to credit in respect of buildings erected by a previous occupant, notwithstanding an eviction and break in the title subsequent to the erection of the buildings *Power v. King and Queen's College of Physicians*, MacD. 111.

As to when a tenant is deemed to have derived his holding from a preceding tenant, see Landlord and Tenant Act, 1870, Sec. 11, *ante*, p. 179.

(c) Although the existence of a flax-scutching mill upon a farm does not necessarily deprive it of its agricultural character, still where it appeared that the principal object of the letting was for manufacturing and not for agricultural purposes, a holding of fifteen acres with such a mill together with a residence and four or five cottages upon it was held to be excluded from the Land Act *Nevin v. Montgomery*, Greer Leading Cases, 189 (L.C.).

PART II.

INTERVENTION OF COURT.

Determination
by court of rent
of present
tenancies

8. (1.) The tenant (*a*) of any present tenancy (*b*) to which this Act applies, (*c*) or such tenant and the landlord jointly, or the landlord, (*d*) after having demanded from such tenant an increase of rent which the tenant has declined to accept, or after the parties have otherwise failed to come to an agreement (*e*) may from time to time during the continuance of such tenancy (*f*) apply to the Court to fix the fair rent (*g*) to be paid by such tenant to the landlord for the holding, and thereupon the Court, after hearing the parties, and having regard to the interests of the landlord and tenant respectively, and considering all the circumstances of the case, holding, and district, (*h*) may determine what is such fair rent.

(2.) The rent fixed by the Court (in this Act referred to as the judicial rent) shall be deemed to be the rent payable by the tenant *as from the period commencing at the rent day next succeeding the decision of the Court.** (*i*)

(3.) Where the judicial rent of any present tenancy has been fixed by the Court, then, until the expiration of a term of fifteen years from the rent day next succeeding the day on which the

* The words in italics are repealed by Land Act, 1896, Sec. 52.

*determination of the Court has been given** (in this Act referred to as a statutory term), such present tenancy shall (if it so long continue to subsist) be deemed to be a tenancy subject to statutory conditions, (j) and having the same incidents as a tenancy subject to statutory conditions consequent on an increase of rent by a landlord, with this modification, that, during the statutory term in a present tenancy consequent on the first determination of a judicial rent of that tenancy by the Court, application by the landlord to authorize the resumption (k) of the holding or part thereof by him for some purpose having relation to the good of the holding or of the estate, shall not be entertained by the Court, unless—

- a. Such present tenancy has arisen at the expiration of a judicial lease, or of a lease existing at the time of the passing of this Act, and originally made for a term of not less than thirty-one years; or
- b. It is proved to the satisfaction of the Court that before the passing of this Act the reversion expectant on the determination of a lease of the holding was purchased by the landlord or his predecessors in title with the view of letting or otherwise disposing of the land for building purposes on the determination of such lease, and that it is bonâ fide required by him for such purpose.

(4.) Where an application is made to the Court under this Section in respect of any tenancy, the Court may, if it think fit, disallow such application where the Court is satisfied that on the holding in which such tenancy subsists the permanent improvements (l) in respect of which, if made by the tenant or his predecessors in title, the tenant would have been entitled to compensation under the provisions of the Landlord and Tenant (Ireland) Act, 1870, as amended by this Act, have been made (m) by the landlord or his predecessors in title, and have been substantially maintained (n) by the landlord and his predecessors in title (o), and not made or acquired by the tenant or his predecessors in title.

(5) *On the occasion of any application being made to the Court under this Section to fix a judicial rent in respect of any holding which is not subject to the Ulster tenant-right custom, or an usage corresponding to the Ulster tenant-right custom, the landlord and tenant may agree to fix, or in the case of dispute the Court may fix, on the application of either landlord or tenant, a specified value*

* The words in italics are repealed by Land Act, 1896, Secs. 20 and 52.

Sect. 8. *for the tenancy; and, where such value has been fixed, then if at any time during the continuance of the statutory term the tenant gives notice to the landlord of his intention to sell the tenancy, the landlord may purchase the tenancy on payment to the tenant of the amount of the value so fixed, together with the value of any improvements made by the tenant since the time at which such value was fixed, but subject to deduction in respect of any damage caused by dilapidation of buildings or deterioration of soil since the time at which the value was so fixed.**

(6.) Subject to Rules made under this Act, the landlord and tenant of any present tenancy to which this Act applies, may, at any time if such tenancy is not subject to a statutory term, or if the tenancy is subject to a statutory term, then may, during the last twelve months of such term, by writing under their hands, agree and declare what is then the fair rent of the holding; and such agreement and declaration on being filed in Court in the prescribed manner (*p*), shall have the same effect and consequences in all respects as if the rent so agreed on were a judicial rent fixed by the Court under the provisions of this Act.

(7.) A further statutory term shall not commence until the expiration of a preceding statutory term, and an alteration of judicial rent shall not take place at less intervals than fifteen years.

(8.) During the currency of a statutory term an application to the Court to determine a judicial rent shall not be made except during the last twelve months of the current statutory term.

(9.) No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements (*q*) made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title (*r*) shall not have been paid or otherwise compensated by the landlord or his predecessors in title.

(10.) The amount of money or money's worth that may have been paid or given for the tenancy of any holding by a tenant or his predecessors in title, otherwise than to the landlord or his predecessors in title, shall not of itself, apart from other considerations, be deemed to be a ground for reducing or increasing the rent of such holding. (*s*)

Sub-sec. 1.

(a) The tenant must be in *actual occupation* of his holding. "Tenant," by Sec. 57, means "a person *occupying* land under a contract of tenancy." Where a tenant

* Sub-Section 5 is repealed by Land Act, 1896, Sec. 20.

has sublet portion of the holding, however, with the express consent of the landlord (Sec. 57, *post*), or where the subletting is within the protection conferred by the 7th Section of the Land Act, 1896, he is deemed to be still in occupation. See, further, notes to these Sections, *post*, pp. 346-8 and 543-6.

Two or more persons who hold in severalty different parts of a holding, which together make up the entirety, may together constitute the "tenant" of the holding for the purpose of the Act. *Ireland v. Landy*, 22 L. R. Ir. 403.

(b) A "present tenancy" must either have been subsisting at the time of the passing of the Act, or have been "created" before the 1st day of January, 1883, in a holding in which a tenancy was subsisting at the time of the passing of the Act (Sec. 57).

Where a proposal for a lease to commence on the 1st day of January, 1883, was accepted by the landlord in writing, and the tenant put into possession under it on the 12th of December, 1882, it was held by the Court of Appeal, reversing the decision of the Land Commission, that the tenancy was not "created" before the 1st day of January, 1883, and that, therefore, the tenant was not entitled to have a fair rent fixed under this Section. *Howell v. Briscoe*, 21 I. L. T. R. 73, 20 I. L. T. R. 15.

A tenant holding under a lease executed between the 22nd August, 1881, and 1st January, 1883, of lands in which a tenancy was subsisting on the 22nd August, 1881, is a "present tenant," not excluded by the 21st Section, and, therefore, *prima facie* entitled to have a fair rent fixed: *Magner v. Hawkes*, 28 L. R. Ir. 365 (L.C.); *Daly v. Gardiner*, 25 I. L. T. R. 47 (Sub-Com.). But where, in such a case, the valuation of the lands was over £150, so that the tenant could contract himself out of the provisions of the Act under Sec. 22, *post*, it was held by the Court of Appeal that his covenant to pay the rent during the term debarred him from having a fair rent fixed: *Ronaldson v. La Touche*, 24 L. R. Ir. 344, 23 I. L. T. R. 21. See, also, Land Act, 1887, Sec. 3, *post*.

A tenancy created after the 1st January, 1883, may be subject to the provisions of this Section, as regards the fixing of a fair rent, in two cases.—(1) If it was created by a landlord reletting to another tenant a holding which he had purchased from a present tenant in exercise of his right of pre-emption under Sec. 1, provided the reletting took place before August 22nd, 1896 (Sec. 20); or, (2) If it is created by a landlord reletting a holding of which he has resumed possession at the expiration of an existing lease, provided the reletting takes place within 15 years after such resumption (Sec. 21).

As to the rights of lessees under leases existing at the date of the passing of the Act, see Sec. 21, *post*, and Land Act, 1887, Sec. 1.

Where a leasehold interest was subdivided, and separate receipts given to each occupier, it was held by Mr. BAILLY (Sub-Commissioner) that the lease was surrendered by operation of law, and that each occupier was a yearly tenant of a separate holding: *Boylard v. Wright*, 24 I. L. T. R. 14. On the other hand it has been held by the Land Commission that tenants who formerly held under leases with *toties quoties* covenants for renewal, but who had omitted to renew their leases or to take out grants in perpetuity to which they were entitled, could not be deemed present tenants of yearly tenancies: *O'Donnell v. Norton*, 21 I. L. T. R. 23.

For the procedure in fixing a fair rent see Rules of Jan., 1897, No. 124 *et seq.*, and the forms therein referred to. As to service of the originating and other notices, see Rules 21 *et seq.* When the Civil Bill Court has cognizance of a case the originating notice must be served one month before the case comes on for hearing

Sect. 8

Present tenancies.

Leases made between 22nd August, 1881, and 1st January, 1883.

Tenancies created after Jan. 1st, 1883.

Leases existing at the passing of the Act.

Procedure.

Sect. 6. (Rule 58), but no time is specified when the Court, having cognizance, is the Land Commission. See, *post*, pp. 722, 731, 748, *et seq.*

Sec. 6 of the Land Act, 1887, provides that when an ejectment is brought in any Civil Bill Court for non-payment of rent where a judicial rent has not been fixed for the holding, the tenant may apply to the Court to fix a fair rent, and the Court may thereupon dispose of the said application and of the said ejectment at the same time. Every order made under that section is, however, subject to appeal, as if the same had been made in the ordinary manner under this section.

Tenancies to which this Act does not apply

(c) Sec. 58 of this Act, and Sec. 5 of the Land Act, 1896, specify the tenancies to which the Act does not apply. A present tenancy, though not within any of these except ones, may be excluded from the privilege of having a fair rent fixed by Sec. 20. the last clause of which provides that where a present tenancy is sold in consequence of a breach of a statutory condition, or an act or default, which would be so if a statutory term existed, the purchaser shall not be entitled to have a judicial rent fixed for the holding. Non-payment of rent, it must be remembered, is a breach of the first statutory condition (Sec. 5), for which ejectment under the 52nd Sec. of the Landlord and Tenant Act, 1860, is specially provided as the remedy (Sec. 13 (3)). Whether a tenancy is one to which the Act applies or not depends in some cases upon the status of the tenant at the date of the passing of this Act; and in others, at the date of the passing of the Land Act, 1896 but cannot be determined by his status at the period of the creation of the tenancy or at the date of the service of the originating notice *Nelson v. Headfort*, 18 L. R. Ir. 407. *Fetherston v. Gaffney* (1900), 2 I. R. 417 34 I. L. T. R. 37. See, further, as to this point, notes to Sec. 58 and Land Act, 1896, Sec. 5, *post*, pp. 353-4 and 518-9.

Occupation in lieu of emblements

A lease for lives determined on the 10th of August, 1881. Part of the demised premises were in the occupation of a sub-tenant as tenant from year to year to the lessee at a rack-rent, and the sub-tenant continued in occupation until September 29th, 1881, pursuant to the 23 & 24 Vic., c. 154, s. 34 (emblement section.) He subsequently served an originating notice, and a judicial rent was fixed by a Sub-Commission under this section. In an ejectment on the title, however, brought by the superior landlord, without service of any notice to quit, it was held by the Common Pleas Division that no tenancy was created by force of the 34th Section of the Landlord and Tenant Act, 1860, between the sub-tenant and the head landlord; that the order of the Sub-Commission having been made without jurisdiction was not binding upon the Court, that the fixing of the fair rent was a nullity, and that the head landlord was entitled to recover possession. *Humphill v. Frazer*, 10 L. R. I. 87, MacD. 408. See also *McCullagh v. Batt*, 24 I. L. T. R. 52

Application by landlord to fix fair rent.

(d) A landlord cannot serve an originating notice to have a fair rent fixed without first demanding an increase of rent from the tenant. A general demand is insufficient; it is necessary that he should specify the exact sum to which he requires the rent to be increased *Morsarty v. Blennerhassett*, 18 I. L. T. R. 73. He must also give affirmative evidence at the hearing of having made the demand for the increase of rent, or of his having failed to come to an agreement with his tenant, otherwise his originating notice will be dismissed. *Brewster French v. McDermott*, 17 I. L. T. R. 17, MacD. 390. The originating notice when served by the landlord should contain an averment to this effect (see Form 30 and Rule 125). It is important for landlords to bear in mind that an application to fix a fair rent cannot be withdrawn save by leave of the Court (Rule 129).

(e) The words "or after the parties have otherwise failed to come to an agreement" in this Sub-Section, refer to applications to fix fair rents by landlords only.

They do not refer to applications by tenants. *Burland v. Clayton*, 32 I. L. T. R. 13 (L.C.).

Sect 6

Application after
expiration of
tenancy

(f) The application must be made "during the continuance of" the tenancy (as to when a tenancy determines see Sec. 20 and notes thereto *post*). An originating notice served after the tenancy has expired is late. *Arran v. Walls*, 14 L. R. Ir. 359. But a tenant on whom notice had been served on the 23rd March, 1881, to quit on the 23rd September, 1881, was held entitled to have a fair rent fixed on an originating notice, not served until the 23rd October, 1881, the originating notice being by the effect of the 60th Section taken as if served on the 22nd of August, 1881: *Boyd v. Phelan*, 14 L. R. Ir. 232, 17 I. L. T. & S. J. 634, MacD. 496.

It must be remembered that a notice to quit does not now *per se* determine a tenancy. Resumption of possession by the landlord appears to be necessary to any determination of a tenancy which is within this Act. See judgment of PALLES, C.B., *M'Donnell v. Blake*, 28 L. R. Ir. at p. 402, and notes to Sec. 20, *post*, p. 296.

In *Croker v. Clonohy*, 20 L. R. Ir. 111, on the expiration of a lease the owner of the reversion was a minor and ward of Court, and the tenant continued in occupation, paying rent to the Receiver in the minor matter. It was held, however, that no "contract of tenancy" was thereby created so as to bind the minor's estate, and that the tenant was not entitled to have a fair rent fixed for the holding.

Where there was a doubt as to the existence of a tenancy, the Land Commission stayed the proceedings on an originating notice to enable the landlord to bring an ejectment. *Lane v. Quislan*, MacD. 381.

A tenant who has been awarded compensation for disturbance under the Act of 1870 cannot apply to have a fair rent fixed. *Bonar v. Wilson*, 16 I. L. T. & S. J. 192, Mac D. 406.

(g) There is no definition of the term "fair rent" in this, or in any other of the Land Acts. The phrase "fair yearly rent" occurs in Sec. 28 of the Landlord and Tenant Act, 1870, to describe the amount to be reserved by a limited owner when making a lease in pursuance of the powers conferred by that Section, and its provisions may throw some light upon the matter. It has been laid down that "any form of competition, which has the effect of unduly inflating the letting value of a holding beyond what would otherwise be its fair letting value, is not to be taken into consideration as a ground for increasing the fair rent." *Per MARETH, J., Ripley v. Macnaghten* [1899], 2 I. R. at p. 452. But, on the other hand, the fair rent is not to be fixed "without any regard for the price which the industrious and sensible farmers in the neighbourhood are willing to pay for land." *Per HOLMES, L.J., The Queen v. Irish Land Commission* [1899], 2 I. R. at p. 445; *Gosford v. Blair* [1899], 2 I. R. 453; *O'Dwyer v. Stawell*, Mac D. 131. The object is to ascertain how much an occupying tenant working the holding with reasonable skill and industry could make out of the farm. *Per FITZGERIBON, L.J., Gosford v. Alexander*, 35 I. L. T. R. at p. 107. As to the method of valuation generally, and the practice of valuing land apart from buildings, see judgment of BEWLEY, J., *McGlynn v. Duke of Abercorn*, Greer Leading Cases, at pp. 553-4.

Meaning of the
term "Fair
Rent"

The ascertainment of a fair rent should not proceed upon the basis that the holding is in the landlord's hands available for letting to an incoming tenant: *Ripley v. Macnaghten* [1899], 2 I. R. 446; *Gosford v. Blair* [1899], 2 I. R. 453. But no deduction should be made from its amount by reason of the value of the tenant-right, or of the tenant's occupation interest, whether in Ulster or elsewhere. *Marky v. Gosford*, 31 I. L. T. R. 97. The price paid for the tenancy (otherwise

Occupation
Interest.

- Sec. 8.** than to the landlord) is not to affect the amount (see Sub-sec. 10, and *M'Geough Bond's Estate*, MacD. 109. Nor the fact that the tenant has only recently purchased the holding. *Craig v. Wray*, 24 I. L. T. R. 114. A deduction must be made for improvements made by the tenant or his predecessors in title, as to which see Sub-sec. 9, and note (g), *post*, p. 272.
- Circumstances to be considered in fixing rent.** (h) The Court is to determine the rent, having regard to "all the circumstances of the case, holding, and district." "These are words of the widest character," says WALKER, C., "and, I think, have been advisedly left in this wide form. 'All the circumstances of the case' do not, of course, mean that the Land Commission are to take into account matters merely personal to the tenant. But it would in no way strain the meaning of the words if we read them as giving power to the Land Commission to take into account a fine paid by the tenant for the tenancy with which they are dealing. I think the words mean, 'all the circumstances connected with the tenancy.'" *Lanyon v. Clinton* [1895], 2 I. R. at pp. 155-156.
- Residential value of holding.** The class of residence which is upon a farm is a circumstance to be considered in fixing the rent. Where the house is a good one, even though the holding be held to be an agricultural holding within the Act, the Court may, in estimating the rent, put on the house its full commercial rent as a residence for a gentleman. *Crawford v. Egmont*, 18 I. L. T. R. 15, MacD. 149; *Hudson v. Lyons*, 1 Greer 333. Again, if a holding, though not actually a demesne, and not taken mainly for a residence, has advantages from a residential point of view, a higher rent will be fixed upon it than its value for merely farming purposes would warrant. *Freeman v. Wolsley*, 1 Greer 81, 4 I. W. L. R. 154. Similarly, where a holding has a value as a site for business premises, in addition to its agricultural value, this is a "circumstance of the case" to be taken into account. *Rossbrough v. Ogilby*, 34 I. L. T. R. 97, 2 Greer 275; *Connolly v. Stewart*, 1 N. I. J. R. 216. The fact that a holding is suitable for fruit-growing also affects the amount of rent to be fixed. *Cope Estate*, 32 I. L. T. R. 170, 1 Greer 119.
- The proximity of a railway to the lands, or of a market or a town, is a circumstance to be taken into account. *Gordon v. Tottenham*, 17 I. L. T. R. 16; likewise facility for getting seaweed on the seashore. *Derham v. Hamilton*, 31 I. L. T. R. 120 (L.C.); *Lee v. Nolan*, 2 N. I. J. R. 203, 36 I. L. T. R. 123 (L.C.).
- Easements** Rent may be affixed, also, in respect of an easement, or a *profit à prendre*, such as a right of pasturage attached to a holding, for the word "land" occurring in the Act is not to be cut down so as to mean merely the soil divested of its easements and *profits à prendre*, provided these are such as are usually enjoyed therewith; and a tenant acquiring a statutory term in a farm is equally entitled to all such easements and *profits à prendre* previously attached to it for the same period and subject to the same conditions as he holds the soil itself. *Ex parte Hutchinson, in re Irish Land Commission*, 12 L. R. I. 79, 17 I. L. T. R. 27, MacD. 498. See also Sec. 17, where rights such as these are referred to and regulated, and Land Act, 1896, Sec. 9, *post*, p. 547.
- Incidence of taxes** The incidence of rates and taxes is also an element to be taken into consideration in fixing a fair rent. *Bruce v. Steen*, 14 L. R. I. 408. County cess has now been abolished, and the new poor rate, under the Local Government Acts, 1898 and 1900, is in all cases payable by the occupier with, in general, no right of deduction from his rent. See notes to L. & T. Act, 1860, Sec. 42, *ante*, pp. 72-73.
- Local Govt. Act, 1898, sec 55.** The 55th Sect. of the Local Government Act, 1898, now provides that:—"After the appointed day a fair rent in a rural district shall be fixed under the Land Law (Ireland) Acts on the assumption that there has been no decrease or increase of the rate in the pound of poor rate as compared with the total rate in the pound to which the standard rates for poor rate and county cess as certified under this

Act when added together, amount, and that the tenant is to have any benefit from the agricultural grant given in respect of the county cess, and that the landlord is to have any benefit from the agricultural grant given in respect of the poor rate."

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If the land be deteriorated by circumstances over which the tenant has no control, or by the act of a third party, as to which the landlord has a legal remedy, the rent should be fixed in accordance with its deteriorated condition. *Neligan v. Herbert*, 18 I. L. T. R. 18. But if the tenant is, by his own act, the cause of the depreciation of the farm, he cannot rely upon the existing state of the farm which he himself has caused as the standard by which the rent is to be fixed. *Heron's Estate*, MacD. 107; for although bad farming does not in itself deprive a tenant of his right to have a fair rent fixed, yet a tenant ought not to get the benefit of his own wrong, and the treatment which the land has received should be taken into consideration in fixing the rent: *Bell v. Robinson*, MacD. 381; 17 I. L. T. & S. J. 60; *Curtin v. Cantillon*, Greer Leading Cases, App. 99; *Joy v. Stoughton*, 1 Greer 347. In extreme cases of deterioration the Court may dismiss the tenant's application. See notes to Sec. 9, *post*, p. 278.

Deterioration of land.

(i) Where the application was made on the first occasion on which the Court sat, the judicial rent commenced from the gale day next succeeding the 22nd August, 1881. See Sec. 60 and notes thereto. The Land Act of 1896, Sec. 3, now provides that the judicial rent shall commence "from the gale day next after the date of the application." See notes to that Section, *post*, p. 515.

Sub-sec. 2. When judicial rent commences.

Pending an appeal, the rent fixed by the Sub-Commission, not the old rent, is that which the tenant is liable to pay: *Davies v. M'Mahon*, 24 L. R. I. 73, 447; *Davies v. M'Mahon*, 20 I. L. T. R. 56. Where the decision of a Sub-Commission as to the amount of the judicial rent is varied on appeal, by the Head Commissioners, the rent as altered by the latter relates back, and is the judicial rent payable for the whole statutory term, and if the tenant has paid rent at a higher rate for the period which has elapsed since he served his originating notice he may recover back the excess, in an action for money had and received *Davies v. M'Mahon*, 24 L. R. Ir. 73 (Ex. Div.), 447 (C. A.), 23 I. L. T. R. 11, 25. See now, also, Land Act, 1896, Sec. 3 (3), *post*, p. 514.

Rent pending appeal.

(j) As to the statutory conditions and the effect of rendering a tenancy liable to them, see Sec. 5 and notes thereto, *ante*, pp. 250-252.

Sub-sec 3.

The Court has only jurisdiction to fix a fair rent where the relation of landlord and tenant exists between the parties; and, if a rent be fixed where that relation does not exist, a statutory term is not thereby created: *Hemphill v. Fraser*, 10 L. R. I. 89; MacD. 408. But *semble*, where the Court has jurisdiction, the fixing of a fair rent is a decision *in rem*. binding in all cases between landlord and tenant per LAWSON, J., *Hemphill v. Fraser (ubi supra)*. As to the jurisdiction of the Court generally, see Sec. 37 (5) and notes thereto, *post*, pp. 324-6.

"All the terms of a contract of tenancy (in respect of which a fair rent is fixed), other than that of the amount of the rent, remain and regulate the rights of the parties after as well as before, such fair rent has been fixed. The Land Commission have no jurisdiction to alter those terms:" per PALLES, C.B., *Bruce v. Steen*, 14 L. R. I., at p. 426. It was, however, held that a special agreement, in consideration of an increase in rent, to allow a tenant, not otherwise entitled to it, one half of the county cess, was abrogated by an application by the tenant to fix a fair rent: *Shuldham v. Black*, 17 I. L. T. R. 85; MacD. 366. *Rankin v. Mullan and Dripps v. Rankin*, 18 I. L. T. R. 40.

Terms of contract unaltered by fixing of rent.

As to the effect of an order fixing a fair rent upon the right of a tenant to cut

Sect. 8. turf on his holding, see *Knox v. Baxter*, 19 L. R. Ir. 460, 473, and notes to Sec. 5, *ante*, pp. 255-6.

There is no implied covenant for quiet enjoyment on the part of the landlord after a fair rent has been fixed under this Section, so that if the landlord allows himself to be evicted for non-payment of rent, he is not liable in damages to the tenant: *Kearns v. Oliver*, 24 L. R. I. 473.

(k) As to the landlord's right of resumption during the currency of a statutory term, see Sec. 5 and notes thereto, *ante*, p. 257.

Sub-sec. 4
English-
managed estates

(l) This sub-section, which is called the Henage Clause of the Act, exempts what are called "English-managed" estates from the jurisdiction of the Court in fixing fair rents. If the landlord intends to rely upon it he should serve notice to that effect, according to Form No. 37 (Rule 131). See also *O'Callaghan v. Mahony*, MacD. 256, and Land Act, 1870, Sec. 4. Improvements are defined by Sec. 70 of the Act of 1870 to mean "any work which being executed adds to the letting value of the holding on which it is situated, and is suitable to such holding." They must have been actually made by the landlord or his predecessors in title: it is not sufficient that they have become his property by efflux of time, as where they have been executed by the tenant before 1870 and 20 years before the hearing of the case *Russell v. Lord Leconfield*, 18 I. L. T. R. 28. "We are disposed," says O'HAGAN, J., "to think the class of cases which the legislature had in view in framing this Section was a class common in England, where the landlord through his own workmen and with his own capital or through the hands of others, executed on the farm all the improvements with which he thinks necessary to equip it, leaving to the tenant no concern whatever and no obligation but to apply his capital in the cultivation of the farm." *Lord Ormathwaite's Estate*, MacD. 252.

(m) When the improvements have been made and substantially maintained by the landlord, the fact that the tenant has paid interest on the landlord's expenditure does not, however, debar the landlord from relying on this clause: *Nicholson v. Jones*, MacD. 249.

Maintenance of
improvements.

(n) It is not sufficient that the improvements should have been made by the landlord. It must be shown also that they have been substantially maintained by him. *O'Callaghan v. Mahony*, MacD. 256; *Lord Ormathwaite's Estate* MacD. 254. But when his attention has not been called to the need of repairs, or where no repairs have become necessary by reason of the recent erection of buildings, or otherwise, he need not prove their maintenance: *Breen v. Mahony*, MacD. 520. Nor will trifling repairs executed by the tenant prevent the landlord successfully relying upon this clause *Breen v. Mahony*: MacD. 520. See, further, notes to Sec. 1 (6), *ante*, p. 237, and *Mower v. Templeton*, 2 N. I. J. 12, 209 (S. C.).

Predecessors in
title.

(o) The term "predecessor in title" no longer continues to bear the meaning given it in *Holt v. Harberton*, I. R. R. & L., App. 32, but denotes throughout this Act, in the case of a landlord, the substantial devolution of title to the reversion, and in the case of a tenant the substantial devolution of title to the possession from predecessor to successor *Adams v. Dunseath*, 10 L. R. I. 109; 16 I. L. T. R. 59; R. & D. 135; MacD. 1. Thus a tenant for life is, under this Section, a predecessor in title to the remainderman; and if the settled estate be subject to a mortgage, and the mortgagee sell under his power of sale, the purchaser would be entitled to treat an equitable tenant for life who had paid for the improvements, but whose estate had since determined, as his predecessor in title. per LAW, C., *Adams v. Dunseath*, 10 L. R. I., at page 123. See, further, as to the meaning of the term, note to Sec. 7, *ante*, pp. 260-261.

(p) An agreement fixing a fair rent under this Sub-section need not be signed by the landlord himself—the signature of his agent is sufficient: *Mercers Co.*, 32 I. L. T. R. 47. But see, *contra*, *Jones v. Haire*, and *Maker v. Carew*, MacD. 375. A landlord is not bound by an agreement fixing the rent, unless it is filed under this Sub-section. Until that is done he may sue for and recover the full amount of the old rent: *Givan v. Moffat*, 14 L. R. Ir. 252. The tenant, similarly, is not bound until the formalities are completed: *Woodside v. Massy*, 28 L. R. Ir. 604, 25 I. L. T. R. 69. Nor, apparently, is the amount agreed on any evidence as to what is a fair rent, if the application to fix a judicial rent is made to the Court after the lapse of some years. See judgment of *Fitzgibbon, L.J.*, 28 L. R. Ir., at p. 611.

The rent has been held to be “fixed” (in reference to Land Act, 1887, Sec. 29), when an agreement under this Sub-section was signed, though it was not filed in Court until some time afterwards: *Church v. M’Poyle*, 22 I. L. T. R. 85 (PALLES, C.B.).

An agreement fixing a fair rent requires no stamp: 45 & 46 Vic., c. 72, s. 10.

In *Walsh v. Huntingdon*, 28 I. L. T. R. 57, it was held by the Land Commission that an agreement could not be filed under this Sub-section where a fair rent had already been fixed on a portion of the holding. But it would appear that such an arrangement could now be carried out by agreements under Land Act, 1896, Sec. 17. See notes to that Section, *post*, p. 557.

Where a gale day intervenes between the date upon which an agreement is signed under this Sub-section, and that upon which it is filed, the statutory term runs from the gale day next succeeding the date of its signature, not that of its being filed. *Dunne v. Knolles* [1896], 2 I. R. 308 (C. A.), reversing the decision of the Land Commission [1896], 2 I. R. 671. Reported as *Dunne v. Nettles*, 30 I. L. T. R. 143.

Whenever a rent fixed by agreement acquires the character of a judicial rent, that rent must be conformable with the statutory term; and the date upon which the judicial rent is to commence is regulated in each case, within legal limits, by the agreement between the parties. There is nothing illegal in an agreement providing that the judicial rent shall commence from an antecedent date: *Fulton v. Templeton* [1896], 2 I. R. 321, 32 I. L. T. R. 125. See now, also, Land Act, 1896, Sec. 17, *post*, pp. 556-7.

As to fixing fair rents by consent generally, see *Gray v. Gosford*, MacD. 372. And as to arbitration, see Sec. 40 of this Act, and notes thereto. Rules of Jan., 1897, Nos. 139 to 143, set out the “prescribed manner” of signing and filing the agreements. Rule 143 provides for objections to the filing of an agreement being made by an incumbrancer or other person having an interest in the holding. See that Rule, and notes thereto, *post*, p. 753.

A contract to sign an agreement and declaration fixing a fair rent under this Sub-section may, in a proper case, be specifically enforced by the Chancery Division: *Drumclerk v. Hanna*, 23 L. R. Ir. 144, 23 I. L. T. R. 26. And a landlord may be entitled to enforce the specific performance, even though, owing to lapse of time, the agreement cannot be filed without a special order of the Land Commission (*ibid.*). Even if the agreement is merely verbal, specific performance may be enforced, if there has been payment of a reduced rent referable to such agreement alone: *Haire-Foster v. M’Intosh*, 23 L. R. Ir. 523. Unless there has been laches in enforcing the agreement (*ibid.*). See further as to specific performance, judgment of *Lawsor, J.*, *Givan v. Moffitt*, 14 L. R. Ir. at p. 257. Notes to Landlord and Tenant Act, 1860, Sec. 4, *ante*, p. 16, and notes to Sec. 16, *post*, p. 279.

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Sub-s 6
Agreements
fixing fair rent.

From what date
judicial rent
runs

specific per-
formance of
contract to sign
agreement as to
judicial rent

Sect. 8.
Taking agree-
ments off the
file.

Where a mortgagee objects to an agreement fixing a fair rent, on the ground that it prejudices his rights, his objection must be disposed of before the agreement is filed *Jordan v. Jordan*, MacD. 374. An agreement, once filed, cannot be taken off the file, even on consent *Murray v. Scottish Provident Institution* [1894], 2 I. R. 44; 28 I. L. T. R. 14. Though an agreement may now be made to abridge the statutory term Land Act, 1896, Sec. 17, *post*, p. 556.

The Land Commission has, however, jurisdiction to remove from its file any agreement improperly placed there. Where a landlord being tenant for life had made fair rent agreements with his tenants at a grossly inadequate value the agreements were ordered to be struck off the file on the application of the succeeding tenant for life *M'Govern v. Peyton*, 27 I. L. T. R. 138.

But this jurisdiction can only be exercised where the original parties to the agreement are before the Court, an agreement cannot be set aside by the Land Commission after the tenant who has made it has sold his tenancy to a purchaser for value without notice *Evans v. Peyton* [1895], 2 I. R. 127 (C. A.), reversing the decision of the Land Commission, 28 I. L. T. R. 81.

It has been held by KENNY, J., on a Civil Bill Appeal, that an agreement under this Sub-section between a middleman and a sub-tenant does not bind the head landlord on the determination of the middleman's interest, or preclude him from contending that the holding is excluded from the Land Acts: *Clifford v. Clifford*, 35 I. L. T. R. 103 1 N. I. J. R. 200. This decision has been followed by the Land Commission *M'Connell v. Brown*, 1 N. I. J. R. 222; 35 I. L. T. R. 245.

Sub-s. 9.
Improvements.

(2) The right of a tenant to be exempted from rent in respect of improvements was, until the passing of the Land Act, 1896, almost, if not entirely, correlative to his right to get compensation for improvements under the Act of 1870: per SULLIVAN, M.R., *Adams v. Dunseath*, 10 L. R. Ir., at p. 141. Every question, therefore, as to improvements under this Section was governed by the provisions of Sec. 4 of the Act of 1870; and therefore, in fixing a fair rent, it was held that no allowance could be made to the tenant in respect of improvements other than permanent buildings and reclamation of waste lands, if the improvements were made before the passing of the Act of 1870, and twenty years before the service of the originating notice *Ferley v. Lefroy*, 17 I. L. T. R. 8, MacD. 104, or in any other case where the tenant would not be entitled to claim compensation under the terms of Sec. 4 of the Land Act, 1870: *Clements v. Tighe* [1894], 2 I. R. 101 (C. A.), 26 I. L. T. R. 100 (L. C.), *Warnock v. Orr*, Greer Leading Cases, 152. This principle is, however, now considerably modified by the 1st Sec. of the Land Act, 1896, which provides that no rent is to be allowed in respect of improvements in several cases, where a tenant would not be entitled to compensation under the Act of 1870. Thus, if the improvement is not suitable to the holding (Sub-sec. 3), or if though made prior to 1870, it was made after 1850 (Sub-sec. 7), no rent is to be allowed in respect thereof. See those Sub-sections and also Sub-secs 5, 6, and 8, of the same Section, and notes thereto, *post*, pp. 512-513.

The limitations imposed by the 4th Sec. of the Land Act, 1870, have not, however, and never had, any application to holdings under the Ulster custom *Smith v. Downshirc*, Greer Leading Cases, App. 88.

A question of great importance as to the meaning of the word "improvements" in this Sub-section was presented for consideration in *Adams v. Dunseath*, 10 L. R. Ir. 109, 16 I. L. T. R. 59, R. & D. 135, MacD. 1, and the Court of Appeal unanimously decided that it should be construed as defined by the Land Act, 1870, Sec. 70. "It does not and cannot mean the increased letting value of the holding caused by the making of the improvements, but simply the works which have caused

that increase, or rather the interest of the tenant who made them, measured by the money expended on them as declared and limited by the two said Acts:” per SULLIVAN, M.R., 10 L. R. Ir., at p. 137.

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In estimating the tenant's interest in the improvements, the Court considers it as it stands when the application to fix a fair rent is made, not as it would be at the end of the statutory term, supposing the tenant were at that time claiming compensation for improvements under the Act of 1870. *Ferley v. Lefroy*, MacD. 104, 17 I. L. T. R. 8.

In fixing fair rents, the Land Commissioners formerly acted upon the principle that after making a fair and liberal allowance in respect of the money, labour, and skill expended by the tenant upon improvements, the surplus or balance (if any) of increased letting value due to the improvement was the sole property of the landlord, and that he was entitled to have a rent fixed in respect of it. Upon a case being stated, however, for the opinion of the Court of Appeal, the majority of that Court held that this principle was not right in law, but that it was within the exclusive jurisdiction of the Land Commission to consider and determine whether, and in what proportions, this surplus or balance should be divided between the landlord and tenant: *Adams v. Dunseath* (No. 2) [1899], 2 I. R. 504; 33 I. L. T. R. 101 (C. A.), [1898], 2 I. R. 709; 32 I. L. T. R. 144 (L. C.); 1 Greer 3, 286. “Although we hold,” says PALLES, C.B., in delivering the judgment of the Court of Appeal, “that the inherent capabilities of the soil are the property of the landlord, subject only to the interest therein of the tenant as a tenant from year to year, we also hold that the Land Commission are not bound, in fixing the fair rent, to give to the landlord the entire of the balance or surplus of the increased letting value due to a tenant's improvement, over and above the allowance in respect thereof made to such tenant under Sub-section 9. We think that this surplus or balance ought to be dealt with by the Land Commission, with due regard to all the circumstances of the case and holding, including the circumstance that that surplus has accrued from the act of the tenant; and that in consideration thereof they may deduct from the sum which would have been the fair rent, had the improvement been made by the landlord, such sum as they may think fit, in addition to the allowance which they make under sub-section 9”: *Adams v. Dunseath*, No. 2 [1899] 2 I. R. at pp. 532-3. As to the application of these principles in particular cases, see *Bannatyne v. Cobden*, 1 Greer 246, and *Gray's Estate*, 2 Greer 23.

Increased letting value due to improvements.

Where fair rents are being fixed by the Land Commission in respect of holdings where drainage works *have been completed*, under the Board of Works, the practice is to treat the drainage as an improvement by the landlord, and to give him the benefit of the full amount of the increased value, subject to his liability to pay the drainage charge. Where the drainage works are in progress, *but not completed*, a rent is imposed in respect only of the actual increased value at the time of the hearing, but no account is taken of the prospective benefit from the completion of the works. The order in both cases usually contains a declaration that “the said rent has been so fixed upon the basis that the drainage and maintenance rates payable to the Board of Works, in respect of works already executed, shall be borne by the landlord without power to cast any portion of the liability on the tenant.” As to the jurisdiction of the Land Commission to make the order in that form see *Gabbitt v. McCarthy*, 30 L. R. Ir. 720 (C. A.).

Drainage made by Board of Works loans

Where the drainage works are carried out after a judicial rent has been fixed, an “increased rent” may still be assessed upon the tenant under 26 & 27 Vic., c. 88, Sec. 56, and 36 Vic., c. 31, Sec. 2. *Enniskillen v. Reilly*, 32 L. R. Ir. 372, 27 I. L. T. R., 82 (see notes to Sec. 5, *ante*, p. 251).

Increased rent under Drainage Acts

- Sect 8.** Where, however, a landlord borrowed money from the Board of Works, and expended it on improvements under an agreement that the tenant should repay him the amount of the instalments payable for principal and interest to the Board, and the loan was thus repaid, it was held that the improvements thus effected were tenant's improvements, and exempt from rent. *Doddy v. Westby* [1899], 2 I. R. 229, 32 I. L. T. R., 170; 1 Greer, 133. Works executed under the Relief of Distress (Ireland) Act, 1880, are also, to a certain extent, to be treated as tenant's improvements 43 & 44 Vic., c 14, Sec. 10, *Colthurst's Estate*; Greer Leading Cases, App. 14.
- Fences** Where claims for fences are made by a tenant, the Court only allows for them in so far as they add to the letting value of the holding. Small holdings are in many cases proved to be over-fenced. *Cope Estate*, 32 I. L. T. R., 170, 1 Greer, 119. A tenant is bound to maintain, at his own expense, the boundary fences between his landlord's estate and that of the adjoining proprietors, and he is not entitled to compensation in respect of ordinary expenditure for that purpose. *Bergin v. Casey*, 7 I. L. T. R., 154 & 156 (note) (PALLES, C. B.).
- Improvements made by sub-tenants.** A sub-tenant of a middleman who has become tenant to the head landlord, under the 15th Section, is entitled to be exempt from rent in respect of improvements made by him during the currency of the middleman's lease. *Nolan v. Gunn*, 17 I. L. T. R. 48; MacD. 127, in the same way as he is entitled to compensation for improvements under the Land Act, 1870 *Bolland v. Domville*, Don. 401; *Comerford v. Sawrey*, 8 I. L. T. R. 25.
- Improvements made by sub-tenants, if they add to the letting value of the holding, are entitled to be exempt from rent, even though they are not of such a character as would entitle the sub-tenant to compensation under the Land Act, 1870. *Ryan v. Gloster* (No. 2), 1 Greer, 240 (see judgment of MEREDITH, J., at p. 243).
- Reduction of tenant's claim for Improvements** The Court is bound, under the provisions of the final paragraph of Sec. 4 of the Land Act, 1870, to take into consideration in reduction of the claim of the tenant (1), the time during which he has enjoyed the improvements; (2), the rent at which the holding has been held; and (3), any benefits received from the landlord in consideration, expressly or impliedly, of the improvements. Prior to the passing of the Land Act, 1896, it was held that these provisions applied in determining a fair rent, as well as in awarding compensation *Adams v. Dunseath*, 10 L. R. I. 109, 16 I. L. T. R. 59. The time during which a tenant had enjoyed improvements was, however, only to be taken into account where the tenant held from year to year, and where the improvements were made before 1870. *Ferley v. Lefroy*, MacD. 104; 17 I. L. T. R. 8. Where, during the currency of a lease, a tenant made improvements, the enjoyment thereof by him, or his successors, while the lease lasted, was not "compensation by the landlord" within the meaning of the sub-section *Adams v. Dunseath*, 10 L. R. I., 109; 16 I. L. T. R., 59.
- Now, however, Sec. 1, Sub-Sec. 8 of the Land Act, 1896, provides that the mere enjoyment by a tenant of any improvement is not to be held to be *per se* valuable consideration for the improvement. See that Sub-Section and notes thereto, *post*.
- Improvements executed in pursuance of covenant.** Before the passing of the Land Act, 1896, it was held that improvements executed by a tenant under a covenant in a lease became, on its expiration, to the extent covenanted for, the landlord's property, and the tenant was precluded by Sec. 4 of the Land Act, 1870, from claiming compensation, or exemption from rent, in respect of them *Mullin v. Lavens*, 16 I. L. T. R. 13, MacD. 121, and thus appears

to be still the law. See Land Act, 1896, Sec. 1, Sub-sec. 4, *post* *Muller v Montgomery*, 32 I. L. T. R. 76; *Kelly v. Des Veaux*, *ibid.* Sect. 8

Improvements executed by a tenant in pursuance of a custom on the estate, that were executed the tenant should be entitled to an allowance for the same, are not executed in pursuance of a contract for valuable consideration, within the 4th Section of the Land Act, 1870. *Lord Ormathwaite's Estate*, MacD. 252. In that case the tenant gave a receipt accepting the allowance as *full compensation* for the improvements; it was held, nevertheless, that such receipt was only *prima facie* evidence, and that the tenant was not thereby estopped from showing that the improvements cost more than the allowances, and from being allowed for them accordingly. See judgment of O'HAGAN, J., MacD., at p. 255. See now, also, Land Act, 1896, Sec. 1, Sub-sec. 5, *post*, p. 509.

The question as to how far the granting of a lease was to be considered compensation for improvements made prior to its execution was considered by the Court of Appeal in the leading case of *Adams v. Dunseath*, 10 L. R. I. 109, 16 I. L. T. R. 59, R. & D. 135, MacD. 1. A lease containing the usual covenants was made in 1846, whereby lands were demised with all houses and buildings thereunto belonging, &c. About two years before the execution of the lease a house had been built on the lands by the tenant, and it was held by the majority of the Court of Appeal (LAW, C., SULLIVAN, M.R., and PALLES, C.B., *diss.*) that the tenant was precluded by the lease from claiming any interest in respect of the house so built before its execution. This decision, however, was arrived at by the majority of the Court only on the special facts of the case with reference to the granting of the new lease, and cannot be relied on as laying down a general rule of law, that the taking of a new lease by a tenant necessarily precluded him, when a judicial rent was afterwards being fixed, from being exempt from rent in respect of improvements made prior to the lease. Whether the tenant in such a case had given up his right to the improvements, was a matter to be determined according to the circumstances of each case: *Walsh v. Limerick*, 23 I. L. T. R. 17 (L. C.). In *Murphy v. Mahony*, 14 I. L. T. R. 87, it was held by LAWSON, J., that a tenant who took a lease at an increased rent did not thereby lose his right to compensation under the Land Act, 1870, in respect of improvements previously made.

Sec. 1, Sub-sec. 8, of the Land Act, 1896, now provides in reference to allowance for improvements when fixing fair rents, that valuable consideration shall not be held to have been given by reason of the mere letting of land on lease, unless the rent of the holding was fixed, reduced, abated, or after the improvement was made allowed to remain unaltered with the object of recouping the tenant for his expenditure upon the improvement. See that Sub-section and notes thereto, *post*, pp. 512-3. Land Act, 1896, sec. 1

In the absence of direct evidence as to which party made the improvements on a holding, the Court, under Sec. 5 of the Act of 1870, as amended by Sec. 1 (10) of the Land Act, 1896, when dealing with holdings not governed by the Ulster Custom presumes that they were made by the tenant except in the following cases:— [r. sumption as to improvements]

- (1) Where the improvements were made before the holding was conveyed on actual sale to the landlord or his predecessors, provided such sale took place before August 1st, 1870.
- (2) Where the improvements were made twenty years before the passing of the Act of 1870.
- (3) Where it was the practice on the holding or the estate for the landlord to make the improvements.

- Sect 8.** (4) Where the entire circumstances satisfy the Court that the improvements were not made by the tenant.

Where improvements come within any of these exceptions, and are therefore excluded from the general presumption of Sec. 5 of the Act of 1870, no presumption of law arises one way or the other as to who made or constructed them, and as the ordinary burden of proof lies on a party who makes an averment, the tenant, if he claims exemption from rent in respect of such improvements, must show affirmatively that they were made by him or his predecessors. *Long v. Brecsford*, 17 I. L. T. & S. J. 467. Although there is no presumption of law in this case, a presumption of fact may be raised either in favour of the landlord or the tenant by slight evidence, and where it appears, for instance, from the age of buildings that they were not erected before the commencement of the tenancy, the Court will presume that they were erected by the tenant *Wall v. Trustees of Foy's School*, MacD. 384.

Applying these principles, BEWLEY, J., laid down the following rules as to the presumption with regard to buildings.—“The improvement in the cases that come before the Court of the nature of buildings may be divided into two classes—those which were erected after the year 1850, that is, 20 years before the passing of the Land Act of 1870, and those erected at an earlier date. As to those erected subsequent to 1850, the presumption given by the 5th Section of the Land Act of 1870, as ratified by the Land Act of 1896, applies, and we are to presume in ordinary cases that such buildings were erected by the tenant or his predecessor in title, except in a specific class of cases pointed out by the statute. With reference to buildings erected prior to 1850, no presumption in law or fact arises, and it is for the Court to consider, having regard to the evidence, what is the presumption as to the erection of those buildings. In considering whether the buildings were erected by the landlord or the tenant, we have in such cases to have regard to what was proved to have been the practice on the estate in the cases that come before us.” (*Colclough Estate*, Greer, Leading Cases, App. 21.)

Presumption in Ulster custom cases.

The 5th Section of the Act of 1870 does not apply to holdings under the Ulster custom; and in such cases there is a general presumption without any exceptions, that all improvements were made by the tenant, unless the custom is shown to be of a restricted character in this respect. See judgment of MERRITT, J., *Harper v. Dufferin*, 1 Greer, at pp. 272-273, and notes to Land Act, 1896, Sec. 49, *post*, p. 596.

(r) The term “predecessor in title” has the same meaning in this Section and throughout the Act as in Sec. 7. See note to that Section, and *Adams v. Dunscaith* (*ubi supra*). The strict technical interpretation given to the term in *Holt v. Harberton*, I. R., R. & L. App. 82, must now be entirely rejected: *per LAW, C. Adams v. Dunscaith*, 10 L. R. Ir., at p. 121.

Sub-sec. 10. Fines paid by tenants to landlords.

(s) This somewhat involved Sub-section, though negative in character, has been held to imply affirmatively, that the Land Commission may take into account, in fixing fair rents, fines paid by tenants to their landlords for their leases or tenancies *Lanyon v. Clinton* [1895], 2 I. R. 150. In that case fee farm grants had been set aside under Sec. 2 of the Land Act, 1887, on the ground that the acceptance of them had been procured by threat of eviction, and it was held by the Court of Appeal that in fixing the fair rents of the holdings subsequently it was competent for the Land Commission to have regard to fines paid by the tenants on the grants which were set aside.

Again, in the words of BEWLEY, J., “if a fine or ‘input’ (as it is frequently called) has been paid to the landlord by the incoming tenant of a holding subject to the Ulster custom in respect of the tenant right, it must be taken into account

sideration in fixing the fair rent of the holding; or if, as is sometimes the case, a fine has been paid for the purpose of acquiring the improvements made on the holding by a previous tenant or by the landlord, the payment is an element that cannot be disregarded in determining the judicial rent" *Mollan v. Kieran* [1894], 2 I. R., at p. 34. Sects. 8-9.

But on the other hand, "where a fine has been paid for the purpose of acquiring a term at a rent lower than what, at the date of the lease, was the letting value, and for no other purpose, and where such term has expired since the Act of 1881, the Land Commission is not at liberty, in fixing a fair rent of the holding, to make it lower than it would otherwise be by reason of such fine" (*per HOLMES, L.J., Glenny v. Bell* [1898], 2 I. R. at p. 243. And this principle applies where a lessee under a perpetual lease comes into court under the Redemption of Rent Act, 1891, on the ground that by doing so he puts himself in the position of a tenant coming in at the expiration of his lease: *Glenny v. Bell* [1898], 2 I. R. 233, 32 I. L. T. R. I. (C.A.); *Mollan v. Kieran* [1894], 2 I. R. 27 (L.C.); *Good v. Dunne*, Greer, Leading Cases, 171 (L.C.). The same principle applies to compositions for renewal fines *Boyd v. M'Cay*, Greer Leading Cases, App. 65. When not to be taken into account

Payment, by an incoming tenant, of arrears of rent due by a former tenant who had been evicted, cannot be treated as a fine or "in-put" in respect of which a deduction may be made from what would otherwise be a fair rent *Talbot v. Honeyford* [1801], 1 I. R. 441; 35 I. L. T. R. 185 (C.A.).

9. Where the Court, on the hearing of an application of either landlord or tenant respecting any matter under this Act, is of opinion that the conduct of either landlord or tenant has been unreasonable, (a) or that the one has unreasonably refused any proposal made by the other, the Court may do as follows: Equities to be administered by Court between landlord and tenant.

It may refuse to accede to the application, (b) or may accede to the same, subject to conditions to be performed by either landlord or tenant, or may impose on either party to the application the payment of the costs or the greater part of the costs of any proceedings, and generally may make such order in the matter as the Court thinks most consistent with justice.

(a) Unreasonable conduct on the part of either landlord or tenant is to be taken into account by the Court on the hearing of any application: *per LITTON, Q.C., Baillie v. Montgomery*, 15 I. L. T. R. 113, MacD. 465. Unreasonable conduct means unreasonable as between landlord and tenant. Disputes with neighbouring tenants as to fences and trespass do not amount to such within the meaning of the Section: *Savage v. Lord Fermoy*, MacD. 511; *Williamson v. Pakenham*, Donn. 313, 5 I. L. T. R. 118. Acts which amount to a breach of his obligations by the tenant as such, or which are incompatible with the proper management of the estate, are, in general, "unreasonable": *per JELLET, Q.C., Bergin v. Casey*, 7 I. L. T. R. 154. Unreasonable conduct.

The 18th Section of the Land Act, 1870, gives the Court similar power in the event of unreasonable conduct between the parties. Under that Section it was decided that a tenant refusing to allow his farm to be "squared" was not unreasonable, so as to deprive him of the right to compensation: *Doolin v. Earl of Leitrim*, Donn. 210.

As to what amounts to unreasonable conduct on the part of the landlord, see *M'Chesney v. Delacherois*, 5 I. L. T. R. 36; *Kerr v. Steele*, *ib.* 37; *Boyd v. Graham*, *ib.* 102.

Sects 9-10. (b) The Land Commission have, in exercise of the power hereby conferred, dismissed applications of tenants to have fair rents fixed where holdings had been so neglected as to become greatly deteriorated in value, without prejudice to the right of the tenants to serve fresh notices when the holdings had been restored to their normal condition *Whyte v. Kirwan*, 1 Greer 213; *Sheddy v. Usher*, 2 Greer 343. It is only, however, where wilful and culpable neglect and bad treatment is proved that this jurisdiction will be exercised (per MEREDITH, J., *Curtin v. Cantillon*, Greer Leading Cases, App. at p. 100). The Court may also, instead of refusing the tenant's application, adjourn the case for a sufficient time to enable the land to be brought into proper condition *ibid.*

Bad farming does not in itself deprive a tenant of his right to have a fair rent fixed, though it should be taken into account in considering the amount of the rent *Bell v. Robinson*, MacD. 381, 17 I. L. T. & S. J. 60. The Court will estimate the value of the holding, if possible, in the condition in which it ought to be, if it had been fairly and properly treated *Curtin v. Cantillon*, Greer Leading Cases, App. 99.

PART III.

EXCLUSION OF ACT BY AGREEMENT.

Judicial Leases.

Lease approved by Court during the continuance to exclude provisions of the Act

10. The landlord and tenant of any ordinary tenancy and the landlord and proposed tenant of any holding to which this Act applies which is not subject to a subsisting tenancy, may agree, (b) the one to grant and the other to accept a lease for a term of thirty-one years or upwards (in this Act referred to as a judicial lease), on such conditions and containing such provisions as the parties to such lease may mutually agree upon, and such lease, if sanctioned by the Court, (a) after considering the interest of the tenant, and where such lease is made by a limited owner, (c) the interest of all persons entitled to any estate or interest in the holding subsequent to the estate or interest of such limited owner, shall be deemed to be substituted for the former tenancy, if any, in the holding; and the tenancy shall during the continuance of such lease be regulated by the provisions of that lease alone, and shall not be deemed to be a tenancy to which this Act applies.

At the expiration of a judicial lease made to the tenant of a present tenancy and for a term not exceeding sixty years the lessee shall be deemed to be the tenant of a present ordinary tenancy from year to year at the rent and subject to the conditions of the lease, so far as such conditions are applicable to such tenancy.

(a) Rules of January, 1897, Nos. 156 and 157, prescribe the necessary procedure for creating a judicial lease. The landlord must prepare and lodge the draft lease, and at the same time lodge an originating notice (Form No. 53) to obtain the sanction of the Court. Notice of application for that purpose must be served

(Form No. 54) upon the parties specified in Rule 156. The lease, when approved **Secs. 10-11** of, must be engrossed in duplicate, and, when executed by the parties, must be signed by the County Court Judge, or sealed with the seal of the Land Commission.

Under the former Rules the signature of the members of a Sub-Commission to the endorsement upon the draft lease, signifying the approval of the Court, was sufficient. Under the Rules of 1897 the signature of either a Commissioner or a County Court Judge is necessary, according to the Court selected.

A form of judicial lease is recommended by the Land Commission, but is not obligatory. See Schedule of Forms, *post*.

For some time after the passing of this Act there was an idea prevalent that a valid lease for a term of years, other than a judicial lease, could not be made of lands that were at the time subject to a tenancy from year to year. But this idea is without foundation. A present tenant from year to year may surrender his tenancy and accept a lease for a term in lieu thereof, without the intervention of the Court, and the new lease will be as valid as if made before the Act. If executed after January 1st, 1883, it will create a future tenancy *Butler v. O'Mahony*, 32 I. L. T. R. 83 (C. A.); see, also, judgment of WALKER, C., *Conroy v. Drogheda* [1894], 2 I. R. at p. 596.

(b) The Chancery Division has jurisdiction to enforce specific performance of an agreement for a judicial lease under this Section. When a decree is made, the draft lease, in conformity with the agreement, is first settled at chambers, and then submitted to the Land Commission for its sanction. The defendant is ordered to execute the lease, if sanctioned by the Land Commission *Kelly v. Enright*, 11 L. R. I. 379, 17 I. L. T. & S. J. 466, MacD. 272. See also *Givan v. Moffitt*, 14 L. R. Ir. 252.

The Land Commission will not, however, itself enforce specific performance of a parol agreement for a lease, even if there has been sufficient part performance to take the case out of the Statute of Frauds, but will adjourn the case for such a time as will enable the party alleging the agreement to take proceedings in a Court of Equity to enforce specific performance. *Broe v. Maunsell*, 16 I. L. T. R. 48, MacD. 274.

The same rules are applicable in determining when agreements for judicial leases will be specifically enforced, as in the case of agreements for leases generally. See Fry on Specific Performance, Part III, cap. iii., and notes to Landlord and Tenant Act, 1860, Sec. 4, *ante*, pp. 16 and 17.

As to enforcing specific performance of a contract to sign an agreement fixing a fair rent, see notes to Sec. 8, *ante*, p. 271, and *Beaulerk v. Hanna*, 23 L. R. Ir. 144, 23 I. L. T. R. 26. Specific performance of such a contract was refused by MONROE, J., on the ground of laches, where the suit was not commenced for six years after the date of the contract being entered into: *Haire-Foster v. M'Intee*, 23 L. R. Ir. 529, 24 I. L. T. R. 44.

(c) As to the powers of a limited owner generally under the Act, see Sec. 23, and Land Act, 1870, Sec. 28. The present Act contains no definition of the term, but that in Sec. 26 of the Act of 1870 is incorporated by Sec. 57.

Fixed Tenancies.

11. The landlord and tenant of any tenancy may agree that such tenancy shall become a fixed tenancy (a) within the meaning of this Act, and such fixed tenancy upon being established shall be sub-

Present ordinary tenancy converted into fixed tenancy.

Sects. 11-12. stituted for the tenancy previously existing in the holding, and shall not be deemed to be a tenancy to which this Act applies.

Conditions of fixed tenancy

12. A fixed tenancy shall be a tenancy held upon such conditions as may be agreed upon between the landlord and tenant establishing such tenancy, and in the case of a landlord who is a limited owner (b) the Court shall approve after considering the interest of all persons entitled to any estate or interest in the holding subsequent to the estate or interest of such limited owner, subject to the following restrictions; that is to say,

- (1.) The tenant shall pay a fee-farm rent which may or may not be subject to re-valuation by the Court at such intervals of not less than fifteen years as may be agreed upon between the landlord and tenant, the rent on any such re-valuation being such as the Court, after hearing the parties, and having regard to the interests of the landlord and tenant respectively, and considering all the circumstances of the case, holding, and district, shall determine to be fair; and
- (2.) The tenant shall not be compelled to quit his holding except on breach of some one or more of the conditions in this Act declared to be statutory conditions.

(a) The agreement for a fixed tenancy must be in writing (Rules of January, 1897, No. 158, Landlord and Tenant Act, 1860, Sec. 4), and the tenant's signature must be witnessed in the manner prescribed by Rule 95. See Form 55. Under the Rules of 1881, No. 108, this was only necessary where the landlord was a limited owner, but the present Rule, No. 158, is general in its application.

(b) As to the power of a limited owner to create a fixed tenancy, see Sec. 23, *post*.

PART IV.

PROVISIONS SUPPLEMENTAL TO PRECEDING PARTS.

Miscellaneous.

Regulations as to sales and application to Court to fix rent.

12. (1.) Where proceedings (a) are or have been taken by the landlord to compel a tenant to quit his holding, the tenant may sell his tenancy at any time before but not after the expiration of six months from the execution of a writ or decree for possession in an ejectment for non-payment of rent (b) and at any time before but not after the execution of such writ or decree in any ejectment other than for non-payment of rent (c); and any such tenancy so sold shall be and be deemed to be a subsisting tenancy notwithstanding such proceedings, without prejudice to the landlord's rights, in the event of the said tenancy not being redeemed within said

period of six months; and, if any judgment or decree in ejectment has been obtained before the passing of this Act, such tenant may within the same periods respectively apply to the Court to fix the judicial rent of the holding, but subject to the provisions herein contained such application shall not invalidate or prejudice any such judgment or decree, which shall remain in full force and effect.

(2.) Where the sale of any tenancy is delayed by reason of any application being made to the Court or for any other reasonable cause, the Court may, on the application of the tenant, and on such terms and conditions as the Court may direct, enlarge the time (*d*) during which the tenant may exercise his power of sale, or in case of ejectment for non-payment of rent redeem the tenancy.

(3.) Where any proceedings for compelling the tenant of a present tenancy to quit his holding shall have been taken before or after an application to fix a judicial rent and shall be pending before such application is disposed of, the Court (*e*) before which such proceedings are pending shall have power, on such terms and conditions as the Court may direct, to postpone or suspend such proceedings until the termination of the proceedings on the application for such judicial rent; and the pendency of any such proceedings for compelling the tenant to quit his holding shall not interfere with the power of the Court to fix such rent, or with any right of the tenant resulting from the rent being so fixed; and in such case any order made by the Court for fixing the rent shall operate in the same manner as if such order had been made on the day of the date of application.

Provided, that proceedings shall not be taken by a landlord to compel a tenant to quit his holding for breach of any statutory condition, save as follows:

- a.* Where the condition broken is a condition relating to payment of rent, then by ejectment subject to the provisions of the statutes relating to ejectment for non-payment of rent; and
- b.* Where the condition broken is any other statutory condition, then by ejectment founded on notice to quit. (*f*)

(4.) Where a notice to quit is served by a landlord upon a tenant for the purpose of compelling the tenant to quit his holding during the continuance of a statutory term in his tenancy in consequence of the breach by the tenant of any statutory condition other than the condition relating to payment of rent, the tenant may, at any

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time before the commencement of an ejectment founded on such notice to quit, apply to the Land Commission (g), and after the commencement, or at the hearing of any such ejectment, may apply to the Court in which the ejectment is brought (h), for an order restraining the landlord from taking further proceedings to enforce such notice to quit.

If the Land Commission or Court to which such application is made are of opinion that adequate satisfaction for the breach of such condition can be made by the payment of damages to the landlord, and that the tenant may justly be relieved from the liability to be compelled to quit his holding in consequence of such breach, the Commission or Court may make an order restraining further proceedings on the notice to quit, upon the payment by the tenant of such sum for damages as they shall then, or after due inquiry, award to the landlord in satisfaction for the breach of the statutory condition, together with the costs incurred by the landlord in respect to the notice to quit and the proceedings subsequent thereto.

If the Land Commission or Court are of opinion that no appreciable damage has accrued to the landlord from the breach of such condition, and that the tenant may justly be relieved as aforesaid, they may make an order restraining further proceedings on the notice to quit, upon such terms as to costs as they may think just.

(5.) The service of a notice to quit, to enforce which no proceedings are taken by the landlord, or the proceedings to enforce which are restrained by the Court, shall not operate to determine the tenancy (i).

(6.) A tenant compelled to quit his holding during the continuance of a statutory term in his tenancy, in consequence of the breach by the tenant of any statutory condition, shall not be entitled to compensation for disturbance.

Sub-sec. 1.

(a) The proceedings to compel a tenant to quit his holding embrace the whole proceedings commencing with the notice to quit. *Laverty v. Moore*, 15 I. L. T. R. 105, MacD. 444. In that case a tenant against whom a decree in ejectment on notice to quit had been obtained before the passing of the Act on which a stay of execution until the 1st of November, 1881, had been put, and who had served a land claim for compensation under the Act of 1870 before the hearing of the ejectment, was held entitled either to sell his tenancy or to serve notice to have a fair rent fixed at any time before the actual execution of the decree.

In *Rutledge v. Rutledge*, 15 I. L. T. R. 107, MacD. 449, it was held, however, by the Land Commission (LITTON, Q.C., *diss.*) that the Section did not apply in a similar way to the case of a lease which had expired before the passing of the Act.

(b) By the Land Act, 1887, service of the written notice prescribed by that Act is

substituted in certain cases for the execution of a judgment in ejectment for non-payment of rent, and the six months within which a tenant ejected for non-payment of rent may sell his tenancy, run in such cases from the date of the service of that notice. (See Land Act, 1887, Sec. 7, *post*).

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(c) In *Haren v. Archdale*, 14 L. R. I. 296, 12 L. R. I. 306, 17 I. L. T. R. 81, MacD. 385, a tenant of a holding within the Land Acts mortgaged it, and the mortgagee subsequently entered into possession. The landlord served a notice to quit upon the tenant, and on its expiration commenced an action against both the tenant and the mortgagee to recover possession, and obtained judgment. After the judgment was obtained, but before it was executed, the mortgagee in possession sold the interest in the holding to a third party, who, however, took no steps under this Section to stay the proceedings. Possession was then taken by the landlord, and an ejectment was brought by the purchaser against him. It was held by the Court of Appeal, reversing the decision of the Exchequer Division, but affirming the judgment of ANDREWS, J., that the tenancy was entirely determined by the execution of the writ of possession, and that the purchaser could not therefore recover, the effect of the sale under the Section being merely to put the purchaser into the same position as the vendor, and to give him the same rights under Sub-sec. 3 to move to stay the proceedings, but not in any way to revive the tenancy in the hands of the purchaser.

Sale of tenancy by mortgagee.

If a present tenancy is sold under this Section by a tenant against whom proceedings are pending, in consequence of a breach of a statutory condition, or of an act or default which, in a tenancy subject to such, would be a breach of a statutory condition, the purchaser cannot at any future time apply to have a judicial rent fixed—his only right is to remain in possession during the residue of the statutory term, if any, then existing. (Sec. 20.)

Sale in consequence of breach of Statutory condition.

When a tenancy is so sold, upon breach of a statutory condition, the landlord is entitled to be paid out of the purchase-money any debt, including arrears of rent, due to him by the tenant, and any damages awarded to him as compensation for the breach of such condition. (Sec. 1 (7).)

(d) The Court has no jurisdiction under this clause, when a tenant has been evicted for non-payment of rent, to enlarge his time for redemption save as ancillary to a proceeding by him for a sale of his tenancy: *Barrett v. Lord Ventry*, 16 I. L. T. R. 50, MacD. 435. The words "or for any other reasonable cause" must be read as if they were "and for any other reasonable cause." "The Sub-section opens," says O'HAGAN, J., "with the words 'When the sale of any tenancy is delayed,' and as the Sub-section consists of but one Section we must hold that these words govern the entire of it, and that all the powers conferred upon the Court are dependent upon that circumstance." *Barrett v. Lord Ventry*, MacD., at p. 438. Before extending the time, the Court will require notice of sale to be served: *Shane v. Carwell*; *M'Loughlin v. Richardson*, 15 I. L. T. R. 94, MacD. 469.

Sub-sec. 2. Extending time for redemption.

A motion to extend the time for redemption in the case of an ejectment for non-payment of rent is one addressed to the discretion of the Court; and, when the right to redeem is disputed by the landlord, the Court will consider that the tenant not having lodged the amount of rent due, in order to obtain a writ of restitution under the Landlord and Tenant Act, 1860, is a sufficient ground for refusing the motion: *Ryan v. Scale*, 15 I. L. T. R. 81, MacD. 433. See further as to extension of time to redeem: *Marsh v. Moreland*, 15 I. L. T. R. 112, MacD. 464; and *Baillie v. Montgomery*, 15 I. L. T. R. 113, MacD. 465.

(e) The application under this Sub-section must be made to the Court in which the ejectment proceedings are pending. The Land Commission has no jurisdiction to

Sub-sec. 3.

Sect. 13.

restrain a landlord from executing a civil bill decree in ejectment, pending an application by the tenant to fix a fair rent for his holding. *Semple v. Hunter*, 15 I. L. T. R. 73, R. & D. 9, MacD. 416; *Laverly v. Moore*, 15 I. L. T. R. 105, MacD. 444. And where a Judge of Assize affirmed a decree for possession in an ejectment founded on a notice to quit, and refused to stay execution, notwithstanding that an order had actually been made by a Sub-Commission fixing a fair rent since the hearing of the ejectment by the County Court Judge, the Court of Appeal, in a subsequent action by the tenant for a declaration of title, refused to grant an interlocutory injunction to restrain the landlord from executing the civil bill decree. *Gorman v. La Touche*, 26 L. R. Ir. 583, 24 I. L. T. R. 70.

Staying
proceedings
under sub-sec 3

The *onus probandi* lies on a defendant, who institutes a motion to stay proceedings, of showing that he is a tenant in *bona fide* occupation. *Hutchinson v. Kavanagh*, 18 I. L. T. R. 5 (note). And where the status of the defendant as tenant is not admitted or clearly established, the Court will refuse to stay proceedings under this Sub-section. *Boyd v. Phelan*, 10 L. R. I. 330. In this case a notice to quit had been served in March, 1881, and was consequently pending when the Act passed; and, although the motion to stay proceeding was refused, it was afterwards decided that the tenant was entitled to have a fair rent fixed. *Boyd v. Phelan*, 14 L. R. I. 23. Applications to stay proceedings were, on similar grounds, refused in many other cases. See *Fitzgerald v. Brennan*, 16 I. L. T. R. 56, MacD. 411; *Boyd v. Hodson*, 15 I. L. T. R. 120, MacD. 423; *Boyd v. Kearney*, 15 I. L. T. R. 120; MacD. 431; *Arran v. Wells*, 14 L. R. I. 359; *McBride v. McClay*, 5 I. W. L. R., 218. But latterly the tendency has been more in favour of granting them. Thus, where the question for determination was whether or not the lands were demesne lands, the Queen's Bench Division stayed the proceedings under this Section to enable that question to be determined by the Land Commission, notwithstanding the fact that the originating notice had not been served until after the notice to quit had expired. *Montgomery v. O'Hara*, 22 L. R. Ir. 608, 23 I. L. T. R. 5. And this decision was affirmed by the Court of Appeal. 24 I. L. T. R. 2. Similarly, where an action to recover possession was brought by a mortgagee, the Exchequer Division stayed the proceedings upon the application of the defendant, who was tenant to the mortgagor, to enable the question to be determined whether his having a fair rent fixed would give him a right to remain in possession as against the mortgagee. *Clarke v. Nixon*, 21 I. L. T. R. 45. See, also, on this question, *Clarke v. Hall*, 24 L. R. Ir. 316, 22 L. R. Ir. 338. In *Hamill v. Doran*, 1 N. I. J. R. 71, the Queen's Bench Division stayed proceedings pending the hearing of an appeal from the decision of a sub-commission by the Land Commission, the defendant undertaking to give a consent for judgment if the appeal failed.

On the other hand, where an ejectment was brought for forfeiture for breach of covenant, and the defence set up was a waiver of the alleged forfeiture, the Queen's Bench Division refused to stay the proceedings pending the hearing of an application to fix a fair rent, holding that the Court ought not to throw over its own jurisdiction in order that the matter might be dealt with by another tribunal. *M'Neill v. Thompson*, 24 L. R. Ir. 444.

In actions by
mortgagees.

The operation of this Sub-section is not limited to cases where the action is brought against a tenant by a person standing in the relation of landlord to him. Proceedings may be stayed, for instance, in an action by a mortgagee of the landlord's interest: *Clarke v. Nixon*, 21 I. L. T. R. 45.

It has been held that there is no power to stay proceedings where an ejectment is brought in respect of lands held under a lease which expired before the passing

of the Act. *Beamish v. Crowley*, 8 L. R. I. 383, MacD. 425, 15 I. L. T. R. 118; *Raine v. Hilgar*, 15 I. L. T. R. 66; or to stay proceedings on a motion for final judgment for rent: *Warburton v. Conroy*, 8 L. R. I. 361, 15 I. L. T. R. 90. Sect. 13.

In ejectments for non-payment of rent, proceedings may also be stayed under this Sub-section. But in such cases orders are usually made only upon terms of the tenant making a substantial payment of rent within a short period of time fixed by the Court. See *Earl of Erne v. Hall*, 15 I. L. T. R. 118, MacD. 424, and *O'Connor v. Danaher*, 21 I. L. T. R. 44. There is also power to stay proceedings in ejectment for non-payment of rent in certain cases under Land Act, 1887, Sec. 30, *post*. But the fact that proceedings to fix a fair rent are pending is no ground for adjourning a civil bill ejectment for non-payment of rent: *Hudson v. Murphy*, 28 I. L. T. R. 98 (PALLES, C.B.).

(f) In addition to the remedy for breach of statutory conditions given by this Sub-section (which, however, is qualified by Sub-sec. 4), a landlord is entitled to proceed by a suit in equity to restrain the breach, and the Court will grant relief by injunction in a proper case. See *Steele v. Tiernan*, 23 L. R. Ir. 583, where an injunction was granted by CHATTERTON, V.C., to restrain the erection of a Land League hut on a farm. Injunction to restrain breach of statutory conditions.

(g) The Land Commission has made orders staying proceedings, on notice to quit, under this Section, on payment of a sum fixed by the Court, where a tenant was charged with breach of a statutory condition by allowing buildings to become dilapidated: *Stott v. Givcen*, 34 I. L. T. R. 12; and where the principal dwelling-house on the holding was sublet, but it was proved to have been sublet with the knowledge and practically with the consent of the landlord: *Smith v. Jones*, 1 Greer 227. The Court has no jurisdiction to put a stay upon the proceedings, unless the tenant admits that there has been a breach of a statutory condition. *per* MEREDITH, J., *Stott v. Givcen*, 34 I. L. T. R., at p. 13; *McGuinness v. Commissioners of Education*, 2 N. I. J. R. 32. Staying proceeding under sub-sec. 3.

As to procedure, see Rules of Jan., 1897, No. 159, and Form No. 57, *post*.

(h) The Queen's Bench Division made an order staying proceedings in an ejectment founded on notice to quit, where a tenant was charged with waste by dilapidation of buildings, it appearing that the landlord had suffered no appreciable damage: *Hamilton v. Black* [1899], 2 I. R. 48.

(i) This Sub-section, which was held by Sir E. SULLIVAN, C., to be an independent enactment (*Boyd v. Phelan*, 14 L. R. Ir. 232), expressly enacts the contrary of what was decided in *Tayleur v. Wilden*, L. R. 3 Ex. 303. In that case the defendant had given a guarantee for a tenant's rent to the landlord. The latter served a notice to quit, but withdrew it before its expiration, and it was held that the old tenancy was determined by the notice to quit notwithstanding its waiver, and that the defendant's guarantee did not apply to the new one created on its expiration. This case, however, so far as it decided that the mere service of a notice to quit determines a tenancy, had never been followed in Ireland; but it had always been held that if the notice were allowed to expire, the tenancy would be thereby determined. See judgment of SULLIVAN, C., *Boyd v. Phelan*, 14 L. R. Ir. 232. The following passage from the judgment of ANDREWS, J., in *Haren v. Archdale* (12 L. R. Ir. 306, 14 L. R. Ir. 296), clearly sets out the effect of the Act upon notices to quit:—

“One of the objects of the Act undoubtedly was to give to tenants an increased security of tenure; but it did not abolish notices to quit. It contemplates their continuance, but qualifies their effect, and gives tenants, to a liberal but limited extent, the means of protecting themselves against the consequences of them.

Sects. 13-14.
Tenancy, when
determined

"The mere service of a notice to quit will no longer determine the tenancy. In order to make it effectual for this purpose, proceedings to enforce it must be taken by the landlord, and be allowed to continue unrestrained by the Court; but, as I read the Act, the tenancy will be absolutely determined if, in such proceedings, the landlord obtains a judgment or decree for possession, and, by execution issued on foot of such judgment or decree, recovers actual possession. In the interval, however, between the commencement of the proceedings and the recovery of possession under the execution, in case the tenant desires to acquire a statutory term in his holding at a fair rent, to be fixed by the proper Courts, the 3rd Sub-section of Section 13 enables him to apply to the Court before which the proceedings are pending, and empowers that Court, on such terms and conditions as it may direct, to postpone or suspend the proceedings for compelling the tenant to quit his holding until the termination of the proceedings, if taken by the tenant, to acquire a statutory term in his holding at a fair rent. Now, the 1st Sub-section of Section 13 provides for the case of a tenant against whom proceedings have been taken to compel him to quit his holding, desiring to sell his tenancy, which, in a case like the present, he is empowered to do at any time before the execution of a writ of possession; and the construction I put upon the words, 'and any such tenancy so sold shall be and be deemed to be a subsisting tenancy, notwithstanding such proceedings,' is that, for the security of the purchaser, they expressly declare the tenancy to be subsisting in his hands—not absolutely, but so as to clearly confer upon him similar rights to those which his vendor would have had, of taking proceedings to acquire a statutory term in the holding at a fair rent, and, if necessary, of applying to the Court to postpone the pending proceedings under which the landlord might, by recovering possession, absolutely determine the tenancy in the meantime, but, according to my view, if the purchaser takes no steps to acquire a statutory term, and allows the landlord to continue his pending proceedings and recover possession, the tenancy becomes absolutely determined in his hands, as it would have been in the hands of the vendor:" 12 L. R. Ir., at p. 312.

It has now been definitely decided by the Court of Appeal that resumption of possession by the landlord is essential to any determination by notice to quit of a tenancy to which the Act applies (*Montgomery v. O'Hara*, 24 I. L. T. R. 2), affirming the decision of the Queen's Bench (22 L. R. Ir. 608. 23 I. L. T. R. 5), at p. 598. See remarks of PALLIS, C.B., on this case in *Conroy v. Drogheda* [1894], 2 Ir. R., at pp. 598-9; and notes to Sec. 20, *post*, pp. 296-7.

Similarly, it has been held that a notice of surrender served by a tenant, but not acted upon, does not determine the tenancy. *M'Donnell v. Blake*, 28 L. R. Ir. 395, 24 I. L. T. R. 48; *Inchiquin v. Lyons*, 20 L. R. Ir. 474.

In the case of ejectments for non-payment of rent, it appears also that the tenancy is not determined until the landlord actually takes possession (see notes to Landlord and Tenant Act, 1860, Sec. 66, *ante*, p. 120, and Sec. 20, *post*, or until he serves a notice under Land Act, 1837, Sec. 7 (see end of Sub-sec. 1 of that Section, *post*).

Limited adm nistration for purposes of sale.

14. The Court on being satisfied that the tenant of any holding within the jurisdiction of the Court has died, and that the tenancy of such tenant ought to be sold under this Act, (a) and that there is no legal personal representative of such tenant, or no legal personal representative whose services are available for the purpose of selling the tenancy, may, on such terms and conditions, if any, as

Sect 14

they may think fit, appoint any proper person to be administrator of the deceased tenant, (b) limited to the purposes of such sale, and such limited administrator shall, for the purpose of selling the tenancy, represent the deceased tenant in the same manner as if the tenant had died intestate, and administration had been duly granted to such limited administrator of all the personal estate and effects of the deceased tenant.

Such limited administrator shall pay to the landlord, out of the purchase money, any sums due to the landlord by the deceased tenant in respect of his tenancy, and may pay the residue of the purchase money to a general administrator (if any) or into Court.

(a) This Section deals only with sales under Sec. 3 on the death of a tenant intestate. As to the mode of carrying out such, see Rules of Jan., 1897, No. 117, and as to payment into Court of the residue of the purchase-money, see Rules 66 to 71, *post*, pp. 732-3 and 745-6.

In *Headfort v. Cochrane*, 26 I. L. T. R. 112, it appeared that a tenant who had died after service of notice of intention to sell his tenancy, had made a will in which he nominated an executor, but that the latter refused to take out probate, so as to facilitate the landlord in the exercise of his right of pre-emption. The Sub-Commission thereupon appointed a person, *nominated by the landlord*, limited administrator for the purpose of completing the sale, and this appointment was held by BEWLEY, J., to be regular, although the executor subsequently took out probate. See also *Duggan v. Coffee*, 28 I. L. T. R. 36.

(b) The Court has a more general power of granting limited administration under Sec. 59 of the Land Act, 1870, incorporated by Sec. 38, *post*, with this Act, "as if the purposes therein referred to included the purposes of this Act." As to the position of a limited administrator under the Land Act, 1870, see *Canny v. Harvey*, 11 I. L. T. R. 178 (PALLES, C.B.). Although the Court mentioned in Sec. 59 of the Land Act, 1870, is the Civil Bill Court, it has been expressly decided by the Queen's Bench Division that the Land Commission has full power under that Section so incorporated, and Sec. 37 (3), to appoint an administrator for the purposes of a fair rent application: *Ex parte Johnston* (No. 2), 20 I. L. T. R. 76. It has, however, been held by the Exchequer Division (MURPHY, J., *diss.*), that the Land Commission has no jurisdiction on the hearing of an application to fix a fair rent to grant limited administration to a deceased tenant, who died previous to the service of the originating notice. *Fox v. Langan*, 26 I. L. T. R. 124; but on the subsequent trial of the action, which was for prohibition, O'BRYEN, J., expressed a contrary opinion. 27 I. L. T. R. 20. Express power is now conferred to do so by Land Act, 1896, Sec. 21, *post*, p. 560.

Where a tenant died pending an appeal, leaving a will in which an executor was named, which will, however, was never proved, the Land Commission refused to grant limited administration: *Mahoney v. Carbery*, MacD. 396. But where a will in which executors were named was lost, and the executors were both dead, limited administration was granted by LITTON, J., *Fee v. Annesley*, 24 I. L. T. R. 104. Orders appointing limited administrators have been sometimes made by Sub-Commissioners, in cases where unproved wills existed. See *Clarke v. Pratt*, 19 I. L. T. R. 43; *Heatherston v. White*, 24 I. L. T. R. 13. See now, also, Land Act, 1896, Sec. 21, *post*, p. 560.

Limited administration for general purposes of Act.

Where tenant has made a will.

Sects 14-15

Death of
landlord

This Section deals only with the case of a tenant having died, but where a landlord, seized in fee, dies intestate pending the hearing of a fair rent application, it has been held that proceedings may be continued against his heir-at-law *Woods v. Lord Lurgan*, MacD. 351. In an earlier case, however, it was held, under similar circumstances, that the whole proceedings should be commenced *de novo*. *Re Vandeleur*, R. & D. 28.

Provision for
determination
of estate of im-
mediate landlord

15. If in the case of any holding the estate of the immediate landlord (a) for the time being is determined during the continuance of any tenancy from year to year, (b) whether subject or not subject to statutory conditions, the next superior landlord for the time being shall, for the purposes of this Act, during the continuance of such tenancy stand in the relation of immediate landlord to the tenant of the tenancy, and have the rights and be subject to the obligations of an immediate landlord. (c)

Where middle-
man had no
power to sub-let.

A sub-tenant can only claim under this Section to become tenant to a head landlord, on the determination of a middleman's interest, where the middleman had power to create the sub-tenancy. By the Common Law every tenant, whether he holds under lease or from year to year, has a right to sublet, and the consent of the landlord is not in any way necessary. Where, however, the middleman holds—(1) under a lease made between the 1st of June, 1826, and the 1st of May, 1832 (other than a lease for a term of 99 years or upwards or a lease for lives or years with a covenant for perpetual renewal or an ecclesiastical lease), not containing a clause expressly authorizing the lessee to sublet (see *Furlong*, L. & T., 2nd ed., p. 1103, *et seq.*); or (2) under a lease made at any time, containing a covenant or agreement against subletting, or (3) under a tenancy from year to year, when he desires to sublet after the 22nd August, 1881—he has no power to create a sub-tenancy without the written consent of the head landlord, and an attempt to do so without such consent is simply null and void. *Jagoe v. Harrington*, 10 L. R. I. 335; *Butler v. Smith*, 18 I. C. L. E. 213; *Clifford v. Reilly*, I. R. 4 C. L. 218, unless the landlord's consent can be implied under Land Act, 1896, Sec. 11, which see, *post*. No tenancy can, therefore, spring up under this Section between the head landlord and the sub-tenant on the determination of the interest of a middleman, where the middleman, being a tenant to whom Sec. 2, *ante*, applies, has sublet after the passing of this Act, without the written consent of the landlord. *Ormsby v. Crean*, 20 L. R. Ir. 526.

Where a tenant to a middleman who is not thus deprived of his right to sublet has had a fair rent fixed for his holding, he cannot be put out of possession by an ejectment on the title brought by the head landlord on the determination of the middleman's estate. *Lewin v. Eagleton*, MacD. 383. But an agreement fixing a fair rent and filed in Court under Sec. 8 (6), *ante*, is not under similar circumstance binding upon the head landlord. *Clifford v. Clifford*, 35 I. L. T. R. 103, 1 N. I. J. R. 200 (KENNY, J.); *McConnell v. Brown*, 1 N. I. J. R. 222 (L. C.). Independently of this section, if a head landlord on the expiration of a middleman's interest, allow a sub-tenant to remain in possession, a tenancy between them may be implied. See *London and North Western Railway Co. v. West*, L. R. 2 C. P. 553, and notes to Landlord and Tenant Act, 1860, Sec. 3, *ante*, pp. 7-9.

Sub-lessee

Where a tenant under a lease for lives made in 1833 sublet the whole of the demised premises in 1866 for the life of the only survivor of the lives in the her

lease, so that both leases expired at the same time by the dropping of this life in 1883, it was held by the Court of Appeal, affirming the decision of the Queen's Bench Division (though on different grounds), that, by the combined effect of this and the 21st Section, the sub-lessee, who was *bona fide* in occupation at the expiration of the leases, became tenant from year to year to the head landlord *Seymour v. Quirke*, 14 L. R. I., 97, 455 (App.), 18 I. L. T. R. 29.

Sect. 15.

(a) The Section applies only in the case of immediate and superior landlords, it does not operate in the case of a succession of owners taking the property, not from each other, but under a settlement, so as to bind a remainderman by a tenancy created by a tenant for life: *Massy v. Norse*, 20 L. R. I. 57 (Q. B. D.). 464 (C. A.); *Sparrow v. Hepenstall*, 24 I. L. T. R. 66 (L. C.). Though the 10th Section of the Land Act, 1896, has that effect.

Successive owners.

It appears from the judgment of Sir E. SULLIVAN, C, in *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85, that the Legislature in this Section had primarily in its view the case of a lease determining where sub-tenants are in occupation of the whole of the lands, whether with or without the landlord's consent, though it applies also where they are in possession of part without his consent, if the sub-letting be valid. Where, however, the lessee has sublet part of the lands with the landlord's consent, and is in actual occupation of the remainder, he is himself entitled to hold on, under Section 21, as tenant from year to year of the entire premises demised, and his sub-tenants still hold under him and not under the head landlord: *M'Carthy v. Swanton* (*ubi supra*).

Part of lands sublet

The Land Commission held that this Section applied in a case where a house in a town was let on lease along with a field outside the town, the latter only being sublet. On the expiration of the lease, the sub-tenant of the field was held entitled to continue on in possession as tenant to the head landlord: *O'Neill v. Tottenham* (Unreported; judgment delivered 25th March, 1893).

Where, pending a Chancery cause, the Court makes a letting of a holding to a tenant from year to year, of which the tenant makes a subletting, such sub-tenancy determines with the principal tenancy on the termination of the cause, and the sub-tenant has no right either to remain on in possession, under this Section, or to have a fair rent fixed, pending the cause. *Shea v. M'Gallicuddy*, 17 I. L. T. R. 104; MacD. 317.

Court lettings.

In *Dillon v. Dillon*, 17 I. L. T. & S. J. 466; MacD. 377, a head landlord applied to have agreements fixing fair rents between a middleman and his sub-tenants set aside, as fraudulent and collusive, on the determination of the middleman's interest. The Court, on the particular facts of the case, refused to do so; but intimated that if evidence were given that rents so fixed by agreement were inordinately low, the whole transaction would be set aside as fraudulent. See judgment of O'HAGAN, J., MacD., at p. 379.

Setting aside agreements between middleman and sub-tenants.

(b) The words "during the continuance of any tenancy from year to year" create some difficulty in the construction of this Section, for, as a general rule, the determination of the middleman's interest would, apart from this Section, determine also the sub-tenancy. A strictly logical construction would, therefore, practically nullify the Section, and it has accordingly been given a wider construction, so as to make it apply, where the middleman's interest being a tenancy from year to year is determined by a notice to quit: *West v. Huggard* [1894], 2 I. R. 108 (C.A.), 27 I. L. T. R. 60 (L.C.); as well as where it expires by the dropping of a life: *Seymour v. Quirke*, 14 L. R. I. 97, 455 (C.A.), 18 I. L. T. R. 29.

Determination of middleman's interest.

In *Allen v. Derby*, 16 L. R. Ir. 346, 351; 19 I. L. T. R. 47, a tenant who resided in a town, and held certain lands adjoining it, which fulfilled the statutory require-

By notice to quit.

Sect. 15.

ments as to town parks, sublet portion of them to a sub-tenant, who did not reside in the town. The sub-tenant had a fair rent fixed as against the middleman; but, subsequently, the head landlords served a notice to quit upon the middleman, and commenced ejectment proceedings. The sub-tenant took defence, notwithstanding which a decree for possession was granted, and the head landlord put into possession under it. The sub-tenant, however, retook possession a few days afterwards. On an ejectment being brought against him, it was held by the Court of Appeal, affirming the decision of the Common Pleas Division, that the decree in ejectment terminated all interests in the holding, including the sub-tenant's statutory term, that the decree was conclusive against him, he having been served with the process and having taken defence, and that, although he might bring a cross-ejectment alleging a tenancy created by this Section between himself and the head landlords on the termination of the middleman's interest, yet it was not open to him by way of defence to set up this title, as the same defence had been available to him in the previous ejectment in the County Court.

Middleman
ejected for non-
payment of rent

Prior to the passing of the Land Act, 1896, it was held that where a middleman was ejected for non-payment of rent the decree for possession destroyed all interests in the holding under him, and that in such a case the sub-tenants had no right under this Section to a tenancy from year to year under the head landlord: *Commins v. Barron*, 19 I. L. T. R. 38, *Dillon v. Dillon*, 17 I. L. T. & S. J. 466; MacD. 377. The 12th Section of the Land Act, 1896, however, makes this Section apply to the determination of a middleman's interest by ejectment for non-payment of rent in the same way as to determination by effluxion of time or notice to quit. See notes thereto, *post*, pp 552-553.

Improvements
made by sub-
tenant

A sub-tenant becoming tenant to the head landlord on the expiration of a middleman's interest, is entitled to exemption from rent in respect of buildings and other improvements made by him during the currency of the middleman's lease *Nolan v. Gunn*, 17 I. L. T. R. 48, MacD. 127. See also *Comerford v. Sawrey*, 8 I. L. T. R. 25, and *Bolland v. Domville*, Donn. 401.

Where proceedings to have a fair rent fixed were commenced by a sub-tenant against a middleman, whose interest expired before the case was heard, the Land Commission allowed the proceedings to be continued against the head landlord, who was bound by the tenancy under the provisions of this Section: *O'Neill v. Shearman* (Unreported Decision given 10th November, 1891).

Land Act, 1887,
sec 8

Under Section 8 of the Land Act, 1887, a middleman has a right to surrender his estate, in certain cases, and the sub-tenants of the person so surrendering thereupon become tenants to the person to whom such surrender is made at the rents and subject to the conditions of their sub-tenancies as previously existing.

Head landlord
may continue
middleman's
interest.

(c) The Section does not, however, restrict the head landlord's right to retain the middleman as his tenant, and if he does so, no tenancy is created between him and the sub-tenants. It "leaves the owner free to deal with his réversion as he pleases, and he need not determine the lessee's tenancy if he wishes to continue it" (*per GIBSON, J., Eyre v. Hardy*, 32 I. L. T. R., at p. 162). In that case a head landlord continued to receive rent from a middleman after the middleman's lease had expired, in ignorance of its expiration, and it was held that he could not afterwards sue an under-tenant, relying upon a tenancy created by this Section, for the difference between the rent payable by the under-tenant to the middleman, and that payable by the middleman to him: *Eyre v. Hardy*, 32 I. L. T. R. 160 (Q. B. D.).

Recovery of
broken gals of
rent

Where the interest of a middleman determines between two gale days, the apportioned part of the sub-tenant's rent is recoverable by the middleman from

the sub-tenant up to the date of the determination. The rent is not a "continuing rent" within the Apportionment Act, 1870 *O'Connell v. Sullivan*, 28 I. L. T. R. 72 (Q. B. D.). Sects 15-16.

Where, on the determination of a middleman's interest, two or more persons become entitled in severalty as superior landlords, this Section now applies, and each of such persons is to be deemed the immediate landlord in respect of the portion of land to which he is entitled. The Land Commission has jurisdiction to apportion the rent between them (Land Act, 1896, Sec. 13, *post*). Where several persons are entitled to head landlord's estate.

16. A tenancy for a year certain created after the passing of this Act shall, for the purposes of this Act and of the Landlord and Tenant (Ireland) Act, 1870, be deemed to be a tenancy from year to year. Provision as to certain small tenancies.

A tenant holding under a tenancy less than a yearly tenancy (a) created after the passing of this Act shall have the same rights under this Act as a yearly tenant, except where land is let merely for temporary convenience (b) or to meet a temporary necessity.

It seems questionable whether a cottier tenancy, within the provisions of the Landlord and Tenant Act, 1860, Sec. 81, can now be created in an agricultural holding. This section and the 69th Section of the Land Act, 1870, would appear to give all cottier tenants the same rights as tenants from year to year.

Tenancies less than tenancies from year to year created before the passing of the Land Act, 1870, appear to be entirely excluded from the provisions of both the Acts of 1870 and this Act. See definitions of "Tenant," Sec. 57, *post*, and Land Act, 1870, Sec. 70. If created after the passing of the Act of 1870, but before the passing of the Act of 1881 (*s.e.*, between the 1st August, 1870, and 22nd August, 1881), the tenant cannot be compelled to quit his holding except on notice to quit, and on being paid compensation for disturbance and improvements (Land Act, 1870, Sec. 69); but it would appear that he has no right whatever under the present Act, being excluded by the definition of "Tenant" in Sec. 57. It has accordingly been held that a tenant of a monthly tenancy, created before the passing of the Act of 1881, is not entitled to have a fair rent fixed: *Burns v. Clarke* (Unreported, but referred to in Healy's Land Act, p. 130). Tenancies created before 1870.
Before 1881

(a) A tenancy for a year certain, which expired before the passing of the Land Act, 1881, has been decided not to be "a tenancy less than a tenancy from year to year" within the meaning of Sec. 69 of the Land Act, 1870: *Wright v. Tracey*, I. R. 7 C. L. 134, 8 C. L. 478, Donn. 398; and is therefore excluded from the provisions of both Acts. Tenancy for a year certain.

A tenancy for a year certain, existing at the date of the passing of the Land Act, 1881, was stated by PALLAS, C.B., in *Fitzgerald v. Brennan* (16 I. L. T. R. 56, MacD. 411), to be an "existing lease" within the meaning of Sec. 21. The Queen's Bench Division, however, decided in the cases of *Ryan v. Chadwick* and *Arran v. Wills*, 14 L. R. Ir. 200, that such a tenancy was excluded from the 21st Section as a tenancy less than a yearly tenancy. This decision was affirmed by the Court of Appeal, but on different grounds, the latter Court holding that it was excluded, not as a tenancy less than a yearly tenancy, but as a yearly tenancy itself: *Ryan v. Chadwick*, 14 L. R. Ir. 353. Whether the tenant would have been entitled to have had a fair rent fixed had he served his originating notice before the expiration of Existing at the passing of the Act.

Sects. 16-17. his tenancy appears to be doubtful. (See judgment of *Max*, C. J., 14 L. R. Ir., at p. 211.)

Mortgagor in possession

A tenancy arising from the relation between mortgagee and mortgagor in possession is not a tenancy at will within Sec. 69 of the Land Act, 1870. *Rice v. M'Quade*, I. R. 9 C. L. 101; nor, apparently, would it be held to be a "tenancy less than a yearly tenancy" within this Section, there being no "contract of tenancy" within the meaning of Sec. 57, existing between the parties.

Conacre, &c

Lettings in conacre, grazing agreements, and dairy contracts are similarly excluded, there being no "letting of land" within the same section. See *Connell v. Skehan*, MacD. 165, *Mulligan v. Adams*, 8 I. L. R. 132, notes to Sec. 58 (5), *post*, p. 360, and Sec. 2, *ante*, p. 243.

Lettings for temporary convenience

(b) As to lettings for temporary convenience, see Sec. 58 (7), and notes thereto, *post*. The purpose or motive of the letting must be within the knowledge of both parties at the time of the making of the contract. *Driscoll v. Riordan*, 16 L. R. I. 235. The temporary convenience or temporary necessity which excludes a tenant's claim may be existing "for a time" compatible not only with a tenancy at will, or a tenancy less than a tenancy from year to year under Sec. 69 of the Land Act, 1870, but also under both that Act and the Land Act, 1881, subject to the restriction as to written evidence, with a tenancy from year to year, for life or lives. *Per Fitz-Gibbon, L. J., Eiffe v. M'Kennas*, 16 I. L. T. R. 39, MacD. 293.

Lettings for temporary convenience include lettings under the Court of Chancery pending a cause or matter *Callan v. Dowlall*, R. & D. 235, MacD. 311; *Jellis v. Swift*, 17 I. L. T. & S. J. 546, MacD. 319. Sublettings by tenants holding under such contracts *Shea v. M'Gillieuddy*, 17 I. L. T. R. 104, MacD. 317. Lettings made by the receiver in a minor matter *Croker v. Clanchy*, 20 L. R. Ir. 111. And, generally, any letting, pending the minority of an infant owner, made, to the knowledge of the tenant, with the motive of securing the right of possession to the infant on his attaining age *Driscoll v. Riordan*, 16 L. R. Ir. 235; *M'Cutcheon v. Wilson* (unreported, but referred to in *Driscoll v. Riordan*). Lettings of lands, *bona fide* required for building purposes *Chaine v. Croker*, 12 L. R. Ir. 151; *Eiffe v. M'Kennas*, 16 I. L. T. R. 39, MacD. 293. Or where, under the terms of the lease, a substantial portion of the lands may be resumed by the landlord for building purposes *Butterly v. Carroll*, 26 L. R. Ir. 93; *Whisker v. Delacherois*, 25 I. L. T. R. 34. But *secus*, if only a small portion can be so resumed *Mooney v. Willcocks*, 28 L. R. Ir. 113. Lettings by way of Welsh mortgage have also been held to be for temporary convenience *Cunny v. Meagher*, 19 I. L. T. R. 35. And leases by persons going abroad for a limited period: *Earl v. Neill*, MacD. 316, R. & D. 244. See further, notes to Sec. 58 (7), *post*, pp. 361-364.

As to lettings for temporary convenience to labourers under the Labourers (Ireland) Acts, see notes to Sec. 18, *post*, p. 291.

Provision as to certain claims of pasturage and turbary

17. Where the tenant of a holding by virtue of his tenancy exercises, in common with other persons, over uninclosed land (a) a right of pasturing or turning out cattle or other animals, or exercises a right of cutting and taking turf in common with other persons (which other persons, together with the tenant, are in this Section referred to as commoners), then if such holding becomes subject to a statutory term the Court may, during the continuance of such term, on the application of the landlord, or of any com-

moner, by order restrain the tenant from exercising his right of pasture or cutting or taking turf in any manner other than that in which it may be proved to the Court that he is, under the circumstances and according to the ordinary usage which has prevailed with the express or implied consent of the landlord amongst the commoners, reasonably entitled to exercise the same. (*b*) Sects. 17-18

A tenant acquiring a right to a holding as a present tenant under the Act is equally entitled to all easements and *profits à prendre*, such as rights of pasturage and turbary, previously attached to the holding for the same period and subject to the same conditions. The Land Commissioners may, and do, affix a rent in respect of such rights: *Ex p. Hutchinson; In re Irish Land Commission*, 12 L. R. Ir. 79, 17 I. L. T. R. 27, MacD. 498. "I think," says DOWSE, B., in giving judgment in that case, "the 17th Section of the Act makes it clear that 'parcel of land' is a term large enough to include this right" 17 I. L. T. R., at p. 29. "It is absolute to demonstration," says FALLES, C. B., "that this Section confers a power which cannot be exercised before the holding becomes subject to a statutory term, and it shows that notwithstanding the fixing of the rent the right may still exist." *Ibid.*

(*a*) This Section deals with rights of turbary, only when exercised over common land not within the ambit of the tenant's holding. As to the effect of the creation of a statutory term on his right to cut turf on his own holding, see *M'Geough v. M'Dermott*, 18 L. R. Ir. 217, *Knox v. Baxter*, 19 L. R. Ir. 460, 473, and *Townshend v. Cotter*, 31 L. R. I. 86, 29 L. R. Ir. 243, referred to in notes to Sec. 5 (5), *ante*, pp. 215 6.

(*b*) Where tenants enjoyed the right of grazing a certain number of sheep upon a mountain belonging to the landlord, and it was proved to be the custom to have the sheep branded and counted in presence of a servant of the landlord, an order was made by the Land Commission under this Section restricting a tenant from exercising the right otherwise than according to what had been proved to be the usage: *Brooke v. Kelly*. Unreported. Judgment delivered 27th July, 1892.

Further powers are conferred upon the Land Commission for regulating the exercise by a tenant during a statutory term of rights of turbary, pasturage, &c., by Land Act, 1896, Sec. 9 (2), which see *post* p. 547.

18. Any person prohibited under this Act from letting or sub-letting a holding may, after service of the prescribed notice upon the landlord, with the sanction of the Court, and with power for the Court to prescribe such terms as to rent and otherwise as the Court thinks just, let any portion of land in a situation to be approved by the landlord, or failing such approval to be determined by the Court, with or without dwelling-houses thereon to or for the use of labourers *bonâ fide* employed and required for the cultivation of the holding. (*a*) and such letting shall not be deemed to be a subletting within the meaning of this Act, or to be a letting prohibited by this Act (*b*); and notwithstanding such subletting the tenant shall for the purposes of this Act be deemed to be still in occupation of the holding.

Lettings for labourers' cottages not to be within the restrictions of Act.

Sects. 18-19. Provided, that the land comprised in each letting shall not exceed half an acre in extent, (c) and that where the holding contains not more than twenty-five acres of tillage land, the number of such lettings shall not exceed one, and that where the holding contains more than twenty-five acres of tillage land, but not more than fifty acres of such land, the number of such lettings shall not exceed two; and so in proportion to the acreage of tillage land in the holding after fifty acres.

See Rules of Jan., 1897, No 160, Form No 58, and Land Act, 1887, Sec. 4.

Definition of
"agricultural
labourer "

(a) The Labourers (Ireland) Acts, 1883, 1885, 1886, 1892, and 1896, have given increased facilities for the building of labourers' cottages. The following is the definition of the term "agricultural labourer," contained in Sec. 4 of the Act of 1886 (49 & 50 Vic., c. 59).—"The expression 'agricultural labourer' in the said Acts and in this Act shall mean a man or woman who does agricultural work for hire at any season of the year on the land of some other person or persons, and shall include hand-loom weavers and fishermen doing agricultural work as aforesaid, and shall also include herdsman." An evicted tenant who had been employed on an adjoining farm was held to be an agricultural labourer within this definition. *Attorney-General v. Guardians, Ballymahon Union*, 21 L. R. I. 534 (V.-C). See also notes to next Section, and Land Purchase Act, 1831, Sec. 26, *post*, p. 483.

(b) The Sections of this Act dealing with subletting are Secs. 2 and 5 (3), also Sec. 57, which defines a tenant as a person "occupying land." See also Land Act, 1887, Sec. 4, which provides that a tenant letting to labourers, in accordance with the prescribed conditions, is to be deemed to be still in occupation of the holding.

(c) The letting under this Section is not to exceed "half an acre"—i.e., half a statute acre. *O'Donnell v. O'Donnell*, 13 L. R. I. 226. Under the Labourers' Acts a letting of a statute acre can now, however, be made (55 Vic., c. 7).

Power of Court,
on application
for the deter-
mination of a
judicial rent, to
impose condition
as to labourers'
cottages

19. Where an application is made to the Court (a) for the determination of a judicial rent in respect of any holding, the Court, if satisfied that there is a necessity for improving any existing cottages or building any new cottages, or assigning to any such cottage an allotment not exceeding half an acre, for the accommodation of the labourers employed on such holding, may, if it thinks fit, in making the order determining such rent, add thereto the terms as to rent and otherwise on which such accommodation for labourers is to be provided by the person making the application. (b)

Where upon any such application the Court requires the tenant of the holding to improve any existing cottage, or to build any new cottage, such tenant shall be deemed to be a person to whom a loan may be made under the Landed Property Improvement (Ireland) Acts (c) for the improvement or building of dwellings for labourers, as if such person were an owner within the meaning of the seventh Section of the Act of the session of the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-

two; but any such loan may be made for a less sum than the sum Sects. 19-20 of one hundred pounds.

If the landlord desires to build labourers' cottages on a farm, the Court may authorize the resumption of sufficient ground for that purpose (Sec. 5).

Advances may be obtained by a tenant ordered to build labourers' cottages for that purpose under Sec. 31 (2) of this Act, as well as under the Landed Property Improvement Acts, as defined by Sec. 57.

(a) The Land Commission have now power to make a similar order, where an agreement as to fair rent is filed 45 & 46 Vic., c. 60, Sec. 3.

(b) A penalty of one pound for every week during which the order is not complied with, after six months have elapsed from the date of the order, may be recovered in a summary way at Petty Sessions 45 & 46 Vic., c. 60, Sec. 4. And it is the duty of the Sanitary Authority of the district to enforce this penalty 46 & 47 Vic., c. 60, Sec. 11.

(c) The following statutes deal with advances for the erection of labourers' cottages in Ireland —10 & 11 Vic., c. 23; 23 & 24 Vic., c. 19; 29 & 30 Vic., c. 40, 40 & 41 Vic., c. 27; 46 & 47 Vic., c. 60; 48 & 49 Vic., c. 77; 49 & 50 Vic., c. 59. Loans under the Landed Property Improvement Acts are repayable by a rent-charge of 5 per cent. per annum for 35 years, to be paid by half-yearly payments on every 5th of April and 10th of October; the term of 35 years to be computed from the second of those dates next after the advance, and interest at 3½ per cent. from the date of the advance to the first gale day after (29 & 30 Vic., c. 40, Sec. 3; 40 & 41 Vic., c. 27, Sec. 7).

The provisions of this Section are now made applicable to holdings sold under any of the Land Purchase Acts. See Land Purchase Act, 1891, Sec. 26, *post*, p. 480.

20. A tenancy to which this Act applies shall be deemed to have determined whenever the landlord has resumed possession (a) Rules as to determination of tenancy of the holding either on the occasion of a purchase (b) by him of the tenancy, or of default of the tenant in selling, or by operation of law, or reverter, (c) or otherwise. Provided that:

- (1.) The surrender to the landlord of a tenancy for the purpose of the acceptance or admission of a tenant (d) or otherwise by way of transfer to a tenant shall not be deemed to be a determination of the tenancy:
- (2.) Where the landlord has resumed possession of a tenancy from a present tenant, he may, if he thinks fit so to do, reinstate such tenant in his holding as a present tenant (e); and thereupon such tenancy shall again become subject to all the provisions of this Act which are applicable to present tenancies;

Provided always, that the landlord and tenant may at the time of such reinstatement agree on the rent to be paid by such tenant, (f) and in such case such agreement shall have the same effect as if the rent so agreed on were a

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judicial rent fixed by the Court under the provisions of this Act;

- (3.) Where a present tenancy in a holding is purchased by the landlord from the tenant in exercise of his right of pre-emption (*g*) under this Act, and not on the application or by the wish of the tenant, or as a bidder in the open market, then if the landlord within fifteen years from the passing of this Act re-lets the same holding to another tenant, the same shall be subject from and after the time when it has been so re-let, to all the provisions of this Act which are applicable to present tenancies;
- (4.) A tenant holding under the Ulster tenant-right custom, (*h*) or a usage corresponding to the Ulster tenant-right custom, shall be entitled to the benefit of such custom, notwithstanding any determination of his tenancy by breach of a statutory condition, or of an act or default of the same character as the breach of a statutory condition.

Whenever a present tenancy is sold in consequence of a breach by the tenant, after the passing of this Act, of a statutory condition, (*i*) or, in the case of a tenancy not subject to statutory conditions, of an act or default on the part of a tenant, after the passing of this Act, which would, in a tenancy subject to such conditions, have constituted a breach thereof, the purchaser or his successors in title in such tenancy shall not at any time thereafter be entitled to apply to the Court under this Act to fix a judicial rent for the holding; but this provision shall not prejudice or affect the right of such purchaser or his successors to hold at such judicial rent during the residue of such statutory term, if any, as the holding may then be subject to, under the provisions of this Act.

Tenancy, when determined.

(a) "This provision," says PALLES, C.B., "appears to me to embrace every case of the determination of a tenancy from year to year through the operation of a notice to quit or notice of surrender; and, in my opinion, although the words actually used are affirmative, a tenancy 'shall be deemed to have determined whenever,' their true meaning includes the negative, 'shall not be deemed to be determined until'" *M'Donnell v. Blake*, 28 L. R. Ir., at pp. 401, 402. Accordingly, it was held by the Court of Appeal in that case that a tenant who in 1885 had served a notice of surrender, and had afterwards withdrawn it and remained in possession, paying rent at the old rate, did not thereby deprive himself of his present tenancy or lose the right of having a fair rent fixed. *M'Donnell v. Blake*, 28 L. R. Ir. 395. "It is clear," says Lord ASHBOURNE, C., "that any tenancy to which the Act applies can only be determined when the landlord resumes possession of the holding." *Montgomery v. O'Hara*, 24 I. L. T. R., at p. 3. In that case it was held by the Court of Appeal, affirming the decision of the Queen's Bench

Division (22 L. R. Ir. 608, 23 I. L. T. R. 5), that an originating notice served after a notice to quit has expired was valid. See also Sec. 13 (5), *ante*, p. 247, and remarks of O'HAGAN, J., in *Laverty v. Moore*, MacD., at p. 448.

But this doctrine, that without the resumption of possession there can be no determination of a tenancy to which the Land Act applies, is confined to cases specified in this Section, and is not so general in its operation as might be supposed. In *Jackson v. Hagan*, 28 L. R. Ir. 326, the Land Commission held that the effect of the Section was to prevent any surrender by operation of law taking place upon the acceptance by a present tenant of a new estate. But the Court of Appeal have now decided that this decision was wrong, and that there is nothing in that Act to prevent a *bona fide* surrender by operation of law of an old tenancy and the acceptance of a new one without any change of possession where this is clearly the intention of the parties: *Conroy v. Marquis of Drogheda* [1894], 2 I. R. 590. In that case the tenant had in 1885 signed a proposal to become tenant of her old holding, which was a present tenancy, together with 10 acres additional, at a bulk rent. The Court of Appeal held that under the particular circumstances of the case there was no intention to surrender the old tenancy, but that if the tenant and landlord had desired to do so, they could have effected such a surrender without any change of possession. A present tenancy can, therefore, now be determined and a new future tenancy created in the same holding without any change in the occupation, but the parties must clearly intend to effect this alteration, and it will not be implied as the indirect effect of a transaction which had a different object in view, and where the attention of either of the parties was not called to the change in the character of the tenancy. Such appears to be the law as now laid down by the Court of Appeal in *Conroy v. Marquis of Drogheda* [1894], 2 I. R. 590, 28 I. L. T. R. 59. See also *Torrens v. Cooke*, 22 L. R. I. 239.

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Conroy v. Marquis of Drogheda.

In *Butler v. O'Mahony*, 32 I. L. T. R. 93, the same Court held that the acceptance of a new lease (not a judicial lease) in 1886 by a present tenant, without any break in the possession, amounted to a surrender of his present tenancy by operation of law, and the creation of a new future tenancy in the holding.

Surrender by operation of law.

This Section, like the rest of the Act, applies only to occupying tenants. Where a middleman holds from year to year his tenancy determines on the expiration of a notice to quit without any resumption of possession: *Huggard v. West*, 27 I. L. T. R. 60 (Bawley, J.) affirmed on appeal [1894], 2 I. R. 108.

It was held by Bawley, J., on the wording of this Section, that the acquisition by a tenant of a small additional parcel of land, and the fixing of a bulk rent for the enlarged holding had not the effect of destroying a present tenancy previously existing: *Jackson v. Hagan*, 28 L. R. Ir. 326. But this decision was disapproved of by the Court of Appeal in *Conroy v. Drogheda* [1894], 2 I. R. 590; 28 I. L. T. R. 59. The 17th Section of the Land Act, 1896, now, however, provides a means for altering the area of a holding without putting an end to a present tenancy in it.

Changes in area and rent.

Where, before the passing of this Act, a notice to quit was served by a landlord, and, while it was current, an arrangement was entered into between the parties that the tenant should continue to occupy at an increased rent, it was held by the Court of Appeal that the notice to quit, having been abandoned by consent, did not *per se* operate to put an end to the old tenancy; and that neither did the increase of rent necessarily create a new tenancy; but that it was a question properly left to the jury whether a new tenancy was or was not created by the acts of the parties: *Inchiquin v. Lyons*, 20 L. R. Ir. 474. See, also, *Curro v. Gordon*, 26 I. L. T. R. 95.

Alteration in rent.

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Execution of writ of possession

Where, however, a writ of possession or civil bill decree in ejectment on title is actually executed, the tenancy is put an end to as against all persons having interests in it. *Allen v. Derby*, 16 L. R. Ir. 346, 351, 19 I. L. T. R. 47. In *Haren v. Archdale*, 14 L. R. Ir. 296, A, who was tenant from year to year of a farm, mortgaged it to B, who subsequently entered into possession. The landlord served a notice to quit on A, and on its expiration commenced an ejectment action against both A and B, and obtained judgment for possession. After the judgment was obtained, B, as mortgagee in possession, sold the interest in the farm to C, notwithstanding which, a writ of possession was executed and possession taken by the landlord. It was held by the Court of Appeal, reversing the decision of the Exchequer Division (reported in 12 L. R. Ir. 306, 17 I. L. T. R. 81, MacD. 385), but affirming the judgment of ANDREWS, J., that the execution of the writ of possession finally determined the tenancy under this Section; and that the sale by the mortgagee after the judgment did not in any way prevent the tenancy from coming to an end. In such a case the Court will not interfere by injunction to restrain the execution of a civil bill decree regularly pronounced *Gorman v. La Touche*, 26 L. R. Ir. 583, 24 I. L. T. R. 70 (C. A.).

In England, it has been similarly held that the words "determination of the tenancy," occurring in Sec. 7 of the Agricultural Holdings Act, 1883, mean "the end of the tenant's holding, and not the time at which by the terms of the contract between the landlord and tenant the tenancy is expressed to come to an end." (*Per* Lord COLERIDGE, C.J., *In re Paul*, 24 Q. B. D., at p. 250)

In cases of ejectments for non-payment of rent.

In the case of ejectments for non-payment of rent, there is some conflict of decisions as to when the tenancy determines. In *Russell v. Moore*, 8 L. R. Ir. 318, it was held that the judgment determined the tenancy as from the date of the writ. FITZGERALD, B., seems to have been of opinion that the tenancy was determined as from the gale day antecedent to ejectment: *Hall v. Flanagan*, I. R. 11 C. L. 470. On the other hand, GIBSON, J., has held that the tenancy is not determined until possession is taken under the execution *Kennedy v. Gannon*, 1 N. I. J. R. 147. 3 Greer 250; following *Busley v. Mason*, 2 I. L. C. R. 582. See, also, *Wilson v. Burne*, 24 L. R. Ir., at p. 37. Sec. 66 of the Landlord and Tenant Act, 1860, distinctly preserves to the landlord a right to rent "to the time of the execution of such judgment or decree," which is scarcely consistent with the tenancy having been previously determined. See *ante*, p. 120. And the 7th Section of the Land Act, 1887, provides that upon the service or posting of the notice and summary provided by the Sect. on "the tenancy in the holding shall be determined as if a writ of possession under the judgment had been duly executed" (end of Sub-sec. 1). Of course, if the tenancy is redeemed under Secs. 70 and 71 of the Landlord and Tenant Act, 1860, it again revives with all its incidents. See *ante*, pp. 121-128, and *Lombard v. Kennedy*, 21 L. R. Ir. 201.

Landlord must resume possession as landlord.

The landlord must resume possession as landlord. Where, as mortgagee, he enters into possession of a holding in which a present tenancy subsists, such possession does not determine, or cause a merger of, the tenancy, which continue to subsist notwithstanding such possession: *Farrelly v. Doughy*, 15 I. L. T. R. 100, MacD. 400.

When tenancy determines on purchase by landlord

(b) "Sec. 1, Sub-sec. 3, entitles the landlord to purchase a tenancy upon receiving the prescribed notice of the tenant's intention to sell. Upon the service of notice by the landlord of his intention to exercise the right of pre-emption, the equitable estate in the tenancy passes to him, but, in the absence of further provision, the tenancy would remain undetermined unless there were an actual surrender or assignment of it" (*per* PALLIS, C.B., *Conroy v. Drogheda* [1894], 2 I. R. at p. 60

(c) This, apparently, refers to the case where a tenant has died intestate, leaving no person entitled to his personal estate (Sec. 3, *ante*). See *Conroy v. Drogheda* [1894], 2 I. R. at pp. 601-2. Sect. 20.

(d) See Sec. 7, *ante*, which provides for the case of a surrender of a tenancy, and acceptance by the tenant himself of a new tenancy, as well as for the admission of a different tenant. Sub-sec 1
Surrender.

Though a mere constructive surrender has not the effect of destroying a tenancy and creating an entirely new one in its place, yet this Section does not prevent the *bona fide* surrender of an old tenancy and the creation of a new one, without any break in the occupation of the tenant, where that is the intention and object of the parties *Torrens v. Cooke*, 22 L. R. Ir. 239 (C. A.); *Conroy v. Drogheda* [1894], 2 I. R. 590, 23 I. L. T. R. 59 (C. A.), *Butler v. O'Mahony*, 32 I. L. T. R. 93 (C. A.). "Surrender depends on intention, and the doctrine of implied surrender is not destroyed by Sec. 20" (*per* BEWLEY, J., *Kelly v. Hamilton* [1897], 2 I. R. at p. 29).

For cases where it was held that a surrender by one tenant and a re-letting of the same holding to another, was "by way of transfer" within the meaning of this Sub-section, and so did not amount to a determination of the original tenancy, see *Conlan v. Campbell*, Greer Leading Cases 297; *Ryan v. Goodbody*, 2 Greer 33.

A surrender cannot be made to take effect *in futuro*. *Doe v. Milward*, 3 M. & W. 328. "There are three requisites in the case of a surrender—it must be in writing, which is required by the Statute of Frauds, it must be stamped, and it must operate as an immediate conveyance of the tenant's interest." *per* Mr. Commissioner LITTON, *Neville v. Harman*, 17 I. L. T. R., 86, MacD. 277. As to what is necessary to constitute a valid surrender, see notes to Landlord and Tenant Act, 1860, Sec. 7, *ante*, pp. 19-23. Requisites of a
valid surrender.

As to the right of middlemen to surrender, where the rents of their sub-tenants are reduced by the Court, See Land Act, 1887, Sec. 8, *post*, p. 412.

(e) The intention of the landlord to reinstate a tenant as a present tenant may be inferred from circumstances, as, for instance, where he receives payment of the back rent, even after the period for redemption has expired: *Thompson v. Templetown*, 27 I. L. T. R. 55, or where an agreement fixing a fair rent is signed upon the re-instatement: *Phillips-Conn. v. Denn*, 34 I. L. T. R. 88; or where the eviction was by arrangement for some indirect object: *Crotty v. White*, 3 Greer 230. But see *Burke v. Bond*, Greer Leading Cases, App. 18. Reinstatement
of evicted
tenant.

(f) An agreement under this Sub-section as to the amount of rent to be paid, when a tenant is re-instated in his holding after having been evicted, creates a judicial rent and a statutory term even though it is not filed in Court under Rules of January, 1897, Nos. 139 and 140. *M'Carthy v. Warrington*, 29 I. L. T. R. 149 (BEWLEY, J.). When it creates
a statutory
term.

(g) As to the landlord's right of pre-emption, see Sec. 1 (3) and notes thereto, *ante*, pp. 233-235. Sub-sec 3.

(h) This clause places tenants holding under the Ulster custom in a much better position than other tenants, for the latter, if compelled to quit their holdings in consequence of the breach of any statutory condition, are deprived of their right to compensation for disturbance (Sec. 13 (6)). Sub sec. 4.
Ulster custom

(i) As to a sale in consequence of a breach by a tenant of a statutory condition, see Sec. 1 (7) and Sec. 13, *ante*. Non-payment of rent is a breach of a statutory condition, so that where a present tenant, whether he has had a fair rent fixed or not, is evicted for non-payment of rent, and, in consequence of the proceedings, sells his tenancy pending redemption, the purchaser from him cannot at any future time apply to have a fair rent fixed. *M'Keon v. O'Neill*, 32 I. L. T. R. 112; 1 Greer 61. Sale on breach of
statutory condi-
tion.

Sects. 20-21. (L. C.). But it is otherwise if the tenant sells before the execution of the judgment or decree for possession, or if the sale is not in consequence of the proceedings, but for some other reason: *Ferguson v. Gosford*, 2 N. I. J. R. 31; 4 Greer 38 (C. A.); 3 Greer 350 (L. C.); 36 I. L. T. R. 5 (C. A.), *Greer v. Gosford*, 2 N. I. J. R. 230 (L. C.).

The final clause of the Section has been held, also, by the Land Commission not to apply to a case where a landlord, having recovered a personal judgment for rent, in his capacity of execution creditor, and not *quâ* landlord, caused the tenancy to be sold under a writ of *f. fa.* *Reddy v. Elliott*, 30 L. R. I. 653. See, also, on this point, judgment of the Court of Appeal in *Dickie v. White*, 1 N. I. J. R. 128, where a similar question was raised, but not decided; and *Doyle v. Gordon*, 3 Greer 245 (BALLET, A. L. C.).

Provision as to
issuing leases.

21. Any leases (*a*) or other contracts of tenancy existing at the date of the passing of this Act, except yearly tenancies (*b*) and tenancies less than yearly tenancies, which said existing leases and contracts of tenancies (except as aforesaid) are in this Section referred to as existing leases, shall remain in force to the same extent as if this Act had not passed, and holdings subject to such existing leases shall be regulated by the lawful provisions contained in the said leases, and not by the provisions relating to tenancies in that behalf contained in this Act: Provided that at the expiration (*c*) of such existing leases, or of such of them as shall expire within sixty years after the passing of this Act, the lessees, (*d*) if bona fide in occupation (*e*) of their holdings, shall be deemed to be tenants of present ordinary tenancies from year to year, at the rents and subject to the conditions of their leases (*f*) respectively, so far as such conditions are applicable to tenancies from year to year; but this provision shall not apply where a reversionary lease (*g*) of the holding has been bona fide made before the passing of this Act; and provided also that where it shall appear to the satisfaction of the Court that the landlord desires to resume the holding for the bona fide purpose of occupying the same as a residence (*h*) for himself, or as a home farm (*i*) in connection with his residence, or for the purpose of providing a residence for some member of his family, the Court may authorize him to resume the same accordingly, in the manner and on the terms provided by the fifth Section (*k*) of this Act with respect to the resumption of a holding by a landlord: Provided always, that if the holding so resumed shall be at any time within fifteen years after such resumption relet to a tenant, the same shall be subject, from and after the time of its being so relet, to all the provisions of this Act which are applicable to present tenancies.

On the termination of any such existing lease in any holding

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which if it had been held from year to year would have been subject to the Ulster tenant-right custom, or any usage corresponding therewith, the person who would have been entitled to make a claim under the first or second Section of the Landlord and Tenant (Ireland) Act, 1870, in respect of the same holding shall be entitled to do so notwithstanding that the holding was held under any such lease, but this proviso shall not apply to leases in which there is contained a provision expressly excluding the Ulster tenant-right custom or a usage corresponding therewith.

*In any case in which the Court shall be satisfied that since the passing of the Landlord and Tenant (Ireland) Act, 1870, the acceptance by a tenant from year to year of a lease of his holding containing terms which, in the opinion of the Court, were at the time of such acceptance unreasonable or unfair to the tenant, having regard to the provisions of the said Act, was procured by the landlord by threat of eviction or undue influence, the Court may, upon the application of the tenant made within six months after the passing of this Act, declare such lease to be void (1) as and from the date of the application or order, and upon such terms as to costs or otherwise as to the Court shall seem just; and thereupon the tenant shall as and from such date be deemed to be the tenant of a present ordinary tenancy from year to year at the rent mentioned in such lease. Any person aggrieved by the decision of the Court in any proceedings under this Section may, by leave of the Court, which leave shall be granted unless the Court shall consider the appeal frivolous or vexatious, appeal to Her Majesty's Court of Appeal in Ireland, and the decision of the said Court of Appeal shall be final and conclusive.**

The effect of this Section is, according to PALLES, C.B., "to compel the tenant to continue in possession, and the landlord to elect to treat him as a tenant" (*Ireland v. Landy*, 22 L. R. Ir. at p. 422). The 5th Section of the Landlord and Tenant Act, 1860, is in substance applied to every tenant of an expired lease (*ibid.*). The tenancy so created is not a prolongation of the old lease, but a new tenancy subject to the conditions of the lease: *Barton v. Atkinson*, 35 I. L. T. R. 193

The Section only applies to leases existing on the 22nd of August, 1881. Lessees under leases made between that date and 1st January, 1883, may in certain cases be entitled to have fair rents fixed under Sec. 8. See *ante*, p. 275.

(a) An agreement for a lease is included within the term "lease:" *per* BEWLEY, J., *Agreement for Donnelly v. Galbraith*, 28 I. L. T. R., at p. 55. See also Land Act, 1870, Sec. 70 ^{a lease.} (incorporated by Sec. 57 of the present Act). The date, however, from which the term is to commence must be fixed: *Marshall v. Berridge*, 19 Ch. D. 233; *Wyse v. Russell*, 11 L. R. Ir. 173, 17 I. L. T. R. 31, MacD. 281; *White v. M'Mahon*, 18 L.

*The portion of the Section in italics has been repealed by Stat. Law Rev. Act, 1894.

Sect 21. R. Ir. 460, or circumstances must exist, by reference to which it may be fixed: *Phelan v. Tedcastle*, 15 L. R. I. 169, 175, *Sims v. Sinclair*, 18 I. L. T. R. 60. Thus, an agreement in writing between A and B, that, on paying £20, B was to get possession of a farm, and also a lease for 21 years, at the yearly rent of £16, and that B, on giving up possession at the end of the 21 years was to get his money returned, was held by the Court of Appeal to be a valid agreement for a lease to commence on the date of the payment of the £20 *Erskine v. Armstrong*, 20 L. R. Ir. 236 (affirming the decision of the Land Commission, 21 I. L. T. R. 15) See also *Broe v. Maunsell*, 16 I. L. T. R. 48; MacD. 274.

As to enforcing specific performance of an agreement for a judicial lease, see *Killy v. Enright*, 11 L. R. I. 379, 17 I. L. T. & S. J. 466, MacD. 272; and notes to Sec. 10 (*ante*, p. 279).

Where, on an application to fix a fair rent before the passing of the Land Act, 1887, a lease for lives of the holding in question was produced, it was held that the onus of proof as to the dropping of the lives lay on the tenant, and that the landlord was not bound to prove that they were in being *Aylward v. Jones*, 18 I. L. T. R. 111; *Gill v. Manly*, 16 I. L. T. R. 57.

Yearly tenancy. (b) "Yearly tenancies" are not identical with "tenancies from year to year," and a tenancy for one year certain is a yearly tenancy within the meaning of this Section *Ryan v. Chadwick*, 14 L. R. I. 353.

Where a tenant held under a written agreement at a certain rent, and it was provided that there should not be a re-valuation for 21 years, it was held, notwithstanding, that the tenancy was a yearly one: *Cuthbert v. Young*, 16 I. L. T. R. 58. So where a landlord was debarred from taking up possession, without giving eight years' previous notice of his intention to do so, it was also held that the tenancy was a yearly one within the exception mentioned in this Section *Weir v. Torney*, 19 I. L. T. R. 41.

Lessor's estate terminating with lease

(c) Prior to the passing of the Land Act, 1896, it was held that where the lessor's estate terminated with the lease no tenancy was created on its expiration by force of this Section *Massy v. Norse*, 20 L. R. I. 57, 464. In that case, by a marriage settlement, lands were vested in trustees upon trust for three persons successively as tenants for life. There was no leasing power given by the settlement. The two first tenants for life joined in a lease for their own lives, which was subsisting at the date of the passing of the Land Act, 1881. Upon the death of the last surviving lessor the third tenant for life brought an ejectment. The former lessee contended that by virtue of this Section he became, on the expiration of the lease, a tenant from year to year of the holding. It was held, however, by the Court of Appeal, affirming the decision of the Queen's Bench Division, that no such tenancy was created by the statute, and that the plaintiff was entitled to recover possession. The lessee, in such a case, it was also held, was deprived of any right during the currency of the lease, to have a fair rent fixed under the 1st Section of the Land Act, 1887 *Moylan v. Finch*, 28 L. R. I. 595, 26 I. L. T. R. 2. In that case the Court of Appeal overruled the decision of the Land Commission (28 L. R. I. 332 24 I. L. T. R. 65), and restored that of the Sub-Commission (22 I. L. T. R. 99). See also *Barton v. Atkinson*, 30 L. R. Ir. 396, 24 I. L. T. R. 26. Now, however, the 10th Section of the Land Act, 1896, makes tenancies created by tenants for life or other limited owners generally binding upon remaindermen. But no decision has yet been pronounced as to the effect of that Section upon the cases above cited.

At the expiration.

"At the expiration" is not to be construed as "after the expiration." *P. FITZGERALD, L. J., O'Donovan v. Kenmare* [1896], 2 I. R., at p. 528. Thus, a lessor for his own life who continued in occupation of the demised premises up to the

moment of his death was held to be, within the express words of the Section, in *bona fide* occupation of his holding at the expiration of his lease, so as to create a tenancy from year to year in his representatives: *Roe v. Cooney*, 14 L. R. Ir. 243. See, however, *Gorman v. Graham*, MacD. 269, and *French v. Duffy*, 32 L. L. T. R. 117. The latter decision, however, appears to have turned entirely on the fact that the surviving lessee was not in *bona fide* occupation even prior to the date of his death.

Where a lease for lives, with a covenant by the landlord for perpetual renewal, contains no covenant by the tenant to name lives or accept renewals, there is no obligation on him to do so; and, on the dropping of the lives, the tenant may, if he chooses, become a present tenant under this Section: *Shinnick v. Beresford*, MacD. 516. But sometimes a covenant by the tenant to renew may be implied. *Ward v. M^r Roberts*, 25 L. R. Ir. 224; *Foley v. Roland* [1898], 1 I. R. 311; in which case the tenant may be compelled to take out a fee-farm grant, unless there has been *leases* on the part of the landlord in enforcing the covenant. *Felson v. Spratt*, 25 L. R. Ir. 5; *Hickey v. Rowayne*, 35 L. L. T. R. 208.

Where a tenant held under a leasee whose interest was converted into a perpetuity under the Trinity College Leasing and Perpetuity Act, 1851, and was entitled under an expired lease to the benefit of a *toties quoties* covenant for renewal on payment of a proportion of the fine and additional rent, it was held that by the payment of the fine and the increased rent he had also converted his holding into a perpetuity, though he had not taken out any grant or renewal of the lease: *O'Donnell v. Norton*, 21 I. L. T. R. 23.

There is not, in the absence of express contract, any equity entitling a sub-lessee to compel his lessor to procure a renewal from a head landlord in pursuance of a covenant contained in the lease by the latter, for the purpose of feeding the sub-lease: *Ex p. Quinn* [1895], 1 I. R. 187 (V.C.).

As to the obligation of a landlord under a *toties quoties* covenant to renew, in respect of any further estate or interest in the lands acquired by him after the execution of the lease, see *Lyttle v. Fox* [1898], 1 I. R. 340; *Coccy v. Pascoe* [1899], 1 I. R. 125; and *Stackpole v. Sampson*, 2 I. W. L. R. 117.

A lessee entitled to surrender under a clause in his lease may, if by the mere service of a notice he can terminate the lease, claim the rights of a present tenant under this Section: *Hodges v. Clarke*, 17 I. L. T. R. 83. But where the surrender is required by the clause to be completed by delivery of possession, he cannot do so: *Perrott v. Dennis*, 18 L. R. Ir. 29; 20 I. L. T. R. 7.

Where, however, the landlord consents to the lessee surrendering, he may surrender his lease and become a yearly tenant without giving up possession. *Torrans v. Cooke*, 22 L. R. Ir. 239. But in such a case the new tenancy, being created by agreement between the parties and not by force of this Section, is a future tenancy if the surrender takes place after January 1st, 1883: *Torrans v. Cooke*, 22 L. R. Ir. 239. See notes to Sec. 20, *ante*, p. 297.

(d) The term "lessees" is not confined to the persons named in the instrument of lease, but includes all persons in whom the interest is vested at the time the lease expires: *Neville v. Harman*, 17 I. L. T. R. 86, MacD. 277. It means in fact "the tenant under the expired lease" (*per* PALLIS, C.B., *Irland v. Landy*, 22 L. R. Ir. at p. 419). The interest in the lease must, however, have become vested in the person claiming to be tenant in some legal manner. *Hart v. Kirk*, 12 L. R. Ir. 364, MacD. 268. And the onus lies upon the tenant of showing how the interest of the original lessee became vested in him: *Hutchinson v. Karanaga*, 18 I. L. T. R. 5 (note). A person in possession of leasehold premises may, however, acquire a

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Covenant to renew.

Rights of lessee on surrendering his lease

Who are lessees

- Sect. 21.** title by the Statutes of Limitation so as to obtain the benefit of this Section; and this may occur even where the lease contains a clause against alienation. *Rankin v. M'Murtry*, 24 L. R. Ir. 290 (Q. B. D.).
- Persons occupying in severalty.** The term "lessee" may in relation to one tenancy include a plurality of persons, even though they occupy different portions of the demised premises in severalty. In such a case the several persons who thus occupy the entirety of the lands together constitute a "conjunct" tenant, and as such are entitled to the benefits of this Section. *Ireland v. Landy*, 22 L. R. Ir. 403 (C. A.); *Smyth v. Reid* [1901], 2 I. R. 61.
- Sub-lessees** Where a lease and sub-lease expire simultaneously, the sub-lessee, if *bona fide* in occupation of the holding, becomes by the combined force of this and the 15th Section, tenant to the head landlord at the rent and subject to the conditions of the lease under which he held from the middleman. *Seymour v. Quirke*, 14 L. R. Ir. 455 (App.), 97 (Q. B. D.), 18 I. L. T. R. 29.
- Bona occupation.** (e) The lessee must be *bona fide* in occupation of the holding in order to claim the benefit of this Section. As to the meaning of the expression "*bona fide*," PALLES, C.B., in *M'Carthy v. Swanton*, 14 L. R. Ir., at p. 375, says: "It means in good faith, really, as distinguished from colourably or fraudulently. It is easy to suppose a change of occupation immediately before the termination of a lease (with the mere object of obtaining the benefit of the Section, and the intention, or, perhaps, the obligation, of reinstating the former occupant), which might be deemed fraudulent and an attempt to evade the Act of Parliament."
- The tenant must be in occupation of the entire holding; where, however, by an arrangement between the parties portion had been surrendered or re-demised to the landlord, the Court of Appeal considered that there had been merely a "shrinkage" of the original letting, and that the remainder, of which the tenant remained in occupation, might be regarded as the entire holding: *Nagle v. Dalbraith*, 25 I. L. T. R. 33 (see remarks of FIRZGIBBON, L.J., on this case in *Moonry v. Willcocks*, 28 L. R. Ir. at p. 120).
- Subletting.** The proviso in Sec. 57 as to subletting with the consent of the landlord applies to a lease under this Section, so that if a lessee has sublet part only of the demised premises with the landlord's consent, he is entitled, on the expiration of his lease, to continue as tenant from year to year of the whole of the demised premises—his sub-tenants having the same right against him as he had against the head landlord. *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85.
- "Having regard to the way in which occupation is treated in this statute, it is plain there are two kinds of occupation referred to—one where a man is in by himself, and one where he is in partly by himself and partly by his sub-tenants. It appears to us that the construction of this Act is made harmonious and perfect by deciding that where a lessee has sublet part of his holding with the consent of his landlord, the sub-tenant's occupation is his occupation under the 21st Section, in which case he is made himself a tenant from year to year at the rent under the lease, his sub-tenants continuing his sub-tenants as before." *per* Sir E. SULLIVAN, C., *M'Carthy v. Swanton*, 14 L. R. Ir. at p. 371.
- A lessee who has sublet the whole of the demised premises, even with the landlord's consent, has no right under this Section: *M'Carthy v. Swanton* (*ubi supra*).
- Where a part has been sublet without the landlord's consent the lessee is also deprived of any rights under this Section as not being in *bona fide* occupation; unless the subletting is within one of the classes mentioned in the 7th Section of the Land Act, 1896, where the tenant is, notwithstanding the sub-letting, to be deemed to be in *bona fide* occupation; or unless the subletting is for the use of labourers employed on the holding within the provisions of Sec. 4 of the Land

Act, 1887. Before 1887 it was held that if the subletting was without the landlord's consent, this Section did not operate, irrespective of the extent of the holding sublet: *Meredith v. Hungerford*, 14 L. R. Ir. 438. Unless the part sublet was very insignificant: *Beamish v. Crowley*, 16 L. R. Ir. 279.

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In *Maconchy v. Robertson*, 18 L. R. I. 483, a lessee of 120 acres at £100 per annum had sublet a house and about half an Irish acre at £4 10s. per annum. No express consent was given by the landlord to the subletting. He admitted, however, in his evidence that he knew that the sub-tenant occupied the house, but stated that he did not know that he occupied it as tenant. Upon these facts the jury found that the landlord had consented to the subletting. It was held, however, by the Court of Appeal, affirming the decision of the Exchequer Division, that there was no evidence proper to be submitted to them of the landlord's consent, and verdict and judgment were entered for the plaintiff upon the ground that the lessee was not *bona fide* in occupation at the expiration of the lease. Lord ASHBURNE, C., in giving judgment, adopted the language of PALLIS, C.B., in the Court below, in the following words.—

Landlord's consent.

"Consent must mean something active, as distinguished from passive. It may, of course, be inferred from acts. I must treat this case as if it was necessary on the part of the defendant to show that there was an agreement by the landlord to the subletting:" (18 L. R. I., at p. 488). "In each case such as the present," says FRIZGIBSON, L.J., "the lessee has the burden thrown upon him of showing that he sublet the part of his holding not occupied by himself with the consent of his landlord. It is not at all necessary for the landlord to show that the subletting was against his will; nor is it enough for the tenant to show, in a case where the landlord's consent was immaterial, merely that he came to know of it afterwards. Proof of subsequent knowledge and acquiescence may be, in some cases, evidence of previous consent, but where the landlord could do nothing effective to prevent subletting, the mere fact that when he became aware of it he did nothing will not prove consent:" (18 L. R. Ir. at p. 490). The landlord's knowledge and acquiescence may, however, be evidence of his consent, where it was in his power to prevent the subletting: *Keating v. Bolton*, 22 L. R. Ir. 143. In that case, however, there was evidence that the landlord's agent had invited the tenants to apply to have a fair rent fixed; and this appears to have been, at least, one of the grounds of the decision. See remarks of FRIZGIBSON, L.J., in *Kennedy v. Essex*, 23 L. R. Ir., at 593.

Where the lease itself contains an express permission to sublet, it is not necessary to prove a distinct consent to each act of subletting: *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85.

If a landlord makes a lease of lands, partly in his own hands and partly in the hands of a tenant, the effect of this is to make the former tenant a sub-tenant of the lessee (see notes to Landlord and Tenant Act, 1860, Sec. 12, p. 38, *ante*). In such a case, as there is no subletting by the lessee but only the assignment of the reversion in the lands sublet to him, the case does not come within the proviso in Sec. 57, *post*, as to subletting with consent, and the lessee, not being in occupation of the entire holding, is not entitled to the benefit of this Section. See dictum of FRIZGIBSON, L.J., in *Flannery v. Nolan*, 20 L. R. Ir., at p. 540; adopted by the Land Commission, *Buchanan v. Cowell*, 26 I. L. T. R. 24.

Lease of the reversion.

But in such a case if the original sub-tenant dies, and some other person succeeds him, without being legally entitled to the tenancy, paying the same rent, but receiving receipts in his own name, this may be regarded as a new subletting by the middleman, and, if a sufficient time elapses to extinguish the old tenancy by

- Sect. 21.** force of the Statute of Limitation, the proviso as to consent may apply to the new letting: *Jackson v. M'Master*, 28 L. R. Ir. 176 (C.A.). Reported as *M'Master v. Betty*, 24 I. L. T. R. 36. See, however, remarks of WALKER, C., on this case: *Mulcaire v. Lane-Joynt*, 32 L. R. Ir., at p. 687.
- Separation of part of holding sublet from remainder. Sec. 7, Sub-sec. 3, of the Land Act, 1896, also, now provides that where part of the property held under one demise is sublet, and the property was let to the tenant subject to the tenancy of some other person in the part sublet, the Court may divide the property, and fix a rent in respect of the part not sublet. See that Section and notes thereto, *post*, p. 546.
- Landlord's consent when presumed in case of covenant against alienation. Sec. 11 of the Land Act, 1896, also provides that in the case of sublettings made in violation of 7 Geo. IV., c. 29, or of an agreement against subletting in a lease, the head landlord shall be deemed, in certain cases, to have given his consent to the subletting, though he has not expressly done so. But *quere* whether this applies as between the head landlord and the middleman. See notes to that Section, *post*, p. 551.
- Conditions of lease attach to statutory tenancy. See, further, as to subletting and *bona fide* occupation, *Dowman v. Catherwood*, 28 L. R. Ir. 572, notes to Sec. 57 of this Act, *post*, to Land Act, 1887, Sec. 4, and to Land Act, 1896, Sec. 7, *post*, pp. 402 b, and 543-6.
- (f) On the expiration of the lease, or upon application in the prescribed manner under Sec. 1 of the Land Act, 1887, the lessee becomes tenant from year to year, subject to the conditions of his lease, so far as the same are applicable to a tenancy from year to year. In *Bolton v. Barry*, 12 L. R. I. 158, one of the conditions of the lease was, that the lessee should deposit with the lessor the sum of £500, which was to be retained by him as security for the payment of the rent reserved until the termination of the lease, and then returned. It was held by the Common Pleas Division, upon a case stated (O'BRIEN, J., diss), that this was a condition applicable to the tenancy from year to year, and that the landlord was entitled to retain the money on the same conditions as he had held it under the lease. This case was affirmed on Appeal, but the decision of the Court of Appeal is not reported (see Murray and Dixon's Digest, col. 870). It was also followed by the Queen's Bench Division in a case under the 1st Section of the Land Act, 1887 *Wilson v. Smyth*, 23 I. L. T. R. 7.
- Where, however, a fine of one half-year's rent was paid on the execution of a lease, and there was a covenant to allow this sum in discharge of a particular gale of rent being the last under the lease, it was held (distinguishing *Bolton v. Barry*, 12 L. R. Ir. 158) that an assignee of the lease was entitled to the benefit of the covenant, even though he did not give up possession on the expiration of the lease, but continued on as tenant under the terms of this Section *Borrowes v. Delaney*, 24 L. R. Ir. 503.
- Except covenants against alienation. A covenant against alienation in a lease does not, however, attach to the yearly tenancy created on its expiration under this Section being inconsistent with the right of sale conferred by Sec. 1 of this Act *Wright & Tittle's Contract*, 29 L. R. Ir. 111.
- Reversionary leases. (g) The term "reversionary lease" in the proviso means a lease which is to commence, not merely *in futuro*, but upon the determination of a prior subsisting lease. It does not apply to a lease which commences *in presenti*, subject to existing leases, and by virtue of which the lessee becomes landlord to the existing lessees, during the continuance of the leases of the latter: *M'Keoghe v. Hutchinson*, 18 I. L. T. R. 70, MacD. 513. As to the distinction between a reversionary lease and a lease of the reversion, see notes to

Sec. 12 of Landlord and Tenant Act, 1860, *ante*, p. 38, and Furlong's Landlord and Tenant, Vol. I., p. 19 (1st ed.) Sect. 21 •

Where the landlord is himself a middleman, *semble*, a reversionary lease by the superior landlord will be within this proviso; and the lessee in reversion will be entitled to recover possession both from the middleman and his tenant, even though the latter may be in *bona fide* occupation at the expiration of the lease. *Hart v. Kirk*, 12 L. R. Ir. 364, MacD. 268.

A "reversionary lease of the holding" need not necessarily be a lease of the whole holding. No statutory tenancy arises under this Section, on the determination of a lease, where a reversionary lease of any part of the holding has been *bona fide* made before the passing of the Act either to a third party (*Beaman v. Crowley*, 16 L. R. Ir. 279, 19 I. L. T. R. 45) or to the occupying tenant (*Sproule v. Ramsay*, 25 I. L. T. R. 4 (C. A.); *Brooke v. Dewhurst*, 2 Greer, 76.

(h) If the landlord applies to resume possession of a holding on the expiration of a lease, upon the ground that he requires it as a residence for himself or for some member of his family, he must show that his primary and real object in doing so is to provide a residence, and to do so directly and immediately. *Shine v. Lynch*, 18 I. L. T. R. 15. "What the statute contemplates is something direct and immediate, not a floating future intention, to be carried out as circumstances permit" (*per O'HAGAR, J., ibid.*). Thus, a landlord's intention to make provision for his son, and, *after some years*, to build a residence for him on the holding, is not sufficient to entitle him to the resumption of the holding on the expiration of the lease. *Lynch v. Callaghan*, MacD. 336. See, also, *Silk v. Newell*, 21 I. L. T. R. 48 (Sub-Com.).

The right of resumption conferred by this Section is a privilege given to the landlord personally. *Per* Lord ASHBOURNE, C., *Martin v. Martin* [1898], 1 I. R., at p. 119; and in this respect is to be contrasted with the right of resumption for certain specified purposes conferred by Sec. 5 of this Act, "none of which are purely personal to the landlord for the time being, and all of which have reference to the improvement of the inheritance, or are of public utility" (*Ibid.*, at p. 120). The right conferred by this Section may be exercised by a landlord who is merely a tenant for life, though he cannot fix a charge upon the inheritance in respect of the compensation which he may have to pay as the price of resuming possession, nor is he entitled, in the absence of any arrangement with the remainderman, to take for his own exclusive benefit the interest in the tenancy which is put an end to. *Martin v. Martin* [1898], 1 I. R. 112; 31 I. L. T. R. 105 (C.A.).

A landlord desirous of resuming possession under this Section must serve an originating notice upon the tenant (Form No. 59) either within the last three months of the term, or within three months after the termination of the lease. Rules of Jan., 1897, No. 161, *post*, 752. May be exercised by a tenant for life.
Procedure on resumption.

(i) A landlord may resume for the purpose of occupying the holding as a residence, or as a home farm in connection with his residence. A "home farm" is described by MORRIS, C.J., in *Gamble v. Simpson*, 17 I. L. T. R. 44, MacD. 244, as being "a farm occupied for the convenience, appurtenant to, and in connection with, and for the advantage of a place of residence." This definition was approved of, but stated not to be exhaustive, by Lord ASHBOURNE, C., in *Hamilton v. Sharpe*, 29 L. R. Ir., at p. 235; and the definition of Mr. Sub-Commissioner REARDON in *Musgrave v. Hanly*, MacD. 333, was quoted with approval by the same learned judge, as follows—"A home farm is one used in connection with the landlord's residence, principally for the convenience or supply of the residence and not for

Sect 21. the purposes of profit, though, of course, surplus produce may be sold or otherwise disposed of in the usual way."

The case of *Hamilton v. Sharpe*, 20 L. R. Ir. 224, may now be considered the leading case on the subject of home farms. There the landlord, who was owner of 100 acres of land, had let 61 acres for a term of 21 years, and the remainder, with the exception of the dwelling house and four adjacent acres, on tenancies from year to year. Having got up possession of the portion held from year to year before the passing of the Land Act, 1881, he, on the expiration of the lease, served notice of his intention to resume possession of the portion held under the lease as a home farm. Upon this application the Land Commission stated a case for the opinion of the Court of Appeal, finding themselves as matters of fact—(1) That the landlord was desirous to resume the holding for the *bona fide* purpose of occupying the same, (2) that he *bona fide* intended to use the holding, when resumed, as a farm or portion of a farm, and (3) that such farm would, from its situation, be a farm in connection with his residence. Upon these facts the Court of Appeal held that the holding was a "home farm" which the landlord was entitled to resume under this Section, prefacing their order with a declaration that they understood from the case stated by the Land Commission "that the landlord desired to resume the holding in question for the *bona fide* purpose of keeping the same as a farm, to be used for the convenience or advantage of his residence, and in connection therewith, and not merely as an ordinary farm, to be used for the purpose of profit."

It appears from this decision that even though the landlord's intention to resume possession be with the purpose of using the farm *mainly* for purposes of profit, it may still be a "home farm," provided it appears that he does not desire to resume it *merely* for that purpose.

A home farm is not necessarily connected with a large estate; the owner may have no other farm, either let or not let to tenants, except it. Judgment of FITZGIBBON, L.J., *Hamilton v. Sharpe*, 20 L. R. I., at p. 237.

Nor again is it necessary, in order that a landlord should be entitled to resume possession, that the farm should at any previous time have been a "home farm." "As to the argument," says BARRY, L.J., "that, to comply with the requirement of Section 21, the farm must, at some previous time, and particularly at the time of the letting, have been a home farm, I think that would make nonsense of the whole Section. The case of a home farm differs in that respect from demesne lands and townparks, as they are spoken of in the Act in reference to their condition at the time of the letting whereas Section 21 contemplates a condition of things, as regards a home farm, that may never have existed before:" *Hamilton v. Sharpe*, 20 L. R. Ir., at p. 238.

In *Gamble v. Simpson*, 17 I. L. T. R. 44, MacD. 244, an agricultural tenant holding 34 acres of land with a dwellinghouse thereon, under a fee-farm grant, demised a portion of the land by a sub-lease for years. The sub-lessee, on whose holding there was no dwellinghouse, resided on another farm held under a different landlord, while the sub-lessor continued to occupy the dwellinghouse under the fee-farm grant, and still cultivated a portion of the farm. It was held by the Common Pleas Division, on a case stated by PALLES, C.B., that the portion so sublet, and not used in connection with the dwellinghouse did not constitute a "home farm" within the Act.

As to home farms generally, see, further, *Hill v. Mullar*, 19 I. L. T. R. 51, *Westropp v. O'Grady*, 18 I. L. T. R. 32; *Fitzgerald v. Costelloe*, *ib.* 33; *Stothers-*

v. Nicholson, 16 I. L. T. R. 35, MacD. 246, *Earl v. Neill*, R. & D. 244, MacD. 316. **Sections 21-22.**
and notes to Land Act, 1896, Sec. 5, *post*, pp 526-577

(k) "The terms provided by the 5th Section" as to resumption, refer to the tenant's right to compensation in such cases. This does not include "compensation for disturbance" *M'Farland v. Carre*, 17 I. L. T. & S. J. 60, MacD. 338. The "true test of the compensation to be given to the tenant," according to O'Hagan, J., is "what would be got for the place if sold in the open market at a fair rent" *M'Farland v. Carre*, *ubi supra*. See further as to the right of resumption and compensation therefor, notes to Sec 5 and Sec. 8 (3), Rules of Jan., 1897, No. 161, and Form No. 59.

(l) The concluding portion of the Section giving the Court jurisdiction to set aside leases has been repealed by Stat. Law Rev. Act, 1894. In *Sweeney v. Lord Ashdown*, 14 L. R. Ir. 123, it was held by the Court of Appeal that the jurisdiction under the Section to declare a lease void was not a discretionary authority, but that its exercise was imperative in cases falling within the class described by the Section. In *Sullivan v. Bowen*, 14 L. R. Ir. 112, it was held that a lease taken after a decree for possession on the expiration of a notice to quit could not be set aside, as the status of the tenant, as tenant from year to year, had then ceased to exist. See also *Power v. Fitzgerald*, 17 I. L. T. R. 39 (L. C.).

Extent of Power to Contract out of Act.

22. A tenant whose holding or the aggregate of whose holdings (a) is valued under the Act relating to the valuation of rateable property in Ireland at an annual value of not less than one hundred and fifty pounds, shall be entitled by writing under his hand to contract himself out of any of the provisions of this Act or of the Landlord and Tenant (Ireland) Act, 1870. (b)

Where the tenancy in a holding subject to the Ulster tenant-right custom or to any corresponding usage, has been purchased by the landlord from the tenant by voluntary purchase before the passing of this Act, then, if at the date of the passing of this Act the owner of any such holding is in actual occupation thereof, it shall be lawful, in the case of the first tenancy created in the holding after the passing of this Act, for the parties to the contract creating the same, by writing under their hands, to provide that such tenancy shall be exempt from the provisions of Section one of this Act.

Save as in this Section mentioned any provision contained in any lease or contract of tenancy or other contract made after the passing of this Act, which provision is inconsistent with any of the foregoing provisions of this Act (c) or with any of the provisions of the Landlord and Tenant (Ireland) Act, 1870, (d) shall be void.

(a) A tenant, holding farms under different landlords, may apparently, if the net annual value of the aggregate of them amounts to £150, make a valid contract inconsistent with the terms of the Act.

The term "holdings" here includes all agricultural and pastoral holdings, Holdings

- Sect. 22.** whether they are excluded from the Land Acts or not. See judgment of HOLMES and GIBSON, J.J., on the construction of similar words in Land Act, 1887, Sec 30 (3) *Bank of Ireland v. Watkins*, 26 L. R. Ir. 258. 24 I. L. T. R. 81.
- Contracts "inconsistent" with the Act. (b) If the tenant's valuation is over £150, and the parties desire to exclude the provisions of the Acts, it is not necessary that they should state, in so many words, that such is their intention. When the contract they make is inconsistent with the terms of the Acts, it will be held to exclude those provisions with which it is inconsistent. Thus, where the tenant of a holding valued at over £150, in which there was a tenancy subsisting on the 22nd August, 1881, entered into an agreement for a lease in April, 1882, it was held that his covenant to pay the rent reserved during the term was a covenant which deprived him of the right to have a fair rent fixed, although, being a "present tenant" within the definition in Sec. 57, he was *prima facie* entitled to apply under Sec 8 *Ronaldson v. La Touche*, 24 L. R. Ir. 344, 23 I. L. T. R. 21 (C. A.). See, also, *Howell v. Briscoe*, 20 I. L. T. R. 15, 21 I. L. T. R. 73, and *Burland v. Clayton*, 32 I. L. T. R. 13.
- Covenant against alienation. A covenant against alienation in such a case is also valid *Ronaldson v. La Touche*, 24 L. R. Ir. 344, 23 I. L. T. R. 21 (C. A.).
- A contract not to take advantage of future legislation has been held to be valid where the tenant was within the exemption from disability to contract under this Section: *Ferguson v. Bradstreet*, 22 L. R. Ir. 303 (C. A.) But a clause in an agreement by which a tenant "admits that the letting hereby made to him is not affected by the Land Acts of 1870 and 1881, or either of them" cannot be so construed. It has been held not to interfere with the right of the tenant to take advantage of the Act of 1896 *Mitchell v. Daly*, 1 Greer 186.
- Leases made between 22nd August, 1881, and 1st January, 1883. (c) A present tenant, whose valuation is under £150, cannot contract himself out of the right to have a fair rent fixed, except by taking a judicial lease, or converting his tenancy into a fixed tenancy. See Secs. 10, 11, and 12, *ante*. And it would appear that a lessee under a lease made between 22nd August, 1881, and 1st January, 1883 (if there was a tenancy subsisting in the holding at the passing of the Act), similarly cannot deprive himself of his right, as a present tenant, to have a fair rent fixed *Howell v. Briscoe*, 20 I. L. T. R. 15 (L. C.) (reversed by the Court of Appeal, but not on this point. 21 I. L. T. R. 73).
- Surrender of tenancy. This Section does not, however, interfere with the doctrine of implied surrender by the acceptance of a new tenancy, without any break in the possession of the tenant. *Per* WALKER, C., *Conroy v. Drogheda* [1894], 2 I. R., at p. 596. And the acceptance of a lease by a yearly tenant after 1883 may, therefore, deprive him of the right to have a fair rent fixed, even though the valuation is under £150; *Butler v. O'Mahony*, 32 I. L. T. R. 93; 1 Greer 22. "There is nothing in the Act to prevent the *bona fide* surrender of an old and the creation of a new tenancy." *per* NAISH, L.J., *Torrrens v. Cooke*, 22 L. R. Ir., at p. 246. In that case it was held that a lessee who had in 1886 surrendered his lease and accepted a tenancy from year to year at a reduced rent could not, after the passing of the Land Act, 1887, take advantage of the first Section of the latter Act *Torrrens v. Cooke*, 22 L. R. Ir. 239 (C. A.). A mere notice to surrender, however, not acted upon, will not change the status of the tenant *M'Donnell v. Blake*, 28 L. R. Ir. 295 (C. A.). 24 I. L. T. R. 48 (L. C.).
- Proviso determining tenancy on bankruptcy. A proviso determining a future tenancy on the bankruptcy of the tenant has been held to be not "inconsistent with any of the foregoing provisions of this Act," and therefore valid, even where the tenant's valuation was under £150: *McDonohy v. Douglas*, 23 I. L. T. R. 12 (EX. DIV.).

(d) See Landlord and Tenant Act, 1870, Secs. 3, 4, and 12, the effect of which was to render void contracts not to claim compensation where the tenant's valuation was less than £50. There was no general provision in that Act to prevent a tenant contracting himself out of its provisions. In *Cagnry v. Roche*, 30 L. R. Ir. 108, it was held by the Queen's Bench Division that, notwithstanding the general terms of the last clause of this Section, a tenant who became an occupier under a contract of tenancy created since the passing of this Act might make a valid contract to pay the whole of the Grand Jury Cess and not to make any claim for a deduction from his rent under the provisions of the 65th Section of the Act of 1870, even though the aggregate value of his holdings was under £150—O'BRYEN, J., in giving judgment, stating that "all the purpose of the 22nd Section of the Land Act of 1881, was to enlarge the amount of valuation mentioned in the 12th Section of the Act of 1870 from £50 to £150"

Secs. 22 23.
Contracts inconsistent with Land Act, 1870.

As to payment of Grand Jury Cess.

Limited Owner.

23. A landlord being a limited owner, as defined by the twenty-sixth Section of the Landlord and Tenant (Ireland) Act, 1870, may exercise under the foregoing provisions of this Act any powers which he might exercise if he were an absolute owner, with this exception, that except in the case of a body corporate, commissioners, or other like body, a limited owner shall not grant a judicial lease or create a fixed tenancy without the sanction of the Court. Any fines or principal moneys arising from the exercise of such powers shall be dealt with in manner provided by the Lands Clauses Consolidation Acts hereafter in this Act defined with respect to the purchase money or compensation coming to parties having limited interests.

Powers of limited owner

In the case of any holding subject to mortgage the prescribed notice of any agreement between landlord and tenant for granting a judicial lease or creating a fixed tenancy of such holding under the foregoing provisions of this Act, shall be served upon the mortgagee, and the mortgagee shall be entitled to intervene in such proceedings in the prescribed manner and subject to the prescribed conditions.

A "limited owner" under Sec. 26 of the Landlord and Tenant Act, 1870, includes a tenant for life, any body corporate, any trustees for charities, and any trustees or commissioners for ecclesiastical or public purposes. See also Land Purchase Act, 1891, Sec. 14, *post*, pp. 469-470.

As to powers of leasing by limited owners, see Sec. 10, *ante*, and Secs. 27, 28, and 29 of the Land Act, 1870, and Settled Land Act, 1882, Secs. 6 and 65.

As to the powers of limited owners under the Labourers Acts, see 48 and 49 Vic., c. 77, Sec. 2.

This Section, it was held, did not render an order fixing a fair rent, as against a tenant for life, binding upon a remainderman: *Peyton v. Gilmartin*, 28 L. R. Ir. 378 (see especially judgment of HOLMES, J., at p. 394). But see now Land Act of 1896, Sec. 10, *post*, p. 518.

Sect. 24.

PART V

ACQUISITION OF LAND BY TENANTS, RECLAMATION OF LAND, AND
EMIGRATION.*Acquisition of Land by Tenants.*

Advances to
tenants by
Commission for
purchase of
holdings.

24. (1.) The Land Commission, out of moneys in their hands, may, if satisfied with the security, (a) advance sums to tenants, for the purpose of enabling them to purchase their holdings, *as follows, that is to say—*

a. *Where a sale of a holding is about to be made by a landlord (b) to a tenant in consideration of the payment of a principal sum,*

The Land Commission may advance to the tenant for the purposes of such purchase, any sum not exceeding three-fourths of the said principal sum (c).

b. *Where a sale of a holding is about to be made by a landlord to a tenant in consideration of the tenant paying a fine and engaging to pay to the landlord a fee farm rent,*

The Land Commission may advance to the tenant for the purposes of such purchase, any sum not exceeding one half of the fine payable to the landlord.

*Provided that no advance shall be made by the Land Commission under this Section on a holding subject to a fee-farm rent, where the amount of such fee-farm rent exceeds seventy-five per cent. of the rent which, in the opinion of the Land Commission, would be a fair rent for the holding.**

(2.) Sales by landlords to tenants may on the application of either landlord or tenant be negotiated and completed through the medium of the Land Commission at a fixed price or percentage, according to a scale to be settled from time to time by the Land Commission with the consent of the Treasury.

(3.) Where an estate is subject to incumbrances, or any doubt arises as to the title, the Land Commission, if satisfied with the indemnity or terms given by the landlord, may themselves indemnify the tenant against any such incumbrances, or any right, title, or interest adverse to or in derogation of the title of the landlord, and any such indemnity of the Land Commission shall be a charge upon the Consolidated Fund or the growing produce thereof.

(a) Where the tenant had not sufficient capital or stock to work a farm, and had let the whole of it for grazing and conacre, the Land Commission refused to make an advance. *O'Kelly's Estate*, 23 I. L. T. R. 86, MacC. 13.

* The words in italics are repealed by Land Act, 1896, 2nd schedule.

(b) Mortgagees not in possession cannot sell directly to the tenants under the **Sects. 24-26.** Landed Purchase Acts. But they may sell to the Land Commission, who can Right of mort-
gagees to sell. then resell to the tenants under Sec. 26, *post*, and the 5th Sec. of the Land Purchase Act, 1885. See *Redington's Estate*, 23 L. R. Ir. 503. Mortgagees in possession, with power of sale, may sell directly to the tenants. Land Act, 1896, Sec. 42, *post*, p. 567.

(c) Now, where there is a guarantee deposit, the Land Commission may advance the whole of the principal sum. See Sec. 2 of the Purchase Act, 1885, *post*, p. 866. The guarantee deposit may even be dispensed with. Land Act, 1896, Sec. 29, *post*, p. 566.

25. A landlord of a holding, being a limited owner as defined by Power to limited
owner to sell
holding and leave
one-fourth of
price of holding
on mortgage the twenty-sixth Section of the Landlord and Tenant (Ireland) Act, 1870, (a) may by agreement, subject to the provisions of the Lands Clauses Consolidation Acts (except so much of the same as relates to the purchase of lands otherwise than by agreement), sell and convey such holding to the tenant, and may exercise to the same extent as if he were an absolute owner the power of permitting any sum not exceeding one-fourth in amount of the price which the tenant may pay as purchase money, to remain as a charge upon such holding secured by a mortgage, and in case of any advance being made by the Land Commission under the provisions of this Act to the tenant for the purchase of such holding any such mortgage shall be subject to any charge in favour of the Land Commission for securing such advance; and any such mortgage and the principal moneys secured thereby shall be deemed to be part of the purchase money or compensation payable in respect of the purchase of such holding, and shall be dealt with accordingly in manner provided by the Lands Clauses Consolidation Acts, (b) and in the construction of the said Acts for the purposes of this Section the expression "the special Act" shall be construed to mean this Act, and the expression "the promoters of the undertaking" shall be construed to mean the tenant.

(a) See that Section, *ante*, p. 149. And see also Land Purchase Act, 1891, Sec. 14, *post*, p. 469

(b) See 8 & 9 Vic., c. 18, ss. 7, 9, 70, and 78. But now, under the provisions of the Settled Land Acts and the Land Purchase Acts, a limited owner has nearly the same powers of sale as an absolute owner. See notes to Land Purchase Act, 1891, Sec. 14, *post*, p. 470.

26. (1.) Any estate (a) may be purchased by the Land Com- Purchase of
estates by Com-
mission and
re sale in parcels
to tenants. mission for the purpose of reselling to the tenants of the lands comprised in such estate their respective holdings, if the Land Commission are satisfied with the expediency of the purchase, and

Sect. 26. are further satisfied that a competent number of the tenants are able and willing to purchase their holdings from the Land Commission. (b)

(2) The sale by the Land Commission of a holding to the tenant thereof may be made either in consideration of a principal sum being paid as the whole price (whether paid immediately or by means of such advance as in this part of this Act mentioned) or in consideration of a fine and of a fee-farm rent, with this qualification, that the amount of the fee-farm rent shall not exceed seventy-five per cent. of the rent which in the opinion of the Land Commission would be a fair rent for the holding.

(3.) For the purposes of this Section a competent number of tenants means a body of tenants who are not less in number than three-fourths of the whole number of tenants on the estate, and who pay in rent not less than two-thirds of the whole rent of the estate, and of whom a number, comprising not less than one-half of the whole number of tenants on the estate, are able and willing to pay the whole price of their holdings, either immediately or by means of such advances as in this part of this Act mentioned.

The condition as to three-fourths of the number of tenants may be relaxed on special grounds with the consent of the Lords Commissioners of the Treasury, but so that in no case less than half the number of tenants shall be able and willing to purchase.

(4.) *The Land Commission may advance to a tenant proposing to pay the whole price of his holding any sum not exceeding seventy-five per cent. of the said price, and to a tenant purchasing subject to a fee-farm rent a sum not exceeding one-half of the amount of the fine payable by the tenant.**

(5.) In sales by the Land Commission to tenants in pursuance of this Section, a separate charge shall not be made for any expenses relating to the purchase, sale, or conveyance of the property, but such expenses shall be included in the price or fine payable by the purchaser.

The Land Commission may, if they are satisfied with the indemnity or terms offered or given by the vendor, purchase for the purposes of this Section an estate subject to incumbrances, or an estate subject to any right, title, or interest adverse to or in derogation of the title of the vendor, and the Land Commission may indemnify any person to whom they may sell any holding

* Sub-sec. 4 is repealed by Land Act, 1896, 2nd schedule.

under this Section against any such incumbrances or the enforcement of any such right, title, or interest, and such indemnity shall be a charge on the Consolidated Fund or the growing produce thereof. Sects. 26-28

(a) For definition of "an estate," see Sec. 57, *post*, p. 342.

(b) See Sec. 34, Sub-sec. 1, and Sec. 5 of the Purchase Act, 1885, *post*, p. 373.

27. Where the Land Commission have purchased an estate, they may sell any parcels which they do not sell to the tenants thereof in such manner as they think fit, (a) in consideration either of a principal sum as the whole price, or of a fine and a fee-farm rent, or partly in one way and partly in the other. Sale to public of parcels not purchased by tenants.

The Land Commission may advance to any purchaser of a parcel under this Section, on the security of such parcel, one-half of the principal sum paid as the whole price or of the fine.

The provisions of this part of this Act with respect to the charges for expenses and to the mode in which sales are to be made and to the indemnity which the Land Commission may give to the purchaser shall, except so far as the Land Commission otherwise direct, apply to the sale of a parcel in pursuance of this Section in like manner as if the purchaser had been the tenant of the holding at the time of his making the purchase.

(a) See also Sec. 7 of the Purchase Act, 1885.

28. (1.) Any advance made by the Land Commission for the purpose of supplying money for the purchase of a holding from a landlord or of a holding or parcel from the Land Commission shall be repaid by an annuity in favour of the Land Commission for thirty-five years (a) of five (a) pounds for every hundred pounds of such advance, and so in proportion for any less sum. Terms of repayment of advances made by Commission.

(2.) Every such advance shall be secured to the Commission either in such manner (b) as may be agreed on between the Commission and the person to whom the advance is made, and as the Commission think sufficient, or in manner provided by Part III. of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Landlord and Tenant (Ireland) Act, 1872, in like manner in all respects as if the same were such an advance as is mentioned in those Acts, and as if the Land Commission were the Board therein mentioned, and as if the person receiving the advance were a tenant or purchaser therein mentioned.* 33 & 34 Vic., c. 46.
33 & 34 Vic., c. 82

(3.) Any person liable to pay an annuity in this Section mentioned may redeem the same, or any part thereof, or may pre-pay any

* Sub-secs. 1 & 2 of Sec. 28 are repealed by Land Act, 1896, 2nd schedule.

Sects 28-29 instalments thereof in such manner and on such terms as is provided by Section fifty-one of the Landlord and Tenant (Ireland) Act, 1870, (c) or in such other manner, and on such other terms, as the Treasury may from time to time approve, having regard to the due repayment of the loan and the protection of the Land Commission against loss by the said loan.

(a) But see now Sec. 4 of the Land Purchase Act, 1885, *post*, by which advances made after that Act came into force are repayable by an annuity for 49 years of £4 for every £100 advanced, and Sec. 25 of Land Act, 1896, by which further reductions are made at the end of the 1st, 2nd, and 3rd decades, and the period of repayment is extended. And see, also, Sec. 27 of the Land Act, 1887, *post*, by which, as regards advances under this Act and the other Acts there mentioned, from the first gale day after the passing of the Land Act of 1887, the annuity of £5 is to be reduced to £4, and is to be payable for such a term, not exceeding 49 years, as the Commission by order shall declare, with interest at 3½th per cent. on so much of the advance as is not due on the said gale day. But where there are arrears of the annuity unpaid, Sec. 27 of the Act of 1887 is not to apply unless upon the order of the Treasury therein mentioned being made.

(b) Now by Sec. 18 of the Land Act of 1887, *post*, every advance is to be secured by the charging order therein mentioned.

(c) See that Section, *ante*, p. 20ⁿ, and as to redemption of annuities payable on advances made under this Act after the date of the Purchase Act, 1885 (14th August, 1885), see that Act, Sec. 4 (b), *post*.

Provision as to purchase and sales by Land Commission.

29. (1) The Land Commission shall not purchase a leasehold estate under this part of this Act, unless the lease is for lives or years renewable for ever, or is for a term of years of which not less than sixty are unexpired at the time when the sale is made, or unless the Land Commission have purchased some greater right or interest in the estate in which the leasehold would be merged :

Provided that—

- a. This part of this Act shall not empower the owner of a leasehold holding under a lease containing a prohibition against alienation to sell such leasehold unless such prohibition is determined or is waived ; and
- b. Nothing in this Section shall prevent the purchase of an estate by reason only of a small part thereof being leasehold.

(2.) Any body corporate, public company, trustees for charities, commissioners or trustees for collegiate or other public purposes, (a) or any person having a limited interest in an estate or any right or interest therein, may sell the same to the Land Commission, and for the purpose of the purchase by the Land Commission of any estate or any right or interest therein the Lands Clauses Consolidation

Acts (except so much as relates to the purchase of land otherwise than by agreement) shall be incorporated with this Act, and in construing those Acts for the purposes of this Section the "special Act" shall be construed to mean this Act, and "the promoters of the undertaking" shall be construed to mean the Land Commission, and "land" shall be construed to include any right or interest in land. Sects. 29-30.

(3.) For the purpose of this Act "the Lands Clauses Consolidation Act" means the Lands Clauses Consolidation Act, 1845, as amended by the Lands Clauses Consolidation Acts Amendment Act, 1860. 8 & 9 Vic., c. 18
23 & 24 Vic.,
c. 106.

(4.) Any sale of a holding to a tenant by a landlord, also any sale to a tenant of a holding by the Land Commission in pursuance of this part of this Act, may be made either in pursuance of Part II. of the Landlord and Tenant (Ireland) Act, 1870, or in such manner as the Land Commission may think expedient; and for the purpose of the application of the said Part II., "price" in Section thirty-two of the Landlord and Tenant (Ireland) Act, 1870, shall be deemed to include a fine and a fee-farm rent as well as a principal sum, and the enactments relating to the distribution of the price shall apply with the necessary modifications.

(a) See as to the powers of such bodies generally to sell under the Acts, Land Purchase Act, 1891, Sec. 14, and notes thereto, *post*, p. 470.

30. (1.) As between the Land Commission and the proprietor for the time being of any holding for the purchase of which the Land Commission have advanced money in pursuance of this part of this Act, the following conditions (a) shall be imposed so long as such holding is subject to any charge in respect of an annuity in favour of the Land Commission; that is to say, Conditions annexed to holdings whilst subject to advances

- a. The holding shall not be sub-divided or let by such proprietor without the consent of the Land Commission (b) until the whole charge due to the Land Commission has been repaid:
- b. Where the proprietor sub-divides or lets any holding or part of a holding in contravention of the foregoing provisions of this Section, the Land Commission may cause the holding to be sold: (d)
- c. Where the title to the holding is divested from the proprietor by bankruptcy, the Land Commission may cause the holding to be sold:

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d. Where, on the decease of the proprietor, the holding would by reason of any devise, bequest, intestacy, or otherwise, become sub-divided the Land Commission may require the holding to be sold (*c*) within twelve months after the death of the proprietor to some one person, and if default is made in selling the same, the Land Commission may cause the same to be sold.

(2.) The Land Commission may cause any holding which under this Section they can cause to be sold, or any part of such holding, to be sold by public auction or private contract, (*c*) and subject to any conditions of sale they may think expedient, and after such notice of the time, place, terms, and conditions of such sale, as they think just and expedient; and the Land Commission may convey such holding to the purchaser in like manner in all respects as if the holding had been vested in the Land Commission.

(3.) The Land Commission shall apply the proceeds derived from such sale in payment, in the first instance, of all moneys due to them in respect of the holding, and in redemption *on the terms specified in Section fifty-one of the Landlord and Tenant (Ireland) Act, 1870,** of any annuity charged on the said holding (*f*), in favour of the Commission, or of so much thereof as remains unpaid, and of all expenses incurred by the Land Commission in relation to such sale or otherwise with respect to the holding, *and shall pay the balance to the persons appearing to the Land Commission to be for the time being entitled to receive the same.** (*g*)

Provided, that in respect of any holding which is subject to any charge in respect of an annuity in favour of the Board of Works, created in pursuance of the Landlord and Tenant (Ireland) Act, 1870, the said Board, may, if they shall see fit, at any time during the continuance of such charge, upon the application of the person for the time being liable to pay the same, declare such holding to be subject to the conditions imposed by this Act on a holding subject to any charge in respect of an annuity in favour of the Land Commission; and thenceforth so much of the forty-fourth and forty-fifth Sections of the said Landlord and Tenant (Ireland) Act, 1870, as prohibits, without the consent of the Board, the alienation, assignment, sub-division, or sub-letting of a holding charged as in the said Section mentioned, and declares that in the event of such prohibition being contravened the holding shall be

* The words in italics are repealed by Land Act, 1896, 2nd schedule.

forfeited to the Board, and also so much of Section two of the Landlord and Tenant (Ireland) Act, 1872, as relates to the sale of holdings in lieu of forfeiture, shall, as to the holding in respect of which such a declaration has been made, be repealed, and the conditions imposed by this Act on a holding subject to any charge in respect of an annuity in favour of the Land Commission shall apply to the holding in respect whereof the said declaration has been made in the same manner as if the said conditions had been made applicable to the said last-mentioned holding by the said Acts of one thousand eight hundred and seventy, and one thousand eight hundred and seventy-two, and the said Board had thereby been authorized to enforce the said conditions.

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(a) These are the conditions which apply to holdings sold under any of the Land Purchase Acts passed since 1881, so long as any portion of the money advanced by the Land Commission remains unpaid. The conditions under the Land Act, 1870, were more stringent. See Sec. 44 of that Act, p. 196, *ante*.

Conditions to which holdings purchased under the Land Purchase Acts are liable.

It will be observed that there is no restriction placed upon the alienation of holdings by the present Section as there was by the 44th Section of the Act of 1870. Nor, apparently, is there anything to prevent the mortgaging of a holding subject to advances, provided it is done by assignment and not by sub-demise, and that the whole holding is included, otherwise the conditions of Sub-sec. (1) *a* would be violated. Even under the more stringent conditions of the Act of 1870, it was laid down that a rent-charge might be granted issuing out of the lands, or an equitable charge created for a gross sum. *per* MAY, C.J., *Flood's Estate*, 7 L. R. Ir., at p. 552. And it was held by the Court of Appeal that the registration of a judgment mortgage created a valid charge, and that the judgment mortgagee might proceed to a sale without the consent of the Commissioners of Public Works *Flood's Estate*, 7 L. R. Ir. 545. Apparently, therefore, any holding subject to the conditions mentioned in this Section may be dealt with in the same way.

Alienation not prohibited.

Mortgaging

Equitable charge

Judgment mortgage

Under the Land Purchase Act, 1891, Part II., the sale of a small holding in a congested districts county purchased by means of an advance under that Act is prohibited, except to the occupier of a holding in the neighbourhood or to the Land Commission. See Sec. 38 (3) of that Act, *post*, p. 49).

Holdings in congested Districts

(b) "Applications to the Land Commission for their consent to the sub-division of a holding purchased under the Land Purchase Acts, being of an administrative and not of a judicial character, should be made by letter addressed to the Secretary and not by motion in Court: *In the matter of W. Creagh Hickie*, 26 I. L. T. R. 145 (L. C.)."

Consent of Land Commission to sub-division, how obtained.

The Land Commission may now, on the sub-division of a holding, so purchased, apportion the annuity, and make an order discharging part of the holding from any further liability to pay same. (Land Act, 1896, Sec. 38 (3)). Before the Act of 1896 passed, they had no power to do so: *In the matter of Creagh Hickie*, 26 I. L. T. R. 145.

Apportionment of annuity upon sub-division.

Where a part of the holding has been sublet, previous to the advance being made, the Land Commission may now impose terms as to the part sublet. See Land Purchase Act, 1888, sec. 4, *post*, p. 452.

Terms as to subletting.

The Land Commission may also, in certain cases, determine disputes between

Sects. 30-31. tenants who have purchased their holdings. See Land Purchase Act, 1891, Sec. 31, *post*, p 484.

(c) The fact that more than twelve months has elapsed since the death of the proprietor of a holding, which has thereby become sub-divided, does not prevent the Land Commission requiring it to be sold, under this Sub-section. *In re Petticrew* [1901], 1 I. R. 163.

Devolution upon death, of holdings purchased by tenants

If the "decease of the proprietor" takes place after 1st January, 1892, and the land is registered under the Local Registration of Title Act, 1891, the land, even though freehold, descends to his personal representatives, and the beneficial interest therein in case of an intestacy devolves upon his next-of-kin. See Secs. 84 and 85 of that Act, *App., post*.

Power of Land Commission to sell holdings.

(d) The Land Commission may also cause a holding to be sold, as for a breach of condition under this Section, if it is in a congested district and has been sold to some person other than the occupier of a holding in the neighbourhood (Land Purchase Act, 1891, Sec. 37 (3), *post*). They may also cause a holding in a congested district to be sold, if more than one house upon it is used as a dwelling-house without permission (Land Purchase Act, 1891, Sec. 38, *post*).

(e) Where sales take place under this Section, the holding may now be sold in lots. (Land Act, 1896, Sec. 38 (1)).

Obtaining possession in case of sale.

The Land Commission, when entitled to sell, can now get an order before selling to put them into possession of the holding (Land Purchase Act, 1891, Sec. 25, *post*). Previously to that Act, the practice was to sell without having possession and after the sale to issue a writ of possession to the purchaser. This course sometimes caused difficulties. See *Irish Land Commission v. Maquay*, 28 L. R. Ir. 342; *MacC. L. C. 71*.

Sale of a holding subject to the annuity.

(f) A sale of a holding may now be made subject to the future payment of the annuity; and, in that case, no part of the proceeds of the sale is to be applied in redemption of the annuity (Land Purchase Act, 1885, Sec. 15, *post*).

(g) The balance of the purchase money, after payment of expenses and amount due to the Land Commission, is now to be distributed "as if it were the purchase money of a holding sold by a landlord to a tenant" (Land Act, 1896, Sec. 38 (4)).

Reclamation of land.

31. (1.) The Treasury may authorize the Board of Works to advance from time to time out of any moneys in their hands to companies, if they are satisfied with the security, such sums as the Treasury think expedient for the purpose of the reclamation or improvement of waste or uncultivated land or foreshores, drainage of land, or for building of labourers' dwellings, or any other works of agricultural improvement.

(2.) The Treasury may authorize the Board of Works to make advances for like purposes to an occupier of land, when satisfied that the tenancy or other security which he may have to offer is such as to insure repayment of principal and interest within such number of years as the Treasury may fix, or when the landlord joins the occupier in giving such security.

Any advance to an occupier under this Sub-section shall be subject to the provisions of the Landed Property Improvement

(Ireland) Acts, (a) so far as the Treasury may declare the same to be applicable, and shall have priority over all charges and incumbrances whatever upon the tenancy of such occupier, (b) except rent, unless the landlord is a party to the advance, and agrees to postpone the rent to it; but before such advance is made one month's previous notice thereof shall be given in a newspaper circulating in the district within which the said holding is situated, and in such other manner as the Board of Works may prescribe; and such advance shall not have priority over any charge or incumbrance of which the Board of Works may have had notice in writing given them before making the advance.

(3.) The Board of Works shall not make to any company in pursuance of this Section any advances exceeding in the whole the sums which such company may, within such period as may be determined by the Board of Works, have advanced or expended out of their own moneys for some one of the purposes of this Section, nor any advances without proper security that those advances shall be expended for such purposes as aforesaid in addition to the sums advanced or expended by the company out of their own moneys.

(4.) Advances made by the Board of Works to a company in pursuance of this Section shall be made repayable within such periods and at such rate of interest as are set forth in a minute of the Treasury made on the sixteenth day of August, one thousand eight hundred and seventy-nine, with reference to loans to which Section two of the Public Works Loans Act, 1879, applies, or as ^{42 & 43 Vict., c. 77.} the Treasury may from time to time fix in pursuance of that Section, and save as regards such periods and rate of interest the enactments relating to loans made by the Board of Works for the like purposes to those above in this Section mentioned shall, so far as is consistent with this Section, apply in like manner as if an advance under this Section were a loan made in pursuance of those enactments.

(a) For definition of "Landed Property Improvement (Ireland) Acts," see Section 57, *post*. For the directions of the Treasury regulating the application of those Acts to loans to occupiers under this Section, see instructions issued by the Treasury in a Minute of the 21st December, 1881, to be found in the *Dublin Gazette* of January 3rd, 1882.

(b) Where a tenant from year to year who had obtained a loan under this Section, subsequently surrendered his tenancy to the landlord, and was awarded compensation for improvements under the 4th Section of the Land Act, 1870, it was held that the Commissioners of Public Works were entitled as mortgagees to be paid the amount so awarded in repayment of the loan made by them: *Brew & Glynn v. Stackpoole* [1896], 2 I. R. 29: 30 I. L. T. R. 38: *Fitz. Irish Land Repts.*

Sects. 32-34. 14 (C. A.); reversing the decision of the Land Commission [1894], 2. I. R., 193
28 I. L. T. R. 52.

32. (*As to emigration. Repealed by Land Purchase Act, 1891, Sec. 35.*)

SUPPLEMENTAL PROVISIONS.

33. (*As to supply of money. Repealed by Land Act, 1896. 2nd Schedule.*)

Proceedings of
Commission.

34. (1.) The Land Commission before buying any estate shall reasonably satisfy themselves that a resale can be effected without loss.

(2.) The Land Commission upon purchasing any estate shall certify to the Treasury that they are satisfied with the matters of which they are by this Section, or by any other provision of this part of this Act, required to be satisfied before such purchase, and such certificate shall be conclusive evidence to any purchaser that they were so satisfied and that the purchase was made in accordance with this Act.

(3) *Any advance made by the Land Commission to a purchaser of a holding or of any parcel of land, in respect of any one purchase by him under this Act whether from the landlord or from the Land Commission, shall not exceed three thousand pounds, unless the Commission report to the Treasury that by reason of special circumstances they deem it expedient to make an advance not exceeding five thousand pounds, in which case they may make such advance with the approval of the Treasury.**

(4.) The Land Commission shall, from time to time, by sale by auction, or in such other manner as may be allowed by the Treasury, dispose of all fee-farm rents for the time being vested in them.

(5.) The Land Commission shall in purchasing estates, in making advances, in dealing with the funds that come into their possession, and in accounting for the same, and generally in the performance of their duties under this part of this Act, conform to any directions, whether given on special occasions or by general rule or otherwise, which may from time to time be given to them by the Treasury, and shall from time to time report, as the Treasury may direct, all matters which may be transacted by the Land Commission.

* Repealed by Sec. 18 (2) of the Land Act, 1887. But a similar limit of £3,000 is, except under special circumstances, imposed by the 2nd Section of the Land Purchase Act, 1888, *post*. Under Sec 17 of Land Act, 1887, an advance up to £5,000 was allowed.

(6.) All sums received by the Commission as repayments of any advance, and all sums received by the Commission for fees, percentages, rents, or otherwise, shall, except so far as they may be applied under directions from the Treasury in payment of expenses, be paid into the Exchequer. Secta. 34-37

35. All powers exercisable by the Board of Works under the Landlord and Tenant (Ireland) Act, 1870, and the Landlord and Tenant (Ireland) Act, 1872, in relation to the purchase by tenants of their holdings shall, after the passing of this Act, and subject to the provisions of this Act, be transferred to and may be exercised by the Land Commission, and the said Acts and any enactments amending the same so far as they relate to the matter aforesaid shall be construed as if the Land Commission were substituted for the Board: Provided that this Section shall not affect or interfere with any of the powers of the Board of Works in relation to any transactions which are completed before the passing of this Act or which the Board declare are being carried into effect at the passing of this Act. Transfer of purchase powers of Board of Works to Land Commission

The property and powers of the Commissioners of Church Temporalities in Ireland have been also transferred to the Land Commission by the Irish Church Amendment Act, 1881 (44 & 45 Vic., cap. 71).

36. In fixing the purchase moneys, fines, rents, fees, percentages, and other sums to be charged or made payable to the Land Commission in respect of transactions under this part of this Act, care shall be taken to fix the same in such manner as to make the amount resulting therefrom, as nearly as can be estimated, not less than the amount required to defray the expenses. Rules as to fixing percentages, purchase moneys, &c.

PART VI.

COURT AND LAND COMMISSION.

Description of Court and Proceedings.

37. (1.) The expression "The Court" as used in this Act shall mean the Civil Bill Court of the county where the matter requiring the cognizance of the Court arises. Court to mean Civil Bill Court.

(2.) Where a matter requiring the cognizance of the Court arises in respect of a holding situate within the jurisdiction of more than one Civil Bill Court, any Civil Bill Court within the jurisdiction of which any part of the holding is situate may take cognizance of the matter.

Sect. 37

(3.) Any proceedings (*a*) which might be instituted before the Civil Bill Court may, at the election of the person taking such proceedings, be instituted before the Land Commission, and thereupon the Land Commission shall, as respects such proceedings, be deemed to be the Court.

(4.) Where proceedings have been commenced in the Civil Bill Court, any party thereto may, within the prescribed period, apply to the Land Commission to transfer such proceedings from the Civil Bill Court to the Land Commission; and thereupon the Land Commission may order the same to be transferred accordingly. (*b*)

(5.) The Court shall have jurisdiction in respect of all disputes between landlords and tenants arising under this Act. (*c*)

(6.) In determining any question relating to a holding, the Court may direct an independent valuer to report to the Court his opinion on any matter the Court may desire to refer to such valuer, (*d*) such report to be accompanied with a statement, if so directed, of all such facts and circumstances as may be required for the purpose of enabling the Court to form a judgment as to the subject-matter of such report. The Court may or may not, as it thinks fit, adopt the report of such valuer, and it may make such order with respect to the costs incurred in respect of such report as it thinks just.

Transfer of Proceedings

(*a*) "Any proceedings" here mean any proceedings under this Act. The Section confers no *original* jurisdiction on the Land Commission to hear applications for compensation for disturbance or improvements under the Land Act, 1870 *Knipe v. Armstrong*, 15 I. L. T. R. 64; MacD. 413; R. & D. 13. Appeals in cases under the Act of 1870 are now heard by the Land Commission instead of by the Judges of Assize as formerly (Sec 47, *post*). But the Land Commission, in hearing Appeals under the Land Act, 1870, cannot deal with matters which arise subsequently to the date of the Order appealed from *Perry v. O'Connor*, 26 I. L. T. R. 48 (L. C.).

(*b*) This clause gives not merely the power to transfer a case from the Civil Bill Court to the Land Commission, but the *right* to either party to have such transfer made, unless it be shown that such transfer would be unjust and unreasonable. *Shields v. Burrowes*, 15 I. L. T. R. 112; MacD. 462. The Rules of 1891 fully recognise this right. An order of transfer is, under Rule 75, made as of course at the expiration of one fortnight from service of the notice of application, unless cause is shown by the opposite party. As to proceedings on transfer generally, see Rules 72 to 77, *post*.

As the Land Commission has no original jurisdiction to hear claims for compensation under the Land Act, 1870, such applications will not, of course, be transferred to it under this clause *Knipe v. Armstrong*, 15 I. L. T. R. 64, MacD. 413.

Limits to jurisdiction of Land Commission under sub-sec. 5.

(*c*) The limits to the jurisdiction of the Land Commission imposed by this Sub-section are—(1) That the relation of landlord and tenant must exist; (2) That there must be a dispute arising under the Act between such landlord and tenant. See judgment of PALLES, C.B., *In re Irish Land Commission v. Ex parte Johnston*, 14 L. R. Ir., at p. 91. "No Court of limited jurisdiction can give itself jurisdiction

by a wrong decision on a point collateral to the merits of the case upon which the limits to its jurisdiction depend; and however its decision may be final on all particulars, making up together that subject matter which, if true, is within its jurisdiction, and however necessary in many cases it may be for it to make a preliminary inquiry whether some collateral matter be or be not within the limits, yet upon this preliminary question its decision must always be open to inquiry in the Superior Court: " *per* COLERIDGE, J., *Bunbury v. Fuller*, 9 Exch. 140.

Sect. 37.

According to this general rule, when the Land Commission acts without jurisdiction, its decision is inoperative even between the parties to it; and, notwithstanding such decision, the relation between the alleged landlord and tenant may be examined for the purpose of determining whether the proceeding was without jurisdiction. Thus, in *Hemphill v. Frazer*, 10 L. R. I. 87, it was decided by the Common Pleas Division that an order of a Sub-Commission fixing a fair rent, even if it was to be treated as a decision that the relation of landlord and tenant existed, was not binding upon the Court; and a landlord was held entitled to recover possession in an ejectment upon the title against an alleged tenant, notwithstanding that a fair rent had been fixed as between the parties, upon evidence from which the Court determined that the relation between the parties brought them outside the jurisdiction of the Land Commission. "The whole foundation of the jurisdiction," says LAWSON, J., "depends on the existence of the relation of landlord and tenant; and if that does not exist there is no jurisdiction " 10 L. R. Ir., at p. 94.

"The fair rent order of the Land Commission," says MORRIS, C.J., "can only be operative on the assumption that the applicant has a right to fix a rent, that is, that the Land Court has jurisdiction, and that it is competent for it to fix a rent" (*Clarke v. Hall*, 22 L. R. Ir., at p. 388. Affirmed on appeal, 24 L. R. Ir. 316).

But when the relation of landlord and tenant exists, the jurisdiction of the Land Commission at once arises, and its decision as regards the nature and terms of the tenancy cannot be questioned in another Court. Thus, where a Sub-Commission had fixed a fair rent, upon the application of a person who was tenant, but not a "present tenant" within the meaning of the Act, it was held, upon a motion by the landlord for a writ of prohibition, that the Land Commission in making the order fixing the fair rent acted within their jurisdiction, as the relation of landlord and tenant undoubtedly existed between the parties, and that, therefore, the writ of prohibition should be refused. *In re Irish Land Commission; Ex parte Johnston*, 14 L. R. Ir. 80; MacD. 504. "I am clearly of opinion," says PALLES, C.B., in giving judgment in that case, "that the Land Commission had jurisdiction to ascertain and determine the terms of the tenancy, and that even if the evidence which has now been brought forward (so far as it appears for the first time)—shewing, as I have already stated it conclusively does, that the tenancy was not a present one—had been before the Sub-Commission, and if the Sub-Commission, notwithstanding that evidence, held that it was a present tenancy, and fixed a fair rent upon that basis, it would not be open to us to substitute the decision which we think they ought to have made for the order which in fact has been made. All that we can do, when their decision is complained of, is to see that the case was one within their jurisdiction; and, having done so, our functions cease:" 14 L. R. Ir., at p. 92. See also *O'Rourke v. Dranelly*, 85 I. L. T. R. 187 (PALLES, C.B.).

Relation of landlord and tenant must exist between the parties.

It must, however, be remembered that the Land Commission has jurisdiction to deal not only with the actual parcel of land comprised within the ambit of a holding, but also with such easements and profits à prendre as are attached thereto: *Ex parte Hutchinson*, 12 L. R. Ir. 79; 17 I. L. T. R. 27; MacD. 498. In

Jurisdiction over easements attached to holding.

Sects. 37-38. that case it appeared that the tenant enjoyed, and was entitled to, as appurtenant to the land included in the letting, a right of pasturage over other lands of the landlord. The Land Commission made an order "that the fair rent of the tenant's holding with the same right of grazing as heretofore, be fixed at the annual sum of £20," and it was held by the Exchequer Division, refusing to grant even a conditional order for a writ of prohibition, that they had full jurisdiction to make such order.

Jurisdiction as regards terms of contract of tenancy.

The jurisdiction of the Land Commission, as regards the terms of the contract of tenancy, appears from this case and that of *Bruce v. Steen*, 14 L. R. I. 408, to be to declare what are the terms of the contract, and to fix the rent accordingly, but not to alter such terms in any respect. "All the terms of a contract of tenancy," says PALLES, C.B., "in respect of which a fair rent is fixed, other than that of the amount of the rent, remain and regulate the rights of the parties after, as well as before, such fair rent has been fixed. *The Land Commission have no jurisdiction to alter those terms*" (*Bruce v. Steen*, 14 L. R. Ir., at p. 426). The order of the Land Commission in this case, after fixing the rent, proceeded to state "that the landlord should continue to pay half the grand jury cess." This order, says PALLES, C.B., was "the judicial act of a Court (which, no doubt, was without jurisdiction to consider or declare personal rights), but which (as there admittedly was a tenancy from year to year between the parties) had not only jurisdiction to determine and declare, but also a duty to determine, the terms of the tenancy, and any dispute that might arise in reference to them," at p. 428.

The foundation of the jurisdiction of the Land Commission under the Land Acts appears thus to be the existence of the relation of landlord and tenant between the parties. A decision of theirs as to the existence of this relation may be questioned by the Superior Courts, but a decision as to the nature of the relation—e.g., whether "present" or "future"—cannot, except in the regular way, by appeal. They may determine, and it is their duty to determine, the terms of the contract of tenancy, but they have no jurisdiction to alter these terms in any way.

An order of the Land Commission, however, though it cannot, of itself, alter the terms of a contract of tenancy, may be used as evidence of an agreement between the parties to vary them. *Tyrrell v. Merriman*, 32 I. L. T. R. 142 (MADDEN, J.).

Appointment of Court valuers.

(d) As to the power of the Land Commission to appoint Court Valuers, and their legal position, see Sec. 48 (4), *post*, which is almost identical in terms with this Sub-section. Rules as to Court valuers in appeals were published on the 11th December, 1884, but these were rescinded on the 1st March, 1886. Sec. 32 of the Land Act, 1887, enables the Land Commission to appoint Court valuers for the County Courts. See *post*.

Incorporation of certain provisions of 83 & 84 Vic., c. 46.

38. There shall be incorporated with this Act the following provisions of the Landlord and Tenant (Ireland) Act, 1870, as if the purposes therein referred to included the purposes of this Act; that is to say,

(1.) Section twenty-three, relating to the powers of the Judge of the Civil Bill Court; (a) and Section twenty-five, relating to the Court of Arbitration; (b)

(2.) Section forty, relating to the apportionment of rents, and in

that Section rents shall include any rent payable to the ~~Sections 38-39~~
Crown;

- (3.) Section fifty-nine, relating to administration on death of tenant (c);
- (4.) Section sixty, containing provisions as to married women;
- (5.) Section sixty-one, containing provisions as to other persons under disability; (d)
- (6.) Section sixty-two, relating to additional sittings of Civil Bill Court;
- (7.) Section sixty-four, relating to power to appoint a substitute in Civil Bill Court if Judge cannot attend.

(a) As to the powers of the Land Commission Court generally, see Sec. 48, *post*.

(b) As to arbitration, see Sec. 40, *post*, and Rules of Jan., 1897, Nos. 152-155. The reference should be in accordance with Form No. 52.

(c) As to the appointment of a limited administrator, whether for purposes of sale or of having a fair rent fixed, see Sec. 14, *ante*, and Land Act, 1896, Sec. 21, *post*, p. 160.

(d) The incorporated Section of the Land Act, 1870, provides that, where any Sub-sec 5 party to any proceeding under the Act is a minor, idiot, or lunatic, the guardian or committee of the estate shall represent him for all purposes; and where there is no guardian the Court may appoint one, and change such guardian from time to time.

Service on a minor *qua* minor would be a nullity. Where an originating notice Service upon a minor. had been served upon a landlord who was a minor, the Court refused, on the motion of the tenant, to record the application under Sec. 60. *Marsh v. Morland*, Ro. & Dill. 18; 15 I. L. T. R. 74; MacD. 363. Before the Court exercises the jurisdiction conferred by this Section, it must be informed whether there is already a guardian or not, and, if not, whom it is proposed to appoint. *Marsh v. Morland* (*ubi supra*). In a similar case, Mr. Commissioner LITTON held that the names of the minors must be given, and that the fact of there being a guardian must appear by affidavit. *Maulverers, Minors*, Ro. & Dill. 19. See also *Carr v. Gray*, 23 I. L. T. R. 89. In a proper case it is the duty of the Sub-Commission to appoint a guardian: *McKinney v. Bustard*, 2 N. I. J. R. 245 (L.C.).

39. There shall be paid, out of moneys to be provided by Parliament, to Clerks of the Peace appointed to their office before the fourteenth day of August, one thousand eight hundred and seventy-seven, and who have not accepted any permanent office under the County Officers and Courts (Ireland) Act, 1877, and also to Clerks of the Crown and Peace who, under the provisions of the sixteenth section of the said Act have elected to continue to practise as solicitors, such annual sums, by way of remuneration for any additional duties imposed on them by this Act, as the Lord Lieutenant, with the consent of the Treasury, may direct.

Notwithstanding the conditions imposed by any other Act upon

Exceptional provisions for certain officers

40 & 41 Vic., c. 56.

Sects. 37-40. the grant of a pension to a County Court Judge, it shall be lawful for the Lord Lieutenant, with the concurrence of the Lord Chancellor and of the Treasury, at any time before the first day of January, one thousand eight hundred and eighty-four, to grant to any County Court Judge now entitled to practise at the bar who shall show to the satisfaction of the Lord Lieutenant and the Treasury that the discharge of the additional duties imposed on him by this Act would deprive him of professional emoluments which, if this Act had not been passed, he would have received, such special retiring pension, not exceeding two-thirds of his salary, as, having regard to the circumstances of each case, shall appear to the Lord Lieutenant and the Treasury to be reasonable.

Arbitration.

Reference to
arbitration.

40. Any matter capable of being determined by the Court under this Act, may, if the parties so agree, be decided by arbitration, and an arbitration shall be conducted by the Court of Arbitration in manner provided by the Landlord and Tenant (Ireland) Act, 1870, (a) and where the amount of rent is decided by arbitration, such rent shall for the purposes of this Act be deemed to be the judicial rent.

(a) See Sec. 25 of the Land Act, 1870, *ante*, p. 188 (incorporated by Sec. 38, *ante*), which provides more fully for the constitution and powers of the Court of Arbitration.

See Rules of Jan., 1897, Nos. 152 to 155, which deal with the proceedings on arbitration. The reference should be according to Form No. 52, and should be lodged with the Clerk of the Peace or with the Land Commission before the first sitting of the Arbitration Court, "but the Court may, on special grounds, dispense with this requirement" (Rule 152). The original rule dealing with arbitration (Rules of 1881, No. 132) did not contain these latter words, and, under it, it was decided that, unless the reference to arbitration was properly lodged, the award could not be recorded or enforced in any way between the parties. *Lee v. Dysart*, Ro. & Dill. 243.

Where a landlord and his tenants agreed to refer the fixing of fair rents to arbitration, the submission providing that the rents when fixed should be deemed judicial rents, and that agreements confirming them should be filed in Court, it was held by the Court of Appeal that the tenants were not bound by the award of the arbitrators, no agreements having been filed, as provided by the submission, although for several years the rents had been received at the rate fixed by the arbitrators. *Woodside v. Massey*, 28 L. R. Ir. 604; 25 I. L. T. R. 69. See also *Givan v. Moffit*, 14 L. R. Ir. 252.

Where, by consent of the parties, the question of a fair rent was left to the decision of Court valuers, the Court treated their decision as tantamount to an award of arbitrators, and refused to set it aside: *Moloney v. Gore*, MacD. 372. *Fitzell v. Collis Sands*, MacD. 373 (L. C.). See now as to fixing fair rents by

valuers without a hearing in Court, Rules of 9th Nov., 1898, and 17th April, 1899, *post*. **Sects. 40-41**

If, after the service of an originating notice, a case is referred to arbitration, the fair rent cannot be fixed by a mere rule of Court, an order on consent upon the originating notice must be made: *Gray v. Gosford*, MacD. 372.

No appeal lies from an award of a Court of Arbitration; and no award can be removed by *certiorari*: Land Act, 1870, Sec. 25.

Appointment and Proceedings of Land Commission.

41. A Land Commission shall be constituted under this Act, consisting of a Judicial Commissioner and two other Commissioners. Constitution of Land Commission.

The Judicial Commissioner, and every successor in his office, shall be a person who at the date of his appointment is a practising barrister at the Irish bar of not less than ten years' standing.

The Judicial Commissioner for the time being shall forthwith on his appointment become an additional Judge of the Supreme Court of Judicature in Ireland, with the same rank, salary, tenure of office, and right to retiring pension as if he had been appointed a puisne Judge of one of the Common Law Divisions of the High Court of Justice.

He may be required by order of the Lord Lieutenant in Council to perform any duties which a Judge of the said Supreme Court of Judicature is by law required to perform; but, unless so required, he shall not be bound to perform any of such duties.

*The first Judicial Commissioner shall be Mr. Serjeant O'Hagan.**

If any vacancy occurs in the office of the Judicial Commissioner by death, resignation, incapacity, or otherwise, Her Majesty may by warrant under the Royal Sign Manual, appoint some other qualified person to fill the vacancy.

*The two Commissioners, other than the Judicial Commissioner, shall respectively hold their offices for seven years next succeeding the passing of this Act.**

If during the said period of seven years a vacancy occurs in the office of any of such other Commissioners by death, resignation, incapacity, or otherwise, Her Majesty may by warrant under the Royal Sign Manual appoint some other fit and proper person to fill such vacancy, but the person so appointed shall hold his office only until the expiration of the said period of seven years.**

*The first Commissioners, other than the Judicial Commissioner, shall be Mr. Edward Falconer Litton and Mr. John E. Vernon.**

See, now, Land Purchase Act, 1891, Sec. 28, *post*.

* The words in italics have been repealed by the Land Purchase Act, 1891 Sch. III., and Stat. Law. Rev. Act, 1894.

Sects 42-44
Incorporation
of Commission

42. The Land Commission under this Act shall be a body corporate, with a common seal, and a capacity to acquire and hold land for the purposes of this Act, and shall be styled "The Irish Land Commission.

Judicial notice shall be taken by all Courts of Justice of the corporate seal of the Land Commission, and any order or other instrument purporting to be sealed with it shall be received as evidence without further proof.

Appointment
of Assistant
Commissioners

43. The Lord Lieutenant may from time to time, with the consent of the Treasury as to number, appoint and by Order in Council remove Assistant Commissioners, who shall have the prescribed qualifications and hold office for the prescribed times.

The central office of the Land Commission shall be in Dublin, but they may hold sittings in any other part of Ireland.

The Land Commission may form Sub-commissions in any province, particular district or districts of Ireland, and such Sub-commissions shall consist of such number of the said Assistant Commissioners or of a Commissioner and one or more Assistant Commissioners as the Land Commission may think fit, and the Land Commission may delegate to any Sub-commission such of the powers, except as to appeals, by this Act conferred upon the Land Commission, as they think expedient, and may from time to time revoke, alter, or modify any powers so delegated to a Sub-commission.

The powers of delegation here conferred do not apply to duties under the Land Purchase Acts. See Land Purchase Act, 1891, Sec 30, *post*.

Quorum of
Commission.

44. Any power or act by this Act vested in or authorized to be done by the Land Commission, except the power of hearing appeals, may be exercised or done by any one member of the Land Commission (*a*) or by any Sub-commission, with this qualification, that any person aggrieved by any Order of one Commissioner, or by any order of a Sub-commission, may require his case to be reheard by all three Commissioners sitting together, except in the case of the illness or unavoidable absence of any one Commissioner, when any such case may be heard by two Commissioners sitting together; provided that neither of such two Commissioners be the Commissioner before whom the case was originally heard.

Appeals and Re-
hearings.

A "re-hearing" under this Section is different from an "appeal" under Sec. 47. The former takes place where the case has originally been heard by one Commissioner only, or a Sub-Commission, and may be before *any two Commissioners* (in the unavoidable absence of the third). An "appeal" from the

decision of a County Court Judge, under Sec. 47, must be heard by at least two Commissioners, *one of whom must be the Judicial Commissioner* see Sec. 47, *post*. See further, as to the distinction between an appeal and a re-hearing: *Williams v. Goodchild*, 2 Russ. 91. Sects. 44-46

A notice of re-hearing did not formerly require a stamp: *Kieran v. Caruth*, 19 I. L. T. R. 1, but now, under Rules of Jan., 1897, the term "appeal" includes a re-hearing (Rule 7), so that if the rent is over £10, the notice should bear a 10s. stamp; otherwise a 1s. stamp. (Rules 88 & 89.)

Every notice of re-hearing must now state the grounds of appeal from the decision of the sub-commission; and "no grounds of appeal shall, save by leave of the Court, which shall not be given as of course, be entered into, except those so stated" (Land Act, 1896, Sec. 22). Notice of appeal must state grounds.

See Rules of Jan., 1897, Nos. 79 to 89, as to re-hearings and appeals generally. The notice must be served within *two months* after the date of the order. (Rule 79)

The question of value, as well as any question of principle or law, is open on a re-hearing under this Section, provided the notice of appeal so states. *Karanagh's Estate*, MacD. 369; *Lifford Cases*, MacD. 397.

After a judicial rent has been fixed by the Sub-Commissioners, the Chief Commissioners cannot interfere with it, even though the parties consent, unless an appeal is taken: *Keppele v. Rathdonnell*, MacD. 370.

Where a fair rent has been fixed by a Sub-Commission and a notice requiring a re-hearing has been served, the rent so fixed is, pending the re-hearing, the rent payable by the tenant. *Davis v. M'Mahon*, 20 I. L. T. R. 56; *M'Yameo v. Naper*, 17 I. L. T. & S. J. 468, MacD. 410.

Where the rent fixed by the Sub-Commissioners is altered on the re-hearing, the altered rent is the rent payable for the whole statutory period, and if the rent has already been paid on the scale fixed by the Sub-Commissioners, the difference can either be set off by the tenant against the next gale of rent, if the rent has been reduced, or recovered from him directly by the landlord if it has been raised. *Davis v. M'Mahon*, 24 L. R. Ir. 73, 447; 23 I. L. T. R. 11, 25 (Exch. D. & C. A.); *Twiss v. Casey*, 18 I. L. T. R. 83 (County Court).

(a) It is competent for one Commissioner sitting alone, under this Section, to make an order taking an agreement and declaration fixing a fair rent off the file in a proper case: *Erans v. Peyton*, 28 I. L. T. R. 81 (L. C.) affirmed on appeal on this point, but reversed on other grounds [1895], 2 I. R. 127 (C. A.). Power of a single Commissioner.

45. The Land Commission may from time to time, with the consent of the Lord Lieutenant, appoint and remove a solicitor, and a secretary, and such officers, agents, clerks, or messengers as they, with the consent of the Treasury, and subject to such regulations as the Treasury may from time to time prescribe, deem necessary for the purposes of this Act. Appointment of officers.

They may also, with the consent of the Treasury, employ such actuaries, surveyors, and other persons, as they may think fit for the purpose of enabling the Land Commission to carry into effect any of the provisions of this Act.

46. There shall be paid to each of the Commissioners, other than the Judicial Commissioner, a salary not exceeding three thousand Salaries of Commission.

Sects. 47-48. pounds a year, and to the Assistant Commissioners, Secretary, officers, and other persons above-mentioned, such salaries or remuneration as the Lord Lieutenant may, with the consent of the Treasury, determine.

The salaries of the Commissioners, other than the Judicial Commissioner, and of the Assistant Commissioners, and of all persons employed by the Land Commission, and all expenses incurred by the Land Commission in carrying into effect this Act, not otherwise provided for, shall be paid out of moneys provided by Parliament

Appeal to Land
Commission.

47. Any person aggrieved by the decision of any Civil Bill Court with respect to the determination of any matter under this Act or under the Landlord and Tenant (Ireland) Act, 1870, may appeal to the Land Commission, and such Commission may confirm, modify, or reverse the decision of the Civil Bill Court. All appeals to the Land Commission under this Act shall be heard by all three Commissioners sitting together, except in the case of illness or unavoidable absence of any one Commissioner, when any appeal may be heard by two Commissioners sitting together, one of whom shall be the Judicial Commissioner.

The Land Commission may determine any appeal in Dublin or may proceed to any place or places in Ireland for the purpose of from time to time determining the same.

33 & 34 Vic.
c. 46.

*The twenty-fourth Section of the Landlord and Tenant (Ireland) Act, 1870, is hereby repealed. All appeals under the said Section pending at the time of the passing of this Act are hereby transferred to the Land Commission; and all further proceedings thereon shall be taken in the prescribed manner.**

An appeal under this Section is only slightly different from a re-hearing under Sec. 44. see that Section and notes thereto, *ante*, p. 330.

As to the rent payable by a tenant pending an appeal and the rights of parties if the judicial rent is varied see notes to Sec. 44, *ante*, p. 331; *Davis v. M'Mahon*, 24 L. R. I. 73, 447; 23 I. L. T. R. 11, 25 (Exch. Div. & C. A.); *M'Nam v. Naper*, 17 I. L. T. & S. J. 468; *MacD.* 410; *Twiss v. Casey*, 18 I. L. T. R. 8; and *Davis v. M'Mahon*, 20 I. L. T. R. 56.

Appeals under the Land Act, 1870, are now heard by the Land Commission accordance with this Section; and the rules as to appeals under this Act apply to them. The Land Commission, not having any original jurisdiction under the Land Act of 1870, cannot, on the hearing of appeals under that Act, take account matters which occurred subsequently to the hearing by the County Court. *O'Connor v. Perry*, 30 L. R. Ir. 388; 26 I. L. T. R. 48.

Powers of
Commission.

48. (1.) For the purposes of this Act the Land Commission shall have full power and jurisdiction to hear and determine all matters

* The words in italics are repealed by Stat. Law Rev. Act, 1894.

whether of law or fact, and shall not be subject to be restrained in the execution of their powers under this Act (a) by the order of any Court, nor shall any proceedings before them be removed by certiorari into any Court.

(2.) The Land Commission may of its own motion, or shall on the application of any party to any proceeding pending before it, unless it considers such application frivolous and vexatious, state a case in respect of any question of law arising in such proceedings, (b) and refer the same for the consideration and decision of Her Majesty's Court of Appeal in Ireland.

The Land Commission may also, in case it thinks fit, permit any party aggrieved by the decision of the Land Commission in any proceedings to appeal in respect of any matter arising in such proceedings to Her Majesty's Court of Appeal in Ireland; provided that no appeal from the Land Commission to the Court of Appeal in Ireland shall be permitted in respect of any matter arising under Part V. of this Act, or in respect of any decision as to the amount of fair rent, or any question of value or of damages, or any matter left in the discretion of the Land Commission. (c)

The decision of the said Court of Appeal on any such question so referred to it shall be final and conclusive.

(3.) The Land Commission with respect to the following matters; that is to say,

- a. Enforcing the attendance of witnesses (after a tender of their expenses), the examination of witnesses orally or by affidavit, and the production of deeds, books, papers, and documents; and
- b. Issuing any commission for the examination of witnesses; and
- c. Punishing persons refusing to give evidence or to produce documents, or guilty of contempt in the presence of the Land Commission or any of them sitting in open Court; and
- d. Making or enforcing any order whatever made by them for the purpose of carrying into effect the objects of this Act; (d) shall have all such powers, rights, and privileges as are vested in the Chancery Division of the High Court of Justice in Ireland for such or the like purposes, and all proceedings before the Land Commission shall in law be deemed to be judicial proceedings before a court of record.

(4.) In determining any question relating to a holding the Commission may direct an independent valuer to report to it his opinion

Sect. 48. on any matter the Commission may desire to refer to such valuer, (e) such report to be accompanied with a statement, if so directed, of all such facts and circumstances as may be required for the purpose of enabling the Commission to form a judgment as to the subject matter of such report. The Commission may or may not, as it thinks fit, adopt the report of such valuer, and it may make any such order with respect to the costs incurred in respect of such report as it thinks just.

(5.) The Land Commission may review and rescind or vary any order or decision previously made by them, (f) or any of them, but save as by this Act provided every order or decision of the said Commission shall be final; Provided always, that any order or decision made by three members of the Land Commission shall not be reviewed, rescinded, or varied, except by three members of the Land Commission.

*Nothing in this Section shall authorize the Land Commission to determine any question or to exercise any power of a Judge in relation to any purchase of an estate by them, or to the purchase of a holding through the medium of the Land Commission.**

Sub-sec. 1. (a) The Land Commission cannot be restrained "in the execution of their powers under this Act." As to what these powers are, and the general limits of their jurisdiction, see Sec. 37 (5) and notes thereto, *ante*, p. 324.

Writ of prohibition. If, however, an order of the Land Commission be plainly in excess of jurisdiction, a writ of prohibition may, notwithstanding this Section, be granted to restrain them from enforcing such order. *Ex parte Hutchinson, In re Irish Land Commission*, 12 L. R. Ir. 79, 17 I. L. T. R. 27, MacD. 498; *Ex parte Johnston, In re Irish Land Commission* (No. 1), 14 L. R. Ir. 80. In the latter case a conditional order for a writ of prohibition was actually granted by the Exchequer Division on the grounds that the Land Commission had fixed a judicial rent in respect of a tenancy which was not a "present tenancy" within the Act, but the conditional order was afterwards discharged, the Court holding that once the relation of landlord and tenant was proved to exist, the Land Commission had jurisdiction to decide what the nature of the tenancy was which existed between the parties. "I do not intend in anything I say," said DOWSE, B., in giving judgment, "to express a doubt about the power of this Court to issue a writ of prohibition in cases where Courts of inferior jurisdiction, such as the Land Commission, have acted either without jurisdiction or in excess of their jurisdiction. That law has not been disputed in the contention on either side, nor could it have been disputed—it is clear and undoubted law" (14 L. R. Ir., at p. 93). "It is, in my opinion," says FITZGIBBON, L.J., "never too late to show that a proceeding of an inferior Court is without jurisdiction." *Reg. (Rosmore) v. Irish Land Commission* [1894], 2 I. R., at p. 424.

In *Fox v. Langan* (26 I. L. T. R. 124) it appeared that a son of a deceased tenant had been in occupation of a farm for about 10 years, paying the rent, but getting

* The words in italics were repealed by Sec. 22 of Land Purchase Act, 1885. But the repealing portion of the latter Section is now repealed by Stat. Law Rev. Act, 1898.

receipts in the name of "Representative of A, deceased." He served an originating notice, without taking out representation to his father, and, in the hearing of the case, an order was made appointing him a limited administrator to his father's estate under the 58th Section of the Land Act, 1870, as incorporated by Sec. 38 of this Act. The Exchequer Division held (MURPHY, J., *diss.*) that this order was made without jurisdiction, and allowed proceedings to be commenced by writ of prohibition to seek to restrain the Land Commission from proceeding to fix a fair rent under the circumstances. But when the case came on for trial, O'BRIEN, J., held that the order was within the jurisdiction of the Land Commission (27 I. L. T. R. 20). See, now, Land Act, 1894, Sec. 21, *post*, p. 560

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A writ of mandamus may also be issued to the Land Commission to hear and determine an application for leave to appeal or to have a case stated *Reg. (Rossmore) v. Irish Land Commission* [1894], 2 I. R. 394 (C. A.). See also judgment of FITZGIBBON, L.J., in *Reg. (Gosford) v. Irish Land Commission* [1899], 2 I. R., at p. 433. But where such an application has been heard and adjudicated upon by an order which is in all respects regular, a writ of mandamus will not be issued *Reg. (Gosford) v. Irish Land Commission* (No. 2), 34 I. L. T. R. 219. 3 Greer 110. *Ex p. Johnston* (No. 2), 20 I. L. T. R. 76. An order will not be made for a mandamus directing the Land Commission to give liberty to appeal or to state a case, as such an order would deprive them of the exercise of any judicial discretion [*per* FALLIS, C.B., *Reg. (Rossmore) v. Irish Land Commission* (1894), 2 I. R., at p. 403].

Mandamus.

A writ of mandamus will not be granted to compel the Land Commission to state a case for the Court of Appeal, when an appeal could have been taken from the order complained of, and was not; nor will such a writ be issued to enforce a mere discretionary duty, depending on whether the objections raised are considered by the Land Commission to be frivolous and vexatious. *Ex parte Johnston* (No. 2), 20 I. L. T. R. 76. With respect to applications to the Court to issue a prerogative mandamus, MAY, C.J., in giving judgment in this case, stated that such a writ should not issue, according to the established practice, (1) where any other legal remedy was open to the applicant; or (2) where the duty which it was sought to enforce was a discretionary one (20 I. L. T. R. 76).

(b) Applications to have a case stated, or for liberty to appeal, under this Sub-section, must be made within one fortnight of the decision complained of (Rules of Jan., 1897, No. 90). And any order made on such application must be prosecuted within one month from the date thereof by lodgment of the appeal or of the draft case (Rule 93). The latter must be prepared by the party making such application, and, after having been submitted to the opposite party, is settled by the Judicial Commissioner (Rules 91 and 92).

Sub-sec. 2.
Appeals to
Court of Appeal
and Cases
Stated.

A case cannot be stated on an abstract question of law, without any findings of fact to support it: *Brown v. M'Bryan*, 31 I. L. T. R. 165 (C. A.).

Under the Judicature Rules, the Court of Appeal may hear additional evidence, *in vacuo*, if they so desire (*Fay v. Kelly*, MacD. 396); and this course was actually adopted by them in *Trustees of St. Keiran's College v. Musgrave*, 19 I. L. T. R., Digest, p. xviii. In the first instance, however, they directed the Land Commission to re-hear the case, which the latter refused to do, upon the grounds that such a re-hearing was not within the limits of their jurisdiction: 19 I. L. T. R. 34. In *Stack v. Muskerry*, 26 I. L. T. R. 118, documents of title which were found since the hearing by the Land Commission, were allowed to be put in evidence.

The Court of Appeal is not debarred from reversing the decision of the Land Commission upon a question of fact, when that question depends largely on legal

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Powers of Court
of Appeal.

considerations *Eiffe v. M'Kenna*, 16 I. L. T. R. 39, MacD. 293. "In dealing with the decision of the Land Commission on appeal," says FITZGIBBON, L.J., "we have not to deal, as in the case of a verdict of a jury, or as upon a case stated under the Registration Acts, with the exercise by the court of first instance of an exclusive or ultimate jurisdiction upon questions of fact. Where the fact has been found by a jury, or by a revising authority, we can give judgment the other way only where the finding is 'against evidence'—*i. e.*, has no sufficient evidence to sustain it in point of law; but where a question of preponderance of evidence arises, unless we can direct a new trial we must accept the facts as found by any court of first instance which has exclusive jurisdiction to ascertain facts. The Chancery Division and the Land Commission in cases such as this have no such exclusive jurisdiction, and, on appeal from them, the duty of reviewing and deciding questions of fact as well as of law devolves upon this Court." *Fetherstonhaugh v. Gaffney*, 34 I. L. T. R., at p. 39 [190⁶], 2 I. R. at p. 426.

Appeals in land
purchase cases.

(c) Part V. of this Act deals with Land Purchase. The prohibition of an appeal to the Court of Appeal in respect of any matter arising under it is not now of much importance, as an appeal lies on any question of law arising under the Land Purchase Acts, even without the leave of the Land Commission: Land Purchase Act, 1885, Sec. 22, *post*.

No appeal lies where the matter is in the discretion of the Court, as in the case of an order under Sub-sec. 5, directing a re-hearing of a case on the discovery of fresh evidence *Feerilly v. Coates*, MacD. 518, or an order amending an originating notice: *St. George v. St. George*, 25 I. L. T. R. 42.

Sub-sec. 3.
Powers of Land
Commission.

(d) Sec. 23 of the Land Act, 1870, conferred similar powers on the Civil Bill Courts. That Section is incorporated by Sec. 38, *ante*, "as if the purposes therein referred to included the purposes of this Act."

Under this Section, it has been held that the Land Commission has jurisdiction to appoint a Commission to take the evidence of a person undergoing a term of imprisonment, where, in consequence of the illness of the prisoner, he cannot be brought up on *habeas corpus* *M'Donagh v. Land Purchase Company*, 25 I. L. T. R. 67.

And it has been similarly held that there is jurisdiction under this clause to give liberty to an administrator to issue execution for costs ordered to be paid to the deceased: *Morris v. Johnston*, 21 I. L. T. R. 16; and to enforce an order directing a tenant to convey his farm to his landlord who had purchased in exercise of his right of pre-emption at the price fixed by the Court: *Fauceit v. M'Kelligett*, 33 I. L. T. R. 71.

But the Land Commission has no power under the Sub-section to restrain a landlord from executing a civil bill decree in ejectment, pending an application to fix a fair rent. *Semple v. Hunter*, 15 I. L. T. R. 73, Ro. & Dill. 9, MacD. 416. The Court of Appeal has also refused to grant an injunction to restrain a landlord from taking such a course *Gorman v. La Touche*, 25 L. R. Ir. 583, 24 I. L. T. R. 70.

Power to amend.

All Courts of Record have at Common Law power to amend. *Usher v. Dansey*, 4 M. & S. 94; *Short v. Coffin*, 5 Burr, 2730; and the Land Commission have apparently such power under this Sub-section. Where, however, a Sub-Commission had amended an originating notice by striking out the tenant's name and inserting that of a totally different party to whom the farm really belonged, it was held that such a substitution was beyond the power of the Court, and the originating notice was dismissed *Mullins v. Morgan*, MacD. 519.

Leave has been given by the Land Commission to amend an originating notice served in the form provided for a tenant from year to year into that provided for

leaseholders under the Land Act, 1887: *St. George v. St. George*, 25 I. L. T. R. 42. **Sects. 48-50.** Though a similar application was, under the particular circumstances of the case, refused by the same Court in *O'Neill v. Willis*, 22 I. L. T. R. 97.

In *Elliott v. Farquar*, 32 I. L. T. R. 40, the Court refused to amend a first term notice into a second term notice.

(e) The power conferred by this Section of obtaining the report of an "independent valuer" is one now invariably exercised by the Land Commission in hearing appeals on questions of value. It has been held that the Court may appoint two or more valuers to make a joint report, and that persons holding office under the Land Commission as Assistant Commissioners may be so appointed *O'Regan v. Trench* [1901], 1 I. R. 274 (C. A.), 34 I. L. T. R. 22 (L. C.); 2 Greer 54, 298. Evidence may be given by the parties impugning the reports of these 'court valuers,' as they are called, or showing that they had valued land on erroneous principles, or were in any way biased or prejudiced *O'Regan v. Trench* [1901], 1 I. R. 274, 34 I. L. T. R. 142 2 Greer 298 (C. A.), reversing the decision of the Land Commissioners 34 I. L. T. R. 22 2 Greer 54. But the evidence must be definite, *O'Regan v. Trench*, 35 I. L. T. R. 118 (L. C.), and the fact that the Court valuers refused to accept *ex parte* statements on the lands as to the rents of adjoining lands is no ground for rejecting their reports *Manchester v. Shelvyn*, 34 I. L. T. R. 212, *Gosford v. Alexander*, 35 I. L. T. R. 105, [1902], 1 I. R. 133. *M'Donnell v. Gosford*, 35 I. L. T. R. 117. 3 Greer 207.

(f) The jurisdiction conferred by this Sub-section to rescind or vary an order previously made is one frequently exercised by the Land Commission. See, for instance, *M'Cosh v. Henderson*, 1 Greer 125, and *Evans v. Peyton*, 28 I. L. T. R. 81.

On the discovery of new evidence, the Court will, if it is of an important character, order a re-hearing of a case already disposed of. *Cowan v. Simpson*, 35 I. L. T. R. 86; 3 Greer 215, 1 N. I. J. R. 128; but where want of reasonable diligence in discovering such evidence in time has been shown, the motion will be refused: *Feerilly v. Coates*, MacD. 518. In exercising this jurisdiction to review a previous decision upon the ground of newly-discovered evidence, the Court adopts the principles laid down by LEFFROY, C.J., in *O'Grady v. Dwyer*, 10 I. C. L. R. 440, and requires to have it shown not only that the evidence was discovered since the hearing, but that by no reasonable diligence could it have been discovered before the hearing. A re-hearing will not be granted merely on the grounds of mistake or surprise. *Norton v. M'Donnell*, 1 Greer 211.

49. Where the Land Commission or any Sub-Commission hold sittings elsewhere than in Dublin, such Land Commission or Sub-Commission may use the Courthouses commonly used for civil bill purposes or for the holding of Courts of Petty Sessions, and the officers of the Civil Bill Courts shall, in the prescribed manner and at the prescribed times, be bound to attend the sittings of the said Land Commission and Sub-Commissions, and to perform analogous duties to those which they perform in the case of a sitting of the Civil Bill Court.

Sittings in Dublin must be held at the Four Courts, Land Act, 1896, Sec. 23 (7).

50. (1) The Land Commission shall from time to time circulate forms of application and directions as to the mode in which appli-

Power of Land Commission to rescind or vary their own orders. On discovery of new evidence
Power for Land Commission and Sub-Commissioners to employ officers and servants of Civil Bill Court
Rules for carrying Act into effect.

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cations are to be made under this Act, and may from time to time make, and when made may rescind, amend, or add to, rules with respect to the following matters, or any of them :

- a.* The proceedings on the occasion of sales under this Act :
- b.* The proceedings on the occasion of applications to fix judicial rents under this Act and the withdrawal of such applications.
- c.* The proceedings in the Civil Bill Court under this Act :
- d.* The consolidation of cases and the joinder of parties.
- e.* The security (if any) to be given by applicants to, or persons dealing with, the Commission :
- f.* The proceedings in appeals under this Act :
- g.* The proceedings in respect of cases stated for the decision of Her Majesty's Court of Appeal in Ireland under this Act :
- h.* The proceedings on the occasion of applications for transfer of cases from the Civil Bill Court to the Land Commission under this Act :
- i.* The qualifications and tenure of office of Assistant Commissioners :
- j.* The forms to be used for the purposes of this Act :
- k.* The scale of costs and fees to be charged in carrying this Act into execution, and the taxation of such costs and fees, and the persons by or from whom and the manner in which such costs and charges are to be paid or deducted, subject nevertheless to the sanction of the Treasury as to the amount of fees to be charged :
- l.* The attendance and discharge of duties by the officers of the Civil Bill Courts before the Land Commission and Sub-Commissions when holding sittings under this Act :
- m.* The mode in which consents on the part of the Land Commission or of any landlord, tenant, or other person may be signified under this Act :
- n.* The service of notices on mortgagees and persons interested, and any other matter by this Act, or any part of any Act incorporated herewith, directed to be prescribed :
- o.* As to any other matter or thing, whether similar or not to those above mentioned, in respect of which it may seem to the Land Commission expedient to make rules for the purpose of carrying this Act, or any part of any Act incorporated herewith into effect.

(2.) Any rules made in pursuance of this Section shall be judicially noticed in all Courts of Her Majesty's dominions. Sects. 50-51

(3.) Any rules made in pursuance of this Section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament; and if an Address is presented to Her Majesty by either House of Parliament within the next subsequent one hundred days on which the said House shall have sat praying that any such rule may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

(4.) The Public Offices Fees Act, 1879, shall apply to fees payable under this Act. 42 & 43 Vic. c. 58.

51. The making of rules and orders prescribing and regulating the mode of service of civil bill processes in ejectment, and for recovery of rent, is hereby declared to be within the provisions of the seventy-ninth Section of the County Officers and Courts (Ireland) Act, 1877; and, notwithstanding any other enactment, the service of such processes in the manner prescribed by such rules or orders shall be valid and sufficient. Service of civil bill processes and limitation of costs. 40 & 41 Vic. c. 56.

Whenever an action for the recovery of rent not exceeding twenty pounds or for the recovery of land, whether for non-payment of rent or for overholding, is brought in the High Court of Justice in Ireland, in any case in which the plaintiff in such action could have sued for the recovery of such rent or land in a Civil Bill Court, (a) the plaintiff in such action shall not be entitled to any costs, unless the Judge before whom such action is tried, or the Divisional Court to which such action is attached, shall by order declare the said plaintiff entitled to costs.

(a) The rule as to costs under the second part of this Section only applies in cases of ejectment where the landlord *as such* is seeking to recover possession, whether for non-payment of rent or in case of overholding; it has no application to ordinary ejectments on the title. Thus, where a landlord obtains a personal judgment for rent, causes the tenant's interest to be sold by the sheriff under a *fi. fa.*, purchases it himself, and then brings an ejectment on the sheriff's conveyance to him, he is entitled to full costs under Sec. 53 of the Judicature Act, 1877, and cannot be deprived of them by this Section: *Lord Cloncurry v. Devane*, 16 I. L. T. & S. J. 97. Rule as to costs.

Sects. 51-52. The joinder of a claim for mesne rates to an ejectment for overholding does not, however, entitle the landlord to costs where the ejectment is within the jurisdiction of the County Court *Greville v. Kirk*, 10 L. R. I. 41, MacD. 351.

The County Court has jurisdiction in all cases of ejectment for non-payment of rent and overholding where the annual rent does not exceed £100, no matter what the actual amount of rent due may be See Landlord and Tenant Act, 1860, Secs. 52 and 72, *ante*, pp 90 and 128.

In actions for rent, where the total amount due is more than £20, the landlord is entitled to full costs, and his right to costs is not affected by this Section, even though the annual rent be less than £20 *Rose v. Kelly*, 15 I. L. T. & S. J. 505, MacD. 350.

Where after the issue of a writ an order was made fixing a judicial rent; and, calculating the rent due at the rate so fixed, and giving the tenant credit for overpayments in respect of earlier gales of the old rent after service of the originating notice, the total amount due for rent, which at the date of the issue of the writ was more than £20, was reduced below that sum, it was held that the Plaintiff was not entitled to any costs of the action under this Section: *Conner v. Lyons* [1894], 2 I. R. 24 (Exch. D.).

Enactments as to costs are matters of procedure, and have a retrospective operation *Wright v. Hale*, 6 H. & N. 227, *Cassidy v. O'Loghlen*, 4 L. R. Ir. 731. This Section has been held, therefore, to apply to actions commenced before the passing of the Act *Greville v. Kirk*, 10 L. R. I. 41, MacD. 351. See, however, the opinion of FALLIS, C.B., *Kearney v. Cahill*, 15 I. L. T. & S. J. 512, and the cases there referred to.

Restitution.

Where a holding at a rent under £100 per annum has been evicted for non-payment of rent and the plaintiff has not been declared entitled to costs under this Section, the tenant or other party having a specific interest in the tenancy is entitled to a writ of restitution under 23 & 24 Vic., c. 154, s. 71, without paying the costs of the action *Scully v. Mandeville*, 10 L. R. Ir. 327, MacD. 351.

Appearances of parties before Commission and Sub-Commission.

52. Subject to Rules made under this Act, it shall be lawful for the party to any proceeding before the Land Commission or any Sub-Commission, or, with the leave of such Commission or Sub-Commission, for the father or husband of such party, or for a solicitor of the Supreme Court of Judicature in Ireland (but not a solicitor retained as an advocate by such first-mentioned solicitor), or for a barrister retained by or on behalf of such party and instructed by his or her solicitor, but without any right of exclusive audience or pre-audience, to appear and address such Commission or Sub-Commission and conduct the case subject to such rules and regulations as may be from time to time prescribed.

An originating notice may be signed "by, or in the name of, or by the authority of," a landlord, or tenant, or a solicitor for a landlord or tenant (Rules of Jan., 1897, No. 36).

Where a party not previously represented by a solicitor desires to be so, he must serve notice in accordance with Rule 40.

A party may at any time change his solicitor by serving the notices prescribed

by Rule 41. The Court has power, however, on the application of the previous **Sects 52-56.** solicitor, to stay the proceedings until his costs are paid. Rule 41.

53. No person being a member of the Land Commission other than the Judicial Commissioner, or being an Assistant-Commissioner or employed by the Land Commission, shall by reason of such membership or employment acquire any right to compensation, superannuation, or other allowance on abolition of office or otherwise.

Existence of Land Commission not to create vested interest

This Section has been partially repealed by the Land Purchase Act, 1891. See Sch. 3 to that Act, *post*. See also Land Commissioners' Salaries Act, 1892 (55 & 56 Vic., c. 45).

54. No person being a member of, or holding office under, the Land Commission, or being an Assistant Commissioner, shall, during the time that he holds his office, be capable of being elected a member of or sitting in the Commons House of Parliament

Disqualification for seat in Parliament.

55. The Land Commission shall once in every year after the year one thousand eight hundred and eighty-one make a report to the Lord Lieutenant as to their proceedings under this Act, and every such report shall be presented to Parliament.

Annual report by Land Commission.

56. The Land Commission shall from time to time prepare in such form and at such times as the Treasury from time to time direct accounts of their receipts and expenditure, and within six months after the expiration of the year to which the accounts relate the Land Commission shall transmit the same to the Controller and Auditor-General to be audited, certified, and reported upon in conformity with the regulations from time to time made by the Treasury for that purpose, and the accounts, with the reports of the Controller and Auditor-General thereon, shall be laid before the House of Commons not later than three months after the date on which they were transmitted for audit if Parliament be then sitting, and if not sitting, within fourteen days after Parliament next assembles.

Audit of account of Land Commission

Provided that the regulations made by the Treasury under this Section shall be laid before the House of Commons within one month of the date thereof, if Parliament be then sitting, and, if not, then within fourteen days after Parliament next assembles, and that such regulations shall not have effect until they have lain for thirty days upon the Table of the House.

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PART VII.

DEFINITIONS, APPLICATION OF ACT, AND SAVINGS.

Definitions.

57. In the construction of this Act the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the context repugnant thereto; that is to say,
 “*Lord Lieutenant*” includes the *Lords Justices or any other Chief Governor or Governors of Ireland for the time being* :
 “*Treasury*” means the *Commissioners of Her Majesty’s Treasury* : *
 “*Board of Works*” means the *Commissioners of Public Works in Ireland* :

“*County*” includes a riding of a county :

“*Contract of tenancy*” (*a*) means a letting or agreement for the letting of land for a term of years or for lives, or for lives and years, or from year to year :

“*Tenant*” (*b*) means a person occupying (*c*) land under a contract of tenancy, and includes the successors in title to a tenant.

Where the tenant sublets part of his holding with the consent of his landlord (*d*) he shall, notwithstanding such sub-letting, be deemed for the purposes of this Act to be still in occupation of the holding.

“*Landlord*” (*e*) means the immediate landlord or the person for the time being entitled to receive the rents and profits or take possession of the land held by his tenant, and includes the successors in title to a landlord : (*f*)

“*Holding*” (*g*) during the continuance of a tenancy means a parcel of land (*h*) held by a tenant of a landlord for the same term and under the same contract of tenancy, and, upon the determination of such tenancy, means the same parcel of land discharged from the tenancy :

“*Tenancy*” (*i*) means the interest in a holding of a tenant and his successors in title during the continuance of a tenancy ; and “*rent of a tenancy*” means the rent for the time being payable by such tenant or some one or more of his successors :

“*Present tenancy*” (*j*) means a tenancy subsisting at the time of the passing of this Act or created before the first day of January one thousand eight hundred and eighty-three, in a holding in which a tenancy was subsisting at the time of the passing of this Act, and every tenancy to which this Act

* The words in italics are repealed by Stat. Law Rev. Act, 1894.

applies shall be deemed to be a present tenancy until the contrary is proved: (*k*) Sect. 57

“Future tenancy” (*l*) means, except as aforesaid, a tenancy beginning after the passing of this Act:

“Ordinary tenancy” means a tenancy to which this Act applies, and which is not a tenancy subject to statutory conditions, or a judicial lease, or a fixed tenancy:

“Sale,” “sell,” and cognate words include alienation (*m*), and alienate, with or without valuable consideration:

“Ejectment” includes action for recovery of land:

“An estate” means any lands which the Land Commission may by order declare fit to be purchased as a separate estate for the purposes of this Act:

“Prescribed” means prescribed by Rules made in pursuance of this Act:

“Landed Property Improvement (Ireland) Acts” means the Act of the session of the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two, intituled “An Act to facilitate the improvement of landed property in Ireland,” and any Acts amending or extending the same.

Any words or expressions in this Act which are not hereby defined, and are defined in the Landlord and Tenant (Ireland) Act, 1870 (*n*), shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the last-mentioned Act, and the Landlord and Tenant (Ireland) Act, 1870, except in so far as the same is expressly altered or varied by this Act or is inconsistent therewith, and this Act shall be construed together as one Act. (*o*)

(a) “Contract of tenancy” does not include the right of occupation in lieu of emblements conferred by the 34th Section of Landlord and Tenant Act, 1860. “Contract of tenancy.”
Hemphill v. Fraser, 10 L. R. I. 87, MacD. 408; *M’Cullagh v. Batt*, 24 I. L. T. R. 52. See also *p.* 67, *ante*.

The subject of the letting must be the land itself, not a right of grazing, or anything of the nature merely of a *profit à prendre*, as *conacre*: *Connell v. Skehan*, MacD. 165; *Mulligan v. Adams*, 8 I. L. R. 132; *Dease v. O’Reilly*, 8 I. L. R. 52; *Booth v. M’Manus*, 12 I. C. L. R. 419, 6 Ir. Jur. N. S. 367.

It seems doubtful whether a tenancy for a year certain created before the passing of the Act is within the definition of “contract of tenancy” here given. See *Ryan v. Chadwick*, 14 L. R. I. 200, 353; *Wright v. Tracey*, I. R. 7 C. L. 134; 8 C. L. 478; 8 I. L. T. R. 142. A tenancy for a year certain created after the passing of the Act is to be deemed a tenancy from year to year (Sec. 16).

Where, on the expiration of a lease in 1879, the owner of the reversion was an infant and ward of Court, and the lessee continued in occupation, paying rent

- Sect. 57.** to the Receiver, it was held that there was no "contract of tenancy" binding on the infants' estate thereby created *Croker v. Clanchy*, 20 L. R. Ir. 111. So the act of a Receiver under the Land Judge in receiving rent from tenants and paying interest thereout to mortgagees does not create a new tenancy binding on the mortgagees *O'Rourke's Estate*, 23 L. R. Ir. 497. As to how a contract of tenancy may be created, and when it may be implied, see notes to Landlord and Tenant Act, 1850, Sec. 3, *ante*, pp. 4-1).
- "Tenant" (b) "Tenant" means a person *occupying* land under a contract of tenancy. "The benefits conferred on tenants by the Act as to free sale fixity of tenure, fair rent, and land purchase are confined to occupying tenants, and the tenancies referred to in the Act, whether present or future, fixed or under judicial lease, are tenancies of persons in occupation of their holdings. Occupation is in fact the key-note of the Act in the provisions which it makes for tenants" (*per* BEWLEY, J., *Meath v. Megan* [1897], 2 I. R., at p. 50, affirmed on appeal, *ibid.* 477)
- Must be in occupation. The word occupation implies more than mere possession, which may be a mere legal right (see judgment of Lord OHAGAN, C., *Carroll v. Keayes*, I. R. 8 Eq. at p. 114), whilst occupation implies that there is a use and enjoyment of the property in fact *Rez v. Ditchat*, 9 B. & C. 176, 4 M. & Ry 151. A tenant who has been displaced by a mortgagee entering into possession under his mortgage no longer "occupies" the lands, and does not come within this definition of a tenant *Farrilly v. Doughty*, 15 I. L. T. R. 100, MacD. 400, *Kelly v. Lord Bantry*, MacD. 405. The mortgagee who holds by a valid assignment, subject to redemption, the interest of the tenant in the tenancy is the tenant of the holding as between all parties *Mullan v. Traill* [1898], 2 I. R. 378. But, if the mortgagee has not entered into possession, the tenant is entitled to have a fair rent fixed, notwithstanding the mortgage *Kirby v. Gubbous*, MacD. 402. And a tenant may still be deemed in occupation, notwithstanding that he has let the "grazing" of the land by the year *O'Shea v. Meara*, I. R. 3 C. L. 115 R. & L. App 1.
- Mortgagee in possession. The Land Commission has no jurisdiction to fix a fair rent where the tenant is not in possession, having been evicted after the service of his originating notice *Walsley v. White*, 28 I. L. T. R. 151. Where, subsequently to the hearing of an application to fix a fair rent by a Sub-Commission, the landlord brought an ejectment on the title and obtained a decree for possession, which was actually executed, it was held that, as the tenant was clearly out of possession and occupation, the Land Commission had no jurisdiction to rehear the case, and the originating notice was dismissed. *Stanley v. Gaynor* (Unreported. Land Commission Court, 9th June, 1887). So also, where a tenancy from year to year had been taken in execution, and a conveyance by the sheriff to a purchaser executed, although the purchaser had not actually taken possession, it was held that the former tenant was not within this definition, and could not apply to have a fair rent fixed. *Stack v. Plummer*, Ro. & Dill. 31, 15 I. L. T. R. 122 MacD. 398.
- Receiver in possession. Where a Receiver is appointed over the tenant's interest in a holding, and takes possession in pursuance of an order of the Land Judge, the tenant may still be deemed in occupation for every legal purpose. This appears from the judgment of the Court of Appeal in *Moir v. Blacker*, 26 L. R. Ir. 375, overruling the decision of LITTON, J., but affirming that of FITZGERALD (Commissioner), 24 I. L. T. R. 77. See also *Annaly v. MacFarlane*, 27 I. L. T. R. 99.
- Assignees in bankruptcy of a tenant, if they elect to take the tenancy, are deemed to be in occupation of the holding, and proceedings to have a fair rent fixed may be continued in their names. *Assignees of Cummins v. Porter*, 26 I. L. T. & S. C. 420 (L. C.).

The "tenant" need not necessarily be a single individual. A number of persons occupying different parts of a holding in severalty may together make up a "conjunct tenant," provided the sub-division is not in violation of Sec. 2 or of Sec 5, *ante*. See judgment of PALLES, C.B., *Ireland v. Landy*, 22 L. R. Ir., at p. 417. But such subdivision, if sanctioned by the landlord, may be held to create separate tenancies in the occupiers, and to effect a surrender by operation of law of the tenancy previously existing *Boylard v. Wright*, 24 I. L. T. R. 14 (Sub-Commission).

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(c) A middleman is, of course, not a tenant "occupying" land; and if a tenant has sublet even a part of his holding without the landlord's consent, he is excluded from the Act by this definition. *Maconchy v. Robertson*, 18 L. R. Ir. 483; *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85; *M'Kee v. Mussenden*, 19 I. L. T. R. 51; *O'Connor v. Sheil*, 17 I. L. T. R. 97, MacD. 260.

Subletting.

Prior to the passing of the Land Act, 1887, it was held that, no matter how small a portion of the holding was sublet, if it was done without the landlord's consent, the tenant who had sublet was entirely excluded from the Act *Meredith v. Hungerford*, 14 L. R. Ir. 438; *Maconchy v. Robertson*, 18 L. R. Ir. 483; *Neill v. Macartney*, Greer, Leading Cases, 396. In *Beamish v. Crowley*, 16 L. R. Ir. 279, however, the Court of Appeal considered it doubtful whether the subletting without consent of so small a portion of a holding as three-quarters of an acre out of a farm of 100 acres would necessarily, and as matter of law, prevent the tenant from being considered in occupation. By the Land Act, 1887, Sec. 4, it was provided that a tenant might also be deemed in occupation of his holding, notwithstanding that part was sublet, where the subletting was of a trivial character. This provision has now been repealed by the Land Act, 1896, but by Sec. 7 of the latter Act, it is provided that a tenant may be deemed in occupation, notwithstanding that part of his holding is sublet, even without consent "if in the estimation of the Court a part not less than seven-eighths, or thereabouts, in value of the holding" remains in the *bona fide* occupation of the tenant, and if the subletting was made before the passing of the Act of 1887, or in substitution for a letting existing at that date. See that Section and notes thereto, *post*, pp. 542-6.

The tenant must be in occupation at the date of the service of the originating notice; if he is not, he cannot subsequently acquire an occupation to satisfy the Act, as, for instance, by getting up possession from a sub-tenant before the hearing of the case: *Kennedy v. Essex*, 28 L. R. Ir. 586, 26 I. L. T. R. 7 (C. A.); *Steele v. M'Naghten*, Greer, Leading Cases, 394 (L. C.), or from a mortgagee *Kelly v. Lord Bantry*, MacD. 405 (L. C.). Where, however, subsequently to the order being made by the Sub-Commission fixing a fair rent, a tenant sublet, and an appeal was taken, he was allowed three months to reinstate himself in his holding, and, having done so, the order of the Sub-Commission was confirmed: *Edwards v. Butt*, MacD. 404 (L. C.). And in *Butterly v. Carroll*, 1 Greer 364, the Court adjourned the hearing of an appeal to enable the tenant to get up possession from a sub-tenant, who was in occupation at the date of the service of the originating notice.

Tenant must be in occupation at date of service of originating notice

It is not necessary that the tenant should have been actually in occupation at the passing of the Act; there may be a present tenancy in lands which were sublet at the passing of the Act, provided the sub-tenant has surrendered before the service of the originating notice: *Butler v. Hutchinson*, 28 I. L. T. R. 22 (L. C.); *Morrissey v. Humble*, 18 I. L. T. R. 18 (Sub-Com.); *Waters v. Crosthwaite* (County Court), *ibid*. It is not necessary to prove a formal surrender of the sub-tenancy, if possession has been given up by the person or persons who were substantially entitled to the sub-tenant's interest *Spence v. Charlemont*, 35 I. L. T. R. 24 3 Greer 79 (L. C.) And where a sub-tenancy has been determined by judgment in

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ejection for non-payment of rent and the caretaker notice under the 7th Section of the Act of 1887 served, the tenant is deemed to be in occupation without proceeding to obtain physical possession of the lands: *Garnett v. Garnett* [1894], 2 I. R. 41: 28 I. L. T. R. 12 (L. C.).

Consent of landlord.

(d) The proviso as to the tenant subletting part of his holding with the landlord's consent is general in its application and applies to all sublettings whether before or after the passing of the Act. In such cases the tenant is deemed to be still in occupation: *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85. And the word "tenant" in the proviso includes a lessee, as to which see notes to Sec. 21 (*ante*, p. 304).

Must be active.

The consent of the landlord, however, must be something active as distinguished from passive, though it may be inferred from acts. It is necessary to show facts, which substantially amount to an agreement by the landlord to the subletting. Knowledge or acquiescence on his part is not sufficient, unless it was in his power to do something to prevent it: *Maconchy v. Robertson*, 18 L. R. Ir. 483 (see Judgment of PALLES, C.B., as adopted by ASHBOURNE, C., 18 L. R. Ir., at p. 488). In that case the tenant, who held under lease, had sublet a house and about half an acre of the demised premises. The landlord admitted in his evidence that he knew that the sub-tenant was in occupation of the house, but stated that he did not know he occupied it as tenant. His consent to the subletting was neither asked for nor given. Upon these facts the Court of Appeal held, affirming the decision of the Exchequer Division, that there was no evidence to go to the jury of the landlord's consent to the subletting. "It is not at all necessary," said FITZGERBON, L.J., in giving judgment, "for the landlord to show that the subletting was against his will; nor is it enough for the tenant to show, in a case where the landlord's consent was immaterial, merely that he came to know of it afterwards. Proof of subsequent knowledge and acquiescence may be, in some cases, evidence of previous consent; but where the landlord could do nothing effective to prevent subletting, the mere fact that when he became aware of it he did nothing will not prove consent," 18 L. R. Ir., at p. 490. See also on this point, *Parnell v. Brownrigg*, 29 I. L. T. R. 56, and *Vaughan v. Greer*, 2 N. I. J. R. 240.

Evidence of consent.

The landlord's knowledge and acquiescence may, however, be evidence of consent to a subletting where, having the power to prevent it, he stands by and permits it: *Keating v. Bolton*, 22 L. R. Ir. 143. But in that case it appeared that the landlord's agents with knowledge of the subletting invited the tenants to apply to have fair rents fixed. See judgment of FITZGERBON, L.J., *Kennedy v. Essex*, 28 L. R. Ir., at p. 593. In the latter case it was held that the mere fact of a landlord knowing of sublettings, which were contrary to a covenant, and not taking any steps to enforce the covenant, could not be relied on as proof of consent: *Kennedy v. Essex*, 28 L. R. Ir. 586, 26 I. L. T. R. 7. But see, now, on this point, Land Act, 1896, Sec. 11, *post*. The fact that lands are described in a lease as in the occupation of a lessee "and his under-tenants" is not any evidence of consent by the lessor to the sublettings: *Thomson v. Rossmore*, 32 L. R. Ir. 431 (C. A.). But where a lease contained a clause against alienation and subletting, and the landlord gave a written consent to an assignment which set out in detail the particulars of certain sub-tenancies, subject to which it was made, it was held by BOWLEY, J., that this fact, coupled with the fact that the landlord's agent had invited the tenant to serve an originating notice, estopped the landlord from alleging that no legal evidence of consent to the sublettings had been given: *Vaughan v. Vandeleur*, 28 I. L. T. R. 29.

Where a lease contains an express permission to sublet, it is not necessary to

prove a distinct consent to each act of subletting. The effect of the clause permitting subletting is to make every subletting in pursuance of it a subletting with consent: *per* WALKER, C., *Thomson v. Rossmore*, 32 L. R. Ir., at p. 437; *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85; *Jackson v. M'Master*, 28 L. R. Ir. 176, 24 I. L. T. R. 36. A clause in a lease giving liberty of turbary to the lessee, and his cottiers and tenants resident on the demised lands, has been held, however, not to be in itself evidence of consent. *La Touche v. Brownrigg*, 26 I. L. T. & S. J. 421 (L. C.). See further as to what amounts to evidence of consent, *Wakefield v. Robinson*, 30 L. R. Ir., 547; 26 I. L. T. R. 109 (C. A.); *Rankin v. M'Murtry*, 24 L. R. Ir. 290 (Q. B. D.); *Bell v. Dyot*, MacD. 406, and notes to Sec. 21, *ante*, p. 30, *et seq.*

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In order that there should be a subletting with consent to come within this proviso, there must, in the first instance, be a subletting by the tenant. Consequently, if a sub-tenancy was in existence before the contract of tenancy, which is the basis of the originating notice, was entered into, no consent of the landlord will be effectual to give a status of occupation to the tenant, for "acquiring a reversion is not subletting" (*per* FITZGIBBON, L.J., *Flannery v. Nolan*, 20 L. R. Ir., at p. 540); and the tenant in that case has not sublet at all: *Buchanan v. Cowell*, 26 I. L. T. R. 24; *Nolan v. Devery*, 26 I. L. T. & S. J. 419. "I cannot," says FITZGIBBON, L.J., "under Section 57, deem a man to be still in occupation of land which he never occupied at all, or to have sublet land which his landlord had let before he ever had any interest in it" *Thomson v. Rossmore*, 32 L. R. Ir., at p. 443). It should be noted, however, that the 7th Section of the Land Act, 1896, applies to these retrospective sublettings, the words being "sublet to or in the occupation of another person."

Subletting antecedent to tenancy.

Where, in the case of a subletting which was in existence at the date of a lease, the original sub-tenant died, and a relative of his succeeded him, paying the same rent, but not having any legal title to the tenancy, it was held that this amounted to a new subletting, of which evidence of consent might be given, the old sub-tenancy having been extinguished by the Statutes of Limitation *Jackson v. M'Master*, 28 L. R. Ir. 176, 24 I. L. T. R. 36. The mere fact of no legal representative being raised to a deceased tenant does not, however, necessarily render the tenancy of one of the next of kin who succeeds him, a new tenancy: *Mulcaire v. Lane-Joynt*, 32 L. R. Ir. 683; 27 I. L. T. R. 121 (C. A.).

A landlord who is merely a tenant for life may give a consent sufficient for the purposes of this Sub-section: *Robinson v. Wakefield* [1897], 2 I. R. 130 (C. A.), [1896] 2 I. R. 194 (L. C.). And the consent of an agent, if given with the authority of his principal appears also to be sufficient. *Wiseman v. Acton*, 2 Greer 32 (L. C.), following the decision in *Robinson v. Wakefield* [1897], 2 I. R. 130. "The general rule of law," says WALKER, L.J., in the latter case, "applicable to the construction of a statute which requires the consent of a party, is that the maxim *quis facit per alium facit per se* applies, unless there is something in the words of the enactment to show that it must be signed by the party, here the landlord himself, or something in the subject-matter to show that the act must be a personal one" [1897], 2 I. R., at p. 139.

Who may give consent.

Where a tenant attempts to sublet in violation of a covenant, without the written consent of the landlord, as the subletting is void under the 18th Section of Landlord and Tenant Act, 1860, a mere verbal consent, it has been held, cannot bring the case within this proviso: *Bowman v. Catherwood*, 28 L. R. Ir. 572 (Ex. Div.). This decision was approved of, and adopted by the Court of Appeal in *Smyth v. Edie*, 27 I. L. T. R. 86, and it was there held that the mere fact of the landlord's

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agent being a witness to the deed creating the subletting was not evidence of consent for the purposes of this Sub-section when the lease contained a clause against subletting. These cases, however, were both decided before the passing of the Land Act, 1896, and it seems at best doubtful whether they would now be held to apply, having regard to the provisions of the 11th Section of that Act. See notes thereto, *post*. See, also, *Keating v Bolton*, 22 L. R. Ir. 143 (C. A.), where a subletting of this character was held to be within the proviso (but the question does not appear to have been argued there), and judgment of FRIZGIBBON, L.J., in *Macoskey v. Robertson*, where he says that "the landlord's consent here spoken of is not necessarily an operative consent, or one essential to the validity of the subletting" 18 L. R. Ir., at p. 489.

Presumption of a lost deed giving consent

Attempts have been made in several cases, where sublettings have existed for long periods of time in violation of covenants contained in the leases, to apply the principle of a lost deed being presumed to have been executed either consenting to the subletting or waiving the prohibition in the lease, sufficient to meet the exigencies of the tenant's case, but in no case has such a contention been successful, though it has never been laid down that a deed can in no case be presumed which would get rid of the provisions of the subletting Acts. See *Stevenson v. Parker* [1895], 2 I. R. 505, 29 I. L. T. R. 2 (C. A.); *Robinson v. Wakefield* [1897], 2 I. R. 130; and *De Mortmorency v. M'Adam* [1899], 2 I. R. 299. In *Robinson v. Wakefield*, a sufficient consent by an agent was proved, but BEWLEY, J., remarked that even if this were not sufficient, the Court would be prepared to presume a lost grant, and expressed his opinion that it was not precluded by the decision of the Court of Appeal in *Stevenson v. Parker* [1895], 2 I. R. 504, from making such a presumption, *Robinson v. Wakefield* [1896], 2 I. R., at p. 203.

"Landlord"

(e) The term "landlord," as defined by this Section, "includes the successors in title to a landlord." It has, therefore, been held that the proceedings are not put an end to by the death of the person named as landlord in the originating notice, but that they may be continued in the name of his successor in title *Woods v. Lord Lurgan*, MacD. 351. Where a person was erroneously named as successor in title in the continuing order, who was not the person really entitled under the will of the late owner, the proceedings were set aside and a new continuing order made in the name of the true owner *Clinton v. M'Kane*, MacD. 354. Similarly, on the death of a tenant the proceedings may be continued in the name of his successor: *M'Murthy v. Snoddy*, MacD. 355.

Successors in title

(f) Although the term "Landlord" includes the successors in title to a landlord, it was formerly held that where a landlord had only a life estate in the lands, the interest in tenancies created by him terminated with his life *Peyton v. Gilmartin*, 28 L. R. Ir. 378 (Q. B. D.); *Sparrow v. Hepenstall*, 24 I. L. T. R. 65 (L. C.); *Monaghan v. Hinds* [1895], 2 I. R. 689. But, now, by the 10th Section of the Land Act, 1896, tenancies created by limited owners are made binding upon the succeeding owners, except in cases of fraud or collusion, or letting at a gross undervalue. Even before the passing of that Act, it was held that if the tenancy has been created by the settlor, or was otherwise paramount to the estate of the tenant for life, the various parties who took under the settlement were each bound by the tenancy, and apparently also by an order fixing a fair rent as against one of them. See judgment of HOLMES, J., *Peyton v. Gilmartin*, 28 L. R. Ir., at p. 394.

"Holding."

(g) The term "holding" means not only the land comprised in the tenancy and actually let to the tenant, but includes such easements and profits à prendre as are appurtenant to the land so let. Thus a right of pasturage over other lands or a right of turbary may be comprised in a "holding" for which a fair rent is fixed *Ex parte Hutchinson*, 12 L. R. I. 79; 17 I. L. T. R. 27; MacD. 498.

Sec. 48 (2) of the Land Act, 1896, now provides that in the definition of "holding" contained in this Section "parcel of land" shall be deemed to include "an undivided share of land whether held alone, or held under the same contract of tenancy with land held in severalty." Prior to the passing of that Act, it was held that an undivided share of land did not come within the definition of a 'holding': *Cummins v. St. Leger* [1896], 2 I. R. 603.

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Where several holdings are included in one originating notice, the court will order an amendment, striking out all but one, at the same time giving the party leave to serve fresh notices for the other holdings, service of which the landlord's solicitor may be ordered to accept: *Dereham v. Hamilton*, E. & D. 103, MacD. 373. See also *Hanna v. Macartney*, 17 I. L. T. & S. J. 650; MacD. 373.

Holdings may be consolidated by the acts of the parties, but the mere fixing of a bulk rent will not necessarily effect such consolidation. *Delmege v. Mullins*, I. R. 9 C. L. 209, especially where the transaction takes place after the passing of this Act. See *Jackson v. Hagan*, 28 L. R. Ir. 326. Nor is the fact that one receipt only is given necessarily a proof of consolidation. In *Dunphy v. Donville*, Court of Appeal, November 10th, 1887 (unreported), it appeared that a tenant held three separate farms, for which he paid one bulk rent, receiving one receipt only. On the hearing of an application to fix a fair rent, it was proved that the tenant had sublet part of one holding without the landlord's consent, and the Land Commission gave liberty to amend by striking out the holding which was so sublet, and fixed a fair rent for the others. The landlord appealed, contending that the holdings had been consolidated by the acts of the parties, and that the originating notice should be entirely dismissed. The Court of Appeal, however, held that the evidence of consolidation was insufficient, and that the order of the Land Commission was right.

Consolidation of holdings.

A consolidation of holdings was formerly, in every case, deemed the creation of a new tenancy, and if it took place after Jan. 1st, 1883, constituted a "future tenancy" in respect of which a fair rent could not be fixed: *Walsh v. Huntingdon*, 28 I. L. T. R. 57. But now, under the 17th Section of the Land Act, 1896, a consolidation may be effected if carried out in the prescribed manner, the new consolidated tenancy being, as from the date of the agreement a present tenancy. See that Section and notes thereto, *post*. See also *M'Donald v. Orme*, Greer, Leading Cases, 475.

There may be a "shrinkage" of an original letting, without destroying the identity of the holding. Thus, where a tenant had re-let part of the premises back to the landlord, it was held that the remainder might be regarded as an entire holding of which he was in *bona fide* possession: *Nagle v. Galbraith*, 25 I. L. T. R. 33 (C. A.). A surrender of portion of the holding does not *per se* put an end to the old tenancy and create a new one, even though the rent is also changed. *Curoe v. Gordon*, 26 I. L. T. R. 95 (PALLES, C.B.); *Irwin v. Goodlatte*. (Unreported, but referred to by WALKER, C. [1895], 2 I. R., at p. 701).

Alteration in area.

(A) The term "Parcel of land" has a less extended meaning than the word "Land," "Parcel of land" as used in the L. & T. Act, 1860. See Sec. 1 of that Act, *ante*. "Parcel of land" by itself means the soil—the corporeal hereditaments only in the particular parcel. A "parcel of land held by a tenant," however, includes not only the soil, but also the appurtenances attached to it: *Per* PALLES, C.B., *Ex parte Hutchinson*, 12 L. R. Ir. at p. 87. It now also may include an undivided share of land: Land Act, 1896, Sec. 48 (2).

(i) "Tenancy" means the interest in a holding "during the continuance of a "Tenancy." *tenancy*." Where a tenant who had held lands for a year certain, expiring on the

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1st of November, served on the 14th of that month an originating notice, he being then and continuing to be in actual occupation of the lands, it was held that the originating notice was late, and the court accordingly refused to stay proceedings in an ejectment by the landlord *Earl of Arran v. Wills*, 14 L. R. Ir. 359. "It seems clear," said MAX, C.J., in giving judgment, "that the period within which such application may be made is limited by the terms of the tenancy. The power or privilege is given to a tenant, and should be exercised while he fills that capacity." 14 L. R. Ir., at p. 363.

So where a tenant served a notice on his landlord duly signed in the following terms—"I hereby inform you that I forthwith surrender my house and garden, situated at Tanhouse, as I consider the rent demanded too high"—it was held that the document operated as an immediate surrender of his tenancy, and that he could not subsequently serve an originating notice to fix a fair rent *Neville v. Harman*, 17 I. L. T. R. 96; MacD. 277.

On the other hand, it has been held by the Court of Appeal, in *Montgomery v. O'Hara* (24 I. L. T. R. 2), affirming the decision of the Q. B. D. (22 L. R. Ir. 608), that a tenancy under this Act does not determine until the landlord resumes possession. See notes to Sec. 20, *ante*, p. 183. As to when a contract of tenancy exists, see *ante*, p. 343, and notes to L. & T. Act, 1860, Sec. 3, *ante*, pp. 4-10.

"Present tenancy."

(j) The definition of a "present tenancy" here given includes a tenancy under a lease for a term of years, "created" between 22nd Aug., 1881, and 1st Jan., 1883, where a tenancy was subsisting in the lands demised on 22nd Aug., 1881. The lessee in such a case is entitled to have a fair rent fixed under Sec. 8 of this Act, *Magner v. Hawkes*, 28 L. R. Ir. 365 (L. C.), but not under the 1st Section of the Land Act, 1887 *Daly v. Gardiner*, 25 I. L. T. R. 47 (Sub-Comm.). In such a case, however, if the lessee's poor law valuation is over £150, his covenant to pay the rent agreed upon during the term is construed as a contract not to apply to have a fair rent fixed, which is valid under Sec. 22, *ante*, and deprives him of the right to apply accordingly *Ronaldson v. La Touche*, 24 L. R. Ir. 344; 23 I. L. T. R. 21.

In *Howell v. Briscoe*, 21 I. L. T. R. 73, 20 I. L. T. R. 16, a question arose as to the meaning of the word "created" in this definition. There it appeared that on the 8th Dec., 1882, the tenant wrote proposing to take a lease for 99 years, to commence on the 1st Jan., 1883, of lands which had come into the landlord's possession since 22nd Aug., 1881. This proposal was accepted in writing on the 12th Dec., 1882, and the tenant put into possession under it, paying rent, however, only from the 1st Jan., 1883. Under these circumstances, it was held by the Court of Appeal (21 I. L. T. R. 73), reversing the decision of the Land Commission (20 I. L. T. R. 16), that the tenancy was not "created" before the 1st Jan., 1883, and was consequently a future and not a present tenancy.

There must have been a *tenancy* subsisting on 22nd Aug., 1881, to bring a lease made between that date and 1st Jan., 1883, within the definition of a present tenancy. Thus, where a lease expired in March, 1881, and the lessee continued to occupy in lieu of emblements under L. & T. Act, 1860, Sec. 34, until Sept., 1881, it was held that as this occupation did not constitute a tenancy, a lease granted in Sept., 1882, did not make the lessee a present tenant: *M'Cullagh v. Batt*, 24 I. L. T. R. 52 (L. C.). An agistment contract is not for this purpose equivalent to a tenancy: *Muldoon v. Crean*, Greer, Leading Cases, App. 11 (C. A.).

Where a tenancy was subsisting in a holding on the 22nd August, 1881, the creation of a new tenancy in *any part* of that holding before 1st January, 1883

constituted a "present tenancy": *Fitzsimmons v. Ellis* [1895], 2 I. R. 698, 30 I. L. T. R. 29; Fitzgibbon Irish Land Repts. 20 (C. A.) *Truell v. Doyle* (Unreported, but referred to in judgment of WALKER, C. [1895] 2 I. R. at p. 701).

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In *Boyd v. Tredennick* [1896], 2 I. R. 364; 30 I. L. T. R. 36; Fitzgibbon Irish Land Repts., 42, it appeared that a present tenancy had been partitioned with the sanction of the landlord, and a portion of it sold as an existing tenancy to another person; the Land Commission held that the portion so sold remained a present tenancy and that the purchaser was entitled to have a fair rent fixed. But where the intention of the parties appeared to be to create a future tenancy under somewhat similar circumstances the same Court held that the tenant was not entitled to have a fair rent fixed. *Kelly v. Hamilton* [1897], 2 I. R. 27. The creation of a present tenancy in a holding, and the partition or division of a holding so that the separate parts may each constitute a present tenancy, may now be effected subject to the prescribed rules and conditions by an agreement under Sec. 17 of the Land Act, 1896, which see *post*, p. 556.

A landlord may be estopped from denying that a tenancy is a present tenancy, where, apart from estoppel, it would not be deemed so. Thus, where having purchased a holding in 1882, the landlord re-let it in 1891, selling the tenant-right to the new tenant as if there was a continuation of the old tenancy, it was held that he was so estopped: *Gordon v. McNeill*, 1 Greer 224 (L.C.). And estoppel was also the ground of the decision in *Boyd v. Tredennick* [1896], 2 I. R. 364; 30 I. L. T. R. 36; see also, as to estoppel, *Moonan v. Conyngham* [1895], 2 I. R. 1. and *Vaughan v. Vandeleur*, 28 I. L. T. R. 29.

Present tenancy
by estoppel.

As to the rights of lessees holding under leases made between 22nd August, 1881, and 1st January, 1883, "where the lessee had been tenant in occupation of the holding under a contract of tenancy expiring after the 29th day of September, 1880," see Land Act, 1887, Sec. 3, *post*, p. 401.

(k) Every tenancy is by this Section to be "deemed to be a present tenancy until the contrary is proved." The onus, therefore, of showing that it is a future tenancy lies on the landlord. Where no evidence was adduced by him, and the Land Commission in consequence fixed a fair rent in respect of what was undoubtedly not a present tenancy, it was held that as it was clearly within their jurisdiction to decide what was or was not a present tenancy, a writ of prohibition could not be granted to restrain them from enforcing their order. *In re Irish Land Commission, Ex parte Johnston*, 14 L. R. Ir. 80. See further, as to the meaning of "present tenancy," notes to Secs. 8 and 20, *ante*, pp. 16 and 299.

(l) "Future tenancy" is defined by relation to "present tenancy," with which it is contrasted. As to the position of future tenants, see Sec. 4, *ante*, and notes thereto, p. 245.

Future
tenancy.

Before the passing of the Land Act, 1896, it was held that a sub-tenant who attorned to the head landlord, on his immediate landlord being evicted for non-payment of rent, after 1st Jan., 1883, became a future tenant: *Claney v. Lethin*, 25 I. L. T. R. 78 (Sub-Commission), as his previously existing tenancy was destroyed by the eviction: *Commins v. Barron*, 19 I. L. T. R. 38 (LAWSON, J.). But now by the 12th Section of that Act, the 15th Section of the Act of 1881 is made to apply in case of ejectments for non-payment of rent, so that the tenancies, if tenancies from year to year, of the occupier, continue unaffected by the determination of the middlemen's estate.

So, also, it was held that where a tenant to whom a letting was originally made by a tenant for life (but not under a power of leasing), was allowed to continue in possession by the remainderman paying rent to him, this constituted a new

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tenancy under the remainderman, which, if the death of the tenant for life occurred after 1st Jan., 1883, was a future, not a present tenancy *Sparrow v. Hepenstall*, 24 I. L. T. R. 65 (L. C.). *Monaghan v. Hinds* [1895], 2 I. R. 689. But now the old tenancy is in the majority of cases binding on the remainderman under Sec. 10 of the Land Act, 1896. See that Section and notes thereto, *post*, p. 548

A new tenancy is not created either by an alteration in the amount of rent being agreed upon *Inchiquin v. Lyons*, 20 L. R. Ir. 470 (C. A.), or by an alteration in area caused by a surrender of part of the holding. *Curoe v. Gordon*, 26 I. L. T. R. 95 (PALLES, C.B.), or by the acquisition by the tenant of a small additional parcel of land *Jackson v. Hagan*, 28 L. R. Ir. 326 (L.C.). See further on this subject notes to L. & T. Act, 1860, Sec. 44, *ante*, p. 85, and notes to Sec. 20 of this Act, *ante* p. 297.

"Sale "

(m) "Sale," &c., includes alienation "with or without valuable consideration." Any assignment of a tenancy, therefore, after the date of the Act must conform to the provisions of Sec. 1. To constitute an alienation, however, it would appear to be necessary that the document should purport to transfer the estate. A mere agreement to transfer would not be such *Doran v. Kenny*, I. R. 3, Eq. 148. Thus an equitable mortgage by deposit of title deeds has been held *not* to be an assignment under Sec. 10 of the L. & T. Act, 1860 *Ex parte Domville, In re Fowler*, 14 Ir. Ch. R. 19

A mortgage was held by CHATTERTON, V.C., not to be a "sale" within the meaning of this definition *Fisher v. Coan* [1894], 1 I. R. 179. But see now Land Act, 1896, Sec. 19, *post*, p. 559

(n) The words defined by the Land Act, 1870, and not defined by this Act, though occurring in it, are "person," "party," "improvements," "lease," "settlement," and "limited owner." These definitions are, therefore, incorporated by this Section. See Land Act, 1870, Secs. 26 and 70, *ante* pp. 189 and 207

(o) The Landlord and Tenant Act, 1870, and this Act are to be construed together as one Act. The entirety of the former Act, however, is not to be taken as incorporated with the latter, so as to confer on the Land Commission original jurisdiction to hear claims for compensation for disturbance or improvement under the Land Act, 1870 *Knipe v. Armstrong*, 15 I. L. T. R. 64; MacD. 413; *O'Connor v. Perry*, 30 L. R. Ir. 388; 26 I. L. T. R. 48.

There is no provision in this Act that it is to be construed with the Landlord and Tenant Act, 1860, but it has been laid down by PALLES, C.B., in *Ireland v. Landy* (22 L. R. Ir. 403), that as the Acts of 1860, 1870, and 1881 are all *in pari materia*, "all three must be construed together as one harmonious whole." So that "words which, in the former Acts, must be interpreted in any particular sense, unless there is something to the contrary in the subject-matter to which they are applied by the latter Acts, or in the context in which they are found, ought to be construed in these latter Acts in the same sense": 22 L. R. Ir., at p. 421.

Tenancies to which the Act does not apply.

58. This Act, with the exception of so much thereof as amends the Landlord and Tenant (Ireland) Act, 1870, in respect of compensation for improvements, (b) and with the exception of Part Five of this Act, shall not apply (a) to tenancies in—

(1.) * Any holding which is not agricultural or pastoral in its

* The portions of this Section in italics have been repealed by the Land Act, 1896, and slightly different provisions substituted by the 5th Section of the latter Act.

character, or partly agricultural and partly pastoral (c); Sect 58.
or

- (2.) *Any demesne land, or any land being or forming part of a home farm, or any holding ordinarily termed "town-parks" (d) adjoining (e) or near to any city or town which bears an increased value as accommodation land (f) over and above the ordinary letting value of the land occupied as a farm, (g) and is in the occupation of a person living in such city or town, or the suburbs thereof (h); or*
- (3) *Any holding let to be used wholly or mainly for the purpose of pasture, (i) and valued under the Acts relating to the valuation of property at an annual value of not less than fifty pounds; or*
- (4.) *Any holding let to be used wholly or mainly for the purposes of pasture, the tenant of which does not actually reside on the same, unless such holding adjoins or is ordinarily used with the holding on which such tenant actually resides; or*
- (5.) *Any holding which the tenant holds by reason of his being a hired labourer or hired servant (k); or*
- (6.) *Any letting in conacre (l) or for the purposes of agistment (m) or for temporary depasturage; or*
- (7.) *Any holding let to the tenant during his continuance in any office, appointment, or employment, or for the temporary convenience (n) or to meet a temporary necessity either of the landlord or tenant: Provided that any such letting made after the passing of this Act (o) shall be by contract in writing, which shall express the purpose for which such letting is made (p);*
- (8.) *Any cottage allotment not exceeding a half of an acre (q);*
- (9.) *Any "glebe" as defined by the Act of thirty-eighth and thirty-ninth Victoria, chapter forty-two, which now is, or hereafter shall be held or occupied by any "ecclesiastical persons" as by the same Act defined (r), and no such ecclesiastical person shall in respect of such glebe be entitled to make any claim for compensation under any of the provisions of the Landlord and Tenant (Ireland) Act, 1870, or of this Act.*

(a) The character of the holding at the date of the passing of the Act determines the question whether it is within the Act, or whether it comes within any of the classes excepted by this Section: *Nelson v. Headfort*, 18 L. R. Ir. 407; 21 I. L. Character of holding, when determined.

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T. & S. J. 67. In that case the question arose as to town parks, and it was held by the majority of the Court of Appeal (FITZGIBBON and BARRY, L.J.J.; NAISH, C. *dis*) that the question whether a tenancy was one to which the Act applied depended on the status of the tenant at the date of the passing of the Act, and not at the date of the service of the originating notice; NAISH, C., taking the latter view. In giving judgment, FITZGIBBON, L.J., after considering the definitions contained in Sec. 57, goes on to say—"It, therefore, appears to me that the question whether or not a tenant can or cannot apply to fix a fair rent—in other words, whether or not the Act applies to his holding, must remain the same, and must be determined in the same way at all times, and from time to time, during the continuance of his tenancy, and, if so, the crucial moment for determining whether or not the Act applies to any tenancy must be the date of the passing of the Act. To every present tenancy the Act as to fixing a fair rent was, on its passing, to apply then, thenceforth, or never. There is no indication that a present tenancy, not within the Act at its passing, could be brought into it afterwards by matter subsequent, or that a tenant who had or had not the necessary status to make the application when the Act passed could acquire or lose it afterwards " 18 L. R. Ir., at p. 420. See also on this point *M'Kelvey v. Cole-Hamilton*, 29 I. L. T. R. 134, and *M'Oscar v. Charlemont*, 31 I. L. T. R. 125.

Effect of Land Act, 1896.

The crucial date for determining whether a holding is within the Land Acts is now the date of the passing of the Land Act, 1896, in respect of these classes of tenancies, such as pasture lettings, which were originally excluded by the portions of this Section now repealed, and are now excluded by the 5th Section of the Act of 1896. *Gaffrey v. Fetherstonhaugh* [1900], 2 I. R. 417: 34 I. L. T. R. 37. 2 Greer 34, 107 6 I. W. L. R. 7 (C. A.).

Where terms of tenancy are altered.

In considering whether a holding is within the Land Acts or not, regard must be had to what were the subsisting terms of the letting at the date of the passing of this Act or of the Act of 1896, as the case may be. A holding cannot be treated as within the Acts merely because the excluding element (such as temporary convenience) did not exist in the original letting, if it was afterwards and before 1881, incorporated therein: *Thompson v. Cleland* [1896], 2 I. R. 190: 30 I. L. T. R. 43 Fitzgibbon, Irish Land Repts. 230 (L.C.)

As to the duty of a tenant to preserve a holding in the character in which it was originally demised, see *Brooke v. Mernagh*, 23 L. R. Ir. 86 (V. C.), and *Grand Canal Co. v. M'Namee*. 29 L. R. Ir. 131 (C. A.).

As to the *onus probandi* where it is alleged that a holding comes within one of the exceptions contained in this Section, see *Douglas v. Allen*, 26 I. L. T. R. 41 (C. A. and L. C.); *Ahern v. Middleton*, MacD. 222 (L. C.); *Reg. (Roosmore) v. The Irish Land Commission* [1894], 2 I. R. at p. 405, and *Coffee v. Hamilton*, and *Gradwell v. McCullagh*, 28 I. L. T. R. 151 and 152.

(b) See Sec. 7, *ante*, p. 26¹, and as to the effect of the amendments contained in this Act in respect of compensation for disturbance, see Sec. 6, *ante*, p. 258, and *Fawcett v. Coillum* [1901], 1 I. R. 129; 3 Greer 91.

Residential and other non-agricultural Holdings.

Demesne Lands.

Home Farms.

(c) The portions of this Section which deal with holdings which are not agricultural or pastoral in character, with demesne lands, home farms, and pasture lettings,

have been repealed by the 2nd schedule of the Land Act, 1896. Similar, but somewhat different clauses have been enacted by the 5th Section of that Act, the notes to which deal with cases decided under the repealed portions of this Section as well as those decided under the new provisions. See, *post*, pp. 519-531.

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Town Parks.

(d) The exemption of lands from the Act as town parks, in the words of Law, C., in *Killeen v. Lamert* (10 L. R. Ir. 362; 17 I. L. T. R. 1, MacD. 179), "depends on the existence of three statutory requisites.

- "(1) That they adjoin or are near a city or town;
 - "(2) That they bear an increased value as accommodation land beyond their ordinary letting value for merely farming purposes; and
 - "(3) That they are occupied by a person living in a city or town or its suburbs "
- 10 L. R. Ir., at p. 368.

As to the first condition, there has been no express judicial decision defining in general terms what is to be considered "a town." It has, however, been held, that it is not necessary that a place should have town commissioners, or be a town corporate, or have suburbs, in order that it should be a town. *Corbet v. Carey*, 5 I. L. T. R. 15. But the mere fact that a fair is held in a village does not make the land near it "town parks": *Adams v. Jones*, Donn. 414, 5 I. L. T. R. 74. The most obvious test is, of course, population, and upon this view it has been held that Portglenone, with a population of 800 (*Adams v. Jones*, 5 I. L. T. R. 74), and by Lawson, J., that Newmarket, with a population of 765, are not considerable enough to be deemed towns. (Referred to in *Downing v. Bland*, MacD., p. 229.) See also *Doyle v. Boland*, 16 I. L. T. R. 193. And, similarly Borrisokane, with a population of 700 (*Dunne v. Clarke*, 17 I. L. T. & S. J. 22), and Kirkcubbin, with a population of 600 (*Gisborne v. McKelvey*, MacD. 201), have been held by O'Hagan, J., not to be towns. Ballynure, with a population of 200, has been held not to be a town. *Hill v. Dobbs*, 2 Greer 324, and Sneem, with a population of 431, was also considered too small: *Downing v. Bland*, 17 I. L. T. R. 117, MacD. 228.

First statutory requisite

On the other hand, Claremorris, with a population of "over 1,000," was considered by the Court of Appeal large enough to have town parks attached. *Killeen v. Lambert*, 10 L. R. Ir. 362; and Kilbeggan, with 1,300 inhabitants, has been held to be a town. *Palmer v. Lambert*, 17 I. L. T. R. 47, MacD. 190. Hacketstown, a place of "over 600 inhabitants," has also been held to be a town: *Kelly v. Vanston*, MacD. 222; and, similarly, Newport, Co. Mayo, with a population of 683 *M'Mannion v. O'Donel*, 22 I. L. T. R. 48. Caledon, with a population of 703 has been held to be a town by the Court of Appeal: *Archer v. Caledon* [1894], 2 I. R. 473, 28 I. L. T. R. 4. Similarly Coalisland (*Atkinson v. Quinn*, 34 I. L. T. R. 192, 3 Greer 88) and Timoleague, with a population of only 366 (*McCarthy v. Travers*, Greer Leading Cases 473), have been held by the Land Commission to be towns.

Population of town

The test of population, however, it must be remembered, is only one of many as to whether an "assemblage of houses" bears the character of a town or merely of a village. "As to the population test taken alone," says FRIZZIBSON, L.J., "it would not in the least surprise me to find that, whether in the popular sense or for the purposes of the Land Acts, one place with a comparatively small population was 'a town,' while another with a larger population was 'a village.' The census depends on boundaries. The urban character may depend on a great number of circumstances, just as the demand for accommodation land depends on many considerations other than mere population": *McCann v. Downshire* [1894], 2 I. R. at

Not an adequate test

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Town Parks.
- p. 629. Whether a place is a town so as to fulfil the statutory requisite for making a holding in its neighbourhood a town park depends not so much on population as on the existence of a demand for accommodation land by the inhabitants, and their willingness to pay for it more than its ordinary value. *Archer v. Caldon* [1894], 2 I. R. 473, 28 I. L. T. R. 4 (C. A.); *McCann v. Downshire* [1894], 2 I. R. 611, 28 I. L. T. R. 58, 93 (C. A.).
- Distance from town.** (e) As to the distance from the town to which town parks may extend no rule can be laid down, as this must of course depend very much upon the size of the town. But it has been held that the vicinity to the civic boundary line is not to be taken as a conclusive test, when this line, as in the case of *Kilkenny*, stretches in all directions far out into the country. *Walsh v. Dunne*, 9 I. L. T. R. 83, Donn. 527. "There may be," says PALLES, C.B., "And I believe there are, in many parts of Ireland, municipal towns, the boundaries of which extend far out into that which, in ordinary language, would be deemed 'country,' as distinguished from 'town'; and I am not to be taken as determining that a holding within such a district might not be within the Act of 1881" *Perry v. Farley* [1894], 2 I. R. at p. 582. See, however, *contra*, *M'Redmond v. Ross*, 9 I. L. T. R. 37, Donn. 527.
- Lands which formerly were not town parks may become such by the fact of a town growing up about them (per KEOGH, J.) *Wilson v. Earl of Antrim*, 8 I. L. T. R. 501, Donn. 472.
- Second statutory requisite** (f) The second statutory requisite is that the lands should bear an increased value as accommodation land beyond their ordinary letting value. Upon this point it has been laid down by FITZGERALD, B., in *Christy v. Gordon*, 13 I. L. T. R. 79, that "lands near a town necessarily bear an increased value as accommodation land if the town is of such a size that there are persons in it who require such land, and the lands are sufficiently convenient for the purpose."
- Increased value.** This principle was fully adopted by the Court of Appeal in the subsequent case of *Killeen v. Lambert*, 10 L. R. Ir. 362. FITZGIBBON, L. J., in his judgment in that case, says.—"The question is not one of rent but of value, though the payment of an increased rent by a townsman is almost conclusive proof that the land bears an increased value to him; and whether he agists market cattle, feeds his own cows, supplies his house with country produce, utilises the manure of his horses, or in any other way works the land and his residence more or less as one establishment, he will generally obtain an increased return from his 'town-parks' as accommodation land over and above the return to be got from an ordinary farm" (10 L. R. I., at p. 374).
- In *Trustees of St. Kieran's College v. Musgrave* (19 I. L. T. R. Dig., p. xviii.), PALLES, C.B., on the same subject, observed that a farm was used for accommodation within the meaning of the 58th Section of the Act if it was used for the personal purposes of the owner, whether for his pleasure or for the purposes of his trade or business, presuming that the trade or business was other than that of a farmer; while, as to whether as such accommodation the land bore an increased value over and above the ordinary letting value of land occupied as a farm, he was satisfied that it did bear such increased value, for here the producer was also the consumer, and it almost followed, not as a matter of law but as a matter of fact, that lands under these circumstances bore a higher value than if they were used for the purposes of a farm.
- The increased value must be an increased value as accommodation land; a farm may have an increased value from proximity to a town as a farm, without fulfilling the condition. *Chism v. Beatty*, Donn. 506 (PALLES, C.B.). It is sometimes a little difficult to distinguish between the accommodation value necessary for town-parks and the mere proximity value of a farm near a large town.

Proximity value in the strictest agricultural sense, as distinguished from the town-park sense, arises in every case where land is so near to a town, as either to produce an increased price for its produce, by reason of having a convenient or high market, or to cause the cultivation of the land to be more profitable by reason of there being in the neighbourhood supplies of manure and other facilities for cultivation. Proximity value of this kind is strictly derived from the increased value of the produce itself, or increased facility of cultivation. Accommodation value, on the other hand, arises from increased demand for land near a town for the purpose of being used by townspeople in connection with their residences or their businesses that are carried on in the town, and unless the increased value is referable to an accommodation of an urban character by and for townsmen, it is not the increased value of land ordinarily termed town-parks that excludes land from the operation of the Land Acts (see judgment of FITZGIBBON, L.J., in *Perry v. Goodbody*, Greer Leading Cases at p. 492). It has frequently been pointed out, accordingly, that in many cases the accommodation value, as distinguished from the proximity value may depend, not so much on the population of a town as its shape and the habits of the occupiers. A long straggling town may have so much land at the rear of the houses as to amply supply the demand for accommodation purposes, and thereby prevent the land in the immediate neighbourhood having any increased value above its normal value as a farm, whereas a small, compact town, of even less population, may, on the other hand, cause such a demand for accommodation land as to give a very greatly increased value to the land adjoining it (see judgment of PALLES, C.B. in *Archer v. Caledon* [1894], 2 I. R. at p. 477). Again, a large city like Dublin or Belfast may be practically without any town-parks, owing to the inhabitants not desiring or requiring to occupy land for themselves in the neighbourhood, while a small country town of 2,000 or 3,000 inhabitants may have a large zone of town-parks in its immediate neighbourhood. The proximity value of land near Dublin is enormous, but an accommodation value scarcely exists at all.

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Town Parks.
Distinction
between
proximity value
and accommoda-
tion value.

Evidence as to the letting value of surrounding or neighbouring land is admissible in determining whether any particular holding bears additional value as accommodation land: *McCann v. Downshire* [1894], 2 I. R. 611 (see judgment of FITZGIBBON, L.J., at pp. 631-2), 28 I. L. T. R. 58, 95; see further as to accommodation value generally, *Reilly v. Doyle*, 8 I. L. T. R. 209 (DOWSE, B.) and *Clarke v. Charlemont*, 35 I. L. T. R. 63 (L. C.), and *Palmer v. Lambert*, 17 I. L. T. R. 47, MacD. 190.

Evidence as to
value of
neighbouring
land.

The burden of proof lies upon the person who avers that the particular lands are town-parks, and he must produce evidence of this increased value as accommodation land over the ordinary value of land in the locality: *McCann v. Downshire* [1894], 2 I. R. 611, 28 I. L. T. R. 93 (C. A.); *Perry v. Goodbody*, Greer Leading Cases 490 (C. A.); *Troy v. Dragheda*, 2 Greer 89 (L. C.); *Ahern v. Middleton*, MacD. 222, *Masterton v. Erne*, 3 Greer 262 (C. A.). See, however, *Killeen v. Lambert*, 10 L. R. Ir. 362, where it was laid down that lands near a town necessarily bear an increased value as accommodation land, if the town is large enough to ensure a demand for such.

Onus of proof

The particular user by the particular tenant, whether for the accommodation of his residence or otherwise, was formerly held to be entirely immaterial on the question of town-parks: *Helen v. Bence Jones*, 18 I. L. T. R. 6, MacD. 198; *Corbet v. Carey*, 5 I. L. T. R. 15; *Kilmorey v. Anderson*, 8 I. L. T. R. 109, Donn. 517. But now, by the Land Act, 1887, Sec. 9, a holding is not to be deemed a town park if it is let and used as an ordinary agricultural farm. (See that Section, *post.*) It would still appear, however, that if it is shown that the land is used for the accommodation of the tenant's town residence and not as an ordinary farm, the particular way in

User of the lands.

- Sect. 58.** which he works the land is immaterial. He may, for instance, use the land in tillage for the culture of green crops, potatoes, or turnips, or in pasture to feed horses or cows, or to supply his house with milk and butter, provided he works it for the accommodation of his residence: *Kulleen v. Lambert*, 10 L. R. Ir. 362, 17 I. L. T. R. 1, MacD. 179.
- Town Parks.** (g) It is not a necessary condition of the exemption of lands as town-parks, that they should be called such—"the lands are described as those 'ordinarily termed town-parks,' words which imply that, though the lands thus meant to be exempted are generally called by that name, still they are sometimes not so designated." Per LAW, C., *Kulleen v. Lambert*, 10 L. R. Ir. at p. 366. See also *Staney v. Henry*, 10 I. L. T. R. 72, and *Kennedy v. Richardson*, MacD. 195. And on the other hand, calling lands town-parks will not make them such, if they do not fulfil the necessary conditions: *Adams v. Jones*, 5 I. L. T. R. 74, Donn. 414, though the fact of their being so described in an old rental may be powerful evidence of their being such in reality *Dobbs v. Daly*, 32 I. L. T. R. 24 (C. A.).
- Lands need not be called town-parks
- Size of holding. The size of a holding is a very important consideration in deciding whether it is a town-park or not, although no hard and fast rule can be laid down on the subject. A holding of ninety-eight acres was held to be too large for a town-park in *Healy v. Smith Barry*, 29 I. L. T. R. 148, and one of thirty statute acres was also considered too large in *Ahern v. Middleton*, MacD. 222; though apparently a holding of twenty-five or twenty-six acres may be such. *Christy v. Gordon*, 13 I. L. T. R. 79; and in *Shannon v. McCormick* (34 I. L. T. R. 30, a holding of twenty-nine acres was held to be excluded from the Land Acts as a town-park.
- If one person manages to engross in his own possession a large tract of town-parks, he cannot then rely upon the size of the holding as bringing it within the Land Acts (per FITZGIBBON, L. J., *Perry v. Goodbody*, Greer Leading Cases at p. 494). Thus where a shopkeeper of Edenderry held seventy-six acres made up of what were originally four contiguous holdings within a short distance of the town, it was held by the Court of Appeal that he could not rely upon the size of the holding as negating its town-park character. *Downshire v. Fay*, 32 I. L. T. R. 150; 1 Greer 189.
- Town-parks subject to Ulster custom. A holding subject to the Ulster tenant-right custom may, nevertheless, constitute a town-park if it otherwise conforms to the statutory conditions. But if it be doubtful in other respects whether the holding is a town-park, the circumstance that a tenant-right interest attaches to it tends to show that it is not a town-park: *Smyth v. Moore*, 18 I. L. T. R. 57. There is no inconsistency, however, between lands being subject to the Ulster tenant-right, and sold as such, and their coming within the statutory definitions of town-parks: *Simms v. Duke of Abercorn*, 18 I. L. T. R. 13; *Williamson v. Earl of Antrim*, 7 I. L. T. R. 157, Donn. 214.
- Whether lands must have been originally taken as town-parks. It has sometimes been held that in order to constitute a town-park the land must have been originally taken by the tenant as such. *Dunne v. Clarke*, MacD. 220; *Boyd v. Graham*, 5 I. L. T. R. 104; *Speer v. Smyly*, 15 I. L. T. R. 116, MacD. 217. This view is founded upon the definition of accommodation land given by FITZGERALD, B., in *Hodgins v. Lord Dunally*, 7 I. L. T. R. 181, Donn. 456, as—"land taken by persons in a city or town for the accommodation of their residences." But in *Chism v. Beatty*, Donn 506, PALLIS, C.B., in adopting this very definition, uses the words "taken or used," which clearly shows that the construction put upon Baron FITZGERALD'S language is not warranted by the words. It would in fact amount to requiring a fourth condition in addition to the three statutory requisites to constitute a town-park. The absence from the Act, indeed, of the words, "let to be used" in reference to town-parks, when they are used in the very next Sub-

section in reference to pasture holdings, appears to be conclusive on the matter, and, in *Nelson v. Headfort*, FITZGIBBON, L.J., distinctly lays down that "the crucial moment for determining whether or not the Act applies to any tenancy must be the date of the passing of the Act" (18 L. R. Ir., at p. 420). See also on this subject *McGowan v. Clements*, 18 I. L. T. R. 11, MacD. 212, and *Wilson v. Earl of Antrim*, 8 I. L. T. & S. J. 501, Donn. 472.

Sect. 58.
Town Parks.

The tenure by which the tenant holds the lands is immaterial on the question of town-parks. The letting need not be of a temporary character. Lands held under a lease for 999 years (*Shannon v. McCormick*, 34 I. L. T. R. 30), and even under a fee-farm grant (*Mahony v. Hibernian Marine Society*, Greer Leading Cases 504) have been held to be excluded from the Land Acts as town-parks.

Tenure of lands
immaterial

(A) The third statutory requisite in reference to town-parks is that they should be "in the occupation of a person living in such city or town, or the suburbs thereof."

Third statutory
requisite.

In *Nelson v. Marquis of Headfort*, 18 L. R. Ir. 407, an important question was raised in the Court of Appeal as to the time at which the fact of the residence of the occupier in the town should be established in order to comply with this requisite. The tenant in that case, both at the time of the letting and of the passing of the Act, resided in the town, but, subsequently, he went to live upon the lands, and while there served an originating notice. The court were unanimous in holding that the time when residence in the town should be proved was not the commencement of the tenancy, the words of the Section being words of futurity; and the majority of them (FITZGIBBON and BARRY, L.JJ.) held that it was the date of the passing of the Act. NAISH, C., however, dissented, and was of opinion that it was the date of the service of the originating notice. The case of *Talbot v. Drapes*, 5 I. L. T. R. 143, Donn. 415, which decided that where the occupier of a town-park had ceased to reside in the town the holding lost its character of a town-park, was held to have no application as having been decided under the Land Act, 1870 (Sec. 15), the wording of which is different from this Section. In *Allen v. Derby*, 16 L. R. Ir. 346, 351; 19 I. L. T. R. 47, PORTER, M.R., also expressed his opinion that a tenant of town-parks cannot entitle himself to have a fair rent fixed merely by leaving the town: "I do not think," said he, "that an act behind the back of the landlord, and without his knowledge, can change the incidents of a holding let as town-parks" (16 L. R. Ir.; at p. 356); and now by the Land Act, 1887, Sec. 9, it is provided that a town-park shall not cease to be within the exemption from this Act by reason only of the occupier ceasing to live in the town, or by reason of the holding becoming vested in a person not living in such town; and, conversely, that a parcel of land shall not come within the exemption by the removal of the occupier into the town, or by the holding becoming vested in a person living in the town. See that Section, *post*, p. 414.

Residence of
occupier in town
when.

Change of
residence.

If the holding was, on the 22nd Aug., 1881, in the occupation of a sub-tenant living in the town, though the immediate tenant was not then living there, the statutory requisite as to residence is complied with: *Routledge v. Leslie*, 33 I. L. T. R. 156 (Sub-Com.).

A holding upon which the tenant actually resides cannot be within the exemption, even though it be actually in the town: *Daly v. Scott*, Donn. 388; *Matchett v. Morton*, 13 I. L. T. R. 129; *Mullally v. Moore*, 17 I. L. T. & S. J. 22; 15 I. L. T. R. 82, MacD. 202; *Burns v. Heusen*, 17 I. L. T. R. 117, MacD. 221. But the fact of its being actually within the town will be strong evidence of its urban character, even though it may be temporarily used for agricultural purposes. See judgment of PALLIS, C.B. in *Perry v. Farley* [1894], 2 L. R. at pp. 582-3.

Holding on
which tenant
resides

Sect. 58. The question whether a holding is a town-park or not is tried by oral evidence before a Sub-Commission, not by affidavit on motion: *Lawler v. Moore*, R. & D 17, 15 I. L. T. R. 65.

As to the object of the Act in exempting town parks from its operation, see *Smyth v. Moore*, 18 I. L. T. R. 57. See further on the subject of town parks generally. *Harcn v. Collum*, 17 I. L. T. & S. J. 23; *M'Loughlin v. Lord Rossmore*, *ibid.*; *Sweeney v. Lord Barnard*, *ibid.*, p. 24, *Rochford v. Hely*, *ibid.*, 25, *Simms v. Duke of Abercorn*, *ibid.*, 26, *Galbrath v. Hynes*, *ibid.*; *Neill v. Collum*, *ibid.*, 27; *Lennon v. Nugent*, 1 Greer 150, 33 I. L. T. R. 75, *McNeill v. McNaghton*, Greer App. 61, *McMath v. Richards*, 13 I. L. T. R. 80.

Pasture Holdings.

(i) Sub-sections (3) and (4) are repealed by the Land Act, 1896, and somewhat different provisions substituted by the 5th Section of that Act. The cases decided under the repealed Sub-sections will be found fully noted along with those decided under the 5th Section of the new Act in the notes to the latter, *post*, pp. 534-539.

Labourers or Servants' Holdings.

Sub-sec 5. (k) "Any holding which the tenant holds by reason of his being a hired labourer or hired servant" is excluded from the Act by this Sub-section. The burden of proof in this case, as well as in the others, rests on the landlord. *Flannery v. Rutledge*, MacD. 249.

The mere payment of rent by labour does not exclude a tenant from the Act *Geary v. Sullivan*, 5 I. W. L. R. 7, *McCorry v. Johnston*, Donn. 389; *Martin v. Trodden*, 6 I. L. T. R. 37, Donn. 417; *Moloney v. Garrihy*, 5 I. L. T. R. 15. In the latter case the tenant had the option of paying in cash or labour, and it was held that he was entitled to compensation under the Land Act, 1870. Similarly a bailiff, who gave his services in lieu of rent for a holding, was held by MORRIS, C.J., not to be excluded by the 15th Section of the Land Act, 1870 *O'Brien v. Hurley*, 7 I. L. T. R. 173, Donn. 463.

In order to bring a holding within the exception it lies upon the landlord to show, not that the rent is paid in labour, but that the holding is given to the tenant as his wages. Thus where the tenant admitted that when he could not work for the landlord he paid another man to go in his place, it was held that he was a hired labourer only. *Wilson v. Willis*, Donn. 388.

Where a tenant took lands at £11 a year, under a written agreement, by which he was to provide the labour of one adult male for at least forty-five days in each quarter, at 1s. a day, it was held by the Court of Appeal, reversing the decision of the Land Commission (MacD. 320), that he occupied the holding as a hired labourer, and was therefore excluded from the Act: *Hansher v. Chichester* (unreported, but referred to in Roche and Reardon's Irish Land Code, p. 162).

In *Guilfoyle v. Willington* (1 Greer 217) it was held that a farm of 21 acres was excluded from the Land Acts as having been let to a herd during his continuance in his employment by the landlord.

Conacre and Agistment Contracts.

Sub sec 6
Conacre.

(l) "A usage prevails in Ireland of letting small portions of land, seldom containing less than a rood, or more than an acre in each lot, at a stipulated price, for a single crop of potatoes or other tillage, 'called conacre or quarter ground'" *Furlong*, L. & T., 2nd ed., p. 217. This creates no tenancy, but is simply a sale of a

profit out of the land and a temporary easement. *Dease v. O'Reilly*, 8 I. L. R. 52, Sect. 58.
Booth v. M'Manus, 12 I. C. L. R. 419. Where an agreement in writing was produced, which purported to be a letting in conacre for fifteen successive years, it was held that it was properly left to the jury to say whether, under all the circumstances, the transaction between the parties was or was not a conacre letting

Evans v. Monagher, 1 I. R. 6 C. L. 526.

(m) A letting "for the purpose of agistment, or for temporary depasturage," gives Asistment.
 no right to the soil, and is merely a *profit à prendre*: *Connell v. Skchan*, MacD. 165
 The possession of the land does not pass by such a letting: *Mulligan v. Adams*,
 8 I. L. R. 132. Money payable under such a contract is not rent *Allingham v*
Atkinson [1898], 1 I. R., 239 (V. C.)

A right of grazing, though by itself it cannot constitute a tenancy in the land, may, however, be appurtenant to a holding within the Act, and a fair rent may be fixed in respect of it as such: *Ex p. Hutchinson*, 12 L. R. Ir. 79, 17 I. L. T. R. 27, MacD. 498. See further as to conacre and agistment lettings, *Muldoon v. Crean*, Greer Leading Cases, App. 16; *Templetown v. Boyd*, 1 Greer, 352, and notes to Sec. 2, *ante*, p. 243.

Lettings for Temporary Convenience.

(n) What is a motive of "temporary convenience" within the meaning of this Sub-sec. 7.
 Section has been laid down by FITZGIBSON, L.J., in *M'Cutcheon v. Wilson* (unreported, but referred to in *Driscoll v. Riordan*, 16 L. R. Ir., at p. 243), as follows —

"Every letting is in a sense for the convenience or to meet a necessity of one or other or both of the parties; but the temporary convenience or necessity contemplated here must, I think, be something special, peculiar to the party or parties or to the holding, collateral to, or possibly even irrespective of the quantity or quality of the tenants' interest, not expected to continue to exist at another time or in other hands, and must be shown to have formed the motive of the letting at the time" (16 L. R. Ir., at p. 244). Nature of "temporary convenience."

"Both parties must have the purpose of the letting present to their minds at the time of making the contract, and be fully agreed as to its terms." Per DOWSZ, B., *Driscoll v. Riordan*, 16 L. R. Ir., at p. 245.

A letting for temporary convenience need not be for a very short period. The holding may be "a holding for a term of years, or for a life or lives with or without a concurrent term of years, or to be held from year to year." Per FITZGIBSON, L.J., *M'Cutcheon v. Wilson* (*ubi supra*). See also *Eiffe v. M'Kenna*, 16 I. L. T. R. 39, MacD. 293. Thus a letting of a dower house by the owner of an estate that it may be available for his widow on his death would be for the "temporary convenience" of the owner: *M'Cutcheon v. Wilson* (*ubi supra*). And a letting to a tenant for his own life has been held to be for temporary convenience: *Cloncurry v. Finnerty* (unreported, but referred to in *O'Donovan v. Kenmare* [1896], 2 I. R. at p. 531). Need not be for very short period

The question whether a letting prior to this Act was made for temporary convenience is one of mixed law and fact, and should be left to the jury, accompanied by such instructions as will restrict their consideration to the matters of fact in controversy: *Driscoll v. Riordan*, 16 L. R. Ir. 235.

A declaration in a lease that the letting is made for temporary convenience is not necessarily an estoppel to the tenant, and parol evidence as to the circumstances attendant on the execution of the instrument may be admitted *Goudy v. Matthews*, 24 I. L. T. R. 105 (L. C.).

A letting by the Court pending the cause or matter, which is usually for seven years, is one for "temporary convenience" within this Section: *Callan v. Dowdall*, Lettings by Court pending the cause

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Temporary
Convenience.

R. & D. 235, MacD. 311; *Jellis v. Swift*, 17 I. L. T. & S. J. 546, MacD. 319. It is doubtful, indeed, whether such a letting creates a tenancy at all. "The Court of Chancery never had powers, except in special cases, under statutes of which 5 and 6 Wm. IV., c. 17, affords an example, to make a lease which operated to actually pass an estate. Assuming jurisdiction as regards the control and management of property, the Court of Chancery no doubt accepts proposals for the letting of lands and executing leases for a term of years pending the cause or matter, but such leases executed by the master or officers of the Court, or even by the judge himself, pass no estate, and only operate by way of estoppel. The legal estate vested in the owner is not bound by the lease, although the Court will restrain the owner from enforcing his rights so long as he is subject to his jurisdiction" (*per LITTON, Q.C., Callan v. Dowdall*, MacD., at p. 313). On the termination of the cause, or in case of a letting pending minority, on the minor attaining age, the owner is entitled to immediate possession, and the Court will grant an injunction to put him into possession, instead of putting him to the expense of an ejectment. *O'Connell v. O'Callaghan*, 3 Ir. Eq. R. 199, *Garsten v. Nangle*, H. & J. 542. See further as to the nature of a tenancy "pending the cause," and when it determines, judgment of CHATBERTON, V.C., *Beechey v. Smyth*, 11 L. R. Ir. at p. 92, and *Shea v. M'Gillcuddy*, 17 I. L. T. R., 104, MacD. 317, where it was held that a sub-tenant holding under a tenant pending the cause was also excluded from the Land Acts.

Receipt of rent
by Receiver

In *Croker v. Clanchy*, 20 L. R. Ir. 111, the facts were as follows.—On the expiration of a twenty-one years' lease in 1879, the owner of the reversion was an infant, and a ward of court. The Receiver in the minor matter continued after the expiration of the lease to accept from the lessee the same rent as that reserved by the lease; and liberty was given by the Receiver Judge to take a new proposal in the proper form from the tenant; but this was never done. The tenant then served an originating notice, and it was held by the Court of Appeal, upon a case stated, that he was not entitled to have a fair rent fixed, as the mere acceptance by the Receiver of the rent at the old rate did not create a tenancy so as to bind the minor's estate, and that the tenant was at best in the position of a tenant holding under a court letting.

In *O'Rourke's Estate*, 23 L. R. Ir. 497, it was also held by MONROE, J., that the act of the Receiver in accepting rent from tenants of a mortgagor, and paying interest thereout to the mortgagee, does not create a new tenancy binding on the mortgagee, as the Receiver is a mere officer of the Court, powerless to create new tenancies without the sanction of the Court.

Letting by
guardian of
minor.

Similarly a letting, pending the minority of an infant owner, by a guardian or trustee, and made to the knowledge of the tenant, with the motive of securing the right of possession to the infant on his attaining age, though not under the court, is a letting for the temporary convenience of the landlord within the meaning of this Section. *Driscoll v. Biordan*, 16 L. R. Ir. 235.

Letting by
Committee of a
Lunatic.

On similar grounds lettings by the Committee of a Lunatic's estate, by direction of the Lord Chancellor, under the powers conferred by 1 Wm. IV., c. 65, Secs. 24 and 31, though they bind the lunatic's estate in all respects, are frequently deemed to be for temporary convenience (*per BEWLEY, J., Cooper v. Cooper*, 31 I. L. T. R.) at p. 147; and *per MAREDDITH, J., O'Rourke v. Crozier*, 34 I. L. T. R., at p. 154.

Letting of lands
intended for
building

Lettings of land which the owner contemplates using subsequently for building purposes have usually been held to be for "temporary convenience." Thus in *Eiffe v. M'Kenna*, 16 I. L. T. R. 39; MacD. 293, a landlord within a few months after the expiration of a lease (which expired before the passing of the Land Act, 1881) stated to the tenant that he required the land for building purposes. The tenant

having urged that if possession were resumed at once he would be a loser, as he had highly manured the land, the landlord replied that he might keep the land until he had exhausted the manure. The tenant, with the landlord's consent, continued thus in possession for three years, and paid various sums towards the rent, but without any settlement of what should be the amount. Upon these facts it was held by the Court of Appeal, reversing the decision of the Land Commission, that the letting was for the "temporary convenience" of the landlord or the tenant, and therefore excluded from the Act. Following this decision, it was held by the Common Pleas Division in *Chaine v. Croker*, 12 L. R. I. 151, that a letting, with a clause of resumption, of lands which the landlord *bona fide* intended ultimately for building purposes, was a letting for "temporary convenience."

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It is not necessary to show that the entire holding was let for temporary convenience; if a defined and substantial part of it was shown to have been so let, the holding was, prior to the passing of the Land Act, 1896, altogether excluded from the Land Acts. Thus, where a lease of eight acres had been made, with a clause of resumption, for building purposes, of a defined portion of about four acres, marked and coloured on a map, annexed to the lease, it was held by the Court of Appeal (following the decision of *Leonard v. St. Leger Barry*, MacD. 240, as regards demesne lands), that as a substantial portion of the holding was let for temporary convenience, the entire holding was excluded from the Act: *Butterly v. Carroll*, 26 L. R. Ir. 93. This decision was followed by the same Court in *Whisker v. Delacherain* (25 I. L. T. R. 34), where, although the holding contained 149 acres, a power in the lease to resume any portion of the lands "coloured green on the map hereunto annexed" (which consisted of about half the entire holding), was held to exclude the holding from the Act. (See remarks of FITZGIBBON, L.J., on this case, in *Mooney v. Willcocks*, 28 L. R. Ir., at p. 119.)

Where portion of
the lands may
be resumed for
building pur-
poses.

Where, however, no definite portion of the holding was indicated by the covenant, it was held that these latter decisions did not apply. Thus, in *Mooney v. Willcocks* (28 L. R. Ir. 113, 25 I. L. T. R. 31), a lease of 65 acres contained a clause enabling the landlord to resume any portion of the demised premises, not exceeding five acres, for building purposes; and it was held by the Court of Appeal that the lessee was entitled, notwithstanding this proviso, to have a fair rent fixed. This decision was followed by the Land Commission under somewhat similar circumstances in *Hughes v. Doynes*, 32 L. R. I. 31, 27 I. L. T. R. 37.

The 8th Section of the Land Act, 1896, now provides that a judicial rent may be fixed where the contract of tenancy provides for resumption by the landlord for purposes of building or planting, without prejudice to the right of the landlord to exercise his right of resumption subsequently, and the Court of Appeal has now decided that a fair rent should be fixed in the case of *Butterly v. Carroll* under that Section (34 I. L. T. R. 141, 3 Greer 35).

Land Act, 1896,
sec. 8.

The following are among the instances of holdings which have been held to be let for "temporary convenience" within the meaning of this Sub-section:—A letting by a Railway Company of lands not immediately required for the purposes of the railway: *Hamilton v. Dublin, Wicklow, and Wexford Railway Co.*, 28 I. L. T. R. 76 (L.C.). A letting by the Irish Church Temporalities Commissioners of glebe lands pending sale: *Spaight v. Irish Church Temporalities Commissioners*, 12 I. L. T. R. 47. A letting by a Presbyterian clergyman of portion of the land attached to his manse: *McGinley v. Cavan Presbytery* (Greer Leading Cases, App. 80). Where, by agreements in writing, tenancies from year to year were created in consideration of certain sums of money being advanced by the tenants to the landlord, and it was provided that such tenancies might be determined at any time on six months'

Other instances
of holdings let
for temporary
convenience.

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Convenience.

notice, and on repayment of the sums so advanced, but not otherwise, it was held that the tenants were in occupation merely as mortgagees, and as such excluded from the Act by this Sub-section, *Cunny v. Meagher*, 19 I. L. T. R. 35, 18 I. L. T. R. 8, and in *Earl v. Neill*, MacD. 316, R. & D. 244, a letting for a limited period, during the absence of the lessor in America, was held to be for temporary convenience. See, also, *M'Gowan v. M'Gowan*, 1 N. I. J. R. 224.

In considering the question whether a holding is let for temporary convenience or not, regard must be had not only to the original terms of the contract of tenancy, but to any special provisions introduced by subsequent agreement between the parties, if these were in force at the time of the passing of this Act. *Thompson v. Cleland* [1896], 2 I. R. 190. The existence, however, of a power of surrender by a tenant, or of resumption by a landlord for some special purpose does not necessarily prove that the holding was let for temporary convenience though it may be important evidence of the fact. *French v. Hutchinson*, 27 I. L. T. R. 11 (L. C.).

Future lettings
for temporary
convenience

(o) A letting for temporary convenience, if made after the passing of the Act, must be by a written contract, which must express the purpose for which the letting is made. Where, on the expiration of a written agreement after the passing of the Act, the tenant continued to hold on by a verbal arrangement, it was held that there was no new letting, and, the tenancy being one for temporary convenience, that it was excluded from the Act. *Clarke v. Steele*, 20 I. L. T. R. 18.

(p) The proviso at the end of this Sub-section was strongly relied on by Lord BLACKBURN, in *Westropp v. Elligott*, 9 App. Cas. 615 14 L. R. Ir. 326, 18 I. L. T. R. 61, as showing that in the case of lettings for the purpose of pasture within Sub-secs. 3 and 4, *ante*, it was not necessary that the contract itself should express the purpose of the letting, as there was no corresponding proviso in either of those Sections (9 App. Cas. at p. 827). See remarks of FITZGERALD, L.J., on this point, in *Fulham v. Garry*, 26 L. R. Ir. at p. 705.

See also as to lettings for temporary convenience, Sec 16, *ante*, and notes thereto, pp. 291-2; *Young v. Gill*, 26 I. L. T. & S. J. 390; and *Spaight v. Irish Church Temporalities Commissioners*, 12 I. L. T. R. 47.

Cottage Allotments.

Sub-sec 8

(g) Cottage allotments, like labourers' holdings, must not exceed half an acre—*i.e.*, half a statute acre. *O'Donnell v. O'Donnell*, 13 L. R. Ir. 226.

Glebe Lands.

Sub-sec 9

(r) A glebe would apparently come within Sub-sec. 7, even if this Sub-section were omitted.

The Act referred to is the Glebe Lands Representative Church Body (Ireland) Act, 1875. The following is the definition of a glebe contained in it:—"The term 'glebe' in this Act shall mean any house with the piece or parcel of land attached thereto, occupied or to be occupied by any ecclesiastical person while having spiritual charge of any parish or district to which such house and land shall have heretofore belonged, or for which it shall be or shall have been granted or purchased or required as a residence for such ecclesiastical person whilst having such spiritual charge" (38 & 39 Vic., c. 42, Sec. 8).

59. (This Section, which dealt with advances for payment of arrears of rent, is repealed by Stat. Law Rev. Act, 1894, except as to any existing charge and the repayment of any outstanding advance.)

60. Any application which a tenant is authorised by this Act to make to the Court shall, if made to the Court on the first occasion on which it sits after the passing of this Act, have the same operation as if it had been made on the day on which this Act comes into force; and any order made upon such application shall be of the same effect as if it had been made on the day on which this Act comes into force, unless the Court otherwise directs; and the person by whom such application is made shall, if the Court thinks just, be in the same position and have the same rights in respect of his tenancy as he would have been in and would have had if the application had been made on the day on which this Act comes into force.

Sects. 60-62.
Saving in case of inability to make immediate application to Court.

The "first occasion" on which the Court sat was extended by order of the Land Commission from the 20th October to 12th November, 1881. A question having been raised as to the legality of the order thus defining the limits of the sitting, it was held by the Court of Appeal that the Land Commission had power by due continuance or adjournment to sit *de die in diem* on said first occasion as long as it was necessary for the purpose of disposing of the applications really intended to be made on that occasion, *Chame v. Nelson*, 12 L. R. Ir. 272, 17 I. L. T. R. 49, MacD. 470. See also *Boyd v. Phelan*, 14 L. R. Ir. 232, 17 I. L. T. & S. J. 634, MacD. 496.

When the application to the Court was made on the first occasion, under this Section, the first statutory term commenced from "the rent day next succeeding" the 22nd August, 1881. (See Sec. 8 (3), *ante*). Actual application in court was at first held to be necessary in order that tenants should get the benefit of this Section *Harrington v. Colomb* [1897], 2 I. R. 30, 30 I. L. T. R. 156, 2 I. W. L. R. 230 (L. C.), but the 4th Section of the Act of 1896 now provides that it shall apply where the rent was fixed by agreement. See that Section and notes thereto, *post*, p 516.

61. This Act shall not apply to England or Scotland.

Application of Act.

62. This Act may be cited for all purposes as the Land Law (Ireland) Act, 1881.

Short title of Act.

PURCHASE OF LAND IRELAND ACT, (1885).

(48 & 49 VICT., CAP. 73.)

AN ACT TO PROVIDE GREATER FACILITIES FOR THE SALE OF LAND TO
OCCUPYING TENANTS IN IRELAND. [14th August, 1885.]

BE it enacted, etc.:

Secs 1-2

1. This Act may be cited for all purposes as the Purchase of Land (Ireland) Act, 1885.

Advances by the Land Commission.

Short title
Advances to
tenants under
this Act.

2. For enabling tenants (*a*) to purchase their holdings, either from the Land Commission or from the landlords (*b*) of such holdings, the Land Commission may make advances under this Act out of any funds at their disposal.

With respect to advances under this Act, the provisions of Part Five of the Land Law (Ireland) Act, 1881, shall be amended as follows; that is to say,

a. The Land Commission may, if the repayment of the advance is secured by a deposit under this Act (hereinafter referred to as a guarantee deposit), and if the Land Commission are satisfied with the security in other respects, (*c*) make an advance to a tenant who is purchasing his holding of the whole principal sum (*d*) or price payable by the tenant instead of the three-fourths thereof mentioned in Part Five of the Land Law (Ireland) Act, 1881.

44 & 45 Vic.,
c. 49.

b. In making advances under this Act the Land Commission shall prefer applications for the purchase of holdings upon which the tenants reside, or which are reasonable adjuncts to holdings upon which such tenants reside. (*e*)

c. It shall not be lawful for the Land Commission to make advances under this Act exceeding in all the sum of five million pounds. (*f*)

Definition of
"tenant"

(*a*) For definition of "tenant," see Land Act, 1881, Sec. 57, *ante*; this Act, Sec. 26, *post*; and see also Land Act, 1837, Sec. 14 (3), *post*. Any tenant may be a purchaser, whether he be a tenant under a fee farm grant, or lease, or from year to year, a present or future tenant under the Act of 1881. Tenants who hold under

tenancies created after the passing of this Act are not excluded from its provisions; but the Commission, before sanctioning advances in such cases, must be satisfied as to the validity and *bona fides* of the contracts of tenancy, as well as of the agreements for purchase: *Bedoyere's Estate*, 24 I. L. T. R. 87 (Commissioner LYNCH). The mere fact, however, that the landlord and tenant are near relatives of each other is no ground for refusing an advance, if the tenancy is a *bona fide* one: *Humble's Est.*, 28 I. L. T. R. 51 (L. C.).

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Even where a tenancy is created expressly with the object of a sale under this Act, an advance may be sanctioned *Egmont's Estate* (Commissioner MACCARTHY), MacC. 44. But there must be a real tenancy, and where the so-called tenant is substantially only a purchaser in possession, not paying rent, but interest on his purchase-money, an advance will not be made: *Goodbody's Est.*, 32 I. L. T. R. 87, 1 Greer 35 (MURPHY, J.). Likewise, where the tenancy is determinable in case the Land Commission refuse to make an advance. *Ryland's Est.*, 27 I. L. T. R. 72 (L. C.).

Tenancies specially created for the purpose of sales.

In *Lawrence's Est.* [1896], 2 I. R. 347, it was held by the Court of Appeal that the owner of an insolvent estate for sale in the Land Judge's Court who had obtained from the Land Judge a lease of portion of the estate pending the matter was not entitled to purchase same under the Land Purchase Acts, Sir P. O'BRIEN, C.J., and FITZGERALD, L.J., basing their decision upon the ground that he was not a "tenant" within the meaning of the Land Purchase Acts; Lord ASHBOURNE, C., and BARRY, L.J., merely affirming the order of the Land Commission on the ground that the discretion of the latter to refuse the advance should not be interfered with. The 40th Section of the Land Act, 1896, now, however, provides that tenants under the Court, including the owner of an estate in occupation of a mansion house or demesne forming part of the estate, are to be deemed tenants within the meaning of the Land Purchase Acts. See Sub-sec. 2 of that Section, and notes thereto, *post*. Even before the passing of that Act it was the practice of the Land Commission to make advances to tenants under the Court pending the matter for the purchase of their holdings. (See judgment of Lord ASHBOURNE, C., in *Lawrence's Est.* [1896], 2 I. R., at p. 350.)

Tenants under the Court pending the matter.

Tenancies excluded from the Land Law Acts are not similarly excluded from the Land Purchase Acts. Demesne lands, town-parks, &c., may be the subject of sales in the Land Purchase department.

Advances will not be sanctioned, or if sanctioned may be rescinded, if it is shown that the agreements for sale were entered into by tenants under duress or threat of eviction: *Walsh v. Marquis of Waterford*, 22 I. L. T. R. 18; *Flynn v. Marquis of Waterford*, 22 I. L. T. R. 27 (Commissioner LYNCH); see generally as to rescinding or varying agreements for sale: *Duke of Abercorn's Estate*, MacC. 48 (Commissioner LYNCH). If, however, the agreements are fair and reasonable, and freely and voluntarily entered into, they are binding upon the parties, and on the sanction of the advances may be enforced in a summary way by an order of the Land Commission for specific performance. Land Act, 1887, Sec. 22, *post*.

Sanction of advances.

Where an agreement to purchase is made, and lodged with the Land Commission, the purchasing tenant, in the event of the sale being carried out, is discharged from all liability for rent and arrears, and liable in lieu thereof to pay interest on his purchase money from the date of the agreement. Interest is payable half-yearly. If the advance for any cause is refused, his liability to pay rent and arrears revives, but credit must be allowed for the payments on account of interest. (Land Act, 1896, Sec. 35.) The rate of interest payable should be specified in the agreement.

Effect of agreement to purchase

- Sect 2.** A proposal to purchase is an acknowledgment of the existence of the relation of landlord and tenant, and of the landlord's title within 3 & 4 Wm. IV., c. 27, Sec. 14: *Johnston v. Smith* [1896], 2 I. R. 82. 30 I. L. T. R. 21. 1 I. W. L. R. 179 (Q. B. D.).
- As to the conditions which apply to a holding subject to advances, see Land Act, 1881, Sec. 30, *ante*, pp. 317-320, and Sec. 15 of this Act, *post*, p. 384.
- No advances can be made for the purchase of any holding which is subject to instalments under any of the Land Purchase Acts. See Sec. 9, Sub-sec. 4, of Land Purchase Act, 1891, *post*, p. 466
- Who may sell as "landlord."** (b) For definition of "landlord," see Sec. 33 of the Land Act, 1870, Secs. 25 and 57 of the Land Act, 1881, Sec. 34 of the Land Act, 1887, and Secs. 3 and 58 of the Settled Land Act, 1882, App., *post*. By Sec. 4, *post*, a sale by the Land Judge to a tenant is, for the purpose of advances and of guarantee deposits, to be deemed a sale by a landlord to a tenant.
- Tenants for life** Tenants for life and other limited owners have ample powers to sell to their tenants under the above Sections and the 2nd Section of the Land Purchase Act, 1889, *post*, p. 454.
- Trustees for charities and others.** Trustees with a power of sale, Corporate Bodies, and Trustees for charitable purposes, are now also enabled to sell under the Land Purchase Acts, subject to such consent as may be required in the case of a sale independently of the Acts. Land Purchase Act, 1891, Sec. 14, *post*. As to their powers before the passing of that Act, see judgment of O'HAGAN, J., *Finnegan's Estate*, MacC. 29; approved of, and adopted by the Court of Appeal, *In re College of Physicians*, 32 L. R. Ir. 341.
- Mortgagees.** Mortgagees in possession, with power of sale, are, for the purposes of the Land Purchase Acts, deemed to be landlords Land Act, 1896, Sec. 42. If not in possession they apparently cannot sell directly to the tenants. *In re Redington's Estate*, 23 L. R. Ir. 503 (MONROE, J.). But they can do so, indirectly, by filing a Petition in the Land Judges' Court, and by having a sale carried out by that Court to the Land Commission for the purpose of resale to the tenants under Sec. 5, *post*. Where a married woman, entitled to an annuity for her separate use without power of anticipation, subsequently acquired the fee-simple of the lands, it was held that she was disabled from selling the lands discharged from the annuity. *Short's Estate*, MacC. 37 (O'HAGAN, J.).
- Sufficiency of the security** (c) In order to ascertain whether the security is sufficient, the agreement to purchase is referred to an inspector, under Order XIV. of the Rules of March, 1897, *post*. Where it appeared that the lands were sub-let in grazing and conacre, and that the tenants had not sufficient stock or capital to work their farms, Commissioner MACCARTHY refused to make an advance *O'Kelly's Estate*, 23 I. L. T. R. 86, MacC. 13.
- The Commission will not only look to the value of the holding (including the tenant's interest (Land Law (Ireland) Act, 1887, s. 20), but also to the character and solvency of the tenant, as under Sec. 13 of the Land Law (Ireland) Act, 1887, the Commission must, if practicable, enforce arrears by action or civil bill process in the first instance. But difficulties as to the security may be met by the tenant making a part-payment, or lodging the guarantee deposit in cash, or by the landlord increasing the guarantee deposit retained, or lodging a special guarantee fund for a limited period. In certain cases a deed of covenant from two solvent sureties for the payment of the purchaser's instalments has been accepted.
- (d) The Land Commission has also power to advance any sum between three-fourths and the whole purchase money, the tenant paying the difference in cash, subject to the general limit of £3,000 placed upon advances by Sec. 2 of the
- Advances of sums between three-fourths and the whole purchase money.**

Land Purchase Act, 1888, *post* *Considine's Estate*, MacC. 40. In all such cases a guarantee deposit was required to be retained by the Land Purchase Act, 1891, Sec. 23. But the Land Commission may now dispense with same, if they consider the security sufficient. Land Act, 1896, Sec. 29, *post*. Advances are now made in guaranteed land stock instead of in cash. Land Purchase Act, 1891, Sec. 1. Sects 2-3.

(c) As a general rule, sales can only be made to occupying tenants. Evidence of occupancy is required before the making of an advance (Rules of March, 1837, Order XVII., *post*). There are, however, some cases in which sales may be made to persons who are not occupying tenants.—(1) Additional land of a limited quantity, which adjoins a holding, may be purchased to increase the size of a holding (Land Purchase Act, 1889, Secs. 1 & 3, *post*); (2) Under Sec. 27 of the Land Act, 1881, and Sec. 7 of this Act, where the Land Commission have purchased an estate, they may sell any parcels which they do not sell to the tenants in such manner as they think fit; (3) Under the Tramways and Public Companies (Ireland) Act, 1883, Sec. 14, where a public company has purchased an estate, they may also sell such parcels as they do not sell to the tenants in such manner as they think fit. In the two latter cases the Land Commission may advance half the purchase money; (4) Tenants *formerly* in possession were enabled by the 13th Section of the Land Purchase Act, 1891, and the 46th Section of the Land Act, 1896, to enter into agreements for purchase, within a limited time, which, however, has now expired; and (5) In congested districts advances may be made for the purpose of amalgamating small holdings (Land Purchase Act, 1891, Sec. 37). Sales to persons not in occupation.

Actual physical occupation is not required, it is sufficient if a tenant is legally entitled to occupation, holding under a contract of tenancy which is not disputed (*Eymont's Estate*, MacC. 44 (Commissioner MacCARTHY)). A tenant, too, may be deemed to be in occupation, when he has sublet with his landlord's consent (see Land Act, 1881, Sec. 57, and notes thereto, *ante*, p. 345). In such a case the Court may prescribe terms as to the rent, &c., of the part sublet (Land Purchase Act, 1888, Sec. 4, *post*). In practice, if the subletting is substantial, the Commissioner usually refuses the advance unless arrangements are made for the subtenant becoming immediate tenant to, and buying direct from, the landlord. General requirements as to occupation of tenant

Any person in occupation and paying rent may enter into an agreement to purchase, but the estate acquired is deemed to be a graft upon the previous interest of the tenant. (Sec. 8, *post*, and Land Act, 1887, Sec. 14 (3), *post*)

(f) Increased under the Land Purchase Act of 1889 to ten millions. As to advances of guaranteed land stock, see Secs. 9 & 11 of the Land Purchase Act, 1891, *post*.

3. Any person willing to secure the repayment of an advance made by the Land Commission to a tenant who is purchasing his holding either from the Land Commission or from the landlord of such holding may deposit with the Land Commission such sum, as a guarantee deposit, (a) not being less than one-fifth of the advance, as may be agreed on between him and the Land Commission. Deposit of money as guarantee fund.

If the person willing to secure the repayment of such advance is a landlord entitled to be paid by the Land Commission, or out of moneys provided by the Land Commission, any sum for the

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purchase money of any land sold by him, he may provide such guarantee deposit by permitting the Land Commission to retain the same out of such sum so payable for purchase money.

*The Land Commission shall pay interest on the guarantee deposit at the rate of three per cent. per annum.**

Subject to the other provisions of this Act, the Land Commission shall retain the guarantee deposit until they ascertain and by order declare that the person liable for the repayment of the advance has repaid on account of principal money a sum equal to the guarantee deposit, and shall then pay over the guarantee deposit to the person entitled thereto. (b)

If at any time during the period for which the Land Commission are authorized to retain the guarantee deposit any sum due to the Land Commission in respect of an advance secured by a guarantee deposit under this Act is declared by them, by order, to be an irrecoverable debt, the Land Commission may apply the guarantee deposit in discharge or reduction of such irrecoverable debt. (c)

Such order shall not be made, unless the Land Commission, having exercised any power of sale of the holding which they legally may exercise, (d) have failed to realize by means of such sale the sum due to them secured on the holding, or unless it appears by the order of the Land Commission that they have attempted to exercise such power of sale and have been unable to do so.

Whenever it appears by such order that the Land Commission have attempted to exercise their power of sale and have been unable to do so, and the Land Commission thereupon apply a guarantee deposit or any part of it in discharge or reduction of any sum charged upon a holding, it shall be lawful for the Land Commission, by order, to declare that the interest in the holding of the person liable to pay such sum shall be charged in favour of the person entitled to the guarantee deposit with the amount of the guarantee deposit, or so much thereof as has been so applied by the Land Commission as aforesaid, with interest thereon at the rate of three per centum per annum until such charge is realized.

Trustees entitled to receive the purchase money produced by the sale of any settled land may, and shall if required by the tenant

* The words in italics are repealed, "so far as respects an advance made by means of stock," by the Land Purchase Act, 1891, 3rd Ed., *post*. see also note to Land Act, 1887, Sec. 10, *post*

for life of the settled land, or the person having the powers of a tenant for life within the meaning of the Settled Land Act, 1882, (e) secure, by a guarantee deposit, the repayment of an advance made for the purchase of any holding being or forming part of such settled land, and may apply or permit the Land Commission to retain so much of the purchase money as the trustees or such tenant for life or other person may think fit for that purpose.

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(a) The Guarantee Deposit may be provided—

(1) By a lodgment in cash. In practice such lodgment is generally made by the tenant.

Retention of guarantee deposit

(2) By retention out of the purchase money coming to the vendor or his trustees, or to incumbrancers on the lands sold (see Sections 11 & 12 of Land Law Act, 1887).

Before the Land Purchase Act, 1891, a guarantee deposit could not be retained out of moneys coming to an incumbrancer without his consent. *In re Colthurst's Estate*, 20 L. R. I. 468, 21 L. L. T. & S. J. 37 (Court of Appeal). But now, by Section 23 of that Act, it is provided that in every case of an advance under any of the Land Purchase Acts, exceeding three-fourths of the purchase money, the Land Commission shall retain a guarantee deposit out of the advance, unless the guarantee deposit is otherwise provided. Thus the difficulties which arose under the previous Acts as to the provision of guarantee deposits by trustees and incumbrancers (see notes to Secs. 11 & 12 of Land Law Act of 1887) have been removed, and the Land Commission have now power to retain a guarantee deposit, without any consent being required for that purpose. In Land Judges' cases, however, the authority of the Land Judge is still required.

As to the investment of the guarantee deposit, see Land Act, 1887, Sec. 10, *post*, Land Purchase Act, 1891, Sec. 23, *post*, and Rules of March, 1897, Order XXIII., Rules 9 & 15, *post*, pp. 839-840.

A register of guarantee deposits is kept in the Accountant's office, and all persons interested may have their claims registered in it. Guarantee deposits, or any interest in them, may be dealt with by way of assignment, charge, settlement, or otherwise, but every such dealing should be entered on the register. See Rules of March, 1897, Order XXIII., Rules 4-10, *post*, pp. 838-9.

Registration and investment of guarantee deposit

(b) The Land Commission may now dispense with the guarantee deposit in whole or in part, if they think the security sufficient without it; and they may pay to the person entitled to it any part of a guarantee deposit previously retained (Land Act, 1896, Sec. 29).

Power to dispense with guarantee deposit.

(c) An order cannot be made declaring any sum an irrecoverable debt, until an attempt has been made to enforce payment by action or civil bill process, as well as by sale. (See Land Act, 1887, Sec. 13, *post*.) As to the application of the guarantee deposit in the case of a sale of the holding for default, see Land Purchase Act, 1891, Sec. 24, *post*, p. 4.9.

(d) As to the power of sale possessed by the Land Commission for default in paying instalments of annuity, see Sec. 15, *post*, and Land Act, 1887, Sec. 13 and 18. Before selling, the Commission can now obtain an order to put them into possession of the holding from the High Court. See Land Purchase Act, 1891, Sec. 25, *post*, and Rules of the High Court thereunder made in June, 1932, *post*. As to the conditions under which sales took place previously to that Act, see *Irish Land Commission v. Maquay*, 28 L. R. Ir. 342, MacC. 71; and as to

Power of sale by Land Commission.

Sects. 3-4. the right of a purchaser upon such a sale to obtain a writ of possession, see Land Act, 1887, Sec. 21, *post*, and Rules of March, 1897, Order XLVIII., *post*. As to the application of the proceeds of a sale, see Secs. 30 of the Land Law Act, 1881, as modified by Sec. 15, *post*.

As to the sale of a holding in a congested district, see Land Purchase Act, 1891, Sec. 37, Sub-secs. 5 to 7, *post*.

(e) See Secs. 2, 58, 59, 60, 61 and 62 of the Settled Land Act, 1882, App., *post*, and as to guarantee deposits, note (a), *supra*.

Terms of repay-
ment of advances

33 & 34 Vic., c. 46.

44 & 45 Vic., c. 49

46 & 47 Vic., c. 43.

4. With respect to advances to be made under this Act, or to be made under the Landlord and Tenant (Ireland) Act, 1870, (a) or the Land Law Act, 1881, (b) and also with respect to advances to be made to tenants under Part Two of the Tramways and Public Companies (Ireland) Act, 1883, (c) the provisions of Part Five of the Land Law (Ireland) Act, 1881, (d) shall be amended as follows:—

a. Every such advance shall be repaid by an annuity in favour of the Land Commission for forty-nine years, of four pounds for every hundred pounds of such advance, and so in proportion for any less sum, instead of by the annuity mentioned in the said Act. (e)

b. Every such annuity, or any portion of it at any time outstanding, may be redeemed in whole or in part by the person liable to pay such annuity, by payment to the Land Commission of a sum equivalent to the then value of such annuity or of such portion of it as is sought to be redeemed; *such value to be calculated according to the table in the Schedule to this Act.**

44 & 45 Vic., c. 41

c. *The repayment of every advance under this Act shall be secured to the Land Commission by deed. It shall be the duty of the Land Commission to exercise the power conferred upon mortgagees by the first Sub-section of the nineteenth Section of the Conveyancing and Law of Property Act, 1881, or any power for the same purpose contained in such deed. (f)**

d. Subject to the amendments contained in this Act, the provisions of Part Five of the said Act shall apply to all advances under this Act. (g)

Where a holding is sold by the Land Judges to the tenant of that holding, the sale may, for the purpose of advances under this Act, and of guarantee deposits under this Act, be deemed to be a sale by a landlord to a tenant.

* The portions in italics are repealed by Land Act, 1887, Sec. 18 (2) and Land Act, 1896, 2nd Schedule.

(a) See that Act, Secs. 32 to 41, *ante*, pp. 191 to 195

(b) See that Act, Secs. 24 to 36, *ante*, pp. 312 to 323.

(c) See Part II. of that Act.

(d) See Sec. 28 of that Act, *ante*, p. 315

(e) See now Land Act, 1896, Sec. 25, *post*, which provides for a periodical reduction in the amount of the purchase annuity, and considerably extends the period for repayment.

(f) This Sub-section has been repealed by Sec. 18 of the Land Act, 1887, by which it is provided that such advances are to be secured by charging order as therein mentioned. By the same Section it is also provided that where the interest and instalments secured by such order are forty days in arrear, the Land Commission may exercise the powers conferred on mortgagees by Secs. 19, 21, and 22 of the Conveyancing Act, 1881. See these Sections, *App.*, *post*.

(g) This Sub-section renders all holdings sold under the Land Purchase Acts, subject to the conditions as to sub-division, sub-letting, &c., mentioned in Sec. 30 of the Land Act, 1881. See notes to that Section, *ante*, p. 319, and see the provisions as to carrying out the sale, and the distribution of the purchase money, in Sec. 29 of that Act, and Sec. 37 of Landlord and Tenant Act, 1870.

Sects. 4-5.

Sales of Land.

5. The Irish Land Commission, if they have reasonably satisfied themselves that a resale can be effected without loss, may purchase any estate (a) for the purpose of reselling to the tenants of the lands comprised in such estate their respective holdings, and may purchase any holding for the purpose of reselling it to the tenant thereof. Provided that such purchase of an estate shall only be made if the Land Commission are reasonably satisfied that holdings to the extent of not less than four-fifths in value and number of the estate will be purchased by the tenants thereof. This condition may be relaxed on special grounds with the consent of the Treasury, but so that in all cases the Land Commission are reasonably satisfied that holdings to the extent of not less than three-fourths in value and number of the estate will be purchased by the tenants thereof, and in every such transaction of the purchase of an estate the Land Commission shall retain not less than one-fifth of the purchase money (b) to satisfy the purpose of a guarantee deposit as defined by Section 3 of this Act.

Purchase of
estates and
holdings

The tenant of any holding may purchase such holding, and before or after completing the agreement for such purchase may apply to the Land Commission for an advance.

If the vendor of such estate or holding is a tenant for life, or has the powers of a tenant for life, (c) and the land proposed to be sold is settled land, within the meaning of those expressions as used in the Settled Land Act, 1882, he shall have all the powers conferred

45 & 46 Vic.,
c. 38.

Sects. 5-6. upon tenants for life under that Act, subject to the amendments thereof herein contained and to the other provisions of this Act; and the purchase money arising from such sale may be invested or applied as if it were capital money arising under the said Act. (*d*)

Sales by mortgagees to tenants. This Section may be taken advantage of by mortgagees who are not in receipt of the rent and profits, and who, therefore, are not "landlords" within the meaning of these Acts (see definition of "landlord," Land Act, 1831, Sec. 57, *ante*, p. 342). The property may be sold by the mortgagees to the Land Commission, either upon petition to the Land Judge or by conveyance under their power of sale, if the Land Commission agree to that course, and the Commission can then sell to the tenants. See judgment of MONROE, J., *In re Redington's Estate*, 23 L. R. Ir., at p. 504. Mortgagees in possession, with power of sale, are deemed to be landlords, for the purposes of the Land Purchase Acts, and may sell directly to the tenants. (Land Act, 1896, Sec. 42)

As to the purchase by the Land Commission of entire estates, see also Landlord and Tenant Act, 1870, Sec. 47, *ante*, p. 47, and Land Act, 1831, Sec. 34, *ante*, p. 322.

Turbary Act, 1891. The Land Commission may now, also, purchase turf bog for the use of tenants who have purchased their holdings. See Turbary Act, 1891, *post*, p. 456.

"Estate." (a) An "estate" here means "any lands which the Land Commission may by order declare fit to be purchased as a separate estate" (Land Act, 1831, Sec. 57).

Purchase money (b) "Purchase money" here means money to be paid by the Land Commission for the acquisition of an estate to be re-sold by them to the occupying tenants, and does not include moneys required to carry out redemption of head-rents and rent-charges *Jackson's Est.*, 29 I. L. T. R. 39 (BEWLEY, J).

The Land Commission may now dispense with the whole or any part of a guarantee deposit, if they think the security sufficient. (Land Act, 1896, Sec. 29 (1).)

(c) For a list of the persons who have the powers of a tenant for life, see Sec. 2 (5), and Secs. 58, 59, 60, 61, and 62 of the Settled Land Act, 1882, *App., post*, and for the definition of "settled land" see Sec. 2 (3) of the same Act, *App., post*, and see notes to Sec. 13 of this Act, *post*, pp. 382-3.

(d) As to how such capital money may be invested, see Sec. 21 of the Settled Land Act, 1882, *App., post*; notes to Land Act, 1837, Sec. 10, *post*; and especially Secs. 18 and 19 of Land Purchase Act, 1891, *post*, which considerably extend the powers of investment of the proceeds of sales of settled land sold under the Land Purchase Acts. See pp. 473-477, *post*.

Power to tenant for life to leave part of purchase money outstanding.
45 & 46 Vic., c. 38.

6. Where a landlord of a holding is a tenant for life, or has the powers of a tenant for life within the meaning of those expressions as used in the Settled Land Act, 1832, (a) and is selling such holding to the tenant thereof, he may exercise, to the same extent as if he were an absolute owner, the power of permitting any sum not exceeding one-fourth of the purchase money to remain as a charge upon such holding secured by a mortgage; and in case any advance is made by the Land Commission to the tenant for the purchase of such holding, any such mortgage shall be subject to any charge in favour of the Land Commission for securing such advance;

and any such mortgage shall be deemed to be part of the purchase money payable in respect of such holding, and the money secured thereby when paid shall be dealt with as if it were capital money arising under the Settled Land Act, 1882, (b) or purchase money otherwise payable under this Act. Secta. 6-8.
45 & 46 Vic.
c. 38.

This Section shall apply to the trustees of any settlement in the same manner as it applies to a tenant for life.

(a) See Sec. 58 of the Settled Land Act, 1882, App., *post*, and Sec. 2 of the Land Purchase Act, 1889, *post*, p. 454.

(b) Capital money arising under the Settled Land Act, 1882, could not formerly be applied in the redemption of merely terminable charges. A difficulty, consequently, arose, where the land sold was in settlement, as to the redemption of the annual instalments in lieu of tithe rent-charge commuted under the 7th Sec. of the Irish Church Act Amendment Act, 1872. See *In re Leinster's Estate*, 23 L. R. Ir. 152. The 18th Sec. of the Land Purchase Act, 1891, however, removes the difficulty by providing that the purchase money of settled land may be applied in redemption of this and certain other terminable charges. See that Sec., *post*. Redemption of terminable charges.

7. Where the Land Commission have purchased an estate, they may sell any parcels which they can not sell to the tenants thereof, in such manner as they think fit. Sales of residues.

The Land Commission may advance to any purchaser of a parcel under this Section, on the security of such parcel, one-half of the principal sum paid as the price.

Subject to that limitation on the amount of the advance, all the provisions of this Act relative to sales and advances to tenants by the Land Commission shall apply to the sale of a parcel in pursuance of this Section in like manner as if the parcel had been a holding and the purchaser had been tenant thereof at the time of his making his purchase.

8. When a holding has been sold by the Land Commission to a tenant or other person, also when a holding has been sold by a landlord to a tenant, and it has been agreed between the Land Commission and the landlord and the tenant that such sale shall be carried into effect by means of a vesting order of the Land Commission under this Act (a) it shall be lawful for the Land Commission, if they think fit, after due investigation of title and being satisfied therewith, to make an order under their seal and signed by a Commissioner vesting the holding, or the interest of any person or of the Land Commission in such holding, in the purchaser, freed from all charges if the vesting order so declares, (b) or subject to such charges as may be specified in such order; Vesting order in lieu of conveyance.

Sect 8

or, if the vesting order so declares, subject to such charges as may lawfully affect such holding.

Every order purporting to vest a holding or interest in a purchaser which purports to be made by the Land Commission in exercise of the powers conferred on them by this Act shall be binding upon all persons claiming any estate or interest in the land comprised in the holding, including Her Majesty, her heirs and successors, and shall be as effectual in all respects, save as hereinafter provided, (c) as if it were a conveyance or assignment executed by one of the Land Judges of the Chancery Division of the High Court of Justice in Ireland under the Landed Estates Court Act. (d) Provided, that where the purchaser of a holding is also tenant of the holding the interest vested in him by such order shall, subject to any charges, rights, or easement set out in the order, be deemed to be a graft upon the previous interest of the tenant in the holding, and be subject to any rights or equities arising from its being such graft. (e)

The enactments of this Section relative to the operation and effect of a vesting order purporting to vest a holding, shall apply to an order purporting to vest an interest in a holding, so far as relates to such interest.

Present Rules of Procedure

(a) Under Sec. 21 of the Land Act, 1881, sales were allowed to be carried out either through the Land Judges' Court in manner prescribed by the Landlord and Tenant Act, 1870, or in such manner as the Land Commission might think expedient. Up to 1885 sales were always carried out by conveyance, and from 1885 by either conveyance or vesting order, under this Section, at the option of the parties, but the Commissioners now require as a general rule that sales shall be carried out by vesting orders. As to the powers of the Commission in cases of sales by vesting order, see Sec. 10, *post*. The practice of the Land Judges' Court as to Notice to Claimants, Final Schedule of Incumbrances, &c., is closely followed. See Sec. 53 of Landed Estates Court Act, and notes thereto, in Madden, 3rd ed., p. 56. Under this and succeeding Sections any incumbered owner can sell without the consent of his mortgagees, subject to due notice. See Sec. 9, Sub-sec. 4, of this Act, *post*.

Registration under the Local Registration of Title Act, 1891, is also compulsory. See Secs. 22 and 23 of that Act, *App., post*. See also as to completing by vesting order procedure, proceedings originally intended to be carried out by conveyance. Land Act, 1887, Sec. 14, *post*.

See as to the preparation of vesting orders generally, Rules of March, 1897, Order XVI. And as to maps upon the vesting orders, see Order XVI., Rule 4

Effect of vesting order on charges

(b) By Sec. 9 (3) of this Act, *post*, and Sec. 62 of the Landed Estates Court Act, *post*, the vesting order will not affect quit rents, crown rents, tithe rent-charge, or land improvement charges, unless such charges have been apportioned and redeemed or paid off by the Land Commission, and unless the vesting order vests the land expressly discharged of such rents and charges.

(c) The words "save as hereinafter provided" refer apparently to Sec. 9, *post*. Sub-secs. 1 and 2 of that Section are, however, now repealed by the Land Act, 1896, Sec. 34 of which provides that a holding vested in a purchaser by a vesting order shall continue to have appurtenant thereto, and to be subject to any previously existing easements, rights, and appurtenances, but that the Land Commission may declare that the sale is made subject to, or free from, any particular easement, right, or appurtenance, see that Section and notes thereto, *post*. Sect. 8
Easements, how
affected

(d) For the effect of such conveyance or assignment, see Sec. 61 of the Landed Estates Court Act, and *Tottenham's Estate*, I. R. 3 Eq. 528 (C. A.), 2 Eq. 375 (L. E. C.). CHRISTIAN, L.J., in a frequently quoted passage of his judgment in that case, points out that it was so to operate, that "by a sort of conveyancing magnetism, it would draw out, not merely from the owner whose estate was under sale, or from whatever other persons might intervene as parties in the proceeding, but from the absent, the helpless, the infant, the married woman, the mentally imbecile, nay, even the unborn, every particle of estate and interest, legal or equitable, present or future, known or unknown, patent or latent, in the land expressed to be conveyed, and would concentrate the whole in the purchaser, freed from everything that the conveyance itself did not save" (I. R. 3 Eq., at p. 547). Effect of E. L. C.
conveyance

Following the decision in *Colclough's Est*, 8 I. Ch. R. 330, and *Nixon's Est*, I. R. 9 Eq. 7, as to a L. E. C. conveyance, it has been held that a vesting order under this Section stops the Statute of Limitations running as from its date, in favour of all persons having charges on the lands in respect of which it is made *Smithwick's Est.* [1896], 2 I. R. 401 (BENZLEY, J.). But where the sale was carried out by conveyance, according to the former practice, the proceedings had no such effect at any stage: *Batson's Est.* [1896], 2 I. R. 171 (C. A.) 29 I. L. T. R. 90 (L. C.). Where persons claim any estate or interest in the lands being sold, as, *e.g.*, by a reversionary lease, they should put forward their claims before the vesting orders are made: *Redington v. Browne*, 32 L. R. Ir. 347. Effect of vesting
order as to
Statute of
Limitations

Maps are not now endorsed upon the vesting orders, unless a map of the lands being vested has been prepared for the purpose of proceedings in the Land Judges' Court. (Rules of March, 1897, Order XVI., Rule 4, *post*.) In *Quinn v. Hewson* (26 I. L. T. & S. J. 534), where a map was endorsed upon the vesting order, it was held by JOHNSON, J., that it was not conclusive evidence of the boundaries. The ground of this decision appears to have been that though the vesting order, like a L. E. C. Conveyance, is conclusive evidence of the title of the party in whom the estate is vested, it can only operate where the relation of landlord and tenant previously existed, and therefore if a piece of land not included in the holding is erroneously included in the vesting order, the latter has no effect as regards it. A similar decision has been made by PORTER, M. A., in an unreported case of *Thompson v. Flanagan (Ex rel G. FETHERSTONHAUGH, K.C.)*. Maps

(e) Sec. 14 (3) of the Land Act, 1887, contains a similar provision as to the estate purchased being a graft, when the holding is purchased by any person in occupation thereof, whether the interest in the tenancy is vested in him or not. The effect of this provision is that the new interest vested in the tenant purchaser becomes subject to all the charges that at the date of the vesting order affected the interest of the tenant in the tenancy. A vesting order, therefore, purporting to vest the lands freed from all charges other than those specified, does not release the lands from a rentcharge created under the Arrears of Rent Act, 1882, even though it is not mentioned in the order: *Irish Land Commission v. O'Flaherty* [1900], 2 I. R. 556 (Q. B. D.). Nor can a vesting order be relied upon by a purchaser inequitably for the purpose of defeating his own contract or grant: *Reddock* Doctrine of
graft applied

Sects 8-9. v. *Wright*, 28 I. L. T. E. 148 (GRISON, J.). See as to the doctrine of grafts generally, notes to *Keech v. Sandford*, 1 White and Tudor, (L. C.); *Hull v. Hull*, I. R. 8 Eq. 140, 622 (C. A.), *Kelly v. Kelly*, I. R. 8 Eq. 403; *Stratton v. Murphy*, I. R. 1 Eq. 345; *Gabbett v. Lawder*, 11 L. R. Ir. 295; and *Dempsey v. Ward* [1899], 1 I. R. 463 (C. A.).

Charges and rights subject to which the sale may be made.

9. (1.) *The Land Commission may, if they think fit, declare by their order that the sale of any holding is made subject—*

a. To any chief rent or fee-farm rent (a) payable out of the lands comprised in the holding.

b. To any annuity charged upon the holding in favour of the Land Commission.

*c. To any other mortgage or charge which the Land Commission may think fit should remain thereon.**

(2.) *The Land Commission may, if they think fit, after due and sufficient inquiry, declare by their order that the sale is made subject to any rights of common, rights of way, or other rights or easements (b) which the Land Commission find to affect such holding; and in that case the rights and easements so declared shall be the only rights or easements affecting the holding; or they may abstain from making any such declaration, and in that case the holding shall be deemed to be sold subject to such rights of common, rights of way, and other rights or easements as may lawfully affect the same.**

(3) The provisions of the sixty-second Section of the Landed Estates Court Act relative to tithe rentcharge, quit rent, crown rent, and charges in favour of the Commissioners of Public Works not being prejudiced or affected by the conveyances therein mentioned, and relative to the redemption of such quit rent, crown rent, and charges, and relative to the notice to be given to the Commissioners of Her Majesty's Woods, Forests (c) and Land Revenues, shall apply to vesting orders under this Act.

(4.) Where the land comprised in any holding is subject to any mortgage, incumbrance, or charge, the Land Commission shall, before sanctioning or completing the sale of such holding, give such notice to the mortgagee, incumbrancer, or person interested as may be prescribed by Rules of the Land Commission. (d)

(5.) In the case of a sale by a landlord to a tenant, where it is agreed that the sale shall be carried into effect by a vesting order (e) of the Land Commission, such vesting order may, notwithstanding anything hereinbefore contained, be made at any time after

* Sub-sections 1 and 2 (in italics) are repealed by Land Act, 1896, 2nd Schedule. See Secs 31 and 34 of that Act, *post*, pp. 567 and 574.

the application for such vesting order has been made to the Court, and same may be made though the landlord is only tenant for life, or has the powers of a tenant for life, and whether or not the holding, either solely or in common with other lands, is subject to any incumbrance or annual charge, and the fact of such incumbrance or annual charge affecting only a partial interest in the estate sold, such as a tenancy for life or lesser interest, shall not affect the right to make such vesting order, but the purchase money shall in all cases where the Court shall think fit be paid into Court to abide the further order of the Court, and shall, for all purposes as regards the rights or claims of any person to or against the estate sold, represent such estate, and unless and so far as the vesting order shall otherwise declare, the rights and claims of all persons in respect of the estate sold, or any incumbrance or annual charge thereon, shall, from the date of such vesting order, be transferred to the purchase money, and the purchaser shall be wholly freed from any liability or claim in respect thereof.

Sects. 9-10.

(a) The practice as to redemption of head-rents and other superior interests is now regulated by Land Act, 1887, Secs. 15 and 16, and Land Act, 1896, Secs. 31 and 34. See these Sections and notes thereto, *post*. Sub-sec. 1 of this Section is repealed by the 2nd Schedule of the Land Act, 1896. Redemption of superior interests.

As to rights of indemnity where mortgages or charges are primarily chargeable on other lands, see now Land Act, 1896, Sec. 33 (4) and notes thereto, *post*. Rights of Indemnity

(b) As to easements, rights and appurtenances when a vesting order is made, see now Land Act, 1896, Sec. 34 (which is substituted for this Sub-section) and notes thereto, *post*, p. 575

(c) By Sec. 62 of the Landed Estates Court Act (App., *post*) before the Commission make any vesting order in fee simple they must be satisfied that one calendar month's notice has been given to the Commissioners of Woods and Forests. For Form of Notice see Form No. 4 to Rules of March 1897, *post*, p. 875. Easements

(d) See Order IV., Rule 10, of the Rules of March, 1897, *post*, p. 813.

Any mortgagee or other person whose rights are affected by the sale may, however, show cause against the advance being made and the sale carried out, on the ground of insufficiency of price or otherwise, and *cf.* Madden, 3rd ed., pp. 56, 57. Incumbrances

Under Sec. 12, *post*, the rights of incumbrancers are preserved as against the purchase money, but see Sec. 15, Sub-sec. 3, of the Land Law Act, 1887, as to part payment of incumbrances charged on lands sold and other lands not sold.

There appears to be no Section which requires the Commission to see to the sufficiency of the price in the case of incumbered estates, in the same manner as the Land Judges were required to do under Sec. 34 of the Landlord and Tenant Act, 1870.

(e) See note (a) to last Section, and Sec. 14 (2) of the Land Act, 1887, *post*, p. 419.

10. In every case in which a holding is sold by the Land Commission to a tenant or other person; also in every case in which a Powers of Land Commission in cases of sales.

Sect. 1021 & 22 Vic.,
c. 72.

holding is sold by a landlord to a tenant, and it is agreed that such sale shall be carried into effect by a vesting order of the Land Commission, the Land Commission shall have the jurisdiction and powers which are vested in the Land Judges of the Chancery Division of the High Court by the following Sections of the Landed Estates Court Act, and those Sections shall be incorporated with this Act, as if the Land Commission were therein referred to, and as if the purposes of those Sections included the purposes of this Act, that is to say. —

Section thirty-seven, relating to the jurisdiction and powers of the Court, so far as may be necessary for enabling the Land Commission to discharge any of the duties imposed on them by this Act. (a)

Sections sixty-four and sixty-five, relating to the application, retention, and investment of purchase money. (b)

Section sixty-six, relating to the appointment of trustees. (c)

Sections sixty-eight and sixty-nine, relating to Crown rent, and quit rent, and incumbrances and charges. (d)

Section seventy, relating to the payment of purchase money into Court in certain cases Money may be paid into Court under that section, in all cases in which the Land Commission think it expedient, and when paid in, may be invested or applied as if it were capital money arising under the Settled Land Act, 1882, (e) and were paid into Court under that Act; or, if the Land Judges (f) so order, as if it were money paid into Court under the said Section of the Landed Estates Court Act.

Section seventy-two, relating to apportionment of rent, and in that Section the term "rent" shall include a fee-farm rent. (g)

Section seventy-three, relating to persons under disability.

Section seventy-six, relating to the abatement of proceedings. (h)

The Sections here referred to will be found in the Appendix, *post*.

Power to enforce,
vary, or rescind
an agreement

(a) The Section hereby incorporated gives power to the Commission (*inter alia*) to enforce, vary, or rescind an agreement. In exercising this jurisdiction the Court follows the practice of the Landed Estates Court, and if necessary proceedings will be stayed to enable a suit to be brought in the Chancery Division *Duke of Abercorn's Estate*, 24 I. L. T. R. 85, MacC. 48 (Commissioner LYNCH).

(b) See now Sec. 14 (1) of the Land Act, 1887, and Sec. 33 of Land Act, 1896, *post*

(c) See also Sec. 13 of this Act, and Sec. 23 of the Land Act, 1887, *post*.

Apportionment
and redemption
of crown rents.

(d) The 12th Section of the Crown Lands Act, 1894 (57 and 58 Vic., c. 43) has extended the powers of Sec. 68 of the Landed Estates Court Act, hereby incorporated to quit rent and other perpetual rents payable to the Crown. The Land Commission has, accordingly, now jurisdiction to charge the whole of any quit

rent or other perpetual crown rent on part of the lands charged in exoneration of the residue thereof: *In re Marti's Est.* [1900], 2 I. R. 259 (MEREDITH, J.). Sects. 10-12

(e) See Sec. 21 of that Act (App., *post*), and Land Purchase Act, 1891, Sec. 19, *post*, as to how such capital money may be invested or applied.

(f) For "Land Judges" read "Land Commission." See Land Act, 1887, Sec. 23.

(g) This provides for the *casus omissus* in Sec. 72 of the Landed Estates Court Act, so far as relates to proceedings under this Act, it having been decided that where lands ordered for sale are held jointly with other lands under a fee-farm grant the Court has no jurisdiction to apportion the fee-farm rent between the sold and unsold portions: *Re Cassan*, 9 Ir. Jur. N. S., 72. See as to apportionment and redemption of lay tithe rentcharge, Sec. 16 of the Land Act, 1887, *post*, and *Hanrahan v. Ryder* (22 I. L. T. R. 26, MacC. 5), and as to the apportionment of a superior rent see Land Purchase Act, 1891, Sec. 20, and Land Act, 1893, Sec. 31.

(h) If the vendor dies (or assigns his interest) application must be made to the Commissioners for liberty to continue the proceedings. See Order XXVIII. of the Rules of March, 1897, *post*. Where a vendor, having by his will devised fee-simple lands to A (whom he appointed residuary legatee) for life, with remainder to B, subsequently sold the lands and died after the advance was sanctioned, but before the sale was completed, and A took out letters of administration with the will annexed; it was held that the agreement for sale effected a conversion of the land into money, and that A as personal representative of the vendor was the proper person to complete the sale, and give a receipt for the purchase money under Sec. 4, Sub-sec. 1, of the Conveyancing Act, 1881. *Walsh's Estate*, MacC. 100 (BRWLEY, J.). See as to the application of the doctrine of equitable conversion in the case of sales to tenants under the Land Purchase Acts, judgments of the Court of Appeal in *Sherlock's Est.* [1899], 2 I. R. 561.

Continuation of proceedings on death of vendor or purchaser

If the vendor was tenant for life, the proceedings should be continued in the name of his successor in title (see Settled Land Act, 1882, Sec. 31, Sub-sec. 2, App., *post*), and where the successor in title is a minor, they should be carried out by his guardian *ad litem*, or by the trustees of the settlement, or by the person appointed to exercise on his behalf the powers of a tenant for life. See Settled Land Act, 1882, Sec. 59, 60, App., *post*.

As to proceedings on the death of, or assignment by, a purchaser, see Order XXVIII., Rule 2, of the Rules of March, 1897, *post*, p. 844.

11. Where land to be sold under this Act is held by tenants in common or rundale or intermixed plots, it shall be lawful for the Land Commission, upon the application of either landlord or tenant, or if it shall seem expedient to the said Land Commission, to make orders for the partition, exchange, or division of such land, and the provisions of the seventy-ninth to the eighty-second Sections inclusive of the Landed Estates Court Act (a) shall apply to such partitions, exchanges, and divisions. Powers of the Land Commission for the partition of lands held in common, &c
21 & 22 Vic., c. 72

(a) See those Sections, App., *post*, and see now Sec. 31 of the Land Purchase Act, 1891, as to the power of Commission to determine disputes between tenants. As to procedure under this Section, see Rules of March, 1897, Order XXVI., *post*, p. 843-843.

12. When the capital money arising from any sale under this Appropriation of income and capital money.

Sects. 12-13 Act is retained by the Land Commission, the income thereof shall be paid by them to the vendor or other person entitled thereto. (a)

The Land Commission shall make orders for the payment of such purchase money to any persons found by the Land Commission to be entitled thereto. (a)

Save as expressly provided by this Act, nothing herein contained shall affect the rights of any incumbrancer, or other person interested in any estate or holding sold, to the capital money arising from such sale.

(a) See Sec. 14 (1) and Sec. 15 (3) of the Land Act, 1867, *post*, and see note to Sec. 9, Sub-sec. 4, p. 379. *ante*, and Sec. 15, Sub-sec. 3, of Land Law Act, 1887, *post*. p. 421.

Mortgagees not entitled to notice before payment.

Mortgagees who are being paid off out of the proceeds of sale are not entitled to notice before payment, even though the mortgage deeds contain express covenants to give such notice. The proceedings in the Court are deemed to be sufficient notice to all incumbrancers. *Kennedy's Est.*, 32 I. L. T. B. 115.

Appointment of trustees purchase of rents, &c., by the Land Commission

13. When the tenant for life of any settled land, or a person having the power of a tenant for life, is desirous to sell the land, or any part, to the Land Commission (a), and there are no trustees of the settlement for the purposes of the Settled Land Act, 1882 (b), or it is expedient that new trustees should be appointed, it shall be lawful for the Land Commission to appoint fit persons to be trustees of the settlement for the purposes of that Act. (a)

Whenever, for the purposes of purchasing any estate for resale to the tenants thereof, it appears to the Land Commission expedient so to do, the Land Commission may purchase any land or hereditament held in connection with such estate or any rent issuing out of it; or may purchase up or obtain the release of any right, easement, charge, or incumbrance affecting it.

(a) This power is now by Sec. 23 of the Land Act, 1887, *post*, extended to all cases in which it may be necessary to appoint new trustees for the purposes of any sale under the Landlord and Tenant (Ireland) Act, 1870, the Land Law (Ireland) Act, 1881, Part II. of the Tramways and Public Companies (Ireland) Act, 1883, this Act; the Land Law (Ireland) Act, 1887; and any Act amending these Acts. The mode of applying to the Land Commission to appoint such new trustees is set out in Order XXV. of the Rules of March, 1897, *post*, pp. 841-842.

Trustees of the settlement.

(b) Trustees of the Settlement may now be appointed by the Land Commission before any agreement for sale is made. Land Purchase Act, 1891, Sec. 19 (3), *post*. The latter Section also considerably extends the powers of trustees, as to the investment of the proceeds of sales; and as to giving consents, when necessary. Trustees of the settlement for the purposes of the Settled Land Act, 1882, are either the persons, if any, who for the time being (1) are under a settlement, trustees with powers of sale of the settled land, (2) or with power of consent to or approval of the exercise of such a power of sale, or (3) if under a settlement there are no such trustees, then the persons, if any, for the time being who are by the

settlement declared to be trustees thereof for the purposes of the Settled Land Act, 1882. Trustees having a power of sale which can only be exercised with the concurrence of a person whose consent cannot be obtained are not trustees within the meaning of the Settled Land Act, 1882. In such cases, if a sale be desirable, it is expedient to appoint such persons as trustees for the purposes of the Act: *In the Matter of Johnstone's Settlement and the Settled Land Act, 1882*, 17 L. R. I. 172. Sect. 13-14.

In appointing trustees the Court usually requires evidence not only of the fitness of the proposed trustees, but also of the purposes for which their appointment is sought so as to render their appointment safe and beneficial to all persons interested in the property: *Burke v. Gore*, 13 L. R. I. 367.

Where an infant was absolutely entitled to an undivided share of lands, the Court, on the application of his guardian, appointed, under Secs. 59 and 60 of the Settled Land Act, 1882, a person to exercise the powers of the Act on his behalf for the purpose of concurring in a sale of the entirety, but refused to appoint for that purpose a co-owner: *Greenville's Estate*, 11 L. R. Ir. 138. In such a case, although the land is settled land (Settled Land Act, 1882, Sec. 59), yet there is no settlement, and, therefore, trustees of the settlement cannot be appointed by the Court. The proper course is to apply under Sec. 60 of the Settled Land Act, 1882, that some person should be appointed to exercise the powers of a tenant for life on behalf of the infant. CHATTERTON, V.C., in *Greenville's Estate (ubi supra)* says — "In this case the person is not actual tenant for life, but by virtue of Sec. 59 he is to be deemed as having the powers of a tenant for life, and the powers which he has might be exercised by the trustees of the settlement if there were any. But there are not any trustees here, and the Court cannot appoint trustees of the settlement in this case, because there is no settlement; but the Court may appoint persons to exercise the powers." *Greenville's Estate*, 11 L. R. Ir. 138.

Where estates in England and Ireland were devised upon similar limitations, and all the persons beneficially interested resided in England, the court appointed, as trustees of the Irish estates, for the purposes of the Settled Land Act, 1882, two persons who had been appointed by the Chancery Division in England trustees of the English estates for the purposes of the Act, notwithstanding their residence in England: *Maberly's Estate*, 19 L. R. Ir. 341. And see Settled Land Act, 1890, Sec. 17, as to appointment of new trustees under Sec. 31 of Conv. Act, 1881, for the purpose of the Settled Land Acts.

14. On every sale, when an advance is made by the Land Commission to the purchaser, the Land Commission shall charge the purchaser with one gross sum, which shall include the advance, the stamp duty on the vesting order or conveyance, if any, made by the Land Commission, and the stamp duty and fees payable for registering such vesting order or conveyance. (a) Sales to be for gross sum.
Stamp duty.

*The Land Commission shall register in the Registry of Deeds in Dublin all vesting orders and conveyances executed by them under this Act, and shall transmit copies thereof to the clerk of the peace of the county in which the holding is situated for the purpose of local registration. (b)**

* The words in italics are repealed by Land Act, 1896, 2nd schedule.

Sects 14-16

A landlord negotiating for the sale to the Land Commission of a holding or estate shall furnish the abstract of his title and verify the same to the satisfaction of the Land Commission at his own cost.

No charge shall be made in respect of any investigation by the Land Commission of the title of either the vendor or the purchaser of any holding.

(a) The provisions of the first clause of this Section have been held by Commissioner LYNCH to be applicable only to cases where the Land Commission purchases estates for the purpose of re-sale to the tenants under Sec. 5, *ante*, and to cases where the Commission orders a holding to be re-sold, but not to sales generally under the Acts *Fermoy's Estate*, 22 I. L. T. R. 66, MacC. 1. In the same case it was held by Commissioner LYNCH that the vendor's costs of sale should be placed on the schedule in priority to incumbrances.

(b) Vesting orders must now be registered under the Local Registration of Title Act, 1891. See Secs. 22 and 23 of that Act, *App., post*. Registration in the Office for the Registry of Deeds is therefore no longer necessary. *Ibid.*, Sec. 19.

Power to sell
subject to
annuity

15. Any sale of a holding by the Land Commission under the thirtieth Section of the Land Law (Ireland) Act, 1881, or under any power of sale, may, notwithstanding anything contained in that Section, be made subject to the future payment of the annuity payable in respect of such holding, and in that case no part of the proceeds of such sale shall be applied in redemption of the said annuity; but, save as aforesaid, such proceeds shall be applied in the manner provided by that Section.

As to the application of the guarantee deposit in the case of a sale of a holding for default, see Land Purchase Act, 1891, Sec. 24, *post*, p. 479.

See also Land Act, 1896, Sec. 38, *post*, which enables a holding to be sold in lots, and provides for the apportionment of the annuity and the distribution of the purchase money. It also extends this Section to sales by the Land Commission as successors to the Church Temporalities Commissioners (Sub-sec. 2).

As to the sale of a holding for default, generally, see also Land Act, 1887, Sec. 18, *post*. And as to such a sale in a congested district, see Land Purchase Act, 1891, Sec. 37, *post*, p. 489.

Injunction to put
purchaser in
possession

16. When any holding is sold by or at the suit of the Land Commission, the High Court of Justice in Ireland, or the County Court of the county in which such holding is situate, may on the application of any purchaser issue an order to the Sheriff to put such purchaser in possession of the holding (a) or part thereof purchased by him, and such order shall be executed by the Sheriff in like manner as a writ for the delivery of possession. (b)

(a) See Land Act, 1887, Sec. 21, and Rules of March, 1897, Order XLVIII., *post*. An order may now also be made by the High Court putting the Land Commission into possession of the holding before sale Land Purchase Act, 1891, Sec. 25, *post*.

(b) Where there is an inhabited dwelling-house or building used as a dwelling-house situated on the holding which the sheriff is to put the purchaser in possession of under such order, notice should be served on the relieving officer of the electoral division in which the holding is situate forty-eight hours at least before the sheriff executes the order, pursuant to 11 & 12 Vic., c. 47. See App., *post*.

Sects. 16-17

Supplemental Provisions.

17. In addition to the three persons named as Commissioners in the Land Law (Ireland) Act, 1881, Her Majesty may, by warrant under the Royal Sign Manual, appoint two other persons to be members of the Irish Land Commission.

Additional members and officers of the Land Commission.

Such persons shall continue in office for the period of three years from the date of their respective appointments, and* shall each be paid an annual salary of £2,000.

The provisions of the Land Law (Ireland Act, 1881, which relate to the members of the Irish Land Commission, other than the Judicial Commissioner, shall apply to each of the persons so appointed, and to every person appointed as hereinafter provided to a vacancy in his office, as if he had been named in the said Act a member of the Land Commission other than the Judicial Commissioner.

Whenever during the said period of three years* any vacancy occurs in the office of the persons so appointed by his death, resignation, inability to act, or otherwise, or of any person appointed in his place, Her Majesty may, if she think fit, by warrant under the Sign Manual appoint some fit person to fill such vacancy. The person so appointed shall continue in office only so long as the person in whose place he is appointed would have done.*

The additional members of the Land Commission appointed under this Act, shall specially attend to the business imposed upon the Land Commission by this Act. Provided that the Lord Lieutenant may from time to time order that such additional members of the Land Commission shall perform such other duties as they should have performed, if they had been named in the said Land Law (Ireland) Act, 1881, members of the Land Commission other than the Judicial Commissioner.

The additional Commissioners, or either of them, may act in the name of the Land Commission in carrying this Act into effect; and anything done by them, or either of them, shall be as valid and effectual as if it were done by the Land Commission. (a)

*The words in italics are repealed by Land Purchase Act, 1891. Third Schedule *post*.

Sect. 17. *Notwithstanding anything hereinbefore contained, any person interested shall be entitled to require that any question of law arising under this Act, may be heard and determined by the Judicial Commissioner sitting with the said additional Commissioners.**

Notwithstanding the appointment of additional Land Commissioners under this Act, any matter or thing which under the Land Law (Ireland) Act, 1881, was required to be done by three members of the Land Commission sitting together; and any matter or thing which might lawfully be done under the said Act by three members or any less number, may still be done by any three members or any less number, of the Land Commission.

A barrister-at-law or solicitor shall not be deemed to have retired from practice by reason of his having been appointed and having acted as a Commissioner or Assistant Commissioner under the Land Law (Ireland) Act, 1881, or this Act.

(a) See now as to the tenure of Land Commissioners and officers, &c., Sec. 28 of Land Purchase Act, 1891, *post*, and as to powers of Land Commissioners, Secs. 29 and 30, *ibid*.

Determination of question of law.

(b) As to the procedure for obtaining the determination of a question of law by the Judicial Commissioner see Rules of March, 1897, Order XXXV., *post*. Proceedings will always be stayed by the Commissioners to enable this course to be adopted. *Duke of Abercorn's Estate*, 24 I. L. T. R. 85, MacC. 48.

By Judicial Commissioner alone.

The Judicial Commissioner alone decides the question of law: *Leconfield's Estate*, 25 I. L. T. R. 28, 38, MacC. 63. It is not now necessary that any Commissioner should sit with him Land Purchase Act, 1891, Sec. 28 (8).

Since the passing of the Land Purchase Act, 1891, the practice as to costs laid down in *Lord Leconfield's Estate* (No. 2), 25 I. L. T. R. 33, has been changed, and the Judicial Commissioner now decides all questions as to the costs of and incident to the requisition.

Question as to costs.

A question of costs, although it is a matter within the discretion of the Commissioners, may involve a question of law, which may be determined by the Judicial Commissioner either on a requisition under this Section or by way of Appeal under the 29th Sec. of the Land Purchase Act, 1891. See *Leconfield's Estate* (No. 1), 25 I. L. T. R. 28, MacC. 63 (Bewley, J.).

Appeal in other cases.

There is now, also, an appeal from the decision of any Commissioner acting alone in carrying the Land Purchase Acts into effect, whether on a question of law or otherwise. If the appeal is not on a question of law it lies to a Court of three Commissioners constituted under the provisions of the Land Act, 1896, Sec. 41. A Commissioner may also submit any question of law arising under the Acts to the Judicial Commissioner, Land Purchase Act, 1891, Sec. 28 (8), *post*.

Officers of Landed Estates Court may be transferred to or serve as officers of the Land Commission.

18. For the purpose of carrying this Act into effect, any officer attached to the Land Judges' branch of the Chancery Division of the High Court or to the Court of either of the said Land Judges may, by order of the Lord Chancellor, with his own consent, be

* The words in italics are repealed by Land Act, 1896, 2nd Sch.

transferred to the office of the Land Commission, or may, by virtue Sects 18-22. of a like order, with the like consent, serve as an officer of the Land Commission; and may discharge such duties under this Act as the Land Commission may assign to him, and may be awarded in either case such remuneration for his services as the Treasury may determine.

19. Whenever either or both of the existing Land Judges of the Chancery Division of the High Court* of Justice in Ireland shall die, resign, or otherwise vacate his office, and in the meantime in the case of the illness, absence, or other inability of the said judges, or either of them, to discharge the duties imposed upon them, or either of them by the seventy-fifth Section of the Supreme Court of Judicature Act (Ireland), 1877, all such duties, or any of them, 40 & 41 Vic c. 57. may be discharged by or under the directions of any judge or judges of the High Court of Justice, or any judge or judges of the Court of Bankruptcy, named and assigned for that purpose by the Lord Chancellor, and the Lord Chancellor may from time to time, by order under his hand, name and assign a judge or judges for that purpose; provided that no judge appointed before the passing of this Act shall be so named or assigned without his own consent.

20. The Land Commission may from time to time, with the consent of the Lord Lieutenant and the Treasury, appoint or employ such counsel, examiners, solicitors, clerks, and persons as they think necessary for enabling them to carry into effect the provisions of this Act. Addition to the staff of the Land Commission.

21. Rules for carrying this Act into effect shall be deemed to be Rules under the Land Law (Ireland) Act, 1881, and shall be made by the Land Commission accordingly, and forms and tables shall be settled or adapted by the Land Commission for the purposes of this Act. Rules and Forms.

See now Land Purchase Act, 1891, Sec. 29, Sub-secs. 5, 6.

22. Notwithstanding anything contained in the forty-eighth Appeal &c. Section of the Land Law (Ireland) Act, 1881, (a) to the contrary, any person aggrieved by a decision made on a question of law in proceedings under this Act may appeal from such decision to the Court of Appeal in Ireland,* and so much of the same Section as enacts that nothing therein contained shall authorize the Land

* The words of this Section in italics are repealed by Stat. Law Rev. Act, 1898.

Sects. 22-28. *Commission to determine any question or to exercise any power of a judge in relation to any purchase of an estate by them, or to the purchase of a holding through the medium of the Land Commission, shall be and is hereby repealed.*

(a) By the second Sub-section of that Section, *ante*, it was enacted that no appeal should be permitted in respect of any matter arising under Part V. of that Act from the Land Commission to the Court of Appeal in Ireland.

An appeal from the decision of any Commissioner acting alone, on a question of law lies to the Judicial Commissioner, and in any other cases to a Court of three Commissioners. See Land Purchase Act, 1891, Sec. 29 (1), *post*.

Terms of repayment of advances to tenant-purchasers under 32 & 33 Vic., c. 42.

23. Whereas certain lessees and tenants of the Commissioners of Church Temporalities in Ireland, referred to in the first paragraph of the fifth Sub-section of the thirty-fourth Section of the Irish Church Act, 1869, purchased parcels of land from the Commissioners under that Act, and a part of the purchase-money was, in some cases, allowed by the Commissioners to remain outstanding, with interest at the rate of four per centum, and was secured, to the Commissioners in some cases by a simple mortgage of the property sold, and in other cases by a deed, referred to in this Section as an "instalment mortgage," providing for the payment of the principal sum, with interest, by an annuity extending over a term of years:

And whereas under the Irish Church Act Amendment Act, 1881, the Land Commission are the successors of and stand in the place of the Commissioners of Church Temporalities in Ireland so far as regards such purchases and deeds of mortgage:

And it is expedient that the following provisions should take effect; therefore—

1. The rate of interest made payable by every such simple mortgage as aforesaid shall, from and after a day to be determined by the Land Commission by order, be reduced to a rate of three and one-eighth per centum.
2. Any person liable to pay to the Land Commission the annuity secured by such an instalment mortgage as aforesaid may make application to the Land Commission to accept payment of the amount then remaining due on the security of such instalment mortgage upon the terms hereinafter specified:—

a. On such application, the Land Commission shall ascertain, and by order declare, the amount of the principal money which then remains owing to them or

the security of such instalment mortgage; and by ^{Sections 23-25.} the same order, the Land Commission shall declare how many years would then remain unexpired of a term of forty-nine years, calculated to commence on the day on which the term of years commenced during which the instalments secured by such instalment mortgage were to continue payable;

- b. The Land Commission shall accept payment of the said sum with interest at the rate of three and one-eighth per cent. by half-yearly instalments of such amount as shall be ascertained and declared by the Land Commission in such order to be required to pay off the said sum with interest at the rate aforesaid, if paid for the residue then unexpired of the said term of forty-nine years;
- c. The payment of such instalments shall be secured to the Land Commission by deed, in such form as they may determine, which shall be in substitution for the instalment mortgage, and which shall be exempt from stamp duty;

3. No order shall be made with reference to any debt secured by a simple mortgage; unless all interest on that debt due before the making of the order is then paid up;

No order shall be made with reference to any debt secured by an instalment mortgage, unless all instalments due before the making of the order are then paid up;

4. Nothing contained in this Section shall apply to any debt due to the Land Commission in respect of any purchase from the Commissioners of Church Temporalities of land held from or under them by virtue of any lease for twenty-one years, or for three lives, or twenty-one years, or for forty years, or for three lives, referred to in the last paragraph of the said fifth Sub-section of the thirty-fourth Section of the Irish Church Act, 1869.

See now also Sec. 25 of the Land Act, 1887, *post*.

24. (Repealed by Land Purchase Act, 1891, and Land Act, 1896.)

- 25. Nothing contained in this Act shall restrict the powers of the Land Commission under the Land Law (Ireland) Act, 1881.** Saving for 44 & 45 Vic., c. 49.

Sect. 26
Interpretation.

26. In this Act, unless there is something in the context repugnant thereto—

The expression "The Landed Estates Court Act" means the Act of the session of the twenty-first and twenty-second year of the reign of Her present Majesty, chapter seventy-two, intituled "An Act to facilitate the sale and transfer of land in Ireland," as amended by any Act or Acts.

The expressions "the Treasury," "the Lord Chancellor," and the "Land Commission," mean respectively the Commissioners of Her Majesty's Treasury, the Lord High Chancellor of Ireland, and the Irish Land Commission.

Other expressions have the same meanings respectively as in the Land Law (Ireland) Act, 1881 (a).

The expression "tenant" shall include a tenant holding under a fee-farm grant.

(a) See Sec. 57 of that Act, *ante*. p. 342.

LAND LAW (IRELAND) ACT, 1887.

(50 & 51 VICT., CAP. 33.)

AN ACT TO AMEND THE LAND LAW (IRELAND) ACT, 1881, AND THE PURCHASE OF LAND (IRELAND) ACT, 1885, AND FOR OTHER PURPOSES CONNECTED THEREWITH.

[23rd August, 1887.]

BE it enacted, &c.

PART I.

Amendments of General Application.

1. *At any time within two years after the passing of this Act** on Sect. 1. Leaseholders. the application (a) in the prescribed manner (b) to the Court by the lessee (c) of any holding (d) who at the expiration (e) of his lease existing at the passing of the Land Law (Ireland) Act, 1881, (f) 44 & 45 Vic. c. 49. would be deemed to be a tenant of a present ordinary tenancy from year to year within the meaning of the said Act, at the rent and subject to the conditions of the lease, or would be so deemed but for the fact that such lease would not expire within sixty years after the passing of the Land Law (Ireland) Act, 1881, such lessee shall, if bonâ fide in occupation (g) of his holding, be deemed to be a tenant of a present tenancy (h) in like manner and subject to like conditions, (i) and subject to the same right of resumption (j) as if his lease had expired, (k) and his holding shall be subject to all the provisions of the said Act of 1881 with regard to present tenancies as if the tenancy therein were a tenancy from year to year (l).

This Section shall apply only to leases expiring within ninety-nine years after the passing of the Land Law (Ireland) Act, 1881, (m) and every lease existing at the passing of the Land Law (Ireland) Act, 1881, for any life or lives then existing, with or without any term of years not exceeding ninety-nine years where such term is concurrent, or thirty-one years where such term is in reversion, and not being renewable (n) in any case, shall, for the purposes of this Section, be deemed to be a lease so expiring.

* The words in italics are repealed by Land Act, 1896, 2nd Schedule.

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In case of a lessee becoming present tenant under this Section, the Court shall not for fifteen years from the commencement of such present tenancy authorize resumption by the landlord under this Section.

Section merely anticipates rights under 21st Sect. of Act of 1881.

This Section, in the words of FITZGIBBON, L.J., in *Moylan v. Finch* (28 L. R. Ir. 332, 595, 26 I. L. T. R. 2), "merely anticipates or antedates future rights under the Act of 1881, Section 21, for the benefit of tenants who, on the expiration of existing leases, might or would have had the right under the earlier Act to be deemed tenants of present ordinary tenancies from year to year. It brings the right of such tenancies into immediate possession, where the necessary conditions exist" (28 L. R. Ir., at p. 600). But it does not enlarge the rights, which the tenants would otherwise have had at the expiration of the lease: *Clements v. Tighe* [1894], 2 I. R. 101 (C. A.), 26 I. L. T. R. 100 (L. C.).

Tenancies excluded from section.

Every tenancy, therefore, which is excluded from the 21st Sec. of the Land Act of 1881, whether by the 58th Sec. of that Act or otherwise, is necessarily excluded from this Section. See notes to the latter Section, *ante*, p. 253, *et seq.*

Lease by tenant for life for his own life.

Thus, where a tenant for life made a lease for his own life, as the lessee was held to be excluded from the 21st Sec. of the Act of 1881, at the expiration of the lease (*Massy v. Norse*, 20 L. R. Ir. 57, 464), so it was also held that he was deprived of the benefits of this Section during its currency: *Moylan v. Finch*, 28 L. R. Ir. 595 (C. A.), 332 (L. C.), 26 I. L. T. R. 2 (C. A.), 25 I. L. T. R. 43 (L. C.), 22 I. L. T. R. 99 (Sub-Com.). See also *Ryan v. Finch*, 24 I. L. T. R. 94. A lease made by a tenant for life for a term of years, if he (the lessor) shall so long live, was also for the same reason held to be excluded from this Section: *Barton v. Atkinson*, 30 L. R. Ir. 396 (C. A.), 24 I. L. T. R. 26 (Sub-Com.). How far these decisions would now be held to apply seems, however, somewhat doubtful, having regard to the terms of the 10th Section of the Land Act, 1896. See notes to that Section, *post*, pp 549-550.

Even before the passing of the Land Act, 1896, it was held by the Court of Appeal that where a lease was made by a tenant for life for a term of 35 years, without any contingency, the lessee was entitled to have a fair rent fixed under this Section, notwithstanding that the lease was void as against persons entitled in remainder, in consequence of a fine having been taken by the tenant for life: *Looby v. Finch*, 30 L. R. Ir., 568. It would appear from these cases, also, even independently of the 10th Section of the Act of 1896, that if a lease was made by a tenant for life either under a leasing power in the settlement, or in accordance with the statutory leasing powers of the Settled Land Acts, or the Land Act, 1870, Sec. 28 (*ante*, p. 190), and there is nothing to render it invalid as against persons entitled in remainder, the lessee is entitled to apply under this Section.

Leases between 22nd Aug., 1881, and 1st Jan., 1883.

This Section, like the 21st Section of the Act of 1881, applies only to leases which were in existence on the 22nd of August, 1881. Leases made after that date are not within its terms *Ronaldson v. La Touche*, 24 L. R. Ir. 344, 23 I. L. T. R. 21, unless they come within the provisions of Sec. 3, *post*. The tenants under such leases, however, may have the right to have fair rents fixed under the 8th Section of the Land Act, 1881, if the leases were made before Jan. 1st, 1883. See notes to Land Act, 1881, Sec. 57, *ante*, p. 350

Where lessee has surrendered his lease.

Where a tenant holding under a lease, which was within the 21st Section of the Act of 1881, surrendered his lease in 1886, and accepted a tenancy from year to year at a reduced rent, in lieu thereof, it was held by the Court of Appeal that he could

not subsequently apply to have a fair rent fixed under this Section: *Cooke v. Sect. 1. Torrens*, 22 L. R. Ir. 239.

So also, where a lessee whose valuation was over £150, joined with his landlord, in 1884, in signing a consent that the parties should execute upon the lease an indorsement reducing the rent, and providing that the reduced rent was to be paid on the gale days mentioned in the lease, notwithstanding any future legislation to the contrary, the Court of Appeal held the contract binding, and dismissed an originating notice by the lessee to have a fair rent fixed under this Section. *Ferguson v. Bradstreet*, 22 L. R. Ir. 303. See also notes to Land Act, 1881, Sec. 22, ante, p. 310.

(a) There has been considerable doubt as to whether the term "application" means the service of the originating notice, or the actual hearing of the case in Court. The former view was taken by BWLEY, J., in *Smythe v. Moore* (26 I. L. T. R. 66), where he held that the provisions of the 1st Section of the Act of 1881, as to the sale of tenancies, applied to leaseholds, after originating notices had been served under this Section, and before the cases had been heard. The terms of Sec. 5, post, and of the Rules of 27th August, 1887, were relied upon by him as confirming this view, which had previously been adopted by several Assistant Commissioners. (See *Fogarty v. Meredith*, 22 I. L. T. R. 68; *Carney v. Arran*, 22 I. L. T. R. 88). But upon a case being stated by the Land Commission, the Court of Appeal laid down that, although the service of the originating notice may constitute the "application," for the purpose of enabling the tenant to obtain an order, yet the mere service of the originating notice does not alter the status of the lessee, so as to constitute him a present tenant of a tenancy from year to year, unless and until he obtains an order or declaration from the Court upon his application: *Smyth v. Moore*, 32 L. R. Ir. 129. Following this decision, it was held by the Queen's Bench Division that as the lessee who serves an originating notice under this Section does not acquire the status of a present tenant until the hearing by the Court of the application, a sub-letting made by him between the date of the service of the originating notice and the hearing in Court is not rendered invalid by the 2nd Section of the Act of 1881: *Johnson v. Egan* [1894], 2 I. R. 480, 28 I. L. T. R. 103.

As to the meaning which has been given to the term "application" in other statutes, see, for instance, under the 60th Section of the Land Act, 1881, *Chasins v. Nelson*, 12 L. R. Ir. 272; 17 I. L. T. R. 49; MacD. 470 (ante, p. 365); and under the 6th Section of the Remitting Act (33 & 34 Vic., c. 109), *Nolan v. Morgan*, 1 R. 4 C. L. 603; and under the 70th Section of the L. and T. Act, 1860, *Fitzmaurice v. Haughney*, 26 I. L. T. & S. J. 511.

If the lease expires between the service of the notice and the hearing in court, the tenant is not debarred from proceeding with his application: *Irvine v. Irvine*, 22 I. L. T. R. 88 (Sub-Com.); *Carney v. Arran* (*ibid.*).

(b) The "application in the prescribed manner" may be, either to have a fair rent fixed (Form No. 28), or, to be deemed and declared tenant of a present tenancy (Form No. 33). It would appear that an agreement fixing a fair rent under Land Act, 1881, Sec. 8 (6) cannot be filed between a lessor and a lessee, unless the latter has first been declared a present tenant by an order under this Section. Where the parties desire to fix a rent by consent, the proper course is for the lessee to serve an originating notice in Form No. 28, and then enter into a consent with the lessor in Form No. 48. (See Rules of Jan., 1897, Nos. 124, 126, 146 and 147, post.)

Or contracted, not to apply to have fair rent fixed.

Meaning of term "application."

Lease expiring before the hearing of the case.

Mode of application.

Agreements to fix fair rents in case of leaseholders.

<p>Sect. 1.</p> <p>Meaning of term "lessee."</p>	<p>(c) The term "lessee" is not confined to the person named in the instrument of lease, but includes any person or persons in whom the interest becomes vested. It means "the owner of the lease," whether assignee or legatee or otherwise <i>M'Carthy v. Swanton</i>, 14 L. R. Ir. 365; 18 I. L. T. R. 85 (see especially the judgment of PALLES, C.B., 14 L. R. Ir., at p. 374); and <i>Neville v. Harman</i>, 17 I. L. T. R. 86, MacD. 277; and applies also to a tenant holding under an agreement for a lease <i>Donnelly v. Galbraith</i>, 28 I. L. T. R. 54 L. and T. Act, 1870, Sec. 70. It may in relation to one tenancy include a number of persons, each occupying in severally a portion of the demised premises <i>Ireland v. Landy</i>, 22 L. R. Ir. 403. But one of such persons cannot alone apply under this Section, even though the holding has been subdivided with the landlord's consent <i>Murphy v. Wheatley</i>, 26 I. L. T. & S. J. 545 (L. C.) <i>Riversdale v. Gethins</i> [1899], 2 I. R. 81: 33 I. L. T. R. 1. Unless he is a joint-tenant or a tenant in common who has worked and occupied a separate portion of the holding, and is otherwise entitled to apply under Land Act, 1896, Sec. 5 (3). See notes to that Section, <i>post</i>, or unless the landlord is in some way estopped from alleging that the sub-divided portion does not form a separate holding <i>Boyd v. Trednick</i> [1896], 2 I. R. 364: 30 I. L. T. R. 36 · Fitzgibbon Irish Land Reports, 42.</p>
<p>Assignees.</p>	<p>Where an assignee claims the rights of a lessee, it appears, however, to be necessary for him to show that there was some legal transfer of the interest to him. See <i>Harte v. Kirk</i>, 12 L. R. I. 364; MacD. 268. But a title may be acquired to a leasehold estate by the Statute of Limitations, so as to give a right to have a fair rent fixed, even though the lease contains a covenant against alienation: <i>Rankin v. M'Murtry</i>, 24 L. R. Ir. 290 (Q. B. D.), <i>Farrell v. Smith</i>, 23 I. L. T. R. 88 (Sub-Com).</p> <p>If the tenant is equitably and beneficially the owner of the lease, the fact that the legal estate in it has not been transferred to him would not apparently debar him from applying under this Section <i>Kelly v. Griffith</i>, 16 I. L. T. R. 29; R. & D. 85. Thus, where the widow of a deceased tenant served an originating notice before taking out administration, it was held that she was entitled to do so, and that the production of the letters of administration at the hearing was sufficient: <i>Davies v. M'Mahon</i>, Land Commission Court, 29th April, 1887 (<i>Ex rel.</i> A. W. Samuels, K.C.). See on this point, further, Williams on Executors, &c. (9th ed.), p. 554.</p>
<p>Where lease contains clause against alienation.</p>	<p>The necessity for a legal transfer of the leasehold interest to the assignee is also dispensed with in the case of leases containing covenants against assignment by the Land Act, 1888, <i>post</i>, where the landlord has consented to the assignment, though the consent has not been given in the manner prescribed by the 10th Sec. of the L. & T. Act, 1860 (<i>ante</i>, p. 29). And by the Land Act, 1889, this provision is extended to the case of leases made between 1st June, 1826, and 1st May, 1832, not containing a clause expressly authorizing assignment</p>
<p>Right of sale in such cases.</p>	<p>When once a fair rent has been fixed in such cases, it appears that the lessee or assignee can sell, under the 1st Sec. of the Act of 1861, without obtaining any consent from the landlord. <i>In re Wright and Title's Contract</i>, 29 L. R. Ir. 111 (V. C.).</p>
<p>Holdings excluded</p>	<p>(d) "Save in Part II. of this Act, the expression 'holding' does not include any holding which is not agricultural or pastoral, or partly agricultural and partly pastoral, in its character." (Sec. 34.) Holdings, excluded from the Land Act, 1881, by the 58th Sec., or by the 5th Sec. of the Land Act, 1896, are also excluded from this Section by the reference to the former Act.</p>
<p>Meaning of term "expiration."</p>	<p>(e) The words "at the expiration" here refer to the time when the lease expires, according to its own terms, and not to its possible determination by title para-</p>

mount or other superior right. *Looby v. Finch*, 30 L. R. I. 568. As to the meaning of the term "expiration," and the distinction between it and "determination," see *Hodges v. Clark*, 17 I. L. T. R. 83, MacD. 264; *Perrott v. Dennis*, 18 L. R. I. 29; 20 I. L. T. R. 7, and notes to Land Act, 1881, Sec. 21, *ante*, p. 303.

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(f) The lease must have been existing at the passing of the Land Act, 1881, *i.e.*, on the 22nd of August, 1881. See, however, Sec. 3, *post*, which provides that leases made after that date, but before the 1st January, 1883, are, in certain cases, to be deemed to be within this Section. They may also, in certain cases, be within the 8th Sec. of the Act of 1881. See notes to Sec. 57 of that Act, *ante*, p. 350.

(g) The lessee must be "bona fide in occupation of his holding." As to the meaning of "bona fide," see judgment of PALLES, C.B., *M'Carthy v. Swanton*, 14 L. R. Ir., at p. 375, and notes to Land Act, 1881, Sec. 21, *ante*, p. 304. Bona fide occupation

"Occupation" means either (1) actual physical occupation by himself, or (2) partly by himself and partly by his sub-tenants, where either he has sublet with the landlord's consent (as to which see *M'Carthy v. Swanton*, 14 L. R. Ir. 365, 18 I. L. T. R. 85, and notes to Land Act, 1881, Secs. 21 and 57), or where the subletting is of a dwelling-house, not being that in which the tenant for the time being resides, or of some other part of the holding, not more than one-eighth in value of the entire. (Land Act, 1896, Sec. 7, *post*.)

If a lessee has sublet the whole demised premises, whether with or without the landlord's consent, or a considerable part without such consent, he is entirely excluded from this Section: *M'Carthy v. Swanton* (*ubi supra*).

Where a lessee's originating notice was dismissed on account of subletting, and he afterwards obtained a surrender from the sub-tenant it was held that he was entitled to serve a fresh originating notice and have a fair rent fixed. *Butler v. Hutchinson*, 28 I. L. T. R. 22 (L. C.).

The fact that a Receiver appointed by the Court over the lessee's interest is in possession does not of itself deprive the lessee of his character of an "occupying" tenant, for the Receiver must be regarded as the common agent of all the parties interested, including the tenant, who thus continues to be the occupier for every legal purpose: *Moir v. Blacker*, 26 L. R. Ir. 375; *Annaly v. MacFarlane*, 27 I. L. T. R. 99. Receiver in possession

(h) Lessees who are thus deemed to be tenants of present tenancies are placed in the same position as if their leases had expired, and they had acquired statutory tenancies under the 21st Section of the Land Act, 1881. Whether the lease continues to exist for any purpose seems to be doubtful, and the authorities are conflicting. In *Wilson v. Smyth* (23 I. L. T. R. 7), O'BRIEN, J., expressed an opinion that there was nothing in this Section to determine it, and that it should be treated as still subsisting at the new rent. This was followed by MORRIS, J., in *Rutledge's Estate* [1895], 1 I. R. 328, where he held that the liability of a grantee under a fee-farm grant to pay tithe rent-charge, is not altered by an order fixing a fair rent under the Redemption of Rent Act, 1891. This decision was expressly based upon the view that both for the purposes of this Section and the Redemption of Rent Act a lease or grant continues to subsist just as before, after the fixing of a fair rent, subject only to the alteration in the amount of the rent. It has recently been followed by the Queen's Bench Division in *Irish Land Commission v. Magorian* [1901] 2 I. R. 445; 1 New Ir. Jur. R. 54, where the same point was decided. See also remarks of BOWLEY, J., in *Mellan v. Kieran* [1894], 2 I. R. 27. Effect upon the lease of order fixing fair rent.

On the other hand in *Moroney v. Ambrose*, 32 L. R. Ir. 63, the Exchequer Division held that where a lessee who, from the nature of his tenure, was liable to tithe rent-charge, had a fair rent fixed under this Section, his liability to pay the tithe rent-

As to tithe rent-charge

Sect. 1.

charge ceased; and in *Sturges v. Ryan* (24 B. R. Ir. 305), it was held by the Queen's Bench Division that where an assignee of a lease, being in possession, had a fair rent fixed, the original lessee was thereby discharged from liability on his personal covenant as regards all rent subsequently accruing due. These decisions seem scarcely consistent with the lease being treated as still subsisting, and the view that once a fair rent has been fixed, the lease is gone for all purposes, seems to have been adopted by HOLMES, L.J., in *Glenny v. Bell* [1898], 2 I. R. at pp. 245-6.

Lease for lives
Devolution upon
intestacy.

A similar question arises in reference to the devolution upon intestacy of the interest in a farm held under a lease for lives limited to heirs in the usual way, where a fair rent has been fixed under this Section. In *M'Evoy v. M'Evoy* [1897], 1 I. R. 295, PORTER, M.R., held that it forms part of the personal estate. After citing and explaining the decision in *Sturges v. Ryan* (24 L. R. I. 305), he goes on to say that "it follows by inevitable logic that the lease is itself terminated by having its expiration accelerated by the acceptance by the lessee of another and inconsistent estate" [1897], 1 I. R. at p. 305. The same view appears to be taken by CHATTERTON, V.C., see *Munster Bank v. Parke*, 1 I. W. L. R. 168, and *In re Gray* [1894], 1 I. R. 65. In the latter case, however, the decision turned rather upon a question of the surrender of the lease. A distinction may possibly be drawn between fee farm grants, or leases which come within the Redemption of Rent Act, 1891, and leases within this Section; but very similar considerations seem to apply in both cases.

Conditions of
lease, how far
binding.

(i) The words "subject to like conditions, &c. . . as if his lease had expired" render lessees, who become statutory tenants, under this Section, "subject to the conditions of their leases respectively, so far as such conditions are applicable to tenancies from year to year" in the terms of the 21st Section of the Land Act, 1881. But on fixing a fair rent, it is open to the parties to vary the conditions of the tenancy even by parol agreement *Tyrrell v. Merriman*, 32 I. L. T. R. 142 (MADDEN, J.).

A covenant in a lease to deposit a sum of money with the lessor, as security for the payment of rent and performance of the covenants contained therein, is a condition which is applicable to the statutory tenancy created under this Section, and the lessor is entitled to retain the money so deposited on the same terms as he held it under the lease. *Wilson v. Smyth*, 23 I. L. T. R. 7, following *Dolton v. Barry*, 12 L. R. Ir. 158; MacD. 409, referred to *ante*, p. 306. In such cases a good deal turns on the special terms of the covenant. See *Borrowes v. Delaney*, 24 L. R. Ir. 503, and notes to Land Act, 1881, Sec. 21, *ante*, p. 306.

A reservation in a lease of "all game" has also been held to be a condition which attaches to the statutory term after a fair rent has been fixed under this Section: *Irvine v. Osborne*, 25 I. L. T. R. 36 (Q. B. D.).

Covenant to pay
a penal rent.

A covenant in a lease to pay a penal rent for a breach of another covenant—as, *e.g.*, for every acre meadowed above a certain quantity—is one which is not affected by the fixing of a fair rent, and the order of the Land Commission is no answer to the lessor's demand for such additional rent. *O'Connor v. Smith*, 20 L. R. I. 393. "It could not be intended," says FITZGIBSON, L.J., "that the Land Commission should forcibly, and for ever, take away from the landlord in the one case, or that in the other by asking an increased ordinary rent he should for ever give up the benefit of provisions contained in the contract for preventing or regulating certain uses of the holding; for example, covenants not to erect unsightly buildings, not to carry on particular trades, or the like. If there is added to such covenants the additional term that the tenant shall or may, upon non-observance of them, pay a certain sum per annum, we cannot hold that a sum so agreed to be paid is any

part of the rent within the meaning of the statute for which the 'fair rent' may be substituted. It is a penalty or a price agreed to be paid by the tenant for doing certain acts which he has contracted not to do unless under such penalty or at such price, and it cannot form any element of the fair rent of the holding so long as the contract of tenancy is observed and the acts giving rise to the liability are not done: "20 L. R. I., at pp. 400-1.

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On the other hand, where a lease contained a covenant to pay 1s. in the £ for Receiver's fees over and above the reserved rent, it was held by ANDREWS, J., that after the fixing of a fair rent under this Section, the tenant was not liable to pay the Receiver's fees in addition to the judicial rent: *Pakenham v. Williamson*, 30 L. R. Ir. 292. And where during the currency of a lease the parties entered into an agreement that in consideration of the landlord executing certain improvements, the tenant would pay interest at five per cent. on the gross outlay "during the continuance of the lease," it was held that this interest could not be recovered after a fair rent was fixed: *Blood v. Sherby*, 27 I. L. T. R. 22 (JOHNSON, J.).

Conditions in lease held not to apply to judicial tenancy.

A covenant against alienation, as being inconsistent with the provisions of Sec. 1 of the Act of 1881, is not a condition in a lease which is applicable to the statutory tenancy subsequently created: *In re Wright and Tittle's Contract*, 29 L. R. Ir. 111; *Smythe v. Moore*, 26 I. L. T. R. 66. Affirmed on appeal 32 L. R. Ir. 129.

Covenant against alienation.

The implied covenant on the part of the landlord for quiet enjoyment has been held also, in the case of a yearly tenancy, not to be binding after a fair rent has been fixed: *Kearns v. Oliver*, 24 L. R. Ir. 473. And the same principle would appear to apply to the express covenant contained in a lease.

Covenant for quiet enjoyment.

Similarly, it has been held by the Exchequer Division upon a case stated by BARRY, L.J., that a covenant by a landlord in a lease to allow out of the rent reserved a certain sum for every barrel of lime spread upon the holding by the tenant, is not a covenant which applies to the tenancy after a fair rent has been fixed under this Section: *Nettles v. Murphy*, 30 L. R. Ir. 564.

As to the effect of the fixing of a fair rent in reference to special covenants, such as a covenant to renew to a sublessee for whatever term the lessee should himself obtain by way of renewal, see *Read v. Flood*, 27 I. L. T. R. 96.

(j) The right of resumption is dealt with in a confused and contradictory manner in this Section. The words "subject to the same right of resumption as if his lease had expired," would, if they stood alone, give the landlord a twofold right to resume possession. First, under the 21st Section of the Act of 1881, the Court might, on the expiration of a lease, authorize the landlord to resume possession for the purpose of occupying the holding as a home farm or as a residence for himself or for some member of his family; but in order to avail himself of this right the landlord should serve notice either during the last three months of the lease or within three months after its termination. (See Rules of Jan., 1897, No. 161.) Secondly, if a fair rent had been fixed the Court could, under Sec. 5, subject to the modification introduced by Sec. 8 (3), during the continuance of a statutory term authorize resumption "for some reasonable and sufficient purpose having relation to the good of the holding or of the estate," such as the use of the land as building ground.

Right of Resumption.

The last clause of the present Section, however, which provides that the Court shall not for fifteen years from the commencement of the present tenancy authorize resumption under it, gives rise to considerable difficulty, and various opinions have been expressed as to its operation. It appears, undoubtedly, to postpone the landlord's right of resumption under the 21st Section of the Land Act, 1881 (i.e., for the purpose of a home farm or a residence), for a period of 15 years: *Bailey v. Smiley*, 24

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I. L. T. R. 107 (L. C.). And it would seem, as stated by Mr. BAILEY in *Hanley v. Carroll*, 23 I. L. T. R. 48, that by such postponement, it practically abolishes this right of resumption altogether. *Bailey v. Smiley* has been approved of, and followed by BEWLEY, J., and the Court of Appeal in *Connolly v. Tyrrell*, 32 L. R. Ir. 97, 27 I. L. T. R. 41, in which it was held that the effect of the clause at the end of this Section was to postpone the landlord's right of resumption for fifteen years from the date of the tenant's becoming a present tenant under the terms of that Section. The period of suspension runs from the date of the adjudication, not from the commencement of the statutory term *Bailey v. Smiley*, 24 I. L. T. R. 107.

All these cases were decided in reference to the right of resumption under the 21st Sect. of the Act of 1881; there has been as yet no reported decision as to the effect of the clause upon the right of resumption conferred, in certain cases, during the currency of a statutory term by the 5th Sect. of the same Act.

The clause has, of course, no application where the lease expires before the service of the originating notice. *Mchaffy v. Pollock*, 24 I. L. T. R. 106 (L. C.).

See now also Land Act, 1896, Sec. 2, *post*, which in some degree limits the effects of enactments prohibiting resumption. See p 53, *post*.

Reversionary leases.

(k) The Section says nothing as to reversionary leases, which were expressly protected by the 21st Section of the Act of 1881. There would appear to be nothing in this Act to interfere with them, and it would seem that a lessee who has become a present tenant under this Section may, notwithstanding, be ejected on the expiration of his lease by a reversionary lessee whose title dates from before the passing of the Act of 1881. It may even be argued that, where a reversionary lease of the holding has been granted before the passing of the Land Act, 1881, the present lessee is not in any case entitled to have a fair rent fixed, as he would not at the expiration of his lease be deemed to be a tenant from year to year, &c., under the 21st Section of the Act of 1881.

Where a lessee under a lease for fifteen years from the 1st November, 1866, obtained on the 27th June, 1881, a reversionary lease to himself to commence on the expiration of the former lease on November, 1881, it was held by the Court of Appeal (FALLIS, C.B., *dicts.*) that he was not entitled subsequently to have a fair rent fixed under this Section: *Sproule v. Ramsay*, 26 I. L. T. R. 4.

Improvements.

(l) As regards improvements, questions sometimes arose, before the passing of the Land Act, 1896, whether a lessee upon having a fair rent fixed, was entitled to be exonerated from rent in respect of them in the same way as a tenant from year to year. Owing to the restrictive terms of the 4th Section of the L. and T. Act, 1870, as to compensation for improvements made during the currency of a lease, lessees were frequently held liable to be rented upon improvements made by themselves, when they applied to have fair rents fixed under this Section. Thus it was held that where a lease contained a proviso that the lessee should not be entitled to claim any compensation for improvements on the expiration of the term, and the extent of the lessee's holdings was sufficient to enable him to enter into a binding covenant to that effect, having regard to the 12th Section of the Landlord and Tenant Act, 1870, no exemption from rent could be claimed under this Section in respect of improvements made by him upon the holding *Clements v. Tighe* [1894], 2 I. R. 101 (C. A.). But now the 1st Section of the Land Act, 1896, provides that such a covenant shall not authorise the allowance of any rent in respect of any improvement, except to the extent to which valuable consideration has been given therefor (Sub-sec. 6).

Again, it was held that in the case of a lease made originally for a term of not less than 31 years, the lessee, in consequence of the provisions of Sec. 4, Sub-sec. 3, of the Landlord and Tenant Act, 1870, was not entitled to claim exemption from rent in respect of improvements, other than permanent buildings and reclamation of waste land, if he applied to have a fair rent fixed under this Section. Though a lease made for 31 years from the date preceding the date of the lease was held not to be a lease for a "term certain of not less than 31 years" within the meaning of the Act of 1870, and a lessee under such a lease was entitled to exemption from rent in respect of his improvements when applying to have a fair rent fixed under this Section: *Kepple v. Pike*, 24 I. L. T. R. 54. The 7th Sub-section of Sec. 1 of the Act of 1896 now, however, provides that Sec. 4 of the L. and T. Act, 1870, shall not authorise the allowance of any rent in respect of any improvement, except in the case of improvements made before 1850, and not being either permanent buildings or reclamation of waste land. This Sub-section places lessees in practically the same position as yearly tenants as regards improvements.

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Under leases for 31 years or upwards.

As regards improvements executed before the granting of the lease, there is some doubt as to the tenant's right. In *Adams v. Dunseath*, 10 L. R. I. 109; 16 I. L. T. R. 59, it was held, though only by four judges against three, that a lease made in 1846, whereby lands were demised with all houses and buildings thereunto belonging, precluded the tenant from being regarded as having any interest in respect of a house built by him on the land before the execution of the lease. That decision, however, was come to by the majority of the Court only on the special facts of the case, and cannot be relied on as establishing any general principle of law. The view taken by some of the judges was that the granting of the lease itself was compensation to the tenant for the improvements which had been executed prior to it; but that view depended on the particular facts established in evidence as to the arrangements in regard to the lease. In *Walsh v. Limerick*, 23 I. L. T. R. 17, the Land Commission held that, according to the principles established by *Adams v. Dunseath*, it was a question of fact in each particular case whether a new lease involved on the part of the lessee a surrender of his right to compensation for improvements previously made, and that if upon the evidence of the particular transaction, no such surrender could be presumed, the lessee was entitled, on having a fair rent fixed, to claim exemption from rent in respect of improvements made prior to the lease. As to how far the principles laid down in these cases are now affected by the 1st Section of the Land Act, 1896, see notes to Sub-sections (5) and (8) of that Section, *post*, p. 512.

Improvements made before the granting of the lease.

Where improvements are executed by a tenant in pursuance of an express covenant in a lease, there is no doubt that, to the extent covenanted for, they form part of the consideration for the lease, and are compensated for thereby. On the expiration of the lease they become the property of the landlord, and he is entitled to rent in respect of them. During the currency of the lease a lessee is not entitled to exemption from rent in respect of them. See Land Act, 1896, Sec. 1, Sub-sec. 4, *post*, and *Miller v. Montgomery*, and *Kelly v. Des Vaux*, 32 I. L. T. R. 76.

After the granting of the lease, in pursuance of a covenant.

(m) The words "Leases expiring within ninety-nine years after the passing of the Land Law (Ireland) Act, 1881," mean leases which may so expire, not merely those which must necessarily do so. Thus a lease for 150 years, provided the lives of three persons named should so long continue, was held to be within the Section: *Fitzsimons v. Bangor*, 28 L. R. Ir. 53 (C. A.).

Leases "expiring" within 99 years.

Leases which will not expire until after the 22nd of August, 1880, are excluded from

Section 1-2. this Section, but the tenants in such cases are entitled to the benefit of the Redemption of Rent Act, 1891, *post*.

Renewable leases.

(4) Renewable leases, *for lives*, are excluded from the Section, even though they are not perpetually renewable. Thus a lease for three lives or 31 years, with a covenant to renew for one life and a concurrent term of 21 years, is not within the Section: *Gorman v. King-Harman* [1894], 2 I. R. 238; *Burton v. King-Harman*, 28 I. L. T. R. 23. But such leases come within the Redemption of Rent Act, 1891. See, *post*, pp 497, *et seq*.

Covenant to renew when implied.

Leases for *terms of years* which are renewable—such as the ordinary Bishops' leases for twenty-one years—are not excluded. If the existing lease would expire before Aug. 22nd, 1980, and the lessee is in occupation, he is entitled to have a fair rent fixed under this Section, as the words "and not being renewable in any case," must be read with the words "for any life or lives then existing:" *Montgomery v. Duncan*, 22 I. L. T. R. 33 (L. C.). Again, if a lease contains a covenant by the landlord only, and not by the tenant, for perpetual renewal, there is no obligation on the part of the tenant either to name lives or accept a renewal, and on the dropping of all the lives he may become, if he so desires it, a present tenant under the 21st Section of the Land Act, 1881: *Shinnick v. Beresford*, MacD. 516. A covenant to take out a renewal may, however, be implied on the part of the lessee, even where the lease contains no express covenant to that effect on his part. *Pilson v. Spratt*, 25 L. R. Ir. 5; *Ward v. M'Roberts*, 25 L. R. Ir. 224 (MONROE, J.); *Foley v. Roland* [1898], 1 I. R. 311 (CHATTERTON, V. C.). And where a tenant was entitled to take out a grant in perpetuity under the Trinity College Leasing and Perpetuity Act, 1851, having paid the necessary fine and an increased rent, it was held that he had converted his holding into a perpetuity, even though he had never taken out the grant to which he was entitled: *O'Donnell v. Norton*, 21 I. L. T. R. 23 (L. C.).

Tenants entitled to perpetuity grants.

Perpetuities may be set aside.

2. In case of a lease or grant existing at the date of the Land Law (Ireland) Act, 1881, and executed since the first day of January, one thousand eight hundred and sixty-nine, of a holding *bona fide* in the occupation of the tenant or grantee, and to which, but for the length of the term, Section 1 of this Act would apply, if the Court is satisfied that the acceptance thereof by the tenant or grantee was procured by the landlord by threat of eviction (a) or undue influence, or other inequitable means, the Court may, upon the application of the tenant or grantee or the successor in title of the tenant or grantee made within six months after the passing of this Act, declare such lease or grant to be void as and from the date of the order, upon such terms as to costs and otherwise as the Court may deem just, and thereupon such tenant shall be deemed to be tenant of a present ordinary tenancy from year to year at the rent mentioned in such lease, and subject to such conditions thereof as the Court may deem just.

This Section deals only with leases or grants excluded from the 1st Section, and executed since January 1st, 1869. The time for applying has now elapsed; but

lessees or grantees excluded from Sec. 1 by the length of the term, can now apply **Sects. 2-3.** for relief under the Redemption of Rent Act, 1891, *post*, p. 497.

(a) As to what amounts to "threat of eviction," see *Ewart v Gray*, R. & D. 67. Threat of eviction. It is not necessary to show that a notice to quit was served, or that any legal proceedings were instituted, provided there was a distinct intimation to the tenant that if the lease were not accepted, the land would be taken from him. *Kelly v. Griffith*, R. & D. 85.

Where in a suit for specific performance of an agreement for a lease it appeared by the evidence that on the expiration of an old lease in 1879, the landlord and tenant agreed as to the term, rent, and other provisions of a proposed new lease, and that the only matter in dispute was the amount of a fine to be paid by the tenant, which was subsequently settled, it was held by CHATFIELD, V.C., that the tenant could not, in 1889, raise as a defence to the action that the acceptance of the new lease was procured by threat of eviction within the meaning of this Section: *MucFarlane v. Dunne*, 24 I. L. T. R. 17.

In a case where the Land Commission had set aside under this Section a fee farm grant for which the grantee had paid a fine, it was held by the Court of Appeal that, in afterwards fixing the fair rent of the holding, the Land Commission might have regard to the fine so paid for the grant. *Lanyon v. Glinton* [1895], 2 I. R. 150. But see also *Glenny v. Bell* [1898], 2 I. R. 233 32 I. L. T. R. 1.

3. A lease to which Section one of this Act would otherwise apply, shall be deemed to be within the said Section if made or agreed to be made after the passing of the Land Law (Ireland) Act, 1881, and before the first day of January, one thousand eight hundred and eighty-three (a), where the lessee had been tenant in occupation of the holding under a contract of tenancy expiring (b) after the twenty-ninth day of September, one thousand eight hundred and eighty, and had thenceforward continued in such occupation as tenant or caretaker, or otherwise, with the assent of the landlord, to the time of the making of such lease: Provided the Court, having regard to all the facts of the case, is of opinion that the making of such lease was deferred with the object of defeating the provisions of the Land Law (Ireland) Act, 1881. Exceptional provisions for certain leaseholders.

In this Section the expression "lessee" shall include the person or persons who would have been successors in title of the tenant under the previous contract of tenancy if such tenancy had continued and had become vested in the lessee.

(a) Where a tenant holding under a lease which expired in March, 1881, continued in occupation, and in September, 1882, entered into an agreement for a new lease for 35 years from March, 1881, which lease was not executed until 2nd April, 1884, it was held by the Land Commission, in the absence of evidence that the making of the lease was deferred with the object of defeating the provisions of the Act of 1881, that the tenant was not entitled to have a fair rent fixed under this Act: *M'Callagh v. Batt*, 24 I. L. T. R. 52.

Section 3-4
Rights of leasees
under leases
made between
22nd August,
1881, and 1st
January, 1883.

It must not be forgotten that a tenant holding under a lease executed between the 22nd August, 1881, and the 1st January, 1883, of lands in which a tenancy was subsisting on the 22nd August, 1881, is a "present tenant" within the meaning of the Act of 1881, and *prima facie* entitled to have a fair rent fixed under that Act. See *Magner v. Hawkes*, 28 L. R. Ir. 365, and notes to Land Act, 1881, Sec 57, *ante*, p. 350

(b) Expiration and determination are not synonymous. Expiration is equivalent to efflux of time. *Hodges v. Clarke*, 17 I. L. T. R. 83; MacD. 264. A contract of tenancy determined by ejection for non-payment of rent would not appear to be one "expiring" within the meaning of this Section. See judgment of PALLES, C.B., in *Hodges v. Clarke (ubi supra)*. As to when a tenancy now expires, having regard to the provisions of the Land Act, 1881, see notes to Sec. 20 of that Act, *ante*, p. 296

Quere, Does a judicial lease come within the provisions of this Section?

Sub-letting to
labourers and
sheeps.

4. A tenant shall for the purpose of the Land Law (Ireland) Act, 1881, and of this Act, be deemed to be in bona fide occupation of his holding notwithstanding that he has sublet part thereof, provided the subletting is for the use of a labourer or labourers (a) bona fide (b) employed and required for the cultivation of the holding, and the Court deems such subletting reasonable, and sanctions the same. The land comprised in each such letting shall not exceed half an acre in extent, and the Court shall have regard to the size and character of the holding, and may prescribe such terms as to rent and otherwise with regard to the part sublet as it thinks fit.

*A tenant may also be deemed in occupation of his holding notwithstanding that part is sublet, where the subletting is of a trivial character, (c) and the Court deems the tenant to be substantially in occupation of the holding, and the Court may prescribe like terms as to rent and otherwise.** This Section shall not apply to a subletting made by a tenant during a statutory term nor to a subletting made after the passing of this Act.

Section retro-
spective in
operation.

This Section is retrospective in its operation, inasmuch as it applies to sub-lettings made before the passing of the Act, and apparently also to cases in which the originating notices were served before that date: *Keating v. Bolton*, 22 L. R. Ir. 143 (C. A.). But it does not apply to sublettings made during the currency of a statutory term, or after the passing of the Act (see last clause of Section) Its operation, therefore, is less general than that of the proviso in Sec. 57 of the Land Act, 1881—"where the tenant sublets part of his holding with the consent of the landlord," &c.—which was held to be general in its application, applying to all classes of tenants and to all sub-lettings, whether before or after the passing of the Act. *M'Carthy v. Swanton*, 14 L. R. I. 365; 18 I. L. T. R. 85 (C. A.)

(a) A covenant in a lease not to sublet without the written consent of the land-

* The portion of this Section in italics is repealed by Land Act, 1896, 2nd Schedule. See Section 7 of that Act, *post*.

lord does not deprive a tenant of the benefit of this Section, even though he has sublet without such consent, where the subletting is to labourers *bona fide* employed on the holding *Bowers v. Power*, 27 I. L. T. R. 109 (L.C.).

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As to lettings for the use of labourers, see, further, Land Act, 1881, Sec. 18, and the Labourers Acts, 1883, 1885, 1886, and 1892. Sec. 4 of the 1885 Act (49 and 50 Vic., c. 59) contains a definition of the term "agricultural labourer," which is quoted in the notes to Land Act, 1881, Sec. 18, *ante*, p. 294. The land comprised in each subletting to a labourer under this Section must not exceed half an acre in extent (*i.e.*, half a statute acre. *O'Donnell v. O'Donnell*, 13 L. R. Ir. 225).

Sub-lettings to labourers.

(b) *Bona fide* means "in good faith, really, as distinguished from colourably or fraudulently" per PALLES, C.B., *McCarthy v. Swanton*, 14 L. R. Ir., at p. 375.

(c) The portion of this Section as to trivial sublettings has been repealed by the Act of 1896 (2nd Schedule), the more extensive provisions of Sec. 7 of the latter Act being deemed sufficient. The decisions upon the construction of this portion of the Section are, therefore, no longer of importance. In the following cases the sublettings were held to be of a trivial character *White v. White* [1894], 2 I. R. 573 28 I. L. T. R. 87; *Ward v. Corballis* [1894], 2 I. R. 637; 28 I. L. T. R. 101. *Runkin v. McMurtry*, 24 L. R. Ir. 290. In the following, on the other hand, they were held not to be trivial, and to disentitle the tenants to have fair rents fixed *Martin v. Purcell*, 28 L. R. Ir. 470, *Kennedy v. Essex*, 28 L. R. Ir. 586, *Robinson v. Wakefield*, 30 L. R. Ir. 547; *Hughes v. Patton*, 27 I. L. T. R. 117, and *Butson v. Berry*, 26 I. L. T. R. 120.

Trivial sub-lettings.

5. (*Repealed by Land Act, 1896, 2nd Sch., but substantially re-enacted by Section 3 of that Act.*)

6. Where an ejectment is brought in any Civil Bill Court for the non-payment of the rent of a holding for which a judicial rent has not been fixed, the defendant may apply, in the prescribed manner, (a) to the Court to fix a fair rent for the holding, and the Court may thereupon dispose of the said application, and of the ejectment at the same time.

Consolidation of proceedings in ejectments and application for fair rent.

Provided always, that every order made under this Section fixing a fair rent shall be subject to the like appeal as if the same had been made in the ordinary manner under the Land Law (Ireland) Act, 1881. (b)

(a) See County Court Rules, 1890, Order 24, Rules 1 to 4, *post*. The notice of application to fix a fair rent must be in the form prescribed by Rule 1. Not being an "originating notice," it apparently requires no stamp.

The notice must be served "within 6 days after the service of the ejectment" (Rule 1) "upon the solicitor for the plaintiff at the address given by him on such ejectment" (Rule 2). The service may be by registered letter (Rule 2); and two copies must be delivered to the Clerk of the Peace four days before the holding of the Court at which the notice is to be disposed of (Rule 3).

Under Sec. 13 (3) of the Land Act, 1881, the Court in which an ejectment is pending, has power to stay the proceedings until an application to have a fair rent fixed is heard. (See, *ante*, pp. 281, 284). Where an ejectment is brought in the

Sects 6-7 Superior Courts, or is not one for non-payment of rent, this remedy is still available to the tenant, although he cannot serve the notice under this Section.

(b) As to appeals, see Land Act, 1881, Secs. 44 and 47, *ante*, and Rules of Jan., 1897, Nos. 81 to 85, *post*, pp 736-737.

Substitution of
a written notice
for the execution
of an ejectment

7. (1.) In the case of any holding (a) for which a judgment (b) in ejectment for non-payment of rent has been recovered, where the rent does not exceed one hundred pounds by the year, and in every other case of judgment in ejectment for non-payment of rent in which the plaintiff shall elect (c) to take advantage of and proceed under this Section, the period within which an application for a writ of restitution of possession may be made in the manner provided by the seventieth and seventy-first Sections of the Landlord and Tenant Law Amendment Act (Ireland), 1860, shall be a period of six months after the service of a notice under this Section. (d) Such notice shall state truly the exact amount claimed by the plaintiff as payable for redemption, (e) and the place or places where and the person or persons to whom the same may be paid or tendered (f) during the said period and may be in the form contained in the Schedule to this Act, or to the like effect, and may be served after six weeks from the date of judgment, but not earlier unless the Court shall permit, (g) by the person entitled to the possession of land under a judgment in ejectment for non-payment of rent, upon every person served with the writ or process in such ejectment who at the time of the service of the notice shall be in possession of such land (h); in all such cases a copy of the said notice shall be sent in a registered letter addressed to the tenant, (i) and a summary of such notice in the prescribed form shall be posted by or on behalf of the landlord on a police-barrack or court-house in the district (j) in the prescribed manner and within the prescribed time; and if no such person is in possession, it may be posted in the prescribed manner (k), and a copy of such notice shall be filed in the Court in which such action is pending within the prescribed time. Upon such service or posting the tenancy in the holding shall be determined as if a writ of possession under the judgment had been duly executed. (l)

(2.) Upon the determination of the tenancy by the service of such notice as aforesaid every person upon whom such notice is served shall thereupon be deemed to be a person put into possession as a caretaker, and the enactments of the Landlord and Tenant Law Amendment Act (Ireland), 1860, relating to persons put into possession of lands by permission of the owner as caretakers shall apply as if on the date of the service of the notice a writ of

possession had been duly executed, and such person, having been removed from possession, had been re-admitted as caretaker. When a person is deemed to have been put into possession of land as a caretaker under this Section, he may be removed from possession at any time after one month from the service of such notice, but not earlier save by leave of the Court, in the manner and under the conditions provided by law for the recovery of possession of premises occupied by a caretaker (*m*): or, at the expiration of the period of redemption, but not sooner, the possession of such land may be recovered by a writ of possession in the prescribed form (*n*) under the said judgment in ejectment for non-payment of rent, and in the case of proceedings being taken under the eighty-sixth Section of the Landlord and Tenant Law Amendment Act (Ireland), 1860, for the removal from possession of such caretaker, the justices may, at the request of the landlord or owner of the premises, issue the warrant mentioned in such Section to the sheriff of the county in which the premises are situated instead of to the special bailiff mentioned in the Section, and such warrant shall be a sufficient authority to the said sheriff, his under-sheriff or bailiff, to enter upon the said premises with such assistants as he shall deem to be necessary and to give possession accordingly; and he shall be under the same obligation to execute such warrant, and shall be entitled to the same fees and allowances, as if the warrant were a civil bill decree in ejectment, nevertheless payable solely by such landlord or owner of the premises. The Justices may put a stay upon the issue of the warrant for any time not exceeding one month, if they think fit, by reason of illness of the caretaker or his family or any other sufficient reason. A warrant may be executed at any time not less than seven days nor more than two months from the issue thereof. (*o*) The enactments of the eleventh and twelfth Victoria, chapter forty-seven, intituled "An Act for the Protection and Relief of the Destitute Poor evicted from their Dwellings in Ireland," shall apply to warrants under this Section (*p*)

Save as provided by this Act, a judgment in ejectment for non-payment of rent of a holding where the rent does not exceed one hundred pounds by the year, or where the plaintiff elects to take advantage of and proceed under this Section, shall not be executed by a writ of possession after the passing of this Act; (*q*) but shall issue in the same form and manner, and for all other purposes shall be of the same force and effect as if this Section had not been passed.

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23 & 24 Vic.,
c. 151.

(3.) A person having the right to apply for a writ of restitution under the seventieth or seventy-first Sections of the Landlord and Tenant Law Amendment Act (Ireland), 1860, (*r*) may, within six months (*s*) after the service of a notice under this Section, apply for a writ of restitution of possession as if a writ of possession had been executed against him; and, subject to power to the Court to award the costs thereof against the plaintiff if the application became necessary by reason only of the unreasonable conduct of the plaintiff, all the provisions of the said Sections relative to the payment or lodgment of rent, arrears, and costs, and relative to the rights of the landlord and tenant respectively in the holding, shall regulate such application. At the end of the period of six months from the service of the notice determining the tenancy all right of redemption in the holding shall be at an end. In case such writ of restitution of possession shall be awarded, the landlord shall not be liable or accountable for any damage or injury occurring to the holding or the crops or produce thereof after the service of the notice aforesaid whilst the holding has been occupied by such caretaker. Provided that the landlord may nevertheless, if he so think fit, after such period has elapsed, reinstate (*t*) such tenant in the tenancy of his holding in as full and ample a manner as he had previously thereto enjoyed it.

23 & 24 Vic.,
c. 154.

44 & 45 Vic.,
c. 49.

When a notice has been served under this Section, any matter or thing which, in accordance with the Landlord and Tenant Law Amendment Act (Ireland), 1860, or the Land Law (Ireland) Act, 1881, or any other Act, might have been done within, but not after, a period of six months from the execution of a writ of possession, may be done within, but not after, a period of six months from the service of such notice; and in the said Acts the period of six months from the service of such notice shall be in lieu of the period of six months from the execution of a writ of possession.

Where a judgment in ejectment for non-payment of rent has been executed before the passing of this Act, the time within which a writ of restitution of possession may be applied for shall be the time limited by the Landlord and Tenant Law Amendment Act (Ireland), 1860, in that behalf.

Service of a notice under this Section, also the service of a summons under the eighty-sixth Section of the Landlord and Tenant Law Amendment Act (Ireland), 1860, may be made in the pre-

scribed way, or in any way in which the service of a writ of summons in an action in the High Court for the recovery of land may for the time being be made. (u)

In this Section expressions referring to the service of a notice upon persons in possession of land shall include the posting of a notice where no person is in possession.

A right to be registered as a voter or to vote at any parliamentary, or other election shall not be affected (v) by reason only of the service of a notice or notices under this Section.

(4.) A return of the number of notices filed in Court under this Section, and, as far as possible, of the actual evictions in respect of such notices, shall be made from time to time to the Lord Lieutenant, and shall be presented by him to Parliament.

(a) This Section does not apply to holdings which are not agricultural or pastoral. Sub-section 1 (See definition of "holding," Sec. 34, *post.*) It applies, however, to all classes of agricultural holdings where the rent does not exceed £100 per annum; whether the tenancy be "present" or "future"; and whether the holding be excluded from the Land Acts or not. Thus, demesne lands, town-parks, pasture lettings, &c., are within its provisions.

The following is a short summary of the procedure necessary to obtain actual possession of a holding in a case coming within this Section — Summary of procedure under this section.

- (1) Judgment or decree in ejectment as formerly.
- (2) Notice as prescribed by this Section to be served after six weeks* by registered letter. (High Court, Order XLVII., Rule 5; County Court, Order XXIV., Rule 6. See these Orders, *post.*)
- (3) Summary of notice to be posted on a police barrack or courthouse in the district within fourteen days of service. (High Court, Order XLVII., Rules 3 and 4; County Court, Order XXIV., Rule 5.)
- (4) Copy of notice to be filed in Court within twenty-one days of service. (High Court, Order XLVII., Rule 7; County Court, Order XXIV., Rule 8.)

The tenancy is then determined, and the former tenant becomes a care-taker. He may be removed from possession after one month by taking the following steps —

- (5) Demand of possession, as prescribed by Landlord and Tenant Act, 1860, Sec. 86. (See *ante*, p. 143, and *Massereene v. Bellew*, 24 L. R. Ir. 420; 24 I. L. T. R. 74.)
- (6) Service of summons under Landlord and Tenant Act, 1860, Sec. 86, in the prescribed manner, either four clear days before the day of the Petty Sessions, if personal service is effected (Landlord and Tenant Act, 1860, Sec. 87), or seven days before the same date, if the service is by posting and registered letter (High Court, Order XLVII., Rule 9; County Court, Order XXIV., Rule 14).
- (7) Warrant of Justices at petty sessions to give possession, directed to sheriff (Sub-sec. 2) or special bailiff.

* Where no person was in possession, the Court allowed service before the expiration of the six weeks: *Howard v. O'Callaghan*, 20 L. R. Ir. 535.

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(8) (Where there is an inhabited dwelling-house on the lands.) Notice to relieving officer forty-eight hours before execution of warrant. (11 & 12 Vic., c. 47, s. 2, App., *post*)

(9) Execution of warrant and delivery of possession to landlord "not less than seven days, nor more than two months, from the issue thereof." (Sub-sec. 2.)

The practical result of all these proceedings is that a landlord cannot be put into actual possession until three months after his judgment or decree. If he is willing to wait until the expiration of the period of redemption, he can dispense with Nos. (6), (7), and (9), and execute the *habere* or decree in the ordinary way; or he may then proceed by ejection on title, in the same way as against a stranger. *Kemmis v. Byrne*, 23 I. L. T. R. 44 (HOLMES, J.).

Stay on execution.

Where a stay has been put on the judgment or decree, under Sec. 30, *post*, and an order made for payment of the arrears of rent and costs by instalments, then, if default is made by the tenant in the payment of any instalment, execution may take place forthwith, and the tenant's right of restitution will be determined upon such execution, or upon the expiration of six months from the recovery of the judgment (not the service of the notice of execution, as under this Section), whichever shall last happen. Sec 30 (2).

(b) "The expression 'judgment,' as respects ejection, means decree of a Civil Bill Court or a judgment of the High Court" (Sec. 34).

(c) If in a case in which the rent exceeds £100 a year the plaintiff takes out a writ of *habere* in the old form, this is considered an "election" on his part not to take advantage of this Section, and he cannot afterwards proceed to execute his judgment by service of notice in the manner here prescribed, unless he obtain the leave of the Court to withdraw the *habere*. *Edge v. Smith*, 2 I. W. L. R. 197, *Kennedy v. Casey*, 4 I. W. L. R. 71.

Signature of notice

(d) The form of notice in the schedule provides that the notice is to be signed by the agent for the landlord. But this direction is not mandatory, the plaintiff may sign the notice himself (per GIBSON, J., *Browne v. Kinsella*, 24 L. R. Ir., at p. 106). And even where it purports to be signed by an agent, it is not necessary that the agent should personally sign it. Where an agent instructed a solicitor to serve the notice, and the solicitor's clerk accordingly prepared it in the solicitor's presence, and subscribed the agent's name to it, it was held that the signature was sufficient. *Browne v. Kinsella*, 24 L. R. Ir. 99 (Q. B. D.).

Amount of rent to be stated in notice.

(e) The amount stated in the notice and summary should be the amount of rent and costs as ascertained by the judgment or decree, even though part of the rent may have been paid before service of the notice. *Kane v. Mulholland*, 28 L. R. Ir. 59, or may be barred by the statute of limitations. *Arthur v. M'Geady*, 32 L. R. Ir. 510; 27 I. L. T. R. 114 (Q. B. D.). This is so, even in cases coming within Land Act, 1896, Sec. 16, *post*, p. 555: *Heath v. Cullen* (C. A., 7th July, 1902.)

(f) The provision of the Section which requires a place to be specified in the notice where the amount due may be paid or tendered is mandatory; and if this essential requisite be omitted, the notice will be invalid. *Arthur v. M'Geady*, 32 L. R. Ir. 510, 27 I. L. T. R. 114 (Q. B. D.).

When notice may be served.

(g) The notice may be served at any time after the expiration of six weeks from the day when judgment was pronounced, respectively of the time when the Registrar's certificate is filed. *Massereene v. Kelly*, 22 L. R. Ir. 612 (Q. B. D.). In computing the time the day upon which the judgment was obtained is not to be included: *Raycroft v. Walsh*, 27 I. L. T. R. 137.

Where no person was in possession of the lands sought to be recovered, the Court gave liberty to serve the notice within less than a week from the date of the judgment: *Howard v. O'Callaghan*, 20 L. R. Ir. 535 (Q. B. D.).

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(h) Where the holding of which possession has been recovered is partly sublet, and the plaintiff admits the right of the sub-tenants to retain possession under Land Act, 1896, Sec. 12, the notice should not be served upon the sub-tenants, but the procedure provided by this Section should be followed as regards the part in the possession of the immediate tenant, being the proper mode of execution of the judgment as against him: *Craig v. McCullagh* [1900], 2 I. R. 136, 33 I. L. T. R. 162; 5 I. W. L. R. 186.

(i) Where the address of the tenant is unknown to the plaintiff, the lands being in the occupation of under tenants, it is a sufficient compliance with the Section, to send a registered letter, containing the copy of the notice, addressed to the tenant by name, at the lands sought to be recovered *Tenlon v. Dennehy*, 22 L. R. Ir. 429; 22 I. L. T. R. 49. The notice may also be served personally: *Barton v. Lipssett*, 2 N. I. R. 171. When tenant's address is unknown.

(j) The word "district" does not necessarily mean "Petty Sessions District." It applies either to the "Civil Bill District," or more probably, to the vicinity or neighbourhood generally: *Birmingham v. Turner*, 24 L. R. Ir. 321, 23 I. L. T. R. 37 (C. A.). District.

(k) If no person who has been served with the writ or process is in possession, service is to be effected by posting a copy of the notice, in the manner prescribed for posting the summary of the notice in the previous case (High Court, Order XLVII., Rule 6; County Court, Order XXIV., Rule 7).

In the case of deserted premises, some difficulty may arise. The notice is to be served by "posting in the prescribed manner" (see High Court, Order XLVII., Rule 6; County Court, Order XXIV., Rule 7; but, is the former tenant, though he has actually deserted the premises, to be "deemed to be a person put into possession as a caretaker?" or, is it the true construction of the Section that there is no person "upon whom such notice is served?" in which case the landlord could himself enter into possession immediately after the posting of the notice; the tenancy being determined by the posting "as if a writ of possession under the judgment had been duly executed." Deserted premises.

(l) The tenancy being determined by the service of the caretaker notice, the tenant cannot after that event apply to have a fair rent fixed, unless he redeems. *Arran v. Wills*, 14 L. R. Ir. 359. He may, however, sell the tenancy at any time before the expiration of six months from the service of the notice: Land Act, 1881, Sec. 13 (1). (As to the effect of such a sale, see *ante*, p. 283.) He may still also be "deemed to be a tenant" for some purposes, as for instance if he has served a claim for compensation under the Landlord and Tenant Act, 1870, he is deemed to be a tenant until the compensation is paid (see Landlord and Tenant Act, 1870, Sec. 70, and *Fitzgerald v. Walsh* [1894], 2 I. R. 731). He may also maintain an action for trespass against a wrong-doer: *Hegarty v. Dillon*, 32 I. L. T. R. 151 (C. A.). From the judgments of ASHBOURNE, C., and FRZEBBON, L. J., in this case, indeed, it would appear that he still is in legal possession, and is only "deemed to be a caretaker" for the purposes of procedure. (See 32 I. L. T. R. at p. 152.) On the other hand it has been held that where a sub-tenancy is determined by service of notice under this Section, the tenant is in occupation for the purpose of serving an originating notice, even though he has not got up physical possession: *Garnett v. Garnett* [1894], 2 I. R. 41 (BEWLEY, J.).

(m) As to the "conditions provided by law for the recovery of possession of premises occupied by a caretaker," see notes to Landlord and Tenant Act, 1860, Sec. 86, *ante*, pp. 143-145.

- Sect. 7.** (n) The law does not impose upon the Sheriff, executing a Civil Bill decree under this Section, the responsibility of ascertaining that the formalities prescribed by Sub-sec. 1 have been complied with, and that the period for redemption after the service of the caretaker notice has expired, his function is ministerial only, and the direction upon the decree to deliver possession is a protection to him. *Reg. v. M'Grath*, 24 L. R. Ir. 391 (Exch. Div.) But it appears to be the duty of the Clerk of the Peace not to part with the possession of the decree until he is satisfied that the prescribed formalities have been complied with, and that the period for redemption has expired. (See judgment of PALLES, C.B., *Reg. v. M'Grath*, 24 L. R. Ir., at pp. 402-3).
- Duty of Sheriff in executing decree under this section.
- Duty of the Clerk of the Peace.
- Landlord's remedies at the expiration of the period for redemption.
- "At the expiration of the period of redemption," says HOLMES, J., "the landlord is not confined to the remedy of executing the *habere* or decree for possession. He can recover in any of the ways by which, as the law stands, the owner of land can recover possession from his caretaker, one of which ways I hold to be an ejectment on the title. Even within the six months the landlord is not bound to proceed by summons before the magistrates. On the contrary, I see no reason why he could not maintain at least after one month from the service of the notice as well as subsequently, an ejectment on the title" *Kemmis v. Byrne*, 23 I. L. T.R., at pp. 44, 45.
- (o) The warrant of the Justices must be executed between the hours of nine in the morning and four in the afternoon. (See 23 & 24 Vic., c. 154, Sec. 86, *ante*, p. 142). An ordinary civil bill decree for the possession of land must be executed between nine in the morning and three in the afternoon. (27 & 28 Vic. c. 99, Sec. 19) In neither case can an entry be made on any *Sunday*, *Good Friday*, or *Christmas Day*, "nor on any day within the time after the commencement of two hours next before sunset." (11 & 12 Vic., cap. 47, Sec. 1.)
- Warrant of Justices
- (p) The Statute 11 & 12 Vic., cap. 47, besides prescribing the days and hours when writs and decrees for possession may be executed, also provides that a notice shall be given to the Relieving Officer before taking possession of any land, upon which there is an inhabited dwelling-house. (See the Act itself, *App.*, *post*). The provisions of Sec. 2 respecting the contents of the notice required to be given to the Relieving Officer before executing a writ of possession are mandatory and not merely directory; and, where the notice fails to comply with the terms of the Section, the person carrying out the execution is liable to the penalty imposed by the Act. *Guardians of Athy Union v. Pratt*, 16 L. R. Ir. 459. The prescribed contents are essential parts of the required notice; and a notice which does not correctly set forth either the parish or the barony, and which does not contain the correct electoral division, does not comply with the statute (*per FRYGIBSON, L.J.*). *Guardians of Athy Union v. Pratt (ubi supra)*. Liability to penalties, however, for eviction without notice to the Relieving Officer is not incurred unless the premises are inhabited at the time of the execution of the writ or warrant. *Guardians of Kilmallock Union v. Saunders*, 20 L. R. Ir. 121. An inhabited house within the meaning of the Act means a house inhabited at the time of the execution of the warrant. In an action by guardians to recover the penalty, it lies on the plaintiff to prove that the houses were inhabited houses within the meaning of the Act, and if he does not discharge this onus of proof, a verdict will be directed against him. *Guardians of Kilmallock Union v. Saunders (ubi supra)*.
- Notice to relieving officer.
- (q) Where a writ of *habere* had been issued, and lodged with the sheriff, before the passing of the Act, PALLES, C.B., sitting as Vacation Judge, refused to allow a notice under this Section to be served until the *habere* had been returned: *Green v. Cullen*, 21 I. L. T. & S. J. 569.

It seems that the procedure by caretaker notice, and summary under this Section is not applicable to a civil bill decree made payable by instalments under Sec. 30, Decree made payable by instalments under Sec. 30. **Sec. 7** *post*. If default is made in payment of instalments in that case, the plaintiff is entitled to immediate possession, and he is not liable to an action of trespass for not serving the notice, &c., under this Section *Heaney v. Lord Lurgan*, 24 I. L. T. R. 81 (Exch. Div.).

(r) A tenant is entitled to redeem without payment of costs incurred in the service and posting of notice and summary under this Section *M'Creary v. Harvey*, 28 I. L. T. R. 150. See as to restitution generally notes to Landlord and Tenant Act, 1860, Secs. 70 and 71, *ante* pp. 123-128

(s) The period of six months allowed for redemption by this Section commences to run from the day upon which the caretaker notice is posted to the tenant, and not from the date of the receipt of such notice by him *Reg. (Mitchell) v. Justices of Carlow*, 24 L. R. Ir. 492 (Q. B. D.). Period for redemption when it begins to run.

There was for some time a serious question upon the wording of this Section, as to whether it was not now necessary that the application to the court for a writ of restitution should be actually made within six months from the service of the notice. Under the Act of 1860, as previously stated (*ante*, p. 124), it was held sufficient to lodge the rent and costs within that period, and to apply afterwards (*Wylbrants v Crawford*, I. R. 1 C. L. 87), but that was upon the express words of Sec. 70, which enables the application to be made within six months "or at the earliest opportunity after on which application can be made" There are no corresponding words in this Section, which, on the contrary, provides that "at the end of the period of six months from the service of the notice determining the tenancy, all right of redemption in the holding shall be at an end" (Sub-sec. 3). It has, however, been held that the two Sections must be read together, and that it is sufficient under this Section, as it was under the Act of 1860, that the money should be lodged within the six months, and the application made "at the earliest opportunity after": *Huntingdon v. Cowan*, 33 I. L. T. R. 124 (Q. B. D.); *Fitzmaurice v. Haughney*, 26 I. L. T. & S. J. 511 (PALLIS, C.B.). See also as to the power of the Court to enlarge the time during which a tenancy may be redeemed, Land Act, 1881, Sec. 13 (2), and notes thereto, *ante*, p. 283. When application must be made

The period of redemption is curtailed in certain cases by Sec. 30, *post*. When the Court puts a stay upon the execution of an ejectionment, and orders the rent and costs to be paid by instalments, if default is made in the payment of the first or any subsequent instalment, the stay is removed, and the judgment may be executed, "and upon the execution thereof, or upon the expiration of a period of six months from the recovery of the judgment, whichever shall last happen, all right of redemption in the holding shall be determined." In cases under Sec. 30

(t) As to what actions of a landlord will amount to a re-instatement under this Section see *Crotty v. White*, 3 Greer 230, and *Thompson v. Templetown*, 27 I. L. T. R. 55. It would appear from the latter case that acceptance of rent due after the period for redemption has expired, even by a succeeding owner of the estate may be sufficient evidence of such a re-instatement.

(u) See as to procedure under this Section generally, Rules of Supreme Court, 1891, Order XLVII., *post*, and County Court Rules of 1890, Order XXIV., *post*.

(v) The right to the franchise is preserved by this clause, even after the period for redemption has expired where no demand of possession has been made: *Kirkpatrick v. Beggan* [1894], 2 I. R. 451. But where a demand of possession has been made and a summons served, there is no longer any "occupation as tenant" for the purposes of the Franchise Acts: *Holland v. Graham* [1894], 2 I. R. 434. Franchise.

Sect. 8.
Power of
surrender by
middleman.

8.—(1.) Where a person (in this Act referred to as a middleman) pays rent for a holding which is wholly sublet, and the rent received by the middleman has been reduced by the Court, or with the sanction of the Court to a sum less than the rent which he pays (a) he may surrender his estate in such holding, without prejudice, however, to any liability incurred by him before such surrender, whether for rent or for any other matter.

(2.) Where only part of the holding is sublet, (b) and the rent received by the middleman for the part so sublet has been reduced by the Court, or with the sanction of the Court, so that when added to the fair rent of the part of the holding which is not sublet, to be ascertained and determined by the Court as hereinafter mentioned, it is of less amount than the rent paid by the middleman, then also he may surrender his estate in the manner aforesaid.

(3.) In computing the amount of rent received by a person entitled to surrender under this Section, twenty per centum deduction from the gross rent shall be allowed for cost of collection and other outgoings.

(4.) A person shall not be entitled to make a surrender under this Section of an estate in land until he has first offered to the persons entitled to incumbrances on that estate, successively according to their priorities, to assign his estate to them.

(5.) When any estate in land is surrendered under this Section, incumbrances on that estate shall not affect the land; but the persons entitled to such incumbrances may enforce payment thereof by any proceedings other than proceedings affecting the land, which they might have taken if such surrender had not taken place.

(6.) A person who is tenant for life of an estate capable of being surrendered under this Section, or has, as respects such estate, the powers of a tenant for life (c) within the meaning of the Settled Land Act, 1882, may surrender such estate in the like manner as if subject to the like conditions as if such surrender were a sale within the meaning of the Settled Land Act, 1882.

(7.) A surrender under this Section shall be by deed or note in writing (d).

(8.) The person to whom a surrender is proposed to be made shall not be bound thereby unless written notice of the intention of surrender be served within nine months after the passing of this Act or within nine months after the making of the reduction of rent upon which the right to surrender is founded (e), whichever shall last happen.

The person to whom a surrender is proposed to be made may apply to the Court to restrain the surrender, upon the ground that the order of the Court reducing the rent has been procured by collusion or other undue means, or that for any other reason the surrender is inequitable. (f) Sect. 8.

(9.) Where any person claims to be entitled under this Section to surrender his estate in any holding, part whereof only is sublet, the Court shall have jurisdiction for the purpose of a surrender, to ascertain and determine the fair rent of the part not sublet, as if such part constituted a holding, and the person claiming to be entitled to surrender were the tenant, and the person to whom the surrender is proposed to be made were the landlord of such holding.

(10.) Where any estate in land is surrendered under this Section, all sub-tenants of the person surrendering such estate shall thereupon become tenants to the person to whom such surrender is made at the rents and subject to the conditions of their sub-tenancies under the person so surrendering.

(11.) In this Section the expression "holding" includes land held under a fee-farm grant, and the expression "rent" includes the rent payable thereunder.

(a) Where the rent received by the middleman is reduced by the Court, the middleman is entitled to surrender, under this Sub-section, notwithstanding that at the time of the passing of the Act the rent received by him was already less than the rent paid by him to the head landlord: *M'Corkell v. Reid*, 25 I. L. T. R. 65 (ANDREWS, J.). Sub-sec. 1.

(b) It does not appear to be necessary that all the sub-tenants should have judicial rents fixed: where one of four applied and had his rent reduced it was held by Judge WATERS that the middleman could surrender under this Sub-section *Malcomson v. Conolly*, 22 I. L. T. R. 77 (C. C.).

(c) The full list of the persons who have the powers of a tenant for life within the meaning of the Settled Land Act, 1882, will be found in Sec. 58 of that Act. (See App., *post*). In the case of an infant owner, the powers of a tenant for life under the Act may be exercised on his behalf by the trustees of the settlement, or if there are none by such person as the Court may order. (See Secs. 59-60, App., *post*.) Persons having powers of a tenant for life.

Where a tenant for life desired to exercise the powers of surrender given by this Sub-section, but the trustees of the settlement had no power of sale, PORTER, M.R., appointed them trustees for the purposes of the Settled Land Acts, limiting the appointment to the lands sought to be surrendered: *Muleahy's Estate*, 27 L. R. Ir. 78. It appears that the Land Commissioners have no jurisdiction to appoint trustees of the settlement for the purpose of enabling a middleman to surrender under this Section. See notes to Sec. 23, *post*, 431.

(d) A surrender under this Section would appear to require a ten shilling stamp. (See Stamp Act, 1891, Schedule.) The surrender must operate as an immediate conveyance of the tenant's interest. There cannot be a surrender to operate *in futuro*: *Doe v. Milward*, 3 M. & W. 328. See further, as to what is required for a valid surrender, notes to L. & T. Act, 1860, Sec. 7, *ante*, pp. 19-23.

Sects 8-9
Time for service
of notice of
surrender

(c) In *M'Corkell v Reid*, 25 I. L. T. R. 65, ANDREWS, J., held that a notice of surrender served after an order had been made by a sub-commission reducing the rent, but pending an appeal, was good; and that the tenant was entitled to rely upon it, even though the judicial rent was slightly increased on the appeal, the increased rent being still, of course, less than the head-rent.

In *Todd Thornton's Estate* (29 L. R. Ir. 453) it was held by MONROE, J., that a surrender under this Section was inoperative, where the order fixing a judicial rent between the middleman and the sub-tenant had been made without jurisdiction, and that it was not necessary for the head landlord to apply to the Land Commission to restrain the surrender under Sub-sect. 8, as that Sub-section was only applicable where there was jurisdiction to fix a judicial rent.

(f) Where a lease contained a clause giving permission to the lessee to surrender subject to certain conditions, and the lessee served notice to surrender under this Section without complying with these conditions, the head landlord moved to restrain the surrender as inequitable, but the Land Commission refused to do so, holding that a new right was conferred by this Section which was not controlled in any way by the conditions attached to the power of surrender in the lease *Trench v. Daly* [1899], 2 I. R. 41.

Town parks.

44 & 45 Vic.
c. 49.

9. A holding shall not be deemed to constitute a town park, though within the definition of the expression "town parks" in Section 58 of the Land Law (Ireland) Act, 1881 (*a*), if it is let and used (*b*) as an ordinary agricultural (*c*) farm, and may, in the opinion of the Court, be included in the operation of the last-mentioned Act without substantially interfering with the improvement or development of the city or town to which it belongs, or the accommodation of the inhabitants thereof.

A town park shall not cease to be within the exemption contained in Section 58 of the Land Law (Ireland) Act, 1881, by reason only of the occupier ceasing to live in the city or town to which it belongs (*d*) or in the suburbs thereof, or by reason only of such town park devolving upon or becoming vested in a person not living in such city or town or in the suburbs thereof.

A parcel of land shall not come within the said exemption by reason only of the occupier coming to live in the city or town, or the suburbs thereof, or by reason only of the same devolving or being vested in a person living in such city or town, or the suburb thereof.

Former rule as
to user of the
lands.

(a) Previous to this Act, it had been held that if lands bore an *increased value* & accommodation lands, it was not necessary to show that they had been in fact & used by the tenants, in order that they should be deemed to be town parks; and that, in fact, the particular way in which the tenant used them was entire immaterial in determining the question. *Killeen v. Lambert*, 10 L. R. Ir. 362 17 I. L. T. R. 1; MacD. 179; *Helen v. Bence Jones*, 18 I. L. T. R. 6; MacD. 19 A farm may be said to be used for accommodation, if it is used for the person purposes of the owner, whether for his pleasure or for the purposes of his trade

business, presuming that the trade or business be other than that of a farmer (Judgment of PALLES, C.B., *Trustee of St. Kiernan's College v. Musgrave*, 19 I. L. T. R. Dig., p. xviii.). Whether he agists market cattle, feeds his own cows, supplies his house with country produce, utilises the manure of his horses, or in any other way works the land and his residence more or less as one establishment, he will generally obtain an increased return from his "town parks" as accommodation land, over and above the return to be got from an ordinary farm Per FITZGIBSON, L.J., *Killeen v. Lambert*, 10 L. R. Ir., at p. 374. See also *Hodgins v. Dunally*, 7 I. L. T. R. 182, and *Chism v. Beatty*, 10 I. L. T. R. 93.

A holding is not deprived of the character of "accommodation land" by reason of the tenant having other lands in his occupation, equally convenient, and more than capable of sufficing as accommodation for his town residence *Palmer v. Lambert*, 17 I. L. T. R. 47, MacD. 190.

(b) In order that a holding should be excluded from the class town-parks by this Section, it is necessary that it should be "let and used as an ordinary agricultural farm." In construing these words, the Court is not limited to the user of any particular date, but must look to the substantial user of the lands during the whole term: *Maenamara v. Maenamara*, 32 L. R. Ir. 1: 27 I. L. T. R. 2 (C.A.). *Daly v. Wright*, 32 L. R. Ir. 9: 27 I. L. T. R. 65; *M'Clean v. Mulholland*, Greer Leading Cases, 481 (C.A.), *Pollock v. Abercorn*, 1 Greer 88 (L.C.).

(c) Importance was attached to this word "agricultural" in dealing with this Section before the passing of the Land Act, 1896; and it was held that it could not apply to a pastoral holding: *Maenamara v. Maenamara*, 32 L. R. I. 1. 27 I. L. T. R. 2 (C.A.); but now by the 6th Section of the Act of 1896, it is provided that it shall be construed to mean "agricultural or pastoral, or partly agricultural and partly pastoral." See notes to that Section, *post*, p. 542.

When a holding is once proved to be a town-park, within the definition given in Sec. 58 of the Land Act, 1881, the onus appears to lie upon the tenant of showing that it has been let and used as an ordinary agricultural farm, so as to bring it within the provisions of this Section: Per WALKER, C. *Daly v. Wright*, 32 L. R. Ir., at p. 11. See also *Savage v. Nugent*, 32 I. L. T. R. 148 (L.C.). *Crowley v. Munster and Leinster Bank*, 1 Greer 91; and *M'Geown v. Knaggs*, 24 I. L. T. R. 114 (Sub-Com.). In *Mintern v. Badington and Others*, 25 I. L. T. R. 28, BEWLEY, J., held that three small lots of land near a town, occupied by a shop-keeper reading in the town, and otherwise fulfilling the requirements of town-parks, were, nevertheless, not excluded from the Land Acts, evidence having been given that they were let and used as ordinary agricultural farms. A holding may be "let and used as an ordinary agricultural farm" within the meaning of this Section, even though the tenant obtains some accommodation from it by the supply of milk, butter and potatoes for the use of his town residence: *Kenmare v. Bird*, 35 I. L. T. R. 57 (C.A.). See also *Taggart v. Macnaghten*, Greer Leading Cases, 471.

(d) Under the Land Act, 1870, it was held that if the occupier of town-parks ceased to reside in the town the holding did not come within the provisions of Sec. 15. *Talbot v. Drapes*, 5 I. L. T. R. 143, Donn. 415. But it was held, even prior to the passing of this Act, that such a change of residence would not prevent lands being considered town-parks within the meaning of the Act of 1881 (*Nelson v. Headfort*, 18 L. R. Ir. 407), as the present tense is used in the 58th Sec. of that Act, in contrast to the future used in the 15th Sec., Act of 1870. See judgment of FITZGIBSON, L.J., at p. 421. In *Allen v. Derby* (16 L. R. Ir. 346; 19 I. L. T. R. 47), PORTER, M.R., says, in reference to such a change:—"I, for one, do not think it possible to alter the position of town-parks in this way. I do

Occupier changing residence.

Sects. 9-11. — not think that an Act, behind the back of the landlord and without his knowledge, can change the incidents of a holding let as town-parks." (16 L. R. Ir., at p. 356).

See, generally, as to town-parks, notes to Land Act, 1881, Sec. 58 (2), *ante*, pp. 355-360.

PART II.

Purchase of Land.

Investment of
guarantee
deposit.
48 & 49 Vic.,
c. 73.

10. A guarantee deposit made under the Purchase of Land (Ireland) Act, 1885, may, on the application of the person by whom the deposit was made, or of any person for the time being interested in it, be invested by the Land Commission in the same investments (a) in which it might have been invested under the direction of the High Court, if it had been capital money arising under the Settled Land Act, 1882, and paid into Court, or in any securities in which trustees are by law for the time being authorised to invest trust moneys (b); and the interest (c) thereof may be paid by the Land Commission to the person entitled thereto.

45 & 46 Vic.,
c. 38.

(a) For a list of these investments see Sec. 21 of the Settled Land Act, 1882, App., *post*, and notes to Land Purchase Act, 1891, Sec. 19, *post*, p. 477.

(b) The investments in which trustees are authorized to invest, are now considerably extended by the Trustee Act, 1893, and the Colonial Stock Act, 1900. For a list of them, see notes to Land Purchase Act, 1891, Sec. 19, *post*. Sec. 23 of the latter Act, however, provides that "no portion of the guarantee deposit shall be invested in any security that is not readily realisable."

As to applications for investment of guarantee deposits, see Rules of March, 1897, Order XXIII., Rule 9, *post*, p. 839.

(c) By Sec. 3 of the Purchase Act, 1885, the Commission pay £3 per cent. interest on uninvested guarantee deposits retained in respect of cash advances made under that Act. Where advances are made under the Land Purchase Act, 1891, in stock, the guarantee deposit only carries 2½ per cent. interest, unless invested in some other security. (Land Purchase Act, 1891, Sec. 15 (11).) See as to guarantee deposits generally Rules of March, 1897, Order XXIII., *post*, pp. 838-840.

Trust funds may
be applied as a
guarantee
deposit.

11. On the occasion of the sale of any holding under the Purchase of Land (Ireland) Act, 1885, any person in whom any incumbrance charged upon the land constituting or comprising such holding is vested as a trustee, also any person who is a trustee for sale thereof, may apply any moneys, being the proceeds of the sale, coming to him as such trustee, for a guarantee deposit under the said Act.

In cases of sales by a tenant for life, the trustees entitled to receive the purchase-money cannot refuse to provide the guarantee deposit if required to do so by the tenant for life. See Sec. 3 Land Purchase Act, 1885, and notes thereto, p. 369, *ante*. Doubts, however, arose as to whether trustees for sale and trustees in whom incumbrances were vested, could provide a guarantee deposit without a breach of trust, and this Section was passed in consequence. No provision

was made to meet the cases of trustees with a power of sale and trustees for charitable purposes. But the Land Purchase Act, 1891, Sec. 23, *post*, provided that in every case of an advance exceeding three-fourths of the purchase-money, the Land Commission should retain a guarantee deposit out of the advance. The Land Commission may now, however, dispense with the whole or any part of the guarantee deposit. Land Act, 1896, Sec. 29. Sects. 11-13

12. In any case in which, upon the sale of a holding under the said Act, any moneys, being the proceeds of such sale, coming to an incumbrancer upon such holding in respect of his incumbrance, are applied by him for the purposes of a guarantee deposit under the said Act, then if such incumbrance affect not only the said holding but also other lands the Commission may by order declare that such incumbrance shall, to the extent of the moneys so applied as a guarantee deposit, continue to be a charge upon such other lands in the same priority as it possessed before such sale; provided, however, that such order shall not be made unless the Commission be satisfied that all persons in whom incumbrances upon such other lands puisne to the said incumbrance are vested, consent thereto, and for the purposes of this Section, all such persons, whether the incumbrances be vested in them as trustees or otherwise, may give such consent. Case where incumbrance is charged on several estates.

Provided also, that the Commission may, by the same or any other order, dispense with the consent of any such person or persons in any case in which, having due regard to the rights and interests of all parties concerned, it shall appear to them expedient to do so.

Where, before the passing of the Land Purchase Act, 1891, an incumbrancer consented to have moneys coming to him applied as a guarantee deposit (as to which see *Colthurst's Estate*, 20 L. R. Ir. 468) to the extent of the sum so applied, his incumbrance ceased to be a charge on the unsold lands as against puisne incumbrancers on these lands, unless they consented to such sum continuing to be charged as before. Before the passing of this Section it would appear that unless the consent was for valuable consideration it should have been by deed, executed by all parties; but under the Section a consent in writing and an order by the Commission thereon became sufficient. (See Form 43 under the Rules of 1887, omitted from the Rules at present in force.) Effect of consent.

Where it appeared that puisne incumbrancers were amply secured on the unsold lands, Commissioner MacCARTHY dispensed with their consent under the last clause of the Section: *Earl of Enniskillen's Estate*, 25 I. L. T. R. 41. And now, under the 23rd Section of the Land Purchase Act, 1891, *post*, neither a consent nor an order under this Section appears necessary. See notes to Sec. 3 of Land Purchase Act, 1885, p. 871, *ante*. Consent not now necessary.

13. The Land Commission shall not make an order under the third Section of the Purchase of Land (Ireland) Act, 1885, declaring Duty of Land Commission with respect to

Sect 13-14.
enforcement of
writs.

any sum due to them in respect of an advance secured by a guarantee deposit under that Act to be an irrecoverable debt until they have first attempted to enforce the payment of that sum by action or civil bill process, (a) where there appears to be a reasonable probability of the debt being recoverable by such proceedings. In addition to any other remedy provided by the Land Law (Ireland) Acts, every annuity payable thereunder to the Land Commission, whether created before or after the passing of this Act, shall be recoverable by the Land Commission in the manner in which rentcharges in lieu of tithes are recoverable in Ireland. (b)

(a) See notes to that Section, p. 371, *ante*. A certificate from the Land Commission, to be given when any sum is unpaid for six months after it has become due, is made evidence by Sec. 28, *post*. See also Sec. 7 of the Public Works Loans Act, 1889 (52 & 53 Vic, c. 71), and Landlord and Tenant Act, 1870, Sec 49, *ante*.

(b) See 1 & 2 Vic, cap. 109, Sec. 27 of which enacts that such rentcharge may be recovered by bill in equity; action of debt; or on the case, or, if not exceeding £20 (now £50, see 40 & 41 Vic, cap. 56, Sec. 50), by Civil Bill in the County Court of the county wherein the lands charged therewith may be situate, or by distress, subject as in said Act mentioned; and by Sec. 30 of the same Act another remedy is provided by summary petition to the Chancery Division of the High Court where the person liable to the rentcharge is not the occupier of the lands, or where such person is not known to the person entitled to receive the rentcharge. See O'Leary on Tithe Rentcharge, p. 247; and generally as to these remedies, see the same book, pp 234-250, appendix thereto, pp. 12 and 13, and Chaytor on Tithe Rentcharge.

Expediting
proceedings on
sales.

14. When an agreement has been made between a landlord and a tenant for the sale of a holding, and the Land Commission are satisfied that the landlord and the tenant are *primâ facie* entitled to carry such agreement into effect, and the Land Commission have agreed to make an advance under the Land Law (Ireland) Acts, the following enactments for facilitating the completion of the sale shall apply:—

- (1.) The Land Commission may, if they think fit, pay into the Bank of Ireland the whole or any part of the amount of the advance to such credit as they may direct, (a) and in any case where the tenant provides any portion of the purchase money may cause the same to be paid to the like credit, and may by order declare that the claims of all persons (except the tenant and persons claiming under him) who are interested in the land sold, whether as incumbrancers or otherwise, shall attach to the purchase money of such land in like manner as immediately before the sale they attached

to the land, and shall cease to be of any validity as against the land, and subject as in this Act mentioned shall be discharged or redeemed out of the purchase money, and the Land Commission shall determine the rights and priorities of the landlord and such other persons, and shall distribute the purchase money in accordance with such rights and priorities. Where the purchase money or any part of it is not immediately distributable, or the persons entitled thereto are not ascertained, or where from any other cause the Land Commission think it expedient for the protection of the rights of the persons interested, then the Land Commission shall, as the case requires, either retain the same under their control or deal with the same in the manner provided by the Settled Land Act, 1882, with respect to capital money arising under that Act, and may by order declare the trusts affecting such money or share, so far as the Land Commission have ascertained the same, or state the facts or matters found by them in relation to the rights and interests therein; and the Land Commission may from time to time make such orders in relation to any purchase money or share and the investment or application thereof, or the payment thereof, or the annual income thereof to the persons interested, as the circumstances of the case may require.

- (2) The Land Commission may at or after the time of making such order as above mentioned, and notwithstanding that it may have been agreed that the sale shall be carried into effect by means of a conveyance, exercise the powers contained in Section nine, Sub-section five, of the Purchase of Land (Ireland) Act, 1885.
- (3.) Any person in occupation of and paying rent for a holding which is held under a contract of tenancy, shall have power to enter into an agreement for the purchase thereof. (b) Where a holding shall be conveyed to or vested in any such person, the interest thereby assigned to him shall be deemed to be a graft upon the previous interest of the tenant in such holding, and shall be subject to any rights or equities arising from its being such graft.

This Section enables the Commission to pay advances into the Bank of Ireland before investigation of the landlord's title, and without any investigation of the tenant's title. The Section applies whether the agreements are for sale by conveyance or by vesting order, but in every case the proceedings must go on by

Secs. 14-15. vesting order, after the advances are paid into the Bank. Under the Rules of March, 1897, all sales are now by vesting order.

When an order is made under the Section, the purchase money (including the guarantee deposit retained by the Commission) represents the lands sold—at least to the extent of the interest which the landlord has agreed to sell. Whether such an order affects superior interests in the lands sold, *e.g.*, reversions and fee-farm rents, has never been decided, but, *semble*, it does not. Compare Sec. 9, Sub-sec. 5, of Land Purchase Act, 1885. And see Rules of March, 1897, Order XXIV.

Money lodged under this Section has been paid out to the vendors, notwithstanding the registration of a *lis pendens* against them. *In re Brewer's Co.*, 32 L. R. Ir. 479; 27 I. L. T. R. 83

Redemption
money of head
rents, &c.

(a) The Land Commission has now power to pay into the Bank of Ireland under this Section the redemption money in respect of an annuity, rentcharge, or head rent redeemed under this Act. See Land Purchase Act, 1891, Sec. 20, *post*, and Rules of March, 1897, Order XX., Rule 17, *post*, p. 834.

(b) It has been held by Commissioner MACCARTHY, that it is sufficient for the purposes of a sale that a tenant is *entitled to the occupation* under a valid contract of tenancy, even though he is not physically in occupation. *Egmont's Estate*, MacC. 44.

As to grafts, see notes to Land Purchase Act, 1885, Sec. 8, *ante*, p. 377; and as to the effect of an agreement to purchase upon the liability of the tenant in respect of rent and interest respectively, see Land Act, 1896, Sec. 35, *post*, p. 575

Crown rents,
quit rents, and
tithe rentcharge.

15.—(1.) When any land (a) sold under the Land Law (Ireland) . Acts is subject with other lands to any crown rent, quit rent, or tithe rentcharge, the Land Commission may, if they think it expedient, apportion such crown rent, quit rent, or tithe rentcharge, between the land sold and the other land, in such manner as to them seems equitable; (b) and when any such land is subject with other lands to any land improvement charge or drainage charge, the Commissioners of Public Works, on the requisition of the Land Commission, may apportion the same between the land sold and other lands, and may issue a certificate (c) setting forth such apportionment.

Upon any apportionment being made under this Section, such portion of the rent or rentcharge or charge as is apportioned to the land sold shall alone be deemed to be the crown rent, quit rent, tithe rentcharge, or drainage charge chargeable on the land sold.

(2.) The Land Commission may, if they think it expedient, order the redemption of any crown rent, quit rent, or tithe rentcharge, or any apportioned part thereof, at a price to be fixed by the Land Commission. (d) They may also, if they think it expedient, order the redemption of any land improvement charge or drainage charge or apportioned part thereof in accordance with the scale fixed by the statutes in that behalf.

(3.) No such apportionment or redemption of crown or quit rent (e) shall be made without the previous consent of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues; and no such apportionment or redemption of land improvement charge or of drainage charge payable to the Commissioners of Public Works, or redemption of tithe rentcharge payable to the Land Commission, (f) shall be made without the previous consent of the Commissioners of the Treasury.

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For the purpose of this Section, the Commissioners of the Treasury may from time to time make rules for regulating the mode of giving consents, and the terms upon which consents shall be given.

When any such land sold is subject with other lands to any incumbrance as defined by this Act, the Land Commission may, if they think it expedient, require the persons entitled to such incumbrance to accept the money advanced for the purchase of the land sold in part discharge of the incumbrance, and the Land Commission may, if they think it expedient and just so to do, by order declare the land sold to be discharged of all incumbrances and upon the making of such order the incumbrances therein mentioned shall cease to be a charge upon such land.

With the exception of impropriate tithe rentcharges (which have been held to come within this Section), *Watson's Estate*, MacC. 22; *Maunsell's Estate*, MacC. 103 (HOLMES, J.), the other annual charges here referred to are public charges, and none of them can be dealt with by the Commission without the consent of the proper authority mentioned in Sub-sec. 3, except tithe rentcharge payable to the Land Commission, as to which the consent of the Treasury is not required, if it is redeemed at not less than 20 years' purchase. (Land Act, 1896, Sec. 37, Sub-sec. 1). This provision, however, does not apply to tithe rentcharges varied under Sec. 3 of the Tithe Rentcharge Act, 1900 (63 & 64 Vic., c. 58, s. 9).

The powers conferred by this Section are considerably extended by the Land Act, 1896. By Sec. 31, Sub-sec. 3, of that Act, they now apply to all "superior interests" as defined by that Section; and the power of apportionment is now no longer limited to an apportionment between the land sold and the residue of the land (*ibid.*).

They are also extended to the purchase money of a holding, as if the money were the holding (Land Act, 1896, Sec. 33, Sub-sec. 1). Contingent liabilities and rights of indemnity may also now be dealt with (Sub-secs. 2 and 3).

This Section is also extended to a sale of holdings by the Land Commission as successors to the Commissioners of Church Temporalities in Ireland (Land Act, 1896, Sec. 38, Sub-sec. 2).

The powers given to the Land Commission by this Section can be exercised only in connection with, and for the purposes of, sale. There is no jurisdiction to order the redemption of impropriate tithe rentcharge after the sales of the holdings, which had been liable thereto, have been completed and closed: *Marquis of*

Sect. 15.

Bath's Est., 27 I. L. T. R. 112 (BEWLEY, J.). This decision was affirmed by the Court of Appeal on Feb. 21st, 1894. (Unreported.)

(a) "Lands sold" means lands agreed to be sold, and for the purchase of which advances have been sanctioned.

For procedure under this and the next Section, see Rules of March, 1897, Order XX., *post* pp. 830 834

(b) These words confer the widest jurisdiction as to the manner of apportionment, and the power of apportionment here given is not confined to apportionment as between lands sold and lands unsold (Land Act, 1896, Sec. 31 (3)) For definition of Land Improvement and Drainage Charges, see Sec. 34, *post*.

(c) The certificate issued by the Commissioners of Public Works is made conclusive evidence of the apportionment and of the matters stated in it by the Public Works Loans Act, 1888, Sec. 5.

Redemption of charges.

(d) Except in the rare instances where quit or crown rent is payable to private individuals, redemptions are only carried out by order under this Section in the case of impropriate tithe rentcharges. The public bodies which have control over the other charges will only consent (under the next sub-section) to their redemption at prices fixed by statutory provisions and Rules of the Treasury. The price of crown and quit rent has been fixed at 25 years' purchase,—of tithe rentcharge payable to the Commission at 22½ years' purchase. (But see Land Act, 1896, Sec. 37, and notes thereto, *post*.) The price of land improvement and drainage charges must be ascertained in accordance with the scale fixed by the Acts themselves.

On the lodgment of the ascertained purchase money (and arrears) in the Bank of Ireland the lands will be released, in the case of crown and quit rent by a conveyance from the Commissioners of her Majesty's Woods, Forests, and Land Revenues, in the case of tithe rentcharge by a merging order of the Commission, and in the case of land improvement and drainage charges by a certificate of redemption issued by the Commissioners of Public Works, under 10 Vic. c. 32, Sec. 44.

Lay or impropriate tithe rentcharges

In contrast to their limited powers of making orders for the redemption of Crown and quit-rent, ecclesiastical tithe rentcharge and land improvement and drainage charges under this Section, and of fixing the price of annuities, rentcharges, and rents ordered to be redeemed under the next Section, the Commission have absolute jurisdiction to order the redemption and fix the price of lay or impropriate tithe rentcharges, even though such tithes are held under lease or fee-farm grant (as to which see Sec. 20 of Land Purchase Act, 1891, *post*). In the absence of special circumstances the price is usually fixed at 20 years' purchase, less the average poor rate for the previous five years *Hanrahan's Estate*, 22 I. L. T. R. 26, MacC. 5; and *Watson's Estate*, 23 I. L. T. R. 87, MacC. 22, *Lord Fermoy's Estate*, 33 I. L. T. R. 13 (MEREDITH, J.); *Earl of Portarlington's Estate*, 33 I. L. T. R. 64 (MEREDITH, J.). Less than 20 years' purchase was, under special circumstances, allowed by Mr. Commissioner LYNCH, in *Warrin's Estate*, 27 I. L. T. R. 119. Where an impropriate lay tithe was held by a private individual under lease, and the rent reserved by the lease, and the reversion expectant on the determination of the lease, were vested in the Commission, it was held that the tithe rentcharge was "payable to the Land Commission" within the meaning of Sub-sec. 3, and that the consent of the Treasury was necessary to an order for its redemption: *Maunsell's Estate*, MacC. 103 (HOLMES, J.). The price was therefore fixed at 22½ years' purchase. But see now Land Act, 1896

Sec. 37 (1), which dispenses with the consent of the Treasury where the price is fixed at not less than 20 years' purchase. Sect. 18.

It would appear that the order for redemption does not discharge the lands until the actual payment of the redemption price either to the person entitled, or into the Bank of Ireland, under Sec. 20 of the Land Purchase Act, 1891, *post*. But see as to effect of redemption order *Synge's Estate*, MacC 107.

As to payment of redemption money in land stock in cases of tithes or head rents payable to the Commission, see Sec. 17 of Land Purchase Act, 1891, *post*.

The owner of an impropriate tithe rentcharge redeemed under this Section is entitled to be paid out of the proceeds of the sales, the costs and expenses of making title, and the costs of the necessary application for payment to him *Leconfield's Estate*, 25 I. L. T. R. 28, MacC 63 (BEWLEY, J). A sum is retained in Court to meet these costs. Title should be made by affidavit *Leconfield's Estate*, 25 I. L. T. R. 38 (LYNCH, Commissioner).

Where the tithe rentcharge had been commuted into annual instalments under Sec. 7 of the Irish Church Amendment Act, 1872, a difficulty formerly arose, if the land was settled land, as regards the redemption of the instalments out of the purchase money, in consequence of the rentcharge being then a terminable charge. See *Leinster's Estate*, 23 L. R. Ir. 152; but this difficulty is now removed by the 18th Section of the Land Purchase Act, 1891, *post*, which provides that the purchase money may be applied in redemption of this and certain other terminable charges. The Land Commission may, now, order the redemption of such tithe rentcharges at a sum calculated on the basis of the annual sum being for a term of 45 instead of 52 years. (Land Act, 1896, Sec. 37 (2).)

(c) As to the apportionment and redemption of crown rent and quit rent, see Landed Estates Court Act, 1858, Sec. 68 (App., *post*), and Crown Lands Act, 1894 (57 and 58 Vic., c. 43), Sec. 12. The Land Commission has jurisdiction to charge the whole of any quit rent or other perpetual crown rent on part of the lands according to exoneration of the residue thereof under the joint effect of these Acts *In re Martis* [1900], 2 I. R. 259 (MEREDITH, J.).

Where quit rents jointly charged upon the lands of different owners have been paid in certain proportions for a long period, the Court will presume that this has been done, under a deed which has been lost, and will apportion them according to the proportions in which they have been paid *Blake's Estate*, 6 I. W. L. R. 54 (MEREDITH, J.). And similarly where they have been exclusively paid out of one estate, a similar presumption will be made, and the Court will exclusively charge them on the land out of which they have been so paid *Longworth's Estate* 7 I. W. L. R. 57 (MEREDITH, J.).

Quit rent which has not been received for over 60 years is not barred by 48 Geo. III., c. 47; and the 1st Section of the *Nullum Tempus* (Ireland) Act, 1878 (39 & 40 Vic., c. 37), does not prevent the Crown sustaining a claim for the arrears of such a rent. In *Maxwell's Estate* (28 L. R. Ir. 356; MacC. 85) BEWLEY, J., held that the Crown was entitled to recover 170 years' arrears of quit rent.

For a general account of Crown and quit rents, and their history, see Howard's *Exchequer and Revenue*, Ireland, p. 31, *et seq.*, and *1 Furlong, Landlord and Tenant*, 2nd ed., pp. 517-8.

As to the power to redeem Crown reversions, see Land Act, 1896, Sec. 31, Sub-sec. 8, and notes thereto, *post*. *Re Costello*, 33 I. L. T. R. 73, and *Murphy's Estate*, 34 I. L. T. R. 42.

(f) The consent of the Treasury is no longer required where tithe rentcharge payable to the Land Commission is redeemed at not less than 20 years' purchase. Tithe rentcharge payable to the Land Commission.

Sects. 15-16. (Land Act, 1896, Sec. 37 (1)) But this provision does not apply to the fixed annual instalments in lieu of tithe rentcharge payable under Sec. 32 of the Irish Church Act, 1869 (*Ibid*, Sub-sec. 2), or to tithe rentcharge varied under the Tithe Rentcharge (Ireland) Act, 1900 (63 & 64 Vic., c. 58, Sec. 6).

Apportionment
and redemption
of annuities and
charges

16.—(1.) When any land sold under the Land Law (Ireland) Acts is subject with other lands to any annuity or rent-charge, the Land Commission may, if they think it expedient, by order apportion the same as between such land and the other lands subject thereto, and thereupon such part of the annuity or rent-charge as is apportioned on the land to be sold shall alone be deemed to be the annuity or rent-charge chargeable on such land.

(2.) When the Land Commission exercise the power of apportionment conferred on them by this Section, and also when the Land Commission exercise the power of apportionment of rent conferred on them by the seventy-second Section of the Landed Estates Court Act as extended by the tenth Section of the Purchase of Land (Ireland) Act, 1885, then the part of an annuity, rent-charge, or rent which is apportioned upon any land sold shall cease to be a charge upon the land, and shall be transferred to the purchase-money thereof; the last-mentioned power of apportionment may be exercised in any case notwithstanding that it may have been agreed that the sale shall be carried into effect by means of a conveyance.

(3.) The Land Commission shall, on the application of the person entitled to a part of an annuity, (*d*) rentcharge, or rent, which part shall have been apportioned by them upon land sold, and may, if they think it expedient, without such application, order the redemption of such annuity, rentcharge, or rent, or of an apportioned part thereof, (*a*) and may, notwithstanding the fact that no apportionment has been made, order the redemption of any annuity, rentcharge, or rent affecting land sold, at a price (*b*) to be fixed by agreement between the parties, or to be determined by the Land Commission, if the parties consent that the Land Commission should determine it, or if they do not consent, then to be settled by arbitration (*c*) in the manner provided by the twenty-fifth Section and the schedule of the Landlord and Tenant (Ireland) Act, 1870; the award of the Court of Arbitrators shall be recorded in the Court of the Land Commission, and the provisions relating to the Civil Bill Court, in the said schedule contained, shall, for the purposes of this Section, be taken to apply to the Land Commission.

A person who is tenant for life of an estate in any annuity, rentcharge, or rent, to which this Section applies, or who has, as respects such annuity, rentcharge, or rent, the power of a tenant for life within the meaning of the Settled Land Act, 1882, shall be deemed to be a person entitled thereto; and if such annuity, rentcharge, or rent is redeemed under this Section, the purchase money shall be dealt with as capital moneys arising under the said Act. (e) Sect. 16.

The powers of apportionment and redemption conferred by this Section, are now considerably extended by the Land Act, 1896. They now apply to all "superior interests," as defined by Sec. 31 of that Act; to the purchase money of a holding as if it were the holding; to contingent liabilities and rights of indemnity. See Land Act, 1896, Secs. 31 (3) and 33 and notes thereto, *post*. See also notes to Sec. 15, *ante*, p. 421.

Prior to the passing of this Act, the Commission could only deal with annuities, rentcharges, and rents—(1) by purchase under Sec. 13 of the Land Purchase Act, 1885, where an estate was bought by them for resale to the tenants, or (2) by apportionment (of rent only) under Sec. 72 of the Landed Estates Court Act, incorporated by Sec. 10 of the Land Purchase Act, 1885, in cases of sales by the Commission, or where it was agreed that sales should be carried out by vesting orders. In all other cases the lands sold were conveyed (or vested) subject to the rent or charge, though in certain cases the Commission required the vendor to indemnify the purchaser by deed, against the rent, &c., issuing out of the land sold, either in whole or in part. Apparently, the Commission cannot themselves indemnify the purchaser under Sec. 24, Sub-sec. 3 of the Land Act, 1881, as annuities, rentcharges, and rents are not incumbrances, or rights, titles, or interests adverse to or in derogation of the landlord's title. Former practice as to rents, &c.

The exercise of the powers given by this Section is discretionary; and though the 9th Section of the Land Purchase Act, 1885, enables the Commission to vest holdings subject to chief and fee-farm rents and charges, the Commission now exercise their discretion by requiring (except where the lands sold are only contingently liable), all annuities, rentcharges, and rents to be dealt with under this Section, either by way of apportionment and redemption of the part apportioned on the lands sold, or by way of redemption alone. The Section applies to all cases of sales under the Acts, whether the sale is by the landlord or the Land Commission, and whether it is provided by the agreement that the sale is to be by conveyance or by vesting order. Where a holding is sold by the Land Judge to a tenant under the Land Purchase Acts, the powers conferred by this Section and Section 15, *ante*, are now vested in the Land Judge (Land Act, 1896, Sec. 31 (4)). Powers of Commission under section.

The power of apportionment under the Section is not now limited to apportionment as between lands sold and lands unsold (Land Act, 1896, Sec. 31 (3)). As to the general principles regulating the apportionment of rents, see *In re Donville*, 6 Ir. L. T. R. 62; *In re Comyns*, 11 Ir. Ch. 334, and Sec. 72 of Landed Estates Court Act, App., *post*. The order for apportionment apparently depends for its validity on the completion of the sale or sales, but whether on the completion of the sale the effect of the order will relate back to the day it bears date seems doubtful. All covenants, conditions, and agreements relating to annuities, rentcharges, and rents (except as to the amount) remain unaffected by an order for apportionment. Apportionment. Effect of order.

As in every case the part of an annuity, rentcharge, or rent apportioned on the Redemption.

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lands sold is transferred to the purchase money, the purchase money cannot be allocated till the apportioned annuity, rentcharge, or rent is got rid of. This is effected by a redemption order under the Section.

Effect of redemption order upon lessor's reversion

Prior to the passing of the Land Act, 1896, the order for redemption in the case of a lease for a term of years only, did not apparently destroy the lessor's reversion at the expiration of the term, it merely substituted a gross payment for the yearly rent reserved by the lease, leaving the lessor's rights in all other respects unaffected. The Commission, therefore, as a rule, refused to make an advance where the landlord's estate was merely a term of years, unless the term was so long as to be capable, after the redemption of the rent, of being enlarged into a fee-simple under the provisions of the 65th Sec. of the Conveyancing Act, 1881, as amended by the 11th Sec. of the Conveyancing Act, 1882. Otherwise, upon the expiration of the term, the estate of the tenant purchaser would come to an end in the same manner as if no order for the redemption of the head-rent had been made. Now, however, where lands sold are held under a lease for lives or years renewable for ever, or a term of years of which not less than 60 are unexpired at the date of sale, the reversion or estate expectant on the determination of the lease is a "superior interest" as defined by Sec. 31 (8) of the Act of 1896, and may be redeemed as well as the rent payable during the term. See notes to the latter Section, *post*

Upon covenants and conditions in lease.

Nor, again, did the redemption order in any way affect any covenants or conditions contained in the grant or lease except such as related to the payment of rent. If these were of a special nature, it was necessary to provide for them in the original agreement for sale, otherwise difficulties arose in carrying out the sales. But, now, all such covenants and conditions are included in the term "superior interests," and may be dealt with under the extended powers conferred by the 31st Section of the Act of 1896. See *post*, pp 567-572.

Upon reservations of mines and minerals &c

Again, if there were reservations of mines and minerals, or of timber, in the head lease or fee-farm grant, these could not be got rid of by redemption order under this Section. Either the sales had to be made subject to them, the agreement so providing, or they had to be purchased by the vendor from the person entitled to them out of Court. All reservations are now included in the term "superior interests," and may be dealt with in the same manner as reversions, covenants, and conditions. See further on this subject, notes to Land Act, 1896, Sec. 31, *post*. See also as to the effect of an Incumbered Estates Court conveyance, where mines and minerals are excepted from a fee-farm grant *Earl of Antrim v. Gray*, I. R. 9 Eq. 513.

As to superior rents.

The provisions of this Section now apply to any superior rent affecting the rentcharge or rent and to any fee-farm grant or lease reserving the same Land Purchase Act, 1891, Sec. 20, *post*, p 477

Redemption of entire rent, where part only of land sold.

(a) The Land Commission has jurisdiction to order the redemption of an entire fee-farm rent, or other head rent under this Section, even though part only of the lands subject to the rent has been sold under the Land Purchase Acts. The Commission may order a redemption before apportionment and without apportionment, but the Court will not, without strong reason compel the redemption of a fee-farm rent on unsold parts of the lands, against the wish of the owner of the fee-farm rent *Penland's Estate*, 22 L. R. Ir. 649 (C. A.), 22 I. L. T. R. 68 (L. C.), MacC. 17. Where an apportionment has been ordered, if the person in receipt of the head-rent so desires, the Court may order the redemption of the entire rent in lieu of apportionment: *Hungerford's Estate*, 31 I. L. T. R. 114.

Where an annuity rentcharge or rent is redeemed under Sub-section 3 without any apportionment, the effect of the order appears to be somewhat different from that

of a similar order where an apportionment is also made. In the latter case the annuity or rent ceases to be a charge upon the land, and is transferred to the purchase-money thereof (Sub-sec. 2), but if a rent is redeemed without any apportionment, there appears to be no statutory provision that the order for redemption *per se* shall have the effect of discharging either the lands sold or unsold from the rent and transferring it to the purchase-money. The order for redemption in that event appears to operate at most as a statutory contract for sale at a price to be fixed in one of the modes prescribed by this Section; and where no apportionment has been made the lands continue subject to the charge until this contract has been carried out. The redemption price may be paid into the Bank of Ireland under the 20th Section of the Land Purchase Act, 1891, but this will not in itself discharge the lands and transfer the liability to the redemption money; there must be an order of the Commission of the nature prescribed by the 14th Section, *ante*, declaring that the claims of all persons interested in the annuity or rentcharge shall attach to the redemption money and shall cease to be of any validity as against the land: *Hargreave's Estate*, 30 I. L. T. R. 24 (BEWLEY, J.).

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As to procedure for obtaining orders for apportionment and redemption under this Section, see Rules of March, 1897, Order XX., *post*, pp 830-834

(b) The redemption price of an annuity, rentcharge, or rent may be determined in one of three ways—(1) by agreement between the parties (2) by the Land Commission, if the parties so consent; or (3) by arbitration. The Land Commission has no jurisdiction without consent, as in the case of tithes, rentcharge, quit rents, &c., under Sec. 15, *ante*, to determine the price. But, for the purpose of an agreement respecting the redemption price, the Court may determine the parties by whom such agreement may be made, or by whom the consent may be given for the determination of the price by the Court (Land Act, 1896, Sec. 33 (2)). If the parties desire that the Commission should fix the price, a written consent should be filed *Givan's Estate*, 25 I. L. T. R. 40 (Commissioner MACCARTHY). There is no definite rule as to the number of years' purchase which will be allowed. Each case is decided on its own facts: *Marquis of Waterford's Estate*, MacC. 26, *Clelland's Estate* [1899], 1 I. R. 505; *Simpson's Estate*, 28 I. L. T. R. 24. In one case where it appeared that a fee-farm rent was amply secured Commissioner MACCARTHY fixed the redemption price at twenty-five years' purchase of the net rent, after deducting the average poor-rate for the previous five years. *Givan's Estate*, 25 I. L. T. R. 40, MacC. 60. But now, since the passing of the Local Government Act, 1898, when poor rate can no longer be deducted, the gross, and not the net amount of the rent, rentcharge, or annuity should be the basis of calculation. *Clelland's Estate* [1899], 1 I. R. 505 (Ross, J.).

Means of determining redemption price of head rents and annuities

Where a life annuity is being redeemed the Court will receive as evidence of value a statement of the amount which would be required to purchase a Government annuity of equal amount, but it will not necessarily fix the redemption price at this amount: *Estate of Irish Land Commission*, 26 I. L. T. R. 115 (Commissioner LYNCH).

If title has not been shown before the order is made, or before the allocation of the fund, the redemption money is put to a separate credit (*Marquis of Waterford's Estate*, MacC. 26), or it may be lodged in the Bank of Ireland under Sec. 14, *ante*. See Land Purchase Act, 1891, Sec. 20, *post*, and Rules of March, 1897, Order XX., rule 17. Title to the head rent should be made on affidavit: Rules of March, 1897, Order XX., rule 16. The owner of the head rent is entitled to his costs of making title and of drawing the money out of Court. *Lord Leconfield's Estate*, 25 I. L. T. R. 28, MacC. 63 (BEWLEY, J.), and to payment of the head rent up to the completion

Disposal of redemption money

Sects 16-18. of the purchase. *Hargreave's Estate*, 30 L. L. T. R. 24 (see judgment of BREWLEY, J., at p. 26).

When land is sold by the Land Judge to the Land Commission, application for payment of the redemption money of the head rent should be made to whichever Court the money has been lodged in: *Coffee's Estate*, 25 L. R. Ir. 91.

(c) As to procedure by arbitration see Rules of March, 1897, Order XX., rules 13, 14, and 15, *post*; Landlord and Tenant Act, 1870, Sec. 25, *ante*, p. 188; and the Schedule to that Act, *ante*, p. 209

Death of annuitant after price of redemption of annuity is fixed

(d) Where an annuitant died after an order for the redemption of the annuity had been made and the price fixed, but before the making of the advances, it was held by GIBSON, J., that the executors of the annuitant were entitled to be paid the full amount of the redemption money. *Syngé's Estate*, 26 I. L. T. R. 69, MacC. 107.

(e) See Secs. 21, 22, and 58 of the Settled Land Act, 1882, App., *post*. Under this clause the tenant for life is competent to consent to the redemption and to agree as to fixing the price, but *semble* the trustees of the settlement should have notice of the redemption.

17. (*Repealed by Land Act, 1896, 2nd Schedule. See Land Purchase Act, 1888, Sec. 2, post.*)

Charging order for securing repayment of advance

18.—(1.) Every advance made by the Land Commission under the Land Law (Ireland) Acts shall be secured by an order (a) of the Land Commission declaring the land upon which such advance is made to be charged with the repayment of the advance with interest in such manner as the order may direct. In case any interest or instalment mentioned in such order, or in any order made by a Land Judge of the Chancery Division of the High Court of Justice in Ireland, under the provisions of the Land Law (Ireland) Acts, shall be in arrear for the space of forty days after the time the same might be paid, it shall be lawful for the Land Commission to exercise the powers of sale and other powers conferred upon mortgagees by Sections nineteen, twenty-one, and twenty-two of the Conveyancing and Law of Property Act, 1881, (b) so far as the same is applicable. The Land Commission shall apply the moneys arising upon any such sale in manner provided by Section fifteen of the Purchase of Land (Ireland) Act, 1885. (c)

44 & 45 Vic., c. 41

48 & 49 Vic., c. 73

44 & 45 Vic., c. 49.

(2.) *Section thirty-four, Sub-section three, of the Land Law (Ireland) Act, 1881, and Sub-section (c) of Section four of the Purchase of Land (Ireland) Act, 1885, shall be, and the same are hereby repealed.**

(a) This order now takes the place of the deed required by Sec. 4 of the Land Purchase Act, 1885, repealed by this Section.

(b) See those Sections, App., *post*, Land Act, 1881, Sec. 30; Land Purchase Act,

* Sub-sec. 2 of Sec. 13 is repealed by Land Act, 1896, 2nd Schedule.

1885, Secs. 3 and 15; Land Purchase Act, 1891, Sec. 24, 25, and 37; and Land Act, Secs. 16-20, 1896, Sec. 38.

(c) The purchaser, upon such a sale, has a lien upon the purchase money in respect of a claim for dilapidations by the previous owner before he is put into possession; *In re Dwyer* [1901], 1 I. R. 165 (Ross, J.).

19. Where an absolute order for the sale of land is made by a Judge of the Chancery Division of the High Court of Justice in Ireland, and a receiver has been appointed, it shall be lawful for a Judge of the said division to make, upon such terms as he thinks fit, a temporary abatement in the rent, or a remission of a part of the arrears of rent, due from a tenant of a holding on such land, if, having regard to all the circumstances of the case, and to the interest of the parties, owners, (a) petitioners, or incumbrancers consenting or refusing to consent thereto, he thinks it just and expedient so to do.

Jurisdiction of High Court to reduce rents in certain cases

(a) It was held in *Hamilton v. Nagle*, 1 Ir. Ch. R. 513, that where the owner objected the Court could not remit arrears of rent due by, or grant prospective abatements of rent to, tenants; this Section appears to enable the Court to do so in spite of the owner's objection.

20. Every annuity (a) payable in respect of any advance made either before or after the passing of this Act to enable a tenant to purchase a holding under the Land Law (Ireland) Acts, shall be a charge on the holding subject thereto, having priority over all existing and future estates, interests, and incumbrances created either by the landlord or the tenant, or their respective predecessors in title, and whether before or after the making of the advance, with the exception of quit-rent and other charges incident to the tenure, rentcharges in lieu of tithes, and any charges created under any Acts authorizing advance of public money, or under any Act creating charges in respect of improvements on lands and passed before this Act, and with the exception also (in cases where lands are subject to a fee-farm rent or held under a lease reserving rent) of such fee-farm rent or rent reserved as aforesaid. Every such annuity payable to the Land Commission shall be payable in equal half-yearly payments on the first day of May and the first day of November in each year. The first half-yearly payment of any such annuity shall, where the advance is not made on one of the said gale days, be due and paid on the second of such gale days after the date of the advance, and together with such first half-yearly payment there shall be due and paid an additional sum for interest on the advance at the rate of three and one-eighth per centum per annum

Priority of charge for advance.

Sects. 20-22

(b) from the date of the advance until the first gale day next after that date. A certificate purporting to be under the seal of the Land Commission, (c) or the Commissioners of Public Works, as the case may be, shall be evidence that the amount of any annuity or arrears of annuity stated therein to be due under any of the said Acts in respect of any holding named therein, is due to the Land Commission or the Commissioners of Public Works, as the case may be, in respect of such holding.

(a) The annuity payable to the Land Commission in respect of an advance under the Land Purchase Acts is an incorporeal hereditament or rentcharge issuing out of, and charged upon the lands, separate from, and paramount to the estate of the owner. When lands, subject to such an annuity, are being acquired by a public body under compulsory powers, the estate in the annuity must be acquired by the promoters on payment of compensation like any other estate in land, otherwise the land taken remains charged with it; *In re Parkinson* [1838], 1 I. R. 390. See especially judgment of MADDEN, J., at p. 398.

As to the amount of the annuity, and the mode of calculating same, see now Land Act, 1896, Sec. 25, *post*.

(b) Now three per cent. Land Purchase Act, 1891, Sec. 16, *post*.

(c) The certificate apparently should not be issued until the amount is six months overdue. See Sec. 28, *post*. See, also, Land Act, 1870, Sec. 48, *ante*, p. 199.

Writ of possession.

21. When any holding is sold by or at the suit of the Land Commission, the Land Commission may, on the application of any purchaser, issue an order to the sheriff to put such purchaser in possession of the holding, or part thereof, purchased by him, and such order shall be executed by the sheriff in like manner as a writ for the delivery of possession.

See Order XLVIII. and Forms Nos. 45 and 46, Rules of March, 1837, *post*. See, also, L. P. Act, 1835, Sec. 16, *ante*, and L. P. Act, 1891, Sec. 25, *post*.

If there is any inhabited dwelling-house, or building used as a dwelling-house, on the holding to be taken possession of by the sheriff under such order, at least forty-eight hours' notice should be served on the relieving officer of the electoral division in which the holding is situated, pursuant to 11 & 12 Vic., c. 47, App., *post*.

In *Irish Land Commission v. Maquay*, 28 L. R. Ir. 342, MacC. 71, it was held that the Land Commission was not liable to a claim for damages sustained by a purchaser of a holding subject to advances by reason of his inability to get possession from the sheriff, although the holding was sold under conditions which provided that immediate possession would be given.

Now, under the 25th Sec. of the Land Purchase Act, 1891, the Land Commission can get an order to put them into possession, before they exercise their power of sale. See that Sect. and Rules of Supreme Court of June, 1832, thereunder (Order XLVII., Rules 14 to 22, *post*).

Specific performance.

22. When either before or after the passing of this Act a sale of a holding has been agreed to be made by a landlord to a tenant,

and an application for an advance to enable the tenant to buy the holding has been sanctioned by the Land Commission, either party to the agreement for sale may apply in a summary manner to the Land Commission to decree the specific performance of the agreement; and the Land Commission shall have all such jurisdiction and authority to decide upon such application, and to make a decree for specific performance as are vested in the Chancery Division of the High Court of Justice in Ireland, for the like purposes, subject to the like appeal as in the case of other orders made by the Land Commission. Sects. 22-24

See Land Purchase Rules of March, 1897, Order XXVII., *post*, p. 844.

An order under this Section was made by Commissioner M'CARTRY, on the application of the tenant purchasers in *M'Farlane's Estate*, MacC. 94. Commissioner LYNN refused to make a similar order, after the death of the tenant in *Quin's Estate*, MacC. 10. See, however, as to the proper procedure upon the death of either vendor or purchaser Rules of March, 1897, Order XXVIII., *post*. See also *Duke of Abrecon's Estate*, 24 I. L. T. R. 85, MacC. 48.

23. That paragraph of Section ten of the Purchase of Land (Ireland) Act, 1885, which incorporates Section seventy of the Landed Estates Court Act, shall be amended by the substitution of the words "Land Commission," for the words "Land Judges," occurring therein, and the power of appointing new trustees given by the thirteenth Section of the Purchase of Land (Ireland) Act, 1885, (a) shall extend to all cases in which it may be necessary to appoint new trustees for the purposes of any sale under the Land Law (Ireland) Acts. Amendments of
48 & 49 Vic.
c. 73, ss. 10
and 13.

(a) For procedure under this Section, see Rules of March, 1897, Order XXV., *post*, pp. 841-842.

An order may now be made under this Section before any agreement for sale is made Land Purchase Act, 1891, Sec. 19, Sub-sec. 3, *post*, p. 474.

The jurisdiction under this Section extends only to lands which are the subject of sales, not to head rents, rentcharges, &c., affecting the lands, which are being redeemed under Sec. 16: *Dames Longworth's Estate*, 26 I. L. T. & S. J. 521 (BEWLEY, J.); nor is there jurisdiction to appoint trustees under this Section for the purpose of enabling a middleman to surrender under Sec. 8, *ante*: *O'Connell's Estate* (Unreported, 3rd June, 1889). But trustees may be appointed for that purpose by the Chancery Division: *Mulcahy's Estate*, 27 L. R. Ir. 78 (M.R.). See, as to the exercise of jurisdiction under this Section generally, *Keating's Estate*, 22 I. L. T. R. 67.

24. Whereas, by Section forty-four and Section forty-five of the Landlord and Tenant (Ireland) Act, 1870, and by Sub-section three of Section one of the Landlord and Tenant (Ireland) Act, 1872, the Commissioners of Public Works in Ireland (in this Act referred to as the Commissioners of Works) were authorised to agree to Reduction of
interest on loans
under 33 & 34
Vic., c. 46,
ss. 44, 45.
35 & 36 Vic.,
c. 32, s. 1.

Sect. 24. advance to a tenant purchasing his holding a sum not exceeding two-thirds of the value of the holding, and such advance is to be repaid by a charge made by virtue of the said Sections, or by a security from the tenant of an annuity of five pounds for every hundred pounds of such advance, payable to the Commissioners of Works for thirty-five years;

And whereas in calculating such annuity, interest was reckoned at the rate of three and one-half per centum per annum, and it is expedient to reduce the annual amount of the annuity by reducing the rate of interest and extending the term of the annuity: Be it therefore enacted as follows:—

- (1.) As from the gale day next after the passing of this Act, any annuity charged on a holding under Section forty-four or Section forty-five of the Landlord and Tenant (Ireland) Act, 1870, or Section one of the Landlord and Tenant (Ireland) Act, 1872, shall (save as hereinafter mentioned) be reduced from five per centum to four per centum on the amount of the advance; and shall be payable for such term as the Commissioners of Works may by order declare to be necessary for the repayment, with interest at three and one-eighth per centum per annum, of so much of the advance as has not accrued due for payment on the said gale day, and the order shall, as soon as may be after the passing of this Act, be made and notified by post or otherwise, in manner directed by the said Commissioners, to the person appearing to them to be the person paying the annuity.
- (2.) Provided that the said Commissioners may in any case in which they think the special circumstances justify so doing, grant such extension of the term as they think just, so that the term shall not in any case exceed forty-nine years from the date of the advance, and shall adjust the annuity and vary the order accordingly.
- (3.) Where on the gale day next after the passing of this Act there are unpaid arrears of instalments of the annuity in excess of the instalments due on the said gale day, this Section shall not apply to such annuity except upon such order of the Commissioners of Her Majesty's Treasury (in this Act referred to as "the Treasury") as hereinafter mentioned.

- (4.) Where the Treasury are satisfied upon the report of the Sects 24-25
Commissioners of Works that in the case of the purchaser of a holding whose instalments are so in arrear the special circumstances are such that it is equitable to apply the provisions of this Section to such purchaser, and to make such provision as hereinafter mentioned for the arrears, the Treasury may, if they think fit, order that on payment within the time limited by the order of a portion of the arrears, not being less than the amount of the instalments of the annuity for six months, if so much be due, the remainder of the arrears shall be repayable by such addition to the amount of the annuity for repaying the advance as will repay the said remainder with interest at the rate of three and one-eighth per centum per annum within the period at which the last-mentioned annuity will, by virtue of this Act or otherwise, terminate, and upon such order being made and portion of arrears paid this Section shall apply, and the Commissioners of Works shall make an order accordingly, and by such order charge the holding with the addition to the annuity for the repayment of arrears, and such charge shall have the same priority as the charge on the holding of the annuity in arrear.
- (5.) An order of the Commissioners of Works under this Section shall be deemed, according as the case requires, to form part of the order under Section forty-four or Section forty-five of the recited Act, or of the security or deed charging the annuity.

25. Whereas in pursuance of Section fifty-two of the Irish Church Act, 1869, the Commissioners acting under that Act credited the purchasers of land, or interests in land, with part of the purchase money on having security for payment of the same, and the sums so credited to purchasers, or many of them, are now mortgage debts due to the Irish Land Commission as the successors of the Commissioners (a) acting under that Act, and are secured in some cases by a simple mortgage, and in other cases by an instalment mortgage providing for the payment of the principal sum with interest by instalments extending over a term of years (which instalments with the interest are in this Section referred to as the instalments);

And whereas the rate of interest on such mortgages was calculated

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at not less than four per centum per annum, but has been in some cases reduced to three and one-eighth per centum per annum by an order of the Irish Land Commission, under Section twenty-three of the Purchase of Land (Ireland) Act, 1885, and it is expedient to provide in other cases for the like reduction in manner provided by this Section: Be it therefore enacted as follows:

- (1.) As from the gale day next after the passing of this Act, or any later date specified in an order under this Section, the annual amount payable to the Irish Land Commission in respect of any such instalment mortgage as above-mentioned shall, save as hereinafter mentioned, be reduced by such amount as is necessary to reduce the rate of interest from four to three and one-eighth per centum per annum, and the term may be extended by the Irish Land Commission, so that it do not exceed forty-nine years from the date of the mortgage. (*b*)
- (2.) As from the gale day next after the passing of this Act, or any later date specified in the order hereinafter mentioned, the annual amount payable to the Irish Land Commission in respect of any such simple mortgage as above-mentioned, shall, save as hereinafter mentioned, be at the rate for interest of three and one-eighth per centum, and for repayment of principal of seven-eighths per centum on the amount of principal due under such mortgage on the said day, and such amount shall be payable by half-yearly payments on the days on which the interest in the said mortgage is payable, and for forty-nine years from the said day, and the mortgage shall then, except for the purpose of recovering arrears, determine.
- (3.) An order of the Irish Land Commission fixing the annual amount and the term of years shall, as soon as may be after the passing of this Act, be made and notified by post, or otherwise in manner directed by the Irish Land Commission, to the person for the time being paying the interest on any simple, or the instalment on any instalment mortgage, or otherwise appearing to the Commission to be liable to pay the same:
- (4.) Provided that the Irish Land Commission may in any case in which they think the special circumstances justify so doing, grant such variation of the term as they think just, and may vary the order accordingly, so that the term shall

not in any case exceed forty-nine years from the date of the mortgage. Sect. 25

(5.) Where on the gale day next after the passing of this Act there are unpaid arrears in respect of interest under any simple mortgage, or instalments under an instalment mortgage, over and above half-yearly payments due on the said gale day, this Section shall not apply to such mortgage except that if the Treasury on the report of the Land Commission are satisfied that it is equitable to apply this Section to any such mortgage—

(a.) The Treasury may order that on payment within a period fixed by the order and notified in like manner as above provided of a portion of the said arrears, being not less than the amount of interest or instalments due for six months, if so much be due, the remainder of the arrears as shall be repaid by such addition to the periodical instalments as will be sufficient to pay the said remainder with interest at the rate of three and one-eighth per centum per annum by the expiration of the period at which the mortgage, by virtue of this Act or otherwise, will cease; and

(b.) Upon such order being made and portion of arrears paid, this Section shall apply, and the Irish Land Commission shall make an order under this Section with reference to such mortgage as if all arrears of interest and instalments required to be paid before the making of the order were paid, and such order shall also provide for such additions to the mortgage as above mentioned.

(6.) Any order of the Irish Land Commission under this Section, also any order purporting to be made by such Commission in pursuance of Section twenty-three of the Purchase of Land (Ireland) Act, 1885, whether before or after the passing of this Act, shall have effect as if the mortgage referred to in the order was modified in the manner provided by the order, and if the order provides for an addition to the debt in pursuance of this Section as if the mortgage included that addition, and an addition so made shall have the same priority as the debt created by the mortgage, and any such order shall be binding on all

Sects. 25-27.

persons interested in the equity of redemption of such mortgage.

(7.) Nothing in this Section shall apply to a mortgage as to which an order has been made under Section twenty-three of the Purchase of Land (Ireland) Act, 1835, before the passing of this Act.

(8.) Nothing in this Section shall apply to the purchasers of perpetuity rents.

(a) The Commissioners of Church Temporalities in Ireland were dissolved as a corporation, and all their property, powers, duties, rights, etc., transferred to the Irish Land Commission by the Irish Church Amendment Act, 1881 (44 & 45 Vic., c. 71).

(b) The annuity may be further reduced, and the time for repayment further extended by Land Act, 1896, Secs. 25 & 26, *post*, 563-5.

Release of
forfeiture
incurred by
purchaser to
whom money
advanced.
33 & 34 Vic.,
c. 46, ss 44, 46

26. Whenever a holding has, either before or after the passing of this Act, become forfeited to the Commissioners of Works, under Section forty-four or forty-five of the Landlord and Tenant (Ireland) Act, 1870, and a legal proceeding in respect of such forfeiture has either not been taken by the said Commissioners, or if taken, has been abandoned, they may, with the consent of the Treasury, if it seem fit, after notice to all persons appearing to the Commissioners of Works to be concerned, order that the holding shall be released from the forfeiture as from the date at which it accrued, and shall vest in the persons named in the order discharged from all claims on account of the alienation, sub-letting, or other act, on account of which the forfeiture was incurred.

Such order shall have full effect and be binding on all persons interested in the holding; and the holding, after the date thereof, shall cease to be subject to the conditions imposed by the Sections above in this Section mentioned, and shall be subject to the conditions imposed by Section thirty of the Landlord and Tenant (Ireland) Act, 1881, and that Section shall apply with the substitution of the Commissioner of Works for the Land Commission.

Reduction of
interest on loans
under 44 & 45
Vic., c. 49

27. Whereas under the Landlord and Tenant (Ireland) Act, 1870, and the Landlord and Tenant (Ireland) Act, 1872, as amended by Section thirty-five of the Land Law (Ireland) Act, 1881, and under Section twenty-four and under Section twenty-six of the Land Law (Ireland) Act, 1881, the Irish Land Commission were authorised to advance to a tenant purchasing his holding a sum not exceeding such proportion of the purchase money as is therein

mentioned, and such advance is to be repaid by a charge made by virtue of the said Sections, or by a security from the tenant of an annuity of five pounds for every hundred pounds of such advance, payable to the Irish Land Commission for thirty-five years;

And whereas, in calculating such annuity, interest was reckoned at the rate of three and one-half per centum per annum, and it is expedient to reduce the annual amount of the annuity by reducing the rate of interest and extending the term of annuity, be it therefore enacted as follows:

- (1.) As from the first gale day next after the passing of this Act any annuity charged on a holding for the repayment of an advance made in pursuance of Section thirty-five of the Land Law (Ireland) Act, 1881, or the Acts in that Section mentioned or made in pursuance of Section twenty-four or Section twenty-six of the Land Law (Ireland) Act, 1881, shall (save as hereinafter mentioned) be reduced from five per centum to four per centum on the amount of the advance; and shall be payable for such term as the Irish Land Commission may by order declare to be necessary for the repayment, with interest at three and one-eighth per centum per annum, of so much of the advance as has not accrued due for payment on the said gale day; and the order shall, as soon as may be after the passing of this Act, be made and notified, by post or otherwise, in manner directed by the said Commissioners to the person appearing to them to be the person paying the annuity:
- (2.) Provided that the said Commission may, in any case in which they think the special circumstances justify so doing, grant such extension of the term as they think just, so that the term shall not in any case exceed forty-nine years from the date of the advance, (a) and shall adjust the annuity and vary the order accordingly.
- (3.) Where on the gale day next after the passing of this Act there are unpaid arrears of instalments of the annuity in excess of the instalment due on the said gale day, this Section shall not apply to such annuity except upon such order of the Treasury as hereinafter mentioned.
- (4.) Where the Treasury are satisfied upon the report of the Irish Land Commission that in the case of a purchaser of a holding whose instalments are so in arrear the special circumstances are such that it is equitable to apply the

Sects. 27-28.

provisions of this Section to such purchaser, and to make such provision as hereinafter mentioned for the arrears, the Treasury may, if they think fit, order that on payment within the time limited by the order, of a portion of the arrears, not being less than the amount of the instalments of the annuity for six months if so much be due, the remainder of the arrears shall be repayable by such addition to the amount of the annuity for repaying the advance as will repay the said remainder with interest at the rate of three and one-eighth per centum per annum within the period at which the last-mentioned annuity will by virtue of this Act or otherwise terminate; and upon such order being made, the portion of arrears being paid, this Section shall apply, and the Irish Land Commission shall make an order accordingly, and by such order charge the holding with the addition to the annuity for the repayment of arrears, and such charge shall have the same priority as the charge on the holding of the annuity in arrear.

- (5) An order of the Irish Land Commission under this Section shall be deemed, according as the case requires, to form part of the order under the Sections of the recited Acts, or of the security or deed charging the annuity.

(a) The annuity may be further reduced, and the period for repayment extended, by Land Act, 1896, Sec. 25 (5). The term "Land Purchase Acts" in that Section includes Parts II. & III. of the Landlord and Tenant Act, 1870. See Land Act, 1896, Sec. 48, and Land Purchase Act, 1891, Sec. 42.

Certificate of sums due

28. Where any sum is due to the Irish Land Commission or to the Commissioners of Public Works in respect of any advance made to, or purchase money due from, the purchaser of any land or interest in land, and is unpaid for the space of not less than six months after the same has become due, the Irish Land Commission or Commissioners of Public Works, as the case may be, may give a certificate of the amount so due, and such certificate shall be evidence in the same manner as a certificate under Section forty-nine of the Landlord and Tenant (Ireland) Act, 1870.

See Landlord and Tenant Act, 1870, Sec. 49, *ante*, p. 200, and Sec. 20 of this Act, *ante*, p. 429.

As to the effect of the certificate, see Public Works Loans Act, 1889 (52 & 53 Vic., c. 71), Sec. 7 of which provides that "a certificate purporting to be under the common seal of the Irish Land Commission shall be evidence that any sum stated

therein to be due to that Commission in respect of any property vested in the Commission from any person named in the certificate is so due, and that any sum stated therein to be due to that Commission and to be charged on any property named therein is so charged." Sects 28-29.

PART III.

Equitable Provisions.

29. The following enactments shall take effect with respect to judicial rents fixed before the first day of January, one thousand eight hundred and eighty-six:— Temporary adjustment of judicial rents.

As soon as possible after the passing of this Act, the Land Commission, having regard to the difference in prices affecting agriculture in counties, poor law unions, or other areas, between the year one thousand eight hundred and eighty-seven, and each of the years one thousand eight hundred and eighty-one, one thousand eight hundred and eighty-two, one thousand eight hundred and eighty-three, one thousand eight hundred and eighty-four, and one thousand eight hundred and eighty-five, shall without application determine with reference to such counties, unions, or other areas what alteration, if any, ought equitably to be made in the judicial rents to become payable in such counties, unions, or areas, in respect of the year commencing from the gale day next before the passing of this Act, according as such judicial rents were fixed (a) in one or other of the years before the first of January, one thousand eight hundred and eighty-six, respectively, so that the rent fixed under the provisions of this Section shall differ by the difference in prices as aforesaid in the respective years, and the judicial rents payable in respect of the year aforesaid in such counties, unions, or areas shall be varied to the extent so determined by the Land Commission.

In the year one thousand eight hundred and eighty-eight, and in one thousand eight hundred and eighty-nine, the Land Commission shall, in like manner, determine what alteration, if any, ought equitably to be made in the judicial rents payable for the year commencing from the first gale day in each of the said years respectively, and such rents shall be varied to the extent determined by the Land Commission.

The Land Commission shall proceed by counties, poor law unions, or other areas as they think fit, in reference to such alterations in judicial rents, and may cause to be made such inspections and reports as may be necessary, and may ascertain averages, and may

Sects. 29-30. proceed in all other respects in such manner as may appear to them to be necessary for carrying out the objects aforesaid.

The Land Commission shall publish the orders made by them under this Section in such manner for giving information to all persons interested as they think most convenient.

A copy of every order made by the Land Commission under this Section shall be published in the "Dublin Gazette."

The production of a printed copy of the "Dublin Gazette," purporting to be published by the Queen's authority, and containing the publication of any order of the Land Commission under this Section, shall be evidence of the contents of such order, and of the date thereof, and that it has been duly made.

When rent is said to be "fixed"

(a) Where a fair rent was fixed by a Sub-Commissioner in 1883, and affirmed on appeal by the Head Commission in 1886, it was held that the rent was "fixed" for the purpose of this Section in 1886, so that the tenant was not entitled to the statutory abatement *Conyngnam v. Gallagher*, 22 L. R. Ir. 614, 23 I. L. T. R. 10 (Ex. Div.). HOLMES, J., had previously decided the contrary, on a Civil Bill appeal *Law v. Sinnamon*, 24 I. L. T. R. 9.

On the other hand, where an agreement as to a fair rent was signed by the parties in 1885, but not filed in Court until 1886, it was held by PALLES, C.B., that the rent was "fixed" in 1885, and that the tenant was, therefore, entitled to the statutory abatement *Church v. M'Poyle*, 22 I. L. T. R. 85.

Power of Court to stay eviction.

30.—(1.) In any proceedings for the recovery of a holding to which this Section applies, for non-payment of rent, or in any action for debt or damages by any person against the tenant of such holding if the court in which the proceedings are pending is satisfied that the tenant of the holding is unable to satisfy by an immediate payment in full the judgment and costs, and that such inability does not arise from his own conduct, act, or default, and there is reasonable ground for granting an extension of time to pay, the Court may put a stay upon the execution (a) of the judgment of the Court in such ejectment, or, in case of an ordinary judgment, may put a stay upon the execution of a writ of fieri facias against the tenant's interest in the holding for such time as the Court thinks reasonable, and the Court may, in any such ejectment, if it thinks fit, order that the arrears of rent and the costs, or such sum in satisfaction thereof as may be agreed on between the parties, shall be paid by such instalments as the Court may appoint: Provided that where the landlord has offered to accept in full satisfaction of the arrears of rent such lesser sum, payable either in one payment or by instalments as the Court shall think reasonable, and

the tenant refuses such offer, no stay of execution shall be granted under this Section.

Sect 30

(2.) If the Court is of opinion that the tenant can pay the first of such instalments forthwith, the Court shall so order. If default is made in complying with the order of the Court for the payment of the first or any subsequent instalment, the stay upon the execution of the judgment in ejectment shall be removed, and it may thereupon be executed by a writ of possession in the prescribed form (b); and upon the execution thereof, or upon the expiration of a period of six months from the recovery of the judgment, whichever shall last happen, all right of redemption in the holding shall be determined. (c)

(3.) This Section shall apply to every holding in respect of which a judicial rent has been fixed, or can be fixed under the Land Law (Ireland) Act, 1881, as amended by this Act, held by a tenant whose holding, or the aggregate of whose holdings, whether under one or more landlords, is valued under the Acts relating to the valuation of rateable property in Ireland at not more than fifty pounds a year. (d)

(4.) This Section shall apply to judgments in ejectment for non-payment of rent, or for debt or damages recovered but not executed before the passing of this Act (e) against the tenant of such holding as aforesaid.

Where any such judgment for non-payment of rent so recovered shall be executed against any such tenant as aforesaid, the Court may, notwithstanding such execution, within three months after the passing of this Act, and under like conditions, and subject to like terms as to instalments and otherwise, as if the judgment had not been executed, make an order setting aside such execution, staying the further execution of such judgment, and, if necessary, restoring the tenant to the possession of the holding.

In case of any judgment for debt or damages so recovered against such tenant, the same shall not be executed against the tenant's interest in his holding without the leave of the Court, within the like period.

(a) Under the County Court Rules of 1890, Order XVII., Rule 5, the Judge has power to put a stay upon the execution of a decree in ejectment in all cases. There is no power, however, independently of this Act, to put a stay upon the execution of an ordinary decree for payment of rent, or any other money demand (*Sullivan v. Staples*, 14 L. R. Ir. 131), though a decree may be made payable by instalments (14 & 15 Vic., c. 57, Sec. 112). A County Court Judge has only such powers as the statute law confers upon him, and his powers are strictly confined to those

Sub-sec. 1
Power before
this Act to stay
execution.

Sect 30.

given by statute. *Smith v M'Glone*, 8 L. R. I. 267. Even as regards the power to put a stay of execution upon ejection decrees, it was held by HARRISON, J., that where the tenant had acquired a statutory term under the Land Act, 1881, the power no longer existed; non-payment of rent being a breach of the first statutory condition under Sec. 5 *Lanesborough v. M'Clean*, 17 I. L. T. R. 75, MacD. 382.

The Court will not, before judgment, make an order under this Section staying execution in an ejection. *Wallis v. Meany*, 20 L. R. Ir. 496.

Procedure on applications under this section

Upon a motion for final judgment in an action for debt the Court will not entertain an application by the defendant to stay execution under this Section without service of a notice of motion for the purpose *Newton v. Nolan*, 20 L. R. Ir. 619, 22 I. L. T. R. 25 (Ex. Div.); *Newton v. Byrne*, 21 I. L. T. R. 82 (Q.B.D.).

The affidavit of the tenant on the application should set out the reasons of the tenant's inability to pay—as, e.g., losses of stock, bad crops, bad prices for agricultural produce, &c.—and should give a full statement of his property, and, in fact, be made like a bankrupt's statement of affairs. It must show that the inability to pay does not arise from the tenant's own conduct, act, or default. (See *Sutton v. Gallagher*, 21 I. L. T. R. 56-57; and 21 I. L. T. & S. J. 569.) "It is not enough to satisfy me," says PALLES, C.B., in giving judgment in that case, "that the tenant is unable to pay, but I must be satisfied that his inability does not arise from his own conduct, act, or default." The rule is the same whether the application be to stay proceedings on an ejection or upon the execution of a writ of *fi. fa.* against the tenant's holding per PALLES, C.B., *Sutton v. Gallagher*, 21 I. L. T. & S. J. 569. The tenant should also state in the affidavit by what instalments he is prepared to pay the rent and costs in action of ejection, or what terms he offers in actions of debt or damages. It seems that the power given to the Court to order payment by instalments extends only to the case of ejections for non-payment of rent; but in actions for debt or damages the Court usually on granting an application to stay proceedings under this Section puts the tenant under terms to bring in some money within a certain time.

Tenant's inability to pay.

There is an inability to pay within the Section, if the payment would deprive the tenant of reasonable means of working the farm, and, as incidental thereto, of supporting himself. *Newton v. Nolan*, 20 L. R. Ir. 619; 22 I. L. T. R. 25.

The stay of execution under this Section in an action of debt or damages extends only to the protection of the tenant's interest in his holding, and does not prevent execution being levied against any other property he may possess seizable under a writ of *fi. fa.*

The registration of a judgment as a mortgage, under 13 & 14 Vic., c. 29, is not a breach of a stay of execution. *Barnett v. Bradley*, 24 I. L. T. R. 39.

(b) See Rules of Supreme Court, 1891, Order XLVII., Rule 11, *post*, and County Court Rules, 1890, Order XXIV., Rule 13, *post*.

Instalments extending over a period of more than one year

A Civil Bill Decree may be made payable by instalments which extend over more than a year from the date of the decree; and the decree may be executed after the lapse of a year in default of payment of instalments in such a case, notwithstanding the provisions of 14 & 15 Vic., c. 57, Sec. 139. *Drapers' Co. v. Bradley*, 22 L. R. Ir. 483; 22 I. L. T. R. 70 (Q.B.D.). It would appear from the judgment of PALLES, C.B., in *Reg. v. MacGrath* (24 L. R. I. 391) that the proper course is for the Clerk of the Peace not to issue the decree to the plaintiff until default has been made in paying an instalment (see 24 L. R. Ir., at p. 401), and

that, according to the analogy of a decree made payable by instalments under the **Sects. 30-32.** Debtors Act, it may be executed at any time within one year of the date of its issue. See *Doyle v. Milmay*, 6 Ir. Jur. (O.S.) 338. There is no power to renew a decree in ejectment (14 & 15 Vic., c. 57, Sec. 139), except where the defendant unlawfully retakes possession within six months after the decree has been executed (27 & 28 Vic., c. 99, Sec. 44), or for costs (14 & 15 Vic., c. 57, Sec. 139).

When once the stay on the execution is removed by default in paying instalments, the judgment or decree may be executed by taking actual possession, and it is not necessary in such a case to follow the procedure prescribed by Sec. 7, *ante* *Haney v. Lord Lurgan*, 24 I. L. T. R. 91. Decree under this section, how executed.

(c) Where a decree is made payable by instalments, and the tenant makes default, his right of redemption is considerably curtailed. The period of six months running, in this case, if the decree is executed, from the recovery of the judgment, not from the date of execution, as under Sec. 7. Moreover, if default is made more than six months after the date when the decree was pronounced, all right of redemption is determined by the execution of the decree. Right of redemption

(d) The "holdings" reckoned under this Sub-section must be agricultural or pastoral in character; but a holding cannot be excluded from the calculation, simply because it is of a class which is excluded from the Land Acts, as, for instance, where it has been let for temporary convenience *Bank of Ireland v. Watkins*, 26 L. R. Ir. 258, 24 I. L. T. R. 81 (Q.B.D.). Aggregate of holdings, how reckoned.

Where a tenant's holdings are valued at more than £50 a year, and the operation of this Section is therefore excluded, the Court will not, upon the mere ground of the defendant's inability to pay, put a stay upon the execution of a judgment *Desart v. Townsend*, 22 L. R. Ir. 389; 22 I. L. T. R. 60 (C.A.); *Newton v. Nolan*, 20 L. R. Ir. 619, 22 I. L. T. R. 25 (Ex. Div.).

(e) The Court has no power to set aside an execution under this Sub-section where the judgment was executed before the passing of the Act *Barlow v. Carolan*, 20 L. R. Ir. 495, 21 I. L. T. R. 64; *MacGillcuddy v. Doyle*, 21 I. L. T. R. 73; *Shaffrey v. Tierman*, 22 I. L. T. R. 33. Sub-section 4

31. Save as by this Act is otherwise expressly provided, every decree, order, and decision of a County Court Judge exercising jurisdiction under this Act, shall be subject to the like appeal as if the same were a decree pronounced by a County Court Judge in exercising ordinary civil bill jurisdiction under the Civil Bill Courts (Ireland) Act, 1851. Appeals

The only place where it is "otherwise expressly provided," is by Sec. 6; but appeals from the County Court in the case of applications by lessees to have fair rents fixed, under Sec. 1, are always heard by the Land Commission, not by the Judge of Assize, as this Section would seem to direct.

32. For aiding the County Court Judges in performing the duties imposed on them by the Act of 1881 and this Act, the Land Commission may from time to time, but subject to the approval of the Lord Lieutenant, nominate independent valuers, to some one of whom each County Court judge may, whenever necessary, refer any question for report. Court valuers in county courts.

Sects 32-33. Such valuers shall be paid such remuneration as the Treasury may determine.

As to the position of these "independent valuers" generally and their duties, see notes to Land Act, 1881, Sec. 48 (4), *ante* p. 337.

PART IV.

Miscellaneous.

Rules, orders,
&c, fees, costs,
and charges

33.—(1.) In the case of the High Court the powers of making Rules and Orders, and of prescribing forms, and of regulating the mode of proving the service, and of proving the date of service of notices under this Act, and of determining the persons upon whom notices under this Act are to be served, and for prescribing anything by this Act authorised to be prescribed, shall be from time to time exercised by the authority and in the manner prescribed by the sixty-first Section of the Supreme Court of Judicature Act (Ireland), 1877, and in that Section, for the purposes of rules under this Act, the Lord Chancellor and the other judges therein referred to, or any four of them with the Lord Chancellor, shall be substituted for the judges therein referred to.

40 & 41 Vic.,
c. 57.

In the case of the Land Commission, rules may be made in the manner provided by the Land Law (Ireland) Act, 1881.

In the case of the county court, the above-mentioned powers shall from time to time be exercised by the authority and in the manner prescribed by Section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

40 & 41 Vic.,
c. 56.

(2) On the passing of this Act, the authority mentioned in the eighty-fourth Section of the County Officers and Courts (Ireland) Act, 1877, shall amend the existing scale of fees, costs, and charges to be paid to counsel and solicitors in ejectments for non-payment of rent in the Civil Bill Courts (*a*) so that the total fees, costs, and charges in any such ejectment as between party and party shall, so far as may be practicable and reasonable, not exceed the total fees, costs, and charges between party and party according to the scale for the time being in force of such fees, costs, and charges in ordinary civil bills, as if such ejectment were an ordinary civil bill and the annual rent of the holding for which such ejectment is brought was the amount sued for or recovered respectively in such ordinary civil bill. Such amended scale of fees, costs, and charges may be subsequently amended from time to time by the same authority if in practice it is found to be insufficient.

(a) See Schedule of Fees under this Section, after County Court Rules, p. 713, Sects. 33-34. *post.*

34. In this Act, unless the context otherwise requires—

11 ions.

The expression "ejectment" means any action for the recovery of the possession of land in the High Court of Justice or in the Civil Bill Court:

The expression "judgment" as respects ejectment means decree of a Civil Bill Court or a judgment of the High Court:

The expression "writ of possession" includes a decree for possession:

The expression "incumbrance" (a) means any legal or equitable mortgage in fee, or for any less estate, and also any money secured by a trust, and also any legacy, portion, lien, or other charge, whereby a gross sum of money is secured to be paid on an event or at a time certain, and also any annual or periodical charge which, by the instrument creating the same, or any other instrument, is made purchasable on payment of a gross sum of money, and every other charge on land which is deemed an incumbrance in a Court of Equity, and which a Court would discharge by a sale of the land charged, or by the appointment of a receiver over the same:

The word "landlord" shall, for the purposes of sales to tenants under the Land Law (Ireland) Acts, include any person entitled to an estate as a trustee for sale, and any limited owner, (b) as defined by Section thirty-three of the Landlord and Tenant (Ireland) Act, 1870:

33 & 34 Vic.,
c. 46.

The expression "tithe rentcharge" includes any annual sum payable to the Land Commission under the thirty-second Section of the Irish Church Act, 1869, as amended by any Act or Acts:

32 & 33 Vic.,
c. 42.

The expression "land improvement charge" includes any charge for land improvement loans payable to the Commissioners of Public Works in Ireland under the Act of the session of the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-two, intituled "An Act to facilitate the Improvement of Landed Property in Ireland," and the Acts amending the same:

10 & 11 Vic.,
c. 32.

The expression "drainage charge" includes any charge for drainage loans payable to the said Commissioners under the same Act and Acts amending it, or under the Act of the

Sect 34.

5 & 6 Vic., c. 89

26 & 27 Vic.,
c. 8844 & 45 Vic.,
c. 49.40 & 44 Vic.,
c. 5740 & 41 Vic.,
c. 56.33 & 34 Vic.,
c. 46,
44 & 45 Vic.,
c. 49,
46 & 47 Vic.,
c. 43,
48 & 49 Vic.,
c. 73Powers of
Trustees for
CharitiesIrish Drainage
Code.

session of the fifth and sixth years of the reign of Her present Majesty, chapter eighty-nine, or any subsequent Act; (c) and also any charge payable to the Drainage Board of a Drainage District under the Drainage and Improvement of Land Act (Ireland), 1863, and the Acts amending the same:

Save in Part Two of this Act, the expression "holding" does not include any holding which is not agricultural or pastoral or partly agricultural and partly pastoral in its character:

The expression "prescribed," when used with reference to proceedings before the Land Commission, means prescribed by rules made under the Land Law (Ireland) Act, 1881; when used with reference to other proceedings, means prescribed by Rules made under the Supreme Court of Judicature Act (Ireland), 1877, as amended by this or any other Act, or under the County Officers and Courts (Ireland) Act, 1877, as the case may be.

The definitions contained or incorporated in the Land Law (Ireland) Act, 1881, and the County Officers and Courts (Ireland) Act, 1877, shall apply to this Act. (d)

The expression "The Land Law (Ireland) Acts" includes the Landlord and Tenant (Ireland) Act, 1870, the Land Law (Ireland) Act, 1881, Part II. of the Tramways and Public Companies (Ireland) Act, 1883, the Purchase of Land (Ireland) Act, 1885, and any Act amending them.

(a) The definition of "Incumbrance" here given is identical with that contained in Sec. 1 of the Landed Estates Court Act, 1858.

(b) "Trustees for charities entitled to receive the tenants' rents are undoubtedly landlords within the definitions both of the Act of 1881 and the Act of 1870, and it did not require the definition in the Act of 1887 to make them so, but they are a class of landlords who can only make a valid sale either under their instrument of constitution or by virtue of a statutory power. The Legislature subjected them to restrictions which are certainly not expressly repealed. I find it impossible to say that the definition in the Act of 1887 amounts to an implied repeal." (per O'HAGAN, J., *In re Finnegan's Estate*, MacC., at p. 36). As to what these restrictions are, see notes to Land Purchase Act, 1891, Sec. 14, *post*, which enables Trustees for Charities to sell under the Land Purchase Acts, subject to "such consent (if any) as would be required in the case of a sale independently of the said Acts." See also *In re College of Physicians*, 32 L. R. Ir. 341 (C.A.).

(c) For a list of the Acts constituting what is called the Irish Drainage Code, see notes to Land Act, 1870, Sec. 36, *ante*, p. 193; and as to the liability of the lessor's estate for unpaid instalments, see *Whites, Minors*, 25 L. R. Ir. 418 (L.C.), and *Attorney-General v. Ireland*, 15 L. R. Ir. 145 (C.A.); 11 L. R. Ir. 401 (V.C.); *Attorney-General v. Wilson*, 31 L. R. Ir. 28; *Board of Works v. Symes*, 32 L. R. Ir. 598 (C.A.); *Attorney-General v. Fetherstone*, 32 L. R. Ir. 614 (C.A.), and 52 & 53 Vic., c. 71, Secs. 5 & 6.

There is no provision in this Act that it is to be construed as one with the previous Land Acts, like that contained in Sec. 57 of the Land Act, 1881. See, *ante*, p. 843. Nevertheless, it is clear that, in the words of PALLES, C.B., all the Land Acts "must be construed together as one harmonious whole." See his judgment in *Ireland v. Landy*, 22 L. R. Ir., at p. 421, quoted, *ante*, p. 2.

Sect. 35

How this Act is to be construed.

35. This Act may be cited for all purposes as the Land Law (Ireland) Act, 1887.

Short title

SCHEDULE.

FORM OF NOTICE TO BE SERVED AFTER JUDGMENT IN EJECTMENT FOR NON-PAYMENT OF RENT. Schedule
Section 7

In the High Court of Justice in Ireland, Division [or in the Civil Bill
].
Court of the County of
 Between *A.B.* - - - - - Plaintiff;
and
C.D. and *E.F.* - - - - - Defendants.
 To *C.D.* and *E.F.*, &c.

Take notice, that a judgment [or decree] for the recovery of the lands of for non-payment of rent has been recovered by the above-named *A.B.*

And that any person entitled by law to redeem the said lands must do so within a period of six months from the service [or posting] of this notice, and that any person being a tenant or having a specific interest in the tenancy, and desiring to redeem, must pay to *A.B.* [landlord's name], at , or *G.H.* [agent's name] at (a) , or lodge in the Division of the High Court [or with the Clerk of the Peace], the rent, arrears, and costs within the said period of six months. The particulars of the rent and costs are as follows:—[set them out as in the judgment or decree (b)].

On the service [or posting] of this notice, the persons to whom it is addressed, being in possession of any part of the lands, are deemed to be in possession as caretakers] and the service of this notice operates in the same manner as if the judgment [or decree], in ejectment had been executed against them, and as if having been removed from possession, they had been reinstated as caretakers.

Signed by *G.H.* for *A.B.* (c)

Dated, &c.

(a) The notice should specify a place for payment, otherwise it will be invalid *Arthur v. M'Geady*, 32 L. R. Ir. 510: 27 I. L. T. R. 114. See notes to Sec. 7, *ante*, p. 403.

(b) Even though a payment on account may have been subsequently made. See *Kane v. Mulholland*, 29 L. R. Ir. 59. But see, also Land Act, 1896, Sec. 16, *post*, p. 555.

(c) It is not necessary that the agent of the plaintiff should personally sign the notice. It is sufficient if any person authorized by him puts his name to it; the plaintiff may sign in his own name if he has no agent. *Browne v. Kinsella* 24 L. R. Ir. 99. See *ante*, p. 403

LAND LAW (IRELAND) ACT, 1888.
(51 & 52 VICT., CAP. 13.)

AN ACT TO AMEND SECTION ONE OF THE LAND LAW (IRELAND) ACT,
1887, IN REGARD TO LEASEHOLDERS. [28th June, 1888.]

1-2. BE it enacted, &c.

Certain assign-
ments, made
without consent
in writing, to be
valid.
50 & 51 Vic.,
c. 33

1. No application under Section one of the Land Law (Ireland) Act, 1887, made by any person claiming as lessee under a lease containing an agreement restraining or prohibiting assignment shall be disallowed on the ground that such lease has been assigned contrary to such agreement, when the landlord has consented to such assignment, and such consent has been established by evidence satisfactory to the court (b) notwithstanding that such consent has not been given, made, or evidenced in the manner prescribed by the tenth Section of the Landlord and Tenant Law Amendment Act (Ireland), 1860 (a): Provided always, that any person claiming to be lessee under any lease, whose claims shall have been allowed by the Court under this Section, and his executors, administrators, and assigns, shall be estopped in any proceedings whatever from denying that such person was assignee of such lease at the time when his claim was allowed. (c)

23 & 24 Vic.,
c. 154.

For the purposes of this Act the term "assignment" shall include an equitable assignment, and the term "lessee" in Section one of the Land Law (Ireland) Act, 1887, shall include persons entitled to the interest of the lessee under such equitable assignment.

This Act deals only with assignments in violation of covenants or agreements, not with sub-lettings *Smyth v. Edie*, 27 I. L. T. R. 86. As to the latter, see now Land Act, 1896, Sec. 11, *post*, p. 550.

(a) This provision is now extended to the case of leases executed between 1st June, 1826, and 1st May, 1832, not containing a clause authorizing assignments. See Land Act, 1889, *post*; see also as to covenants against assignment generally, notes to L. & T. Act, 1850, Sec. 10, *ante*, pp. 29 35; and to Land Act, 1887, Sec. 1, *ante*, p. 394

(b) Where a landlord had received rent from an assignee direct for a number of years, and had given him receipts in his own name, it was held that there was sufficient evidence of consent to comply with the Section *Stewart v. Wray*, 24 I. L. T. R. 16 (Sub-Com.).

(c) Although the Section enables an assignee to have a fair rent fixed, and

estops him from denying that he is assignee, where no written consent to the assignment has been obtained, yet it does not vest the interest in the lease in him so as to enable a creditor to levy execution against it: *Kavanagh v. Crowley*, 33 L. T. R. 30 (Q. B. D.). **Sects. 1-2.**

2. This Act may be cited for all purposes as the Land Law ^{Shorttitle} (Ireland) Act, 1888; and the Land Law (Ireland) Act, 1887, shall be read as if this Act were incorporated therein.

TIMBER (IRELAND) ACT, 1888.

(51 & 52 VIC., CAP. 37.)

AN ACT TO AMEND THE ACTS RELATING TO THE PLANTING OF TIMBER
TREES IN IRELAND. [13th August, 1888]

BE it enacted, &c.

Sects 1-3,
Amendments in
the Timber
Acts.

1. From and after the passing of this Act, the Act of the session of the Irish Parliament of the twenty-third and twenty-fourth years of the reign of King George the Third, chapter thirty-nine, intituled "An Act to amend the Acts relating to the planting of Timber Trees," shall be amended as follows:—

44 & 45 Vic.
c. 49.

(1) Every tenant of a holding who has a statutory term therein under the Land Law (Ireland) Act, 1881, shall have the same rights and privileges as are conferred by the said Act of King George the Third upon tenants for years exceeding fourteen years unexpired, subject to the conditions imposed by the said Acts.

(2.) The said Act of King George the Third, and the other Acts relating to the planting of timber trees in Ireland, shall extend to and include fruit trees

See the principal Sects. of the Timber Acts, pp 925-929, *Appendix post*; and see also notes to L. & T. Act, 1860, Sec 31, *ante*, pp 62-63.

Amendment of
44 & 45 Vic
c. 46, s 4

2. A tenant of a holding under a lease made for a term certain of not less than thirty-one years, or, in cases of leases made before the first day of August, one thousand eight hundred and seventy, for a term of a life or lives with or without a concurrent term of years, which leases shall have existed for thirty-one years before the making of the claim, shall be entitled to claim compensation under the fourth section of the Landlord and Tenant (Ireland) Act, 1870, in respect of trees planted and registered by him under the provisions of the said Act of King George the Third: Provided always, that no claim may be made under this Act exceeding in amount the value of such improvement at the time the claim is made.

Short title

3. This Act may be cited for all purposes as the Timber (Ireland) Act, 1888.

PURCHASE OF LAND AMENDMENT ACT, 1888.
(51 & 52 VIC., CAP. 49.)

AN ACT FURTHER TO FACILITATE THE PURCHASE OF LAND IN IRELAND
BY INCREASING THE AMOUNT APPLICABLE FOR THAT PURPOSE BY
THE LAND COMMISSION. [24th December, 1888.]

BE it enacted, &c.

1. *Section two, Sub-section (c), of the Purchase of Land (Ireland) Act, 1885, and the Acts amending the same, shall be read and construed as if the words "ten million pounds" were substituted for the words "five million pounds" in the said Sub-section: and* the money required for the purpose of advances under the said Acts as amended by this Act shall be advanced out of the Local Loans Fund, in accordance with the National Debt and Local Loans Act, 1887.*

Sects 1-2
Increase of
limit of
advances by
Irish Land
Commission,
and provision
therefor
48 & 49 Vic
c 73.

2. No advance shall be sanctioned by the Land Commission to any one purchaser (a) of land under the Purchase of Land (Ireland) Act, 1885, or the Acts amending the same, exceeding the sum of three thousand pounds, unless in the opinion of the Land Commission the advance of such larger amount (not exceeding five thousand pounds) is expedient for the purpose of carrying out sales on the estate of the same landlord. (b)

Limitation of
advances
48 & 49 Vic
c 73

The limitation on the amount of an advance hereby imposed is substituted for that of £5,000 provided by the 17th Section of the Act of 1887, now repealed. It applies to cases under the Redemption of Rent Act, 1891, as well as to ordinary sales by agreement. *Gun-Cunningham v. Byrne*, 30 L. R. Ir. 384. (See judgment of BEWLEY, J., at p. 388.) *Roeh v. Mulcahy*, 27 I. L. T. R. 12.

In dealing with large holdings, the price of which would naturally exceed £3,000, it should be remembered that an advance can be made, now, for the purchase of a holding subject to a rentcharge payable to the vendor. (Land Act, 1896, Sec. 36.) The rent, therefore, may be fined down by the amount of the advance the Land Commission can sanction under this Section.

(a) In computing the amount of the advances to one purchaser, an advance made to him as trustee or personal representative of a deceased person is not to be included. (Land Act, 1896, Sec. 30.)

* The portion of this Section in italics is repealed by Land Act of 1896, 2nd Schedule.

Sects 2-7 (b) The words "sales on the estate of the same landlord" include the particular sale in respect of which the advance is sought. *Shaw v. Townshend*, 34 I. L. T. R. 191. In that case an advance of £4,130 was sanctioned, as otherwise the other sales on the estate would have fallen through.

3. (*Repealed by Land Act, 1896, 2nd Schedule. Similar provisions are enacted by Sec. 35 of that Act.*)

Sub-letting

4. Where the Land Commissioners shall after the passing of this Act sanction an advance for the purchase of a holding which is agreed to be sold subject to a sub-tenancy or sub-letting of any kind, they may prescribe such terms as to rent and otherwise with regard to the part sublet as they think fit.

See notes to Land Purchase Act, 1885, Sec. 2, *ante*, p. 369.

5. (*Repealed by Land Purchase Act, 1891, Schedule III.*)

6. (*Repealed by Land Act, 1896, 2nd Schedule.*)

Short title

7. This Act may be cited for all purposes as the Purchase of Land (Ireland) Amendment Act, 1888.

PURCHASE OF LAND AMENDMENT ACT, 1889.

(52 & 53 VIC., CAP. 13.)

AN ACT TO AMEND THE PURCHASE OF LAND (IRELAND) ACT, 1885,
AND THE ACTS AMENDING THE SAME. [24th June, 1889.]

WHEREAS in some cases it is desirable to enable tenants about Sect 1.
to purchase, under the Purchase of Land (Ireland) Act, 1885, and 48 & 49 Vic.
the Acts amending the same, to increase the size of their holdings c. 73
by purchasing additional lands which are reasonable adjuncts to
such holdings:

BE, it therefore enacted, &c.

1. Where the sale of a holding is about to be made (a) by a land- Land Commis-
sion may
advance money
to tenants to
purchase lands
to increase the
size of their
holdings.
lord to a tenant under the Purchase of Land (Ireland) Act, 1885, and
the Acts amending the same, and such tenant is desirous of pur-
chasing additional land which either adjoins such holding or is in
the opinion of the Land Commission under the special circumstances
of the case reasonably required for the suitable and convenient use
and enjoyment of such holding, the Land Commission may, if it
thinks fit, advance to the tenant, for the purpose of purchasing such
additional land, the principal money, to be paid in like manner
as if the purchaser had been tenant of such additional land at the
time of the purchase and was about to purchase the same under the
said Acts, and the provisions of the said Acts shall apply to the
sale of additional land under this Act in like manner as if the
purchaser had been the tenant of such land at the time of the
purchase.

Provided always, that nothing in this Act contained shall
authorize the making to any one tenant of a larger advance than
that which the Land Commission is authorized to sanction to any
one purchaser of land under the Purchase of Land (Ireland) Act,
1885, and the Acts amending the same.

(a) The Land Purchase Act (No. 2), 1901 (1 Ed. VII., c. 30), now provides that this
Act shall apply, with the necessary modifications, where a tenant is desirous of pur-
chasing land, notwithstanding that the sale of his holding is not about to be made
under the Land Purchase Acts. See that Act, *post*, 605-6.

An advance was sanctioned under this Section for the purchase of additional

454 *Purchase of Land Amendment Act, 1889.*

Sects. 1-6 land containing a plantation and a quarry on special terms *Duke of Abercorn's Estate*, 24 I. L. T. R. 85, MacC. 43.

The additional land must either not exceed ten acres or be valued at a sum not exceeding £10 (Sec. 3, *post*).

The powers hereby conferred have been held by Commissioner MacCARTHY not to be retrospective *Earl of Egmont's Estate*, MacC. 44.

Application of
48 & 49 Vic,
c 73, s 6

2. Where the vendor is a tenant for life, or a person having the power of a tenant for life within the meaning of those expressions as used in the Settled Land Act, 1882, such vendor shall have all the powers given to the landlord by Section six of the Purchase of Land (Ireland) Act, 1885, and all the provisions of such Section shall apply to the sale.

This Section shall apply to the trustees of a settlement in the same manner as it applies to a tenant for life.

Additional land
not to exceed
10 acres or £10
a year Govern-
ment value

3. No advance shall be made by the Land Commission to any one purchaser for the purpose of purchasing over ten acres of land under this Act, unless in cases where the land purchased under this Act is valued under the Acts for the valuation of rateable land in Ireland at an annual sum not exceeding ten pounds

Powers to make
rules

4. Rules for carrying this Act into effect shall be deemed to be rules under the Land Law (Ireland) Act, 1881, and shall be made by the Land Commission, and forms and tables shall be made or adapted by the Land Commission for the purposes of this Act.

Construction of
Acts

5. The Purchase of Land (Ireland) Act, 1885, the Land Law (Ireland) Act, 1887, and the Purchase of Land (Ireland) Amendment Act, 1888, except so far as the same respectively are expressly altered or varied by this Act or are inconsistent therewith, and this Act, shall be construed together as one Act.

Short title

6. This Act may be cited for all purposes as the Purchase of Land (Ireland) Amendment Act, 1889.

LAND LAW ACT. 1888. AMENDMENT ACT. 1889.
(52 & 53 VIC., CAP. 59.)

AN ACT TO AMEND THE LAND LAW (IRELAND) ACT, 1888, WITH
REGARD TO LEASEHOLDERS. [30th August, 1889.]

BE it enacted, &c.

1. This Act may be cited for all purposes as the Land Law Sects 1-2
(Ireland) Act, 1888, Amendment Act, 1889. Short title

2. Section one of the Land Law (Ireland) Act, 1888, shall be read and construed as if the words "and no application under the said Section made by any person claiming as lessee under a lease executed after the first day of June, one thousand eight hundred and twenty-six, and before the first day of May, one thousand eight hundred and thirty-two, not containing a clause expressly authorizing and empowering assignment, shall be disallowed on the ground that the consent of the landlord to any assignment of such lease has not been given, made, or evidenced in the manner prescribed by the third Section of the Act passed in the seventh year of the reign of King George the Fourth, chapter twenty-nine, 7 Geo 4, c. 21, s. 3 intitled 'An Act to amend the Law of Ireland respecting the assignment and sub-letting of lands and tenements,' when the landlord has consented to such assignment, and such consent has been established by evidence satisfactory to the court," were inserted therein after the figures "1860."

Certain assignments made without particular consent to be valid 51 & 52 Vic c 11

See notes to Land Act, 1888, *ante*, p. 448; to Land Act, 1887, Sec. 1, *ante*, p. 394; and to Landlord and Tenant Act, 1860, Sec. 10, *ante*, pp. 30-31.

TURBARY (IRELAND) ACT, 1891.
(54 & 55 VIC., CAP. 45.)

AN ACT TO PROVIDE FOR AND REGULATE THE USER BY PURCHASING
TENANTS OF RIGHTS OF TURBARY.* [5th August, 1891.]

BE it enacted, &c.

Sects. 1-2
Purchase of
bog by Land
Commission.

1.—(1.) Where any tenants of holdings on an estate have agreed to purchase their holdings, the Land Commission may, if the land-lord agrees to sell any bog on the estate, purchase the same for the benefit of any tenants or purchasers of holdings on the estate who have been accustomed to exercise, whether as of right or by permission, any privilege of turbary over any bog on the estate, or for the benefit of any other tenants or purchasers of holdings on such estate and of other inhabitants of the neighbourhood.

(2.) The amount of the purchase money and costs shall be defrayed as part of the expenses of the Land Commission, and all sums received by the Land Commission in respect of bogs purchased in pursuance of this Section shall, if directed by the Treasury, be applied as an appropriation in aid of money provided by Parliament for the expenses of the Land Commission, and, so far as not so directed, shall be paid into the Exchequer.

(3.) The Land Commission, before purchasing any bog, shall be reasonably satisfied that they will ultimately realise by means of the bog an amount sufficient to repay the purchase money with interest at the rate of three and one-eighth per centum per annum.

Grant of
privilege of
turbary.

2. Where the Land Commission purchase a bog on an estate, and any tenants or purchasers of holdings on the estate have been accustomed, whether as of right or by permission, to exercise any privilege of turbary, the Commission shall grant them that privilege, subject to the provisions hereinafter contained as to payment, conditions, and regulations, and, so far as such grants shall not extend, may grant privileges of turbary to the tenants or purchasers of holdings on the estate and to other inhabitants of the neighbour-

* Rules were issued under this Act by the Land Commission, on 15th August, 1891. See, *post*, pp. 913-915.

hood, or any of them, and, so far as such grant shall not extend, **Sects. 2-7.** in every case shall require such payments as the Land Commission consider will, after deducting current expenses, pay off with interest the purchase money and costs of purchase, and may make such conditions and regulations as they think expedient as to the exercise of the privileges granted.

3. When the bog or any part thereof is exhausted for purposes Sale of exhausted bog. of turbary the Land Commission may sell the same.

4.—(1.) Where a holding for the purchase of which an agreement Regulations for exercise of rights of turbary has been entered into by a tenant comprises a bog which is subject to a right of turbary exercisable by persons other than the purchaser of the holding, the Land Commission on the prescribed application may make regulations for the purpose of securing that the exercise of the right shall not prevent the future reclamation of the bog, and that such persons shall have reasonable facilities for the exercise of the said rights.

(2.) Any regulations under this Section may provide for the punishment of any breach of them by a fine not exceeding five pounds to be recovered in a court of summary jurisdiction.

5. This Act shall apply where holdings have been purchased Application of Act. 32 & 33 Vic. c. 42. whether before or after the commencement of this Act, under any of the Land Purchase Acts, or under the Irish Church Act, 1869: Provided that, where a holding subject to a right of turbary has been purchased before the commencement of this Act, the regulations under this Section shall be made only on the application of the proprietor of the holding.

6. In this Act—

Definitions.

- (1.) "Land Purchase Acts" means the Landlord and Tenant (Ireland) Act, 1870 (Parts II. and III.); the Land Law (Ireland) Act, 1881 (Part V.); the Purchase of Land (Ireland) Act, 1885; the Purchase of Land (Ireland) Amendment Act, 1888, and any Act amending the same.
- (2.) "Estate" means any lands belonging to one landlord which the Land Commission may declare form a separate estate for the purposes of this Act.
- (3.) Other expressions have the same meanings respectively as in the Land Purchase Acts.

7. This Act may be cited as the Turbary (Ireland) Act, 1891. Short title.

PURCHASE OF LAND (IRELAND) ACT, 1891.

(54 & 55 VICT, CAP. 48.)

AN ACT TO PROVIDE FURTHER FUNDS FOR THE PURCHASE OF LAND IN IRELAND, AND TO MAKE PERMANENT THE LAND COMMISSION; AND TO PROVIDE FOR THE IMPROVEMENT OF THE CONGESTED DISTRICTS IN IRELAND. [5th August, 1891]

BE it enacted, &c.

PART I.

Land Purchase and Land Commission.

Sect. 1
Advances by
guaranteed land
stock

1.—(1) Every advance under the Land Purchase Acts as amended by this Act after the commencement of this Act, except as hereinafter mentioned, shall be made by the issue of a sum of guaranteed land stock equal in nominal amount to the advance; such stock, as between vendor and purchaser of the holding purchased, shall be accepted by the vendor as equal in value to the nominal amount thereof. (a)

(2) Such stock shall be a capital stock, consisting of annuities yielding dividends at the rate of two pounds fifteen shillings per cent. per annum on the nominal amount of the capital, payable by equal half-yearly payments on the first days of July and January, and after thirty years from the commencement of this Act, and not before, shall be redeemable in accordance with Sub-section two of Section two of the National Debt Conversion Act, 1888, as if it were stock redeemable under that Section; and for the purpose of such redemption of any stock, at or before the expiration of the term of forty-nine years from the time of the issue of such stock, a Sinking Fund shall be established by means of an annual sum at the rate of one per cent. on the nominal amount of the capital, payable in equal half-yearly payments.

51 & 52 Vic.
c 2

(3.) The said dividends and payments to the Sinking Fund shall be paid out of the Land Purchase Account hereinafter mentioned, and, if that is insufficient, shall, to the extent of the deficiency, be paid as a temporary advance out of the Consolidated Fund, and every such advance shall be repaid to the Consolidated Fund out of the Guarantee Fund as provided by this Act.

This Section does not apply to cases where the advance has been sanctioned under the Acts of 1885 and 1887, before it was passed *M'Kelvey's Estate*, Fitzgibbon, Irish Land Reports, 90. **Sects. 1-3**

(a) The trustees of any incumbrance, charge, annuity, or rent, may also, at their discretion, accept land stock at its par value in lieu of cash (see Sec. 15, Sub-sec. 3, of this Act, *post*). And tithe rentcharges and head rents payable to the Land Commission may be redeemed by land stock at its par value (Sec. 17). But head rents and incumbrances must still be redeemed in cash, unless the persons entitled to the redemption money consent to take land stock in lieu thereof. See notes to Sec. 20, *post*.

Guaranteed land stock may be converted into consols, if the holder so desires (Sec. 15, Sub-sec. 2, *post*).

2. Where a person liable to pay a purchase annuity either—

a. Redeems the annuity or any part thereof; or

b. Pays on a gale day or within fourteen days thereafter the instalment due on that gale day;

Payment by purchaser of Sinking Fund payments in guaranteed land stock

the payment of the redemption money, or, as the case may be, of one-fourth of the instalment, may be discharged by the prescribed transfer to the National Debt Commissioners of an equal nominal amount of guaranteed land stock, and such transfer may be made through the medium of a post office savings bank in the prescribed manner.

3. If at any time after guaranteed land stock to a nominal amount of not less than ten million pounds has been issued, the Treasury are of opinion, having regard to the average market price of the said stock for the period, not less than twelve months, then immediately preceding, that the market price of a like stock, but bearing dividends at the rate only of two pounds ten shillings per cent. per annum on the nominal amount of the capital, would be one hundred pounds cash for an equal nominal amount of stock, they shall cause notice to be given that after the date specified in the notice the following provisions will apply, and the same shall apply accordingly; that is to say,—

Power to issue two and a half per cent guaranteed land stock

- a. The guaranteed land stock issued for advances under any agreement made subsequently to the said date shall yield dividends at the rate only of two pounds ten shillings per cent. per annum on the nominal amount of the capital;
- b. The annual sinking fund payment on stock issued for such advances shall be at the rate of one pound two shillings per cent. on the nominal amount of the capital;
- c. The county percentage shall continue to be at the rate of five shillings per cent. per annum on such advances;

Sect. 4.

- d.* The purchase annuity for the repayment of any such advance shall be at the rate of three pounds seventeen shillings per cent. instead of four pounds per cent. per annum on the advance;
- e.* The provisions of this Act with respect to guaranteed land stock, and the dividends thereon, and the sinking fund payments for the same shall apply to stock issued for such advances, with the substitution of the last-mentioned amount of dividends and sinking fund payments for those mentioned in such provisions.

Establishment of
a Land Purchase
Account.

4. —(1.) The Land Commission shall establish a Land Purchase Account and under the prescribed rules carry thereto and apply as follows all moneys received on account of any purchase annuity for the discharge of an advance

(2) All sums so carried in respect of the current half-yearly instalments of the annuity shall be applied in the following order:

a. In paying the dividends and Sinking Fund payments on an amount of guaranteed land stock equal to the amount of the advance; and

*b.** *In paying to the Guarantee Fund an annual sum (in this Act referred to as the county percentage) at the rate of five shillings for every hundred pounds of the advance; and the whole or any part of such percentage not required for the purposes of the Guarantee Fund shall be paid out of that fund to the Local Taxation (Ireland) Account and applied towards the cost of providing labourers' cottages under the Labourers (Ireland) Acts, 1883 to 1886, in the county in which is situate the holding charged with the annuity, on such terms and conditions and subject to such regulations as the Lord Lieutenant thinks expedient; save that, where it appears to him, on the representation of the Local Government Board, that the whole or any part of such percentage cannot with advantage be so applied, he may order the same to be applied as if it were part of the share of the county in the Irish probate duty grant, and he may for the purposes of this Section withhold or suspend the distribution of the whole or part of the said percentage when paid to the Local Taxation (Ireland) Account.*

(3.) All sums carried to the account in respect of arrears of the

* The portion of this Section in italics is repealed by Land Act, 1896, 2nd Schedule. See Sec. 27 of that Act, *post*.

purchase annuity, whether paid by the proprietor of the holding, or from the guarantee deposit, or from the proceeds of the sale of a holding, or from any other source, shall be paid to the Guarantee Fund; provided that where a sum is applicable out of the guarantee deposit for the discharge or reduction of an irrecoverable debt, one-half only of the amount so applicable shall be paid out of the guarantee deposit to the Land Purchase Account; (a) and such one-half shall be carried to the Land Purchase account out of the guarantee deposit immediately on any sum due to the Land Commission in respect of an advance secured by a guarantee deposit having been declared an irrecoverable debt. Sums carried to the Guarantee Fund under this Sub-Section shall be applied in the same manner, subject to the provisions of this Act as to guarantee, and subject to the prescribed regulations, as the sums carried to the Land Purchase Account in respect of the current half-yearly instalments.

Sects. 4-5.

(4.) All sums carried to the account in respect of the redemption of the purchase-annuity, whether received from the proprietor of the holding, or upon the sale of the holding, or from the guarantee deposit, and also (save as otherwise provided by or in pursuance of this Act) all other moneys carried to the Land Purchase Account, shall be paid to the Sinking Fund.

Provision has been made for carrying this and the subsequent Sections into effect by Treasury Rules, dated 26th February, 1892.

(a) Under this Sub-section the guarantee deposit would only seem to be liable to one-half of the particular deficiency on any one half-yearly instalment. For definition of an "irrecoverable debt" see Sec. 3 of Land Purchase Act, 1885, p. 370, *ante*, and Sec. 13 of Land Law Act, 1887, p. 418, *ante*.

5.—(1.) There shall be established a Guarantee Fund under the direction of the Treasury, consisting of a cash portion and a contingent portion, and in every financial year there shall be paid to the Fund—

Establishment
of Guarantee
Fund

a. In respect of the cash portion of the Fund—

- (i.) the Irish probate duty grant; and
- (ii) a sum of forty thousand pounds, which shall in every financial year be paid out of the Consolidated Fund (in this Act referred to as the Exchequer contribution); and
- (iii.) the county percentage; and

b. In respect of the contingent portion of the Fund, if and when and to the extent required in pursuance of this Act,—the

Sect. 5

Irish share of the local taxation (customs and excise) duties and the following local grants, that is to say, grants—

- (i.) for rates and contributions in lieu of rates on Government property in Ireland;
- (ii.) for the expenses of the Commissioners of National Education in Ireland under the accounts headed "Model Schools" and "National Schools";
- (iii.) in aid of the maintenance of children in industrial schools in Ireland;
- (iv.) in aid of the salaries of schoolmasters and schoolmistresses in workhouses in Ireland, of the salaries of medical officers of workhouses and of dispensaries in Ireland, and of the cost of medicines and medical and surgical appliances in Ireland, and of the salaries of officers appointed or constituted under the Public Health (Ireland) Act, 1878; and
- (v.) in aid of the cost of maintenance of pauper lunatics in district asylums in Ireland;

41 & 42 Vic.,
c. 52.

and the several sums constituting the cash portion and the contingent portion respectively of the Guarantee Fund shall be applicable to the purposes of that Fund in the order specified in this Section.

(2.) The cash portion of the Guarantee Fund, so far as not required in any financial year for meeting charges on the Fund, shall, subject to the provisions of this Act with regard to the county percentage, be applied as follows, that is to say,—

a. The Irish probate duty grant shall be paid to the Local Taxation (Ireland) Account, and applied in manner provided by Section three of the Probate Duties (Scotland and Ireland) Act, 1888.

51 & 52 Vic.
60.

b. The Exchequer contribution shall be carried to a Reserve Fund until a sum of two hundred thousand pounds has been so carried; and so far as not required for that purpose shall be paid to the Local Taxation (Ireland) Account; and the share of the municipal boroughs to which this Act does not apply, shall be ascertained and applied as if it were part of the Irish probate duty grant; and the residue shall be divided between the counties as nearly as may be in the proportion of the shares of the counties in the Irish probate duty grant; and such residue shall be applied towards the cost of providing labourers' cottages in the several counties under the

Labourers (Ireland) Acts, 1883 to 1886, on such terms and conditions and subject to such regulations as the Lord Lieutenant thinks expedient (a) save that where it appears to him, on the representation of the Local Government Board, that the whole or any part of such residue applicable to any county cannot with advantage be so applied, he may order the same to be applied as if it were the share of the county in the Irish probate duty grant.

Sects 5-6
46 & 47 Vic,
c. 60
49 & 50 Vic
c. 59

(3.) The money paid to the cash portion of the Guarantee Fund shall from time to time during every financial year, so far as not required to meet the charges on the fund already accrued, be forthwith paid to the Local Taxation (Ireland) Account.

(a) The power conferred by this Sub-section is extended to making regulations for defraying costs incurred in providing labourers' cottages. Land Act, 1896, Sec. 39.

6.—(1.) If the Land Purchase Account is at any time insufficient to meet the dividends and Sinking Fund payments, the deficiency shall be a charge on the Guarantee Fund, and, subject to such subsequent adjustment of charge between the several counties as hereinafter mentioned, shall be paid thereout to the Land Purchase Account, or, so far as the deficiency has been paid out of the Consolidated Fund, to that Fund.

Making up
of deficiency
of Land
Purchase
Account by
guarantee fund
or a levy on
county.

(2.) If the cash portion of the Guarantee Fund is at any time insufficient to pay all such charge, the Treasury shall send to the Lord Lieutenant a notice stating the sum required to meet the remainder of the charge and the date for its payment, and if the Lord Lieutenant before that date, or such later date as on his application the Treasury may allow, does not pay to the Guarantee Fund from the Local Taxation (Ireland) Account, the said sum, with interest at the rate of three per cent. per annum, or such other rate as the Treasury may fix, from the date of the notice, the Treasury shall order such sum and interest to be paid to the Guarantee Fund out of the local taxation (customs and excise) duties and local grants forming the contingent portion of the Fund, and, subject to such subsequent adjustment of charge between the several counties as hereinafter mentioned, such sum and interest shall be deducted from the said duties and grants, and the Treasury by their order shall make such provision as seems to them necessary or proper for carrying the order into effect, and the order shall be duly observed.

(3.) The Lord Lieutenant shall raise the said sum and interest,

Sect. 6.

and also any sum which, upon any adjustment under this Act of a charge between the counties, is charged against a county in excess of the share of the county in the cash portion of the Guarantee Fund, by a levy upon the county liable; and for that purpose he shall send to the secretary of the grand jury (a) of the county a requisition for the payment of the sum therein named within such period therein mentioned, as the Lord Lieutenant, with the consent of the Treasury, thinks reasonable. The requisition shall be laid before the grand jury (a) at the next assizes, and the grand jury (a) shall, without any previous proceeding at any presentment sessions, present the sum payable in pursuance of the requisition, together with such further sum as will defray the costs of collection at the ordinary rate, to be levied off the county at large, and in default of such presentment the judge of assize shall order the sum to be raised, and such order shall have the force of a presentment; and the county treasurer shall out of the first moneys which he receives in respect of any presentment made at those assizes, pay the sum required into the Local Taxation (Ireland) Account, to be there placed to the credit of the county, and any sum paid out of moneys not levied under this Section shall be replaced out of moneys so levied.

(4.) A charge on the Guarantee Fund shall, as between the counties, be adjusted and be borne by such county and in such manner, and the burden as between the local authorities and persons in the county shall, subject to the provisions of this Act, be adjusted and borne in such manner, as may be provided by regulations of the Lord Lieutenant made with the consent of the Treasury, and the benefit of any sum repaid to the Guarantee Fund from the Land Purchase Account shall be adjusted, in accordance with as nearly as may be the mode in which the burden of originally paying such sum was borne.

(5.) The share of a county in the Guarantee Fund or any portion thereof for any purpose of this Act shall be ascertained by the Lord Lieutenant in accordance with the regulations under this Section, and the regulations shall provide for apportioning the Guarantee Fund in the proportion in which the Irish probate duty grant and the local taxation (customs and excise) duties and the local grants are distributable among the local authorities and persons in each county on the basis of the financial year in which the apportionment is made, and shall provide for the share to be assigned to any county where the benefits of any school or lunatic

asylum are not confined to the county in which the school or asylum is situate, or where parts of a poor law union or other area are situate in more than one county. Sects 6-9.

(6.) All questions which arise as to the share of any county, local authority, or person, in any fund or sum dealt with in this Act, or as to the rights or burdens of any county or local authority or person in respect of payments out of the Guarantee Fund or the Local Taxation (Ireland) Account, shall be determined by the Lord Lieutenant, and his decision shall be final.

(a) The fiscal duties of the Grand Juries are now transferred to the County Councils by the Local Government Act, 1898. Under the Adaptation of Irish Enactments Order, 1899, made by the Local Government Board under the powers conferred by Sec. 105 of that Act, the words "County Council" must be substituted for "Grand Jury" wherever they occur in this Section.

7. Notwithstanding anything in the Land Purchase Acts or this Act, any advance made after the passing of this Act, which shall not exceed three-fourths of the price paid for a holding, shall be repaid by an annuity of three pounds seventeen shillings and sixpence per cent. on the amount of such advance for forty-nine years; and an annual sum, at the rate of two shillings and sixpence for every hundred pounds of the advance, shall be paid and applied in the same manner as the county percentage mentioned in Section four of this Act.* Advance of three-fourths of purchase money.

8. (*Repealed by Land Act, 1896, 2nd Schedule, "save as respects any purchaser's insurance money paid before the commencement of this Act." See also Sec. 28 of that Act, post.*)

9.—(1.) Advances under the Land Purchase Acts as amended by this Act, in addition to the amount of ten million pounds authorized by the Land Purchase Acts, 1885 and 1888, may be made by the issue of guaranteed land stock to the amount from time to time required by the Land Commission, but such advances for the purchase of holdings in any county shall not, except in so far as is hereafter provided, exceed twenty-five times the share of the county in the Guarantee Fund; and the Treasury, when of opinion that the advances made for the purchase of holdings in any county approximate to this limit, shall certify their opinion to the Lord Lieutenant, who shall forthwith ascertain, on the basis of the preceding financial year, the share of each county in the Guarantee Fund. Limitation of advance.

* The portion of this Section in italics is repealed by Land Act, 1896, 2nd Schedule.

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(2.) The Treasury, in communication with the Lord Lieutenant, may authorize, by order, additional advances in the county, not exceeding the capital value for the time being of that part of the Sinking Fund which has been accumulated out of the Sinking Fund payments paid out of purchase-annuities, or out of payments for the redemption of purchase-annuities, in the county, and such capital value shall include the capital of any guaranteed land stock redeemed by the said payments.

(3.) So long as any money authorized to be issued under the Land Purchase Acts, 1885 and 1888, remains available for advances under those Acts, an advance may be made, out of the money so available, in any case where the landlord and tenant so agree, and every such advance and the repayment thereof shall in all respects be subject to the provisions of the Land Purchase Acts as if this Act had not passed.

(4.) An advance shall not be made under the Land Purchase Acts, as amended by this Act, for the purchase of any holding for the purchase of which advances have been made under the Land Purchase Acts, whether before or after the passing of this Act, and whether under this Act or otherwise, until the entire annuity for the repayment of such advances has been paid or redeemed. (a)

(5.) Where it appears to the Treasury that the payment of annuities in any county has fallen into arrear, and that there is probability that the share of the county in the cash portion of the Guarantee Fund will be annually exhausted in meeting the deficiency of the Land Purchase Account, they shall certify the same to the Lord Lieutenant, and the Lord Lieutenant shall thereupon direct the Land Commission to cease making advances in such county, until the Treasury shall notify to the Lord Lieutenant that, in their opinion, the advances may again be safely resumed.

The total amount available for advances under this Act has been estimated at £33,000,000. The limit provided by Sub-sec. 1 with respect to advances in any particular county may now be exceeded on the certificate of the Lord Lieutenant. See Land Purchase Act, 1901, Sec. 1, *post*, p. 605.

(a) The effect of this Sub-section would seem to be to prevent the making of more than one advance in respect of any parcel of land whether held from a landlord who is owner in fee-simple, or from a landlord who is a lessee or fee-farm grantee. See *Parnell v. Brownrigg*, 23 I. L. T. R. 56

Glebe tenants.
§2 & §3 Vic.
c 42

10. Notwithstanding anything in Section fifty-two of the Irish Church Act, 1869, when the Land Commission, as representing the late Commission of Church Temporalities in Ireland, sell any land

in pursuance of the Irish Church Act, 1869, to the occupying tenants thereof, the sale may be deemed to be a sale under the Land Purchase Acts as amended by this Act, and in such case shall be carried out accordingly. Sects 10-11

11.—(1.) The Lord Lieutenant shall, within one year from the passing of this Act, ascertain as nearly as may be and declare as regards each county the proportion between the total number of agricultural and pastoral holdings for the purchase of which advances may be made under this Act, and the number of such holdings of a rateable value exceeding fifty pounds. Allocation of the sum available for purchase in proportion to the value of holdings

(2.) The Land Commission, in making advances under this Act, shall have regard to such proportion, so that as far as practicable the total amount advanced under this Act for the agricultural and pastoral holdings the rent of which exceeds fifty pounds each in any county, as compared with the total amount advanced under this Act in the county, shall not exceed the above proportion, except where in the opinion of the Land Commission an advance to a tenant of any of such holdings is necessary for carrying into effect sales of other holdings, the rent of which does not exceed fifty pounds each, on the estate of the same landlord.

(3.) *a.* If the advances applied for (and which appear to the Land Commission likely to be sanctioned) for the purchase of holdings exceeding fifty pounds rental fall short in any year of the proportion of the annual share of the county in the guarantee fund ascertained in accordance with sub-sections (1) and (2) of this Section with reference to the class of holdings exceeding fifty pounds valuation, the difference shall be carried to a common fund to be available for the purchase of any holding within the county for the purchase of which advances may be made under this Act.

b. If the advances applied for (and which appear to the Land Commission likely to be sanctioned) for the purchase of holdings not exceeding fifty pounds rental fall short in any year of the proportion of the annual share of the county in the guarantee fund ascertained in accordance with Sub-sections (1) and (2) of this Section with reference to the class of holdings not exceeding fifty pounds valuation, the difference shall be carried to a common fund to be available for the purchase of any holding within the county for the purchase of which advances may be made under this Act.

c. Returns shall be published by the Land Commission at the

Sects. 11-12. end of each financial year in at least two newspapers circulating in each county setting out the amount (if any) carried to the common fund under the provisions of this Sub-section in the preceding year, and the class of holdings in respect of which such amount has been so carried.

d. In sanctioning advances out of such common fund the Land Commission shall give the preference, so far as is practicable, to applications which would have been sanctioned earlier but for the proportions fixed as aforesaid having prevented such applications being sanctioned.

(4.) Nothing in this Section contained shall invalidate any advance hereafter actually made.

Reference to
Privy Council of
objections to
Lord Lieutenants'
decision.

12.—(1.) Not less than one month before a decision of the Lord Lieutenant as to the share in any fund or sum or the rights or burdens of any county, local authority, or person, in respect of payments out of the Guarantee Fund or the Local Taxation (Ireland) Account is finally given, notice of the proposed decision shall be published in the "Dublin Gazette," and in at least one newspaper circulating in each county concerned, and if during such month any authority or person interested sends to the Lord Lieutenant an objection to the proposed decision, in writing, stating the reasons for the same, then such objection shall be referred to the Privy Council, and after hearing the objector and any other authority or person, if such objector, authority, or person appears to the Privy Council to be interested and desires to be heard, and after hearing what is offered on behalf of the Crown, the Privy Council shall advise the Lord Lieutenant thereon, and the decision of the Lord Lieutenant shall be suspended until the advice is given, and shall be in accordance with such advice.

(2.) The Privy Council may order costs, on a scale to be settled by the Lord Chancellor, to be paid by or to the objector or by or to any authority or person appearing or cited to appear, including the Crown.

(3.) The Section shall apply, with the necessary modifications, to a declaration by the Lord Lieutenant as to the proportion between the total number of holdings and those of a rateable value exceeding fifty pounds, and in that case any ten persons whose position (whether as vendors or purchasers) as respects advances under this Act may be affected by the declaration, shall be deemed to be pecuniarily interested.

13.—(1.) Where the tenancy of a holding has been determined since the first day of May one thousand eight hundred and seventy-nine, and the former landlord or his successor in title is in occupation of the holding, it shall be lawful for the former landlord or his successor in title, within six months of the passing of this Act, to enter into an agreement under the Land Purchase Acts, or the said Acts as amended by this Act, for the sale of the holding to the former tenant or his personal representatives.

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Purchase by tenants formerly in possession of holdings

(2.) An advance for such purpose may be made by the Land Commission, in the same manner and subject to the same conditions as if the purchaser was at the date of the agreement in possession of the holding as tenant, and thereupon all the provisions of the Land Purchase Acts as amended by this Act shall apply to such agreement and advance.

(3.) If the Land Commission are of opinion that the holding would be sufficient security for the advance but for its having become temporarily deteriorated in value, they may make the advance upon the purchaser, providing such security as they may deem sufficient to meet any risk arising from such temporary deterioration.

The time limited by this Section expired on the 5th February, 1892. But the Section itself was re-enacted by 50 Vic., c. 4, for a period of six months from 5th September, 1895; and again re-enacted by Land Act, 1896, for a further period of twelve months, which expired on the 15th August, 1897. There appears, however, to be nothing to prevent a landlord, who has evicted a tenant, from reinstating him at any time under Sec. 20 of the Land Act, 1881, for the purpose of a sale in the ordinary way; or the parties may agree to a new tenancy specially created to enable them to carry out a sale under the Acts. It would appear from the judgment of Commissioner MacCARTHY, in *Egmont's Estate*, that such an arrangement, if *bona fide* made, will be sanctioned. "It may be objected," says he, in reference to the tenancy in that case, "that the tenancy was created *ad hoc*, and only for the purpose of the sale; but it was within the right of the parties to create a tenancy *ad hoc*, and it is our duty to recognise it." MacCARTHY, *Leading Cases in Land Purchase Law*, at p. 47. But there must be a real tenancy created: *Ryland's Estate*, 27 I. L. T. R. 72; *Goodbody's Estate*, 32 I. L. T. R. 87, 1 Greer 35.

Tenancies created for the purpose of sales.

14. Any persons entitled to an estate as trustees for sale, or trustees with a power of sale, and any body corporate, trustees for charities, commissioners, or trustees for collegiate or other public purposes, shall have the same power of selling under the Land Purchase Acts, as amended by this Act, as if they were private individuals, subject nevertheless to the provisions of the said Acts respecting the disposal of the purchase-money, and subject also to

Persons entitled as landlord to sell under Act.

Sects 14-15

such consent (if any) as would be required in the case of a sale independently of the said Acts.

See Land Act, 1870, Secs. 26 & 33, *ante*, Land Act, 1881, Sec. 25, *ante*, and Land Act, 1887, Sec. 34, *ante*, which confer similar powers. The necessity for the present Section would appear to arise from the fact that advances under the present Act are not made in cash, but in guaranteed land stock, and a question might arise as to the right of trustees to accept this stock at its par value. See the provision in reference to trustees of an incumbrance, Sec. 15 (3), *post*.

Sales by trustees
for charities.

Trustees for charities "can only make a valid sale either under their instrument of constitution, or by virtue of a statutory power." Per O'HAGAN, J., *Finnegan's Estate*, MacC., L.C., in Land Purchase Law, at p. 36.

Sales by trustees of charity property to tenants or other persons can be carried out in four different ways.—

(1.) Under Sir Samuel Romilly's Act (52 Geo. III., c. 101) the sanction of the Chancery Division may be obtained in Chambers. See Rules of Supreme Court, Order 55, Rule 3 (16).

(2.) By obtaining the sanction of the Commissioners of Charitable Donations and Bequests under the 14th Section of 30 & 31 Vic., c. 54, which empowers the Commissioners to authorize a sale of charity property, if on inquiry they are satisfied that such a sale would be advantageous to the charity.

(3.) By sale in the Landed Estates Court under Sec. 32, 33 & 34 of the Land Act, 1870; or

(4.) By adopting the method prescribed by the Lands Clauses Consolidation Acts in cases of sales by agreement made by persons under disability, *i.e.*, by having a valuation made by two surveyors, and paying the purchase money into court, if it exceeds £200. This course is sanctioned by the 25th Section of the Land Act, 1881, but is seldom adopted.

Where trustees of a charity endeavoured to sell to their tenants under the Land Purchase Acts, without adopting any of these courses, O'HAGAN, J., held that they could not make a valid title. *Finnegan's Estate*, MacC. 29. This decision was followed and adopted by the Court of Appeal. *In re College of Physicians*, 32 L. R. Ir. 341.

Miscellaneous
and supplemental.
31 & 34 Vic.
c. 71.

15.—(1.) The guaranteed land stock shall, from time to time as required for the purposes of this Act, be created by the Treasury, and issued by the Land Commission in the prescribed manner, and the National Debt Act, 1870, shall, but without creating any further charge on the Consolidated Fund, apply to the stock as if it were described in the First Schedule to that Act, and the Treasury may declare that the stock shall be subject to Part Five of that Act, and the stock shall be deemed to be Government stock within the meaning of the Savings Banks Act, 1880, and the Savings Banks Act, 1887.

43 & 44 Vic.
c. 36
50 & 51 Vic.
c. 40

(2.) All persons, including the National Debt Commissioners, shall have the like power of investing in the said stock as they have in consolidated annuities, and the National Debt Commis-

sioners shall also, within the limits fixed by the Treasury in communication with them, give on application consolidated annuities in exchange for an equal nominal amount of guaranteed land stock.

(3.) The trustees of any incumbrance, charge, annuity, or rent may at their discretion (notwithstanding any general prohibition of investment in securities not mentioned in the instrument creating the trust) accept in payment of such incumbrance or charge, or the capital value of such annuity or rent, guaranteed land stock as equal in value to the nominal amount thereof.

(4) Where any holdings on an estate are sold by the Land Judge to the tenants thereof or to the Land Commission, the Land Judge may accept, in payment of the purchase money, guaranteed land stock as equal in value to the nominal amount thereof.

(5.) Rules of the Treasury shall provide for the consolidation of the said stock and for the commencement of the dividends on stocks issued for an advance, and for the payment of interest at the like rate as the dividends for the period between the advance and the commencement of the dividends, and such interest shall be paid out of the Land Purchase Account, and if need be the Consolidated Fund and Guarantee Fund, as if it were part of the dividends.

(6) The payments to the Sinking Fund, including the purchaser's insurance money, shall be paid to the National Debt Commissioners, who shall apply and invest the same and the income thereof for the purposes of this Act in the prescribed manner.

(7) Subject to the prescribed regulations the cash portion of the Guarantee Fund, and the Reserve Fund, may be used for temporary advances to the Land Purchase Account, or for other current purposes connected with the administration of this Act, and the Reserve Fund shall, so far as not so used, be invested, and the income shall form part of the Fund.

(8.) The payment directed by Section one of the Probate Duties (Scotland and Ireland) Act, 1888, shall be made as if the Guarantee Fund under this Act were substituted for the Local Taxation (Ireland) Account. ^{51 & 52 Vic. c. 60}

(9.) All sums directed or authorized by this Act to be paid out of the Consolidated Fund shall be charged on and issued out of that Fund or the growing produce thereof at such times as may be prescribed, and, if none are prescribed, as the Treasury direct.

(10.) The Treasury may cause such adjustments to be made between the Sinking Fund, inclusive of the purchaser's insurance

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money, the Land Purchase Account, the Guarantee Fund, the Guarantee Deposit, and the Reserve Fund, and such payments to be made from one Account or Fund or one portion of an Account or Fund to another, and sums to be placed to such credit, and such securities to be sold or bought as may be necessary for the purpose of carrying into effect this Act or the rules

(11.) The issue of guaranteed land stock to the prescribed names or accounts shall be equivalent to the advance and payment of the purchase money, and to the retention by the Land Commission of any sum as a guarantee deposit, and all the provisions in the Land Purchase Acts relating to purchase money and guarantee deposit respectively shall apply to guaranteed land stock so issued; and the interest payable on any guarantee deposit, where an advance is made under this Act, shall, until the guarantee deposit is otherwise invested in pursuance of the Land Purchase Acts as amended by this Act, be at the rate of two pounds fifteen shillings per cent. per annum instead of three per cent. (a)

(a) As to investments of Guarantee Deposits, see Sec. 10 of Land Law Act, 1887, p. 416, *ante*, and Sec. 23 of this Act, *post*, p. 479.

Amendment of 30 & 51 Vic., c. 33, s. 20, as applied to advances under this Act.

16. In the application of Section twenty of the Land Law (Ireland) Act, 1887, to advances made under this Act, the said Section shall be construed as if the word "three" were substituted for the words "three and one-eighth," and the interest in the said Section mentioned shall be deemed for the purposes of this Act to be part of the purchase annuity, save that no portion thereof shall be payable to the Sinking Fund.

Application of guaranteed land stock, in sale proceedings, for redemption of certain charges payable to Land Commission

17. In the course of any sale proceedings, if it shall appear to the Land Commission that any tithe rentcharge or head rent payable to them is redeemable out of the purchase-money, and may be redeemed without injury to, and without waiting to ascertain, the priority of any other charge, the Land Commission may, on the application of the landlord, order the redemption of the said tithe rentcharge or head rent, by transferring to the Land Commission, on account of the Irish Church Temporalities Fund, guaranteed land stock to the nominal amount payable in respect of such redemption, or pending redemption may transfer to the separate account of the said rentcharge or head rent, the said amount of guaranteed land stock, and, until such redemption, the interest on the said stock shall be paid to the Land Commission

on account of the Irish Church Temporalities Fund; and the National Debt Commissioners, on request, shall, out of moneys in their hands under this Act applicable to the Sinking Fund, purchase the guaranteed land stock so held on account of the Irish Church Temporalities Fund at a price equal to its nominal amount. Sects 17-19.

See as to redemption of tithe rentcharge, generally, Land Act, 1887, Sec. 15, *ante*, and notes thereto, p. 422.

18. When any land, being settled land within the meaning of the Settled Land Act, 1882, is sold under the Land Purchase Acts, as amended by this Act, and such land is subject to any instalment mortgage created under the provisions of the fifty-second Section of the Irish Church Act, 1869, or to any land improvement charge or drainage charge, or to any instalment or annuity payable in respect of the purchase of any tithe rentcharge, under the Irish Church Act, 1869, or the Irish Church Amendment Act, 1872, it shall be lawful for the trustees of such settled land, or other person to whom the purchase money thereof is payable, to apply the same in the redemption of any such instalment mortgage, charge, instalment, or annuity, as aforesaid, or such part of same as may at the time of such sale be apportioned in respect of the land sold. On sale of settled land purchase money may be applied to redemption of certain terminable charges

Power was conferred by the 21st Sec. of the Settled Land Act, 1882, to invest capital money in the redemption of rentcharges payable out of the settled land; but this was held not to apply to *terminable* rentcharges. *Knatchbull's Settled Estate*, 29 Ch. Div. 538. The Settled Land Act, 1887, however, authorized the investment of capital money in the redemption of terminable rentcharges created with the object of paying off moneys advanced for the expenses of any improvement authorized by the Settled Land Acts. This was held to include rentcharges payable to the Board of Works under the Irish Drainage Acts. *In re Navan and Kingscourt Railway*, 21 L. R. Ir. 369 (M.R.). But in the case of instalments of the purchase money of tithe rentcharge a difficulty arose prior to the passing of this Act, which is now removed by this Section. See *In re Leinster's Estate*, 23 L. R. Ir. 152; see also Settled Land Act, 1882, Secs. 21 & 22, App., *post*.

19.—(1.) Where the land comprised in a holding sold to a tenant is settled land within the meaning of the Settled Land Acts, 1882 to 1890, and the purchase money for such holding is received by the trustees of the settlement, those trustees, according to such direction and subject to such consent (if any) as is required by the Settled Land Acts, 1882 to 1890, may in their discretion invest the money not only on any security authorized by the Settled Land Acts, 1882 to 1890, but also in any other securities (b) the investment in which is consented to by the person who, next after the then tenant for life and his or her wife or husband, is entitled to Extended investment of purchase money of holding.

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the money for his life or for any greater interest, (a) and, if such person is under disability, the consent may be given in manner provided by Section seventy-three of the Landed Estates Court Act.

(2.) Where the persons so entitled are trustees (c) they may give the said consent without incurring any liability, and may give it before the agreement for sale is made, and where the persons so entitled are entitled as tenants in common, a majority of the persons representing more than half the value of the whole of the property of such tenants in common may give the said consent.

(3.) In the case of settled land, if there are no trustees of the settlement, trustees may be appointed under the Settled Land Acts, 1882 to 1890, before any such agreement for sale is made, (d) and the trustees of the settlement may, before any such agreement for sale is made, consent to the securities in which money arising from any sale is to be invested.

(4.) This Section shall not authorize an investment in any security specifically forbidden by the settlement, unless such investment be authorized by the Settled Land Acts, 1882 to 1890, but shall have effect notwithstanding any general prohibition of investing in securities not mentioned in the settlement.

Sub-sec 1, what consents necessary

(a) For the exercise of the extensive power of investment conferred by this Sub-section, three distinct consents are required, namely, those of (1) The trustees of the settlement, (2) The tenant for life, and (3) *Some other person or persons entitled in remainder, whether to a life estate or otherwise* *In re Fermoy's Settled Estates*, 26 I. L. T. R. 73. In that case lands had been conveyed by a marriage settlement to trustees to the use of the settlor for life, remainder to the trustees for a term, and subject thereto, to the use of the first and every other son of the marriage in fee tail, with an ultimate remainder to the settlor in fee. It was held by PORTER, M.R., that neither the trustees nor the settlor could give a sufficient consent for the purposes of this Section, there being at the time of the application no issue of the marriage.

Securities

(b) The word "securities" here used, will probably be held to limit the power of investment considerably. "*Security* means a something which secures money, and not something which may be bought with money" (per PORTER, M.R.) *In re Kavanagh*, 27 L. R. Ir. 498. In that case it was held that a direction to executors to invest in "securities," as they might think proper, did not warrant the purchase of shares in a limited banking company.

The range of authorized trust investments in general is now considerably extended by the Trustee Act, 1893, Secs. 1 & 2, and the Colonial Stock Act, 1900, Sec. 2. By Sec. 1 of the former Act it is provided that—

List of authorised trust investments

"A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:—

a. "In any of the parliamentary stocks or public funds or Government securities of the United Kingdom.

- b. "On real or heritable securities in Great Britain or Ireland.
- c. "In the stock of the Bank of England or the Bank of Ireland.
- d. "In India Three and a half per cent. stock and India Three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India.
- e. "In any securities the interest of which is for the time being guaranteed by Parliament.
- f. "In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District.
- g. "In the debenture or rentcharge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock.
- h. "In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in Sub-section (g) either alone or jointly with any other railway company.
- i. "In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India.
- j. "In the 'B' annuities of the Eastern Bengal, the East Indian, and the Souda Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway, also in deferred annuities comprised in the register of holders of annuity Class D. and annuities comprised in the register of annuitants Class C of the East Indian Railway Company.
- k. "In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India or upon the capital of which the interest is so guaranteed.
- l. "In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock.
- m. "In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order.
- n. "In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each

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of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied.

- o. "In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court (*see list of such securities below*) and may also from time to time vary any such investment." (56 & 57 Vic., c. 53, Sec. 1.)

Section 2 of the same Act provides that —(1) "A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in Section 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2.) "Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in Sub-sections (g), (i), (k), (l), and (m) of Section 1, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the Sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3.) "A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act." (56 & 57 Vic., c. 53, Sec. 2.)

Section 2 of the Colonial Stock Act, 1900, is as follows.—"The securities in which a trustee may invest under the powers of the Trustee Act, 1893, shall include any Colonial Stock which is registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892, as amended by this Act, and with respect to which there have been observed such conditions (if any) as the Treasury may by order notified in the London Gazette prescribe.

"The restrictions mentioned in Section 2, sub-section (2) of the Trustee Act, 1893, with respect to the stocks therein referred to shall apply to Colonial Stock. The Treasury shall keep a list of any Colonial Stocks in respect of which the provisions of this Act are for the time being complied with, and shall publish the list in the London and Edinburgh Gazettes, and in such other manner as may give the public full information on the subject." (63 & 64 Vic., c. 62, Sec. 2.)

The following securities are now by virtue of this Act, and the lists published under Sec. 2, open to trustees for the investment of trust funds, subject, however, to the restrictions of Sec. 2, Sub-sec. (2), of the Trustee Act, 1893 —

Dominion of Canada.

- Four per Cent. Loans of 1874, 1875, 1876, and 1878-79.
- Three-and-a-Half per Cent. Loan.
- Four per Cent. Reduced Loan.
- Four per Cent. Loan.
- Three per Cent. Loan.
- Two-and-a-Half per Cent. Loan.

New Zealand.

- Four per Cent. Consolidated Stock.
- Three-and-a-Half per Cent. Consolidated Stock.
- Three per Cent. Consolidated Stock.

Victoria.

- Four per Cent. Railway Loan of 1881.
- Four per Cent. Redemption Loan of 1882.

Four per Cent. Inscribed Stock of 1883.

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Four per Cent. Inscribed Stock of 1884.

Four per Cent. Inscribed Stock of 1885

Three-and-a-Half per Cent. Inscribed Stock of 1888-89.

Three-and-a-Half per Cent. Inscribed Stock.

Four per Cent. Inscribed Stock.

Three per Cent. Consolidated Inscribed Stock.

The Rules of the High Court of Justice in Ireland provide that —

"Cash under the control of, or subject to the order of the High Court of Justice Investments authorised for cash in Court in Ireland, may, by order of the Court or a Judge, be invested in the following stocks, funds, or securities, namely. —

"Two-and-three-quarters per cent. Consolidated Stock (to be called after the 5th April, 1903, two-and-a-half per cent. Consolidated Stock).

"Two pounds fifteen shillings per cent. annuities.

"Two pounds ten shillings per cent. annuities.

"Local loans Stock under the National Debt and Local Loans Act, 1887.

"Bank of England Stock.

"Bank of Ireland Stock.

"Deposit receipt in the Bank of Ireland.

"Indian Three-and-a-Half per cent. Stock.

"India Three per cent. Stock.

"Indian guaranteed Railway Stocks or Shares, provided in each case that such Stocks or Shares shall not be liable to be redeemed within a period of fifteen years from the date of investment."

"Inscribed Stock of colonial governments guaranteed by the Imperial Government.

"Mortgage of freehold and copyhold estates respectively in Ireland.

"Debenture preference guaranteed or rentcharge Stocks of railways in Great Britain or Ireland, having for ten years next before the date of investment paid a dividend on ordinary Stock or Shares."

(Rules of Supreme Court, 1891, Order LXII., Rule 70.)

(c) The trustees to give a valid consent under this Sub-section must be trustees Sub-sec. 2. other than the trustees of the settlement. The latter cannot consent in a double capacity: *In re Fermoy's Settled Estate*, 26 I. L. T. R. 73 (referred to above).

(d) As to the appointment of trustees of the settlement by the Land Commission, see Land Act, 1887, Sec. 23, *ante*, and Rules of March, 1897, Order XXV., *post*, pp. 841-842.

20. Where any tithe rentcharge, annuity, rentcharge, or rent, or any apportioned part thereof, is ordered to be redeemed pursuant to the provisions of the Land Law (Ireland) Act, 1887, the Land Commission shall have the same powers in respect of the redemption-money thereof as are contained in Sub-section one of fourteen of the said Act, (a) and the provisions of Section of the said Act shall apply to any superior rent affecting the rentcharge or rent, or to any fee-farm grant or lease re the same. (b)

(a) That is, they may pay the redemption money into the E Ireland pending the ascertainment of the several rights of the parties red. See

Redemption o
tithe rentcharge
under
50 & 51 Vic.,
c. 33.

Sects. 20-21 notes to Land Act, 1887, Sec. 14, *ante*, p. 419 ; Rules of March, 1897, Order XX., Rule 17, *post*; and *Dames Longworth's Estate*, 26 I. L. T. & S. J. 521.

(b) It would appear that head rents must still be redeemed in cash. It is only as between the vendor and purchaser of the holding, and in redemption of charges payable to the Land Commission, that the guaranteed land stock is to be necessarily taken at par value. See Sec. 1, Sub-sec. 1, and Sec. 17 of this Act, *ante*. Trustees of any incumbrance, charge, annuity, or rent may, at their discretion, accept land stock in lieu of cash (Sec. 15, Sub-sec. 3), but they are not likely to do so if its selling value is below par.

Application of
Guarantee
Fund under
Labourers
(Ireland) Acts
46 & 47 Vic.,
c. 60.

21. When under the provisions of this Act the whole or any portion of the county percentage, or of the Exchequer contribution, is applied towards the cost of providing labourers' cottages in any county, so much of the sixth Section of the Labourers (Ireland) Act, 1883, as enacts that an improvement scheme shall provide for a plot or garden not exceeding half a statute acre being allotted to each dwelling shall not apply; and such dwelling may be provided with or without such plot or garden:

Provided that, notwithstanding anything in the said Acts, it shall be lawful for any local authority with the said moneys to acquire existing dwellings and to repair dwellings so acquired.

Miscellaneous
as to area

22.—(1) A holding situated in more than one county shall, for the purposes of this Act, be deemed to be in such county as the Land Commission, having regard to the area and value of the holding, determine.

(2.) The counties of cities and counties of towns specified in the First Schedule to this Act shall, for the purposes of this Act, be considered as included in the counties therein named for that purpose, and the amount required in pursuance of this Act to be raised by a levy on any such county shall be apportioned by the Lord Lieutenant between such county of a city or county of a town and the rest of the county, in proportion to the rateable value of each area, and the provisions of this Act as to a levy on a county shall apply with the necessary modifications to such county of a city or town, and in particular with the substitution for the grand jury of the county of the grand jury of such county of a city or town, or of any body therein to whom the power of a grand jury as to the presentment of public money has been transferred.

(3.) Nothing in this Act shall apply to a municipal borough mentioned in the Second Schedule to this Act, except that it shall be entitled to the same share in the Exchequer contribution and the Irish probate duty grant, as if the Act applied.

(4.) Provided that, if the town council of any such municipal borough shall by resolution so declare, this Act shall apply to such municipal borough in like manner as if such municipal borough were specified in the First Schedule to this Act; and the same shall be considered as part of the county at large within which it is situated, and if such borough is situated within more than one such county each portion thereof shall be considered part of the county at large within which that portion is situated. Sects. 22-24.

23.—(1.) No portion of the guarantee deposit shall be invested in any security that is not readily realizable. Investment of guarantee deposit

(2.) Notwithstanding anything in any of the Land Purchase Acts, in every case of an advance under the said Acts and this Act exceeding three-fourths of the purchase-money of a holding, the Land Commission shall retain a guarantee deposit out of the advance, unless such deposit is otherwise provided.

The 29th Section of the Land Act, 1896, now enables the Land Commission to dispense with the whole or any part of the guarantee deposit, if they think the security sufficient. It also enables them to pay to the party entitled a part of the deposit retained under the earlier Acts, and the whole of that retained under this Act or the Redemption of Rent Act.

See as to investment of guarantee deposits, generally, notes to Land Act, 1887, Sec. 10, *ante*, p. 416, and Rules of March, 1897, Order XXIII., Rule 9, *post*, p. 839. As to what are now authorized trust investments, see notes to Sec. 19 of this Act, *ante*, pp. 474-477.

(a) Formerly, if there were incumbrancers, it was necessary to obtain their consent to the retention of a guarantee deposit. *Colthurst's Estate*, 20 L. R. Ir. 468. This Section seems to render it unnecessary to obtain such consent. See on this point, notes to Sec. 3 of Land Purchase Act, 1885, p. 371, *ante*, and Sections 11 and 12 of Land Law Act, 1887, pp. 416-417, *ante*, and *Earl of Enniskillen's Estate*, 25 I. L. T. R. 41.

24. If the Land Commission, in the exercise of any power of sale of a holding, for default in payment of a purchase annuity, which they legally may exercise, have sold such holding, and the purchaser is the owner for the time being of the guarantee deposit relating to such holding, or entitled to the income thereof, the Land Commission may, at the request of such purchaser, and with the consent of the person or persons (if any) beneficially interested in the guarantee deposit, apply the guarantee deposit pro tanto in discharge of so much of the purchase money as is required to meet the amount of the annuity in default, and thereupon make an order declaring the purchaser's interest in the holding to be charged with such sum in favour of the person or persons entitled to the Application of guarantee deposit in case of sale of holding for default

Sects. 24-26. capital of the guarantee deposit, but subject nevertheless to the future instalments of the purchase annuity.

As to the exercise by the Land Commission of their power of sale for default in payment of the purchase annuity see Land Act, 1881, Sec. 30; Land Purchase Act, 1885, Secs. 3 & 15, Land Act, 1887, Sec. 18; Conveyancing Act, 1881, Secs. 19, 21, & 22 (incorporated by the 18th Sec. of the Land Act, 1887), Secs. 25 & 37 of this Act, and Land Act, 1896, Sec. 38, *post*.

Power to Land Commission to claim possession of holding.

25. Whenever the Land Commission are entitled to cause any holding to be sold for the non-payment of any sum due to them they may, if they think fit, apply to the High Court in the manner prescribed by the Rules of the High Court, (a) for an order to the sheriff to put them in possession of such holding, and it shall be lawful for such Court, if it sees fit, and upon hearing such evidence as is offered, to issue an order accordingly, and such order shall be executed by the sheriff in like manner as a writ for the delivery of possession. Any order made under this Section shall be subject to the same right of appeal as now by law exists from any order of the said Court. The Court shall ascertain and determine in such proceeding the amount due to the Land Commission, and if, within the time limited by such order, the person against whom such order is made shall pay to the Land Commission the amount so found due, together with the costs of such proceedings, the Land Commission shall certify accordingly and such order shall not issue or be executed.

The former practice was to sell without having possession, and then issue an order to the sheriff to put the purchaser into possession under Sec. 21 of the Land Act, 1887. This course may still be pursued. See Rules of March, 1897, Order XLVIII., *post*, pp. 865-866.

In *The Irish Land Commission v. Maquay* (28 L. R. Ir. 342, MacC. 71), it was held that a purchaser of a holding thus sold, could not claim damages from the Land Commission by reason of the inability of the sheriff to put him into possession, even though he was liable under the covenant in his purchase deed to pay the instalments of the annuity which fell due after his purchase.

(a) Rules and Forms under this Section were issued in June, 1892. The Rules may be cited as Order XLVII., Rules 14 to 22 of the Rules of the Supreme Court, 1891. They will be found among the High Court Rules under the Land Acts, *post*, pp. 612-613.

Extension of 44 & 45 Vic., c. 49, s. 19

26.—(1.) The provisions of Section nineteen of the Land Law (Ireland) Act, 1881, and the enactments amending the same, shall apply in all cases where an advance is made for the purchase of a holding under the Land Purchase Acts and this Act, and the powers thereby conferred on the Land Commission in regard to the determination of rent shall be exercisable by them, with the

necessary modifications, in sanctioning an agreement for sale; and Sects 26-28.
 for that purpose the expression "labourer," as used in the said
 Section and the said enactments, shall mean a man whose occupa-
 tion during the ordinary season of agricultural work is the doing
 of agricultural work for hire on the holding, and shall include a
 herdsman.

(2.) It shall be the duty of the inspector appointed by the Land
 Commission to report whether the holding affords sufficient security
 for the advance applied for, to inquire into the condition in respect
 of house accommodation of every labourer employed on the holding,
 and to report to the Land Commission accordingly.

(3.) If an order has been made in favour of any labourer
 employed on the holding, no proceedings for the recovery of a
 penalty under such order shall be defeated by reason only of the
 labourer having been dismissed from such employment.

27.—(1.) The Treasury may make Rules for the purpose of Power of
Treasury to
make rules.
 carrying into effect this part of this Act, and in particular with
 respect to—

- a. The Sinking Fund and the creation and issue of the stock,
 and the cancellation of the stock when purchased or re-
 deemed, and the Sinking Fund payments and dividends on
 account of stock cancelled;
- b. The audit of the accounts of any receipts and expenditure
 by the Controller and Auditor-General or otherwise;
- c. The conclusiveness of any certificate given in pursuance of
 such rules.

(2.) Such Rules shall be laid before Parliament, and shall have
 effect as if enacted in this Act, and so far as they relate to the
 creation, issue, or redemption of stock, or to the Sinking Fund,
 shall not be altered without the consent of Parliament.

Treasury Rules were issued under the powers conferred by this Section on 26th
 February, 1892.

28.—(1.) From the commencement of this Act the Land Com- Tenure of Land
Commissioners,
&c.
 mission shall be perpetual, but it shall be lawful for the Lord
 Chancellor to remove for inability or misbehaviour any Commis-
 sioner other than the Judicial Commissioner.

(2.) Every order of removal shall state the reasons for which it is
 made, and no such order shall come into operation until it has lain
 before both Houses of Parliament for not less than thirty days,
 nor if either House passes a resolution objecting to it.

Sect 26.

(3) Save as aforesaid, each Commissioner, other than the Judicial Commissioner, shall hold his office by the same tenure as if he were a County Court Judge in Ireland, and his salary shall be paid out of the Consolidated Fund. but none of the Commissioners shall by reason of this Act be entitled to any pension or superannuation allowance, save so far as he would have been so entitled if this Act had not passed.

(4) The Lord Chancellor may nominate any Judges of the High Court, other than the Lord Chief Justice and the Master of the Rolls, to act as additional Judicial Commissioners for the purposes of the Land Purchase Acts as amended by this Act for the time specified by him; and every Judge so nominated shall during that time have the same jurisdiction for the purpose of determining any question of law, or of hearing any appeal, as the Judicial Commissioner for the purposes of the said Acts.

(5.) If and when the Judicial Commissioner is temporarily unable to attend, or his office is vacant, the Lord Chancellor may nominate any Judge of the High Court to act temporarily in his place, and the Judge so nominated shall during such inability or vacancy have the same jurisdiction as if he were the Judicial Commissioner.

(6.) A Judge of the High Court appointed before the first day of January, one thousand eight hundred and eighty-eight, shall not, without his own consent, be nominated under this Section.

(7.) Such of the Assistant Commissioners and such of the persons for the time being employed by the Land Commission as the Lord Lieutenant and the Treasury, after receiving and considering reports from the several members of the Land Commission, determine to be necessary and best qualified for the permanent organisation of the staff of the Land Commission, shall, as from the first day of January next after the passing of this Act, notwithstanding anything in the Land Purchase Acts, be permanent civil servants of the Crown within the meaning of Section seventeen of the Superannuation Act, 1859; and in their case, and in the case of persons formerly employed by the Commissioners of Church Temporalities in Ireland or by the Land Commission who have since served continuously in the service of the Crown, their periods of service (if any) under the Commissioners of Church Temporalities in Ireland or under the Land Commission, as the case may be, shall be taken into account for all purposes of superannuation allowance,

and such portion of the superannuation allowance (if any) as the Treasury determine to be properly payable in respect of such service shall be charged on and paid out of the Irish Church Temporalities Fund. Sects 28-29

(8.) Notwithstanding anything in Section seventeen of the Purchase of Land (Ireland) Act, 1885, (a) any Commissioner in carrying the Land Purchase Acts and this Act into effect may submit any question of law arising under the said Acts for the hearing and determination of the Judicial Commissioner, and it shall not be necessary that any Commissioner shall sit with the Judicial Commissioner when he is hearing or determining any question of law under the provisions of that Section. 48 & 49 Vic
c 73

(a) See notes to that Section, *ante*, p. 385, and Rules of March, 1897, Order XXXV, *post*, pp. 858-4.

29.—(1.) Nothing in Section seventeen of the Purchase of Land (Ireland) Act, 1885, shall be deemed to limit the jurisdiction of any member of the Land Commission under Part V. of the Land Law (Ireland) Act, 1881, and the Acts amending the same, and anything done by any member of the Land Commission in carrying the said Acts into effect shall be as valid and effectual as if it were done by the Land Commission: *Provided that any person aggrieved may appeal (a) from the decision of any Commissioner acting alone in carrying the said Acts into effect, and if the appeal is on a question of law only it shall be to the Judicial Commissioner, and in any other case it shall be to three Commissioners, of whom one shall be the Judicial Commissioner, one shall be a Commissioner appointed under the Purchase of Land (Ireland)-Act, 1885, and the third a Commissioner appointed under the Land Law (Ireland) Act, 1881.** Powers of Land
Commissioners
48 & 49 Vic
c 73
44 & 45 Vic
c 49 *Provided also that any order of the Land Commission in carrying the said Acts into effect shall, in the first instance, be made by a Commissioner sitting alone.*

(2.) *Provided that the duty of sanctioning advances under the Land Purchase Acts and this Act shall be discharged exclusively by the Commissioners appointed under the Purchase of Land (Ireland) Act, 1885, until the fair rent appeals lodged on or before the first day of June, one thousand eight hundred and ninety-one shall have been disposed of.**

(3.) The Commissioners appointed under the Purchase of Land (Ireland) Act, 1885, shall thereupon have the same jurisdiction as

* The words in italics are repealed by Land Act, 1896, 2nd Schedule. See Sec. 41 of that Act, *post*.

Sects 29-32. if they had then been appointed, under the Land Law (Ireland) Act, 1881, members of the Land Commission, other than the Judicial Commissioner, notwithstanding that no order may have been made by the Lord Lieutenant under Section seventeen of the Purchase of Land (Ireland) Act, 1885.

(4) Provided also that, if it shall appear to the Lord Lieutenant that the security for any advance under this Act sanctioned by the decision of a single Commissioner is inadequate, he may require the case to be reheard by three Commissioners in the manner provided by this Section.

(5.) The general rules and orders which shall be in force at the commencement of this Act in relation to the acquisition of land by tenants shall, until expressly varied by Rules to be made as hereinafter provided, remain and be in force in all proceedings under the Land Purchase Acts, as amended by this Act, in the same manner in all respects as if they had been rules made under this Act.

(6.) All Rules to be made by the Land Commission for carrying into effect the Land Purchase Acts, as amended by this Act, shall be made by a majority of the Commissioners, which majority shall include the Judicial Commissioner.

(a) The procedure on appeals under the Land Purchase Acts is now regulated by Land Act, 1896, Sec. 41, and Rules of March, 1897, Order XXXV., *post*, pp. 853-354.

Powers under
44 & 45 Vic,
c. 49, ss 43, 44.

30. The powers of delegation conferred on the Land Commissioners under the forty-third and forty-fourth Sections of the Land Law (Ireland) Act, 1881, shall not apply to the discharge of duties arising under the Land Purchase Acts.

Power of Land
Commission to
determine dis-
putes between
tenants.

31. Where any tenants of an estate have agreed to purchase their holdings under the Land Purchase Acts, the Land Commission shall have power, if they think fit, where the agreements for sale so provide, to determine for the purposes of the sale all questions which may arise respecting the boundaries of the holdings, easements, turbary, or appurtenances claimed by any of such tenants of such estate against any other of such tenants of the same estate.

Decisions as to
advances to be
published.

32. The Land Commission shall make public their decisions as to advances under this Act, and under the Land Purchase Acts, 1885 and 1888, in such manner as the Lord Lieutenant shall by rules direct.

33. Periodical returns shall be made by the Land Commission at the prescribed times in each year and forthwith laid before Parliament, and shall contain with respect to every county the prescribed particulars, including the particulars hereinafter mentioned, that is to say:—

Sect. 33.
Returns.

- a.* Returns of advances under this Act, specifying—
- (i.) the situation, size, rateable value, and rent (judicial or non-judicial) of each holding for the purchase of which an advance has been made;
 - (ii.) the vendor and purchaser thereof;
 - (iii.) the amount of the purchase-money, advance, and guarantee deposit; and
 - (iv.) particulars of any order made under Section nineteen of the Land Law (Ireland) Act, 1881, as amended by this Act, in relation to such holding and of the enforcement thereof;
- b.* Returns specifying the like particulars as above mentioned with respect to cases (if any) in which default has been made in the payment of purchase annuities, and, specifying further the date of the advance, the amount of instalments paid and in default respectively, the proceedings taken for the recovery of the instalments in default, and the amount of loss on the occasion of the sale of any holding.
- c.* Returns specifying—
- (i.) the amount (if any) which has been temporarily advanced out of the Consolidated Fund, and the amount (if any) which has been paid out of the Guarantee Fund to the Land Purchase Account, or to the Consolidated Fund;
 - (ii.) the amount which has been applied under this Act towards the cost of providing labourers' cottages;
 - (iii.) the presentments (if any) which have been made under this Act;
 - (iv.) the regulations and decisions which have been made by the Lord Lieutenant with respect to the share of any county, local authority, or person in any fund or sum dealt with under this Act, and with respect to the proportion in which advances are to be made in a county as between holdings the rent of which exceeds fifty pounds and other holdings; and
 - (v.) the amounts paid out of the purchaser's insurance

Sects. 33-35.

money under this Act, and the amounts paid out of the reserve fund and repaid to such fund under this Act.

PART II.

CONGESTED DISTRICTS.

Constitution of
Congested Dis-
tricts Board.

34.—(1.) For twenty years after the passing of this Act, and thereafter until Parliament shall otherwise determine, there shall be a Board called the Congested Districts Board for Ireland, consisting of the Chief Secretary and a member of the Land Commission whom the Lord Lieutenant may nominate to especially represent agriculture and forestry, and who shall be *ex-officio* members of the Board, and of five other members. The Chief Secretary, when absent, shall be replaced by the Under Secretary to the Lord Lieutenant.

(2.) It shall be lawful for Her Majesty, by warrant under the Royal Sign Manual, to appoint and fill up vacancies among the members, other than the *ex-officio* members, and also in the same manner to appoint one or more persons, not exceeding three, to be temporary members of the Board for the purpose of the business of the Board relating to fisheries, agriculture, or other special matters. A temporary member of the Board shall hold office for such period as may be mentioned in the warrant appointing such member.

(3.) Three members of the Board, not including temporary members, shall form a quorum, and any act of the Board may be signified under the hands of any three members of the Board.

Additional powers are conferred upon the Congested Districts Board by the Congested Districts Board Acts, 1893 and 1894 (56 & 57 Vic., c. 35) and 57 & 58 Vic., c. 50), *post*, and Land Act, 1896, Part IV.

Provision of
moneys for
purposes of
Part II.

35.—(1.) For the purposes of this part of this Act, the sum of one million five hundred thousand pounds (in this Act referred to as the Church Surplus Grant) shall, with interest at the rate of two and three-quarters per cent. per annum, be charged on the Irish Church Temporalities Fund, and such interest shall, so far as not required for the purposes of the Guarantee Fund as hereinafter mentioned, be placed at the disposal of and paid or applied as may be directed by the Congested Districts Board for the purposes of this Act.

(2.) The interest on the Church Surplus Grant shall be paid by

the Land Commission at such times as the Treasury direct, and so far as not for the time being required, may, under the directions of the Treasury, be invested, and the principal and income of such investment shall be dealt with as if it were the said interest. Sects. 35 36.

(3.) The Land Commission may, with the consent of the Treasury, place at the disposal of and pay and apply as may be directed by the Congested Districts Board for the purposes of this Act any part of the principal of the Church Surplus Grant which may not in the opinion of the Treasury and of the Lord Lieutenant be required for the purposes of the contingent portion of the Guarantee Fund.

(4.) Section thirty-two of the Land Law (Ireland) Act, 1881, and Section twenty of the Arrears of Rent (Ireland) Act, 1882, and Section twelve of the Tramways and Public Companies (Ireland) Act, 1883; shall be repealed. 44 & 45 Vic.,
c 49.
45 & 46 Vic.,
c 47.
46 & 47 Vic.,
c 33.

(5.) The Irish Reproductive Loan Fund and the Sea and Coast Fisheries Fund, including all monies due on foot of loans, and for interest, dividends, and other annual income payable on foot of such funds, save and except the sum of twenty thousand pounds, forming portion of the Sea and Coast Fisheries Fund, shall be placed at the disposal of the Board for the purposes of this Act, but shall be applicable only in any county in which the fund is before the passing of this Act applicable, and the said sum of twenty thousand pounds shall be retained by the Commissioners of Public Works, and expended by them elsewhere than in the congested district counties, as if this Act had not passed.

The 4th Section of the Public Works Loans Act, 1892 (55 & 56 Vic. c. 61), confers on the Congested Districts Board the powers and remedies for the recovery of the monies placed at its disposal by this Section, which are possessed by the Commissioners of Public Works, and provides that a certificate from the Secretary of the Congested Districts Board is to have the same effect as a like certificate under the seal of the Commissioners (See that Section, *App., post*).

36.—(1.) Where at the commencement of this Act more than twenty per cent. of the population of a county, or in the case of the county Cork of either riding thereof, live in electoral divisions of which the total rateable value, when divided by the number of the population, gives a sum of less than one pound ten shillings for each individual, those divisions shall for the purposes of this Act be separated from the county in which they are geographically situate, and form a separate county (in this Act referred to as a congested districts county), and the provisions of this Act as to the share of Congested districts counties, and application thereto of Part I.

Sects. 36-37. a county in any portion of the Guarantee Fund shall apply to such county with the necessary modifications.

(2.) Provided that if within one year from the passing of this Act it appears to the Congested Districts Board that it is expedient to include under the provisions of this Section any electoral division other than the divisions hereinbefore mentioned, or to exclude therefrom any electoral division, it shall be lawful for the Lord Lieutenant, on the report of the Board, to include or exclude, as the case may be, such division.

(3.) The interest on the Church Surplus Grant shall form part of the contingent portion of the Guarantee Fund, and be applicable for the purposes of that Fund next after the rates on Government property, and be apportioned between the congested districts counties in proportion to their population.

(4.) The local grants under the accounts headed "Model Schools and National Schools" shall not form part of the contingent portion of the Guarantee Fund for a congested districts county.

(5.) Where under this Act a sum is required to be raised by a levy on a county from which a congested districts county is separated, no portion of it shall be presented or apportioned upon or raised out of any hereditaments in the latter county.

(6.) Where under this Act a sum is required to be raised by a levy on a congested districts county, one-half of that sum shall be paid out of the share of the county in the interest on the Church Surplus Grant, so far as that share extends; and the residue shall be raised by the Lord Lieutenant by a levy on the county, and the requisition may be sent to the secretary of the grand jury of the entire county, and the same shall be paid accordingly, but shall solely be presented and apportioned upon and raised out of the hereditaments within the congested districts county.

37.—(1.) For the purpose of amalgamating small holdings in a congested districts county, the Congested Districts Board may—

Amalgamation
of small holdings
in congested
districts county.

a. out of the moneys at their disposal, give special aid to the migration or emigration of any occupier of a holding, with his family, if any, and settling such migrant or emigrant under favourable circumstances in the place to which he first migrates or emigrates, on condition that he transfers his interest in that holding to an occupier of a neighbouring holding and that the holdings are amalgamated, or that he transfers such interest to the Land Commission; and

b. recommend the Land Commission to facilitate the amalgamation of small holdings, which the Land Commission are hereby authorized to do, whether by the apportionment of a purchase-annuity and of the guarantee deposit, or by a sale to a tenant, or by making an advance towards the purchase of an interest in a holding; and any such advance may be made out of money supplied by the Board, and shall be repaid by an annuity charged on the holding as if the advance were made under the Land Purchase Acts, but all sums received by the Land Commission on account of such annuity shall be paid to the Board. The annuity may be charged on the amalgamated holding, and not merely on the holding purchased, subject, nevertheless, to any prior charges on such portion of the holding as has not been purchased, and subject to any rent of either holding.

(2.) Provided that no holding shall be increased by amalgamation under this Section so that in the opinion of the Board the rateable value will exceed twenty pounds.

(3.) In a congested districts county a small holding purchased by means of an advance by the issue of stock under this Act, shall not during the continuance of the purchase-annuity charged thereon be sold, except to the occupier of a holding in the neighbourhood or to the Land Commission, and if it is, the Land Commission may cause the holding to be sold as if for a breach of condition under Section thirty of the Land Law (Ireland) Act, 1881.

44 & 45 Vic.,
c. 49.

(4.) The purchase by the Land Commission of a holding shall be made through the Congested Districts Board, and out of moneys provided by the Board, and for such price as may be agreed on by the vendor and the Board, or, in case of difference, may be determined by the Land Commission to be its full market value

(5.) Where a small holding in a congested districts county is (whether under this Section or the Land Purchase Acts) liable to be sold, (a) or has been purchased by the Land Commission, the Land Commission shall endeavour to sell the same to one of the occupiers of a neighbouring holding with a view to the holdings being amalgamated.

(6.) The sale may be made upon such terms and conditions and at such price as the Land Commission fix, and the price may not be greater than the difference between the value of the two holdings

Sects. 37-38 after amalgamation, and the value of the purchaser's holding before amalgamation.

(7.) The purchase money may be advanced as if it were for a purchase under the Land Purchase Acts, save that the annuity shall be charged on the amalgamated holding, and not merely on the holding purchased, subject, nevertheless, to any prior charges on such portion of the holding as has not been purchased.

Sub-sec 5. (a) As to when a holding is liable to be sold, and the procedure necessary for carrying out the sale, see Land Act, 1881, Sec. 30, Land Purchase Act, 1885, Secs. 3 & 15, Land Act, 1887, Sec. 18, Sec 25 of this Act, *ante*; Land Act, 1896, Sec. 38, *post*. See also Congested Districts Board Acts, 1893, 1894, and 1901., *post*, and Land Act, 1896, Part IV.

Supplemental provisions as to amalgamation of holdings in congested districts county.

44 & 45 Vic, c. 49.

38.—(1.) On a holding amalgamated in pursuance of this Act, one house only shall be used as a dwelling-house, and if more than one house is so used, the Land Commission shall, except where that use is permitted as hereinafter mentioned, cause the holding to be sold as if for a breach of condition under Section thirty of the Land Law (Ireland) Act, 1881.

(2) Provided that the Congested Districts Board, if they think special reasons justify the course, may request the Land Commission to permit, and thereupon the Land Commission shall permit, the former occupier of another house on the amalgamated holding or a member of his family to become and be caretaker of such other house, and of any yard and garden attached thereto, not exceeding one-quarter of an acre, for such limited time and on such conditions as the Board approve.

(3.) Where a holding amalgamated in pursuance of this Act is of less value than the holdings out of which it was amalgamated, either because only one house can be used as a dwelling-house on the amalgamated holding, or otherwise by reason of the amalgamation, the Land Commission may, and on the request of the Congested Districts Board shall, certify the amount of the difference, and that amount shall be paid by the Board out of the moneys at their disposal to the person or department on whom the loss has fallen, and if paid to the Land Commission shall be applied towards the discharge of the purchase-annuity on the holding.

(4.) The provisions of this Act respecting the amalgamation of holdings shall, in cases where the Congested Districts Board think it expedient, apply to a part of a holding.

39.—(1.) The Congested Districts Board may take such steps as they think proper for—

Sect. 39.
Power to aid migration and emigration, agriculture and industries

- a. Aiding migration or emigration from any electoral division, which either forms part of a congested districts county, or the total rateable value of which, when divided by the number of the population, gives a sum of less than one pound ten shillings for each individual, and settling any migrant or emigrant under favourable circumstances in the place to which he first migrates or emigrates; and
- b. Providing suitable seed potatoes and seed oats for sale to occupiers in any such electoral division; and
- c. Aiding and developing agriculture, forestry, the breeding of live stock and poultry, weaving, spinning, fishing (including the construction of piers and harbours (b), and the supply of fishing boats and gear, and industries connected with and subservient to fishing) and any other suitable industries; and for the purposes of Part II of this Act the Land Commission may acquire (by purchase or taking on lease) and hold land, and may place such land under the control of the Congested Districts Board (a) on such terms and conditions as they may deem expedient.*

(2.) The said seed shall be sold for ready money, and, where such price can be obtained for the same, for not less than the cost of the seed (including all expenses incurred for carriage, storage, or otherwise), except so far as such cost may be defrayed out of gifts specially given to the Board for that purpose.

(3.) Any person nominated by the Board may, at all reasonable times, and after due notice to the occupier, enter any land occupied by an occupier to whom seed has been sold, and ascertain whether it has been properly sown.

(4.) The Board may proceed under this Section directly or indirectly, and by the application of money at their disposal or otherwise, and may make gifts or loans to any persons upon and subject to such conditions as the Board consider expedient, and any moneys received in respect of the principal or interest of the loans may be applied as part of the money placed at the disposal of the Board.

(a) The Congested Districts Board may now acquire and hold land through trustees. (Congested Districts Board Act, 1893, *post.*)

(b) Sec. 18 of the Local Gov. Act, 1898 (61 & 62 Vic., c. 37), now provides that the

* The words in italics are repealed by the Congested Districts Board Act, 1893, Sec. 2, *post.*

Sects. 39-40. Council of any county may, if they think fit, agree to take over from the Congested Districts Board any marine work constructed or acquired by such Board, subject to payment of compensation to persons other than the Board.

Supplemental
as to Congested
Districts Board.

40.—(1.) *The Lord Lieutenant may direct the officers of the Land Commission to discharge such secretarial and other duties for the Board as he thinks proper, and for that purpose officers may be added to the permanent staff of the Land Commission, and if the Lord Lieutenant thinks those officers are insufficient, he may, with the sanction of the Treasury, authorise the Board to employ such officers as are required.**

(2.) Any member of the Board shall be eligible to act as an officer under this Section for any temporary purpose, but so long as he is employed as such officer he shall not act as a member of the Board.

(3.) The salaries or remuneration of the officers (if any) employed by the Board and the administrative expenses of the Board shall be fixed by the Treasury, and paid out of moneys provided by Parliament.

(4.) The Congested Districts Board may accept any gifts of property real or personal for all or any of the purposes for which money is provided under this part of this Act, and apply them according to the directions of the giver, if consistent in their opinion with the principles on which they apply the said money, and, subject to any such directions, may apply them in like manner as that money.

(5.) Any property given to the Board, and any investments made by or securities given to the Board, may be held, and given to the Land Commission, and shall be held by the Land Commission in trust for the purposes of this part of this Act, or such of them as the circumstances of the case require.

(6.) The Congested Districts Board shall submit to the Treasury annually and at any other time for any special purpose, in the form fixed by the Treasury, an estimate showing the amount proposed by the Board to be expended, and shall not expend any sums except in accordance with such estimate when approved by the Treasury, and shall not create any permanent charge on the Church Surplus Grant, except that they may with the sanction of the Treasury borrow out of the moneys available for local loans in Ireland on the security of the annual income of the Church Surplus Grant such sum as, having regard to the liabilities of such income for the

* Sub-sec. 1 of Sec. 40 is repealed by the Congested Districts Board Act, 1894, *post*.

purposes of the Guarantee Fund and the other moneys at the disposal of the Board, the Treasury consider can be properly borrowed without danger to the security given by the Guarantee Fund. Sects. 40-42.

(7.) The Board shall keep such accounts of their receipts and expenditure, and those accounts shall be audited in accordance with such regulations, as the Treasury direct, and be laid before Parliament.

41. The Congested Districts Board shall once in every year after the year one thousand eight hundred and ninety-one make a report to the Lord Lieutenant on their proceedings under this Act, and every such report shall be presented to Parliament. Report of Congested Districts Board.

PART III.

DEFINITIONS, REPEALS, &c.

42. In this Act, unless the subject or context otherwise requires:
- The expression "Local Government Board" means the Local Government Board for Ireland: Interpretation of terms.
- The expression "prescribed" means prescribed by Rules made by the Treasury in pursuance of this Act:
- The expression "Local Taxation (Ireland) Account" means the account to which that name is given in the Probate Duties (Scotland and Ireland) Act, 1888: 51 & 52 Vic. c. 60.
- The expression "Irish Probate duty grant" means the sums which but for this Act would under Section two of the last-mentioned Act be paid in respect of the probate duty grant to the Local Taxation (Ireland) Account:
- The expression "Consolidated Fund" means the Consolidated Fund of the United Kingdom:
- The expression "consolidated annuities" means the capital stock of perpetual annuities created under the National Debt Conversion Act, 1888, or consolidated with the annuities so created: 50 & 51 Vic. c. 2.
- The expression "assizes includes a presenting term, and the expression "Judge of assize" includes a Judge of the High Court, and the expression "County Treasurer" includes a Finance Committee or other person exercising the functions of County Treasurer:
- The expression "rateable value," when used in relation to any hereditament or area, means the annual rateable value under

Sect. 42.

the Irish Valuation Acts of such hereditament or of the hereditaments comprised in such area :

*The expression "annual value of the holding" means the annual sum which at the date of the application for an advance under the Land Purchase Acts is the rent of the holding in respect of which the advance is to be made, after deducting therefrom the average annual amount payable by the landlord during the five years next before such date for poor rate and grand jury cess, and for tithe-rentcharge (unless such tithe-rentcharge is to be redeemed out of the purchase-money); provided that, after the advance applied for has been sanctioned, the purchaser may apply to the Land Commission to determine the annual value of the holding, and thereupon such annual value shall be ascertained by the Land Commission in the manner prescribed by Rules to be made by them, and in such case the said expression means the annual value so determined :**

The expression "purchase-annuity" means an annuity for the repayment of an advance for the purchase of a holding made by the issue of stock under this Act :

The expression "population" means population according to the last published census for the time being :

The expression "local grants," means grants made in aid of local taxation or for local purposes out of moneys provided by Parliament, and any reference to the purposes or account for or on which grants are made shall be construed according to the terms of the estimates for such grants laid before the House of Commons and the heads of account therein mentioned :

The expression "Land Purchase Acts" means the Landlord and Tenant (Ireland) Act, 1870 (Parts II. and III.), the Landlord and Tenant (Ireland) Act, 1872, the Land Law (Ireland) Act, 1881 (Part V., Part VI., and Part VII.), the Tramways and Public Companies (Ireland) Act, 1883 (Part II.), the Land Purchase Acts, 1885 and 1888, the Land Law (Ireland) Act, 1887 (Parts II. and IV.), and the Purchase of Land (Ireland) Amendment Act, 1889; and the said Acts and this Act may be cited as the Land Purchase (Ireland) Acts, 1870 to 1891 :

The expression "Land Purchase Acts, 1885 and 1888," means the Purchase of Land (Ireland) Act, 1885, and the Purchase of Land (Ireland) Amendment Act, 1888 :

* The words in italics are repealed by Land Act, 1896, 2nd Schedule.

33 & 34 Vic,
c 46.
35 & 36 Vic,
c 32
44 & 45 Vic,
c 49
46 & 47 Vic,
c 43
48 & 49 Vic,
c 73
50 & 51 Vic,
c 33
51 & 52 Vic,
c 49
52 & 53 Vic,
c 13

48 & 49 Vic,
c. 73.
51 & 52 Vic.,
c. 49.

The expression "Irish Church Temporalities Fund" means **Sects. 42-43.**
 the fund under the control of the Land Commission by
 virtue of the Irish Church Act Amendment Act, 1881: **44 & 45 Vic.,**
c 71.

The expression "a small holding" means a holding of a rate-
 able value of less than ten pounds, or any higher sum fixed
 by the Congested Districts Board:

The expression "occupier" means an occupier whether tenant
 or proprietor:

The expression "county" means the riding of a county where
 such riding is separated from the county for fiscal purposes:

The expression "Land Judge" means the Land Judge of the
 Chancery Division of the High Court.

43.—(1.) The enactments described in the Third Schedule to
 this Act are hereby repealed to the extent appearing in the third
 column of that Schedule. Repeal of enact-
 ments; con-
 struction; short
 title.

(2.) This Act shall be construed as one with the Land Purchase
 Acts, and may be cited as the Purchase of Land (Ireland) Act, 1891.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

Section 22.

COUNTIES OF CITIES AND TOWNS INCLUDED IN CITIES.

Name	Counties in which situated
County of the city of Kilkenny - - -	Kilkenny.
County of the town of Carrickfergus - - -	Antrim.
County of the town of Galway - - -	Galway.
County of the town of Drogheda - - -	Louth.

SECOND SCHEDULE.

Section 22.

MUNICIPAL BOROUGHES TO WHICH THE ACT DOES NOT APPLY.

Dublin, Cork, Belfast, Limerick, Londonderry, Waterford

Schedule.
Section 43.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

ENACTMENTS TO BE REPEALED ON COMMENCEMENT OF ACT.

Chapter and Session	Title of Act	Extent of Repeal
44 & 45 Vic., cap. 49.	The Land Law (Ireland) Act, 1881.	Section forty-one, from "The two Commissioners other" down to "passing of this Act;" the words "during the said period of seven years;" and from "but the person so appointed" to the end of the section, and section fifty-three so far as it applies to any person who, by virtue of the determination of the Lord Lieutenant and the Treasury under this Act, or otherwise is a permanent civil servant of the Crown.
48 & 49 Vic., cap. 73.	The Purchase of Land (Ireland) Act, 1885.	Section three, from "The Land Commission shall pay" down to "per annum," so far as respects an advance made by means of stock. Section seventeen, from "shall continue" to "appointments and;" the words "during the said period of three years;" and from "The person so appointed" down to "would have done." In section twenty-four, from "out of the Consolidated Fund," where those words first occur, to the end of the section.
51 & 52 Vic., cap. 49.	Purchase of Land (Ireland) Amendment Act, 1888.	Section five.

REDEMPTION OF RENT (IRELAND) ACT, 1891.

(54 & 55 VIC., CAP. 57.)

AN ACT TO PROVIDE FOR THE REDEMPTION OF RENT BY LONG LEASE-
HOLDERS AND OTHERS. [5th August, 1891.]

BE it enacted, &c.

1. Where a person in bonâ fide occupation (*b*) of a holding to which Part One of the Land Law (Ireland) Act, 1881, applies (*a*) is a lessee under a lease (*c*) to which the provisions of Section one or Section three of the Land Law (Ireland) Act, 1887, do not apply by reason of the period of its expiration or by reason of its being renewable or perpetual, or is a grantee under a fee-farm grant, (*d*) and such person holds his land at a rent which the Land Commission considers, having regard to the renewal fines (if any) and all the circumstances of the case, holding, and district, to be a full agricultural rent, (*e*) such occupier shall, subject as hereinafter mentioned, be entitled to apply in the prescribed manner to redeem his rent, whereupon, if the lessor or grantor, as the case may be, signifies his consent within the prescribed time and in the prescribed manner, (*f*) including consent (where such consent is by law required) to such sum being retained as guarantee deposit as the Land Commission may think necessary, then such redemption shall be effected by payment, subject to the Rules of the Land Commission, of such capital sum as may be agreed upon, or as in case of difference may be determined (*g*) by the Land Commission (regard being had to the adequacy of the security) (*h*) in like manner as if it were a head rent redeemed under the provisions of Section sixteen of the Land Law (Ireland) Act, 1887.

Such consent by the lessor or grantor shall have the same effect as the lodgment of an agreement to purchase (*i*) under the Land Purchase Acts, and, except as herein otherwise provided, all subsequent proceedings shall be carried on, and with the like consequences, as upon such an agreement.

Provided that if the lessor or grantor, as the case may be, does not consent in manner prescribed by the Land Commission to such redemption, or causes, in the opinion of the Land Commission, unreasonable delay to the making of such redemption, the redemp-

Sect. 1.
Redemption of
rent by long
leaseholders
when occupying
tenants.
44 & 45 Vic.,
c. 42.
50 & 51 Vic.,
c. 33

Sect. 1.

tion shall not be made, but the lessee or grantee, as the case may be, shall be deemed to have made the prescribed application under Section one of the said Act of 1887, and shall be held to be a tenant of a present tenancy (*j*) in manner and subject to the conditions and right of resumption mentioned in Section twenty-one of the said Act of 1881, as modified by Section one of the said Act of 1887, and his holding shall be subject to the provisions of the said Acts with regard to present tenancies.

(a) This Act applies to the same class of holdings as are within the fair rent provisions of the other Land Law (Ireland) Acts, namely, all agricultural and pastoral holdings, not specially excepted by Sec. 58 of the Act of 1881, or by Sec. 5 of the Act of 1896. "The power to redeem extends to the entire rent, and to the entire holding" (per FITZGIBBON, L.J., *Cowell v. Buchanan* [1898] 2 I. R., at p. 161). A part of a rent cannot be redeemed: *Platt v. Shaftesbury*, Greer L. C., App. 67.

Fee-farm grants before 1861.

The term "holding" as defined by the 57th Section of the Land Act, 1881 (see *ante*, p. 342) implies that the relation of landlord and tenant exists between the parties. In the case of fee-farm grants made before the date when the Landlord and Tenant Act, 1860, came into operation (1st Jan., 1861), a difficulty formerly arose. As a general rule it was held that these did not create that relation, as no reversion was reserved to the grantor: *Kelly v. Rattey*, 32 L. R. Ir. 445; 27 I. L. T. R. 29, 88 (C.A.). (See on this question, notes to Landlord and Tenant Act, 1860, *ante*, pp. 4-5.) But there were some exceptions. It was held that fee farm grants (including sub-perpetuity grants) made under the Church Temporalities Acts, or under the Renewable Leasehold Conversion Act, being grants to which there was attached as a statutory incident the right to bring ejectment for non-payment of rent, even though made before 1861, did create the relation of landlord and tenant, for the purpose of enabling the grantee to claim the benefit of this Act: *Hamilton v. Casey* [1894], 2 I. R. 224; 27 I. L. T. R. 46; *Adams v. Alexander* [1895], 2 I. R. 363; 28 I. L. T. R. 141; *Clarke v. Cochrane*, Greer, Leading Cases, 392. A grant in perpetuity under the Trinity College, Dublin Leasing and Perpetuity Act, 1851, was held to have the same effect *Gormill v. Lyne*, 28 I. L. T. R. 44 (Sub-Com.). And a fee farm grant or lease for lives renewable for ever executed after the passing of the Renewable Leasehold Conversion Act, though not in pursuance of it, was similarly held to be within this Section: *Langtry v. Sheridan*, 30 I. L. T. R. 64 (L.C.); *Sheridan v. Nesbitt*, 30 I. L. T. R. 39 (Sub-Com.). The 14th Section of the Land Act, 1896, now, however, removes the difficulty as regards these old grants by providing that a lessee or grantee shall be entitled to apply under the Act, notwithstanding that the instrument under which he holds, though purporting to create the relation of landlord and tenant, is dated before January 1st, 1861, and by reason of its date does not create the relation. (See notes to that Section, *post*.)

Relation of Landlord and Tenant must exist.

But the grant whenever made must purport to create the relation of landlord and tenant. Where lands were conveyed by deed, in 1879, in fee simple to the use that the grantor should receive thereout a perpetual yearly rentcharge of £45, it was held that the rentcharge thereby created under the Statute of Uses was not a rent service arising from tenure or contract, and was, therefore, not capable of being redeemed under the Act. *Christie v. Peacocke*, 30 L. R. Ir. 646; 26 I. L. T. R. 120 (L.C.); and this would appear to be still the law, notwith-

standing the 14th Section of the Land Act, 1896. See *Barton v. Fisher*, 34 Ir. L. T. R. 193 (C. A.) where the question was raised but not decided. Sect. 1

The reference to the Acts of 1881 and 1887 in this Section and in Sec. 3, *post*, also excludes from this Act all holdings, such as town-parks, demesnes, and pasture lettings, which are excluded from the earlier Acts by Sec. 58 of the Act of 1881 and Sec. 5 of the Act of 1896. Where a fee-farm grant had been made of demesne lands, it was held, by the Court of Appeal, reversing the decision of the Land Commission (26 I. L. T. & S. J. 420), that the lands had not thereby lost their character of demesne lands, and that the case therefore did not come within the provisions of this Section: *Spencer v. Tedcastle*, 32 L. R. I. 411: 27 I. L. T. R. 3. Where lands were taken as an adjunct to a demesne, it was held also that they were excluded from the Act: *Allen v. Grogan*, 32 L. R. Ir. 179: 27 I. L. T. R. 55 (L.C.). See also *O'Farrell v. Quirk* [1895], 2 I. R. 197 29 I. L. T. R. 7; *Borrowes v. Colles*, 28 I. L. T. R. 41; and notes to Land Act, 1881, Sec. 58, *ante*, pp. 365-364, and to Land Act, 1896, Sec. 5, *post*, pp. 519-539. Holdings excluded.

(b) "Under the provisions of the 1st Section of the Redemption of Rent (Ireland) Act, 1891, an application for the redemption of rent can only be made by a person in *bona fide* occupation of a holding of the class mentioned in that Section; and as by the 3rd Section it is enacted that 'this Act shall be read and construed with the Land Law (Ireland) Acts, 1881 and 1887,' the nature of the occupation of a tenant applying under the Redemption of Rent Act must be of the same character as that of a tenant applying to fix a fair rent under the Land Acts of 1881 and 1887." (per BEWLEY, J.), *Cowell v. Buchanan*, 30 L. R. Ir. at p. 378; *Macartney v. Wharry*, 27 I. L. T. R. 91; *Parnell v. Brownrigg*, 29 I. L. T. R. 56. If the lessee or grantee has sublet part of the holding with the express consent of his landlord, he may be deemed in occupation. See notes to Land Act, 1881, Sec. 57, *ante*, p. 346. But where a landlord makes a lease of lands partly in his own hands and partly in the hands of a tenant, the lessee, although he is entitled to the rent paid by the tenant, cannot be deemed to have sublet with consent, and is not entitled to have his rent redeemed under this Act. *Cowell v. Buchanan*, 30 L. R. Ir. 375; 26 I. L. T. R. 24; see also *Flannery v. Nolan*, 20 L. R. I. 537, and notes to Land Act, 1881, Sec. 57, *ante*, p. 347. Nor is the grantee in that case relieved by Sub-section 3 of Section 7 of the Act of 1896, as it has been held by the Court of Appeal that that Sub-section does not apply to a redemption of rent under this Act: *Cowell v. Buchanan* [1898], 2 I. R. 147. Lessee must be in bona fide occupation.

(c) "Lease" in this Act must be interpreted in the same way as "lease" in the Acts of 1881 and 1887, and includes, therefore, "an agreement for a lease," if it was existing at the date of the passing of the Land Act, 1881, and was for a term sufficiently long to exclude it from the 1st Section of the Act of 1887: *Donnelly v. Galbraith*, 28 I. L. T. R. 54 (L.C.).

(d) "A lessee applying under this Section of the Redemption of Rent Act, 1891, must hold under a lease existing at the passing of the Act of 1881; but the Section in terms imposes no such conditions on a grantee under a fee-farm grant:" (per BEWLEY, J.), *Gun-Cunningham v. Byrne*, 30 L. R. Ir. at p. 386. In this case it was held that a grantee under a fee-farm grant made in 1884 was entitled to apply, but the grant had been executed in pursuance of a lease for lives renewable for ever, made in 1855, under which the tenant held at the passing of the Act of 1881. Where, however, a grantee under a fee farm grant made in 1885, not in pursuance of the Renewable Leasehold Conversion Act, but creating an entirely new contract of tenancy between the parties, applied to have his rent redeemed under this Section, it was held that the case was not within the Act: *Alexander* Fee-farm grants made after 22nd Aug., 1881

- Sect. 1.** *v. Macky*, 32 L. R. Ir. 484. "The 1st Section of the Redemption of Rent Act," says BEWLEY, J., in giving judgment in that case, "so far as it deals with leaseholders, is confined obviously to leaseholders holding under leases existing at the time of the passing of the Land Act of 1881; and although no words of qualification are used in connection with the expression 'grantee under a fee-farm grant,' I think it is manifest from the latter portion of the Section that the grantee under the fee farm grant must be a person who, if the landlord does not assent to the redemption, may appropriately be deemed to be a tenant of a *present tenancy*, *i.e.*, of a tenancy subsisting at the passing of the Act of 1881" (32 L. R. Ir., at p. 490).
- Full agricultural rent. (e) There is no definition in this, or any of the other Acts, of the term "full agricultural rent." In practice it appears to be considered equivalent to what is popularly known as the gross fair rent of the holding; that is, in the words of the 1st Section of the Land Act, 1896, "the annual sum which should be the fair rent of the holding on the assumption that all improvements thereon were made or acquired by the landlord." *Wynne v. Wilson*, 1 N. I. J. R. 95. 3 Greer 156; *Stuart v. Niblock*, 35 I. L. T. R. 61; *Kelly v. M'Caughy*, 27 I. L. T. R. 22. And it is only when the full agricultural rent so ascertained does not exceed the rent reserved in the lease or grant, that the case comes within the Act. The matter is referred to an inspector appointed by the Land Commission, and if he reports that the full letting value of the holding is not more than the rent actually paid, the Court usually holds that the rent is a "full agricultural rent," even though a fine may have been originally paid by the lessee or grantee to the landlord, or a large sum given for the interest in the lease, at a recent date. Thus, in *Warren v. Richardson*, 30 Ir. R. Ir. 639; 26 I. L. T. R. 116, where a lease was originally made in 1871 at a rent of £180, in consideration of a fine of £600, and this rent was in 1876 reduced to £150, in consideration of a further sum of £600 paid to the landlord, the Court (BEWLEY, J., and FITZGERALD, Commissioner), notwithstanding the payment of these fines, and the further fact that the tenant had in 1883 paid £750 for the interest in the holding, held that the reduced rent of £150 was a "full agricultural rent," the inspector having reported that the full letting value of the holding was £125.
- Where a fine has been paid. (f) See Rules of March, 1897, Order XLI., *post*. The Form of Consent (Form No. 38) thereby provided is conditional in terms upon the lessee or grantee being entitled to apply under the Act. As soon as it is served and lodged, the case is set down for hearing before a Commissioner, and the lessor or grantor may then show by evidence on affidavit, that the holding is not within the Act, notwithstanding his consent.
- Procedure. If, however, the lessor (or grantor) contends that the lessee (or grantee) is not entitled to have the rent redeemed, he may at once move to have the originating notice dismissed. This course was adopted in *Cowell v. Buchanan*, 30 L. R. Ir. 375; 26 I. L. T. R. 24, where the originating notice was dismissed, on the ground that the lessee was not in occupation. But a disputed question of fact—as, *e.g.*, whether a holding is agricultural or not—will not be decided summarily on motion. *Nesbitt v. Ferris*, 26 I. L. T. R. 135 (L.C.). See, however, *contra*, *Spencer v. Tedcastle*, 32 L. R. I. 411, where a question whether lands were demesne lands or not was decided by the Court of Appeal upon a motion to set aside the originating notices.
- Limit on amount of advances. An originating notice under the Redemption of Rent Act requires a one shilling stamp. Rules of March, 1897, Order XLI., rule 1., *post*, p. 857.
- (g) The Land Commission cannot sanction any advance for effecting a redemption exceeding the sum of £3,000, except under special circumstances. See Land

Purchase Act, 1888, Sec. 2, *ante*, p. 451, and *Roch v. Mulcahy*, 27 I. L. T. R. 12. But this restriction does not apply to the amount of the purchase-money which may be fixed. (See judgment of BEWLEY, J., *Gun-Cunningham v. Byrne*, 30 L. R. Ir., at p. 388.) If the sum so fixed exceeds £3,000, the tenant must himself provide the balance over that amount or the redemption cannot be carried out.

Sect. 1.

(h) In determining the amount of the purchase-money, the Court is to have regard to the "adequacy of the security." These words refer to the security for the rent, not to the security for an advance by the Land Commission, from a mortgagee's point of view. *Warren v. Richardson*, 30 L. R. Ir. 639; 26 I. L. T. R. 116 (L.C.). If, however, the rent to be redeemed is in excess of the full agricultural rent of the holding, it cannot be regarded as a well-secured rent, and the redemption price cannot be as large as it would be if the actual rent and the full agricultural rent were identical. *Warren v. Richardson*, 30 L. R. Ir. 639; 26 I. L. T. R. 116 (L.C.). In this case the redemption price of a rent of £150 per annum was fixed at £2,600 guaranteed land stock, the inspector on behalf of the Land Commission having reported that £125 per annum was the full letting value of the holding.

Amount of redemption price, how fixed.

In determining the sum to be paid for redemption, the Land Commission may take into account the suitability of the holding for building ground and the probability of any portion of it being converted into such. *Macartney v. Gordon* [1897], 2 I. R. 1: 30 I. L. T. R. 93; Fitzgibbon Irish Land Repts., 276.

A question has been raised as to whether in fixing the redemption price, a deduction should be made in respect of improvements effected by the tenant or his predecessors in title, in the same manner as in fixing a fair rent under the Land Act, 1881. In *O'Hea v. Morrison* (30 L. R. Ir. 651; 26 I. L. T. R. 139; 26 I. L. T. & S. J. 431), Commissioner M'CARTHY excluded the value of the buildings erected by the grantee from the amount of the redemption price (26 I. L. T. & S. J. 431); but on appeal this ruling was reversed by the Land Commission, and an addition made to the redemption price in respect of their value (30 L. R. Ir. 651; 26 I. L. T. R., 139, BEWLEY, J.). See also *Roch v. Mulcahy*, 27 I. L. T. R. 12. Such improvements are just as much a security for the rent, if made by the tenant, as if they had been made by the landlord; but if the tenant would be entitled on quitting his holding to compensation for improvements, the Court considers this a circumstance lessening the value of the security. A grantee under a fee-farm grant is not, however, a "tenant" within the definition contained in the 70th Section of the Land Act, 1870 (see *ante*, p. 208), and therefore is not entitled to compensation for improvements in any event. But the 14th Section of the Land Act, 1896, now provides that the provisions of the Land Law Acts with respect to improvements shall apply in cases under this Act, notwithstanding that the lessee or grantee would not on quitting his holding be entitled to compensation for improvements.

Tenant's improvements.

In *Chearnley v. O'Donnell* (32 L. R. I. 185), it was held by BEWLEY, J., reversing the decision of Commissioner M'CARTHY, that the Court should, in estimating the value of the "security," take into account, not only the value of the lands, with all buildings and improvements thereon, but also the personal covenant of the original lessee or grantee for the payment of the rent, to the extent of his assets. A sum of £1,000 was, in that case, added to the redemption price fixed by Commissioner M'CARTHY, for which the Land Commission refused to make an advance. (Judgment delivered 26th Nov., 1892.)

Lessee's personal covenant to pay rent.

(i) A landlord's consent to a redemption of rent, though under this clause it

Sects. 1-2. has the same effect as the lodgment of an agreement to purchase, is not such an agreement to all intents. The grantor, for instance, who has given such a consent is not a "vendor" within the meaning of Sec. 24 of the Local Registration of Title (Ireland) Act, 1891: *Re Lynch*, 29 I. L. T. R. 99. And it appears very doubtful whether an order for specific performance can be made against him, if he fails to carry out his consent. *Gyles v. Beausang* [1895], 2 I. R. 325.

Fixing fair rent. (j) If the lessor or grantor fails to consent to redemption within the prescribed time, the lessee or grantee becomes entitled to have a fair rent fixed, and the case is sent down to a sub-commission in the ordinary way, as if it were a case under the Act of 1881 or 1887. As regards exemption from rent on improvements, a grantee under a fee-farm grant appears now to be in the same position as a lessee applying under the 1st Section of the Act of 1887. See Land Act, 1896, Sec. 14: *Mairs v. Lecky* [1895], 2 I. R. 475: 29 I. L. T. R. 42, overruling *Kieran v. Mollan* [1894], 2 I. R. 27. 27 I. L. T. R. 129; and notes to Land Act, 1887, Sec. 1, *ante*, pp 398-399.

Fine paid for fee-farm grant.

In fixing a fair rent in respect of a fee-farm grant or long lease within this Act no deduction should be made from what would otherwise be a fair rent by reason of the payment of a fine for the purpose of acquiring the lease or grant at a lower rent than what at its date was the fair letting value of the lands: *Glenny v. Bell* [1898], 2 I. R. 233: 32 I. L. T. R. 1 (C.A.). The case appears to be different, however, where the grants are set aside under Land Act, 1887, Sec. 2. See notes to that Section, *ante*, p. 401, and *Lanyon v. Clinton* [1895], 2 I. R. 150.

If a grantee under a fee-farm grant has a fair rent fixed under this Section, what is the exact nature of his tenure thenceforward? Does he continue to possess an estate in fee, or does he become merely a yearly tenant? The decisions appear to be conflicting on this point. The most recent case is *The Irish Land Commission v. Magorian* [1901], 2 I. R. 445, where it was held by the Queen's Bench Division that he continues to be owner in fee, and that consequently his liability to pay the rentcharge is not affected. "It seems to me," says KENNY, J., in that case, "that the object of the legislature can only be achieved without inconvenience and without doing violence to language by holding that the fee-simple still remains vested in the only person who by any possibility can have it, namely, the new judicial tenant, and that in his relations with his grantor, he is to be regarded as if he were a yearly tenant, subject to the provisions of the Land Act of 1881" [1901], 2 I. R. at pp. 460, 461. This decision follows one of MONROE, J., to the same effect: *Ruttledge's Est.* [1895], 1 I. R. 328. But on the other hand, HOLMES, L.J., seems to be of opinion that once the judicial rent is fixed, the fee-farm grant ceases to exist for all purposes: *Glenny v. Bell* [1898], 2 I. R., at pp. 245-6. And there have been several decisions on the similar question arising under the 1st Section of the Act of 1887, that once a fair rent is fixed, the lease ceases to exist. See especially, *Morony v. Ambrose*, 32 L. R. Ir. 63 *M'Evoy v. M'Evoy* [1897], 1 I. R. 285, and notes to that Section, *ante*, pp. 395-6.

Apportionment and redemption of annuities and charges

2.—(1.) The Land Commission may carry into effect a redemption under this Act as if it were a redemption of a head rent under Section sixteen of the Land Law (Ireland) Act, 1887, with the necessary modifications, and may make an advance under the Land Purchase Acts for such redemption money or any part thereof in like manner as if that money were the purchase money of a

holding purchased by a tenant, and the provisions of the said Acts with respect to the advance and the repayment thereof shall apply with the necessary modifications. (a) Sects. 2-3.

(2.) When the Land Commission exercise the powers conferred on them by this Act then any rentcharge, rent, or other liabilities chargeable on or affecting the interest of the lessor or grantor, as the case may be, in such holding shall cease to be a charge upon the land and shall be transferred to the redemption money, (b) and the powers conferred upon the Land Commission by Section ten of the Purchase of Land (Ireland) Act, 1885, and by Sections fourteen, fifteen, and sixteen of the Land Law (Ireland) Act, 1887, shall be exercisable by them with respect to such redemption.

See Rules of March, 1897, Order XLI., *post*, where the procedure for completing the sale in case of consent to redemption by the Landlord is laid down.

As to the costs of redemption and making title to the redemption price, see *Lord Leesonfield's Estate*, 25 I. L. T. R. 28, MacC. 63.

(a) The advance cannot, except under special circumstances, exceed £3,000 Land Purchase Act, 1888, Sec. 2 (*ante* p. 451). If the redemption price is in excess of this amount, the tenant must provide the balance. See *Gun-Cunningham v. Byrne*, 30 L. R. Ir., at p. 388. But where the preliminary conditions have been fulfilled, an order to have the rent redeemed and a redemption price fixed, is a matter of right, though possibly the Land Commission may refuse to make an advance for the purpose of redemption: *Annaly v. M'Farlane*, 27 I. L. T. R. 99.

In *Vickery v. Deane* (32 L. R. Ir. 36: 27 I. L. T. R. 52), it was held by the Queen's Bench Division that the provisions of Sec. 3 of the Land Purchase Act, 1888, applied to cases under the Redemption of Rent Act, and that, upon an order being made sanctioning an advance under this Act, the tenant would be released (in the event of the redemption being carried out) from all rent and arrears due to the date of the signing of the consent. Section 3 of the Land Purchase Act, 1888, is now repealed by the Land Act, 1896, but the same principle would appear to apply to the construction of the 35th Section of the latter Act, which is substituted for it.

(b) These words seem to provide for cases where the grantors or lessors hold under superior fee-farm grants or leases. As to which see judgment of Commissioner *MACCARTHY, O'Hea v. Morrison*, 26 I. L. T. & S. J. 431; and see also Land Purchase Act, 1891, Sec. 20, *ante*, p. 477. Superior grants or leases.

Where the superior rent is substantial, a final order for redemption will not be made until it is shown that sufficient funds will be available to redeem it: *Leahy v. Geany*, 27 I. L. T. R. 11.

3. In this Act the expression "Land Purchase Acts" means the Land Law (Ireland) Act, 1881, Part V., the Purchase of Land (Ireland) Act, 1885, and the Purchase of Land (Ireland) Amendment Act, 1888, and any Act amending the same; the word "prescribed" means prescribed by Rules made in pursuance of this Definitions and construction.

504 *Redemption of Rent (Ireland) Act, 1891.*

Sects 3-4. Act; and the words "grantor," "lessor," "grantee," and "lessee." include the successors in title of such persons respectively; and this Act shall be read and construed with the Land Law (Ireland) Acts, 1881 and 1887, and the Land Purchase Acts.

Short Title. **4.** This Act may be cited as the Redemption of Rent (Ireland) Act, 1891.

CONGESTED DISTRICTS BOARD (IRELAND) ACT, 1893.
(56 & 57 Vic., CAP. 35.)

An Act to amend the power of the Congested Districts Board for
Ireland so far as respects the Purchase and Holding of Property.

[24th August, 1893.]

Be it enacted, &c.

1. This Act may be cited as the Congested Districts Board (Ire- Sects. 1-2.
land) Act, 1893, and shall be construed as one with Part Two of the Short title and
Purchase of Land (Ireland) Act, 1891. construction.

2.—(1.) The Congested Districts Board for Ireland may acquire Acquisition of
land for the purposes of Part Two of the Purchase of Land (Ireland) land and holding
Act, 1891, and of enlarging small holdings in a congested districts of property by
county, and shall be landlords of all land so acquired within the Congested
meaning of the Land Purchase (Ireland) Acts, 1870 to 1891. Districts Board.

(2.) For the purpose of holding land so acquired, or any property 54 & 55 Vic.
given to or investments made by or securities given to the Board, c. 48
the names of such two members of the Board, as the Board from
time to time appoint, shall be enrolled in the High Court as
“ Trustees of the Congested Districts Board for Ireland ”; and land,
securities, and other property acquired by or given to the Board
shall be held by such trustees under that name in trust for the
Board, and notwithstanding any change in the persons who are
trustees, shall, without any conveyance or assurance, vest in the
trustees for the time being so enrolled, and shall be dealt with
by them as the Congested Districts Board direct.

(3.) All land heretofore acquired by the Land Commission on
behalf of the Congested Districts Board shall, upon the enrolment
of trustees under this Act, vest in those trustees by virtue of this
Act without any conveyance, and shall be deemed to have been
duly acquired by the Congested Districts Board for the purposes
authorised by this Act. *

(4.) So much of section thirty-nine of the Purchase of Land
(Ireland) Act, 1891, as relates to the acquiring and holding of
land by the Land Commission and sub-section five of section forty
of the said Act are hereby repealed.

CONGESTED DISTRICTS BOARD (IRELAND) ACT, 1894.

(57 & 58 VIC., CAP. 50.)

An Act to make further provision with respect to the Congested Districts Board for Ireland.

[25th August, 1894.]

Be it enacted, &c.

Sect. 1.
Provisions as to
guarantee
deposits and
purchaser's
insurance
money

1.—(1.) Where the Congested Districts Board sell land to a tenant, and the Land Commission make an advance for the purchase of such land, the said Board may give to the Land Commission both or either of the following guarantees:—

(a.) that the Board will make good any default by the purchaser to the extent to which it might have been made good out of the guarantee deposit; and

(b.) if by reason of the tenant purchasing an addition to his holding or for any other special reason it seems desirable, then that during eighteen years from the date of the advance the Board guarantee the payment of all sums against which the purchaser's insurance money might otherwise have been set off by the Land Commission;

and where the first of such guarantees is given the Land Commission shall not require, or retain out of the advance the guarantee deposit, and where the second of such guarantees is given the annuity for the repayment of the advance shall be at the rate of four per cent. per annum on the advance.

(2.) The sums payable by the Congested Districts Board under any such guarantee shall be paid out of the money at the disposal of the Board, and shall be applied in like manner as if they had been paid out of the guarantee deposit or set off against the purchaser's insurance money, as the case may be.

(3.) All sums so paid by the Board shall be debts from the purchaser to the Board, and be a charge on the holding purchased next after the purchase annuity.

(4.) The Congested Districts Board shall not give guarantees under this section to an amount exceeding in the aggregate such sum as the Treasury, having regard to the liabilities of the

Congested Districts Board, may fix for the purpose of preventing any loss to the Exchequer. **Sects. 1-4.**

On the sale of the Dillon estate, situated in the counties of Mayo and Roscommon, being the first case of a re-sale of an estate purchased since the Act of 1896, the Land Commission required that the guarantee to be given by the Congested Districts Board under this Section should be for the whole of the purchase-money. *In re Trustees of Congested Districts Board*, 35 I. L. T. R. 122.

2. For the purpose of the taking of land by the Congested Districts Board, the Lands Clauses Acts (except the provisions thereof with respect to the purchase and taking of land otherwise than by agreement) shall be incorporated with the Congested Districts Board (Ireland) Acts, and the enactments so incorporated shall be construed as if the Congested Districts Board were the promoters of the undertaking. Incorporation of Lands Clauses Acts.

3.—(1.) The Lord Lieutenant may, with the sanction of the Treasury as to number and remuneration, authorise the Congested Districts Board to appoint to the permanent staff of the Land Commission such officers as may be required for the purposes of the Board. Officers of the Board.

(2.) Every officer so appointed, not being the secretary or assistant secretary, shall be selected by open competition in accordance with regulations made by the Civil Service Commissioners and approved by the Lord Lieutenant.

(3.) The Lord Lieutenant may also, with the sanction of the Treasury as to number and as to remuneration payable out of moneys voted by Parliament, authorise the Board to employ temporarily such persons as the Board may require.

(4.) Sub-section one of section forty of the Purchase of Land (Ireland) Act, 1891, is hereby repealed.

4.—(1.) This Act may be cited as the Congested Districts Board (Ireland) Act, 1894. Short title.

(2.) Part two of the Purchase of Land (Ireland) Act, 1891, section four of the Public Works Loan Act, 1892, (a) the Congested Districts Board (Ireland) Act, 1893, and this Act, are referred to in this Act as the Congested Districts Board (Ireland) Acts, and together with this Act, may be cited collectively. 54 & 55 Vic., c. 48.
55 & 56 Vic., c. 61.
56 & 57 Vic., c. 35.

(a) Sec. 4 of the Public Works Loan Act, 1892, will be found in the Appendix, *post*.

LAND LAW (IRELAND) ACT, 1896.
(59 & 60 VIC., CAP. 47.)

An Act to further amend the Law relating to the Occupation and
Ownership of Land in Ireland, and for other purposes relating
thereto.

[15th August, 1896]

Be it enacted, &c.

PART I.

LAND LAW.

Fair Rents.

Sect. 1
Amendment as
to improve-
ments.

1.—(1.) Where the court fix a fair rent (*a*) for a holding, the court shall ascertain and record in the form of a schedule, unless both landlord and tenant shall otherwise request—

a. the annual sum which should be the fair rent of the holding on the assumption that all improvements thereon were made or acquired by the landlord; (*b*)

b. the condition as to cultivation, deterioration, or otherwise of the holding and the buildings thereon;

c. the improvements made wholly or partly by the tenant or at his cost, and with respect to each such improvement—

(i.) the nature, character, and present capital value thereof, and the increased letting value (*c*) due thereto;

(ii.) the date (so near as can be ascertained) at which the same was made; and

(iii.) the deduction from the rent made on account thereof;

d. the extent (if any) to which the landlord has paid or compensated the tenant in respect of each such improvement;

e. the improvements made wholly or partly by or at the cost of, or acquired by, the landlord; (*d*)

f. such other matters in relation to the holding as may have been taken into account in fixing the fair rent thereof, or as may be prescribed; and

g. the fair rent of the holding;

and the said schedule shall be in the form set out in the First Schedule to this Act, or in such other form as may be prescribed, (*e*)

and a certified copy of the record shall on the prescribed application (*f*) be sent by post to each party, and the record shall be admissible in evidence on its mere production from the proper custody.

(2.) Nothing contained in the First Schedule to this Act shall affect the construction of any other portion of this Act.

(3.) No rent shall be allowed or made payable in respect of an improvement made by the tenant on a holding by reason only of the work constituting such improvement not being suitable to the holding. (*g*)

(4.) For the purpose of the Land Law Acts, as amended by this Act, a tenant shall be deemed to have been fully paid or compensated for every improvement made by him in pursuance of a contract entered into for valuable consideration. (*h*)

(5.) For the purpose of the Land Law Acts, as amended by this Act, a tenant shall not be deemed to have been paid or compensated for any improvement not made in pursuance of a contract entered into for valuable consideration, except to the extent to which the court, having regard to all the circumstances of the case, are of opinion that valuable consideration has been given by the landlord in respect of the improvement.

(6.) A contract by a tenant not to claim, on quitting his holding, compensation for any improvement made by him shall not authorise the allowance of any rent in respect of any improvement (*i*) except to the extent to which the Court, having regard to all the circumstances of the case, are of opinion that valuable consideration has been given by the landlord in respect of the entering into that contract.

(7.) Section four of the Landlord and Tenant (Ireland) Act, 1870, ^{33 & 34 Vic., c. 46.} shall not authorise the allowance of any rent in respect of any improvement, (*j*) provided that rent may be allowed in respect of an improvement made by the tenant, if made twenty years before the passing of the said Act, and not being a permanent building or reclamation of waste land.

(8.) For the purpose of this section valuable consideration shall not be held to have been given by reason of the mere letting of the land on lease or otherwise, or the mere enjoyment (*k*) by the tenant of any improvement where the rent of the holding was not fixed, reduced, abated, or, after the improvement was made, allowed to remain unaltered with the object of recouping the tenant for his expenditure of capital and labour in making the improvement;

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and in the case of an improvement made in pursuance of a contract entered into for valuable consideration, such object shall be implied where not expressed.

(9.) In assessing the fair rent of any holding no deduction shall be made, except such deductions as shall be specified and accounted for in the said schedule, (7) and are in accordance with the provisions of the Land Law Acts.

33 & 34 Vic,
c. 46.

(10.) Sub-sections (2) and (4) of section five of the Landlord and Tenant (Ireland) Act, 1870, and in the case of sales after the passing of the Landlord and Tenant (Ireland) Act, 1870, sub-section (1) of the same section shall not have effect in the case of applications to fix a fair rent. (*m*)

Statutes confer-
ring jurisdiction
to fix fair rent.

(a) Jurisdiction to fix a fair rent is conferred by six different Sections of the Land Acts.—(1) By the 8th Section of the Act of 1881, in respect of yearly tenancies existing at the passing of that Act, and tenancies of any tenore created before January 1st, 1883, in holdings in which tenancies were subsisting at the passing of the Act. (See notes to Land Act, 1881, Secs. 8 and 57, *ante*, pp. 265 and 350.) (2) By the 1st Section of the Act of 1887, in respect of leases in existence at the date of the passing of the Act of 1881 and expiring before 22nd August, 1880. (3) By the Redemption of Rent Act, 1891, in respect of similar leases expiring after that date and fee farm grants.—These are the principal Sections applying to all classes of tenancies. In addition to these, special jurisdiction is conferred, (4), by Land Act, 1887, Sec. 6, where an ejectment is brought in any Civil Bill Court for non-payment of rent. (5) By Sec. 8 of the same Act, where a middleman desires to surrender a holding, part of which is in his own occupation. And (6) by Land Act, 1896, Sec. 8, where the contract of tenancy provides for the resumption of a holding for the purpose of building or planting, and the holding is therefore deemed to be let for temporary convenience. In all these cases, the schedule required by this Section must be attached to the order. The Section is mandatory in this respect, and when the Land Commission re-hear a case on appeal from a sub-commission, it is necessary to have a new schedule attached to their order, which supersedes that of the sub-commission. *Cope v. Cunningham* [1897], 2 I. R. 467; 31 I. L. T. R. 37 (C. A.). “The intention of the Legislature was that the Court should, before it determines, and as incidental to determining, the amount of the fair rent, ascertain the various particulars mentioned in clauses (a) to (f) of the Sub-section; and that the fair rent of the holding should be ascertained, having regard to such particulars, which are essential ingredients in, and the basis of, the ascertainment of the fair rent.” (Per PALLES, C.B., *Cope v. Cunningham* [1897], 2 I. R. at pp. 471-2.)

Schedule to be
attached to order
in every case

The Local Government Act, 1898 (Sec. 55), now requires the schedule to state, in addition to the particulars specified in this Section, the standard amount, as defined by Sec. 54 of that Act, both of poor rate and county cess; and the benefit in respect of the holding received by the landlord and tenant respectively, out of the agricultural grant. This applies in all cases where the fair rent is fixed after April 1st, 1899.

Gross fair rent,
how ascertained.

(b) “The annual sum which should be the fair rent of the holding on the assumption that all improvements thereon were made or acquired by the landlord” is commonly spoken of as the “gross fair rent.” The Court, in ascertaining it, is not bound to

assume that the land is in the landlord's hands; nor does the "gross fair rent" necessarily correspond with the amount for which the holding might be expected to let to an incoming tenant if in the landlord's hands. *Gosford v. Blair* [1899], 2 I. R. 453; 33 I. L. T. R. 66; 1 Greer 208 (C. A.). The amount of the fair rent "is still to be ascertained and determined by the Land Commission under the Act of 1896, as under the Act of 1881, by a similar process and in a similar manner, and all that the Act of 1896 has done is to require that any deductions made from that sum shall be specified, and that certain of the material used in ascertaining it shall be stated." (Per FITZROBSON, L.J., *The Queen (Gosford) v. The Irish Land Commission* [1899], 2 I. R., at p. 420.) The "gross fair rent" in the schedule appears to be practically equivalent to the "full agricultural rent" mentioned in the 1st Section of the Redemption of Rent Act, 1891. *Wynne v. Wilson*, 1 N. I. J. R. 95; 35 I. L. T. R. 152; 3 Greer 156. As to fixing fair rents generally and what circumstances should be considered in doing so, see notes to Land Act, 1881, Sec. 8, *ante*, pp. 267-269, and *Walker v. Gosford*, 36 I. L. T. R. 132, 4 Greer 154, 249 (C. A.).

Sect. 1.

(c) The "increased letting value" due to an improvement is not necessarily the same as "the deduction from rent made on account thereof." There may be a surplus or balance of increased letting value over and above a fair and reasonable allowance in respect of the cost of the improvement; and this surplus it is the duty of the Land Commission to dispose of between the landlord and the tenant, having regard to all the circumstances of the case, holding and district, "treating the latent or dormant resources of the soil, as let by the landlord to the tenant, as the property of the landlord, and treating the development of those resources by the improvement as the act of the tenant." (See order of Court of Appeal, *Adams v. Dunseath* (No. 2) [1899], 2 I. R., at p. 545.) There appears to be no difference in this respect between holdings subject to the Ulster customs and other holdings; unless evidence is given of some special usage on the particular estate providing for the mode in which the increased letting value caused by a tenant's improvements should be dealt with as between landlord and tenant. See judgment of PALLIS, C.B., *Adams v. Dunseath* (No. 2) [1899], 2 I. R., at p. 534. And see also, as to the question of improvements generally and deductions from rent in respect of them, notes to Land Act, 1881, Sec. 8, *ante*, pp. 272-276.

Increased letting value due to improvements, how dealt with.

In dealing with improvements made under a special Drainage Act, such as the Suck Drainage Act, 1889, the instalments which the tenant is paying cannot be treated as the measure either of the "present capital value thereof" or of "the increased letting value due thereto" under this Section. The actual increase of annual value resulting from the works must be ascertained in the same way as the increase of annual value from other improvements of a similar kind, and dealt with in the same way: *Healy v. Bagot*, 1 N. I. J. R. 283 (C. A.). See note (g) to Land Act, 1881, Sec. 8 (9), *ante*, p. 272.

Improvements under Drainage Act.

(d) Improvements made by a landlord are, under this Section, recorded in the schedule in the same way as tenants' improvements. A landlord is obliged to serve particulars of those claimed by him. (Rules of 13th March, 1899, *post*, p. 763.) The practice of the Court appears to be to deal with them upon the same principles as are applied in the case of tenants' improvements, and to allow rent to the extent only to which the improvement adds to the letting value of the holding. (See judgment of BALLEY, L.A.C., *Overend v. Clive*, 35 I. L. T. R. 75.)

Improvements made by landlord.

(e) The Land Commission Rules of 20th January, 1899, prescribe three new forms of schedule, in substitution, according to circumstances, for that provided by the 1st Schedule of this Act, so as to comply with the varying conditions as to the

Form of Schedule.

Sect. 1.

situation of the holding under the Local Government Act, 1898. See those Rules and Forms 39, 39A, and 39B, *post*, pp. 787-789.

(f) See Rules of January, 1897, No. 135 and Form No. 40, *post*, pp. 751 and 790.

Exemption from rent in respect of improvements

(g) Sub-section 3, for the first time, introduces a distinction between a tenant's right to exemption from rent in respect of a particular improvement, and his right to compensation for the same improvement when quitting his holding. Upon the construction of Sub-sec. 9 of Sec. 8 of the Act of 1881, it was held that these rights were almost, if not entirely, correlative. (See judgment of SULLIVAN, M R., in *Adams v. Dunseath*, 10 L. R. Ir., at p. 141.) Owing to the definition of the term "improvements" in Sec. 70 of the Act of 1870, works of a non-agricultural character, no matter how valuable, are not the subjects of compensation; and accordingly it was held by BEWLEY, J., that such improvements gave no claim to exemption from rent under the Act of 1881: *Robb v. Downshire*, unreported in L.C. Court but reported in S.C. Court, Greer Leading Cases 448. It was held, however, that this decision did not apply to a holding subject to the Ulster Custom: *Carson v. Molyneux*, 30 I. L. T. R. 87 (S.C.), and now, under this Sub-section, it is no longer law. Thus no rent can now be put upon a gentleman's residence erected on a farm, even though built by a sub-tenant *Ryan v. Gloster* (No. 2), 1 Greer 240.

Improvements made in pursuance of contract for valuable consideration.

(h) Sub-sections 4, 5, and 8 must be read together, and are somewhat difficult to construe. Sub-section 4 appears to deal exclusively with improvements made by a tenant in pursuance of a contract with his landlord, entered into prior to the execution of the improvement; such, for instance, as a house built, or fences made, under a covenant in a lease to do the work. Sub-section 5, on the other hand, appears to deal only with improvements made by a tenant voluntarily, and not in pursuance of any contract. The term "valuable consideration" is used in both Sub-sections, but the effect of Sub-section 8, which is intended to apply to both, is to give it a slightly different meaning in each case. The concluding words of Sub-section 8 make the lease itself (or other contract) *per se* "valuable consideration" within the meaning of Sub-section 4, irrespective of the amount of the rent, length of the term, or other circumstances. An improvement made in pursuance of a covenant in a lease is still, therefore, to be deemed to have been fully compensated for by the lease, and no evidence need be given that the rent was fixed lower than it would otherwise have been in consequence of the covenant. This was the construction of Sub-sections 4 and 8 adopted by BEWLEY, J., in *Miller v. Montgomery*, 32 I. L. T. R. 76 (note), and followed by MEREDITH, J., in *Kelly v. De Veaux*, 32 I. L. T. R. 76. In *Talbot v. Honeyford* [1901], 1 Ir. R. 441, 35 I. L. T. R. 185, the same question arose before the Court of Appeal, but as the rent in that case was actually reduced, under the terms of the lease, after the improvements were made, no question arose as to the tenant having been compensated. In *Morgan v. Kilmorey* (30 I. L. T. R. 147) the reasons for this construction are well stated by BAILEY A. L. C.

Lease, how far "valuable consideration"

On the other hand, where improvements are made voluntarily by a tenant, and a lease is subsequently granted to him, it appears to be clear on the construction of Sub-sections 5 and 8, that the lease *per se* is not to be deemed to be "valuable consideration." If the landlord relies upon it as being compensation to the tenant he must show that some difference was made in the amount of the rent reserved with the object of compensating the tenant for the improvement. The Court will enquire into the *quantum* of this compensation, and will only deem the improvement compensated for to the amount which it finds he has been allowed out of the rent. *Johnston v. Annett*, Greer Leading Cases, App. 19 (L.C.); *Ellis v. Powell*, 35 I. L. T. R. 64 (L.C.); *Armstrong v. Stoney*, 1 Greer 331. A succeeding owner

may, however, take advantage of payments made by the executors of a previous tenant for life. *Corbett v. Digby*, 1 Greer 226. Sects 1-2.

Under the Ulster Custom it was held by O'HAGAN, J., in *Smith v. Downshire* (Greer Leading Cases, App. 88), that where it was proved to have been the custom on a particular estate, when adjusting the rents on the expiration of leases, not to put rent on a tenant's improvements, *even though made in pursuance of a covenant in a lease*, exemption from rent should be allowed upon such improvements in fixing a fair rent under the Land Act, 1881. And this would appear to be still the law, notwithstanding the general terms of Sub-section 4 of this Section owing to the saving clause contained in Sec. 49, *post*. Under Ulster custom

(f) Sub-section 6 introduces another exception to the former rule, established by the decision in *Adams v. Duncaith* (10 L. R. I. 109), that the right to exemption from rent upon improvements only exists where the tenant can claim compensation for them on quitting his holding. Prior to the passing of this Act a covenant not to make such a claim, if valid, rendered a tenant liable to pay rent on his improvements during the tenancy. *Tighe v. Clements* [1894], 2 I. R. 101 (C.A.); *O'Neill v. Cooper* (reported in Appendix to House of Commons Report on Irish Land Acts, 1894, p. 743); *Warnock v. Orr*, Greer Leading Cases 152 (L.C.). The term "valuable consideration" in this Sub-section bears the same meaning as in Sub-sections 5 and 8. See note (h) above Contract not to claim compensation for improvements

(g) The meaning of Sub-section 7 appears to be that the *exceptions and limitations* to a tenant's right to compensation for improvements under Sec. 4 of the Land Act, 1870 (see *ante*, p. 169), are not to apply henceforth to his right to exemption from rent on these improvements. The only improvements made by a tenant upon which rent can now be put, in fixing a fair rent, are improvements other than permanent buildings or reclamation of waste land made prior to 1st August, 1850. Effect of L. & T. Act, 1870, sec. 4

(h) As to the application of Sub-section 8, see note (h) above. The mere enjoyment by a tenant of an improvement must be taken into account in awarding compensation under the final clause of Sec. 4 of the Act of 1870. As to how this rule was applied in fixing fair rents prior to the passing of this Act, see *Moore v. Fillicrs Stuart*, and *Morrissey v. Fillicrs Stuart* (reported at length in Appendix to House of Commons Report on Irish Land Acts, 1894, at pp. 701-2). Enjoyment by tenant of improvements

(i) Sub-section 9, it has been held, prohibits any deduction being made in fixing a fair rent for what is called "occupation interest," whether a holding is subject to the Ulster Custom or not. *Markey v. Gosford*, 31 I. L. T. R. 97 (L.C.), *Ripley v. Macnaghten* [1899], 2 I. R. 446 (L.C.). This does not, however, mean that the ascertainment of a fair rent should proceed upon the basis that the holding is in the landlord's hands free from any tenancy. (*Ibid.*) As to how fair rent should be arrived at generally, see notes to Land Act, 1881, Sec. 8, *ante*, pp. 267-269. Occupation interest.

Maintenance of fences ought not to form the subject of a special deduction in the schedule: *Farrell v. Farrell*, 3 Greer 159 (L. C.).

(m) For the rules governing presumption as to improvements introduced by this Sub-section and now in force, see notes to Land Act, 1881, Sec. 8 (*ante*, pp. 275-6). And as to their application to holdings subject to the Ulster Custom, see notes to Sec. 49 of this Act, *post*, p. 596.

2. Any enactment prohibiting the resumption of a holding or part of a holding until the expiration of the first statutory term in a tenancy shall not apply where the term began after the commencement of this Act, and either the land resumed is demesne Limitation of enactments prohibiting resumption of holding during statutory term.

Sects. 2-5 land, or the holding is a town park for which a fair rent is fixed by virtue of this Act.

The enactments referred to are Land Act, 1881, Sec. 8, Sub-sec. 3; and Land Act, 1887, Sec. 1 (last clause). See also Land Act, 1881, Sec. 5, and notes to these Sections, *ante*, pp 257 and 397.

Statutory term
and beginning
of judicial rent

3.—(1.) On the expiration of a statutory term (*a*) in a present tenancy the tenancy shall continue a present tenancy subject to the same rent and conditions (including the statutory conditions) as during the statutory term, until the tenancy is determined (*b*) or a new statutory term for the holding begins, and an application to fix a fair rent may be made at any time during such continuance of the tenancy; and no objection to such application shall be allowed which could have been but was not taken upon the application for a previous judicial rent, or being then taken was overruled. (*c*)

(2.) Where the Court on application fix a judicial rent for a holding, the judicial rent and statutory term shall begin from the gale day next after the date of the application, (*d*) or, if a preceding statutory term is then current, from any later gale day on which that statutory term expires.

(3.) The judicial rent fixed by order of the court for a holding shall, as from the gale day from which it begins, be the rent payable by the tenant of the holding; and where it differs from the previous rent, whether or not a judicial rent, then in respect of the period which may have elapsed since the gale day from which it began, the difference, if the judicial rent so fixed is higher than the previous rent, shall be paid by the tenant, and if the judicial rent so fixed is lower, may, if it has been actually paid by the tenant, be deducted from any rent subsequently payable by him, unless the judicial rent exceeds fifty pounds a year, in which case the difference may be deducted from any rent subsequently payable by him to the landlord to whom such difference has been paid, or to his personal representatives, or where the estate of such landlord has determined may be recovered from such landlord or his personal representatives. Provided that where the judicial rent does not exceed fifty pounds a year, the amount of any deduction made by the tenant may be recovered from the person to whom the difference was paid, or his personal representatives.

(*a*) See as to the creation of a statutory term generally and its incidents, notes to Land Act, 1881, Sec. 5, *ante*, pp. 250-252.

(b) As to how and when a present tenancy in an agricultural holding may still be determined, see notes to Land Act, 1881, Sec. 20, *ante*, pp. 296-298. Sect. 3.

(c) The final words of this Sub-section make the previous fixing of a fair rent an estoppel as against the landlord, on an application for a second statutory term. On the other hand, another Section of this Act provides that the previous dismissal of an application by the Court shall not, where the law has been altered by this Act, be an estoppel as against a tenant (Sec. 50, Sub-sec. 2). It would appear, however, that if the tenant had parted with the possession of a part of the holding during the first statutory term by an attempted sub-letting or sub-division without the consent of the landlord, and was not in the occupation of the holding when he served his second originating notice, he would not be entitled to a second judicial term (unless the sub-letting came within the provisions of Sec. 7, *post*), as this would be an objection which could not have been taken upon his previous application for a judicial rent.

Quere. How far does the estoppel created by this Sub-section apply where a fair rent was originally fixed by agreement? It was not uncommon where a law point was raised by a landlord, and the holding was alleged to come within one of the excluding clauses, for the parties to compromise the matter by fixing a rent at something between the old rent and what would probably be the judicial rent, and then filing an agreement under Sec. 8 of the Act of 1881. When the statutory term created by this agreement runs out, can the landlord then fall back upon his law point, or is he prevented by this Section from doing so? It would seem from the definition of "judicial rent," in Sec. 48, Sub-section 1, *post*, that we would be so prevented. Where rent was fixed by agreement.

(d) Sub-section 2 is a substantial re-enactment of the 5th Section of the Act of 1887, which is repealed by the schedule to this Act. The "date of the application" appears to be equivalent to the "making of the application" in the repealed Section, which was interpreted as referring to the service of the originating notice, not the hearing in Court *Smythe v. Moore*, 32 L. R. Ir. 129 (C. A.), 26 I. L. T. R. 66 (L. C.). Where landlord and tenant enter into an agreement to fix a judicial rent under Sec. 8, Sub-sec. 6, of the Act of 1881, and provide by their agreement from what date the judicial rent is to run, the statutory term begins from that date. And there is nothing illegal in inserting in such an agreement a provision that the judicial rent and statutory term shall begin from a date antecedent to the execution of the agreement. *Fulton v. Templetown* [1898], 2 I. R. 321; 32 I. L. T. R. 125 (C. A.). See also *Dunne v. Knolles* [1898], 2 I. R. 308; 31 I. L. T. R. 89 (C. A.). From what date judicial rent runs.

^o Under the Land Act, 1881, in case of all orders made prior to the passing of the Land Act, 1887, the judicial rent commenced "as from the period commencing at the rent day next succeeding the decision of the Court" (Sec. 8 (2)) unless the application was made on the first occasion on which the Court sat, in which case it commenced as from the gale day next succeeding the 22nd August, 1881 (Sec. 60).

The "decision" of the Court was held to mean the first order made by a Sub-Commissioner fixing a fair rent, even though this was afterwards varied by the Chief Commissioners. *Davus v. M'Mahon*, 24 L. R. Ir. 73 (Ex. Div.), 447 (C. A.), 23 I. L. T. R. 11, 25.

The 5th Section of the Land Act, 1887, now repealed, provided that the judicial rent, when fixed, should "be the rent payable by the tenant of the holding as from the gale day next after the making of the application." This Section was held to be general in its operation, applying to yearly tenancies as well as to leaseholds. *Sutton v. Walsh*, 26 L. R. Ir. 629. And the portion of it above quoted was also held to apply to all cases which were pending when the Act passed. Thus, a judicial rent, fixed after the passing of the Act of 1887 upon an originating notice served Statutory Term under Land Act, 1887, Sec. 5.

Sects. 3-4. prior to that date, runs from the gale day next after the service of the originating notice *Sutton v. Walsh*, 26 L. R. Ir. 629 (Q. B. D.). The statutory term begins, in all cases, on the same date as the judicial rent: *M'Cann v O'Neill*, 36 I. L. T. R. 95, 135; 2 N. I. J. R. 192, 262 (C. A.).

(c) Sub-section 3, which is somewhat involved in its terms, provides for the remedies available to a tenant who has, pending the fixing of a judicial rent, paid more than the amount he is ultimately held liable to pay. The effect of it appears to be as follows —

Over payments pending proceedings, how recovered.

(1) Where the judicial rent does not exceed £50 a year the tenant may deduct the amount of overpayment from any rent subsequently payable by him, whether to the landlord to whom he made the original overpayment or any succeeding landlord. And in the event of his making the deduction from a succeeding landlord, the latter may recover the amount deducted from the person who received the overpayment or his personal representatives. This right of deduction, it has been held, applies even as against a succeeding landlord who has acquired the property under a Landed Estates Court conveyance, which makes no mention of the tenant's right of deduction *M'Caffrey v. M'Donald*, 34 I. L. T. R. 180 (Q. B. D.).

(2) Where the judicial rent exceeds £50 a year, the deduction by the tenant can only be made from rent accruing due to the landlord to whom the overpayment was originally made, and where his estate has determined, then the tenant may recover the amount overpaid by a personal action against him or his personal representatives.

In case of change of ownership

Upon the construction of the repealed 5th Section of the Act of 1887, it was held that a tenant could not deduct from rent payable to a remainderman the amount of an overpayment thus made to a previous limited owner: *Burrell v. Farmer*, 24 I. L. T. R. 92. This decision now applies only where the judicial rent exceeds £50 a year. It was further held by the Court of Appeal that, notwithstanding similar provisions in the repealed Section with reference to a deduction of an overpayment from rent subsequently becoming due, the tenant could maintain an action to recover the amount of the overpayment from the landlord, and that the right of deduction from subsequent rent was not his only remedy *Stubbs v. Martin* [1895], 2 I. R. 70. But, *quere*—upon the construction of the present Section is not this right of action confined to cases where the estate of the landlord has determined?

Or transfer of tenants' interest

The circumstances which actually occurred in *Stubbs v. Martin* [1895], 2 I. R. 70, do not appear to be provided for by the present Section at all. There a lessee after serving an originating notice assigned his lease to a purchaser. The proceedings were continued in the purchaser's name and a judicial rent subsequently fixed at a considerable reduction on the amount of the old rent. The rent which accrued due after the service of the originating notice had been partly paid by the lessee and partly by the assignee, and as the latter was the only person who could recover his overpayment by the method pointed out by the Section, it was held that the former could maintain an action for what he had overpaid, that being his only remedy. The present Section provides for a change of landlords during the period when the overpayments were made, but not for a change of tenants, and therefore it would appear that the principles laid down by the Court of Appeal in *Stubbs v. Martin* [1895], 2 I. R. 70, would still apply.

Judicial term in case of agreements 44 & 45 Vict., c. 40.

4. In the case of a tenant who applied to the Court under section sixty of the Land Law (Ireland) Act, 1881, on the first occasion on which it sat, to have a fair rent fixed, and who, since making that application, has signed an agreement under sub-section (6) of

section eight of the said Act, the statutory term so created shall, Sects 4-5. where the judicial rent has been received as having accrued due from the gale day next after the day on which the Land Law (Ireland) Act, 1881, came into force, be held for the purpose of an application to fix a fair rent to date from that gale day.

See notes to Land Act, 1881, Sections 8 and 60, *ante*, pp. 271 and 365; and as to the application of this Section generally, *M'Mahon v. Plunkett*, 31 I. L. T. R. 163 (L. C.).

5.—(1.) The Land Law Acts, (*r*) except section seven of the Land Law (Ireland) Act, 1881 (which amends the Landlord and Tenant (Ireland) Act, 1870, in respect of compensation for improvements), shall not apply to the following tenancies. — Exclusion of certain holdings.

a. To a tenancy in any holding which is not substantially (*b*) either agricultural or pastoral in its character, (*a*) or partly agricultural and partly pastoral, or the main object of the letting of which was for a residence; (*c*)

b. To a tenancy in any holding which substantially (*b*) consists of—

(i.) land being or forming part of a home farm (*d*); or

(ii.) land which when first demised (*f*) was demesne, (*e*) and which the provisions of the contract of tenancy, or the circumstances of the case, show was intended to be preserved (*g*) as demesne or resumed (*h*) as demesne by the landlord; or

(iii.) land incorporated in a demesne by the tenant (*i*) and forming part of a demesne at the time the application to fix a fair rent is made.

c. To a tenancy in a holding (other than a holding let to be used wholly or mainly for a dairy farm (*m*)) which is let to be used wholly or mainly for the purpose of pasture (*j*)—

(i.) if it is of the rateable value of upwards of one hundred pounds; or

(ii.) if the tenant does not actually reside on the holding, or where the holding adjoins (*k*) or is ordinarily used (*l*) with another holding, then on the latter holding.

(2.) Where a distinct and substantive part of the property held under one demise is demesne land, or is not agricultural or pastoral

(a) See notes, p. 519.

(b) See notes, p. 524.

(c) See notes, p. 526.

(d) See notes, p. 526.

(e) See notes, p. 527.

(f) See notes, p. 532.

(g) See notes, p. 532.

(h) See notes, p. 533.

(i) See notes, p. 533.

(j) See notes, p. 534.

(k) See notes, p. 538.

(l) See notes, p. 538.

(m) See notes, p. 539.

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in its character, or is an incorporeal hereditament, and the court consider that that part is not the substantial part of such property (*o*), the court may, if they are of opinion that, apart from the fixing of a fair rent, the separation of the property into two parts will not diminish the value of the landlord's interest therein (*p*), direct that that part shall thenceforth be, or, if it is an incorporeal hereditament, be treated as, a separate holding (*u*), and shall, unless the tenancy has expired, be held at such rent during the continuance of the tenancy as the court determine to be the proper proportion of the rent reserved by the demise (*q*), and the court may fix a fair rent for the remainder of the property held under the demise, and the said Acts (*r*) shall apply to that remainder as if it were a separate holding

50 & 51 Vic.,
c 33.

(3) Where a holding is held by joint tenants or tenants in common (*s*), and such tenants have worked and occupied separate portions thereof, and the division of the holding was made prior to the passing of the Land Law (Ireland) Act, 1887, the court, on the application (*u*) of any joint tenant or tenant in common, may, if they think that it is just, fix a fair rent upon the portion of the holding so separately occupied (*t*). Such order fixing a fair rent when made shall not have the effect of increasing the liability of the landlord for rates or taxes (*v*) in respect of the holding, and such order shall not be made if the court are of opinion that the interests of the landlord in the holding will be injuriously affected thereby otherwise than by the mere fixing of a fair rent.

(4.) Nothing in this section shall extend to any holding in respect of which a judicial rent has been fixed before the commencement of this Act.

Crucial date for
determining
character of
holding.

The first Sub-section of this Section is a substantial re-enactment, though with some important alterations, of the repealed portions of the 58th Section of the Land Act, 1881, as regards non-agricultural holdings, home farms, demesne lands, and pasture holdings. Under the Act of 1881 it was decided that the question whether a tenancy was one to which the Act applied, or which came within one of the classes excluded by Section 58, should be determined by the circumstances existing at the date of the passing of that Act: *Nelson v. Headfort*, 18 L. R. Ir. 407 (C. A.); *M'Kelvey v. Cole-Hamilton*, 29 I. L. T. R. 154 (L. C.) (see notes to Land Act, 1881, Sec. 58, *ante*, p. 353). As the new provisions introduced by this Section are independent and complete in themselves, it has been held by the Court of Appeal (*LORD ASHBOURNE, C., diss*) that the crucial date at which the exclusions enacted thereby take effect is the date of the passing of this Act (15th August, 1896): *Gaffney v. Fetherstonhaugh* [1900], 2 I. R. 417; 34 I. L. T. R. 37; 6 I. W. L. R. 7. But the

(*n*) See notes, p. 539. (*q*) See notes, p. 540. (*t*) See notes, p. 541.
(*o*) See notes, p. 539. (*r*) See notes, p. 540. (*u*) See notes, p. 541.
(*p*) See notes, p. 540. (*s*) See notes, p. 541. (*v*) See notes, p. 541.

date of the passing of the Act of 1881 is still the crucial date under the unrepealed portions of the 58th Section of that Act, as regards, *e.g.* the residence of the tenant of a town park: *M'Oscar v. Charlemont*, 31 I. L. T. R. 125 (S. C.). It must, however, be remembered that the status of the tenant as regards occupation generally, is determined at the date of the service of the originating notice (see note (c) to Land Act, 1881, Sec. 57, *ante*, p. 345); and as regards the user of a town park, the Court is not confined to any particular date, but must look to the substantial user of the lands during the whole term *Daly v. Wright*, 32 L. R. Ir. 9. The same remark applies to demesne lands and pasture holdings under the express words of this Section.

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Residential and other Non-Agricultural Holdings.

(a.) Sub-section 1a is substituted for Sub-section 1 of Section 58 of the Act of 1881, now repealed. The new Sub-section differs from the repealed Sub-section in two points. *First*, the word "substantially" is introduced to qualify the negative exclusion; *secondly*, at the end of the Sub-section are added the words "or the main object of the letting of which was for a residence." In *Robertson v. Duncannon* (unreported, judgment given 22nd December, 1896), BEWLEY, J., held that these latter words were not intended to create any new ground of exception, or to exclude from the rent-fixing provisions of the Land Acts any holding that had not been excluded by the existing law. And this decision was, on the facts, affirmed by the Court of Appeal on 26th February, 1897.

How far new sub-section differs from Act of 1881, sec 58.

The terms of Sub-sec. 1 of Sec. 58 of the Act of 1881, were almost identical with those of Sec. 71 of the Land Act, 1870, so that the decisions under the three Acts can be conveniently considered together.

Residential holdings must not be confounded with demesne lands, which are dealt with in the next clause of the Sub-section. The former are neither agricultural nor pastoral; the latter may be both or either. As regards the former, "the burden of proof is on the tenant, who comes in to prove that he has a holding agricultural in its character" (Per FRYZEBORN, L.J., *Perry v. Farley* [1894], 2 I. R., at p. 586). As regards demesne lands, the burden of proof is on the landlord.

Contrast residential holdings with demesne lands.

To exclude the holding as residential, the residence must be the dominant factor, and the use of the land for agriculture must be subordinate or ancillary to the use of the place as a residence: *Butterly v. Carroll* (No. 2), 34 I. L. T. R. 31, 141; 3 Greer 35 (C. A.); 6 I. W. L. R. 15.

In the leading case under the Act of 1870 of *Carr v. Nunn*, I. R. B. & L. App. 89, 7 I. L. T. R. 26; Donn. 331, the question arose as regards a villa residence situated about a mile and a half from the town of New Ross, and occupied by a solicitor having an office in the town. There were eight acres of land attached, six of which formed the lawn, about half an acre was under tillage, and the remainder under the house and gardens. The Court for Land Cases Reserved unanimously held it to be a residential holding and excluded from the Act—"We do not mean to determine," said LORD O'HAGAN, C., in giving judgment, "that eight acres might not constitute an agricultural or pastoral holding, or that, under certain circumstances, a much smaller piece of land, consisting of four, three, or even two acres, might not be properly considered as such. We have to regard the nature and extent of the property, the object with which the tenancy commenced, and the use which the claimant has made of the tenement in order to determine the nature and character of the holding." I. R. B. & L. App., at p. 97; *Donnell's Reports*, p. 332.

Residential holdings, how distinguished from agricultural holdings.

In *Doyle v. Campbell*, I. R. 9 C. L. 95; 8 I. L. T. R. 101; Donn. 456, a holding surrounded by a demesne wall, containing twenty-five acres, ten of which were under

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a villa residence, offices, gardens, and ornamental grounds, and the remaining fifteen in pasture, was held by the Court of Exchequer to be non-agricultural. "The most appropriate use of which, viewed as a whole, it was capable, was a residence, and its use as a residence was within the contemplation of both parties at the time of the letting. Parts of the holding were capable of use for purposes of agriculture or pasture, but this was, from the nature of the holding, not only consistent with but subordinate to, the use of the entire as a residence." (Per PALLES, C.B., I. R. 9 C. L., at p. 97.)

The principles laid down in these two cases have been since applied by all courts in determining cases as they arise from time to time. The question is one rather of fact than of law, and the numerous cases reported only afford assistance in so far as they point out what matters are considered of importance for determining the question whether a holding is residential or agricultural in character.

Circumstances
 taken into
 consideration.

The size of the holding, and its situation, the amount of rent agreed to be paid, the comparative value of buildings and land, the covenants in the lease or contract of tenancy under which the lands are held, the social position of the tenant and previous occupiers, the object of the letting, and the use made of the lands are the principal matters upon which the question turns, and upon which evidence is usually given.

Size of holding.

In *Moonan v. Conyngham* [1895], 2 I. R. 1, 28 I. L. T. R. 117, a holding of eighty-six acres in the co. Meath, with a house upon it, undoubtedly superior to an ordinary farmer's residence (but which had been made so at the expense of the tenant, who had spent about £1,600 upon it), was held by the Court of Appeal to be an agricultural holding, and its size was relied upon as one of the circumstances influencing the decision. In *Waldron v. De Vecsi* (unreported, but referred to by FITZGERALD, L.J. [1895], 2 I. R., at pp. 18-19) similarly, a holding of seventy-one acres, at a rent of £72 per annum, was held to be agricultural.

On the other hand, in *Couser v. Hassard*, 35 I. L. T. R. 91, a holding of 117 acres, held at a rent of £175, was held by the Land Commission to be residential, evidence having been given that the house, with about two acres attached, had been let, furnished, for £150 a year. The extent of the holding, though important, is therefore by no means conclusive. In *Harrison's Estate* [1900], 1 I. R. 139, 33 I. L. T. R. 137, 1 GREY 360, where portion of a mansion house, together with 190 acres (of which, however, forty acres were ornamental plantation), were held under a court letting made by the Land Judge, Ross, J., held that the holding was not an agricultural one, so as to come within the 40th Section of this Act.

Comparative
 valuation of
 land and build-
 ings

As an indication of the comparative importance of the land and the residence in the letting, the relative proportion of the Government valuation on land and on buildings is frequently referred to. If the amount on buildings is greater than that upon land, the case is almost conclusive that the holding is not an agricultural one. *Wallace v. Boggs*, 27 I. L. T. R. 105; but, on the other hand, in some cases the holding has been held to be residential, though only a small part of the valuation was on buildings. Thus in *Couser v. Hassard* (35 I. L. T. R. 91), the total Government valuation was £193 10s., of which £54 only was on buildings, yet the holding was decided to be residential in character by the Land Commission; and in *Hunt v. Ryan* (unreported, judgment given 20th January, 1893) the total valuation was £57, of which £11 only was on buildings, yet the Court of Appeal was equally divided as to whether the holding was residential or agricultural in character. There are many cases also where a holding consisting of land without any buildings has, nevertheless, been considered to be "residential" in character, being held to have been taken as an "accessory" to a residence, or residential

holding adjoining. See, for example, *Crookshank v. Law*, 27 I. L. T. R. 2, and p. 522, *post*

A holding may change its character during the tenancy. "It is quite possible that lands let as a farm may be so treated by the tenant as to lose either in whole or in part their agricultural character" (per HOLMES, L.J., *Gloster v. Ryan* [1899], 2 I. R., at p. 193). When this takes place the character the holding bore as between the parties at the date of the passing of this Act must determine whether it is within the Land Acts or not. Thus where a mill had been allowed to fall into ruins the holding was deemed agricultural. *Faris v. Nesbitt*, 29 I. L. T. R. 83. In *Connolly v. Stewart* (1 N. I. J. R. 233) it was contended that the opening of a public-house upon a holding had altered its character, but the Court of Appeal held otherwise on the particular facts of the case, admitting, however, that such a change was possible. "When the letting was made in 1862," says HOLMES, L.J., "there is no doubt that the holding was agricultural or pastoral. The granting of the licence would not alter its character. *The development of the business might, however, have done it, but that is a matter of evidence*" (1 N. I. J. R., at p. 234). In *Grant v. Lymbery* [1902], 2 I. R. 97, it was held in an ejectment on title by the King's Bench Division that a valuable right of fishing by salmon weirs in a tidal river acquired by a tenant under the Fishery Acts of 1842 and 1863 during the currency of a lease so altered the character of the holding as to exclude the tenant from the benefits of the Land Acts on the expiration of the lease. But, in the words of MEREDITH, J., "the doctrine of conversion by the tenant of an agricultural into a non-agricultural or residential holding is one that should be applied with great care and caution, and only under special, I may say exceptional, circumstances". *Massy v. Webb* [1899], 2 I. R., at p. 618. See also *Gloster v. Ryan* [1899], 2 I. R. 174 (C. A.), and *Moonan v. Conyngham* [1895], 2 I. R. 1.

If a holding was originally let as an agricultural one, the erection upon it by the tenant of a dwelling-house in excess of the requirements of an ordinary farm is not enough in itself to deprive it of its original agricultural character. *O'Donnell v. Chearnley*, 32 L. R. Ir. 185 (L. C.). And the same remark applies to the improvement of an existing house, and the adding of accessories, such as greenhouses, gateways, ornamental plantations, &c.: *Williamson v. Purcell*, 3 Greer 161; *Gethin v. Gore*, 3 Greer 224; unless the whole character of the holding has been changed, so that it became and was, at the date of the passing of this Act, substantially a residential holding (see judgment of WALKER, C., *Moonan v. Conyngham* [1895], 2 I. R., at p. 4). But, if its character is actually changed, the description of the demised premises in the lease or other contract of tenancy is immaterial. Thus a holding of twenty-one acres, with a moderate-sized two-storied house thereon, situated about five miles from Belfast, was held by the Court of Appeal not to be an agricultural holding, though it was described in the lease as "that farm, tenement, or parcel of land, &c.," without any mention being made of the house. *Lepper v. Pooler*, 26 I. L. T. R. 121.

The situation of a holding is of great importance in determining its character. Thus a holding of one acre within the municipal boundary of the city of Dublin, used for growing vegetables, was held by the Court of Appeal not to be one to which the Land Acts applied, the court coming to the conclusion from its position and surroundings that it was a town building plot, which, pending a demand for it as such, was used as a market garden: *Perry v. Farley* [1894], 2 I. R. 579; 28 I. L. T. R. 109. But the mere inclusion of a holding within a municipal boundary will not exclude it from the Land Acts, where it is distinctly of an agricultural character: *Power v. Prndergast* [1897], 2 I. R. 352. See also judgment of PALLES, C.B., in *Perry v. Farley* [1894], 2 I. R., at p. 582.

Sect 5.

Residential Holdings.

Change in character of holding

<p>Sect. 5. Residential Holdings. Object with which tenancy commenced</p>	<p>"The object with which the tenancy commenced" is mentioned by LORD O'HAGAN, C., in <i>Carr v. Nunn</i> (I R. R. & L. App., at p. 97) as one of the principal tests for determining the character of the holding. But prior to the passing of this Act it was held by the Court of Appeal that the motive with which the holding was taken was only of consequence where there was some doubt as to the physical character of the holding <i>Morris v. Kendal</i>, 1 I. W. L. R. 71. It is the holding that is excluded, if excluded at all, and not the individual from time to time in occupation of it (per BEWLEY, J., <i>Furlong v. Thompson</i>, 29 I. L. T. R., at p. 99) But where "the main object of the letting was for a residence," or for carrying on some trade or business, the holding was always held to be excluded <i>O'Neill v. Greene</i>, 22 I. L. T. R. 99; <i>Allen v. Cope</i>, 18 I. L. T. R. 99.</p>
<p>Land taken as adjunct to residence</p>	<p>Where land, without any buildings upon it, is taken for the benefit of an existing residence, and apart from it, the holding may be deemed residential, notwithstanding that no buildings are put upon it. Thus a holding of three acres, near the town of Portrush, taken by a gentleman because it adjoined his residence, was held by the Court of Appeal to be non-agricultural in character, although it had no buildings upon it, and was used for ordinary agricultural purposes <i>Crookshank v. Law</i>, 27 I. L. T. R. 2. See also <i>Collins v. Finnucane</i>, 26 I. L. T. & S. J. 646; and <i>O'Malley v. Clements</i>, 27 I. L. T. & S. J. 359.</p>
<p>Or demesne.</p>	<p>Lands taken, also, not with a view to making a profit by farming, but as an adjunct to a demesne, to improve its appearance, or add to its amenity are not agricultural or pastoral in their character <i>Allen v. Grogan</i>, 32 L. R. Ir. 179 (L. C.), <i>Pratt v. Gormanstown</i> [1894], 2 I. R. 557 (C. A.); <i>Grace v. O'Connor</i> (unreported, but referred to in 32 L. R. Ir., at p. 185). Such lands may also be held to be "incorporated in a demesne," as to which see note to Sub-sec. (1) b (iii.), <i>post</i>, p. 533.</p>
<p>Amount of rent</p>	<p>Where there is no direct evidence as to the object of the letting, its purpose may be inferred from various circumstances. Thus where the rent reserved in a lease, or fine paid, is very much in excess of the agricultural value of the land, the court may assume that the lands were not taken as an agricultural holding <i>Bland v. Thompson</i>, 32 I. L. T. R. 167, 1 Greer 132 (C. A.); <i>Crookshank v. Law</i>, 27 I. L. T. R. 2 (C. A.).</p>
<p>Terms of lease.</p>	<p>The provisions of the lease are, in all cases, most important elements in determining the character of the holding. Thus in <i>Moonan v. Conyngham</i> [1895], 2 I. R. 1, 28 I. L. T. R. 117, the presence of a covenant against sub-letting in the lease and the absence of clauses specially suited to a residential holding, such as a covenant to insure, were relied upon by the Court of Appeal as indicating that the holding was an agricultural one. See judgment of FITZGERALD, L.J. [1895], 2 I. R., at p. 12. See also <i>Faris v. Nesbitt</i>, 29 I. L. T. R. 83 (L. C.). On the other hand, a covenant not to claim compensation under the Act of 1870 has been considered an indication that the holding is agricultural, though it is not conclusive evidence to that effect <i>Stott v. Cramsie</i>, 27 I. L. T. R. 57 (C. A.). A covenant permitting a tenant to cut down all trees upon the holding and to sell them has been held also to indicate that the holding was not residential <i>Jeffares v. Byrne</i>, 27 I. L. T. & S. J. 388 (S. C.).</p>
<p>Social position of tenant</p>	<p>The social position of the various tenants or occupiers is frequently relied upon as an indication of the object of the letting. If they are shown to have been gentlemen of position, or to have had other occupations besides that of farming, this is looked upon as evidence that the holding is non-agricultural <i>Stott v. Cramsie</i>, 27 I. L. T. R. 57; <i>Spring v. Blennerhassett</i>, MacD. 236; <i>Couser v. Hassard</i>, 35 I. L. T. R. 91; but it is not a circumstance to which very much weight is attached, for the Land Acts place no restriction upon the class of persons entitled to the</p>

benefit of their provisions; and if a gentleman of means and position takes an agricultural holding, he is not to be excluded from having a fair rent fixed, simply because he makes the house more suitable for the residence of a gentleman than it would be for that of an ordinary farmer: *Furlong v. Thompson*, 29 I. L. T. R. 98; *Crawford v. Egmont*, MacD. 149; *Moonan v. Conyngham* [1895], 2 I. R. 1 (C. A.). See especially judgment of FITZGERSON, L.J., at p. 18.

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The principle of estoppel is sometimes applied in favour of a tenant seeking to have a fair rent fixed. Where a landlord has treated a holding as being within the Acts (*Crawford v. Egmont*, MacD. 149), or claimed a privilege which he only possesses by virtue of the Acts (*Connolly v. Stewart*, 1 N. I. J. R. 233), or allowed a purchaser to acquire the holding on a representation from the vendor that it was within the Acts (*Moonan v. Conyngham* [1895], 2 I. R. 1), it has been held that he cannot afterwards contend that it is excluded.

The mode in which the tenant has used the holding is also an important element in determining whether it is agricultural or not. If the user is mainly residential, the lands being laid out in an ornamental manner, and profit treated as a secondary consideration, the holding will be considered non-agricultural (*Massy v. Webb* [1899], 2 I. R. 615). But, on the other hand, if profit is clearly the main object, the particular mode of cultivation is immaterial. The holders, for instance, of market gardens in the neighbourhood of large towns have been frequently held entitled to have fair rents fixed (*Butterly v. Carroll* (No. 2), 34 I. L. T. R. 31, 141, 3 *Greer* 35, 6 I. W. L. R. 15 (C. A.)). But it does not follow that every market garden is an agricultural holding: *Perry v. Farley* [1894], 2 I. R. 579; 28 I. L. T. R. 109.

The question in each particular case whether a holding is agricultural or not is one rather of fact than of law. The reported decisions are very numerous. It is difficult to reconcile them all; but the principle underlying them appears to be, that in order to constitute an agricultural holding the land must be the substantial part of the letting, and must have been taken for the purpose of making profit in the way of agriculture, and not merely as accessory to a residence, or place of business, or a demesne.

The following have been held to be agricultural or pastoral. Holdings, varying in extent from one to three acres, and used as market gardens, partly within the borough boundary of the city of Limerick: *Mullally v. Moore*, 15 I. L. T. R. 82; MacD. 202. Affirmed on appeal, 17 I. L. T. & S. J. 22. Holdings of a few acres each in the neighbourhood of Dublin, used mainly for the cultivation of strawberries: *West v. Lord Annaly*, 17 I. L. T. & S. J. 23; *Strawberry-Bed Cases*, MacD. 230. A holding of thirty-two acres, on which was a valuable quarry, which the tenant was entitled to work: *Lindsay v. Kennedy*, 11 I. L. T. R. 58. A holding of forty-seven acres and a quarry: *Husband v. Harrington*, 29 I. L. T. R. 11. A holding of thirty acres, adjoining a church, and formerly held by the curate of the parish, where the evidence showed that he took the place, not for the sake of the residence, but to make money out of the farm: *O'Callaghan v. Mahony*, MacD. 256. A plot of land consisting of thirty-five perches, immediately adjoining the owner's residence in the town of Dungarvan: *Fitzgerald v. Shanahan*, 16 I. L. T. R. 37; MacD. 209. A holding of an acre and a half, held by a labourer: *Finnegan v. Conlon*, Donn. 399. A holding of 186 acres, with a residence upon it, suitable for a gentleman of position and fortune, when the evidence showed that it was taken as a farm: *Crawford v. Egmont*, MacD. 149. But in that case the landlord was held to have waived his right to object to a fair rent being fixed, by inviting the tenant to apply to the Court. A house, which the tenant was entitled to remove, and twenty-nine acres of land: *Magner v. Harris*, *Greer Leading Cases* 78, App. 64. A public-house and twenty-one acres of land where the licence had been acquired after the letting

Holdings:
decided to
agricultural.

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Holdings
decided to be
residential or
non-agricul-
tural.

Connolly v. Stewart, 1 N. I. J. R. 233. A mill which had not been used for over twenty years, and twenty-four acres of land. *Faris v. Nesbitt*, 29 I. L. T. R. 83. See also the various cases referred to above, and *Raphael v. Sinclair*, Donn. 472; *Fleck v. O'Neill*, Donn. 188; *Lindsay v. Kennedy*, 11 I. L. T. R. 58; *Murphy v. Wilson*, MacD. 146, *Boyd v. Graham*, 5 I. L. T. R. 102, Donn. 415.

The following have, on the other hand, been held *not* to be agricultural or pastoral holdings. A gentleman's residence, with a farm of eighty-four acres attached *Spring v. Blennerhassett*, MacD. 236. A public-house, with a field of about three acres attached, situated immediately outside the town of Carrick-on-Suir. *O'Connell v. M'Grath*, MacD. 131. A dwelling-house, mill, and sixty acres of land attached. *Tisdall v. Lord Kenmare*, MacD. 146. A mill and thirty acres of land attached; *M'Curdy v. Heygate*, 16 I. L. T. R. 36, Mac. D. 147. A mill and twenty-seven acres attached *Johnston v. Chambers*, 24 I. L. T. R. 54. A mill and thirteen acres *M'Farlane v. Stewart*, 1 Greer 276. A mill and fifteen Irish acres. *Nevin v. Montgomery*, Greer Leading Cases, 189. A house and seventeen acres of land, usually held by the incumbent of a parish *M'Cutcheon v. Lord Lansdowne*, 9 I. L. T. R. 20; Donn. 527. A house with an acre of land attached, held by a national schoolmaster *Mullie v. Fitzgerald*, MacD. 146. A holding of four and a half acres, on which a villa had been erected *Hay v. Cooke*, 5 I. L. T. R. 145; Donn. 415. A farm of eight acres and a cottage thereon, held by a book-keeper in a mill *Wilson v. Ensor*, 16 I. L. T. R. 36. A public-house, with an acre of land attached *Spunham v. Walsh*, 8 I. L. T. R. 27; Donn. 521. A holding of nine acres, without buildings, let for the purpose of erecting a dwelling-house thereon *O'Neill v. Greene*, 22 I. L. T. R. 99. A holding of twenty-nine acres, taken originally for the purposes of a private asylum: *Allen v. Cope*, 18 I. L. T. R. 99. Nine acres and a residence let to a dispensary doctor *Kane v. Bland*, 2 Greer 29. Six acres upon which a manse was built. *Portlone Trustees v. Jones*, 3 Greer 233. Land on which bathing lodges had been erected *Evans v. Scottish Provident Institution*, 1 Greer 29. A residence and ten acres in Bundoran *Gully v. Lapsatt*, 1 Greer 86. Nine acres upon which a manse was erected *Bailey v. Newton*, Greer Leading Cases 83, App. 31. A residence and seventeen acres let to a retired head-constable of the R. I. C. *Power v. Temple*, 2 Greer 93. A shop residence and four acres *O'Sullivan v. Murray*, 2 Greer 342. Twelve acres and six small cottages in an adjoining town. *Bradley v. Johnston*, 30 L. R. I. 532. Thirty-eight acres upon which eleven cottages, part of an adjoining village, were built: *Dundee v. Robbins*. (Unreported, C.A., judgment delivered 12th January, 1894.)

Effect of word
"substantially."

(b) How far the change of definition in this Act by introducing the word "substantially" before the words "agricultural or pastoral" alters the law does not appear to be quite clear. But it would seem that tenants who were excluded before by decisions, based upon the ground that part of the property comprised in their holdings was not agricultural or pastoral in its character, are now entitled to have their cases reviewed and re-considered either under the first or second Sub-section of this Section; though where the holding has one uniform character the law may not be altered by the addition of the word "substantially". *Beakey v. Cosgrove*, 1 Greer 155 (L. C.). See also judgment of HOLMES, L.J., in *Gloster v. Ryan* [1899], 2 I. R., at p. 194.

The provision of Sec. 58 (1) of the Act of 1881 as to non-agricultural holdings, assumed that each holding possessed a specific character, that it was always homogeneous, either wholly agricultural or wholly non-agricultural. But a class of cases came up for consideration where this condition was not fulfilled, namely, tenancies which comprised two subject matters, one distinctly agricultural and the other as

distinctly non-agricultural. Under the Act of 1881 there was no power to separate them (such as that conferred by Sub-sec. 2 of this Section), and there being no jurisdiction to deal with the non-agricultural element, the court was bound to dismiss the case, no matter how inconsiderable the non-agricultural element was. Thus where one lease demised a farm of lands together with the tolls and customs of a fair, although the tolls were of very small value in comparison with the land, it was held by the Court of Appeal that there was no jurisdiction to fix a fair rent *Wall v. Eyre*, 32 L. R. Ir. 475; 27 I. L. T. R. 87. "In my opinion," says FITZGIBBON, L.J., in that case, "in deciding whether the court has jurisdiction, we cannot apply the maxim *de minimis non curat lex*, unless the *minimum* is so small that we can treat it as non-existent; and having no jurisdiction to deal with the tolls, the Land Commission cannot deal at all with the holding of which they form an appreciable and integral part" (32 L. R. Ir., at p. 479). In *Bradley v. Johnston* (30 L. R. Ir. 632) it was similarly held by the Court of Appeal that a holding consisting of 12½ acres near Strabane, and six small houses in the town, was not within the Act, inasmuch as a substantial portion of it was neither agricultural nor pastoral. And in *Grace v. Eyre* (unreported, but referred to by FITZGIBBON, L.J., in *Ward v. Corballis* [1894], 2 I. R., at p. 645) the same court held that where a farm at some distance from Freshford, and a small house in the town (which was sublet), were held under one demise, there was no jurisdiction to fix a fair rent. See also *Brien v. Tollemache*, Greer Leading Cases 398 (L. C.).

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Tenancies comprising both agricultural and non-agricultural elements.

But where separate receipts were given by the same landlord in respect of a house in a village and a field outside it, the latter was held to be within the Act of 1870: *Earl of Leitrim v. Gallagher*, Donn. 199.

Upon the same principle it was decided that where a farm was held under the same demise as a mill, there was no jurisdiction to fix a fair rent *Boyle v. Foster*, 30 L. R. Ir. 623 (C. A.); *Murdock v. Parks*—unreported, but referred to by WALKER, C. [1895], 2 I. R., at p. 439; *Holmes v. Chaine*, 1 Greer 67; *McFarlane v. Stewart*, 1 Greer 276; *Tisdall v. Kenmare*, MacD. 146; *McCurdy v. Heygate*, 16 I. L. T. R. 36. And even where the mill was a flax-scutching mill the same principle was held to apply. See notes to Land Act, 1881, Sec. 7, *ante*, p. 262, and *Yates v. Montgomery*, Greer Leading Cases 189 (L. C.).

Mill holdings.

But the mill, or other non-agricultural element, it was held, should be a substantial rent-producing factor in the demise in order to exclude a holding from the Acts. Thus where seventy acres of agricultural land, together with a corn mill and scutching mill (the former disused), were held under a lease at a rent which appeared to the court to be purely an agricultural rent, the holding was held to be within the Land Acts notwithstanding that the lease contained a covenant to keep the mill in repair. *McConaghey v. Gledstones* [1895], 2 I. R. 433; 29 I. L. T. R. 35. "I have no doubt," says WALKER, C., in that case, "that a holding may as a whole be agricultural in its character, though there is on it a mill, or open quarry, or some other subject, which if taken as a separate entity is not agricultural, unless the separate non-agricultural entity be a substantial rent-producing factor in the demise": [1895], 2 I. R., at p. 438. Similarly, where the mill, though demised by the lease, had not been used for twenty years before the passing of the Land Act, 1881, the holding was dealt with as an ordinary agricultural farm: *Faris v. Nesbitt*, 29 I. L. T. R. 83 (L. C.). And where the mill had practically ceased to be used, even though the holding was described in the lease as "all that and those the mill of C, with the land attached," a fair rent was also fixed: *Matson v. Woodhouse*, 29 I. L. T. R. 108 (L. C.). Under the Land Act of 1870, also, it was held that where a thread factory had been erected on a farm, but had not been used for over twenty

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Home Farms

Main object of letting for a residence.

years, it did not interfere with the agricultural character of the holding *Matchett v. Morton*, 13 I. L. T. R. 128 (FITZGERALD, B). See also as to this class of holdings, and the extended power of the court to deal with them, Sub-sec. 2 of this Section, and notes thereto, *post*, pp. 539-540.

(c) The words "or the main object of the letting of which was for a residence," which did not occur in the Act of 1881, do not appear to make any substantial alteration in the law. Ever since the passing of the Land Act of 1870, the object of the letting has been one of the principal tests applied in determining whether a holding was residential or agricultural, and the new words introduced into this Section, therefore, appear only to be a legislative recognition of the previous decisions. *Robertson v. Duncannon* (unreported, referred to, *ante*, p. 519). In *Massy v. Webb* [1899], 2 I. R. 615, it was contended on behalf of the tenant that these words implied the existence, prior to and at the date of the letting, of a dwelling-house fit for immediate occupation, but the court held that this construction was too narrow. "In my opinion," says MEREDITH, J., "the words are clearly wide enough to embrace a case where, by express contract and obligation, the tenant to whom land is let is bound to create and maintain a residence"—[1899] 2 I. R., at p. 619—and he further held that they applied to the particular case, then before the court, where a holding of twenty-eight acres, without any buildings, was taken under a fee-farm grant which contained no indication of any intention on the part of the grantee to build, and imposed no obligation on him to do so, there being evidence that the tenant had asked for lands for the purpose of building a residence upon them, which he afterwards did *Massy v. Webb* [1899], 2 I. R. 615. For other cases decided by the Court of Appeal expressly under this part of the Sub-section, see *Blund v. Thompson*, 32 I. L. T. R. 167 (referred to, *ante*, p. 522), *Barton v. Fisher* [1901], 1 I. R. 453, 3 Greer 59, and as to residential holdings generally, *ante*, pp. 519 and *seq.*

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(d) The subject of home farms is dealt with in the notes to Land Act, 1881, Sec. 21 (*ante*, pp. 307-8) in reference to the power of resumption in certain cases on the expiration of a lease. By this Sub-section home farms are entirely excluded from the Land Acts, but they are here treated from a different point of view. In order to bring a case within this Sub-section the character of a home farm must be shown to have existed at the time of the original letting, not merely at the date of the passing of the Act. *Bailey v. Smiley*, 24 I. L. T. R. 107 (L. C.). On the other hand, the 21st Section of the Act of 1881 gives power to the landlord to alter the state of facts, and make a home farm of what was not previously such. See judgment of BARRY, L.J., *Hamilton v. Sharpe*, 20 L. R. Ir., at p. 238 (quoted *ante*, p. 308), and *Westropp v. O'Grady*, 18 I. L. T. R. 32. He can only do so, however, on paying compensation on the terms provided by Sec. 5 of the same Act, while in the case of home farms excluded by this Section no provision as to compensation is made. But a tenant of a home farm, if disturbed in his holding, may be entitled to compensation under the Land Act, 1870, as home farms are not excluded from that Act.

Definition of "home-farm."

The order made by the Court of Appeal in *Hamilton v. Sharpe* (20 L. R. I. 224) contains a convenient definition of a home farm for all practical purposes—*viz.*, "a farm to be used for the convenience or advantage of his [the landlord's] residence and in connection therewith, and not merely as an ordinary farm, to be used for the purpose of profit" (20 L. R. Ir., at p. 239). In that case the definitions in similar terms given by MORRIS, C.J., in *Gamble v. Simpson*, 17 I. L. T. R. 44 MacD. 244, and by REARDEN, L.A.C., in *Musgrave v. Hanley*, MacD. 333, were

quoted with approval by Lord ASHBOURNE, C., though the former was stated not to be exhaustive. For these definitions see notes to Land Act, 1881, Sec. 21, *ante*, pp. 307-8. Sect. 5
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"Both the name 'home farm,' and the thing itself, are exceptional in Ireland, but it is not difficult to give the expression a construction. It must mean something more than lands in the occupation of the owner of an estate. It often happens that a resident land owner farms a portion of his estate himself, but what he so farms is not properly called a home farm unless his primary objects are the use and convenience of his residence as distinguished from mere commercial profit." Per HOLMES, L.J., *Sullivan v. Marshall* [1899], 2 I. R., at p. 797. In that case it was held by the Court of Appeal that a holding did not constitute a "home farm" within the meaning of this Sub-section merely because it had some time previously been in the occupation of the landlord, who had farmed it, in conjunction with other farms, having at the time 600 or 700 acres in his own hands. *Sullivan v. Marshall* [1899], 2 I. R. 785; 33 I. L. T. R. 117. Convenience of
residence must
be primary
object.

In *Gamble v. Simpson*, 17 I. L. T. R. 44, MacD. 244, an agricultural tenant holding thirty-four acres of land, with a dwelling-house thereon, under a fee-farm grant, demised a portion of the land by a sub-lease for years. The sub-lessee, on whose holding there was no dwelling-house, resided on another farm held under a different landlord, while the sub-lessor continued to occupy the dwelling-house held under the fee-farm grant and still cultivated a portion of the farm. On the expiration of the lease the sub-lessor commenced a civil bill ejectment to recover possession, and, on a case stated by PALLES, C.B., the Common Pleas Division held that the portion sub-let did not constitute a "home farm" within the meaning of the Land Acts. See also *Fitzgerald v. Merritt*, 26 I. L. T. R. 118 (C. A.).

A home farm need not necessarily be connected with a large estate. "It may be that a farmer who has but one ordinary farm has not a 'home farm'; but when a man, having, as his home, a suitable country residence, farms neighbouring land, for the advantage of, and in connection with, his home, why is such land not to constitute a 'home farm' because he has not tenants elsewhere?" Per FITZGIBBON, L.J., *Hamilton v. Sharpe*, 20 L. R. Ir., at p. 236. Nor is it at all necessary that a home farm should adjoin or be near to the landlord's residence, if it be actually worked in connection therewith: *Musgrave v. Hanley*, MacD. 333. Need not be
connected with
large estate

In *Earl of Meath v. Megan* [1897], 2 I. R. 39, 477, it was argued that a holding had been converted into a home farm by the tenant, on the principle of the decision of *Magner v. Hawkes* (32 L. R. Ir. 285) as to demesne lands; but it was held by BEWLEY, J., that this would not bring it within the exclusion of this Sub-section. The argument does not appear to have been repeated in the Court of Appeal, as no reference to it is made in the judgments of that Court. See further as to home farms generally: *Stothers v. Nicholson*, 16 I. L. T. R. 35, MacD. 246; *Hill v. Millar*, 19 I. L. T. R. 51; *Westropp v. O'Grady*, 18 I. L. T. R. 32, *Fitzgerald v. Costelloe*, ib. 33; *Earl v. Neill*, MacD. 316, R. & D. 244. Cannot be made
by the tenant.

Demesne Lands.

(c) The repealed portion of Sec. 58 of the Land Act, 1881, as to demesne lands, following, verbatim, the words of Sec. 15 of the Land Act of 1870, merely excluded "any demesne land" from the provisions of the Act. The extreme generality of this excluding clause gave rise to some difficulty in judicial interpretation. "Demesne lands," according to the strict interpretation of the term, in feudal tenure, meant lands reserved by the lord for his own use in connection with his manor-house or chief residence and not granted out in freehold to tenants, though such lands might Strict interpreta-
tion of the term.

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be let for chattel terms without losing their character of demesne. See judgment of PALLES, C.B., *Graydon v. Trustees of Morgan's Charity* [1895], 2 I. R., at pp. 525-6, and as to the meaning and derivation of the word "demesne," judgments of PORTER, M.R., and FITZGIBBON, L.J., in the same case: [1895], 2 I. R., at pp. 520 and 536. It was obvious, as pointed out by both these learned judges, that this strict legal sense could not be adopted in interpreting the Land Acts, for such an interpretation would have excluded all yearly tenancies, to which alone the Act of 1881 originally applied. The courts were bound to look for some narrower signification of the term.

Meaning, as used in the Land Acts.

In *Hull v. Antrim* (5 I. L. T. R. 70), FITZGERALD, J., used the following words in reference to demesne lands.—"The intention was to exempt what is ordinarily known as demesne lands—that is, land within the ambit of the demesne reserved with the mansion-house, and used for purposes of pleasure or for pasture, or sometimes let to dairymen, or during the minority of an owner—what are known as demesne lands in the ordinary and popular acceptance of the term."

Demesne lands need not be of ornamental or unprofitable character.

This passage cannot, however, be taken as an exhaustive definition of demesne lands. As such it was disapproved of by the Court of Appeal in *Griffin v. Taylor*, 16 L. R. I. 197. "The true definition of demesne lands," says SULLIVAN, C., in that case, "is lands held by the owner with the mansion-house. They may occupy 500 acres, but if they are occupied by the owner with the mansion-house, they are no less demesne lands" (16 L. R. Ir., at p. 202). They need not necessarily be pleasure grounds, or lands set apart for the enjoyment of the owner. (*Ibid*, at p. 201.) Accordingly, in that case a portion of land, consisting of about twenty acres, within the walls of a demesne, but which had been let to a tenant for a number of years (part of it for more than fifty), and treated by him as an ordinary farm, having been tilled for some time back, was held still to be demesne lands, there being no house upon the holding, and no separate rating of it, while a plantation, undoubtedly belonging to the demesne, ran right through it *Griffin v. Taylor*, 16 L. R. Ir. 197.

If occupied with Mansion-house.

In *Griffin v. Taylor*, FITZGIBBON, L.J., gave a more precise definition of what, in his opinion, was meant to be excluded than that contained in the judgment of SULLIVAN, C. The passage, frequently quoted, is as follows—"Demesne lands in the ordinary legal sense, are not necessarily of an ornamental or unprofitable character, but include all lands of whatever use or character held by the tenant in chief, and occupied by him in connection with his residence, the mansion-house of the estate. It seems to have been unfortunately overlooked that in the Land Act of 1870 and 1881 it is impossible that the 'demesne lands,' the subject of the express exceptions, can fall strictly within this definition, for they must be lands which but for the exception, would be within the Acts; therefore, whenever the question arises the lands must be in the hands of tenants, must be agricultural or pastoral and must not even be let wholly or mainly for the purposes of pasture, otherwise the exceptions would be unmeaning or redundant. It follows that the true question is whether the lands, having previously been demesne lands in the legal sense, have passed into the hands of tenants without losing that character; that is (as it seem to me), have been continuously let under circumstances showing that the landlord intended at some time to resume possession of them, and again to occupy them with the mansion-house, or at least intended to leave it open to himself or his successor to do so. When this is fairly shown I think the holding must be within the exceptions as being 'demesne lands' within the untechnical meaning of the Land Acts" 16 L. R. I., at p. 203

Subsequent decisions of the Court of Appeal have departed from this definition in two respects. In the first place it was held that lands might become "demesne" while in the occupation not only of an owner in fee, but of a tenant in fee-farm or even a termor, and that it was not essential that they should have been at one time the demesne of the tenant in chief or fee simple owner. *Magner v. Hawkes*, 32 L. R. Ir. 285. And in the second place, it was held that the intention and power of resuming possession by the landlord were not essential in order to bring a tenancy within the excluding clause: *Spencer v. Tedcastle*, 32 L. R. Ir. 415; 27 I. L. T. R. 3. "I can find nothing," says WALKER, C., in that case, "in any of the Land Acts to show that it is essential to constitute 'demesne' that the landlord should have the power to resume possession. It is used to describe the character of the lands just as are used the words 'agricultural or pastoral': 32 L. R. Ir., at p. 415. See also judgment of PALLES, C.B., *Graydon v. Trustees of Morgan's Charity* [1895], 2 I. R., at pp. 527-9; and judgment of HOLMES, L.J., in *Power v. Crosbie*, 35 I. L. T. R., at p. 51.

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Demesne.

Tenure of lands.

Power of resumption by landlord.

The fact of lands being described in the lease or agreement as demesne lands is not necessarily conclusive evidence of their being so in fact. *Sullivan v. De Burgh*, MacD. 238. But if the words "demesne lands" were used in a lease made before the passing of the Land Act, 1870, it is strong evidence of their being so. *Griffin v. Taylor*, 16 L. R. Ir. 197. "If I found," says FITZGIBBON, L.J., "as appeared in *Sullivan v. De Burgh*, that the term 'demesne lands,' or the term 'town-parks,' had been for the first time applied to a holding after the Act of 1870 made it the landlord's interest to introduce it, I should look with suspicion upon it, and should require clear proof that the new description was truly given. But where the excepting term was used to describe the tenant's holding at a time when neither party had any object in adopting an untruthful description, I think it would require evidence to displace the presumption that it was correct, and other circumstances tending to the same conclusion would acquire cumulative force" (16 L. R. Ir., at p. 203).

Description of lands as demesne.

In some cases, however, lands have been held not to be "demesne," though described as such in documents of title prior to 1870: *Chevers v. Fallon* [1895], 2 I. R. 407 (C. A.); *Stitt v. Hamilton*, Greer Leading Cases 569 (L. C.). But, as a general rule, the description in documents prior in date to the Land Acts of the lands as demesne has been held conclusive. See especially *Roche v. Rice*, 26 I. L. T. R. 117 (C. A.); *Shekleton v. Jones*, 26 I. L. T. R. 127 (L. C.); *Watson v. Duke of Abercorn*, Greer Leading Cases 103; *Munn v. Maxwell*, 2 Greer 10; *Higgins v. Jones*, 2 Greer 111; *M'Craith v. Burgess*, 26 I. L. T. R. 113; *Cooper v. Cooper*, 31 I. L. T. R. 145. And the following unreported cases mentioned by FITZGIBBON, L.J., in *Graydon v. Trustees of Morgan's Charity* [1895], 2 I. R., at pp. 536-7; *Orpen v. Fitzgerald*, *Lalor v. Castletown*, *Smith v. Hotham*, and *White v. Johnston*.

As evidence that lands are demesne, the provisions of the lease under which they are held are of great importance. Covenants to preserve timber; to insure the mansion-house, if let; not to sub-let, &c., are frequently relied upon: *O'Rourke v. Crosier*, 34 I. L. T. R. 151; 2 Greer 283; *Fuller v. Curtis*, 1 Greer 143. Notwithstanding, however, the most stringent covenants in a lease as to the preservation of trees, shrubberies, and pleasure grounds, and against breaking up the lawn, or any ground within 200 yards of the house, the Court of Appeal, in *Cobden v. Bannatyne* (32 I. L. T. R. 173), held that lands were not demesne, so that such covenants are by no means conclusive.

Evidence that lands are demesne. Covenants in lease.

In considering the question whether or not lands are demesne lands within the exception, "All the circumstances of the particular case are to be taken into con-

Other circumstances.

- Sect. 5.** consideration—the tenure, the social position of the owner, the user, past, present, and contemplated, but above all the physical characteristics of the subject matter.”
- Demesne.** Per Sir P. O'BRIEN, C.J., *Magner v. Hawks*, 32 L. R. Ir., at p. 297. See also judgment of MEREDITH, J., in *O'Rourke v. Crozier*, 34 I. L. T. R., at p. 152.
- Old estate maps. Old estate maps and surveys, prepared before living memory, may be received in evidence to prove that lands are demesne as against persons deriving title from the proprietors under whose direction the maps and surveys were made. *M'Kenma v. Earl of Horth*, 27 I. L. T. R. 48, *Miller v. Montgomery*, 32 I. L. T. R. 76 (note). *Hewson v. Listowel*, 32 L. R. Ir., at p. 704. See also Taylor on Evidence, Part II., Chap. 14.
- Tenure of lands. It does not require an estate in fee to constitute land demesne within the meaning of the Land Acts. A lessee for a term of years, or for lives, may be the owner of a demesne, though the lands were not demesne prior to the letting under which he holds, and if he makes a letting of them, his tenant may be excluded from the Land Acts as the occupier of demesne lands *Magner v. Hawks*, 32 L. R. I. 285 (C. A.). If, as between the occupier and his immediate landlord, lands are held to be demesne, “they must be dealt with as such in relation to any person having an estate or interest in them, whether owner in fee, middleman, or sub-tenant.” Per O'BRIEN, C.J., *Magner v. Hawks*, 32 L. R. I., at p. 297. See also judgment of PALLIS, C.B., in same case, at p. 305.
- Part of holding consisting of demesne lands. Prior to the passing of this Act it was held that if any substantial portion of a holding consisted of demesne lands, even though the larger portion of it was not so, the whole holding was excluded from the Land Acts. *Leonard v. St. Ledger Barry*, MacD. 240 (L. C.). This decision was referred to with approval by the Court of Appeal in *Moonney v. Willcocks*, 28 L. R. Ir. 113, 25 I. L. T. R. 31 (see judgment of Lord ASHBOURNE, C., 28 L. R. Ir., at p. 116), and was followed by the same court in *M'Crath v. Burgess*, 26 I. L. T. R. 113, and in *Wall v. Eyre*, 32 L. R. Ir. 475; 27 I. L. T. R. 87 (see *ante*, p. 525); but how far it would apply under this Act, having regard to the word “substantially” in the Sub-section, seems doubtful. At any rate, there is jurisdiction now, in a suitable case, to separate the demesne portion of a holding from the remainder and fix a fair rent upon the latter. See Sub-sec. 2 of this Section and notes thereto, *post*, pp. 539-540.
- How lands may be undemesned. Lands which were formerly demesne lands may have been so dealt with by the parties as to become denuded of that character. *Cheevers v. Fallon* [1895], 2 I. R. 407 (C. A.); *Graydon v. Trustees of Morgan's Charity* [1895], 2 I. B. 513 (C. A.). *Hill v. Antrim*, 5 I. L. T. R. 70. “There are several ways in which that might be done. suppose a portion of the demesne was let off to a tenant for twenty-one years, and he had built a house on it, one might come to the conclusion that the landlord had shown an intention of taking this portion away from the demesne lands and putting it into the tenant's farm. A house on it would be very important—a separate rating would be important. If the tenant had cut down the trees on it with the knowledge of the owner, that would be evidence on the point” (per SULLIVAN, C., *Griffin v. Taylor*, 16 L. R. Ir., at p. 202).
- By letting for long term. The length of the lease is also an important matter to be considered. “Suppose, for the sake of argument, that the owner of demesne land let a portion of it on an agricultural lease for a term of sixty-one years, would it not be absurd to speak of that as demesne land at the end of sixty-one years, when it had been set aside as an ordinary farm and for farm purposes?” (per FITZGERALD, J., *Hill v. Antrim*, 5 I. L. T. R., at p. 72). Thus where portion of demesne lands were let by lease for lives renewable for ever, apart from the rest of the demesne, although they were

described in the lease as "part of the demesne," they were held to have been thereby undemesned. *Chevers v. Fallon* [1895], 2 I. R. 407; 29 I. L. T. R. 59.

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But where the whole of the demesne lands are let with the mansion-house the length of the lease does not deprive them of their character as demesne lands, if there is evidence from the covenants in the lease that the landlord desired to preserve their character as such. *Moore v. Batt*, 32 L. R. Ir. 68 (C. A.). "Where lands are, as they were here," says PALLES, C.B., in that case, "demesne lands in the hands of an owner in fee, they cannot, in my opinion, cease to be lands of that character, unless a clear affirmative intention on the part of their owner be shown that they shall be held or used in a manner which is inconsistent with their continuing to be demesne lands. Therefore neither a sale of the fee of the demesne lands and mansion-house together, nor a settlement of them giving estates to several in succession, will *per se* have this effect, for there is nothing inconsistent with each successive owner continuing to hold the lands with the mansion-house. It seems to me to follow that neither can a lease of mansion-house and demesne lands together necessarily do so, because the tenant is to hold both the mansion-house and lands. Neither, in my opinion, are *temporary* lettings of the mansion-house, gardens, and other grounds, the owner continuing in possession of the demesne lands, sufficient to deprive the lands of their character of demesne. Were the mansion-house let for a lengthened period of time without the demesne lands, the question would be different" (32 L. R. Ir., at pp. 72-73).

Unless mansion-house be let with the lands

Following this decision, it was held by the Court of Appeal, reversing the decision of the Land Commission (25 I. L. T. & S. J. 420), that a fee-farm grant of demesne lands, where the whole of the lands were let with the mansion-house, did not undemesne them. *Spencer v. Tedcastle*, 32 L. R. Ir. 411, 27 I. L. T. R. 3. See also *Weldon v. Coote*, 26 I. L. T. & S. J. 420 (L. C.).

But if it is shown that though the mansion-house is let with the lands, no rent is charged for it, and that the calculation of rent reserved in the lease was merely for so much agricultural land, excluding everything which was ornamental, the inclusion of the mansion-house in the letting will not prevent the lands from being undemesned: per PALLES, C.B., *Graydon v. Trustees of Morgan's Charity* [1895], 2 I. R., at pp. 531-2. Where lands surrounding a mansion-house comprising 100 acres which had originally been demesne were included in an agricultural lease with other lands, the whole being described as "the entire farm and lands of Ennismore, together with all the dwelling-houses, out-offices, &c.," it was held that they had been undemesned. *Hewson v. Listowel*, 32 L. R. I. 700 (C. A.). Similarly, where the mansion-house had been allowed to fall into ruins, and the whole of the demesne lands were let with adjoining lands, it was held that they were undemesned, though there was a good house upon the adjoining lands, and stringent provisions in the lease as to the preservation of trees, shrubberies, pleasure grounds, &c. *Cobden v. Bannatyne*, 32 I. L. T. R. 173 (C. A.).

Or no rent is charged for it

An intention to undemesne lands may be inferred not only from the terms of the lease by which they are demised, and the use which it is contemplated to make of them under the letting, but from other dealings of the owner with them as shown by family deeds, wills, &c., indicating such an intention. Thus where lands, which in three deeds of 1801, 1814, and 1822 were described as "demesne," were put in settlement in 1827 along with other lands which were let to tenants, the deed of settlement not describing them as demesne, and the owner having another mansion-house and demesne which was not comprised in the settlement, it was held by the Court of Appeal that the owner, by treating the lands as rent-producing property in

Intention to undemesne, how inferred

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the settlement, as well as by his subsequent dealings with them, had thereby undemesned them: *Mansfield v. Congreve* [1895], 2 I. R. 425; 28 I. L. T. R. 126.

And where an owner in 1783 by his will devised demesne lands with other property to trustees for charitable purposes who leased them from time to time for the benefit of the charity, it was held by the same court (PALLES, C.B., and FITZGIBBON, L.J., *diss*) that the lands had been thereby undemesned. *Graydon v. Trustees of Morgan's Charity* [1895], 2 I. R. 513.

Where there can be no intention on the part of the owner to change the character of the lands a different rule will apply. Thus a lease of demesne lands belonging to a lunatic, made by the committee of the lunatic's estate with the sanction of the Lord Chancellor under the powers conferred by 1 William IV., c. 65, Sec. 24, has not the effect of undemesning them. *Cooper v. Cooper*, 31 I. L. T. R. 145 (L. C.); *O'Rourke v. Crozier*, 34 I. L. T. R. 151 (L. C.).

Change in *onus probandi* by this Act.

As regards the *onus* of proof on a question of undemesning, an important change is made by this Act. Formerly, though the *onus* was on the landlord of proving that lands were demesne at the date of the letting, once he established that fact the *onus* was then thrown upon the tenant of showing that they had been undemesned. The effect of this Sub-section is practically to shift the *onus probandi* as to undemesning on to the landlord. See judgment of FITZGIBBON, L.J., in *Magner v. Hawkes* (No. 2) [1900], 2 I. R., at p. 470, and note (g), *infra*, p. 532. The landlord must now prove, not only that the lands were demesne at the date of the letting, but that they were intended to be preserved as demesne during the tenancy, or resumed as demesne at its expiration.

Lettings by tenant for life or mortgagor

Under the Act of 1881 it was held that a landlord who was merely a tenant for life could not by his own acts deprive demesne lands of their character as such *Moloney v. Hamilton*, MacD. 231; and where an estate was mortgaged, that the mortgagor, even if in possession, had no power to change the character of demesne lands as against mortgagees. *Grehan v. Pim*, MacD. 241. Having regard, however, to the altered terms of this Sub-section as compared with the 58th Section of the Act of 1881 (see note (g), *infra*), and the terms of Sec. 10, *post*, it seems doubtful how far these decisions would now apply to a letting made by a tenant for life or mortgagor in possession unless the letting either comprised the mansion-house or would materially diminish its value as a residence. As to which see Sec. 10, Sub-sec. 3, *post*. See further as to demesne lands generally. *Spaight v. Irish Church Commissioners*, 12 I. L. T. R. 47, 11 I. L. T. R. 140; *Irwin v. Buchanan*, 10 I. L. T. R. 22, Donn. 532; *Montgomery v. Storey*, 14 I. L. T. R. 56; and *Higgins v. Jones*, 2 Greer 111.

Meaning of words "When first demised."

(f) The words "when first demised" refer to the commencement of the tenancy before the court: *Simpson v. Farley* [1901], 1 I. R. 418, 34 I. L. T. R. 177 (C. A.). They mean "when first let to the tenant in occupation of the holding, or his predecessor in title" by his immediate landlord; not, when first let by the owner in fee, if the immediate landlord is a middleman. Per Lord ASHBURNER, C., *Magner v. Hawkes* (No. 2) [1900], 2 I. R., at pp. 467-8. See also *Riggs v. O'Brien* (C. A.) (unreported, but referred to by FITZGIBBON, L.J. [1901], 1 I. R., at p. 425).

Intention of landlord to preserve as demesne or resume as demesne.

(g) In commenting on this part of the Sub-section, FITZGIBBON, L.J., points out, in *Magner v. Hawkes* (No. 2) [1899], 2 I. R. 465, what an important change it has made in the law. "The first change, which is admitted, is as to the *onus* of proof. It no longer rests on the tenant to prove undemesning, but the *onus* is now thrown on the landlord not only to prove demesning before and up to the letting, but further to show that, by and after the letting, the holding was intended to be preserved as demesne or resumed as demesne by the landlord. But, besides the change in the *onus probandi*, the *probandum* also is changed, because part of what has now to be

proved on behalf of the landlord was not necessary to his proof before, namely, the intention to preserve as demesne, or resume as demesne, by the landlord" [1900], 2 I. R., at pp. 470-1. Sect. 5.
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This intention may be proved either by the "provisions of the contract of tenancy," How proved. as, e.g., covenants in a lease to preserve timber, shrubs, &c.: *Fuller v. Curtis*, 1 Greer 143 (L. C.); *O'Rourke v. Crozier*, 34 I. L. T. R. 151; 2 Greer 243 (L. C.); or by the "circumstances of the case," as, e.g., the relationship of the lessee to the owner: *Magner v. Hawkes* (No. 2) [1900], 2 I. R. 465 (see judgment of Lord ASHBOURNE, C., at p. 468); or the fact that the letting was made to a workman in the landlord's employment: *Tynan v. Darby*, 1 Greer 40 (C. A.), or that the tenant lived in the gate-lodge of the demesne: *Higgins v. Jones*, 2 Greer 111. But where the landlord fails to show an intention either to preserve the lands as demesne, or to resume them as such on the expiration of the tenancy, a fair rent will be fixed: *Simpson v. Farley* [1901], 1 I. R. 418, 34 I. L. T. R. 177, 1 N. I. J. R. 18 (C. A.); *Cleary v. Daly* [1897], 2 I. R. 52, 30 I. L. T. R. 170 (L. C.); *Aughnay v. Vesey*, Greer Leading Cases, App. 13; even though it is clearly established that the lands at one time were demesne lands: *Nugent v. O'Donohue*, 2 Greer 78, 279 (C. A.); and notwithstanding that a previous application to have a fair rent fixed has been dismissed on that ground: *Burrows v. Kerr*, 32 I. L. T. R. 134 (L. C.).

(h) An intention on the part of a landlord to resume possession, as demesne, or at all, was not essential to the exclusion of a holding from the Land Acts of 1881 and 1887. *Magner v. Hawkes*, 32 L. R. I. 285 (C. A.); *Spencer v. Tedcastle*, 32 L. R. I. 411, 27 I. L. T. R. 3 (C. A.); *Pratt v. Gormanstown* [1894], 2 I. R. 557 (C. A.). Now the landlord must prove either this intention, or the intention to preserve the lands as demesne. See note (g) above and (e), ante, p. 529.

(i) Where an owner in fee simple in 1795 took a fee farm grant of twenty-two acres immediately adjoining his demesne and separated from it only by a sunk fence, and ever since that date the two parcels of land had been always in the occupation of the same person, it was held by the Court of Appeal (FITZGERBON, L.J., *diss*) that the land held under the fee farm grant was "incorporated in a demesne" by the tenant within the meaning of this Section: *Power v. Crosbie*, 35 I. L. T. R. 49, reported as *Power v. Smith*, 2 Greer 340 (L. C.); 3 Greer 127 (C. A.). See also *Leving v. M'Loughlin*, 1 Greer 339 (L. C.). Land incorporated in a demesne by the tenant.

Lands may acquire the character of demesne from the acts of the lessee or tenant without any act of the landlord: *Magner v. Hawkes*, 32 L. R. Ir. 285; and even before the passing of this Act it was held that lands taken by the owner of a demesne from an adjoining landlord for the purpose of making an addition to the demesne were to be considered demesne lands and excluded from the Land Acts, though they had never been such in the hands of the landlord, whether they were taken under fee farm grant: *More O'Ferrall v. Quirk* [1895], 2 I. R. 197 (L. C.); *Borrows v. Colles*, 28 I. L. T. R. 41 (L. C.); a long term of years: *Allen v. Grogan*, 32 L. R. Ir. 179 (L. C.); or even a tenancy from year to year: *Pratt v. Gormanstown* [1894], 2 I. R. 279 (L. C.), 557 (C. A.); 28 I. L. T. R. 69; provided it was shown that the tenant had impressed the holding with the character of demesne, as by covering it with ornamental plantations: *Pratt v. Gormanstown* [1894], 2 I. R. 279, 557; 28 I. L. T. R. 69; or by obliteration of boundaries between it and the demesne: *Borrows v. Colles*, 28 I. L. T. R. 41, or the removal of internal fences: *O'Ferrall v. Quirk* [1894], 2 I. R. 197. Land is, however, not necessarily incorporated in a demesne because it adjoins it, and is held by the owner of the demesne: *Earl of Meath v. Megan* [1897], 2 I. R. 39, 447; 31 I. L. T. R. 28, 93. See especially report of case before the Land Commission [1897], 2 I. R., at pp. 43 and 47. In *Power v.* Decisions before Act of 1896.

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Pasture
Holdings

Creation of a
demesne by a
tenant

Crosbie, 35 I. L. T. R. 49, FITZGIBBON, L.J., dissented from the judgment of the court, on the ground that the evidence of such physical incorporation was, in his opinion, in that case insufficient. See also *Litchfield v. Gasgill*, 26 I. L. T. R. 140 (C. C.).

The Act makes no reference to the creation of a demesne by a tenant in occupation as distinct from the incorporation of additional land in an existing demesne. FITZGIBBON, L.J., seems to be of opinion that this may be done. "If a termor can (as *Magner v. Hawks*, 32 L. R. Ir. 285, decides he can) convert a chattel holding into 'demesne land' he must be capable of doing so while it is still in his own occupation. A subsequent sub-letting may 'undemesne' the holding, or may tend to show that it is not 'demesne land', but I fail to see how the termor can keep it out of the Land Acts, and fix a fair rent for himself, when, if let to a sub-tenant, it would be 'demesne land' and would be excluded as such from the Land Acts" (*Pratt v. Gormanstown*, Judgment of FITZGIBBON, L.J. [1894], 2 I. R., at p. 562). On the other hand, PORTER, M.R., seems to be of the contrary opinion "I do not understand *Magner v. Hawks*," says he, "or any other case as deciding that a demesne within the Land Acts can exist except as an incident of the property of the landlord, whoever he may be, whose rent is sought to be affected by an order to fix a fair rent or the like, or that he can say, 'I have no demesne, and never had, but the tenant has, and therefore that tenant cannot have a fair rent fixed.' I am clearly of opinion that this cannot be done, and that the lands, if demesne, must for the purposes of the Acts be not the tenant's but the lord's demesne, notwithstanding the tenancy" (*Graydon v. Trustees of Morgan's Charity* [1895], 2 I. R., at pp. 522-3. The net question involved has not yet come up for decision.

Pasture Holdings.

(g) A holding "let to be used" for the purpose of pasture is excluded from the Land Acts where the valuation is over £100 per annum or where the tenant does not actually reside on the holding or on one adjoining or ordinarily used therewith (Sub-sec. (1), c. (ii)).

Changes made
by Act of 1896

Two changes in the law are made by this Act as contrasted with the repealed portion of the Act of 1881 (1) The limit of valuation of holdings not excluded is raised from "not less than £50" to "upwards of £100" provided the tenant resides; and (2) dairy farms are expressly excepted from the excluding clause as to which see note (m), *post*, p. 539

Meaning of word
"pasture"

As to the meaning of the word "pasture," Lord Watson says, in *Westropp v. Elligott* (9 App. Cas., at p. 830), "I have never seen any reason to doubt that the words 'depasturage' in Sec. 5 (3) and Sec. 58 (6), 'pasturing' in Sec. 17, and 'pasture' in Sec. 58 (3) and (4) of the Act of 1881, were all intended by the Legislature to signify one and the same thing—viz., the grazing of cattle or other live stock upon grass lands. But the fact that hay or green crops is raised on the holding for the exclusive purpose of maintaining the grazing stock during autumn or winter will not, in my opinion, deprive it of the character of a grazing farm."

Westropp v.
Elligott.

The onus lies upon the party desiring to bring land within these exceptions of showing that the land has been "let to be used wholly or mainly for the purposes of pasture". *Westropp v. Elligott*, 9 App. Cas. 815; 14 L. R. Ir. 319; 18 I. L. T. R. 61. In that case a holding, consisting of 123 acres, was let under a lease containing covenants on the part of the lessee that he would till and use the lands in a good and husband-like manner, and in due and regular course of good husbandry, and that he would not, without the consent of the landlord, break up or have in tillage in any one year more than 18 acres, to be selected from a certain portion of the

premises then under tillage, and delineated on an annexed map, but there was no restriction on meadowing. On the expiration of the lease the landlord brought an action to recover possession, the tenant relying on the statutory tenancy created by Sec. 21 of the Land Act of 1881. At the trial the landlord deposed that for over forty years, and so long as he had known the lands, they had always been used as a pasture farm. The tenant admitted in his evidence that he had used the farm as a dairy farm, but stated that he had frequently meadowed the lands, generally about twenty acres each year, and sometimes had sold hay off them. The judge, being of opinion that there was no evidence that the lands were let to be used for the purpose of pasture, directed a verdict for the defendant; which direction was upheld by the House of Lords (affirming the decision of the Court of Appeal and the Common Pleas Division), upon the grounds that there was nothing either in the lease itself, or in the custom of the locality, or in the requirements of good husbandry, to prevent the lands being meadowed, and that if they were so used they would not have been used "wholly or mainly for the purpose of pasture."

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Whether a farm is let "wholly or mainly for the purpose of pasture" is a question which cannot be decided merely by the relative number of acres which it is agreed shall be under tillage and pasture respectively, for the capital and amount of attention expended on a small number of acres under tillage may be more than is necessary for a very large number under grass. *Drought v. Stubber*, 18 I. L. T. R. 37 (C. A.) In that case a tenant held 195 acres under an agreement by which he was bound not to till or break up more than 40 acres, or meadow more than 30 acres each year. All hay, straw, and green crops grown on the lands were to be consumed on the farm, but there was no restriction as to what portion of it should be tilled in any year. The Court of Appeal held, affirming the decision of the Land Commission (reported: MacD. 159), that the farm was not let "wholly or mainly for the purposes of pasture."

Part of farm
allowed to be
tilled.

In *Holmes v. Lauder*, 22 L. R. Ir. 47, it appeared that a tenant held 156 acres (of which 30 were a commonage, upon which no rent was fixed. He was bound under his agreement not to sell or remove any meadow off the land, and not to till more than 20 acres in any one year; yet it was held by the Court of Appeal, following *Drought v. Stubber* (18 I. L. T. R. 37), that the letting was not mainly for the purpose of pasture. The lease in this case was made after the passing of the Land Act, 1870, and contained no direct statement that the object of the letting was for pasture. This fact was strongly relied upon by Lord Ashbourne, C., in his judgment.

Where a lessee of 600 acres covenanted by his lease not to break up or convert into tillage, in any one year, more than 40 acres of the demised premises, and to lay down any portion of the lands so broken up, at the latest, in the third year after it should have been so broken up, it was held by the Court of Appeal reversing the decision of the Land Commission (J Greer J) that according to the true interpretation of this covenant the lessee was entitled to break up a fresh 40 acres each year, so as to have, in all, 120 acres in tillage at the same time; and that accordingly the farm was a mixed one and not let mainly for the purpose of pasture: *Fagan v. Murphy* (Decision of Court of Appeal, unreported). See also *Burke v. Westropp*, 30 I. L. T. R. 15; *Fitzgibbon Irish Land Reports*, p. 38.

In *Cleary v. Gascoigne* (MacD. 157), however, where a tenant had agreed not to have in tillage more than 10 acres out of 463, and had also bound himself to consume by his stock all hay, &c., grown on the farm, and not to sell the same or suffer it to be removed from the farm, it was held that the holding was one mainly for pasture, and excluded from the Acts. See also *Booker v. Darnly*, MacD. 161;

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Meadowing not
prohibited.

Spaight v. Church Temporalities, 11 I. L. T. R. 140; 12 I. L. T. R. 47; and *Molony v. Delandre*, 16 I. L. T. R. 38, MacD. 176.

If lands in grass can be meadowed, or used for the production of hay, under the agreement by which they are held, and according to the capacity of the soil, they are not let for the purpose of pasture within the meaning of this Section *Westropp v. Elligott*, 9 App. Cas. 815; *Glynn v. Blossie*, 18 I. L. T. R. 72. But if by the contract the tenant is debarred from selling the hay the case is different. In *Harper v. Davies*, 12 L. R. Ir. 23; 16 I. L. T. & S. J. 339, MacD. 153; R. & D. 246, a farm of 172 acres, held under an agreement by which it was provided that the tenant should not break in more than eight acres, or remove or allow to be removed any hay from the farm, was held by the Court of Appeal to be a pasture-letting within Sub-Sec 3 of the 58th Section of the Act of 1881, and excluded from the Act.

The absence of a restriction upon meadowing cannot, however, be relied upon by a tenant as bringing a holding, which he is prohibited by his lease from breaking up, within the Land Acts, if the holding is situated in the centre of a large grazing district, has been always occupied by graziers, and could not profitably be worked otherwise than as a grazing farm *Taafe v. French*, 27 I. L. T. R. 56 L. C. and C. A.). Thus also in *Byrne v. Hill* (30 L. R. I. 605), a farm of 75 Irish acres in the County of Meath was let by a lease, which contained a covenant by the lessee not to break up more than 2 acres, but no restriction on meadowing. The Assistant Commissioners reported that the farm was a good grazing holding, and could be used for nothing else. Upon these facts the Court of Appeal held, reversing the decision of the Land Commission, that the farm was a pasture holding.

Express agree-
ment to use for
pasture not
necessary.

To bring a holding within the excluding clause it is not necessary to prove an express contract to use the lands for the purpose of pasture, it is sufficient to show that they are of such a nature that they could not, in the ordinary course of things, be used except for pasture. This was fully acknowledged by all the Law Lords in *Westropp v. Elligott (ubi supra)*. Lord BLACKBURN, in disagreeing with the judgment of O'HAGAN, J., in *O'Brien v. White*, 18 I. L. T. R. 24, says —“Both he and Mr. LITTON lay it down that the contract being in writing was conclusive as to whether or not there was a contract on which the tenant could be sued, with which I do not quarrel; but they also lay it down that, though the lands were of such a nature that they could not in the ordinary course of things be used except for pasture, they could not be held to have been let to be used as pasture, unless the court could imply a covenant that they should be used in that and no other way. I do not, as at present advised, agree in this” (*Westropp v. Elligott*, 9 App. Cas. at p. 825). Lord FITZGERALD also says —“The real question is, did the parties, on the occasion of the letting, intend that the farm should be used mainly for pasture? That intention is to be collected from the contract, aided by the light of the then existing circumstances of the land, the custom of the country, and other surrounding circumstances. If the contract does express the purpose of the letting, and is *bona fide*, then no question can arise . . . If, on the other hand, the contract is wholly silent as to the purpose for which the land is to be used, then it seems to follow that the tenant is at liberty to use the farm in any proper manner consistent with good husbandry, and so as not to be guilty of waste or deterioration; but even in such a case the circumstances may raise a question as to whether the land was so let ‘to be used’ for the purpose of pasture” (*Westropp v. Elligott*, 9 App. Cas., at p. 839).

Where land is
only suitable for
pasture.

In *O'Brien v. White*, 16 L. R. I. 15, the Court of Appeal, having regard to these expressions of opinion by the Law Lords in *Westropp v. Elligott*, reversed the

decision of the Land Commission (18 I. L. T. R. 24), and held that a farm of 200 Irish acres in the county of Clare, known as the Craggs of Burren, about 20 acres only of which were capable of being ploughed, and about 15 more of being tilled by spade labour, was a holding let to be used mainly for the purpose of pasture, notwithstanding that the agreement under which the lands were held contained no provision as to the manner in which they should be used. "It is manifest and plain," says Sir E. SULLIVAN, C., "that the capabilities of the land and the purpose for which it is destined by nature are all important if the contract is silent, and are sufficient to raise an implied contract that that is to be its user, if that fact ought reasonably to be present to the minds of both parties to the contract" (16 L. R. Ir., at p. 26). "I am distinctly of opinion," says FITZGIBBON, L.J., "that the 'purpose' of the letting is distinct from its terms, and not only may, but generally must, be proved as a matter of fact by evidence drawn from various sources, of which the terms of the contract, whether express or implied, will form, perhaps, the first and most important part—but still only a part": 16 L. R. Ir., at p. 28.

In *Battersby v. Nicholson*, 22 L. R. Ir. 38, accordingly, parol evidence of a con-
 vefasation between the lessor and the lessee shortly before the execution of the lease, was held by the Court of Appeal to be admissible to prove that the lands were taken as a grazing farm. The lease, in that case, contained covenants not to break up any part of the lands without the lessor's consent, but there was no provision against meadowing or selling hay off the lands. Acting upon parol evidence, however, that the lessee agreed to take the lands as a grazing farm, the Court held that it was so let. In determining questions as to lettings for pasture, "we must look," says FITZGIBBON, L.J. "in order of their importance, to three things.—first, the terms of the contract; secondly, its subject-matter; and, thirdly, any extrinsic or collateral evidence of the purpose of the letting". 22 L. R. Ir., at p. 43.

Following this decision, it was held by the same Court, in *Fulham v. Garry*, 26 L. R. I. 698, where by the terms of the lease lands were demised "for grazing and meadowing purposes only," that parol evidence was admissible to show that the purpose of the letting was for grazing only. According to these decisions, any parol evidence may be given even when the lands are held under lease, which is not inconsistent with the terms of the contract.

But if the purpose of the letting is distinctly expressed in, or implied by, the lease or contract of tenancy, no extrinsic evidence is admissible to contradict, or even to qualify it. Thus where a lease gave express permission to till nearly one-third of the holding, it was held that the landlord could not rely upon the circumstances that this permission had never been taken advantage of, and that there were no farm buildings on the lands to establish a purpose of pasture in the letting: *Nicholson v. Headfort*, [1896] 2 I. R. 651; 30 I. L. T. R. 92; *Fitzgibbon*, p. 69 (C. A.). A similar decision was made on the same day by the Court of Appeal in *Hanlon v. Bor*. (Unreported; for facts, see over-ruled judgment of Sub-Commission, 30 I. L. T. R. 16.)

"The actual mode of user adopted by the tenant" is an important factor in
 ascertaining the purpose of the letting: Per Lord WATSON, *Westropp v. Elligotti*,
 9 App. Cases, at p. 832; though it cannot control the express or implied terms of
 the contract of tenancy: Per FITZGIBBON, L.J., *Nicholson v. Headfort* [1896], 2 I.
 R., at p. 660. Where lands had been used continuously as a grazing farm for
 upwards of half a century, and there was a covenant in the lease not to erect any
 additional buildings except sheds for cattle (there being at the date of the lease
 only a herd's house on the lands), the Land Commission held that there
 was sufficient evidence that the lands were let for pasture, though there was

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 how far evidence.

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no restriction upon tillage or meadowing in the lease: *Einers v. Hamilton*, 28 L. R. Ir. 464; 25 I. L. T. R. 79. And similarly, where lands were let on lease with a covenant against breaking up any portion, except during the first three years of the term, but with no restriction upon meadowing, it was held, on oral evidence that the lands could not be profitably used for meadowing, and that they had always been used for pasture, that they were let to be used for that purpose *Ball v Maxwell*, 28 L. R. Ir. 468 (L. C.). Both these decisions were approved of and followed by the Court of Appeal in *Byrne v. Hill*, 30 L. R. Ir. 603.

Where lands were ancient pasture at date of lease

If lands have become, by twenty years continuous user prior to the date of the lease, ancient pasture, a letting of them, though silent as to the purpose, will be deemed to be for the purpose of pasture; the implied covenant not to commit waste being considered equivalent to an express covenant so to use them: *M'Cormick v. Loftus* [1894], 2 I. R. 465, 28 I. L. T. R. 37 (C. A.). In that case the lease contained no restrictive covenants as to the user of the lands. Evidence was, however, given that, prior to the date of the lease, the greater part of the lands had become ancient pasture; that they had never been used since the lease except for pasture; and that, though a considerable portion of them were capable of being tilled, pasture would be the more profitable user. Upon this evidence it was held by the Court of Appeal that the holding was excluded from the Land Acts.

See further as to pasture lettings generally *Flanagan v. Crofton*, 28 I. L. T. R. 128, and *Kenmare v. Herbert*, 34 I. L. T. R. 63.

Where tenant resides on holding or on adjoining one

(k) Where a holding let for the purpose of pasture is valued at not more than £100 per annum it is within the Land Acts, provided the tenant actually resides upon it or that it adjoins or is ordinarily used with the holding on which he resides. In *Healy v. Lord Cloncurry*, MacD. 162, the tenant of a holding so let owned in fee-simple an adjoining piece of land on which she resided, and it was held that she was entitled to have a fair rent fixed, and was not excluded from the Act by the corresponding Sub-Section of the Act of 1881. But doubts have frequently been expressed as to the correctness of this decision, and in *Palmer v. May* (33 I. L. T. R. 61) the Court of Appeal appears to have assumed that the holding upon which the tenant resides, in order to obtain the benefit of this Sub-section, must be within the Land Acts; at any rate it must be an agricultural or pastoral holding. It has been held by the Land Commission that residence on premises in an adjoining town is not sufficient. *Trears v. O'Connor*, 3 Greer 296, reversing the decision of the Sub-Commission, 33 I. L. T. R. 15.

The residential holding must be also a holding belonging to the tenant of the pastoral holding. Where the tenant resided with his father on an adjoining holding, which belonged to his father, it was held that the pastoral holding in his occupation was excluded from the Land Acts, though it was within the prescribed limits as to valuation. *Maguire v. King*, 28 I. L. T. R. 13 (L. C.).

The word "adjoins" appears to be equivalent to "actually touches," *i.e.*, without the smallest intervening space. Per FRYZIBBON, L.J. *Fry v. Gleeson*, 32 I. L. T. R., at p. 158.

Or on holding "ordinarily used" therewith.

(l) A holding cannot be said to be "ordinarily used with another holding" unless it is substantially used as one common undertaking, the two being practically one holding for working purposes. Thus, where the out-farm was in charge of a separate herd, and was 17 miles away from the home-farm, it was held by the Court of Appeal that the two holdings were not "ordinarily used" together, though it was proved that cattle and sheep were sent each year from one to the other farm. *Fry v. Gleeson*, 32 I. L. T. R. 157. Similarly where the out-farm was mainly used for agistment, it was held by the same court that there was no community

user between it and the home farm. *Palmer v. May*, 33 I. L. T. R. 61. See also *Killen v. Coates*, 10 I. L. T. R. 159. But where the two farms are worked substantially as one undertaking from one residence the out-farm is not excluded from the Act. *Cussen v. Joynt*, 2 Greer 90 (L. C.), even though it may be some distance from the home-farm, in one case amounting to 4 miles *Coffee v. Hamilton*, 28 I. L. T. R. 151 (L. C.); and in another case to 9 miles *Gaynor v. Mooney*, 32 I. L. T. R. 160 (note) (L. C.).

The *onus* of proving that a holding is let to be used for pasture within the meaning of this Section is on the landlord, but once that fact is established, the *onus* of showing that it is ordinarily used with the holding on which the tenant resides is on the tenant *Coffee v. Hamilton*, 28 I. L. T. R. 151 (L. C.).

Following the analogy of the decision as to town parks (*Nelson v. Headfort*, 18 L. R. Ir. 407; see *ante*, p. 533), it was held under the corresponding provision in Sec. 58 of the Act of 1881, that the date of the passing of that Act was the date upon which the conditions as to residence or user must be complied with, in order to entitle a tenant to have a fair rent fixed *M'Kelvey v. Cole-Hamilton*, 29 I. L. T. R. 134 (L. C.); *Maguire v. King*, 28 I. L. T. R. 13. The effect of the repeal of Sec. 58, Sub-sec. 4, of the Act of 1881, and the substitution of similar provisions in this Act for it, is to make the date of the passing of this Act, now, the crucial date; and it has been held by the Court of Appeal (Lord ASHBOURNE, C., *dicta*) that the residence on the holding, and the ordinary user mentioned in the new provisions of this Sub-Section, are residence and user on the 14th of August, 1896; *Gaffney v. Fetherstonhaugh* [1900], 2 I. R. 417; 34 I. L. T. R. 37; 2 Greer 108, reversing the decision of the Land Commission, 1 Greer 349.

(m) The principles by which it is to be ascertained that a holding is let to be used for a dairy farm are the same as those by which it is determined whether it is let to be used for purposes of pasture or not (See *ante*, p. 536). The purpose must be one common to both landlord and tenant. If the contract of tenancy is silent on the subject it may be implied from extrinsic circumstances, such as the natural capabilities and equipment of the farm, the user, both prior to, and under the contract, conversations, letters, and other circumstances attending the making of the contract. *Heuston v. Lord Cloncurry* [1901], 1 I. R. 152; 34 I. L. T. R. 92, 2 Greer 258, reversing the decision of the Land Commission (34 I. L. T. R. 79; 2 Greer 104). An application in the same case had been dismissed under the Act of 1881, which made no reference to dairy farms (1 I. W. L. R. 229).

Separation of Property held under one demise.

(n) The jurisdiction to separate the subject-matter of one demise into two holdings is for the first time conferred by this Sub-Section. Prior to this, it was held that if any part of the holding was outside the jurisdiction of the Land Commission there was no power in that Court to make any order affecting the tenancy as a whole; whether the excluded portion consisted of an incorporeal hereditament (*Wall v. Eyre*, 32 L. R. Ir. 474), a number of cottages in an adjoining town (*Bradley v. Johnston*, 30 L. R. I. 632), a mill (*Boyle v. Foster*, 30 L. R. I. 623), or even a portion of a demesne (*Leonard v. St. Leger Barry*, MacD. 240). See notes (b) and (c) to this Section, *ante*, pp. 524 and 530.

(o) Where the non-agricultural part of the property held under the tenancy is the substantial part, the agricultural land being merely an accessory, the tenant is *ex vi termini* excluded from the benefit of Sub-Sec. 2: *Brophy v. Barter* [1899], 2 I. R. 99; 1 Greer 112 (L. C.); *M'Farlane v. Stewart*, 1 Greer 276. But if the agricultural part is the substantial part of the holding, it is only necessary for the tenant to

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show that he is in *bona fide* occupation of this part; and a separation may be made of the holding, notwithstanding that he may have sublet the remainder. See judgment of MEREDITH, J., *Brophy v. Barter* [1899], 2 I. R., at p. 105.

(p) In determining whether the separation of the property into two parts will or will not "diminish the value of the landlord's interest therein," the best way to proceed "is to assume that the landlord has resumed possession of the holding, and to consider whether it would let as well divided as if it were kept together." (Per HOLMES, L.J., *Ryan v. O'Brien* [1900], 2 I. R., at p. 545.) Applying this test, the Court of Appeal held in that case, reversing the decision of the Land Commission, that a large flour mill might be separated from a farm of 113 acres by which it was surrounded, although there was only one residence upon the holding. (*O'Brien v. Ryan* [1900], 2 I. R. 539, 34 I. L. T. R. 89; 2 Greer 251) The Land Commission have also, under this Sub-section, ordered the separation from the purely agricultural part of the holdings of the tolls of a fair (*Butterfield v. Pennefather*, 1 Greer 157, *Fecny v. O'Sullivan*, Greer Leading Cases, App. 82), and of a number of houses in an adjoining village (*Irwin v. Scanlan*. Unreported, but referred to by MEREDITH, J., in *Brophy v. Barter* [1899], 2 I. R., at p. 105).

On the other hand, where a mansion house and demesne of 70 acres were let under one lease with 460 acres of ordinary agricultural land, the Court of Appeal declined to make the separation asked for by the tenant, and ordered the originating notice to be dismissed, holding that the landlord's interest would be diminished by a partition, owing to the fact that the buildings were all on the demesne portion of the holding, and were in excess of its requirements; while the other portion, if separated, would be without any offices. *Norton v. M'Donnell* [1899], 2 I. R. 51, 32 I. L. T. R. 121; 4 I. W. L. R. 159, 1 Greer 33. And in another case, where there were two dwelling-houses upon a holding, one of them a good gentleman's residence which was sub-let for £100 a year, the same Court held that the separation of this residence from the rest of the holding would diminish the value of the landlord's interest therein, owing to the fact that there was no separate approach to it, and that there was no power to create a right of way, but the Court here ordered a fair rent to be fixed for the whole, upon the ground that Sec. 7, Sub-Sec. (1) *a* and (2) expressly contemplate a fair rent being fixed upon the holding on which there is a second dwelling-house in the occupator of a sub-tenant. The decision of the Court of Appeal in this respect reversed that of the Land Commission. *Gloster v. Ryan* [1899], 2 I. R. 174; 32 I. L. T. R. 165; 1 Greer 99.

Including that of
head landlord.

"The landlord's interest" in the property includes the interest of a head landlord which may be taken into consideration by the Court in determining whether or not it should direct a partition. *Norton v. O'Donnell* [1899], 2 I. R. 51 (L. C). See judgment of MEREDITH, J., at pp. 64 and 65.

(q) As to the construction of the words "the proper proportion of the rent reserved by the demise," see judgment of MEREDITH, J., *Feeny v. O'Sullivan* Greer Leading Cases, App. 82.

Cases under
Redemption of
Rent Act.

(r) The "Land Law Acts" include the Redemption of Rent Act, 1891 (Sec. 4; Sub-sec. (1), *post*); but, notwithstanding this fact, it has been held by the Court of Appeal that Sec. 7, Sub-Sec. 3, *post*, which is similar in terms to Sub-Sec. 2 of this Section, does not apply to a redemption of rent under the Act of 1891. *Cove v. Buchanan* [1898], 2 I. R. 147. (See notes to that Section, *post*, p. 545.) The same principle applies to the construction of Sub-Sec. 2 of this Section. *Lockhart v. Crozier*, 1 Greer 356 (L. C). See also judgment of FITZGIBBON, L.J. [1898] 2 I. R., at pp. 162 and 163. BEWLEY, J., seems to have been of opinion that if

1st Sub-Section of this Section applied to proceedings under the Redemption of Rent Act. See his judgment in *Cowell v. Buchanan* [1898], 2 I. R., at p. 150; but the Court of Appeal thought even this doubtful. See judgment of FITZGIBBON, L.J., in same case [1898], 2 I. R., at p. 162. See, however, the subsequent judgment of the Court of Appeal in the same case of *Cowell v. Buchanan*, referred to in note (a) to Sec. 7, *post*, p. 545. Sects. 5-6.

Fixing fair rent on portion of holding, separately occupied by joint tenant or tenant in common.

(a) The words "joint tenants or tenants in common" in Sub-Sec. (3) must receive a strictly legal construction. There must, at some time, have been unity of possession between the co-owners in order to make them either joint tenants or tenants in common; and the Sub-Section does not apply to an assignee of part of a holding who never has had any privity of estate, title, or possession with the occupiers of other parts. *Riversdale v. Gethins* [1899], 2 I. R. 81; 35 I. L. T. R. 1; 1 Greer 97, 139; 5 I. W. L. R. 9 (C. A.). But such occupiers, if they all unite in one application, may have a fair rent fixed as a "conjunct tenant" under the Act of 1881, without needing the assistance of this Sub-Section. *Ireland v. Landy*, 22 L. R. I. 403. Moreover, if the landlord has consented to the sub-division, one of them may be entitled alone to have a fair rent fixed. *Boyd v. Tredennick* [1896], 2 I. R. 364; 30 I. L. T. R. 36; 2 Fitzgibbon, Irish Land Rep., 42. What co-owners are within sub-section 3.

(b) The power to fix a fair rent upon a portion of a holding under this Sub-Section only exists where the Land Commission has jurisdiction to deal with the whole. The position of the entire holding must be considered, and not merely that of the part occupied by the joint tenant who applies; consequently, where, on the expiration of a lease, one of several joint tenants had sub-let without the landlord's consent almost the whole of her portion, it was held by the Court of Appeal, reversing the decision of the Land Commission, that this in itself deprived the other joint tenants of the right to have fair rent fixed. *Barton v. Muldoon*, 1 N. I. J. R. 235; 3 Greer 321 (1902), 1 I. R., 410.

After the fixing of a fair rent under this Sub-section on the application of any joint tenant, such tenant thenceforward is liable only for the rent so fixed, and issuing out of the lands occupied by him. An ejectionment for non-payment of rent cannot be maintained against him in respect of the rent due by himself and his co-tenants out of the entire holding: *Barfield v. Anderson*, 4 I. W. L. R. 102; 1 Greer 71 (MADDEV, J.). Effect of order.

(u) As to procedure under this Sub-section, see Rules of January, 1897, No. 128, and Form No. 35, *post*. The originating notice must be served upon the other tenants of the holding, as well as upon the landlord (Rule 128).

(v) The proviso that the landlord's liability for rates or taxes is not to be increased by an order under this Sub-section refers to the liability, formerly, of a landlord to be rated for poor rate and county cess in respect of holdings in the occupation of his tenants valued at £4 or under. See 6 & 7 Vic., c. 92, Sec. 1; and 33 & 34 Vic., c. 46, Sec. 66. These Sections are now both repealed by the Local Government Act, 1898; so that the landlord's liability to rates or taxes cannot be affected by the order. See notes to L. & T. Act, 1880, Sec. 42, *ante*, p. 77.

6. In the construction of section nine of the Land Law (Ireland) Act, 1887, the word "agricultural" shall be construed to mean agricultural or pastoral, or partly agricultural and partly pastoral. Town parks. 50 & 51 Vic., c. 33.

Secs. 6-7. Provided that this section shall not entitle a person to have a fair rent fixed who is not bonâ fide using the holding as an ordinary farm.

In the case of *Macnamara v. Macnamara* (32 L. R. I. 1), the Court of Appeal held that the word "agricultural" in the 9th Section of the Act of 1887 applied to "tillage" only as opposed to "pasture." The purpose and effect of this Section is to displace the grounds of that decision, and to admit town parks into the operation of the 9th Section of the Act of 1887, even though they may have been used for grazing or meadowing purposes, and not for tillage, provided they otherwise satisfy the conditions laid down in that Section and in this. See *Rogers v. Murphy*, 50 I. L. T. R. 152 (C. A.), 2 I. W. L. R. 221; Fitz. I. L. R. 253, and notes to Land Act, 1887, Sec. 9, *ante*, p. 415.

Exclusion by
subletting of
holding

7.—(1.) For the purpose of the Land Law Acts, (a) the tenant of a holding shall be deemed to be in bonâ fide occupation thereof notwithstanding—

a. that any dwelling-house (b) on the holding, not being the dwelling in which the tenant for the time being resides, (c) and not having been erected by the tenant in breach of his contract of tenancy or of a statutory condition, is sublet to or in the occupation of (d) another person; or

b. that any other part of the holding is, otherwise than in breach of the contract of tenancy (e) or of a statutory condition, sublet to or in the occupation of another person, if in the estimation of the court a part not less than seven-eighths or thereabouts in value of the holding, excluding from such value the value of any buildings erected by the tenant, remains in the bonâ fide occupation of the tenant, and if the sub-letting was made before the passing of the Land Law (Ireland) Act, 1887, or if it was substantially in substitution for a letting existing at that date.

50 & 51 Vic,
c. 33.

Provided that—

(i) for the purpose of the foregoing provisions of this section, a breach of the contract of tenancy shall not be deemed to have taken place if the landlord waived (f) such breach; and

(ii) the foregoing provisions of this section shall not apply unless the court think it reasonable to entertain the application having regard to the acreage of the holding and to any other matter which they think should be taken into consideration, and the court may entertain the application notwithstanding that any such house or part of a holding is occupied by a person to whom it has been sublet in

contravention of section two of the Land Law (Ireland) Act, 1881. Sect 7.
44 & 45 Vic,
c 49.

(2.) The sub-letting of any such dwelling-house as is referred to in sub-section (1) *a* of this section during the continuance of a statutory term or after its expiration shall not be deemed to be a breach of any statutory condition, nor shall section two of the Land Law (Ireland) Act, 1881, apply to any such sub-letting, 44 & 45 Vic,
c 49. whether made before or after the passing of this Act.

(3.) Where a part of the property held under one demise is sublet, and the property was let to the tenant subject to the tenancy of some other person in the part sublet, the court may, in any case to which sub-section (1) of this section does not apply, (*g*) direct that the part so sublet shall thenceforth be, or if it is an incorporeal hereditament be treated as, a separate holding, and (unless the application to the court is made on the expiration of a lease) that the same shall be held during the continuance of the tenancy at such rent as the court determine to be the proper proportion of the rent reserved by the demise, and the court may fix a fair rent for the remainder of the property held under the demise, and the Land Law Acts (*a*) as amended by this Act shall apply to that remainder, as if it were a separate holding;

Provided that if the landlord so elect, the court shall, in any case to which this sub-section applies, order that the tenant of the part so sublet shall be the tenant of such landlord as his immediate landlord.

In considering the effect of this Section it must not be forgotten that it leaves the landlord (Section 57); so that it is only in cases where a sub-letting has been made without consent that the aid of this Section need be invoked by a tenant. Other provisions
authorising sub-
letting.

The provisions of the 18th Section of the Land Act, 1881, and of the 4th Section of the Land Act, 1887, also, with reference to sub-lettings for the use of labourers upon the holding, still remain in force, though the portion of the latter Section which deals with sub-lettings of a trivial character is repealed by the second schedule to this Act.

The present Section creates, for the first time, a distinction between the sub-letting of a dwelling-house and of any other part of the holding, and the provisions as to each differ in very material respects. They are less stringent as regards a second dwelling-house than as regards other parts of the holding. Sub-sections 1 *a* and 2 deal exclusively with the sub-letting of such a dwelling-house. Sub-sec. 1 *b* is confined to the sub-letting of other parts of the holding; while the provisos (i.) and (ii.) at the end of Sub-sec. 1 and the whole of Sub-sec. 3 deal with sub-lettings of both classes. The following is a short summary of the provisions of the Section, distinguishing the two classes of sub-lettings.—

(I.) As to sub-lettings of dwelling-houses, a tenant is to be deemed in occupation of his holding notwithstanding that any dwelling-house on the holding is sub-let, Sub-lettings of
dwelling-houses.

Sect. 7. or in the occupation of another person, even without the landlord's consent, provided—

- (1.) That the dwelling-house is not that in which the tenant for the time being resides;
- (2.) That it was not erected by the tenant in breach of his contract of tenancy (unless the landlord waived the breach) or in breach of a statutory condition (see Land Act, 1881, Sec. 5, Sub-sec. 3, notes thereto, *ante*, pp. 253-254);
- (3.) That the Court think it reasonable to entertain "the application" (apparently to have a fair rent fixed), having regard to the acreage of the holding and any other matter they consider of importance. (Sub-sec. 1, proviso ii.)

Although the dwelling-house must not have been erected in breach of the tenant's contract of tenancy or of a statutory condition, the sub-letting of it may have been in violation both of the statutory conditions and of the 2nd Section of the Act of 1881 (Sub-sec. 2), and apparently also of the tenant's contract of tenancy, without depriving the tenant of the benefit of this Section. The sub-letting too may have been made at any time, whether before or after the passing of this Act (Sub-sec. 2).

Sub-lettings of other parts of holding.

(II.) As regards the sub-letting of parts of a holding other than dwelling-houses, the Section provides that the tenant may still be deemed in occupation notwithstanding such sub-letting, provided that—

- (1.) Not less than about seven-eighths in value of the holding remains in the actual occupation of the tenant; excluding from such value the value of any buildings erected by the tenant;
- (2.) The sub-letting was made before the passing of the Land Act, 1887 (23rd Aug., 1887), or was substantially in substitution for a sub-letting existing at that date;
- (3.) The sub-letting was not made by the tenant in breach of his contract of tenancy unless the landlord waived such breach (proviso i.);
- (4.) The sub-letting was not made in breach of a statutory condition, though it may have been in violation of the 2nd Section of the Land Act, 1881 (proviso ii.)—*i e.*, if the written consent of the landlord was not obtained, it must not have been made after the commencement of the first statutory term, though it may have been after the passing of the Act of 1881;
- (5.) That the Court think it reasonable to entertain the application to have a fair rent fixed, notwithstanding the sub-letting, having regard to the acreage of the holding and any other matter they consider of importance.

In comparing the conditions respecting the two classes of sub-lettings, it will be observed that in two respects there is a marked contrast. Firstly, although a dwelling-house must not have been erected in breach of contract, or of the statutory condition, it may have been sub-let in violation of both. But the sub-letting of any other part of the holding must not have been in violation of either; and, secondly, the sub-letting of the dwelling-house may have been at any time, even after the passing of this Act, but the sub-letting of any other part of the holding must not have been after the 23rd of August, 1887.

Partition under sub-section 3.

In cases which do not come within the 1st Sub-section, where part of the property was sub-let prior to the commencement of the tenancy, and where, for instance, it is more than one-eighth in value of the entire, the 3rd Sub-section enables a partition of the holding to be made in a somewhat similar manner to the method provided by Sec. 5, *ante*, where portion of a holding is non-agricultural or is demesne land. See *Thompson v. Rossmore*, 35 I. L. T. R. 183.

(a) The expression "Land Law Acts" is defined by Sec. 48, *post*, so as to include the Redemption of Rent Act, 1891, but not the Land Purchase Acts. By Sec. 50, *post*, it is provided that Parts I. and II. of this Act (but not Part III.) are to be

construed as one with the Land Law Acts. Part III. includes Sec. 40, so that tenants seeking to claim the benefit of that Section in the Court of the Land Judge cannot rely upon this Section, if they have sub-let part of their holdings. *In re Abbott's Estate*, 31 I. L. T. R. 159; 3 I. W. L. R. 204 (Ross, J.).

Notwithstanding the definition of "Land Law Acts" in Sec. 48, it has been held by the Court of Appeal that Sub-section 3 of this Section does not apply to a redemption of rent under the Act of 1891, upon the ground that there is only power under that Act to deal with an entire rent (*Cowell v. Buchanan* [1898], 2 I. R. 147). It was at one time thought doubtful, indeed, whether Sub-sec. 1 applied to proceedings under the Redemption of Rent Act (see judgment of FITZGERALD, L.J. [1898], 2 I. R., at p. 162), though BAWLEY, J., thought that it did (*Ibid*, at p. 150). But the Court of Appeal have now decided that it does so apply. *Cowell v. Buchanan* (unreported, judgment delivered 16th December, 1901).

After the order of the Court of Appeal in *Cowell v. Buchanan* [1898], 2 I. R. 147, the lessee got up possession from one of his sub-tenants, and so acquired the actual occupation of more than seven-eighths of the entire holding; he then served a fresh originating notice, but LYNCH (Commissioner) held that, the lessor having consented to the redemption, no part of this Section applied to the case, and dismissed the originating notice: *Cowell v. Buchanan* (No. 2), 35 I. L. T. R. 119. This decision was affirmed by ROSS, J., but afterwards reversed by the Court of Appeal, who held that the 1st Sub-section of this Section was applicable to all proceedings under the Redemption of Rent Act, whether the owner did or did not consent to the redemption. (Unreported; judgment of C.A. delivered December 16th, 1901.)

(b) The expression "dwelling-house" includes any out-office, curtilage, and garden appurtenant thereto. See Sec. 48, Sub-sec. 1, and note thereto, *post*. A hotel is not a "dwelling-house" within the meaning of this Section. Per MEREDITH, J., *Brophy v. Barter* [1899], 2 I. R., at p. 102. But if the second house on a farm is sub-let merely for residential purposes, even though at a high rent, to a gentleman of position, the tenant is still entitled to have a fair rent fixed. *Gloster v. Ryan* [1899], 2 I. R. 174; 32 I. L. T. R. 165 (C. A.).

(c) An addition to the principal dwelling-house upon a holding, having an external entrance and no internal communication with the original house, comes within the exception as "not being the dwelling in which the tenant for the time being resides," and may be sub-let in accordance with the conditions laid down in Sub-sec. 1. *O'Hagan v. Charlemont*, 35 I. L. T. R. 24; 1 I. N. I. J. R. 46; 3 Greer 141.

(d) It will be observed that the phrase "sub-let to or in the occupation of another person" is used throughout the Section. This wording makes the whole Section apply to at least two, if not three, classes of cases which are not within the protection of the proviso in Section 57 of the Act of 1881. (1.) To cases where there has been an attempted sub-letting in breach of covenant, which is held to be void unless it complies with the conditions of the 18th Section of the Act of 1860. See notes to Sec. 57 of the Act of 1881, *ante*, pp. 347-8. (2.) To cases in which the tenant took the holding originally subject to the sub-tenancy, never having been in occupation of the portion sub-let, and only having acquired the reversion in it. See *Flannery v. Nolan*, 20 L. R. I. 537; *Thompson v. Rossmore*, 32 L. R. I. 431; and Sub-sec. 3 of this Section. (3.) Possibly, also, to cases where another person is in occupation of part of a holding, under an assignment from the tenant, or as a squatter, having acquired a title against him by the Statute of Limitations. HOLMES, L.J., however, appears to be of opinion that this Section is confined to cases of actual sub-letting, or to a transfer of occupation in the nature of sub-letting, and does not extend to an absolute assignment. See *Kennedy v. M'Lough-*

- Sects. 7-8** *ton* [1898], 2 I. R., at p. 375, where the question was raised, but it became unnecessary for the purposes of that case to decide it. See also *M'Elroy v. Patrick*, 2 Greer 30 (L. C.).
- Sub-letting in breach of contract.** (e) In *De Montmorency v. M'Adam* [1899], 2 I. R. 299, it was held by MURKETT, J., that a sub-letting to two persons of separate parcels was "in breach of the contract of tenancy" within the meaning of this clause, where the lease (made on 7th May, 1832, and therefore coming within 2 Wm. IV., c. 17, s. 2), contained a provision permitting the lessee to sub-let to one, but not to more than one person; and that accordingly the lessee could not be considered in *bona fide* occupation, although less than one-eighth of the holding was sub-let.
- Waiver of breach.** (f) As to waiver of a breach of covenant against sub-letting, see notes to L. & T Act, 1860, Secs. 18 and 43, *ante*, pp. 49 and 83. It would appear that if the covenant were contained in a lease made prior to Jan. 1st, 1861, the waiver need not be in writing. The case would then not be governed by the 43rd Section of the Act of 1860, and the old law, as laid down in *Dunpor's Case*, 1 Sm. L. C., would prevail. The acceptance of rent, for instance, after the breach, and with knowledge of it, would act as a waiver, and similarly any other act of the landlord which clearly showed that he elected to allow the lease to continue after he knew of the breach. If the lease, however, was made after 1st Jan., 1861, it would appear that the 43rd Section of the Landlord and Tenant Act, 1860, would apply to the case, and that a waiver in writing should be proved. Sec 11 of this Act does not appear to apply as between the lessor and the lessee who has sub-let *Barton v. Muldoon*, 1 N. I. J. R. 235, 3 Greer 321 [1902], 1 I. R. 410.
- Partition of holding where part is sub-let.** (g) In *Flannery v. Nolan*, 20 L. R. I., at p. 540, it was pointed out by FITZGIBBON, L.J., that the proviso as to sub-letting with consent in Sec. 57 of the Land Act, 1881, would not apply to the letting of land to a tenant subject to a pre-existing sub-tenancy in another person, and that the tenant in such a case could not rely upon the consent of the landlord to the transaction as giving him any rights under the Land Acts. Sub-sec. 1 of this Section apparently applies to such cases where the part not in the tenant's occupation is less than one-eighth in value of the whole holding. See note (d), *supra*. If the tenant is under similar circumstances out of occupation of more than one-eighth of the holding, this Sub-section may apply *Thompson v. Rossmore*, 35 I. L. T. R. 182 (L. C.). But if he himself has sub-let more than this proportion to sub-tenants without the landlord's consent he cannot claim the benefit of either Sub-section.

Judicial rent may be fixed where contract provides for resumption of holding by the landlord.

8. Where any holding is held under a contract of tenancy, empowering the landlord to resume the whole or any part thereof for the purpose of building or planting, a judicial rent may be fixed in respect thereof, without prejudice to the right of the landlord to resume possession at any time for the *bonâ fide* purposes aforesaid, upon the terms contained in the said contract of tenancy, or, if no terms are contained therein, upon the terms that the rent of the holding be proportionately abated.

Holdings which the landlord was entitled to resume possession of for the purpose of building were hitherto considered to be excluded from the Land Acts as being let for temporary convenience within the 58th Section of the Land Act, 1881. See notes to that Section, *ante*, pp 362-3, and the leading cases of *Butterty v. Carroll*, 26 L. R. I. 93; *Whisker v. Delachrois*, 25 I. L. T. R. 34, and *Thompson v. Cleland*

[1896], 2 I. R. 190, 30 I. L. T. R. 43, 1 Fitzgibbon's Irish Land Reports, p. 230. In *Butterly v. Carroll* an application was subsequently made to have a fair rent fixed under this Section, and was successful, notwithstanding other objections raised by the landlord (34 I. L. T. R. 141). Sects 8-9

As to the general power of resumption of land for building purposes during a statutory term, when the contract of tenancy does not empower the landlord to resume, see Sec. 5 and Sec. 8, Sub-sec. 3, of the Act of 1881, and notes thereto, *ante*, p. 207, Rules of Jan., 1897, Nos. 123, 161, and Forms 27 and 59, *post*, pp. 746, 759, 782, and 798.

9.—(1) Where on an application to fix the fair rent for a holding it is proved to the court that the tenant of the holding by virtue of his tenancy (*b*) has by the permission of the landlord been accustomed to exercise any privilege (*a*) over land belonging to the landlord, the withholding of which privilege would materially diminish the value of the holding to the tenant, the landlord shall be required to elect whether he will or will not allow the tenant to exercise as of right during the statutory term, under the same restrictions and conditions as theretofore, or such other restrictions and conditions as may be agreed on by the landlord and tenant, that which he previously exercised by permission, and if the landlord consents to so allow, such exercise shall be secured to the tenant by the order fixing the fair rent, and if the landlord refuses to so allow the fair rent shall be fixed having regard to such refusal Turbary and other profits, easements, and privileges

(2) Where an order securing the exercise of any such privilege is so made, the court, during the continuance of the statutory term, may, upon the application of the landlord or of any other tenant exercising the like privilege, restrain the tenant from exercising the privilege in any manner other than that authorised by the order or by any reasonable regulations of the landlord made in pursuance of the order. Provided that the court may remit the application for hearing to any sub-commission, which at the time the same is made is actually sitting or is about to sit in the district in which the holding is situate, which sub-commission shall have all the powers of the court to hear and determine the matter of the application and make an order thereon (*c*).

(*a*) Where a lease reserved the turbary absolutely to the landlord, but the tenant had been in the habit, for many years, of cutting turf with the knowledge and acquiescence of the landlord, it was held by the Land Commission that this Section applied, and the landlord was required to elect whether or not he would allow the privilege to continue as a right: *White v. Grehan*, 30 I. L. T. & S. J. 555.

(*b*) The tenant must, however, enjoy the privilege "by virtue of his tenancy"; where, in common with other persons, not tenants of the same landlord, he had been allowed, on payment, to cart sea-weed off land belonging to his landlord, it was held that the privilege was not one to which this Section applied. *Derham v. Hamilton*, 31 I. L. T. R. 120; Greer Leading Cases, App. 74 (L. C.).

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(c) The scale of Solicitors' fees, in cases of applications under this Section and Sec. 17 of the Land Act, 1881, will be found in the Schedule of Fees, *post*.

Lettings by
persons not
absolute owners

10.—(1.) The Land Law Acts shall apply, and be deemed to have always applied, in the case of tenancies created by a limited owner (*a*) or by a mortgagor or mortgagee in possession, (*b*) and the tenancies shall not be or be deemed to have been determined (except in the case of fraud or collusion or a letting at a gross undervalue) by the cesser of the interest or possession of such limited owner, mortgagor, or mortgagee, and the person entitled on such cesser to receive the rent of the holding shall stand in the relation of landlord to the tenant of the holding, and have the rights and be subject to the obligations of landlord accordingly.

(2.) Provided that where a fair rent has, after the passing of this Act, been fixed for the first time in the case of a tenancy to which this section applies, the person entitled on the said cesser to receive the rent of the holding may, within the prescribed time after becoming entitled to receive such rent, apply to the court in the prescribed manner, (*c*) and the court, after giving such person and the tenant of the holding an opportunity of being heard, may proceed as follows:—

a. if of opinion that by reason of a fine or premium having been paid the rent when judicially fixed was reduced, or that otherwise the fair rent fixed was unreasonable, the court may vary the fair rent for the portion of the statutory term then remaining unexpired; and

b. if of opinion that, by reason of any special circumstance not brought to the knowledge of the court on the hearing of the application to have a fair rent fixed, a fair rent ought not to have been fixed, the court shall declare that the said person and the tenant shall be in the same position as if this section had not been enacted.

(3.) This section shall not apply to a tenancy created by a limited owner in a holding the substantial part of which at the date of the letting was demesne land, (*d*) where the mansion house is let with such demesne land, or the application of the Land Law Acts to the tenancy would materially diminish the value as a residence of the mansion house situate on and theretofore occupied with the demesne.

Position of
tenants holding
under limited
owners before
this Act.

(*a.*) Prior to the passing of this Act, except in a few isolated cases, a prescriptive tenancy, whether a fair rent were fixed or not, could last only so long as the estate of the landlord who created it continued to subsist, and when that came to an end

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the tenancy also determined. Even though the tenant continued in possession of the lands under the new owner at the same rent as he previously paid, and there was no break whatsoever in his occupation, he was considered to hold under a new tenancy, so that if the change occurred after the 1st of January, 1883, his tenancy became a future tenancy. This principle applied when the original landlord was a tenant for life under a settlement, and the succeeding owner a remainderman under the same settlement: *Wakefield v. Hendron*, 11 L. R. Ir. 505; *Sparrow v. Hepenstall*, 24 I. L. T. R. 68; *Peylon v. Gilmartin*, 28 L. R. Ir. 378. These cases, which were all decisions of Courts of first instance, were considered and adopted by the Court of Appeal in the case of *Monaghan v. Hinds* [1895], 2 I. R. 689. "It is a well-settled doctrine of our real property system," says WALKER, C, in that case, "that a tenant for life cannot create any estate greater than his own—whether by grant, or letting, or incumbrance—and that any letting made by him terminates with the estate out of which it issues, unless it be created under a power annexed to the estate, or under a power derived from some statutory provision" [1895] 2 I. R., at p. 691. Now this is all changed. The tenancy for the future will not determine with the life estate; and even where, since 1883, such a determination has taken place and a new tenancy has been created, the Act is made retrospective, and the Section provides that the old tenancies shall not be deemed to have determined (except in cases of fraud or collusion or letting at a gross under-value). This is so, even where a fine was taken by the tenant for life upon creating the tenancy, and apparently irrespective of the amount of the fine; so that where a tenant for life has made a lease under a leasing power and taken a fine, in direct violation of the power, the lease will apparently now bind the remainderman unless he can show that the letting was "at a gross under-value" or fraudulent or collusive. If a fair rent has been fixed as against the tenant for life, the remainderman is, however, given in certain cases a right to have the rent raised, or to have the order fixing a fair rent set aside altogether (see Sub-sec. 2).

Before, however, this Section can apply, it must be shown that there is in existence a tenancy to which the Land Acts would have applied but for the fact that the tenancy was created by a limited owner. The opening words of the Section refer to cases where there is a tenancy in existence, or where a tenancy was in existence at the date of the passing of the Act of 1881. They do not revivify tenancies which had ceased to exist before that date: *M'Nello v. Hanratty*, 33 I. L. T. R. 51; 1 Greer 218 (L. C.). Nor do they apply where the person who creates the tenancy is merely a permissive occupant, not a limited owner: *Dill v. O'Neill*, Greer Leading Cases, App. 25 (L. C.).

The Section does not empower a limited owner to convert a future tenancy into a present tenancy, or to give such a consent under Sec. 18, *post*, as will have the effect of annexing to a future tenancy the rights incident to a present tenancy. *M'Carthy v. Bennett* [1899], 2 I. R. 622 (C. A.). In that case, however, the conditions laid down in Sec. 17, *post*, as to the creation of a present tenancy were not complied with, and it is probable that if they had been the decision would have been different. See judgment of HOLMES, L.J. [1899], 2 I. R., at pp. 636-7, and notes to Sec. 17, *post*, pp. 557-558.

Where a tenant for life made a lease for his own life, it was held, before the passing of the Act of 1887, that the lessee was not entitled, on the expiration of the lease, to continue on in possession as tenant from year to year to the remainderman by virtue of the 21st Section of the Act of 1881: *Massy v. Norse*, 20 L. R. I. 57, 464 (Q. B. D. & C. A.). And this decision, it was afterwards held, had the effect of excluding lessees of the same class from the right to have a fair rent fixed under

Conversion of a future into a present tenancy.

Lease by tenant for life for his own life.

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the 1st Section of the Land Act, 1887, during the currency of their leases *Maylan v Finch*, 28 L. R. I. 332, 595 (L. C. & C. A.), 26 I. L. T. R. 2, *Ryan v Finch*, 24 I. L. T. R. 94; *Barton v Atkinson*, 30 L. R. I. 396 (C. A.), 24 I. L. T. R. 26 (Sub-Cor.) The question will now arise whether this Section has not the effect of overruling *Massy v Norse* (20 L. R. I. 57, 464), and giving to the former lessee who remains in possession the status of a present tenant from year to year under the remainderman. It is a question not easy to form a decided opinion upon. The lease is, of course, gone, having expired by the death of the tenant for life, so it cannot be held to be in itself binding upon the remainderman, and the question which the Court will probably have to determine is, whether the hypothetical tenancy from year to year, which is deemed at the very moment of its expiration to spring up between the original lessor and lessee (see *Roe v Cooney*, 14 L. R. I. 243), is a tenancy "created by a limited owner" within this Section, so as to bind the remainderman.

Lettings by mortgagors or mortgagees in possession

(b.) The Section makes a letting by mortgagor or a mortgagee in possession binding upon the other (except in case of fraud, &c). Even before the passing of this Act it was held by the Court of Appeal that where a mortgagee showed an intention to adopt a lease made by a mortgagor in possession after the date of the mortgage he was bound by it, and that a fair rent could be fixed as against him *Roulston v Caldwell* [1895], 2 I. R. 136.

As to the powers of mortgagors and mortgagees, respectively, to make leases, and create tenancies generally, see notes to L. & T. Act, 1860, Secs 3 and 4, at pp. 6 and 13, *ante*.

(c.) The application by a successor in estate to have the fair rent varied under clause a of this Sub-section should be in Form No. 60, the application to declare the order not binding upon him under clause b should be in Form No. 61 (see Rules of 2nd Jan., 1897, No. 162). The scale of solicitor's fees, in cases of applications under this Section, will be found in the Schedule of Fees, *post*.

Application of section to demesne lands

(d.) A holding, "the substantial part of which at the date of the letting was demesne land," was always held prior to the passing of this Act to be altogether excluded from the Land Acts by Sec. 58 of the Act of 1881 *M'Craith v Burgess*, 26 I. L. T. R. 113 (C. A.), *Leonard v St. Leger Barry*, MacD. 240 (L. C.). This is still the case, where an intention to preserve as demesne or resume as demesne is proved to have existed at the time of the letting (Sec. 5 (1) b ii., *ante*). And it would appear that Sub-sec. 3 of this Section has only a scope for operation where this intention cannot be shown to have existed. Under the Act of 1881, it was also held that a tenant for life could not by his own acts deprive demesne lands of their character as such *Moloney v Hamilton*, MacD. 231. As to how far this decision now applies, having regard to the terms of this Section, and of Sec 5, where the mansion-house is not let, or its value as a residence diminished, see note (c) to Sec. 5, *ante*, p. 532. And as to the general effect of this Sub-section, judgment of Edge, Q.C., in *Brady v Farnham*, 34 I. L. T. R. 53, 2 Greer 219.

Tenancy not invalidated by reason of subletting by landlord.

11. A contract of tenancy entered into, whether before or after the commencement of this Act, by a landlord in violation either of the Act of the seventh year of the reign of King George the Fourth, chapter twenty-nine, intituled "An Act to amend the law of Ireland respecting the assignment and subletting of lands and tenements," (a) or of an agreement against subletting in his lease, (b) shall not as between him and the tenant holding under such

contract be, or be deemed to have been, void or voidable, and a superior landlord shall be deemed to have expressed a sufficient consent, in the manner in which the consent is required by law to be expressed, to a subletting made in violation of such Act or agreement, unless within a reasonable time after the subletting came to the knowledge of himself, or his agent, he served on the lessee or sub-tenant notice of his dissent from the subletting, or instituted a proceeding against the lessee founded upon the said violation. Sects. 11-12.

(a.) The Act referred to, 7 Geo. IV., c. 29, enacted that where lands were held under any lease or agreement for a lease made after 1st June, 1826 (other than renewable leases, or leases for terms of 99 years or upwards), not containing an express clause authorising sub-letting, any sub-letting should be void unless it were made with the express consent of the lessee, by being a party to the deed or written instrument or by indorsement thereon, where the sub-letting was by deed or instrument in writing, or by a written consent thereto, if otherwise. This Act was repealed by 2 Wm. IV., c. 11, except as regards leases made between 1st June, 1826, and 1st May, 1832. 7 Geo IV, c 29.

(b.) See Landlord and Tenant Act, 1860, Sec. 18, and notes thereto, *ante*, pp. 46-49. See also as to consent to sub-letting generally, notes to Land Act, 1881, Sec. 57, *ante*, pp. 345-347. L. & T. Act, 1860, Sec. 18.

This Section has no application to the case of a tenant from year to year who has sub-let in violation of the Act of 1881, so as to validate such a sub-letting as between the parties thereto: *Golloghy v. Cannon*, 35 I. L. T. R. 88 (Kenny, J.).

(c.) The latter part of this Section must be read in connection with the earlier part, and confined to the legal mode of carrying the first portion into effect. In other words, it merely estops the middleman from repudiating his own contract, unless his lessor has intimated to him that he must do so, and enables the sub-tenant to have a fair rent fixed as against him; but it cannot be relied upon by a middleman, who has sub-let in violation of his covenant, in order to enable him to have a fair rent fixed as against the head landlord. *Barton v. Muldoon* [1902], 1 I. R. 410, 1 N. I. J. R. 235, otherwise the strange result would follow that a tenant who had sub-let without consent would be in a better position, if bound by a covenant not to do so, than if he were not so restrained. Section only applies as between middlemen and sub-tenant.

In the ordinary case, where there is no agreement prohibiting sub-letting, a tenant who has sub-let part of his holding, and seeks afterwards to have a fair rent fixed, must prove, in order to bring himself within the proviso of Sec. 57 of the Act of 1881, that the sub-letting was made with the active consent of his landlord. This may, of course, be inferred from circumstances, but it has been expressly laid down by the Court of Appeal that mere knowledge and acquiescence by the landlord cannot be relied upon as proof of such active consent: *Maconchy v. Robertson*, 18 L. R. Ir. 483; *Kennedy v. Essex*, 28 L. R. I. 586, 26 I. L. T. R. 7; *Thompson v. Rossmore*, 32 L. R. I. 431. See also as to sub-lettings in violation of 2 Wm. IV., c. 17, Sec. 2: *De Montmorency v. M'Adam* [1899], 2 I. R. 299.

12.—(1.) Where a superior landlord recovers against an immediate landlord a judgment in ejectment for nonpayment of the rent of a holding, or of lands including a holding, (a) the estate of Determination of estate of immediate landlord.

Sect. 12

44 & 45 Vic,
c. 49.

the immediate landlord shall be deemed to be determined within the meaning of section fifteen of the Land Law (Ireland) Act, 1881, (b) without prejudice to his right to redeem his interest, as if a decree for possession or a writ of possession had been executed.

(2.) Unless the court before which the ejectment was brought certifies that the nonpayment was due to the nonpayment of rent by the tenant (c) of the holding, such judgment shall not be executed against the tenant, (d) and the tenancy of the holding shall not be affected, except that the superior landlord shall stand in the relation of immediate landlord to the tenant, (e) and may proceed accordingly for the recovery of all rent due from the tenant to the immediate landlord, (f) as if it had always been due to the superior landlord, but (except in the case of fraud or collusion or a letting at a gross under-value) (g) not for the recovery of the rent due to the superior from the immediate landlord. If the amount recovered by the superior landlord from the tenant equals or exceeds the amount due to him from the immediate landlord, the interest of the immediate landlord shall not be deemed to have been redeemed, but the superior landlord shall pay the excess to the immediate landlord, after deducting any amount due for costs.

(a) A "holding" within this Section must be an agricultural or pastoral holding. Cottagers or lodgers cannot claim the privilege of the Section. *Lloyd v. Lloyd*, 5 I. W. L. R. 59 (Boyd, J.). But if a landlord contends that sub-tenants in occupation are not agricultural or pastoral tenants, he must give satisfactory evidence that they are not so. *Fairholme v. Power*, 6 I. W. L. R. 132 (BARRON, J.).

If there is a dispute as to the extent of a sub-tenant's holding, the matter cannot be decided on motion. The case must proceed to trial in the ordinary way. *Mennons v. Burke*, 5 I. W. L. R. 154 (KENNEX, J.).

(b) See the 15th Section of the Act of 1881, and notes thereto, *ante*, p. 288. It was held by LAWSON, J., in *Commins v. Barron*, 19 I. L. T. R. 38, that it did not apply where the estate of the middleman or immediate landlord was determined by ejectment for non-payment of rent, and that in such a case the sub-tenants had no right to continue in possession as tenants to the head landlord, unless they redeemed by paying up the full amount of rent due and costs. This Section now enacts the contrary.

Are sub-lessees
within the
section?

(c) "Tenant" in this Sub-section means sub-tenant. A question may arise as to whether a *sub-lessee* for a term of years, or for lives, can claim the benefit of this Sub-section. The 15th Section of the Act of 1881 was confined to cases where the sub-tenants held as tenants from year to year; and it is presumed that the 1st Sub-section of this Section would, if it stood alone, be similarly restricted, but the language of Sub-sec. 2 is more general, and would *per se* apply to a sub-tenant holding under a lease for lives or years, unless the lease was made fraudulently or at a gross under value. "Tenant" and "tenancy" are terms constantly occurring in the Land Acts and they are defined both in the Act of 1870 (Sec. 71) and in the Act of 1881 (Sec. 57) so as to include leaseholders. A sub-lessee for years or lives would therefore

appear to be within the privileges conferred by this Sub-section. Such, at all events, appears to have been the opinion of BEWLER, J. *Bagnell v. Broggy*, 31 I. L. T. R. 81. (The decision in this case was, however, reversed by the Court of Appeal, but not on this point *Ex rel* R. F. Harrison, K.C.) The position of a sub-grantee under a fee farm grant is more doubtful, especially if the grant was made before 1861 (*Kelly v. Rattey*, 32 L. R. Ir. 445), unless it was made under the Church Temporalities Acts (*Hamilton v. Casey* [1894], 2 I. R. 224; 27 I. L. T. R. 46), or the Renewable Leasehold Conversion Act (*Adams v. Alexander* [1895], 2 I. R. 363; *Langtry v. Sheridan*, 30 I. L. T. R. 64).

(d.) The procedure prescribed by the 7th Section of the Land Act, 1887, is still the proper method of execution of a judgment for possession for non-payment of rent against "an immediate landlord," even though there are sub-tenants in possession of part of the holding whose rights under this Section are admitted by the plaintiff *Craig v. M'Cullagh* [1900], 2 I. R. 136; 33 I. L. T. R. 162, 5 I. W. L. R. 186. But as the effect of the service of the caretaker notice is to convert any person upon whom it is served into a caretaker, the proper course would appear to be not to serve the notice upon sub-tenants, unless the Court certifies that the non-payment of rent by the "immediate landlord" was due to the non-payment by the sub-tenants.

Rules have been published under this Section which materially alter the procedure in ejectments for non-payment of rent, both in the High Court and in the County Court. See Rules of Supreme Court (Ireland), of March, 1897, *post*, and County Court Rules of 13th March, 1897, *post*, pp. 616-9 and 682-3.

(e.) As to the effect of attornments by sub-tenants before the passing of this Act, see *Hines v. Bell* [1897], 2 I. R. 357; 31 I. L. T. R. 110, *Ferris v. Thompson*, 30 I. L. T. R. 147; and notes to Sec. 50, Sub-sec. 2, *post*, p. 599.

(f.) The Section does not, in express terms, deprive the immediate landlord of the right to sue for arrears of rent previously due to him, but it would seem by necessary implication to do so, when it gives the right to sue for the same arrears to the head landlord. *Nemo bis vezari debet pro eadem causa.*

(g.) A further question may arise where the middleman has taken a fine from his sub-tenant. Will the head landlord be bound by the sub-lease in that case if he evicts the middleman for non-payment of rent? Supposing there was nothing fraudulent or collusive in the matter, can it be said that a letting was made "at a gross undervalue," even though a very small rent was reserved, if a considerable fine was paid? It will be noticed that under Sec. 10 (*ante*) a letting made by a tenant for life in consideration of a fine may bind the remainderman (see Sub-section 2 (a)), though a letting "at a gross under-value" does not (Sub-sec. 1). But that Section enables the fair rent of a holding to be varied in favour of the remainderman in such a case. The present Section contains no such provision, and leaves the matter quite open.

13. Where the estate of the immediate landlord for the time being is determined during the continuance of any tenancy from year to year, and two or more persons are entitled in severalty as superior landlords, each of such persons shall be deemed to be the immediate landlord to the tenant of the tenancy within the meaning of section fifteen of the Land Law (Ireland) Act, 1881, in respect of the portion of the land to which he is entitled, and to have the rights and to be subject to the obligations of an immediate

Sects. 12-13.

Mode of execution of judgment for possession

Right to sue for arrears of rent.

Fine taken by middleman from sub tenant.

Tenure in severalty.

44 & 45 Vic. c. 49.

Sects. 13-14. landlord as provided by the said section; and the Land Commission may, on application being made to them by any person interested other than the tenant, apportion the rent previously paid by the tenant between the different persons thenceforward entitled to the landlord's interest according to the value of the land held from each; and the tenancy shall thereupon be divided into two or more tenancies according to the portions of land to which each of such landlords is entitled: Provided that each of such tenancies shall continue to be subject to the same conditions in all respects (save as regards the amount of rent to be paid) as the previously existing tenancy was subject to under the immediate landlord prior to the determination of his estate

The object of this Section is to meet a difficulty which occurred in applying the 15th Section of the Act of 1881. Suppose a landlord held one estate, Whiteacre, from A, under a lease for a term of years, and another, Blackacre, from B, also for a term of years, and made a letting of a holding containing portions of both estates to a sub-tenant;—on the expiration of the lease or leases under which he held it was, in the first place, doubtful whether the Section applied to the case at all, and even assuming that it did, there was no machinery for apportioning the rent between the two owners.

Where the estate of the immediate landlord in part of the holding determines—suppose, for example, Whiteacre to be held for a term of years, which expires, but Blackacre to be held in fee-simple—does the apportioned part of the tenancy become binding on the head landlord of Whiteacre under this Section? If not, the difficulty would not be really met, for this would be a much more common case than the determination of both estates simultaneously.

(a) Rule 163 of the Rules of 2nd January, 1897, provides for the form of application to apportion the rent (Form No. 75) see Rules and Forms, *post*. The scale of fees in applications under this Section will be found in the Schedule of Fees, *post*.

Amendment of
54 & 55 Vic,
c. 57, as to long
leases and fee-
farm grants.

14. The Redemption of Rent (Ireland) Act, 1891, shall be amended as follows:—

a. The provisions of the Land Law Acts and this Act with respect to improvements shall apply, (a) notwithstanding that the lessee or grantee would not, on quitting his holding, be entitled by reason of his being such lessee or grantee to claim compensation for improvements under the Landlord and Tenant (Ireland) Act, 1870;

b. A person shall be a lessee or a grantee under a fee farm grant within the meaning of the said Acts, notwithstanding that the instrument under which he holds, though purporting to create the relation of landlord and tenant, is dated before the first day of January, one thousand eight hundred and sixty one, (b) and by reason of its date does not create the relation of landlord and tenant between him and the person to whom

33 & 34 Vic,
c. 46.

money is payable thereunder in respect of the holding, and that person shall be a lessor or grantor in like manner as if the instrument were executed on or after the above-mentioned day. **Sects. 14-16.**

(a) It was held by the Land Commission in *Mollan v. Kieran* [1894], 2 I. R. 27, that a fee-farm grantee, when a fair rent was fixed under the Redemption of Rent Act, 1891, was not entitled to be exempted from rent in respect of any improvements made by him or his predecessors in title, on the ground that he would not have been entitled to compensation for improvements under the Act of 1870, and that the right to exemption from rent was correlative to the right to compensation for improvements. The Court of Appeal, however, in *Mairs v. Lcky* [1895], 2 I. R. 475, overruled *Mollan v. Kieran* [1894], 2 I. R. 27, and held that as a fee-farm grantee had the *status* of a present tenant imputed to him, he was entitled to the rights incidental to the imputed *status*, including the right to exemption from rent on improvements. But they held that he was in no better position than a long leaseholder, and that as a tenant holding under a lease for 31 years or upwards could not claim to be exempted from any improvements other than permanent buildings and reclamation of waste land, the fee-farm grantee was exempted from rent on those improvements only, and was liable to rent on other improvements, even though made by himself. Rights of tenants under fee-farm grants as to improvements

Sec. 1 of this Act, *ante*, has exempted tenants holding under leases for 31 years and upwards from rent on all kinds of improvements; and this Section now gives fee-farm grantees the same rights in regard to their improvements.

(b) Fee-farm grants made before Jan. 1st, 1861, were considered not to create the relation of landlord and tenant, and so were formerly held to be excluded from the Redemption of Rent Act, 1891. See notes to Sec. 1 of that Act, *ante*, p. 498. They are now included, provided they purport to create that relation, though "it is still possible to create a rent-charge under a fee-farm grant to which the Land Acts would not be applicable." Per FITZGERSON, L.J. *Barton v. Fisher* [1901], 1 Ir. R. 453, 34 I. L. T. R., at p. 194. See also *Christie v. Peacocke*, 30 L. R. Ir. 646; 26 I. L. T. R. 120 (noted, *ante*, p. 498).

15. Applications under section one of the Land Law (Ireland) Act, 1887, may be made at any time. Amendment of 50 & 51 Vic., c. 33, s. 1.

16. In the case of any ejectment which shall be or has been brought (a) for the nonpayment of the rent of a holding to which the Land Law Acts as amended by this Act apply, where the rent in arrear exceeds two years' rent, the tenant (b) may pay, tender, deposit, or lodge under sections sixty to seventy-one of the Landlord and Tenant Law Amendment Act (Ireland), 1860, the sum of two years' rent instead of the sums therein respectively required to be paid, tendered, deposited, or lodged in respect of the rent and arrears, exclusive of costs, and upon such tender, payment, deposit, or lodgment the tenant shall be in the same position under those sections as if two years' rent were the sum due for rent up to the date of the commencement of the proceedings in the ejectment; (c) and the balance of the rent due to that date shall be recoverable by the landlord as if the same were a debt due to him by the Ejectments for non-payment of rent in cases of holdings under Land Law Acts. 23 & 24 Vic., c. 154.

Sects. 16-17 person legally liable therefor, but shall not be recovered by ejectment for non-payment of rent or distress. Provided, however, that—

(1.) Nothing herein contained shall relieve the tenant from paying or undertaking to pay costs as provided by the said Sections; and

(2.) That this Section shall not apply to any proceeding in ejectment in which an order has been or shall be made under Section thirty of the Land Law (Ireland) Act, 1887, nor to any arrears of rent the subject of any such order.

50 & 51 Vic,
c. 83.

(a.) In *Spaight v. Baker* [1897], 2 I. R. 112, 30 I. L. T. R. 142; 2 I. W. L. R. 221; Fitzgibbon I. L. R. 259, it was held by the Court of Appeal that this Section applied to cases where judgment had been recovered and executed before the passing of the Act, provided the period for redemption had not then expired.

(b.) "Tenant" means a person occupying land under a contract of tenancy (Land Act, 1881, Sec 57). *Quære*, therefore, can a mortgagee of a tenant's interest who is not in possession take advantage of this Section, if he seeks to redeem.

(c.) In *Baker v. Murphy* (3 I. W. L. R. 97) the Queen's Bench Division held that the rent payable under this Section is that which accrued due during the two years immediately preceding the issue of the writ. This decision was followed by GIBSON, J., on circuit, where a question arose as to the amount to be paid, the rent having been reduced two years before the ejectment. *Tweedy v. Ward* (1 N. I. J. R. 272). But where a tenant merely paid the amount of two years' rent, and the landlord appropriated the payment to the earlier portion of the rent due, so as to prevent it being barred by the Statute of Limitations, and gave a receipt which the tenant accepted for this rent, it was held that the appropriation was, in fact, good. *Eyre v. Coen* [1898], 2 I. R. 761, 33 I. L. T. R. 59. (See judgment of ANDREWS, J., as reported in I. L. T. R.)

The notice served, after judgment in ejectment under Land Act, 1887, Sec 7, may still state the full amount of rent due, and is not invalid if it claims payment of more than two years' arrears. *Henth v. Cullen* (C. A., 7th July, 1902). See *ante*, p 408.

Provision for
agreements by
landlords and
tenants in
certain cases.

17.—(1.) The landlord and tenant of any holding may at any time (whether a statutory term is current in respect of the holding or not) agree in the prescribed manner, and subject to the prescribed rules and conditions, (a) in regard to all or any of the matters following:—

a. the consolidation of the holding (b) with any other holding or portion of a holding or the making of any addition to the holding;

b. the partition or division of the holding;

c. the assignment or surrender of portion of the holding; (

d. the creation of a present tenancy in the holding; (d)

e. the abridgement of any statutory term in the holding; (

and

f. the fair rent of the holding and the date at which the statutory term is to commence (f) and the duration thereof.

(2.) Where any such agreement is made the tenancy in the holding shall (in the absence of a provision in the agreement to the contrary) as and from the date of the agreement be a present tenancy.

(3.) Any such agreement on being filed in the prescribed manner with the Land Commission shall have the same effect and consequences in all respects as if the matters agreed to therein had been determined by the Land Commission, and the Land Commission had power to determine the same.

(4.) The said conditions shall, in the case of an agreement made by a limited owner or a mortgagor or mortgagee in possession, include such conditions as may be prescribed to protect the interests of the person entitled on the cesser of the interest or possession of such limited owner, mortgagor, or mortgagee.

(a.) See Rules of the 2nd January, 1897, Nos. 164 to 170, and Forms Nos. 62 and 63, *post*. The agreement must be lodged with the Land Commission within one month after the date thereof (Rule 165), and, along with it, a statutory declaration by the landlord giving particulars as to his title, mortgages, &c., and names of persons (if any) entitled on the cesser of the interest (Rule 166). Notice must be served on such persons as the Land Commission may direct (Rule 167). Any person having an interest in the holding may, within three months after the lodgment, move that the agreement be not filed (Rule 169). The landlord, if a limited owner, or a mortgagor or mortgagee in possession, cannot receive any fine or personal benefit as a consideration for the agreement (Rule 168). See *post*, pp. 759-761, and 799-802. Procedure under section.

Strict compliance with all these rules and regulations is necessary, otherwise the agreement will not have any binding force, especially where the landlord is a limited owner. *M'Carthy v. Bennett* [1899], 2 I. R. 622 (C. A.); *Fingall v. Everard*, 35 I. L. T. R. 134 (L. C.).

The necessity for compliance with the rules and forms restricts the operation of the Section to agreements made after the passing of this Act: *Hamilton v. Nelson*, 1 Greer 344, 368 (L. C.). As to the effect of similar agreements made previously, see Sec. 18 and notes thereto, *post*, p. 559.

Quære, need an agreement under this Section be stamped? An agreement fixing a fair rent under Land Act, 1881, Sec. 8, Sub-sec. 6, requires no stamp, but that is by reason of a special statutory exemption (45 & 46 Vic., c. 72, Sec. 10). The scale of solicitor's fees in cases of agreements under this Section will be found in the Schedule of Fees, *post*. It is the same as in cases of agreements fixing the fair rent of holdings.

(b) The consolidation of two holdings at a bulk rent, or the addition of any considerable amount of land to a holding at an increased rent, has been always considered to be the creation of a new tenancy, and if this took place after January 1st, 1883, it constituted a future tenancy, so that a fair rent could not be fixed for the enlarged holding: *Conroy v. Drogheda* [1894], 2 I. R. 590 (C. A.). But unless the parties so intended, the Court held that the old tenancy was not surrendered and allowed it to continue to be treated as a separate entity: *Jackson v. Hagan*, 28 L. R. I. 326; *Conroy v. Drogheda* [1894], 2 I. R. 590. Consolidation of holdings.

A fair rent could not, however, *even by consent*, be fixed for the consolidated

- Secs. 17-18.** holding prior to the passing of this Act, if the consolidation took place after January 1st, 1883 *Walsh v. Huntingdon*, 28 I. L. T. R. 57.
- Assignment or surrender of portion of holding (c) The Court of Appeal, on the other hand, held, even before this Section came into force, that it was competent for the landlord to take up from a present tenant a portion of his holding, reducing the area and rent, without affecting his status as a present tenant *Irwin v. Goodlattice*. (Unreported. Referred to by WALKER, C. [1895], 2 I. R., at p. 701.) The same Court held also that where a present tenancy was subdivided with the landlord's consent, before 1st January, 1883, the new tenancies, thereby constituted, became present tenancies *Fitzsimons v. Ellis* [1895], 2 I. R. 698, *Truill v. Doyle*. (Unreported. Referred to by WALKER, C. [1895], 2 I. R., at p. 701.) And it has been held by the Land Commission that this is so, even though the subdivision was subsequent to the year 1883 *Boyd v. Tridennick* [1896], 2 I. R. 364, 30 I. L. T. R. 36. Unless the parties intended to create a future tenancy *Kelly v. Hamilton* [1897], 2 I. R. 27, 30 I. L. T. R. 158. (Reported as *Kelly v. Campbell*, Greer Leading Cases 133.) Similarly it was held that the surrender of a portion of a holding, and the reduction of the rent in consequence, did not necessarily put an end to the old tenancy and constitute a new one *Nagle v. Galbrath*, 25 I. L. T. R. 33, *Curac v. Gordon*, 26 I. L. T. R. 95. The present Section now gets rid of all difficulty in making alterations in the area or rent by consent of the parties, without destroying a present tenancy.
- Creation of present tenancy. (d) "Where the landlord and tenant desire to agree to create a present tenancy they must agree in the prescribed manner and subject to the rules framed under the Act, and until that is done the tenancy remains a future tenancy." (Per MEREDITH, J. *Fingall v. Everard*, 35 I. L. T. R., p. 134.) This applies, however, only to agreements made after the passing of this Act. Agreements to create present tenancies made before the Act may be valid under Sec. 18, even though made without any formalities *M'Grath v. Legge*, 2 Greer 94. But such agreements, if made by a tenant for life, would probably not bind a remainderman *M'Carthy v. Bennett* [1899], 2 I. R. 622.
- Abridgment of statutory term. (e) Where agreements and declarations fixing the fair rents of tenants' holdings had been filed in Court under Land Act, 1881, Sec. 8 (6), and afterwards the parties agreed to abandon them and to allow fair rents to be fixed by the Court in the ordinary way, it was held by the Land Commission that there was no jurisdiction, even on consent, to take the agreements off the file, in order to allow originating notices to be served, and new rents to be fixed by the Court *Murray v. Scottish Provident Institution* [1894], 2 I. R. 44. This clause now removes the difficulty in such cases by enabling parties who so agree to abridge the existing statutory terms, and so have new judicial rents fixed.
- Fixing date of its commencement. (f) It was competent for the parties in an agreement fixing a fair rent, prior to the passing of this Act, to specify the date from which the statutory term was to run, and effect was given to the agreement so made by them *Fulton v. Templeton* [1898], 2 I. R. 321 (C. A.).

Tenancy to be present tenancy where landlord has so consented.

18. Where, prior to the commencement of this Act, the landlord of a holding has consented that the tenancy in the holding should be a present tenancy, (a) or that the tenant should have the same rights as a present tenant, (b) the tenancy shall be deemed to be a present tenancy accordingly.

(a) Until this Act passed, a holding which did not come within the definition of a present tenancy" in the 57th Section of the Act of 1881 could not by any consent

of the parties be treated as such. Thus, where a tenant holding two farms under the same landlord agreed, in 1894, with her landlord to consolidate them, and signed an agreement and declaration fixing a fair rent for the consolidated holding, the Land Commission refused to file it. *Walsh v. Huntingdon*, 28 I. L. T. R. 57. Sects. 18-19.

But where parties distinctly agreed, in word and terms, before the passing of this Act, that a holding, created after 1883, should be a present tenancy, or that the tenant should have the rights of a present tenant, such agreement, though invalid at the time it was made, is given a retrospective effect and operation by this Section, and is now, therefore, to be deemed valid. *M'Grath v. Legge*; 2 Greer 94 (L. C.). And where the parties in making such an agreement further provided that the agreement should have the same effect as if a judicial rent had been fixed on its date, the Land Commission have also held that effect must now, also, be given to that portion of the agreement, and that until the expiration of 15 years from its date a judicial rent cannot be fixed by the Court. *O'Callaghan v. Sweeney*, 33 I. L. T. R. 99; 1 Greer 393. An agreement fixing a fair rent signed by a tenant in such a position, and duly filed, will not be set aside. *Casey v. Mauneli*, 33 I. L. T. R. 162, 2 Greer 41 (L. C.). But the agreement must be a concluded agreement definitely entered into. A parol arrangement to have an agreement fixing a fair rent entered into under Land Act, 1881, Sec. 8 (6) not carried into effect, has no force or validity. *Kerfe v. Baldwin*, 1 Greer 41 (L. C.) Retrospective effect of section

The onus of proving that a tenancy created after 1883 has been made a present tenancy under this Section is on the tenant who asserts it. *Gray v. Waugh*, 2 Greer 171; *Thompson v. Gordon*, 1 N. I. J. R. 247; *Teggart v. Baird*, Greer Leading Cases, App. 81.

It would appear from the decision of the Court of Appeal in *M'Carthy v. Bennett* [1899], 2 I. R. 622, that where a landlord, who is merely a tenant for life, gives a consent under this Section to treat a future tenancy as a present tenancy, such consent does not bind a remainderman, though where the formalities of Sec. 17 are complied with a tenant for life may now create a present tenancy binding on the inheritance. See judgment of FRITHSON, L.J., and HOLMES, L.J. [1899], 2 I. R., at pp. 633 and 636. Effect of consent by tenant for life

(b) Where a landlord took up possession of a holding from a present tenant in 1881, and in 1894 sold the "tenant right" of the holding to a purchaser, and representations were made on his behalf, which induced the purchaser to believe that he was acquiring the rights of a present tenant, it was held by the Court of Appeal, affirming the decision of the Land Commission, that the landlord had consented that the purchaser should have the same rights as a present tenant within the meaning of this Section, and accordingly that the latter was entitled to have a fair rent fixed. *Rossmore v. Graham*, 35 I. L. T. R. 154; 1 N. I. J. R. 224; 3 Greer 259, 312. See also *Talbot v. Honeyford*, 35 I. L. T. R. 185, 1 N. I. J. R. 267 (C. A.). Now also officially reported [1901], 1 I. R. 441, and *M'Neill v. Rowney*, 36 I. L. T. R. 74 (C. A.).

19. The alienation to one person only of a holding by way of mortgage, (a) or family settlement, or where marriage forms a portion of the consideration, or otherwise than for consideration in money or money's worth, (b) shall be a sale within the meaning of Section one of the Land Law (Ireland) Act, 1881, but the provisions of the several regulations thereof other than regulation (6) shall not apply thereto. Amendment as to mortgage or settlement of holdings. 44 & 45 Vic., c. 49.

Sects 19-21.
Rights of
landlord
where tenant
mortgages

(a) The definition clause of the Land Act, 1881, provides that "sale," "sell," and cognate words "include alienation and alienate, with or without valuable consideration" (Sec. 57). This would seem to make all the regulations of the 1st Section of that Act applicable to both mortgages and settlements, and so to give the landlord a right of pre-emption in both cases. However, it was held that the 1st Section did not apply to mortgages *Fisher v. Coan* [1894], 1 I. R. 179 (CHAFFINON, V.C.). This Section now provides that a mortgage "to one person only" shall be a sale within the meaning of Sec 1 of the Act of 1881, but that the only regulation of the Section which shall apply shall be that which gives the landlord a right to refuse on reasonable grounds to accept the purchaser as tenant (Sub-sec. 6). The landlord, if he intends to exercise this right, must serve notice on the tenant in Form No. 5 within one fortnight after the sale has come to his knowledge. (Rules of 2nd January, 1897, No. 102.)

Where the landlord has notice of a valid mortgage subsisting on a tenant's interest, which has not been duly objected to as a sale by him, he cannot thereafter treat the tenant to the prejudice of the mortgagee, as a person qualified to sell the tenancy *Mullan v. Traill* [1898], 2 I. R. 378 (L. C.). It would appear, however, from the terms of this Section, as well as from the decision in *Fisher v. Coan* [1894], 1 I. R. 179, that a tenant need not serve any notice of intention to mortgage his holding upon his landlord.

Mortgages by sub-demise are not within the Section, being in all cases illegal, without the landlord's consent in writing, as a violation of the 2nd Section of the Land Act, 1881.

Family settle-
ments.

(b) This Section applies not only to mortgages and settlements, but to any alienation "otherwise than for consideration in money or money's worth," provided the alienation be to one person only, such, for instance, as a conveyance in consideration of a covenant to support and maintain by an uncle to a nephew *Aylward v. Nolan*, Greer, App. 72 (L.C.). But if the transaction is, in reality, a sale, though also in the nature of a family settlement, it does not come within the protection of the Section, and may be set aside if notice of it has not been given to the landlord *Lamb v. Crofts*, 33 I. L. T. R. 164 (L. C.).

Voluntary
assignments

In all cases, however, to which the Section applies, the landlord's right of pre-emption is taken away, and the Court has now no jurisdiction to set aside a voluntary assignment to one person of a tenancy in consequence of the non-service of the notices prescribed by Sec. 1 of the Land Act, 1881: *Fox v. Gloster* [1897], 2 I. R. 35, 30 I. L. T. R. 169 (L. C.); *Earl of Meath v. Megan* [1897], 2 I. R., at p. 49

Repeal of
44 & 45 Vic.,
c. 49, s. 8 (5).

20. The fifth Sub-section of Section eight of the Land Law (Ireland) Act, 1881, is hereby repealed.

Though the right to have the "specified value" of a tenancy fixed is abolished by this Section, the right to have the "true value" fixed on the occasion of a sale still remains. See Land Act, 1881, Sec. 1, and notes thereto, *ante*, pp. 233 235.

Procedure.

Amendments of
procedure as to
limited representa-
tion of deceased
person.

21. On any application under the Land Law Acts, as amended by this Act, an order may be made by the court appointing some person limited administrator of a deceased person for the purpose of such application, and such order may be made whether such deceased person did or did not die before the application, (a) &

make a will which was not proved. (b) It is hereby declared that Sections 21-22. the court had power, at any time since the passing of the Land Law (Ireland) Act, 1881, to make such an order as in this Section is mentioned.

(a) The 59th Section of the Land Act, 1870, conferred power on the Civil Bill Court to appoint an administrator limited to the purposes of that Act. This Section was incorporated by the 38th Section of the Land Act, 1881, for the purposes of that Act. The 14th Section of the Act of 1881 also conferred a special power on the Land Commission to appoint a limited administrator for the purpose of sale. In *Fox v Langan*, 26 I. L. T. R. 124; 27 I. L. T. R. 20, a question was raised as to the extent of the jurisdiction of the Land Commission in such cases. There it appeared that one of the next of kin of a deceased tenant, being in sole possession of the farm, served an originating notice to have a fair rent fixed. On the hearing of this application the Land Commission made an order appointing him limited administrator of the deceased tenant for the purpose of the Act, and then fixed a fair rent. The landlord, disputing the jurisdiction of the Land Commission to make such an order, applied to the Exchequer Division for leave to issue a writ of prohibition, and the majority of that Court being of opinion that the jurisdiction of the Land Commission in fair rent cases to appoint a limited administrator was confined to cases where the tenant died pending the proceedings, allowed the writ to issue (26 I. L. T. R. 124). Upon the case coming on for trial at Nisi Prius, however, O'BRIEN, J., being of a different opinion, entered judgment for the defendants (27 I. L. T. R. 20), and that decision appears not to have been appealed from. This Section now removes any doubt as to the jurisdiction of the Land Commission. See also *Carroll v. Burke*, 30 I. L. T. R. 52 (Sub-Com.).

(b) In *Mahony v. Carberry*, MacD. 396, the Land Commission refused to grant limited administration where it was proved that the deceased tenant had left a will of which probate had not been taken out. But in subsequent cases limited administrators were appointed, notwithstanding the existence of unproved wills. See *Fee v. Annesley*, 24 I. L. T. R. 104; *Clarke v. Pratt*, 19 I. L. T. R. 43, *Heatherton v. White*, 24 I. L. T. R. 13.

22. Rules under Section fifty of the Land Law (Ireland) Act, 1881, may provide that, subject to the qualifications (if any) contained in those rules, every notice of appeal under the Land Law Acts shall state the grounds of appeal, and on the hearing of the appeal no grounds of appeal shall, save by leave of the court, which shall not be given as of course, (b) be entered into except those so stated (a). For the purpose of this Section "appeal" includes "rehearing."

See Rules of 2nd January, 1897, No. 85, and Forms Nos. 71 & 72, *post*, which require a specific statement of the grounds of appeal: *Miller v. Hertford*, 2 I. W. L. R. 223. In cases of appeals on questions of value only, the new forms also require a specific statement of the points to be relied upon. See *post*, pp 737 and 803-4.

(a.) Under the rules now in force pursuant to this Section, a respondent, unless he serves a notice of cross-appeal, cannot open up any questions not raised by the appellant's notice of appeal. *M'Donald v. Trout*, 32 I. L. T. R. 72; *Hunt's Estate*, Greer Leading Cases, App. 41.

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(b.) Leave to amend a notice of appeal was given by BEWLEY, J., in *Byrne v Dawson* (31 I. L. T. R. 162), and by MEREDITH, J., in *Valentine v. Cunningham* (7 I. W. L. R. 118). But similar leave was refused in *Cope v. Gray* (34 I. L. T. R. 207; 1 N. I. J. R. 47, 3 Greer 249), where the landlord sought to raise a fresh ground of appeal affecting the status of the tenant.

PART II.

LAND COMMISSION AND LAND JUDGE.

Regulations as to interchange of duties of the Land Judge and the Judicial Commissioner of the Irish Land Commission

23.—(1.) The Lord Chancellor, the Land Judge of the Chancery Division of the High Court, and the Judicial Commissioner of the Land Commission, or any two of them (of whom the Lord Chancellor shall be one) may make rules (a) for the following purposes, namely:—

a. To enable the Land Judge to act as an additional Judicial Commissioner of the Land Commission—

(i.) in any matter arising under the Land Purchase Acts as amended by this Act; or

(ii.) in any appeal or rehearing under the Land Law Acts as amended by this Act;

b. To enable the Judicial Commissioner of the Land Commission to exercise any jurisdiction, powers, and duties, so far as existing at the commencement of this Act,

(i.) of the High Court or any judge thereof, either as successors of the Landed Estates Court and the judges thereof, or under the Record of Title (Ireland) Act, 1865, or the Local Registration of Title (Ireland) Act, 1891; and

(ii.) of the Land Judge and of the Receiver Judge under any enactment conferring any jurisdiction upon either of such judges as such;

c. To enable the High Court to distribute the proceeds of any sale under the Land Purchase Acts, and to enable the Land Commission to carry into effect any sale under those Acts ordered by the High Court.

(2) For carrying into effect any such rules, and exercising the jurisdiction, powers, and duties arising thereunder, the Land Judge shall be deemed to be an additional Judicial Commissioner of the Land Commission, and the Judicial Commissioner shall be deemed to be an additional Land Judge.

(3.) The Land Judge as respects officers of the Supreme Court who are attached to such judge, or otherwise employed in or about the execution of any such jurisdiction, powers, and duties as may

under this Section be exercised by the Judicial Commissioner, and Sects. 23-24.
 the Judicial Commissioner, so far as respects the officers of the
 Land Commission, may direct those officers to perform such duties
 as he thinks fit under the Land Commission or under the Land
 Judge, as the case may be, and those officers shall perform those
 duties.

(4.) The Land Judge and the Judicial Land Commissioner may
 also make regulations (b) for carrying into effect any rules made
 in pursuance of this Section, and for the mutual relations between
 the Land Judge and the officers of the Supreme Court on the one
 side, and the Land Commission and their officers on the other,
 and in particular for the payment into the High Court of money
 to be distributed among the parties entitled thereto, and for the
 Land Commission carrying into effect any sales under the Land
 Purchase Acts ordered by the High Court.

(5.) Sub-Sections (2) and (3) of Section fifty of the Land Law 44 & 45 Vic.
c. 49
 (Ireland) Act, 1881, shall apply to rules made under this Section.

(6.) The first rules under this Section shall be made as soon as
 practicable after the commencement of this Act.

(7.) Such rules shall provide that the Court of the Land Com-
 mission in Dublin shall, when hearing appeals or rehearing cases,
 or hearing such other matters as may be prescribed, be held at
 the Four Courts, Dublin.

(a.) Rules under this Sub-section were published on October 26th, 1896. See 611,
post

(b.) See Regulations made in pursuance of this Sub-section by the Judicial Com-
 missioner and the Land Judge, dated 18th September, 1896, *post*, pp. 622-632.

24. The Lord Chancellor may nominate any judge of the High Power to
nominate Judge
to act as
additional Land
Judge for
purposes of
28 & 29 Vic.
c. 83.
54 & 55 Vic
c. 66
 Court with his consent to act, for the time specified by the Lord
 Chancellor, as an additional Land Judge, for the purposes of the
 Record of Title (Ireland) Act, 1865, and the Local Registration of
 Title (Ireland) Act, 1891, and the judge so nominated shall have
 during that time the jurisdiction of the Land Judge for those
 purposes.

PART III.

LAND PURCHASE.

25.—(1.) In the case of every advance under the Land Purchase Alteration of
mode of calcu-
lating purchase
annuity.
 Acts made after the commencement of this Act the purchase
 annuity shall be calculated and payable—

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a. during the first decade of the annuity, upon the total advance; and

b. during the second and third decades, upon the portion of the advance which is ascertained, as provided by this Section, to be unpaid at the end of the previous decade; and

c. after the end of the third decade, upon the portion of the advance which is ascertained, as provided by this Section, to be then unpaid, and shall continue to be paid until the whole advance is ascertained as provided by this Section to have been repaid.

(2.) The Land Commission shall, in accordance with such rules as the Treasury may make—

a. at the end of each of the said decades ascertain how much of the advance has been repaid by means of the accumulation during the decade of that portion of the purchase annuity which represents repayment of capital, and the residue of the advance shall be the unpaid amount upon which the subsequent annuity is to be calculated and paid; and

b. ascertain when the whole advance has been repaid by means of the accumulation of that portion of the purchase annuity which represents repayment of capital.

(3.) If the proprietor of a holding charged with an annuity applies to the Land Commission within the prescribed time and in the prescribed manner, prior to the end of each of the said decades, that the annuity during the next decade shall not be reduced under this Section, no alteration of the annuity shall then be made.

(4.) The amount of the annuity, when re-calculated as provided by this Section, shall be certified by the Land Commission, and that certificate shall be conclusive for all purposes, and shall be sent by them for registration to the registration authority under the Local Registration of Title (Ireland) Act, 1891.

(5.) The foregoing provisions of this Section shall apply in the case of an annuity for any advance made under the Land Purchase Acts before the commencement of this Act, subject as follows:—

a. where more than ten years have elapsed since an annuity for the repayment of the advance began, the amount of the advance remaining unpaid shall be ascertained as at the end of the last completed decade since that beginning, and the reduction of the annuity in the current decade shall date from the gale day next after the commencement of this Act;

b. In a case where purchaser's insurance money (*a*) has been

paid, the amount so paid, and not set off against arrears, shall Sects. 25-26 be taken into account at the end of the first decade, as if it were a portion of the purchase annuity which represents repayment of capital; and the provisions with respect to setting off against arrears purchaser's insurance money so paid shall not apply after the end of such decade.

Under the Land Purchase Acts of 1885 and 1891, the advance made for the purchase of a holding to a tenant was repayable by a fixed annuity of 4 per cent. on the amount of the advance, for 49 years.

Now, under this Section the period for repayment is extended to 73 years, and the ^{Change in} amount of the annuity is gradually reduced every tenth year for the first 30 years, ^{amount of} annuity payable. in the manner directed by Sub-sec 1. This reduction is not confined to those who purchase, or even those to whom advances are made after the passing of this Act, but applies to all who have previously purchased under any of the Acts since 1870 (Sub-sec. 5.).

The difference between the former and the present system of repayment of advances will be best explained by a concrete example. Suppose a tenant purchases a farm for £1,000. Formerly, he became liable to pay an annuity of £40 for 49 years. Now, he pays the £40 only for the first 10 years; for the second 10 years he pays £34 8s. 0d. a year; for the third 10 years, £29 12s. 0d.; and for the remaining 43 years, £25 12s. 0d.; *i.e.*, for the bulk of the period he pays only at the rate of a little over 2½ per cent. on the original advance.

(a.) "Purchaser's insurance money" was a special fund set apart out of the ^{Purchaser's in-} purchaser's annuity in certain cases under the 8th Section of the Land Purchase ^{insurance money.} Act, 1891. It is abolished by this Act (Sec. 28, *post*), and the 8th Section of the Act of 1891 is repealed by the second schedule, *post*, "save as respects any purchaser's insurance money paid before the commencement of this Act."

26.—(1.) The Land Commission, upon the application of any person liable to pay interest on any simple mortgage under Section fifty-two of the Irish Church Act, 1869, may, if they think fit, by ^{Application of} order convert that mortgage into a mortgage to secure repayment ^{part of Act to} of the principal of the mortgage debt then outstanding, with ^{annuities under} interest at the rate of three and one-eighth per centum per annum, ^{32 & 33 Vic.} by means of an annuity at the rate of four per centum per annum ^{c. 42} on the said principal, payable by half-yearly payments on the days fixed for the payment of the interest on the said mortgage, until the whole principal has been repaid, and such order shall be binding upon all persons interested, whether in the equity of redemption of such mortgage or otherwise.

(2.) The foregoing provisions with respect to the calculation of a purchase annuity may be applied by the Land Commission with the necessary modifications, to the calculations of the instalments of an annuity by means of which any mortgage debt is payable either under this Section or otherwise under Section fifty-two of ^{32 & 33 Vic.} the Irish Church Act, 1869, and the Acts amending the same. ^{c. 42.}

Sects. 27-29.

Abolition of
county percent-
age.
54 & 55 Vic,
c. 48.

27. The amount which under the Purchase of Land (Ireland) Act, 1891, is required to be applied as county percentage (*a*) shall, when received in respect of an instalment of the annuity falling due after the commencement of this Act, cease to be so applied and shall be paid to the National Debt Commissioners and applied as a portion of the purchase annuity which represents repayment of capital.

(*a*) See Land Purchase Act, 1891, Sec 4 (2) b, *ante*, p. 460

Abolition of
purchaser's in-
surance money.

28.—(1.) In the case of any advance after the commencement of this Act for the purchase of a holding, and also in the case of any instalment of a purchase annuity which shall become payable after the passing of this Act, purchaser's insurance money (*a*) shall not be payable.

(2.) In the case of a purchase annuity payable at the date of the commencement of this Act, the amount thereof as altered by this Section shall be certified by the Land Commission, and sent by them for registration to the registration authority under the Local Registration of Title (Ireland) Act, 1891.

54 & 55 Vic,
c. 66.

(*a*) Purchaser's insurance money was a fund created by the 8th Section of the Land Purchase Act, 1891, repealed by this Act, 2nd Schedule, *post*.

As to guarantee
deposit.

29.—(1) The Land Commission on making an advance may dispense with the whole or any part of the guarantee deposit being made or retained, if they think the security for the repayment of the advance is sufficient without it.

(2.) The Land Commission may, if they think fit, on application pay to the person entitled thereto the whole or any part of the guarantee deposit made or retained in respect of advances under the Purchase of Land (Ireland) Act, 1891, or the Redemption of Rent (Ireland) Act, 1891, except in a case where any part of the deposit has been actually applied in pursuance of the Land Purchase Acts.

54 & 55 Vic.,
c. 48.

(3) In the case of any advance made otherwise than under the Purchase of Land (Ireland) Act, 1891, or the Redemption of Rent (Ireland) Act, 1891, the Land Commission may pay out of the guarantee deposit to the person entitled thereto a sum equal to the portion of the advance which at the end of any decade is ascertained under the provisions of this Act to have been repaid.

54 & 55 Vic.,
c. 48.
54 & 55 Vic.,
c. 57.

See as to guarantee deposits generally. Land Purchase Act, 1885, Sec. 3, Land Act, 1887, Secs. 10, 11, and 12; Land Purchase Act, 1891, Sec. 23, and notes these Sections, *ante*, pp. 371, 416, 417, and 479. See also Land Purchase Rule 1897, Order XXIII, *post*, pp. 838-840.

30. In computing the amount advanced to any one purchaser under the provisions of Section two of the Purchase of Land (Ireland) Amendment Act, 1888, an advance made to such purchaser as a trustee for another, or as personal representative of a deceased person, shall not, if (as regards advances made after the passing of this Act) he declares at the time that he was so acting, be included, and for the purposes of the said Section the advance in such cases shall be deemed to have been made to the person beneficially interested in such advance. Sects. 30-31.
Amendment of
51 & 52 Vic.,
c. 49, s. 2.

See Land Purchase Act, 1888, Sec. 2, *ante*, p. 451.

31.—(1.) Where any land has been sold (a) under the Land Purchase Acts, as amended by this Act, or where land is sold by the Land Judge to the tenant thereof, and an advance under the Land Purchase Acts is made for the purpose of such sale, or where a lessor or grantor has signified his consent to the redemption of a rent under the Redemption of Rent (Ireland) Act, 1891, the sale of such land, or the redemption consequent on the lodgment of such consent, as the case may be, shall be made discharged from all superior interests as defined by this Section, or from any of them, (b) and in every such case the land shall be vested accordingly in the purchaser in fee-simple, and such superior interests, or the value thereof, shall become a lien upon, and be redeemed or satisfied (c) out of, the purchase money of such land. Extinguishment
of superior
interests.

54 & 55 Vic.,
c. 57.

(2.) A vesting order shall be subject to such exceptions and reservations (d) as are specified in the order, if they were contained in the agreement for purchase or subsequently agreed to by the vendor and purchaser and have been approved by the Land Commission, and the Land Commission are satisfied that the effect of such exceptions and reservations was explained to and understood by the purchaser, or the purchaser is represented by a solicitor other than the solicitor of the vendor.

(3.) The powers of apportionment and redemption given to the Land Commission by Section ten of the Purchase of Land (Ireland) Act, 1885, and Sections fifteen and sixteen of the Land Law (Ireland) Act, 1887, shall extend to superior interests and be exercised in such manner as shall appear equitable, (e) and shall not be limited to an apportionment between the land sold and the residue of the land subject to the superior interest. 48 & 49 Vic.,
c. 73.
50 & 51 Vic.,
c. 33.

(4.) Where a holding is sold by the Land Judge to the tenant thereof, and an advance under the Land Purchase Acts is made

Sect. 31.

50 & 51 Vic,
c 33,
54 & 55 Vic.,
c 48.

for the purpose, the Land Judge shall have the powers of apportionment and redemption (*f*) conferred on the Land Commissioner by Sections fifteen and sixteen of the Land Law (Ireland) Act 1887, and by Section twenty of the Purchase of Land (Ireland) Act, 1891, as the same are amended and extended by this Act in like manner as if the Land Judge were the Land Commissioner.

(5.) The price or compensation to be paid in respect of a superior interest, or of any apportioned part thereof, shall be determined in the manner provided by the said Sections for the redemption of annuities, rentcharges, and rents (*g*): Provided that, if the Court are of opinion that any such superior interest is of no appreciable value (*h*) to the persons entitled thereto, the purchase money of the land may be distributed without regard to such superior interest.

(6.) If a superior interest, or the benefit arising thereunder, is settled land within the meaning of the Settled Land Acts, 1882 to 1890, the person who constitutes the tenant for life, or who has the powers of a tenant for life under those Acts, shall have power to enter into any consent in relation to the sale being made discharged from such superior interest, and to the redemption or satisfaction of the same out of the purchase money.

50 & 51 Vic.,
c 33.

(7.) Where a superior interest is subject to an incumbrance as defined by the Land Law (Ireland) Act, 1887, the Court shall have the same powers as if such incumbrance had been charged directly upon the land sold.

(8.) The expression "superior interest" (*i*) shall include an annuity, rentcharge, annuity, fees, duties, or services, payable or to be rendered in respect of the land sold to any person, including Her Majesty and her successors, and any estates, exceptions, reservations, covenants, conditions, or agreements, contained in any fee-farm grant, or other conveyance in fee, or lease, under which such land is held, and, if such land is held under a lease for life or years renewable for ever, or for a term of years of which not less than sixty are unexpired at the date of the sale, shall include any reversion (*j*) or estate expectant on the determination of such lease or expiration of such term, and notwithstanding that such reversion or estate may be vested in Her Majesty and her successors (*k*).

(9.) Nothing in this Section shall affect the rights of the public or of any class of the public in respect of the land sold.

(10.) The Land Commission or the High Court shall not in any case be empowered to make any requisition as to title the making of which by a purchaser would be prevented by the Vendor and Purchaser Act, 1874, or any Act amending the same. Sect. 31.
37 & 38 Vic.,
c. 78.

(a) This Section applies to all operations under the Land Purchase Acts, as amended by this Act, whether by the Land Commission or by the Land Judge, under agreements made after the passing of the Act; but not without the consent of the vendor and purchaser to agreements made before the Act (Sec. 50, Sub-sec. 5, *post*). The Section provides the means and confers the jurisdiction of acquiring every interest which stands between the Court and the fee-simple; and this jurisdiction the Court is bound to exercise. *In re Owen's Estate* (No. 3) [1900], 1 I. R. 151. "I consider," says Lord ASHBOURNE, C., in that case, "that the Section had strongly and directly in view the vesting of the fee of the holding he purchased in the tenant. This both the Land Commission and the Land Judge must steadily regard, and they are clearly bound, when possible, to apportion and redeem all 'superior interests' necessary to effectuate that object. Speaking generally, I think the first Sub-section of the Section to be compulsory, but I do not regard it to be necessary to discuss, for the purposes of this case, how far any discretion may conceivably be exercised under it by the Land Commission or the Land Judge. They cannot be expected to order redemption when it is practically impossible". [1900], 1 I. R., at pp. 156-7. WALKER, L.J., in the same case expressed a decided opinion that the Section was "compulsory in all its parts, the latter half as well as the first half": [1900], 1 I. R., at p. 170. And FITZGIBBON, L.J., though he dissented from the judgment of the Court, only did so upon the grounds (1) that, in his opinion, the particular annuity ordered to be redeemed was not a "superior interest" within the meaning of the Section, and (2) that even if it was, its redemption was not necessary for the vesting of the lands in fee-simple in the tenant purchasers, inasmuch as the Land Judge had ordered the lands to be sold discharged of the jointure under the powers conferred upon him by the L. E. C. Act, 1858.

(b) The sale is to be made discharged from all superior interests, "or from any of them." These latter words imply that a sale may be made subject to some "superior interests" (see judgment of Lord ASHBOURNE, C., in *Owen's Estate* (No. 3) [1900], 1 I. R., at p. 157); to such, for instance, as are of the nature of exceptions or reservations within the meaning of Sub-sec. 2. See as to these, note (d), *post*. A wider scope has, however, been given to the permissive words. Thus it has been held that the fee-simple may be vested in tenant purchasers, subject to a contingent liability to tithe rentcharge or quit-rent, but adequately indemnified by other lands against the liability: *Grogan's Estate* [1897], 1 I. R. 321 (ROSS, J.); *McNeill's Estate*, 32 I. L. T. R. 69 (BEWLEY, J.). And even where no instrument of indemnification was forthcoming, but the quit-rent and tithe rentcharge had been for a long time paid by the owners of other lands, a similar order was made *Ryan's Estate*, 31 I. L. T. R. 65 (ROSS, J.).

But where it would be impossible to vest the fee-simple in the tenants without getting rid of the "superior interest," the sale must be made discharged from it. Thus, where lands were subject to a contingent jointure secured by a term of 300 years, it was held by BEWLEY, J., that the sale could not be made subject to the term, even though indemnified from liability to the jointure: *Guttm's Estate*, 31 I. L. T. & S. J. 85. See also *Hill's Estate*, 3 I. W. L. R. 194.

(c) Where a "superior interest" is redeemed under this Section it becomes a lien upon the purchase money, and must be discharged by payment of its capitalized Annuities must
be redeemed.

Sect. 31.

value as a bulk sum, even though it is a terminable annuity, such as a jointure, the owner of which objects to be paid off *Owen's Estate* (No. 3) [1900], 1 I. R. 151 (C. A.). And the annuitant can insist on this right, even though the owners desire to have the money retained in Court, and the annuity paid as it falls due: *Alexander's Estate* [1900], 1 I. R. 20 (Ross, J.).

The word "redeemed" applies to rents, annuities, and money payments generally. The word "satisfied" appears to refer to covenants, conditions, reservations, &c, to which the word "redeemed" would not be appropriate. Per HOLMES, L.J. *Owen's Estate* (No. 3) [1900], 1 I. R., at p. 176; *Alexander's Estate* [1900], 1 I. R. 20 (Ross, J.).

Priority of redemption price.

The redemption price of a fee-farm rent, or of a reversion or other estate outside the interest for sale, and acquired by the Court in order to vest the fee-simple in the tenants, should be put on the final schedule above, even the costs of the sale *Constable's Estate*, 1 N. I. J. R. 20 (Ross, J.). But where the "superior interest" is an annuity or rentcharge, in the nature of an incumbrance, and carved out of the estate for sale in the matter, it appears to be payable only according to its priority of interest, and the redemption can be made only out of monies properly applicable thereto. (See judgment of HOLMES, L. J., *In re Owen's Estate* (No. 3) [1900], 1 I. R., at p. 176.) If there is not sufficient to redeem the superior interests in full, Ross, J., has held that the sales cannot be carried out *Bolton's Estate* [1898], 1 I. R. 401, *Conolly's Estate*, 34 I. L. T. R. 171. But in these cases the superior interests affected were head rents, and it is doubtful whether the same principle would apply to annuities or rentcharges created under the Statute of Uses, or otherwise carved out of the particular estate for sale in the matter.

Exceptions and reservations.

(d) Sub-sec. 2 authorises a vesting order to be made in certain cases, subject to exceptions and reservations agreed to by the vendor and purchaser, and approved of by the Land Commission. These exceptions and reservations may be either created for the first time at the time of sale (*In re Trustees of Congested Districts Board*, 35 I. L. T. R. 122) or pre-existing ones in the nature of superior interests. Thus it has been held that sales may be made to tenants subject to reservations in fee-farm grants, under which the lands are held, of mines, quarries, royalties, and rights of fishing and fowling. *Herbert's Estate* [1897], 1 I. R. 476 (Ross, J.), and of timber-trees, in addition to mines, &c, as above *Montgomery's Estate*, 31 I. L. T. R. 121 (BEWLEY, J.). In the case of *The Trustees of the Congested Districts Board* (35 I. L. T. R. 122) the Land Commission sanctioned reservations of game and sporting rights which belonged to the vendors, and were not reserved in any superior grant.

Practice as to appointment and redemption of superior interests.

(e) As to the powers of apportionment, and redemption of head-rents, &c., possessed by the Land Commission before the passing of this Act, see Land Purchase Act, 1885, Sec. 10, Land Act, 1887, Secs 15 and 16; and Land Purchase Act, 1891, Sec. 20, and notes thereto, *ante*, pp. 380 421. and 425. These powers are now extended to all "superior interests," as defined by Sub-sec. 8. See note (i), *post*, p. 571.

The words "as shall appear equitable" in this Sub-section mean that the Court should have regard to the equities, not merely of the owners of superior interests, but also to those of persons interested in the estate. Thus, where lands which were being sold to tenants were liable with other lands to a fee-farm rent, but were bound to indemnify the latter therefrom, Ross, J., ordered the entire of the fee-farm rent to be redeemed, though the owner of the rent contended that it should be apportioned, and only an apportioned part redeemed *Thompson's Estate* [1901], 1 I. R. 392. As to the jurisdiction to make such an order, see *Penland's Estate*, 22 L. R. Ir. 649 (C. A.), referred to, *ante*, p. 426. But where a life annuity was

similarly charged, and the indemnifying lands were being sold, an apportionment was ordered. In re *Gabbett's Estate* [1900], 1 I. R. 198 (Ross, J.). Sect. 31.

(f) Under Sub-sec. 4 the Land Judge has all the powers of apportionment and redemption conferred on the Land Commission by the Sections mentioned, when selling to tenants under the Land Purchase Acts (though not apparently when he sells to the Land Commission for the purpose of re-sale to the tenants *Butler's Estate*, 31 I. L. T. & S. J., at p. 86). He can thus sell to tenants, under the 40th Section, an estate held for a term of years, of which not less than 60 are unexpired at the date of the sale: *Vyse's Estate* [1897], 1 I. R. 444 (Ross, J.), or an estate held under a sub-fee-farm grant, for the 20th Section of the Land Purchase Act, 1891, confers power to redeem a rent upon a rent: *Daly's Estate* [1897], 1 I. R. 445 (Ross, J.). Powers of Land Judge.

As to the powers of apportionment and redemption of superior interests in the case of purchasers by the Congested Districts Board, see Congested Districts Board Act, 1899, Sec. 2, *post*, p. 603.

(g) The redemption price may be determined in one or other of three ways—either (1) by agreement between the parties, (2) by arbitration, or (3) by the Land Commission or the Land Judge, if the parties consent that it should be so determined. The procedure for carrying out the apportionment and redemption of superior interests is set out in Order XX. of the Land Purchase Rules of March, 1897, *post*. Where the land sold is the subject-matter of proceedings which originated in the Land Judge's Court, the procedure is regulated by Order V. of the Regulations of 18th September, 1896, *post*. Application should, if possible, be made at the hearing of the Final Schedule of Incumbrances (Rule 10). Redemption price, how fixed.

(h) MEREDITH, J., has refused to hold that a reservation of mines and minerals in a conveyance under which lands were held was "a superior interest" of no appreciable value within the meaning of Sub-sec. 5, merely because no mines had, in fact, been opened, and evidence was given that there were probably none on the lands *O'Brien's Estate*, 34 I. L. T. R. 95. In *Kirkwood's Estate*, however, Ross, J., held that a reversion expectant on the determination of a lease for 900 years from 1710 was "of no appreciable value," and made a ruling disallowing any claim on foot thereof. (Unreported. Final Schedule ruled 4th Nov., 1898.) Superior interest of no appreciable value.

(i) The term "superior interest," as defined by this Sub-section, is one of very wide signification. It is not confined to paramount estates, or perpetual charges, but includes a life annuity, secured by a term of years, and charged upon the land *Alexander's Estate* [1900], 1 I. R. 20 (Ross, J.). It includes, also, an annuity by way of jointure not secured by a term, even where an order has been made by the Land Judge to sell the estate discharged from the jointure: *Owen's Estate* (No. 3) [1900], 1 I. R. 151 (C. A.). Definition of term "superior interests."

It apparently also includes a contingent liability for any annuity, rentcharge, or rent; as to which, see Sec. 34 (3), and note thereto, *post*, p. 575.

(j) Power to redeem, or rather to purchase compulsorily, a reversion expectant on the determination of a term of years is for the first time conferred by this Section. Prior to the passing of this Act, the Land Commission had power only to redeem the rent payable during the term under the 16th Section of the Act of 1887; so that, for instance, if a landlord held his land under a lease for a term of 200 years unexpired, and entered into an agreement to sell to his tenants, though the head rent could be redeemed, the fee could not (without the consent of the owner in fee) be vested in the tenant purchasers. The Land Commission, therefore, were in the habit of refusing to sanction advances, where the landlord's estate was merely a term of years, unless the term was so long as to be capable of being enlarged into a Reversions, how dealt with.

Se ts. 31-32 fee-simple estate under the provisions of the 65th Section of the Conveyancing Act, 1881, as amended by the 11th Section of the Conveyancing Act, 1882, or unless the head landlord joined in the agreement. Now, under this Sub-section, if the landlord is owner of a term of years, of which not less than sixty are unexpired, he can sell *the fee* to his tenants, without the consent of the head landlord, and the Land Commission, or the Land Judge, can redeem the head landlord's reversion, as well as the rent payable during the term. *Kelly's Estate*, 34 I. L. T. R. 93. But there is still no power to deal with the reversion expectant on the determination of a lease for lives, not renewable for ever. Nor, apparently, can an estate in remainder be treated by the Land Judge as a "superior interest" under this Section. See note (c) to Sec. 40, *post*. An ordinary limited owner can, however, himself, sell the fee-simple to the tenants under the L. P. Acts. See Land Act, 1881, Sec. 25, and L. P. Act, 1885, Sec. 5, *ante*, pp 313 and 373.

Estates in remainder.

Crown reversions.

(k) A reversion vested in the Crown could not previously have been dealt with without the consent of the Commissioners of Woods and Forests, and a landlord who held subject to a Crown reversion was obliged to purchase it at a price fixed by them, if he desired to sell to his tenants under the Land Purchase Acts. The onus, however, of proving that the Crown has a reversion in any particular lands proposed to be sold under the Land Purchase Acts lies on the Crown: *Marquis of Ormond's Estate*, 28 I. L. T. R. 73 (L. C.).

Only crown reversions expectant on the determination of leases for lives or terms of years, however, come within the compulsory powers conferred by this Section. A Crown reversion in a vendor's estate held under patent from the Crown for an estate in tail male is not within the Section, and the redemption of it can only be carried out under Sec. 68 of the L. E. C. Act, 1858. (See Appendix, *post*), with the consent of the Commissioners of Woods and Forests: *Fischer's Estate* [1901], 1 I. R. 377 (MEREDITH, J.). See also *Murphy's Estate*, 34 I. L. T. R. 42 (C. A.), and *Re Costello*, 33 I. L. T. R. 73 (MADDEX, J.).

Framing of and dispensing with vesting order and registration of title on purchase.

32.—(1.) The Land Commission shall prepare the vesting order, or if they see fit to dispense therewith, shall fiat the agreement for the purchase of the holding, subject to such conditions, exceptions, and modifications as they think necessary; and on the advance being paid such fiat shall have effect as if it were a vesting order (a) made by the Commission in relation to the holding purchased, and the provisions of this Act referring to vesting orders shall apply and be construed accordingly.

(2.) The Land Commission shall, immediately after the vesting order or fiat, prepare and transmit to the registering authority under the Local Registration of Title (Ireland) Act, 1891, the prescribed particulars as to the holding, in order that the title of the purchaser to the ownership of the holding may be registered pursuant to that Act.

54 & 55 Vic., c. 66.

(3.) Section thirty-four of the said Act (which relates to the correction and rectification (b) of the register) shall extend to a vesting order or fiat as if it were the register, save that the

jurisdiction of the court for the purposes of this Act shall be S.cts. 32-33.
exercised by the Land Commission.

(4.) An agreement for purchase, a vesting order, or fiat, shall not operate to convert the interest of the purchaser into real estate (c).

(a) As to the effect of a vesting order, generally, see Land Purchase Act, 1885, Sec. 8, and notes thereto, *ante*, pp 376-7.

(b) As to the procedure for correction and rectification of a vesting order, see Land Purchase Rules of March, 1897. Order XVI., Rule 9, *post*, p. 827.

(c) See Local Registration of Title Act, 1891, Sec. 84, App., *post*. This Sub-section provides for the period intervening between the date of the agreement for sale and the actual registration of the title

33.—(1.) For the purpose of the distribution of, or other dealing with, an advance, Sections fifteen and sixteen of the Land Law (Ireland) Act, 1887, and any other unrepealed enactment in the Land Purchase Acts, or this Act, relating to the redemption or apportionment of charges on holdings, or otherwise to the distribution of the purchase money of a holding, shall apply as if the money were the holding (a).

As to redemption or apportionment of annuities, rentcharges, &c., under 50 & 51 Vic., c 33, ss 15, 16.

(2.) For the purpose of an agreement respecting the redemption price of any annuity, rentcharge, or rent apportioned under the said Section sixteen, the court may determine the parties by whom such agreement may be made or by whom the consent may be given for the determination of the price by the court (b).

(3.) The said Sections as amended by this Section shall apply to any contingent liability (c) for any annuity, rentcharge, or rent, in like manner as they apply to the annuity, rentcharge, or rent itself, and where any contingent liability has no appreciable value, the money may be distributed without regard to such liability.

(4.) Where any liability for any annuity, rentcharge, or rent is apportioned and redeemed out of the purchase money and a right of indemnity in respect of such liability exists, the person entitled to the purchase money shall be entitled to the proportion of the annuity, rentcharge, or rent so redeemed, in like manner as if he had purchased the same, (d) and the court, after due notice to all persons interested, shall make provision as to the future payment of such portion of the annuity, rentcharge, or rent so purchased, and as to the land to be liable thereto, and such other provisions as appear to the Court necessary for carrying into effect this enactment (e).

(a) This Sub-section enables a jointure or annuity to be redeemed, even though an

Sects. 33-34. order has been made by the Land Judge to sell discharged therefrom under the power conferred by the L. E. C. Act, 1858, and the redemption is not, therefore, necessary in order to vest the fee-simple of the holding in the purchasing tenant *Owen's Estate* (No. 3) [1900], 1 I. R. 151 (C. A.).

(b) See notes to Land Act, 1887, Sec. 16, *ante*, p. 427

Contingent annuities or rent-charges.

(c) A contingent liability to an annuity, rentcharge, or rent, can be redeemed under this Sub-section, in the same manner as if it had become payable. As to the necessity for redeeming a contingent jointure secured by a term under a marriage settlement, see judgment of BEWLEY, J., *Butler's Estate*, 31 I. L. T. & S. J. 85. See also note (i) to Sec. 31, *ante*, p. 571.

Rights of indemnity, how provided for.

(d) The provisions of Sub-section 4 can be best explained by a concrete example. Suppose a fee-farm grant to comprise two denominations of equal value, "A" and "B," subject to one rent, and "B" to have been sold by the grantee to a purchaser altogether indemnified by "A" from the rent. If the purchaser of "B" afterwards sells to his tenants under the L. P. Acts, it becomes necessary to apportion the fee-farm rent and to redeem that portion properly payable out of "B," in order to vest the fee-simple in the tenants discharged from all contingent liability to pay the fee-farm rent. Out of the purchase money coming to the owner of "B," therefore, a moiety of the capitalized value of the rent, as the redemption price of the portion of the rent properly payable out of "B," is paid to the grantor, the rent is reduced by one half, and the lands of "B" are discharged from all contingent liability to pay it, or any part of it, for the future. The owner of "B" now becomes entitled under this Section, in lieu of his right of indemnity, to receive from the owner of "A," henceforward, the moiety of the fee-farm rent which has been redeemed, as if he had been the purchaser thereof for the amount paid to the grantor for its redemption. The same principle applies to an annuity or jointure, whether terminable or perpetual, and whether contingent or actually payable. See judgments of WALKER, L.J., *Owen's Estate* (No. 3 [1900], 1 I. R., at p. 169; and of BEWLEY, J., *Butler's Estate*, 31 I. L. T. & S. J., at p. 87.

(e) As to the procedure to be adopted in order to obtain a charging order under this Sub-section and form of order, see *Kennedy's Estate* [1902] 1 I. R. 364; 34 I. L. T. R. 212 (Ross, J)

As to easements, &c., when vesting order is made

34.—(1.) A holding vested in a purchaser by a vesting order under this Act shall continue to have appurtenant thereto and to be subject to, as the case may be, any previously existing easements, rights, and appurtenances; and any privilege previously in fact enjoyed, whether by permission of the landlord or otherwise, in such manner and for such time that, if the holding had belonged to a different owner from the rest of the estate, it would have been an easement or right, shall be an easement or right (a) within the meaning of this Section, and shall be appurtenant to or exercisable over the holding, as the case may be.

(2.) The vesting order may, if the Land Commission think fit, declare that the sale is made subject to or free from any particular easement, right, or appurtenance, and such declaration shall have full effect (b).

(3.) This Section shall extend to any sale or declaration of title

made by the Land Judge in pursuance of the Landed Estates **Sects. 34-35.**
Court (Ireland) Act, 1858, in like manner as if it were herein ^{21 & 22 Vic.}
re-enacted with the necessary modifications (c). _{c. 72.}

(a) Where the tenant of a holding, and his predecessors in title, had for 40 years, ^{Privilege when converted into a right} by the permission of the landlord, cut turf from a neighbouring bog, and the tenant purchased the holding under the L. P. Acts, but the vesting order was silent as to any rights or easements, **MADDEN, J.**, held that what was previously a privilege had been converted into a right by force of this Sub-section, and that the former landlord could not maintain an action for trespass *Cootte v. Phelan*, 35 I. L. T. R. 196. In this case it was also held that the Section applied, though the agreement to purchase was made before the passing of this Act, the vesting order having been issued after that date. But see as to this, Sec. 50, Sub-sec (5), *post*, which does not appear, from the report, to have been cited in the case.

(b) Sub-sec 2 is a substitution for Land Purchase Act, 1885, Sec 9, Sub-sec. 1, which is repealed by this Act (See Schedule II., *post*.)

(c) The 54th Section of the Landed Estates Court Act, 1858, casts upon the Judge ^{Easements affecting land sold} of that Court the duty of ascertaining "the rights of persons claiming rights of common, rights of way, or other easements," so far as he may deem necessary for the purpose of any sale or conveyance, and by Section 61 of the same Act the conveyance passes the lands subject only to such easements, &c., as are expressed or referred to therein. The effect of these provisions was seriously to interfere with the power of the Court to sell to occupying tenants by reason of the great expense of ascertaining and defining the easements affecting each lot. See judgment of **MADDEN, J.**, in *re Jamieson's Estate* [1895], 1 I. R. 469. The present Section appears to dispense with the necessity of ascertaining the easements affecting the holding, whether as a dominant or a servient tenement, in all cases of sales to tenants by the Land Judge, under the Land Purchase Acts, but it does not apply to other sales under his ordinary jurisdiction *Ingham v. Mackey* [1898], 1 I. R. 272. See judgment of **POURZA, M.R.**, at pp. 287-90.

35.—(1.) Where an agreement for the purchase of a holding is ^{Liability for arrears of rent, and interest on purchase money after agreement to purchase.} made after the commencement of this Act and is lodged with the Land Commission, the purchaser shall, in the event of the sale being carried out, be discharged from all liability to the vendor in respect of any liabilities affecting the holding at the date of the agreement, including all rent and arrears existing at such date; but if the advance is refused the agreement shall be void, and the tenant shall be liable to pay rent and arrears as if the agreement had not been made (a). Provided that no proceedings in respect of the said rent and arrears existing at the date of the agreement shall be brought pending the carrying out of the sale.

(2.) Interest on the purchase money (b) from the date of the said agreement until the day from which the purchase annuity begins, shall be payable half-yearly on the first day of May and first day of November by the purchaser, and shall be paid to, and be collected and recoverable by, the Land Commission (c), in

Sects. 35-36. like manner as if it were an instalment of the purchase annuity charged upon the holding, and when received by them shall as respects the period subsequent to the date of the advance be applied in payment of the interest due under Section twenty of the Land Law (Ireland) Act, 1887, and subject thereto shall be paid to the person in receipt of the rent at the date of the agreement or such other person as may prove himself to be entitled thereto, and if the advance is refused shall be allowed by the landlord to the tenant as a payment on account of rent.

50 & 51 Vic.,
c. 33

Arrears of rent
due at date of
purchase.

(a) The first Sub-section of this Section is a re-enactment, with some modifications, of the 3rd Section of the Land Purchase Act, 1888 (repealed by Schedule II., *post*). Under that Section it was held by the Queen's Bench Division that an order of the Land Commission provisionally sanctioning an advance to a tenant under the Land Purchase Acts, suspended the landlord's right to recover all rent and arrears of rent due at the date of the agreement, and all subsequent rent accruing due, and that the completion of the sale absolutely released and discharged the tenant from all liability to pay same; the right to recover rent being restored, however, in case the proceedings proved abortive, or (possibly) if the tenant were guilty of any default in completing the sale. (*Vickery v. Deane*, 32 L. R. Ir. 36; 27 I. L. T. R. 52.)

Interest on
purchase money.

Where, however, in order to carry out a sale under the Land Purchase Acts, the tenant, being unable to pay the arrears of rent due, a promissory note was given, at his request, by a third party to the landlord, it was held that the amount of the note could be recovered by action after the agreement to purchase had been carried out. (*O'Shea v. Walsh*, 29 I. L. T. R. 95 (Q. B. D.).)

(b) "Purchase money" in Sub-section 2 means "unpaid purchase money." If the tenant under an order of a Commissioner lodges a portion of the purchase money in Court, he ceases to be liable to pay interest on that amount; and it is the vendor's duty to see to the investment of the fund in Court, the dividends on which will be paid to him. (*Gilmore's Estate*, 34 I. L. T. R. 147; 3 *Greer* 31.)

(c) The former practice was to provide by the agreement for sale that interest should be paid by the tenant to the landlord until the sale was carried out. As to the rights of the parties under such an agreement, see *Jackson & Verner v. Irvine*, 28 L. R. I. 473. For the future the Land Commission will collect it from the date of the agreement to purchase.

No rate of interest is mentioned in the Section. The rate usually provided for by agreement is 4 per cent.

Advances for
purchase of
holding subject
to a rentcharge

36. Where a sale of a holding is made by a landlord to a tenant in consideration of the tenant paying a fine and engaging to pay to the vendor a rentcharge, the Land Commission may, if satisfied with the security, make an advance under the Land Purchase Act: as amended by this Act to the tenant for the purposes of such purchase of any sum not exceeding the amount of the fine payable to the landlord, subject as follows:—

a. The advance shall not exceed the saleable value of th

landlord's interest in the holding after deducting such sum as Sects. 36-37 appears to the Land Commission to be the capital value of the rentcharge;

b. The advance shall not be made where the rentcharge exceeds half the rent which, in the opinion of the Land Commission, would be a fair rent for the holding;

c. An ejectment for nonpayment of rent shall not be brought in respect of the rentcharge;

d. The rentcharge shall be reserved in the vesting order, but the purchase annuity shall have priority over such rentcharge;

e. The Land Commission may, if satisfied with the security, make a further advance for the redemption of the rentcharge in like manner as for the purchase of the holding;

f. Where a holding is sold under this Section the powers conferred by the Land Purchase Acts and this Act for the apportionment of charges shall extend to an apportionment of charges between the purchase money and the rentcharge, and the provisions of Section fifteen of the Land Law (Ireland) Act, 1887, with respect to the acceptance by an incumbrancer of the purchase money in part discharge of his incumbrance shall apply as if the rentcharge were other lands within the meaning of those provisions. 50 & 51 Vic. c. 33.

As to procedure under this Section, see Land Purchase Rules of March, 1897, Order XXXVI., *post.*, p. 854.

37.—(1.) Where the Land Commission, in pursuance of Section fifteen of the Land Law (Ireland) Act, 1887, order the redemption of tithe rentcharge at a price not less than twenty times the net amount of such tithe rentcharge, after making such deduction in respect of rates as is provided by Section seven of the Irish Church Act, 1869, Amendment Act, 1872, the consent of the Treasury shall not be required to such redemption. Terms of redemption of tithe rentcharge in case of sale 50 & 51 Vic. c. 33. 35 & 36 Vic. c. 70.

(2.) The foregoing enactment shall not apply to any annual sum payable to the Land Commission under Section thirty-two of the Irish Church Act, 1869, as amended by any other Act, but the Land Commission may order the redemption of such tithe rentcharge at a sum calculated on the basis of the annual sum being for a term of forty-five instead of fifty-two years (*a*). 32 & 33 Vic. c. 42.

The Tithe Rentcharge (Ireland) Act, 1900, provides that Sub-sec. 1 of this Section shall not apply to any tithe rentcharge to which Sec. 3 of that Act applies—*i.e.*, to any tithe rentcharge varied under the terms of the Act (63 & 64 Vic., c. 58, Sec. 9). Tithe Rentcharge Act, 1900.

Sects. 37-39. The consent of the Commissioners of the Treasury is, therefore, still necessary in all cases to which that Act applies, and the price fixed by them is usually 22½ years' purchase. In *The Earl of Portarlington's Estate*, 33 I. L. T. R. 64, MEREDITH, J., stated that he had been in the habit, since the passing of this Act, of redeeming tithe rentcharge payable to the Land Commission at 20 years' purchase. But that statement was made before the passing of the Act of 1900.

(a) See Land Purchase Act, 1891, Sec. 18, and notes thereto, *ante*, p. 473. See also note (d) to Land Act, 1887, Sec. 15, *ante*, p. 422.

Sale of holding
by Land
Commission.
44 & 45 Vic.,
c. 49.
48 & 49 Vic.,
c. 73.

38.—(1.) The Land Commission upon the sale of a holding under Section thirty of the Land Law (Ireland) Act, 1881, or under any power of sale, may sell the holding in lots

(2.) Section fifteen of the Purchase of Land (Ireland) Act, 1885, as amended by this Act, shall extend to a sale of a holding by the Land Commission, as successors to the Commissioners of Church Temporalities in Ireland.

(3.) Where a holding is subject to the future payment of an annuity, and the Land Commission sell it in lots, or in the exercise of their powers under the Land Purchase Acts authorize the subdivision of the holding, the Land Commission may apportion the annuity in such manner as they deem expedient, or may, if they think fit, make an order discharging any such portion of the holding as aforesaid from any further liability for such annuity, or any part thereof, or any arrears thereof.

(4.) Where the Land Commission sell a holding, the purchase money shall, subject to the provisions of Section thirty of the Land Law (Ireland) Act, 1881, be paid and distributed as if it were the purchase money of a holding sold by a landlord to a tenant. (a)

44 & 45 Vic.,
c. 49

Distribution of
purchase money
of holding sold
by Land Com-
mission

(a) The object of Sub-section 4 is, apparently, to enable the proceeds of sale, after discharging the claim of the Land Commission for all moneys due to them, to be paid to mortgagees and incumbrancers (if any) of the tenant purchaser's interest instead of being paid to him in every case—in other words, to have the balance dealt with as the purchase money of a landlord's estate would be dealt with by the Land Judge.

Where a holding was sold by the Land Commission owing to default of the tenant-purchaser in payment of his annuity, and between the date of the sale and that upon which possession was given over to the purchaser, the previous owner proceeded to wreck the farm, it was held that the purchaser was entitled to a lien upon the purchase money for compensation in respect of the injuries; and on the allocation of the proceeds of the sale under this Sub-section, he was placed upon the schedule for the amount due to him, to be ascertained by the examiner *Bourke's Estate*, in re *Dwyer* [1901], 1 I. R. 165; 34 I. L. T. R. 168 (Ross, J.).

Amendment of
54 & 55 Vic.,
c. 48, s. 5 (2) (b)
as to money for
labourers'
cottages.

39. The power conferred on the Lord Lieutenant by sub-Section (2) of Section five of the Purchase of Land (Ireland) Act, 1891 to make regulations for the application of the moneys therei:

mentioned towards the cost of providing labourers' cottages is hereby Sects. 39-40. extended to include a power to make regulations for the application of those moneys towards defraying any costs incurred at any time after the passing of the said Act of 1891 in providing such cottages.

40.—(1.) Where an absolute order for the sale (*a*) of an estate Sales under the Landed Estates Court Act 21 & 22 Vic. c. 72. (*k*), comprising holdings to which this Section applies, has been made under the Landed Estates Court (Ireland) Act, 1858, and either a receiver (*b*) has been appointed over the estate or the estate is so circumstanced that it would independently of this Act be sold without the consent of the owner (*c*) as to price, the following provisions shall have effect:—(*d*)

a. The Land Commission shall, at the request of the Land Judge, cause the estate to be inspected, and a report to be made by two Commissioners respecting the estate, and the circumstances thereof, and the price at, and the conditions under which, the sale of the holdings to the tenants under the Land Purchase Acts can properly be made:

b. The Land Judge, after giving all parties, including the tenants, an opportunity of being heard, and considering the report and any offers that may be made for the purchase of the estate (*f*) or any part thereof, and any other matters that may be brought before him, and the general circumstances of the estate, shall make to the person appearing to be in occupation as tenant of each holding on the estate (*i*) an offer to sell to him the fee-simple (*e*) of the holding, discharged from the arrears of rent then due from him in respect thereof (*h*), at such price, and subject to such conditions, whether as to the payment of part of the price in cash, or as to the offer to one tenant being conditional on the acceptance by other tenants of the offers made to them within a limited time, or otherwise, as the Land Judge may consider reasonable and just (*g*), having regard to the interest of all persons interested in the estate:

c. The offer shall be communicated in such manner as the Land Commission think fit to the person appearing to be in occupation as tenant (*i*), and, if it is accepted, then on fulfilment of the conditions (*j*), the said person shall be deemed to have agreed to purchase the holding within the meaning of

Sect. 40.

the Land Purchase Acts, and the sale shall be completed accordingly:

d. If it appears to the Land Judge that the tenants of holdings on the estate to the extent of not less than three-fourths in number and value according to the rateable value under the Irish Valuation Acts, have accepted the offers under this Section, he may, if, having regard to the circumstances of the case, he thinks it expedient, order that the remaining tenants or any of them shall be deemed to have accepted the offers made to them, and this Section and the Land Purchase Acts shall apply accordingly; provided that such order shall not apply to any tenant if the purchase-money of his holding would exceed the limitation on the amount of the advance imposed by Section two of the Purchase of Land (Ireland) Amendment Act, 1888, and the holding of such tenant shall not be taken into consideration in estimating the three-fourths above mentioned:

51 & 52 Vic,
c. 49.

e. Subject to the prescribed rules, including rules as to security for costs, any person aggrieved by any order of the Land Judge made under this Section may, with the leave of the Land Judge or of the Court of Appeal, appeal to the Court of Appeal, whose decision shall be final:

f. Where a receiver has been appointed over part of an estate (*k*), this Section shall apply to that part in like manner as if it were an estate:

g. The foregoing provisions of this Section shall apply only to holdings which are agricultural or pastoral, or partly agricultural and partly pastoral (*l*).

(2.) Any person in occupation of and paying rent for a parcel of land (including the owner of an estate in occupation of a mansion house or demesne forming part of the estate) held under a letting by the Land Judge or Receiver Judge (*m*) may agree to purchase such parcel of land, and the same shall be deemed a holding, and such person a tenant, and the Land Judge or Receiver Judge, as the case may be, a landlord within the meaning of the Land Purchase Acts.

(3.) At any time after an absolute order for the sale of an estate or part of an estate has been made in pursuance of the Landed Estates Court (Ireland) Act, 1858, the foregoing provisions of this Section so far as they are applicable may upon the application of the owner be applied to such estate, although a receiver has no

21 & 22 Vic.
c. 72.

been appointed over the estate, and the estate is not so circumstanced that it would, independently of this Act, be sold without the consent of the owner as to price; provided that no advance shall be made to the owner to purchase any mansion house or demesne forming part of the estate.

Sect. 40.

(4.) Rules under Part Two of this Act may be made for carrying into effect this Section (*n*).

Two conditions must be fulfilled in every case in which this Section is put into operation; (1) an absolute order for sale must have been made under the L. E. C Act, 1858; and (2) *either* a receiver must have been appointed, *or* the estate must be insolvent. (See note (*c*) below.)

(a) The order for sale need not have been made for the purpose of discharging To what cases section applies. incumbrances, nor is it necessary to show that the estate is insolvent if a receiver has been appointed. Where a suit had been brought to carry out the trusts of a will, and the Master of the Rolls directed that steps should be taken in the Land Judge's Court for a sale or partition of the lands, and ordered the appointment of a receiver, an absolute order for sale having been made under the Partition Acts by the Land Judge, it was held that the estate came within the Section and must be sold to this tenant; if the sale was proceeded with at all *Graham's Estate* [1901], 1 I. R. 474; 35 I. L. T. R. 83; 1 N. I. J. R. 103; 7 I. W. L. R. 72 (Ross, J.).

(b) The receiver need not have been appointed by the Land Judge; if appointed Estates under Receiver by any judge of the High Court the condition of the Section is complied with *Graham's Estate* [1901], 1 I. R. 474; 35 I. L. T. R. 83; 1 N. I. J. R. 103, 7 I. W. L. R. 72.

(c) Although a receiver has not been appointed, an estate may come within the Insolvent estates terms of this Section if it is "so circumstanced that it would independently of this Act be sold without the consent of the owner as to price." "This clause," says Ross, J., in *Grogan's Estate* [1896], 1 I. R. 614, "might be held to embrace the case of every incumbered estate. An estate worth £100,000 charged with £1,000 is, in a sense, so circumstanced that it would be sold without the consent of the owner as to price." He, however, held that the clause only applied to incumbered estates which were insolvent. "According to the practice of the Court an estate would only be sold without the consent of the owner as to price in cases where the equity of redemption was valueless:" [1896], 1 I. R., at pp. 616, 617. Where, therefore, no receiver has been appointed, and the estate is solvent, this Section does not apply, and the discretion of the Land Judge under the 55th Section of the Landed Estates Court Act, 1858, as to the time and manner of sale remains unfettered.

(d) Soon after the passing of the Act, it was held by Ross, J., in *Grogan's Estate* Section mandatory in character. [1896], 1 I. R. 614, that the Section was mandatory on the Land Judge in all cases that fell within its scope. "I consider," said he, "that I am bound to put the special machinery of the Section into operation in such cases by issuing my request to the Land Commission at the proper time. I think that the Land Commission are bound to comply with the request, and that I shall be then obliged to offer the fee-simple to the occupying tenants at such price as I think just. Until all this is done, the Section prohibits the ordinary sales of agricultural and pastoral lands in the occupation of tenants, and over which a receiver has been appointed, from taking place. The tenant has acquired a right he never had before—namely, a distinct interest in a sale, of which I cannot lawfully deprive him. In case the tenants

Sect. 40.

ultimately refuse to purchase at the price so fixed by me, I shall then be at liberty to accept offers from persons other than tenants" [1896], 1 I. R., at p. 615. The question again came before the same judge in *Owen's Estate*, 30 I. L. T. R. 153; [1897], 1 I. R. 186, when, after argument, he adhered to his previous decision. An appeal was in this case taken to the Court of Appeal and heard by the full Court of seven Judges. The Court, by a majority of five to two (PORTER, M.R., and FRIZZIBRON, L.J., *diss.*), affirmed the decision of ROSS, J., holding that the Section was mandatory [1897], 1 I. R. 200; 31 I. L. T. R. 16. "I cannot think," said Lord ASHBOURNE, C., in giving judgment, "that the Section ever contemplated giving the Judge a discretion under which he might do nothing, and thus leave possibly the Section a dead letter. It was the intention, I think, of the Section to graft on the existing procedure towards a sale this new method by which a price could be fixed for a holding, and the holding then be offered at that price to the occupying tenant. In the fixing of the price every care is taken under Sub-sec. b that all parties shall be heard, and every interest considered. To assist this fixing, and in order to see the amount of public money that will be advanced, the Judge should prefer his request for a report to the Irish Land Commission" [1897], 1 I. R., at pp. 205-6.

But estate may
be withdrawn,
from Court

The decision of the Court of Appeal in *Owen's Estate* [1897], 1 I. R. 200, was that the Land Judge cannot proceed to sell an estate, coming within the provisions of this Section, to outside purchasers, without first offering it to the tenants; but a further question of importance, which did not, however, directly arise in the case, was much discussed both in the arguments and in the judgments—namely, whether the Land Judge could withdraw an estate from sale where an absolute order for sale had been made and a receiver appointed. Upon this point Sir P. O'BRIEN, L.C.J., expressed a clear opinion that he could do so. "I do not think," said he, "that under all circumstances the Land Judge is bound to sell, even though an absolute order for sale should have been made, and a receiver appointed or the estate should be insolvent. He may, at any time, for good cause, cancel the absolute order for sale, and dismiss the petition. The *raison d'être* of the Land Court is to facilitate the sale and transfer of land in Ireland, and should it appear that the sale and transfer of land is not necessary, the Land Judge may, upon the lodgment of money to satisfy incumbrancers, or though money is not lodged, pending arrangements for the lodgment of money, stay his hand, or generally he may stay his hand pending any *bona fide* arrangements to withdraw the estate from the Court, or upon the disclosure of the existence of any equity, which would warrant the rescission of the absolute order for sale. And further, he may, upon good grounds being shown, discharge the receiver, if one has been appointed, and, if the estate is not insolvent, withdraw it altogether from the operation of the Section." [1897], 1 I. R., at p. 208.

Rights of
tenants.

The principles laid down by O'BRIEN, C.J., in *Owen's Estate* (*ubi supra*) have been followed and adopted in all subsequent cases. The tenants are considered to have an interest in the sale, but not in the estate. A sale cannot take place to an outside purchaser of any estate coming within this Section unless an offer has been first made to the tenants and rejected by them *Wemy's Estate* [1897], 1 I. R. 540; 3 I. W. L. R. 163. "The tenants have an absolute right," says ROSS, J., in that case, "if a sale is to take place, to have the offer made to them" [1897], 1 I. R., at p. 543. But the Land Judge has still jurisdiction, under the Landed Estates Court Act, to dismiss a petition at any stage of the proceedings, and that jurisdiction is untouched by this Section *Bunbury's Estate* [1901], 1 I. R. 248 (C. A.). "I am of opinion," says HOLMES, L.J., in that case, "that the owner of an unincumbered estate is entitled down to the last moment to withdraw the estate from the Court, and to

Regulations
of
Sept, 1896

Schedule referred to in the foregoing Statement.

Townland, Barony and County (Ordnance Survey Names only)	Reference to Map	Area (Acutate Measure of each Townland or part of a Townland)	Tenement Valuation	Names and Addresses of Owners or reputed Owners	Proportions in which the Rent has heretofore been paid	Proposed Apportionment	Observations
		A. R. P.	£ s. d.		£ s. d.	£ s. d.	
FIRST PART.							
A.—Lands which have been sold.							
B.—Lands which it is contemplated selling.							
SECOND PART.							

Affidavit as in Form 2.

FORM 5.

Statement of Facts for the apportionment of a Rentcharge or an Annuity.

Heading and Title of Matter, with the following addition —

And in the matter of the apportionment of a rentcharge (or annuity) of £
created by a deed dated the day of 18

The statement of facts of

Showeth—

1. That by the above mentioned deed, dated the day of 18 , and made between [*Here state the parties to the deed and its nature, whether a marriage settlement or otherwise.*] A.B. being then seized in fee of the lands described in the schedule hereto charged the same with an annuity of £ m favour of C.D. [*Here specify the particulars of the rentcharge or annuity, whether the same was perpetual, for a term of years, for a life or lives, or by way of jointure, and the particulars of any term of years vested in trustees for securing such rentcharge or annuity. Here also state shortly the particulars of any instrument or circumstances by which the lands were partitioned or by which any special liability for, or indemnity against any portion of the rentcharge or annuity was created, with such statement of the devolution of title as may be necessary to make the statement of facts intelligible to the Judge*]

2. That E. F. of is the owner of and in receipt of the said rentcharge (or annuity).

3. That the [parts of] the lands described in the first part of the said schedule have been sold under the Land Purchase Acts, [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said owner.]

4. That the lands described in the second part of the said schedule are not the property of the said owner, and the names and addresses of the reputed owners thereof are stated therein.

- Sect. 40.** for ever—it would appear that there is no power to sell to the tenants under this Section.
- Superior interests, how dealt with.** Upon sales under this Section, as in case of other sales under the Land Purchase Acts, it is necessary to redeem “superior interests,” as defined by Sec. 31, *ante*. Where the value of the superior interests exceeds the amount capable of being realized by a sale to the tenants, this Section does not apply; and a sale may be made to an outsider *Bolton's Estate* [1898], 1 I. R. 401, 4 I. W. L. R. 162; 1 *Greer* 230; *Conolly's Estate*, 34 I. L. T. R. 171. But holdings may be sold to tenants under this Section, subject to some “superior interests,” as, *e.g.*, a reservation of mines and minerals in a fee-farm grant *Herbert's Estate* [1897], 1 I. R. 476. Where there was a covenant to pay a royalty in case minerals should be discovered, *Ross, J.*, however, held that this covenant must be redeemed *Jening's Estate*, 3 I. W. L. R. 168. See, generally, as to what “superior interests” a sale may be made subject, note (b) to Sec. 31, *ante*, p. 569. The jurisdiction of the Land Judge selling under this Section as regards superior interests is the same as that of the Land Commission in the case of ordinary sales by landlord to tenant under the Land Purchase Acts. *Hill's Estate*, 3 I. W. L. R. 194.
- Crown Duties** When land is sold under this Section to the tenants, and superior interests are redeemed, the duty payable to the Crown, under Sec. 88 of the L. E. C. Act, 1858, is on the balance of the purchase-money remaining, after deducting the redemption price of the superior interests. In *re Garde's Estate* In *re Carew's Estate* [1901], 1 I. R. 477 (*Ross, J.*)
- Price to be fixed by Land Judge.** (f) It is the duty of the Land Judge, under this Section, to fix the price at which the fee-simple of the holdings is to be offered to the tenants. In doing so he is bound to take into account any offers that may have been made for the purchase of the estate by outsiders. The practice of the Court is not to sell to the tenants at a lower price than that offered by an outsider: *Bagot's Estate*, 3 I. W. L. R. 166. Provided the latter is an unconditional cash offer, capable of being enforced legally *Morgan's Estate*, 3 I. W. L. R. 170; *Higgin's Estate*, 33 I. L. T. R. 53 (judgment of *FITZGERBON, L.J.*, at p. 54). If the sum thus arrived at is more than the Land Commission is willing to advance, the difference must be paid in cash, and it is referred to the examiner to fix the cash addition to the offer to be made to each tenant *Ellis' Estate*, 5 I. W. L. R. 137; for, though the prices are fixed by the Land Judge, it has been held by the Court of Appeal that the Land Commission, if not satisfied as to the sufficiency of the security, is not bound to make advances to the tenants, in guaranteed land stock, of the amount of the prices so fixed *Harkness' Estate* (No. 2) [1898], 2 I. R. 391, 32 I. L. T. R. 16, 58 (C. A.), overruling in this respect the judgment of *Ross, J.*, in same case: [1897] 1 I. R. 426; 31 I. L. T. R. 176; 3 I. W. L. R. 116. See also judgment of *PORTER, M.R.*, in *Owen's Estate* [1897], 1 I. R., at pp. 220-1. If any tenant is unable or unwilling, in such a case, to supplement by a cash payment, the amount which he can obtain from the Land Commission, it would appear that the sale to him must fall through; and the Land Judge will, in that event, be at liberty to sell the owner's estate in the holding, subject to the tenancy, to anyone, in the way he would have sold it prior to the passing of this Act. See judgment of *PALLES, C.B.*, *Owen's Estate* [1897], 1 I. R., at p. 241.
- Price, how fixed** (g) The Land Judge is directed to fix such price for each holding as he “may consider reasonable and just, having regard to the interest of all persons interested in the estate.” The price is, in practice, fixed by the Judge on consideration of the report of the Land Commissioners. Evidence as to value may then be given by any party interested: *Harkness' Estate* [1897], 1 I. R. 426. And the judge will not

adopt as adequate, sums which a cautious valuator for an intending mortgagee would consider sufficiently secured (*Ibid*). Sect. 40.

(h) As the fee-simple of the holding is to be vested in the tenants "discharged from the arrears of rent then due," the Judge usually requires the arrears of rent, or such sum as he considers reasonable on account thereof, to be paid by the tenants as a condition of the purchase: *Harkness' Estate* [1897], 1 I. R. 426. Rent is also payable by the tenants pending the proceedings: *Kenny's Estate*, 3 I. W. L. R. 165. But where, after the Court had fixed the amount payable by each tenant on foot of arrears, it appeared that some of the tenants had paid rent for which they had not got credit, Ross, J., ordered the amounts so paid to be refunded *Hassett's Estate*, 34 I. L. T. R. 145. Arrears of rent, how dealt with

Pending proceedings under this Section to sell to the tenants, proceedings to have fair rents fixed in the Land Commission will be adjourned or stayed. *Blake v. Smith*, 33 I. L. T. R. 97.

(i) The offer of sale is to be made to the person "appearing to be in occupation as tenant" of each holding on the estate. This includes a grantee under a fee-farm grant: *Browne's Estate* [1898], 1 I. R. 378; *Hassett's Estate*, 32 I. L. T. R. 115, Land Purchase Act, 1885, Sec. 26. Also a mortgagee of the tenant's interest if in possession: *Abbott's Estate*, 31 I. L. T. R. 159; 3 I. W. L. R. 128. If there are conflicting claims to a tenancy the Judge will not determine them, but will make the offer to the person named in the rental as tenant: *Kenney's Estate*, 4 I. W. L. R. 36. The interest vested in him, if he purchases, being a graft upon the previous interest of the tenant in the holding (Land Purchase Act, 1885, Sec. 8), the dispute can be determined by some other tribunal. Who are deemed to be tenants

It would appear, also, from the wording of the Section, that it is only when the tenants in occupation hold directly from the owner whose estate is for sale in the Court that sales can be effected under this Section. If there is any middle interest interposed between the owners and the occupying tenants, there is no power to sell to the latter under the Land Purchase Acts. See *Smith's Estate*, 3 I. W. L. R. 171 (Ross, J.). Must be occupying tenants

Where the person to whom it is necessary to make an offer to sell is a minor or a person of unsound mind, the Land Judge may appoint a guardian *ad litem* for him (Rules of 2nd July, 1898, *post*, p. 650). Persons under disability.

(j) If the tenants to whom offers are made fail to fulfill the conditions imposed, the offers will be cancelled, and the estate, or such part of it as comprises the holdings in respect of which the offers are cancelled may then be sold by the Judge under his ordinary jurisdiction, to an outside purchaser: *Higgin's Estate*, 33 I. L. T. R. 53; *Kirkwood's Estate*, 4 I. W. L. R. 172.

(k) The Land Judge has power to treat part of an estate as a separate estate for the purposes of this Section, even where a receiver has been appointed over the whole. Where part of the lands had been sold to the tenants since the passing of the Act, Ross, J., held that the remaining lots constituted an estate within the meaning of the Section, in respect of which a request could be issued: *Leonard's Estate* [1897], 1 I. R. 447. See also judgment of PALLIS, C.B., *Owen's Estate* [1897], 1 I. R., at p. 240. Part of estate sold.

(l) The Section applies only to holdings which are agricultural or pastoral in character. As to what holdings are excluded by this condition, see note (a) to Sec. 5, *ante*, p. 519. (The word "substantially," however, does not qualify the exclusion here as in that Section.) It appears to apply to all classes of agricultural holdings, even though they may be excluded from the Land Law Acts, such as town parks, demesne lands, lettings for the purpose of pasture, &c., as the latter are not excluded from Holdings must be agricultural or pastoral.

Sects. 40-41. the benefit of the Land Purchase Acts. See notes to Land Purchase Act, 1885, Sec 1, *ante*, p 347, and Sec. 43, *post*. But where portion of a mansion-house yard and offices, and 190 acres of demesne land, were held by a Court tenant, Ross, J., held that the tenancy did not come within the benefit of this Section as an agricultural or pastoral holding *Harrison's Estate* [1900], 1 I. R. 139; 33 I. L. T. R. 137, 1 Greer 360.

Rights of tenants under Court lettings.

(m) A further question arose in *Owen's Estate* (No. 2) [1897], 1 I. R. 265, as to the rights of persons in occupation of land under Court lettings. There was always considerable doubt as to the position of such tenants. A lease by the Court, it was held, operated only by way of estoppel, and passed no estate. (See *Callan v Dowdall*, MacD. p. 311). Tenants holding under such lettings were always held to be excluded from the fair rent provisions of the Acts of 1881 and 1887, but this exclusion was sometimes based upon the principle that lettings under the Court were for "temporary convenience" within the meaning of Section 58 (7) of the Land Act, 1881. Sales to such tenants were, however, frequently carried out under the Land Purchase Acts, and advances made to them by the Land Commission. In *Laurine's Estate* [1896], 2 I. R. 347, the legality of such practice was seriously questioned, and it was actually decided that an owner who took portion of his own estate under such a letting could not obtain an advance for the purchase of it under the provisions of the Land Purchase Acts. Sub-section 2 of this Section appears to have been passed with the object of altering the law as laid down in *Laurine's Estate* [1896], 2 I. R. 347, and it has been now held by the Court of Appeal in *Owen's Estate* (No. 2) [1897], 1 I. R. 265, reversing the decision of Ross, J. (30 I. L. T. R. 153), that owner and other tenants under Court lettings, as described in Sub-section 2, are not only entitled to enter into agreements with the Land Judge for the purchase of their holdings, but that they are also within the provisions of Sub-section 1, and entitled to the same right of pre-emption as is conferred upon ordinary tenants by the Sub-section. And this is so even though they may have acquired the right to their lettings by some arrangement with the owner. *Abbott's Estate*, 31 I. L. T. R. 159 3 I. W. L. R. 128. A tenant under an expired Court letting has been also held entitled, pending the taking out of a new lease to the benefit of this Section *M'Carron's Estate*, 3 I. W. L. R. 208. But where, under an order of the Court, a owner entered into a deed of covenant with the trustees of the petitioner and the receiver to pay £100, and certain head rents for the use and occupation of part of the estate, it was held that he did not occupy as tenant, and was not entitled to a offer of sale under the Section *Lawder's Estate* [1900], 1 I. R. 206.

(n) As to procedure under this Section, see Land Purchase Rules of March, 189 Order XXXIX., *post*, and Rules of Land Commission and Land Judge's Court of 23 Jan., 1897, and 2nd July, 1898, *post*, pp. 612-653.

Appeals under Land Purchase Act.

41. Any person aggrieved by the order of a Land Commission acting alone in carrying the Land Purchase Acts as amended by this Act into effect may, if such Commissioner was not a Judicial Commissioner and the question is one of law, require the case to be re-heard by a Judicial Commissioner, and in any other case may require the question to be reconsidered by a Judicial Commissioner and two other Commissioners, one of whom shall be a Commissioner appointed under the Purchase of Land (Ireland) Act, 1885, except where, owing to unavoidable absence, illness, or a vacancy in office

48 & 49 Vic., c. 73.

such a Commissioner is not available; provided that if the Judicial Commissioner thinks it desirable the case shall be re-heard by those three Commissioners. Sects. 41-43.

Power to appeal from the decision of a Commissioner acting under the Land Purchase Acts was conferred by the 29th Section of the Land Purchase Act, 1891, portion of which is now repealed (Schedule II., *post*). This Section is in substitution for the repealed portion of the latter Section.

Any Commissioner, in carrying out the Land Purchase Acts, may also submit a question of law for the determination of the Judicial Commissioner under L. P. Act, 1891, Sec. 28 (8).

As to the procedure on appeals under this Section, and the determination of questions of law referred to the Judicial Commissioner, see Land Purchase Rules of March, 1897, Order XXXV., *post*, pp. 853-4.

42. A mortgagee in possession with power of sale shall for all the purposes of the Land Purchase Acts be deemed to be a landlord. Powers of mortgagee

Under the power conferred by this Section, a mortgagee in possession can give a valid consent to the redemption of a rent under the Redemption of Rent Act, 1891, the latter Act being one of the Land Purchase Acts as defined by Sec. 43, *post* *Palmer v. Mackin*, 33 I. L. T. R. 106.

Mortgagees who are not in possession have no power to sell directly to the tenants under the provisions of the Land Purchase Acts, as they are not landlords within the meaning of the Acts. If they desire to have such sales carried out without going into possession, they can do so in either of two ways: (1) by filing a petition for sale in the Land Judges' Court. The Land Judge can then sell to the tenants, and by virtue of the 4th Section of the Land Purchase Act, 1885, the sale is to be "deemed to be a sale by a landlord to a tenant," so as to enable the tenants to obtain advances for the purpose of purchasing, even if the provisions of the 40th Section do not apply to the case. Or (2) Without taking any proceedings in the Land Judges' Court, the mortgagees may negotiate a sale to the Land Commission under the provisions of the 5th Section of the Land Purchase Act, 1885, and the Land Commission can then re-sell to the tenants. See, on this matter generally, judgment of *MONROE, J.*, in *Redington's Estate*, 23 L. R. Ir., at p. 504. Sale by mortgagees not in possession.

PART IV.

CONGESTED DISTRICTS BOARD.

43.—(1.) Where the Congested Districts Board have agreed to purchase land, whether in a congested districts county or elsewhere, the Land Commission, on a request from the Board stating the congested districts county for the benefit of which the land is purchased, and the amount of the purchase-money, shall, subject as in this Section mentioned, advance the purchase-money to the Board in like manner as if the Board were a tenant purchasing his holding under the Land Purchase Acts as amended by this Act. (a) Purchase and sale by Congested Districts Board under the Land Purchase Acts.

(2.) The advance shall not be made, if it exceeds, or together

Sect 43 with any previous advance on account of the county for the benefit of which the land is purchased not repaid or written off will exceed, twenty-five times the share of the county (b) in the interest on the church surplus grant (referred to in Section thirty-five of the Purchase of Land (Ireland) Act, 1891), after deducting from that share any prior charges, whether under this Section or otherwise, including such proportion of contingent charges under Part Two of the Purchase of Land (Ireland) Act, 1891, as the Treasury may fix.

54 & 55 Vic,
c. 48

54 & 55 Vic.,
c. 48

(3) The advance shall be repaid by the Board by an annuity of the same amount, and involving the same interest and sum for repayment of capital, as if it were an annuity payable by a tenant purchasing his holding, and the amount of such annuity shall be deducted by the Land Commission from the interest on the church surplus grant.

(4.) Where the Land Commission make an advance to a tenant for the purchase of his holding from the Congested Districts Board the amount of the advance shall be written off the debt due from the Board for advances made to them on account of the congested districts county for the benefit of which the Board purchased the land, in such manner as may be arranged between the Land Commission and the Board, and shall be treated as the redemption of a proportionate part of the annuities payable by the Board to the Land Commission.

(5.) Where land is purchased by the Congested Districts Board for the benefit of more than one congested districts county, the Board shall state in their request to the Land Commission the proportion of the purchase money which is to be treated as being advanced for the benefit of each county.

54 & 55 Vic,
c. 48.

(6.) **The Land Commission shall not make any advance in respect of any purchase by a tenant from the Board of a small holding as defined in the Purchase of Land (Ireland) Act, 1891.*

(7.) The Congested Districts Board shall not buy any land but under a lease for a term of years of which less than sixty a unexpired at the time of the sale, unless they hold or buy the reversion expectant upon the determination of such lease.

(a) Provision is made by the Congested Districts Board Act, 1899, for the redemption of "superior interests" by the Land Commission, in the case of an advance being made for the purchase of land by the Congested Districts Board under this Section. See that Act, Sec 2, *post*, p. 603.

This Sub-section is repealed by Congested Districts Board Act, 1899, Sec. 4, *post

The same Act requires that the ownership of land, for which an advance is made **Sects 43-44** under this Section, shall be registered under the Local Registration of Title Act, 1891 (Sec. 3).

(b) The limit provided by Sub-section 2 of this Section is now increased to an amount not exceeding fifty times the share of the county in the interest on the church surplus grant. Land Purchase Act, 1901, Sec. 1, Sub-sec. 2, *post*, p 605.

44.—(1.) The Congested Districts Board may sell land to a tenant of a small holding for the price agreed upon, and credit the purchaser with the whole or any part of the purchase money, and such purchase money shall be secured to the satisfaction of the Board, and be payable by such annuity payable half-yearly, and calculated at such rate of interest as may be agreed on.

Sales by Congested Districts Board of small holdings otherwise than under Land Purchase Acts

(2.) For carrying such sale into effect the Trustees of the Congested Districts Board may convey the land to the purchaser charged with the said annuity; but the conveyance shall not operate to convert the interest of the purchaser in the holding into real estate.

(3.) The particulars of any such conveyance may be communicated to the Land Commission, and thereafter they shall issue half-yearly applications for payment of the half-yearly instalments of the annuity charged on the holding, and shall credit or pay to the Congested Districts Board all sums received by the Commission in respect thereof, and shall furnish to the Board particulars of all instalments for which they issue applications under this Section, showing which have and which have not been paid.

(4.) The Trustees of the Congested Districts Board shall have for the recovery of any such instalments unpaid the same remedies as the Land Commission have for the recovery of unpaid instalments of an annuity under the Land Purchase Acts.

(5.) Holdings purchased under this Section, while subject to any annuity for the payment of purchase-money, **shall not be subject to the provisions of the Local Registration of Title (Ireland) Act, 1891, but shall be subject to all the provisions of the Land Purchase Acts respecting a holding subject to an annuity under those Acts; and the power under those provisions to require a holding to be sold when subdivided by reason of the death of the proprietor may be exercised within twelve months after the sub-division becomes known to the Congested Districts Board, notwithstanding that it is more than twelve months after the death.*

54 & 55 Vic., c. 66.

(6.) Whenever, upon the amalgamation of small holdings, part

**The words in italics are repealed by Congested Districts Board Act, 1899, Sec. 3, post.*

Sects. 44-47. of the amalgamated holding is subject to an annuity under this Section, and the amalgamated holding is not a small holding, the Congested Districts Board may agree with the occupier of such amalgamated holding for the purchase by him of that holding under the Land Purchase Acts, and the Land Commission may sanction the agreement and make an advance as if such occupier was in occupation of the whole of such holding under a contract of tenancy.

(7.) On such last-mentioned advance being made by the Land Commission, the balance of the principal of the purchase money payable by the annuity under this Section shall be treated as repaid to the Board out of the advance, and the purchaser and the holding shall be discharged from all liability in respect of the said annuity.

Rules for part of Act.

45. Rules for carrying into effect this Part of this Act may be made by the Lord Lieutenant after communication with the Land Commission and the Congested Districts Board.

PART V.

EVICTED TENANTS.

Re-enactment with modifications of 54 & 55 Vic., c. 48, s. 13

46. Section thirteen of the Purchase of Land (Ireland) Act 1891, is hereby re-enacted, and shall have effect with the modification following: Twelve months of the commencement of this Act shall be substituted for six months of the passing of this Act.

Application to Land Commission for reinstatement of tenant or for purchase of holding

47.—(1.) Where the tenancy of a holding has been determined at any time after the first day of May, one thousand eight hundred and seventy-nine, the landlord or the former tenant of the holding or both jointly, may, within twelve months of the commencement of this Act, apply in the prescribed manner to the Land Commission to act as mediators with a view to the reinstatement of the tenant in the holding or with a view to the purchase of the holding by the tenant.

(2.) Upon any such joint application with a view to reinstatement, the Land Commission may declare the terms and conditions as to rent, and the payment of arrears, or otherwise, upon which they consider that it would be reasonable that the former tenant should be reinstated in the holding, and upon the parties consent within the prescribed time and in the prescribed manner, may make an order reinstating the tenant in his holding upon the said terms and conditions.

(3.) Upon any such joint application with a view to the sale of Sections 47-48 the holding, the Land Commission may declare the amount of the advance which they are prepared to sanction, and the conditions (if any) to be fulfilled previously to the making of such advance, and upon the parties consenting within the prescribed time and in the prescribed manner, may order an advance, subject to the said conditions, in like manner as if an agreement had been made under Section thirteen of the Purchase of Land (Ireland) Act, 1891, as ^{54 & 55 Vic.} _{c. 48.} re-enacted by this Act.

(4.) Upon such application, whether for reinstatement or for a sale being made by either the landlord or the former tenant of the holding, the Land Commission may, if they think fit after making such inquiry as they think advisable, serve in the prescribed manner upon the party not having made the application a notice calling upon him to state whether he consents to the application being treated as a joint application, and, if the party so served does not within the prescribed time after such service object, a joint application within the meaning of the Section shall be deemed to have been made for reinstatement or for a sale, as the case may be, and the Land Commission may thereupon proceed under this Section accordingly.

(5.) Every order under this Section shall be binding upon all persons, and be final and conclusive.

(6.) An order under this Section shall not be made in the case of a holding which, on the first day of January, one thousand eight hundred and ninety-six, was in the occupation of a tenant.

(7.) For the purposes of this Section, the expression "former tenant" shall include the heir or personal representative, as the case may be, of the former tenant.

This Section does not give the tenant a right to re-enter pending the proceedings *Reg (MacManus) v. Justices of Monaghan*, 5 I. W. L. R. 5.

Rules and forms under this, and the preceding Section were issued by the Land Commission on the 16th March, 1897, but are now obsolete, as the time limited by the Sections has expired.

PART VI.

SUPPLEMENTAL.

48.—(1.) In this Act, unless the context otherwise requires— *Definitions.*

The expression "dwelling-house" includes any out-house, curtilage (a), and garden appurtenant thereto:

The expressions "landlord" and "tenant" include respectively the predecessors in title of a landlord or tenant:

Sect. 48.33 & 34 Vic.,
c. 46

The expression "limited owner" means a limited owner within the meaning of Section twenty-six of the Landlord and Tenant (Ireland) Act, 1870, and includes any person having the powers of a tenant for life under the Settled Land Acts, 1882 to 1890:

The expression "lease" includes an agreement for a lease (*b*)

44 & 45 Vic.,
c. 49.
50 & 51 Vic.,
c. 33.
51 & 52 Vic.,
cc. 13, 27.
52 & 53 Vic.,
c. 59.
54 & 55 Vic.,
c. 57.
33 & 34 Vic.,
c. 46.
54 & 55 Vic.,
cc. 48, 57.

The expression "Land Law Acts" (*c*) means the Land Law (Ireland) Act, 1881, except Part V. thereof, the Land Law (Ireland) Act, 1887, except Part II., and the Land Law (Ireland) Act, 1888, and the Timber (Ireland) Act, 1888, and the Land Law (Ireland) Act, 1888, Amendment Act, 1889, and the Redemption of Rent (Ireland) Act, 1891, and does not include the Landlord and Tenant (Ireland) Act, 1870, except so far as the provisions of it are necessary for giving effect to the above-mentioned portion of the Land Law (Ireland) Act 1881:

The expression "Land Purchase Acts" (*d*) means the Purchase of Land (Ireland) Act, 1891, the Land Purchase Act as therein defined, and the Redemption of Rent (Ireland) Act 1891:

The expression "permanent building" (*e*) shall include permanent structures and sea and river embankments having permanent character:

The expression "judicial rent" (*f*) means a fair rent, whether fixed by the Court or by agreement or arbitration or by demand of the landlord accepted by the tenant, and an application to fix a fair rent shall include reference to an agreement to fix a fair rent or to refer to arbitration the fixing of a fair rent, or to the demand of an increased rent by the landlord:

The expression "prescribed" means prescribed by rules made by the Land Commission, save that where the expression refers to financial matters it shall mean prescribed by rules made by the Treasury, and where the expression relates to matters connected with the Land Judge it shall mean prescribed by rules made under Part Two of this Act:

The expression "Receiver Judge" means the judge assigned under Section nineteen of the Purchase of Land (Ireland) Act 1885, for the execution of the duties in that Section mentioned

48 & 49 Vic.,
c. 37.44 & 45 Vic.,
c. 49.

(2.) In the definition of "holding" contained in the Land Law (Ireland) Act, 1881, "parcel of land" shall be deemed to include

an undivided share of land (*g*), whether held alone, or held under the same contract of tenancy with land held in severalty. Sect. 48

(3.) Any jurisdiction vested by this Act in the High Court in relation to the purchase money under the Land Purchase Acts, or otherwise in relation to those Acts, shall, subject to rules of Court, be exercised by a Land Judge.

(a) "Curtilage" has been defined as "a little garden, yard, field, or piece of void-ground lying near and belonging to the messuage" (Touch. 94). In *Marsden v London, Chatham and Dover Railway Company* (L. R. 6 Eq. 101, 7 Eq. 546), it was held that a vacant piece of ground in front of a public-house, not fenced off from the street, which was ordinarily used as a means of approach for vehicles to the front door of the house, came within the definition of a "curtilage," and was part of the house within the meaning of the 92nd Section of the Lands Clauses Act. See also *Steel v. Midland Railway Co.* (L. R. 1 Ch. App. 275), where the rule is laid down that by the description of a house, what is necessary for the convenient occupation of the house will pass (See judgment of TURNER, L.J., at p. 289).

(b) A similar definition of the term "lease" is contained in the Landlord and Tenant Act, 1870 (Sec. 70). Under this it has always been held that a tenant holding under an agreement for a lease is in the same position as regards his rights under the Land Acts as if a lease had actually been executed. An agreement for a lease for ever, it has also been held, entitles the tenant to apply under the Redemption of Rent Act: *Donnelly v. Galbraith*, 28 I. L. T. R. 54 (L. C.). Lease.

(c) The definition of "Land Law Acts," it will be observed, includes the Redemption of Rent Act, 1891, and excludes the Landlord & Tenant Act, 1870. This definition is, however, like all the others contained in the Section, qualified by the opening words, "unless the context otherwise requires", and it has been held by the Court of Appeal that, as used in Sec. 7, Sub-sec. 3, the phrase "Land Law Acts" does not include the Redemption of Rent Act, 1891. *Cowell v. Buchanan* [1898], 2 I. R. 147. The same construction appears, also, to apply to Sec. 5, Sub-sec. 2, but it is doubtful how far it applies to Sub-sec. 1 of each of these Sections. See note (r) to Sec. 5, ante, p. 540, and note (a) to Sec. (7), ante, p. 544. Land Law Acts.

The exclusion of the Landlord and Tenant Act, 1870, from the definition of "Land Law Acts," is of importance with reference to improvements. Prior to the passing of this Act, the right of a tenant to compensation for improvements when quitting his holding corresponded in every respect to his right to claim exemption from rent upon the improvement when having a fair rent fixed. Now, for the first time, a difference is introduced, and tenants, in many cases, will, for the future, be entitled to claim exemption from rent upon their improvements under the 1st Section of this Act, though, upon quitting their holdings, they would not be entitled to compensation for the same improvements. Land Purchase Act.

(d) The Land Purchase Acts as here defined include the Landlord and Tenant Act, 1870 (Parts II. and III.); the Landlord and Tenant Act, 1872; the Land Act, 1881 (Parts V., VI., and VII.); the Tramways and Public Companies Act, 1883 (Part II.); the Land Purchase Act, 1885; the Land Act, 1887 (Parts II. and IV.); the Land Purchase Acts, 1888, 1889, and 1891; the Redemption of Rent Act, 1891; and the Land Act, 1896 (Parts II., III., and V.). (See Land Purchase Act, 1891, Sec. 42 and Sec. 50, Sub-sec. 4 of this Act, post). The Redemption of Rent Act, 1891, had already been held to be one of the Land Purchase Acts within the meaning of Sec. 22 of the Local Registration of Title (Ireland) Act, 1891. (*In re Keogh, Grantor; Kettle, Grantee* [1896], 1 I. R. 285.)

Sects. 48-49.

Permanent building.

(e) In the 4th Section of the Landlord and Tenant Act, 1870, where the term "permanent building" also occurs, it has generally been construed as applying only to buildings of stone and mortar, or brick and mortar. The definition here given would appear to have a wider meaning. Sea and river embankments are frequently made of earth, and certainly, when so constructed, may have a permanent character; they would then be "permanent buildings" within this definition. If this be so, it would seem to follow that ordinary earthen fences, if well constructed, would also be "permanent buildings." The importance of this extension of the term is that a tenant under Sec. 1, Sub-sec. 7, of this Act, can claim exemption from rent in respect of permanent buildings, *whenever made*, as well as in respect of the reclamation of waste land, no matter how long it has been reclaimed; but as regards other improvements he is only entitled to exemption from rent in respect of these if they were made since 1850.

Judicial rent.

(f) Under Sec. 4 of the Land Act, 1881, if a landlord demands an increase of rent from the tenant of a present or a future tenancy, and the tenant agrees to pay it, a statutory term is thereby constituted, without any order of the Court. The rent payable during a statutory term created in this way is not referred to in the Act of 1881 as a "judicial rent"; that term being confined to a rent fixed by the Court (Sec. 8 (2), or by agreement and declaration filed under Section 8 (6)). This definition thus extends the term to the case of a statutory term created under Sec. 4 or Sec. 20 (2) of the Act of 1881.

Undivided share of land.

(g) This Sub-section has been passed to meet the decision of the Court of Appeal in *Cummins v. St. Leger* [1896], 2 I. R. 603; 29 I. L. T. E. 88, where it was held that the lessee of an undivided share of land was not the occupier of a holding within the meaning of the Redemption of Rent Act, 1891.

Where a partition order was made pending proceedings in the Land Commission to have a fair rent fixed by the tenant of an undivided share of land, it was held by the Court of Appeal that this Section applied, and that the tenant was entitled to have a fair rent fixed. *Kennedy v. M'Loughlin* [1898], 2 I. R. 364; 32 I. L. T. E. 113.

Compare, also, Sec. 5 (3), *ante*, which provides for the case of joint tenants or tenants in common actually occupying portions of the holding in severalty; and enables the Court to fix a fair rent for a portion of a holding so separately occupied.

Saving of Ulster tenant right custom.

49. Nothing in this Act contained shall prejudice or affect any right (a), benefit (b), or presumption (c), exercised or enjoyed under or by virtue of the Ulster tenant right custom, or any usage corresponding thereto.

The practical matter for consideration in reference to this Section is what special privileges a tenant holding under the Ulster custom still possesses, as contrasted with other tenants throughout Ireland. These may be considered under the three heads of (1) rights, (2) benefits, and (3) presumptions, as mentioned in the Section.

Right of sale under Ulster custom.

(a) First, as regards rights, the essential characteristic of the Ulster custom is the right of sale. This, indeed, is held by some judges to be the only incident of the custom of which the Courts can take judicial notice (Per HOLMES, L.J., *Adams v. Dunseath* (No. 2) [1899], 2 I. R., at p. 542). This right of sale is not an unrestricted right. It is subject to "restrictions, limitations, and conditions which vary infinitely" according to the usages prevailing on particular estates (*Ibid.*). As to the nature of some of these particular restrictions upon sales under the custom, which have been proved to exist, see note (s) to Land Act, 1881, Sec. 1, *ante*, p. 238.

But the right of sale under the custom is unfettered by the right of pre-emption a

the "true value" conferred upon landlords by Land Act, 1881, Sec. 1, in case of sales of tenancies under that Section. Nor is it subject to the duty of serving the notices prescribed by the Act of 1881 and the rules made thereunder. This right to sell under the custom, as distinguished from a sale under the Act, continues to exist, even though the tenant acquires a statutory term at a fair rent under the Land Acts: *Ballatine v. Gosford*, 35 I. L. T. R. 189, 3 Greer 273. "The manifest intention of the Land Acts," says ANDREWS, J., in that case, "since the legalisation by the Act of 1870 of the usages prevalent in Ulster, and known as the Ulster tenant-right custom, was to guard and protect, and not to imperil it" (35 I. L. T. R., at p. 180). As to how a transfer of a tenancy is effected under the custom, see further, note (s) to Land Act, 1881, Sec. 1, ante, p. 238.

Sect. 49.

Upon breach of a statutory condition, a tenant holding under the Ulster custom has also a special privilege over other tenants, for he does not thereby forfeit the benefit of the custom (Land Act, 1881, Sec. 20 (4), though a tenant, not so circumstanced, loses his right to compensation for disturbance, if compelled to quit his holding in consequence of the breach (Land Act, 1881, Sec. 13 (6)).

(b) Secondly, as regards benefits, the chief benefit which a tenant, holding under the Ulster custom enjoyed during the continuance of his tenancy, even prior to the passing of the Act of 1881, was a right to exemption from rent upon his improvements: *Carraher v. Bond*, 6 I. L. T. R. 19; *Donn 319*; *Bennett v. Jones*, *Donn 514*. "Any landlord insisting on rent in respect of improvements made, not by himself, but by the tenants for the time being, whether holding under one continuous tenancy or under distinct successive tenancies transmitted from one tenant to another, has always been dealt with as infringing on the custom by thus demanding what was unreasonable and unfair." (Per LAW, C. *Adams v. Dunseath*, 10 L. R. Ir., at p. 118.) By the Act of 1881 this privilege was extended to all agricultural tenants (Sec. 8 (9)), but in the case of other tenants it was considerably restricted by the application of the limitations imposed by the 4th Section of the Act of 1870 as regards compensation for improvements to the fixing of a fair rent. The 4th Section of the Act of 1870 had, however, no application when the Ulster custom prevailed (*Adams v. Dunseath*, 10 L. R. Ir. 109; 16 I. L. T. R. 59 (See judgment of LAW, C., 10 L. R. Ir., at p. 118): *Smith v. Downshire*, Greer Leading Cases, App. 88. Until the passing of the present Act, therefore, a tenant holding under the Ulster custom, upon having a fair rent fixed under the Land Acts, was entitled to exemption from rent in many cases where another tenant would not be so exempt. Sub-sec. 7 of Sec. 1 of this Act now provides that Sec. 4 of the Act of 1870 shall not authorise the allowance of any rent in respect of any improvements, *except improvements other than permanent buildings and reclamations of waste land made before 1850*. It is only, therefore, in respect of these last improvements that the tenant holding under the Ulster tenant right custom has now any advantage over other tenants. See note (g) to Land Act, 1881, Sec. 8, ante, pp. 272-275.

Exemption from rent on improvements.

Special usages may, however, still be proved to exist under the Ulster custom as to improvements giving advantages to tenants under the custom not possessed by other tenants. Thus in *Smith v. Downshire* (Greer Leading Cases, App. 86) it was proved that according to the custom prevailing on the Downshire estate, when a rent was being fixed on the termination of a lease, no rent was imposed on improvements made by the tenant, *even though they were made in pursuance of a covenant contained in the lease*, and effect was given to this particular custom in fixing the fair rent. Even under the present Act, a tenant, not enjoying the benefit of the custom, would be liable to pay rent on such improvements. See note (A) to Sec. 1, ante, p. 512. Such a custom will not, however, be presumed to exist; evidence must be given to

Special usages as to improvements in Ulster.

Seot. 49.] prove its existence in the particular case in which it is claimed. Per MERRIDITH, J. *Cope Estate*, 32 I. L. T. R. 170.

Subject to these qualifications, and in the absence of evidence of particular customs affecting the amount of rent to be fixed in case of a holding where improvements have been made, the methods of the Land Commission in estimating fair rents do not vary as between holdings subject to the custom and those not so subject *Upton v. Dufferin*, 32 I. L. T. R. 118 (S. C.). See also judgment of HOLMES, L.J., in *Adams v. Dunseath* (No. 2) [1899], 2 I. R., at p. 543.

Presumption as to improvements under Ulster custom

(c) Thirdly, as regards presumptions. It is here that the tenant holding under the Ulster custom has still the greatest advantage over other tenants. The presumption that the improvements upon a holding were effected by the tenant is in the ordinary case, governed by the 5th Section of the Act of 1870, restricted, as regards applications to fix fair rents by Sec. 1, Sub-sec. 10 of this Act. See note (m) to that Section, *ante*, p. 513. But the 5th Section of the Act of 1870, in express terms, excludes from its operation holdings subject to the Ulster custom, and in these cases a general unrestricted presumption that improvements of all kinds were made by the tenant has, as a rule, been applied by the Land Commission in fixing fair rents *Harper v. Dufferin*, 1 Greer 253 (L. C.). "This Court for years," says MERRIDITH, J., in that case, "has been acting upon the view that in case of tenant-right estates, where it is proved or admitted that the usage under which the farms on the estate are held, is one of general and unrestricted tenant-right, a presumption of fact arises on which the Court, in fixing a fair rent, is at liberty to act, and justified, in acting, unless the presumption is displaced by evidence to the contrary that the existing and effective improvement works upon the holding are tenants' improvements" (1 Greer, at p. 272). As to the limits on this presumption, see however, judgment of BEWLEY, J., in *M'Glynn v. Abercorn*, Greer Leading Cases, a pp 554-5.

Practice as to allowance for improvements in fixing fair rent.

The practice of the Assistant-Commissioners in allowing for improvements by the tenants when fixing rents in cases subject to the Ulster custom, is laid down as follows by BAILEY, L.A.C., in *Boyle v. Richardson*, 28 I. L. T. R. 153:—"The general rule of law in Ulster custom cases is that the tenant is entitled to credit for any improvements which are found to exist on the holding. In all cases the presumption is that the improvements have been made by the tenant or his predecessor in title, and that the onus lies on the landlord of showing the contrary. It is, however, one thing to presume the ownership of improvements, and another thing to show that they exist, consequently, in Ulster custom cases a marked distinction has to be drawn between the two great classes of improvements—viz., those which add to the value of the holding as an equipped farm, and secondly, those which actually affect the productive capacity of the soil. In the first class are included buildings, fences, and farm roads. In the second, drains, reclamation, and tillages. The first class improvements are part of the general equipment of the holding, and are evident to all comers. In Ulster custom cases the presumption as to the ownership of improvements being in favour of the tenant, all improvements of this class, namely, houses, fences, and farm roads, which are found to exist on the holding, are, without a proof, presumed to be the property of the tenant, and should be exempted from rent unless proved to be the property of the landlord. As regards the second class improvements, although a similar presumption exists as to their ownership, a different practice a different procedure has to be applied. Drainage and reclamation are self-evident in the majority of cases. As to whether drains exist in a certain field or whether a particular piece of land has been reclaimed, is a matter of evidence consequently, in this (second) class of improvements—those that affect the productive capacity of the soil without being self-evident—some proof must be furnished to

those improvements exist before the presumption as to ownership can be applied, **Sects. 49-50.** and before credit can be given. Once, however, it is shown that they do exist, then the presumption arises, and it is not necessary that the tenant should show that he or his predecessor in title has made them."

See further as to the Ulster custom generally, and the evidence by which it may be proved to exist, notes to L. & T. Act, 1870, Sec. 1, *ante*, pp. 160-165.

50.—(1.) Part One of this Act shall, save as is by this Act expressly provided, apply to every proceeding pending (a) at the commencement of this Act. Application and construction of parts of Act.

(2.) An application to fix a fair rent for a holding shall not be refused on the ground of any previous decision (b) with reference to the holding or any part thereof, whether between the same parties or otherwise, if such application can be sustained under this Act or any of the Land Law Acts as amended by this Act, and where a tenant would, if this Act had been in force at the passing of the Land Law (Ireland) Act, 1881, be now a present tenant, and either the landlord has not, since the passing of the said Act, or the thirty-first day of December one thousand eight hundred and eighty-two, as the case may be, resumed possession of the holding, or if he resumed the tenant has redeemed or been reinstated in his former tenancy, the tenant shall be deemed a present tenant for the purpose of any such application (c). 44 & 45 Vic., c. 49.

(3.) Parts One and Two of this Act shall be construed as one with the Land Law Acts, and together with those Acts may be cited as the Land Law Acts, and shall apply to all holdings to which the Land Law Acts or any of them, as amended by this Act, apply, and Section twenty-two of the Land Law (Ireland) Act, 1881, shall apply as if the said Acts and Parts of this Act were part of the foregoing provisions of the said Act of 1881, within the meaning of the said Section. 44 & 45 Vic., c. 49.

(4.) Parts Two, Three, and Five of this Act shall be construed as one with the Land Purchase Acts as herein defined, and, together with those Acts may be cited as the Land Purchase Acts.

(5.) The provisions of Part III. of this Act with respect to superior interests and a vesting order (d) shall not, without the consent of the vendor and purchaser, apply to proceedings in respect of any agreement made before the commencement of this Act.

(6.) Part Four of this Act shall be construed as one with the Congested Districts Board (Ireland) Acts, as defined in the Congested Districts Board (Ireland) Act, 1894, and together with those 57 & 58 Vic., c. 50.

Sec. 50. Acts may be cited collectively as the Congested Districts Board (Ireland) Acts (e).

Proceedings pending

(a) Where a notice of appeal to the Court of Appeal in a town park case was current when the Act passed, it was held that there was a "proceeding pending" within the meaning of this Section, and that the tenant was entitled to rely upon Sec. 6 of this Act: *Rogers v. Murphy*, 30 I. L. T. R. 152 (C. A.).

Similarly in *Fox v. Gloster* (30 I. L. T. R. 169) the Land Commission held that Section 19 (*ante*), which in effect deprives the landlord of his right of pre-emption under Section 1 of the Land Act, 1881, in the case of a voluntary assignment of a tenancy, applied to a case where the deed was executed before the passing of the Act, but the landlord did not move to set it aside until afterwards.

In *Cope v. Cunningham* [1897], 2 I. R. 467; 31 I. L. T. R. 37, the Court of Appeal held that the provisions of Section 1, requiring a schedule to be filled up in every case, applied where a Sub-Commission order had been made before the passing of the Act, and the case came on for appeal before the Head Commissioners after the passing of the Act.

Previous decision, how far an estoppel.

(b) The effect of the opening words of Sub-sec. 2 is that if any change in the law applicable to a particular holding has been made by this Act, the tenant is not bound by any previous decision, dismissing the case, based upon the former law, whether he himself was a party to that decision or not. He is entitled to serve a new originating notice to have a fair rent fixed, and his case will be heard on its merits, and decided according to the law now in force. Thus where an application to fix a fair rent had been dismissed on the ground that the holding was let for temporary convenience, there being a clause in the lease enabling the landlord to resume possession of part of the holding for building purposes (*Butterly v. Carroll*, 26 L. R. I. 93), it was held on a second application after the passing of this Act, having regard to Sec. 8, *ante*, that a fair rent should be fixed: *Butterly v. Carroll* (No. 2), 34 I. L. T. R. 31, 141; 3 Greer 35 (C. A.). And where a holding, consisting of 113 acres and a mill, was held to be excluded from the Land Acts as being partly non-agricultural in 1888, a fresh originating notice having been served after the passing of this Act, it was held by the Court of Appeal that a separation of the holding could be made under Sec. 5 (2), *ante*, and a fair rent fixed upon the agricultural portion: *Ryan v. O'Brien* [1900], 2 I. R. 539; 34 I. L. T. R. 89; 2 Greer 251.

Where there has been no alterations in the law.

But where there has been no alteration in the law affecting a particular holding, this Section does not allow a proceeding to be brought a second time merely for the purpose of having a re-trial of a question of fact: *Bucleugh v. Rainey* [1899], 2 I. R. 369 (C. A.), reported as *Rainey v. Duke of Manchester*, 1 Greer 16; *Cowan v. Alexander*, Greer Leading Cases, App. 26 (L. C.); *M'Auliffe v. Hickman*, 2 Greer 22 (L. C.), whether the previous decision relates to the status of the tenant or the character of the holding: *Beakey v. Cosgrove*, 1 Greer 155 (L. C.), and even though new evidence may be produced: *Nixon v. Greene*, 1 Greer 329 (L. C.). The same rule applies even where the previous decision was only that of a Sub-Commission and the case is on the second hearing brought before the Land Commission itself: *Hamilton v. Nelson*, 1 Greer 344, 368. See also judgment of FRIZZIBSON, L.J. *Magner v. Hawkes* (No. 2) [1900], 2 I. R., at pp. 469-70.

Tenant when deemed to be a present tenant.

(c) Commenting on the latter clause of Sub-sec. (2), HOLMES, L.J., says: "The obvious meaning of the words is, that although the tenancy has been put an end to still, if the tenant has been allowed to remain in possession, he shall be deemed to be a present tenant for the purpose of the application". *Kennedy v. M'Loughlin* [1898], 2 I. R., at p. 374. There must, however, have been a tenancy of some kind

in existence after the Land Act, 1881, came into force, and before 31st Dec., 1882. Sects. 50-52. Mere occupation is not sufficient: *McNello v. Hasratty*, 33 I. L. T. R. 51.

Quite apart from the provisions contained in this Section, a landlord could always reinstate an evicted tenant as a present tenant, even though the period for redemption had expired before the reinstatement, and it was a question of fact to be determined upon all the evidence, whether in reinstating him he intended to set up the former tenancy again, or to create a new one: *Thompson v. Templetown*, 21 I. L. T. R. 55. (See as to this point, Land Act, 1881, Sec. 20 (2), and Land Act, 1887, Sec. 7 (3).)

Reinstatement of evicted tenant.

The reinstatement required by this Sub-section to entitle a tenant who has been put out of possession to be deemed a present tenant is not a reinstatement in the holding, but in the tenancy existing prior to the eviction. Where a superior landlord recovered possession of a holding for non-payment of rent in 1892, and on execution of the writ of possession, the physical occupation of certain sub-tenants was not disturbed, but they were allowed to attorn to the head landlord, and signed new agreements for tenancies under her, it was held by BEWLEY, J., that the landlord must be treated as having resumed possession within the meaning of this Section, and that the sub-tenants had not been "reinstated" in their tenancies, so as to make them now present tenants by force of this, and the 12th Section, *ante Hines v. Bell* [1897], 2 I. R. 357; 31 I. L. T. R. 110. See, however, *contra Ferris v. Thompson*, 30 I. L. T. R. 147 (Sub-Com.).

Attornment by sub-tenant to head landlord.

(d) See Secs. 31 to 34, *ante*. Notwithstanding this Section, however, it was held by MADDEN, J., that the provisions of Sec. 34 (1), as to privileges previously enjoyed by permission of a landlord applied to a case where the agreement to purchase was made before this Act passed, but the vesting order was not issued until after it became law: *Coote v. Phelan*, 35 I. L. T. R. 196.

(e) All the Congested Districts Boards Acts down to that of 1901 (1 Ed. VII., c. 34), will be found in their proper chronological order in this volume.

51. This Act may be cited as the Land Law (Ireland) Act, 1896. Short title.

52. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Repeal

SCHEDULES.

FIRST SCHEDULE.

Schedule 1

Section 4. (1).

FORM OF SCHEDULE FOR RECORD.*

Particulars of Holding taken into consideration in fixing the Judicial Rent.
No. of Ordinance Sheet.

County	Tenant	
Record No.	Landlord	
Date upon which holding inspected	day of	189
Who attended inspection on behalf of Landlord?		
Do. on behalf of Tenant?		

1. Character of holding:—

The land in a holding may be all of uniform character, or it may consist of two or more of the qualities of land indicated in the following Schedule, which should be

*This form of Schedule is no longer in use. Three new forms, varying according to the situation of the holding, have been prescribed by Land Commission Rules of 20th July, 1899. See post, pp. 767-789.

Schedule 1.

carefully filled up according to the facts. The acreage of each class of land found in the holding should be set out in the column given for the purpose, and this area should be marked off with a blue coloured line on the Ordnance Survey Map of the holding, and also marked with the letter or letters corresponding with same in the Schedule. These areas should be stated with as near an approach to accuracy as under the circumstances is possible. The record number of the holding should in each case be marked on the Map, and where more than one holding is marked on the Map a Schedule of holdings with the record numbers, and tenants' names is to be written on the right hand margin on the map. *The exterior boundaries of each holding must be carefully marked on the Map with a red coloured line.*

(1) SCHEDULE of classes of land.

	Area in Statute Measure			Fair Rent per Acre (excluding Buildings), on the assumption that all Improvements thereon were made or acquired by the Landlord		
	A.	R.	P.	£	s.	d.
<i>Grass Lands</i>						
A 1st class ...						
B 2nd class ...						
C 3rd class ...						
D 4th class ...						
E 5th class, mountain and unreclaimed bog ..						
F 1st class, permanent meadow						
G 2nd class, permanent meadow						
<i>Land in tillage or worked in rotation, including pasture or meadow of a temporary character:</i>						
H 1st class ...						
I 2nd class ..						
K 3rd class ...						
L 4th class, reclaimed mountain or bog ...						
X waste (description) ...						
Total area ..						

2. For what description of stock is the grass land best suited?

3. Carrying power in sums or collops of grass land, stating the months during which the season usually continues, and how hay is provided?

4. How is the holding used?

5. The condition as to cultivation, deterioration or otherwise of the holding and the buildings thereon. Does the soil show traces of improvement or of deterioration and to whom is the improvement or deterioration to be attributed?

6. Does the holding or any part of it require to be drained, and, if so, how much of the holding? Mark part requiring drainage on map by thin parallel black lines

7. IMPROVEMENTS. Proved in Court (excluding buildings) whether made by land and present capital value thereof, and the increased letting value due thereto, and to exist on inspection, to be stated in detail, together with the nature, character and tenancy, which are at present a *bona fide* benefit to the holding and are found

the date so near as can be ascertained, at which the same were made, and the deduction from rent made. Sched 1-2

8. BUILDINGS: If tenants state so, if landlords specify particulars of same, the date, so near as can be ascertained, at which they were made, state fair annual value, whether they have been kept in repair, and by whom, and any deduction from rent made on account thereof, and the extent (if any) to which the landlord has paid or compensated the tenant in respect thereof.

Improvements under this head shall be distinguished according as—

- (a) they have been made wholly or partly by or at the cost of the tenant; and
- (b) the landlord has paid or compensated the tenant in respect thereof.

9. SITUATION: As to markets, railways, and county roads.

10. What per centage (if any) has been added for proximity, or what (if any) has been deducted in consequence of remote position?

11. Give particulars of any right of turbarry, commonage, mountain grazing, or seaweed—and state whether turbarry is inside or outside holding, what amount has been added for any of those appurtenances.

12. LOCAL RATES—Average poor rate in li. Average county cess in li.

13. Special incidents of holding, such as aspect, elevation, and water supply, and general observations.

(To be signed by Lay Assistant-Commissioners)

14. The following improvements included in enumeration in paragraph No. 7 were made or acquired by the tenant or his predecessors in title, and are exempted from rent.

15. For what rights (if any) referred to in answers to query No. 11 has an addition been made to the rent?

16. Upon what assumption with regard to the respective liabilities of landlord and tenant as to rates and taxes mentioned in answers to query No. 12, has the judicial rent been fixed?

(To be signed by Legal and Lay Assistant-Commissioners.)

17. The annual sum which should be the fair rent of the holding on the assumption that all improvements thereon were made or acquired by the landlord.

18. The fair rent of the holding.

19. If tenancy has been purchased since the Land Act, 1870, give date and amount of purchase money on each sale.

20. What changes of rent have been proved in evidence?

(To be signed by Legal Assistant-Commissioner alone.)

SECOND SCHEDULE.

ACTS REPEALED.

Session and Chapter	Short Title	Extent of Repeal
33 & 34 Vic., c. 46.	Landlord and Tenant (Ireland) Act, 1870	Section thirty-five.
44 & 45 Vic., c. 49.	Land Law (Ireland) Act, 1881	In section eight, sub section (2), from "as from the period" down to "decision of the court," and sub-section (3), from "from the rent day," down to "has been given." Section twenty-four, from "as follows" to "fair rent for the holding," being the end of sub-section (1). In section twenty-six from "the I and Commission may advance" down to "payable by the tenant," being sub section (4). Section twenty eight from the beginning down to "purchaser there-in mentioned," being sub-sections (1) and (2). In section thirty, sub-section (3), from "on the terms" down to "1870," where that figure next occurs, and from "and shall pay" down to "receive the same." Section thirty-three.

Schedule B.

Session and Chapter	Short Title	Extent of Repeal
44 & 45 Vic., c. 49	Land Law (Ireland) Act, 1881	In section fifty-eight, sub-section (1) sub-section (2) down to "home farm or" and sub-sections (3) and (4)
48 & 49 Vic., c. 73	Purchase of Land (Ireland) Act, 1885	In section two, from "it shall not be lawful" to the end of the section, being paragraph (c). In section four, the words "such value" to be calculated according to the "table in the Schedule to this Act." Section nine, sub-sections (1) and (2) In section fourteen, from "the Land Commission shall register" down to "local registration." In section seventeen, from "the additional members of the Land Commission" down to "with the said additional Commissioners." Section twenty four.
50 & 51 Vic., c. 33	Land Law (Ireland) Act, 1887	Section one down to "passing of this Act." In section four, from "a tenant may also" to "and otherwise." Section five. Section seventeen. In section eighteen, from "section thirty four" to the end of the section, being sub-section (2).
51 & 52 Vic., c. 49	Purchase of Land (Ireland) Amendment Act, 1888	Section one, down to "said sub-section and." Section three, save as regards agreements for purchase made before the passing of this Act. Section six.
54 & 55 Vic., c. 48	The Purchase of Land (Ireland) Act, 1891	In section four, sub-section (2), from "in paying to the guarantee fund" to the end of the sub-section, being paragraph (b) Section seven, from "and an annual sum" to end of section. Section eight, save as respects any purchaser's insurance money paid before the commencement of this Act. In section twenty-nine, sub-section (1) from "provided that" to "Act 1881," where those words next first occur; and sub-section (2). In section forty-two, from "the expression annual value" to "so determined."

CONGESTED DISTRICTS BOARD (IRELAND ACT), 1899.
(62 & 63 VIC., CAP. 18.)

An Act to amend certain provisions of the Land Law (Ireland) Act, 1896, affecting the Congested Districts Board, and to make further provision for the expenses of that Board out of money provided by Parliament.

[1st August, 1899.]

Be it enacted, &c.

1. Where the Congested Districts Board make an offer to the Land Judge for the purchase of an estate or part of an estate for the purpose of re-selling the same to the tenants thereon, the provisions of Section forty of the Land Law (Ireland) Act, 1896 (in this Act referred to as the principal Act), shall be suspended, and shall not have effect in the case of that estate or part of an estate unless and until the offer is refused by the Land Judge, or is withdrawn.

Sects 1-2.
Amendment of
59 & 60 Vic.
c. 37, s 40, in
case of purchase
by Congested
Districts Board.

2.—(1.) Where the Land Commission have made an advance to the Congested Districts Board under Sub-section (1) of Section forty-three of the principal Act, and the land purchased by the Board is subject to any superior interest as defined by Section thirty-one of the principal Act, or any incumbrance as defined by Section thirty-four of the Land Law (Ireland) Act, 1887, the Land Commission may on the application of the Board exercise any powers for the apportionment and redemption of superior interests conferred on them by the Land Purchase Acts, and may direct that a sum of guaranteed land stock equivalent at the price of the day to the redemption price of the superior interest, or the amount due in respect of such incumbrance, as the case may be, shall be advanced and disposed of in like manner as if the advance were made to a tenant for the purchase of his holding, and the amount of such advance shall be repaid by the Board in the manner provided by Sub-section (3) of the said Section forty-three.

Provision for
redemption of
superior interests
in case of pur-
chase of land by
Congested Dis-
tricts Board
54 & 55 Vic.,
c. 66
50 & 51 Vic.,
c 33

(2.) Rules for the purposes of this Section may be made by the Land Commission, and shall be laid before Parliament.

Rules under this Section were issued by the Land Commission dated May 21st, 1900.
See *post*, pp. 917-919.

Sections 3-6
 Amendment of
 59 & 60 Vic.,
 c. 47, ss 43 & 44,
 with respect to
 registration of
 land and stamp
 duty.
 54 & 55 Vic.,
 c. 66

3.—(1.) Notwithstanding anything in Sub-section (1) of Section forty-three of the principal Act, the Land Commission shall not make an advance under that Sub-section unless the ownership of the land is registered under the Local Registration of Title (Ireland) Act, 1891.

(2.) Where the ownership of any land has been registered under the said Act of 1891, after the date of an agreement for the sale thereof to the Congested Districts Board, no fee shall be payable to the Local Registration of Title Office on the transfer to the trustees of the Board of that land, and in no case shall any such fee be payable on any sale by that Board to a tenant of his holding upon any land the ownership of which is registered.

(3.) So much of Sub-section (5) of Section forty-four of the principal Act as exempts the holdings therein mentioned from the provisions of the said Act of 1891 is hereby repealed.

(4.) No stamp duty shall be payable on any purchase of land by the Board for the purpose of sales to tenants.

Amendment of
 59 & 60 Vic.,
 c. 47, s. 43,
 with respect to
 limit of advance
 and repeal of
 s. 43 (6).

4.—(1.) **The limit provided by Sub-section (2) of Section forty-three of the principal Act in respect of advances which may be made by the Land Commission to the Congested Districts Board may, in exceptional cases, with the consent of the Treasury, be exceeded to such extent and for such periods as the Treasury may determine.*

(2.) Sub-section (6) of the said Section forty-three (which prohibits the Land Commission from making an advance in respect of the purchase of a small holding) is hereby repealed.

Provision of
 money for Con-
 gested Districts
 Board.
 54 & 55 Vic.,
 c. 48.

5. For the purposes of Sub-section (3) of Section forty of the Purchase of Land (Ireland) Act, 1891, and for other purposes of the Congested Districts Board (Ireland) Acts, there shall be paid, a from the first day of October one thousand eight hundred and ninety-nine, to the Congested Districts Board, subject to such conditions as the Treasury may require, out of money provided by Parliament, an annual sum not exceeding twenty-five thousand pounds.

Short title and
 construction

6.—(1.) This Act may be cited as the Congested Districts Board (Ireland) Act, 1899.

(2.) This Act shall be construed as one with the Congested Districts Board (Ireland) Acts, and together with those Acts may be cited collectively.

**Repealed by 1 Ed. VII., Cap. 3. See, however, Sec. 1 (2) of that Act, post, p. 64*

PURCHASE OF LAND IRELAND ACT, 1901.

(1 ED. VII., CAP. 3.)

An Act to amend sub-Section (1) of Section nine of the Purchase of Land (Ireland) Act, 1891, and sub-Section (2) of Section forty-three of the Land Law (Ireland) Act, 1896.

[2nd July, 1901.]

Be it enacted, &c.

1.—(1.) Where it appears to the Lord Lieutenant that it is expedient that the limit provided by Sub-section (1) of Section nine of the Purchase of Land (Ireland) Act, 1891, with respect to the advances which may be made in any county should be exceeded, he may certify to that effect to the Treasury, and the Treasury may authorise advances to be made in that county, to such increased amount as may be determined by them, not exceeding fifty times the share of the county in the guarantee fund, where they are of opinion that such advances can be made up to that increased amount without risk of loss to the Exchequer

Sects. 1-2
Amendment of
54 & 55 Vic.,
c. 48, s. 9, and
59 & 60 Vic.,
c. 47, s. 43 (2)
with respect to
limit of advance.

(2.) The Lord Lieutenant may certify to the like effect with respect to the limit provided by Sub-section (2) of Section forty-three of the Land Law (Ireland) Act, 1896, and in such case the Treasury may authorise advances to be made under that Section for the benefit of the county mentioned in such certificate to such increased amount as may be determined by them, not exceeding fifty times the share of the county in the interest on the church surplus grant, after making the deductions in the said Sub-section mentioned, where they are of the same opinion as aforesaid.

(3.) Sub-section (1) of Section four of the Congested Districts Board (Ireland) Act, 1899 (which extends the limit under Section forty-three of the Land Law (Ireland) Act, 1896), is hereby repealed.

62 & 63 Vic.,
c. 18.

2. This Act may be cited as the Purchase of Land (Ireland) Act, 1901.

Short title

PURCHASE OF LAND (IRELAND) (No. 2) ACT, 1901.

(1 ED. VII., CAP. 30.)

AN ACT TO EXTEND THE PURCHASE OF LAND (IRELAND) AMENDMENT ACT, 1889.

[17th August, 1901.]

BE it enacted, &c.

1. The Purchase of Land (Ireland) Amendment Act, 1889, as amended by any enactment, shall, subject to the provision of this

606 *Congested Districts Board (Ireland) Act, 1901.*

Sects. 1-3. Act, apply with the necessary modifications in the case of a tenant desirous of purchasing land, notwithstanding that the sale of his holding is not about to be made under the Land Purchase Acts.

Rules providing a special form of agreement for sales under this Act were published on January 20th, 1902. See *post*, pp 911-912.

2.—(1.) Where a tenant to whom an advance is made in pursuance of this Act is the proprietor of a holding charged with an annuity under the Land Purchase Act, an account shall be taken of the amount outstanding in respect of the original advance, and the original holding and any additional parcel of land purchased under this Act shall be deemed one holding and shall be charged with a new annuity for the repayment of such outstanding amount, together with the amount of the advance made in respect of such additional parcel, and shall be discharged from the annuity payable in respect of the original advance.

(2.) An annuity payable in pursuance of this Section shall continue for such term of years as the Land Commission, on the application of the purchaser, may determine.

3. This Act may be cited as the Purchase of Land (Ireland) (No. 2) Act, 1901.

CONGESTED DISTRICTS BOARD (IRELAND) ACT, 1901.

(1 ED. VII., CAP. 34.)

An Act to amend the Congested Districts Board (Ireland) Acts.

[17th August, 1901]

Be it enacted, &c.

Sect. 1.
Provision for
facilitating re-
sales of land by
Congested
Districts Board.

1.—(1.) Where the Congested Districts Board have, whether before or after the passing of this Act, purchased an estate and the tenants of holdings thereon to the extent of not less than three-fourths in number and rateable value so request, the Board may serve a notice on any tenant thereon which shall have the effect of determining his tenancy in his holding as from the date mentioned in the notice, not being less than six months from the service thereof.

(2.) Every such notice shall contain an undertaking by the Board that they will within the period mentioned in that behalf in the notice, or so soon thereafter as practicable, provide the tenant with a new holding on the same or an adjacent or neighbouring estate, subject to a rent not exceeding that payable by him for his original holding, and of not less value in respect of

the land comprised in the new holding and the buildings and improvements thereon than the value of the land comprised in the former holding, and the buildings and improvements thereon respectively at the date of the purchase of the estate by the Board.

(3.) If any such tenant is dissatisfied with his new holding, or refuses to enter into possession thereof he may within four months after he has been served with a notice stating that the Board are prepared forthwith to put him into possession thereof, apply to the county court within the jurisdiction of which the estate is situate, and that court may, subject to rules of court, hear and decide upon the application.

(4.) If where the tenant is dissatisfied with the new holding the Court decides that the value thereof is, in respect of any of the matters aforesaid, less than the value of the former holding, the Court may, after taking into account in connection with such inferiority in value the rent payable for the new holding, and every circumstance which the Court considers material, order such compensation as it may deem fit to be paid by the Board to the tenant, and, in addition, or as an alternative, may order the Board to erect such buildings, or make such other improvements on the holding, as the Court may think reasonable.

(5.) Where a tenant refuses to enter into possession of the new holding, the Court may order the payment to him by the Board of such sum as, in the opinion of the Court, is equal to the value of his interest in his former holding.

(6.) The county court may, upon application, order that such charges, liabilities, and equities as affect the tenant's interest in his former holding shall either continue to affect that holding, or be transferred to his new holding.

(7.) Any decision of the county court under this Section shall be final, and any notice under this Section determining a tenancy may be enforced by a writ of possession of the county court, but no such writ shall be executed in pursuance of this Section in the case of any tenant until the Board certify to the sheriff that they are prepared forthwith to put such tenant into possession of his new holding.

(8.) Where a matter requiring the cognizance of the Court under this Section arises in respect of an estate situate within the jurisdiction of more than one county court, the county court within the jurisdiction of which the greater part in rateable value of the estate is situate shall take cognizance of the matter.

608 *Congested Districts Board (Ireland) Act, 1901.*

Sects 1-4

(9.) Every notice under this Section shall be served on the tenant affected thereby, either personally, or by leaving the same at his residence, or by transmitting the same by registered letter to his last known address.

(10.) The Court may award costs to or against any party to any proceedings under this Section, and in addition to any other power may, where of opinion that a reasonable offer for the payment of compensation, or the execution of any works has been made by the Board, order a tenant to pay any costs incurred by the Board after the date of the offer. Any costs ordered to be paid by a tenant under this Section may be deducted from any compensation payable to him thereunder.

(11.) Rules of court may regulate the practice and procedure under this Section.*

(12.) In this Section the expression "estate" includes part of an estate.

Extension of
44 & 45 Vic.,
c. 49, s. 5 (5) in
case of land pur-
chased by the
Board

2. The right to enter upon a holding during the continuance of a statutory term conferred on a landlord by Sub-section (5) of Section five of the Land Law (Ireland) Act, 1881, for the purposes therein specified, is hereby conferred on the Congested District Board and any person authorised by them in that behalf, in respect of any holding not subject to a statutory term which is situated upon land purchased by that Board; and for enforcing the right conferred by this Section the Board shall have the like remedies as in the case of a holding subject to a statutory term.

Provision for
exercise of
powers by
Board in
respect of certain
lands

3. Where the Congested Districts Board have, whether before or after the passing of this Act, purchased land elsewhere than in a congested districts county, the Lord Lieutenant may, if he thinks fit on the report of the Board by Order in Council, declare that for the purposes of this Section the land shall be treated as part of such congested districts county as he may determine, and the Board shall thereupon have, with respect to that land, all the powers conferred on them by the Congested Districts Board (Ireland) Act, 1901, as amended by this Act.

Short title and
construction

4.—(1.) This Act may be cited as the Congested Districts Board (Ireland) Act, 1901.

(2.) This Act shall be construed and may be cited with the other Congested Districts Board (Ireland) Acts.

* County Court Rules under this Section were issued on 24th February, 1902.

PART II.
RULES AND FORMS.

RULES OF THE SUPREME COURT (IRELAND) ACT, 1891

ORDER XLVII.

Writ of Possession, &c.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of the Principal Act used in actions of ejectment in the Superior Courts of Common Law.

Rules of
1891.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order, and that the same has not been obeyed.

3. The summary of the notice mentioned in the 7th Section of the Land Law (Ireland) Act, 1887 (50 & 51 Vict., c. 33), shall be in the Form No. 6 in Appendix H., with such variations as circumstances may require. (a) The manner of posting such summary on a police barrack, shall be by affixing same to the notice board on such barrack, or on some other conspicuous place on the front of such barrack. The manner of posting such summary on a court house, shall be by affixing same to the door of such court house, or some other conspicuous place on the front of such court house.

(a) For Form, see *post*, p. 613.

4. The time within which such summary shall be so posted, shall be fourteen days after sending the registered letter containing a copy of said notice to the tenant of the holding, or within such further or other time as the Court or a Judge shall sanction or direct.

5. Service of the notice mentioned in the said 7th section, by sending a copy thereof in a registered letter addressed to the tenant,

Rules of
1881.
Order 47

and by sending a copy thereof by registered letter (a) to every person served with the writ in such ejectment, who at the time of the service of the notice shall be in possession of the land, addressed to every such person upon the land, shall be good service of such notice on all the persons required to be served therewith under the provisions of said Section.

(a) The service is complete on the day the registered letters are posted, even though they may not be received until a subsequent day. (per MORRIS, C.J.), *Reg. v. Justices of Carlow*, 24 L. R. I., at p. 494; see also *Vandeleur v. M'Grath*, 20 L. R. Ir. 437.

6. If at the time of the service of the notice mentioned in the said 7th Section, no person who has been served with the writ of summons shall be in possession of the land mentioned therein, service of such notice may be effected by posting a copy thereof in a manner similar to that hereinbefore provided in Rule 3, for posting the summary therein mentioned.

7. The time within which a copy of the notice mentioned in the said 7th Section must be filed in Court shall be twenty-one days after the service thereof, (a) and such copy shall be so filed by delivering same to the proper officer, in the office of the Division of the High Court in which the judgment has been recovered.

(a) In *Bandon v. Hurley*, 23 I. L. T. R. 7, the time was extended by the Court upon a motion *ex parte* by the plaintiff. And in *Prorost of Trinity College v. Lynch*, 6 I. W. L. R. 188, the Court allowed a writ of *habere* to issue though a copy of the notice was not filed.

8. The mode of proving service of all notices under the said Act, and the date or dates of such service, shall be by affidavit or affidavits, (a) to be filed with the proper officer of the Division of the High Court in which judgment shall have been recovered.

(a) No time is now limited for filing this affidavit. Under the Rules of Sept., 1887, it was necessary that it should be filed within the time limited for filing the copy of the notice.

9. Service of the summons under the 86th Section of the Landlord and Tenant Law Amendment Act (Ireland), 1860 (23 & 24 Vict., c. 154), may be effected either according to the ordinary mode of service (a) or by posting a copy thereof on the petty sessions or other court house in the district, (b) by affixing same to the door of such court house or other conspicuous place on front of same, and by sending by post a copy of such summons in a registered letter addressed to the person to be served at his usual place of residence

provided that such postings and transmission by post shall be effected at least seven days before the petty sessions for the district at which such person shall be required to appear.

Rules of
1891.
—
Order 47

(a) *i.e.*, as prescribed by L. and T. Act, 1860, Sec. 87, *ante*, p. 145.

(b) As to the meaning of the word "district," see *Birmingham v. Turner* (24 L. R. Ir. 321; 23 I. L. T. R. 37), referred to *ante*, p. 409.

10. The writ of possession, under which possession of a holding may be recovered after the expiration of the period of redemption has expired, pursuant to the provisions of the said 7th Section, shall be in the Form No. 7 in Appendix H. (a), with such variations as circumstances may require.

(a) For Form, see *post*, p. 614.

11. The writ of possession, by which a judgment in an action for the recovery of land shall be executed after the stay upon the execution of such judgment has been removed in consequence of default made in complying with an order of the Court for the payment of any instalment of the arrears of rent and costs, or such sum in lieu thereof as in the 30th Section of the Land Law (Ireland) Act, 1887 (50 & 51 Vic., c. 33), is mentioned, shall be in the Form No. 8 in Appendix H. (a), with such variations as circumstances may require.

(a) For Form, see *post*, p. 614.

12. Upon any judgment or order for the recovery of any land and mesne profits, arrears of rent, double rent, damages, or costs, there may be either one writ or separate writs of execution for the recovery of possession and for the mesne profits, arrears of rent, double rent, damages or costs (a) at the election of the successful party.

(a) Formerly it was held that if a writ of possession was issued before the costs were taxed, the plaintiff could not afterwards issue execution for the costs: *Beasley v. Chapman*, 6 L. R. I. 393; but that case was overruled by *Harold v. Daly*, 24 L. R. Ir. 412.

13. Upon every writ of possession in any action for the recovery of land for non-payment of rent, there shall be a statement of the amount of rent then due; and if at any time before execution executed the defendant shall pay to the sheriff the sum so marked for rent and the costs, such sheriff shall stay such execution, and shall indorse on such writ, as a return thereto, the receipt of such rent and costs. (a)

Rules of
June, 1892.

(a) This Rule, though it purports to apply to every writ of possession, seems to be entirely inappropriate to cases within the 7th Section of the Land Act, 1887, where the period for redemption must have expired before the writ of possession is issued. The form given in the Appendix (No. 7) contains no statement as to the amount of rent due, corresponding to that in Form 8, under the 30th Section of the same Act. See *post*, p. 614.

RULES OF THE SUPREME COURT UNDER SECTION 25
OF THE PURCHASE OF LAND (IRELAND) ACT, 1891.

The following Rules may be cited as "The Rules of the Supreme Court (Ireland), June, 1892," and each Rule may be cited separately, according to the heading and number thereof, with reference to, and as part of, the Rules of the Supreme Court (Ireland), 1891.

ORDER XLVII.

14. An application by the Irish Land Commission to the High Court for an order to the Sheriff to put them in possession of a holding under the Purchase of Land (Ireland) Act, 1891 (54 & 55 Vic, c. 48), s. 25, shall be by motion on notice.

15. Such notice shall be served on every person in the actual possession of the holding or any part thereof as owner; but the Court or a Judge may direct the same to be served on any other person in lieu of or addition to such owner.

16. Rules 4, 5, 14, 15, and 19 of Order IX., and Orders X and XI., (a) shall, so far as applicable, apply to such notice as if the same were a writ of summons.

(a) Order IX. deals with the service of writs of summons generally; Order X with substituted service; and Order XI. with service out of the jurisdiction.

17. Every affidavit of service of such notice shall state that the deponent knows not of any person other than those who have been served who is in the actual possession of the holding or any part thereof as owner.

18. Unless the Court or a Judge give special leave to the contrary, there shall be at least seven clear days between the service of such notice and the day on which the motion is heard.

19. After the expiration of the time limited by such order, an within six months from such expiration, and upon production t

the proper officer of the High Court of a certificate of the Irish Land Commission that the amount ascertained and determined in such proceeding to be due to the Irish Land Commission, together with the costs of such proceedings, have not been paid, such officer shall sign an indorsement to that effect upon the said order, and such order shall thereupon issue.

Rules of
June, 1892

20. Such order and indorsement may be in the Form No. 13, in Appendix H., (a) with such variations as circumstances may require.

(n) See *post*, p. 615.

21. The delivery to the sheriff of such order bearing the indorsement mentioned in Rule 19 of this order, shall be sufficient authority to the sheriff to forthwith execute such order

22. Rules 13, 21, 22, and 23 of Order XLII., (a) shall, so far as applicable, apply to such order as if the same were a writ of possession.

(n) The Rules referred to specify the time during which a writ of possession remains in force; and when, and how, it may be renewed, or re-executed.

FORMS ATTACHED TO RULES OF SUPREME COURT.

APPENDIX H.—FORMS OF WRITS

No. 5.

WRIT OF POSSESSION.

VICTORIA, by the Grace of God, &c. To the sheriff of greeting Whereas lately in our High Court of Justice in Ireland, by a judgment of the Division of the same Court [*A. B.* recovered] or [*C. D.* was ordered to deliver to *A. B.*] possession of all that with the appurtenances in your bailwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said *A. B.* to have possession of the said lands and premises with the appurtenances. And in what manner, &c.

And have you there then this writ.

Witness, &c.

No. 6.

SUMMARY OF NOTICE UNDER THE 7TH SECTION OF THE LAND LAW (IRELAND) ACT, 1887.

To *C. D.*, &c.

A judgment for the recovery of the lands of for non-payment of rent has been recovered by the above-named *A. B.*

Any person entitled by law to redeem the said lands must do so within a period of six months from the service [or posting] of the said notice. Such person must pay

Forms under
Rules of
1891.

to *A. B.* [landlord's name], at _____, or *G. H.* [agent's name], at _____, or lodge in the _____ Division of the High Court, the rent, arrears, and costs within the said period of six months. The particulars of the rent and costs are as follows.—
[set them out as in the judgment or decree].*

On the service [or posting] of the said notice, the persons to whom the notice is addressed, being in possession of any part of the lands, are deemed to be in possession as caretakers only, and not as tenants.

Signed by *G. H.* for *A. B.**

Dated, &c

No. 7.

WRIT OF POSSESSION ON EXPIRATION OF PERIOD OF REDEMPTION UNDER THE LAND LAW (IRELAND) ACT, 1887, SECTION 7. †

VICTORIA, by the Grace of God, &c. To the sheriff of _____ greeting: Whereas lately in our High Court of Justice in Ireland, by a judgment of the _____ Division of the same Court, the said *A. B.*, the plaintiff, recovered possession of all that _____ with the appurtenances in your bailiwick. And whereas the period for the redemption of said premises has expired: Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same and without delay you cause the said *A. B.* to have possession of the said lands and premises, with the appurtenances. And in what manner, &c.

And have you then there this writ.

Witness, &c.

This writ was issued, &c.

No. 8.

WRIT OF POSSESSION AFTER STAY OF EXECUTION REMOVED UNDER THE LAND LAW (IRELAND) ACT, 1887, SECTION 30.

VICTORIA, by the Grace of God, &c. To the sheriff of _____ greeting: Whereas lately in our High Court of Justice in Ireland, by a judgment of the _____ Division of the same Court, the said *A. B.*, the plaintiff, recovered possession of all that _____ with the appurtenances in your bailiwick. And whereas by an Order of the said Division it was ordered that the sum of £ _____ being [the sum agreed upon between the parties in satisfaction of] the arrears of rent due up to the _____ day of _____ and the costs should be paid by instalments. And whereas default has been made in complying with said Order. Therefore we command you, that you omit not by reason of any liberty of your county, but that you enter the same and without delay you cause the said *A. B.* to have possession of the said lands and premises, with the appurtenances. And in what manner, &c.

And have you then there this writ.

Witness, &c.

This writ was issued, &c.

Amount due to plaintiff £ _____ sterling, balance of sum directed to be paid to plaintiff by instalments, by order of the _____ day of _____ 18 _____ as verified by the affidavit of _____

* Even though part of the rent may have been subsequently paid. See *Kane v. Mulholland*, 28 L. R. Ir. 59, and notes, *ante*, p. 408.

* Personal signature by the landlord or his agent is not necessary: *Browne v. Kinsella*, 24 L. R. Ir. 99. See *ante*, p. 408.

† See as to this Form, note to Order XLVII., Rule 13, *ante*, p. 611

Where no sum
agreed on, strike
out words in
brackets.

Amount [agreed upon in satisfaction]* of rent to	the	day of	18	Forms under Rules of 1891.
and costs, - - - - -	-	-	£	
Amount of instalments paid	-	-	£	
Balance due	-	-	£	
Dated this	day of	18		Solicitor for plaintiff.

No. 13.

ORDER TO SHERIFF TO PUT IRISH LAND COMMISSION IN POSSESSION OF HOLDING UNDER
"THE PURCHASE OF LAND (IRELAND) ACT, 1891," s. 25. †
In the High Court of Justice in Ireland,
Division.

In the matter of "The Purchase of Land (Ireland) Act, 1891" (54 & 55 Vic., c. 48), s. 25.

A. B.
C. D.

Vendor;
Purchaser.

Upon hearing and upon reading the Certificate of the Irish Land Commission, dated the day of 18, whereby it is stated that the following holding, namely, all that situate in the barony of and county of is charged with the repayment to the Irish Land Commission of an advance of £ with interest thereon, the affidavit of filed and, and it appearing that the Irish Land Commission are entitled to cause such holding to be sold for the non-payment of the sum hereinafter mentioned, and ascertained, and determined in this proceeding to be due to them in respect of such advance, it is hereby declared that there is due to the Irish Land Commission, in respect of such advance, the sum of £. And it is ordered that the sheriff of the said county do omit, not by reason of any liberty of his county, but that he enter the same, and without delay cause the said Irish Land Commission to have possession of the said lands and premises with the appurtenances. And that in what manner he shall have executed this our Order he do make appear to us in our said Court immediately after the execution thereof. And do have there then this Order. And one calendar month [or such other period as may be ordered] from this date is hereby limited as the time within which, if the said sum of £, together with the costs of these proceedings, shall be paid to the Irish Land Commission, this Order shall not issue or be executed. And it is ordered that it be referred to the proper officer to tax the costs of this application and the proceedings thereon.

Dated the day of 18.

Indorsement to be made on Order before issue thereof.

After the expiration of the time by the above Order limited for payment, a certificate of the Irish Land Commission, that the sum of £ above mentioned, together with the costs of these proceedings, had not been paid, was produced to the proper officer of the High Court.

Dated
Signed,

Issued the day of 18.

This Order was taken out by of [registered place of business], Solicitor for the Irish Land Commission.

NOTE.—The delivery to the Sheriff of this Order, bearing the above indorsement, shall be sufficient authority to the sheriff to forthwith execute this Order.

* Where no sum agreed on, strike out words in brackets.

† As provided by Rules of Supreme Court, June, 1892. See ante, p. 613

SUPREME COURT (IRELAND).

RULES

Rules of
March, 1897.MADE IN PURSUANCE OF SECTION 12 OF THE LAND LAW (IRELAND)
ACT, 1896.*March, 1897.*

The following Rules may be cited as the "RULES OF THE SUPREME COURT (IRELAND), MARCH, 1897," and each Rule may be cited separately, according to the heading and number thereof, with reference to, and as part of, the Rules of the Supreme Court (Ireland), 1891.

Rule 23 of Order XII, and Rule 6 of Order XXI., of the Rules of the Supreme Court (Ireland), 1891, are hereby annulled.

ORDER III.

6A In all actions for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character for non-payment of rent, the writ of summons shall be specially endorsed, under Rule 6 of this Order, with a statement of the plaintiff's claim. Such special indorsement shall state that—

(a) There is no person in occupation as tenant otherwise than as immediate tenant to the plaintiff of the premises sought to be recovered or any part thereof, and the plaintiff claims to recover clear possession of the same premises, and to have the judgment in the action executed against all persons in occupation of the same; or,

(b) There is or are a person or persons in occupation as tenant or tenants otherwise than as immediate tenant or tenants to the plaintiff of the premises sought to be recovered or some part thereof.

In case the plaintiff alleges that there is any person in occupation as tenant otherwise than as immediate tenant to the plaintiff of the premises sought to be recovered or any part thereof the special indorsement shall, so far as reasonably can be done, state the name of every such person, and show what portion of the said premises is occupied by him; and shall further state as

to such person whether the plaintiff admits, denies, or is ignorant as to his right, under Section 12 of the Land Law (Ireland) Act 1896 (59 and 60 Vic., c. 47), notwithstanding judgment for the plaintiff in the action, to retain possession as immediate tenant to the plaintiff of the portion of the said premises so in his occupation, and not to have such judgment executed against him. In case the plaintiff denies the right under the said Section of any such person as aforesaid, notwithstanding judgment for the plaintiff in the action, to retain possession as immediate tenant to the plaintiff of the portion of the said premises so in his occupation, and not to have such judgment executed against him, the special indorsement shall state the facts on which the plaintiff relies in denial of such right. Such special indorsement shall be in such one of the Forms Nos. 1, 2, and 3 in Appendix C., Section VIII., as shall be applicable to the case, with such variations as circumstances may require, and shall in the cases of the said Forms Nos. 2 and 3 have added thereto the note in the said Forms respectively contained.

**Rules of
March, 1897.**

ORDER XII.

22A. Where any person entering an appearance in an action for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character for non-payment of rent, is in occupation of such holding as sub-tenant thereof, and merely claims to be entitled under Section 12 of the Land Law (Ireland) Act, 1896 (59 & 60 Vic., c. 47), notwithstanding judgment for the plaintiff in the action, to retain possession of such holding as immediate tenant to the plaintiff, and not to have such judgment executed against him, he shall be at liberty to limit his memorandum of appearance accordingly. The memorandum shall state whether such person so defends in respect of all the premises sought to be recovered or part only thereof, and shall in the latter case describe such part with reasonable certainty. It shall also state full particulars of his sub-tenancy, including the rent payable in respect thereof, the gale days, and the amount then due for arrears of such rent up to the last gale day, and the name of his immediate landlord. An appearance, where the memorandum is not limited as above mentioned, or where it does not contain the statements prescribed by this Rule, shall be deemed to be an appearance to defend generally, and in respect of all the premises sought to be recovered.

Rules of
March, 1897.

22B. Where an appearance is limited in accordance with Rule 22A of this Order the plaintiff shall be at liberty by notice to confess the right, under Section 12 of the Land Law (Ireland) Act, 1896, of the person so limiting his appearance, notwithstanding judgment for the plaintiff in the action, to retain possession as immediate tenant to the plaintiff of the holding described in his memorandum of appearance. Such notice shall be served and filed in the proper office of the division to which the action is assigned within twenty-one days after appearance. The person whose right is so confessed shall, where the special indorsement on the writ of summons does not deny such right, abide his own costs of appearance, unless the Court or a Judge shall otherwise direct.

23. Save as in Rule 22A of this Order mentioned a defence to a writ of summons for the recovery of land for non-payment of rent shall be a defence for all the lands and premises claimed in the indorsement thereon; and in case a defendant shall desire to take defence for part only of the premises, upon the ground that such part is not included in the tenancy sought to be evicted, he shall make a special application to the court for that purpose. Applications under this Rule shall be made on notice grounded on affidavit, and may be made before appearance or within forty days after appearance.

ORDER XIII.

9A. In an action for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character for non-payment of rent, judgment shall be entered under the last preceding Rule until an affidavit has been filed made by the landlord, his agent, receiver or clerk, verifying the special indorsement on the writ of summons. Such affidavit may be in the Form No. 8, Appendix A, Part I.

ORDER XXI.

5A. A person who has appeared in an action for the recovery of a holding or of lands including a holding agricultural or pastoral or partly agricultural and partly pastoral in its character for non-payment of rent, and has limited his appearance in accordance with Rule 22A of Order XII., shall deliver his defence (if any) within thirty-one days after his appearance, unless such time is extended by the Court or a Judge.

6. In cases not within Rule 5A of this Order where a statement of claim is delivered to a defendant he shall deliver his defence within ten days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

Rules of
March, 1897.

ORDER XXVII.

8A. In an action for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character for non-payment of rent, no judgment shall be entered under the last preceding Rule until an affidavit has been filed made by the landlord, his agent, receiver, or clerk, verifying the special indorsement on the writ of summons. Such affidavit may be in the Form No. 8 in Appendix A., Part I.

APPENDIX A.

PART I.

No. 8.

AFFIDAVIT VERIFYING SPECIAL INDORSEMENT UNDER ORDER XIII., RULE 9A,
AND ORDER XXVII., RULE 8A.

I, *M. N.*, of _____ agent for the plaintiff [*or as the case may be*],
make Oath and say, that I have read the special indorsement on the writ of
summons in this action, and the same is true to the best of my knowledge, informa-
tion, and belief.

Sworn, &c.

APPENDIX C.

SECTION VIII.

WRITS OF SUMMONS—SPECIAL INDORSEMENTS.

ACTIONS FOR RECOVERY OF A HOLDING, OR OF LANDS INCLUDING A HOLDING,
AGRICULTURAL OR PASTORAL, OR PARTLY AGRICULTURAL AND PARTLY PASTORAL,
FOR NON-PAYMENT OF RENT.

No. 1.

No Person in occupation as tenant otherwise than as immediate tenant to plaintiff.

1. The lands of _____ in the Barony of _____ and County of _____,
containing _____ are held from the plaintiff under a lease dated, &c. [*or as the
case may be*], at the yearly rent of £ _____, and the sum of £ _____, being one
year and upwards of such rent, due and ending the _____ is due to the plaintiff.

2. There is no person in occupation as tenant otherwise than as immediate tenant
to the plaintiff of the said lands or any part thereof.

Rules of
March, 1867.

The plaintiff claims to recover clear possession of the said lands and to have the judgment in this action executed against all persons in occupation of the same.

Particulars of rent due.—

189 . Nov. 1.—Balance of half-year's rent	-	-	-	£
189 . Nov. 1.—One year's rent	-	-	-	£

£

Place of Trial

Signed,

No. 2.

Persons in occupation as tenants otherwise than as immediate tenants to plaintiffs Rights under Sec. 12 of Land Law Act, 1896, admitted or denied.

1. [As in Form No. 1, or as the case may be.]

2 *G. H.* is in occupation of the entire of the said lands as subtenant thereof, and the plaintiff admits his right under Section 12 of the Land Law (Ireland) Act, 1896 notwithstanding judgment for the plaintiff in this action, to retain possession, as immediate tenant to the plaintiff, of the said lands, and not to have such judgment executed against him [or, *G. H.* is in occupation of a house and 30 acres of the said lands as sub-tenant thereof, and *K. L.* is in occupation of a cottage and 20 acres being the residue of the said lands as sub-tenant thereof. The plaintiff admits the right of the said *G. H.* under Section 12 of the Land Law (Ireland) Act, 1896 notwithstanding judgment for the plaintiff in this action, to retain possession, as immediate tenant to the plaintiff, of the said house and 30 acres, and not to have such judgment executed against him; but denies any such right in the said *K. L.* in respect of the said cottage and 20 acres for the reasons following—The said cottage and 20 acres do not constitute a holding to which the said section applies (The non-payment of the said rent was due to the non-payment of rent by the said *K. L.*, or any other matters which show that the said Section does not apply to the case of the said *K. L.*)]

The plaintiff claims judgment for possession of all the said lands as against—[the immediate tenant to the plaintiff] [and claims to recover clear possession from the said *K. L.* of the said cottage and 20 acres and to have execution for the same]

Particulars, &c., as in Form No. 1

NOTE.—If any person served with the writ of summons in this action is in occupation of the whole or any part of the said lands as sub-tenant of a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character, and merely claims to be entitled under Section 12 of the Land Law (Ireland) Act, 1896 notwithstanding judgment for the plaintiff in this action, to retain possession of such holding as immediate tenant to the plaintiff and not to have such judgment executed against him, he may limit his memorandum of appearance accordingly. In such case the memorandum shall state whether he so defends in respect of the said lands or part only thereof, and shall in the latter case describe such part with reasonable certainty. It shall also state full particulars of such sub-tenant including the rent payable in respect thereof, the gale days, and the amount of due for arrears of such rent up to the last gale day, and the name of such person as immediate landlord.

No. 3.

Persons in occupation as tenants otherwise than as immediate tenants to plaintiff.

Rules of
March, 1897.

Plaintiff ignorant as to rights under Sec. 12 of Land Law Act, 1896.

1. [*As in Form No. 1, or as the case may be.*]

2. *G. H.* is in occupation of a house and one field adjoining same as sub-tenant thereof; *K. L.* is in occupation of a house and about three acres of land adjoining same; and the defendant, *C. D.*, is in occupation of the residue of the said lands as immediate tenant to the plaintiff under the said lease [*or as the case may be*]. The plaintiff is ignorant as to the rights of the said *G. H.* and *K. L.*, under Section 12 of the Land Law (Ireland) Act, 1896, notwithstanding judgment for the plaintiff in this action, to retain possession, as immediate tenants to the plaintiff, of the said house and field and the said house and three acres, respectively, and not to have such judgment executed against them.

The plaintiff claims judgment for possession of all the said lands as against the said *C. D.*, and to recover clear possession and have execution for the same, save so far as the said *G. H.* or *K. L.* establish such a right as aforesaid in respect of the premises so in his occupation as above mentioned.

Particulars, &c., as in Form No. 1.

NOTE.—As in Form No. 2.

APPENDIX F.

No. 11.

JUDGMENT IN ACTION FOR RECOVERY OF LAND WITHIN ORDER III., RULE 6A, WHERE NO PERSONS ARE ENTITLED TO RETAIN POSSESSION UNDER SECTION 12 OF THE

LAND LAW (IRELAND) ACT, 1896.

[*Heading as in Form 1.*]

The day of 18 .

No appearance, &c., as in No. 3 [*or the action having, &c., as in No. 6, or as the case may be.*] It is adjudged that the plaintiff recover possession of the land in the indorsement on the writ described, and that he do have execution for the same [and that he do recover against £ for his costs.]

No. 12.

JUDGMENT IN ACTION FOR RECOVERY OF LAND WITHIN ORDER III., RULE 6A, WHERE A SUB-TENANT IS ENTITLED TO RETAIN POSSESSION UNDER SECTION 12 OF THE

LAND LAW (IRELAND) ACT, 1896.

[*Heading as in Form 1.*]

The day of 18 .

No appearance, &c., as in No. 3 [*or, an appearance having been entered by G. H., merely claiming to be entitled, under Section 12 of the Land Law (Ireland) Act, 1896, notwithstanding judgment for the plaintiff in the action, to retain possession of the land in the indorsement on the writ described (or, of the portion of the land in the indorsement on the writ described, consisting of the house and 30 acres of land in his occupation), as immediate tenant to the plaintiff, and not to have such judgment executed against him, and the plaintiff having confessed such right of the said G. H., and save as aforesaid no appearance having been entered to the writ of summons herein, or the action having, &c., as in No. 6, or as the case may be.*] It is adjudged that the plaintiff recover as against [The plaintiff's immediate tenant] possession of the land in the indorsement on the writ described, but that no execution do issue in respect of same [*or, and that he have execution for possession of the said land, save the said house and 30 acres, and that no execution do issue in respect of the said house and 30 acres*] [and that he do recover against, &c.]

LAND LAW (IRELAND) ACT, 1896.

LAND COMMISSION AND LAND JUDGE.

REGULATIONS

MADE IN PURSUANCE OF SECTION 23, SUB-SECTION 4, OF THE LAND
LAW (IRELAND) ACT, 1896.

18th day of September, 1896.

Regulations
of
Sept., 1896.

It is this day ordered, pursuant to the provisions of the 23 Section of the Land Law (Ireland) Act, 1896, that the following Regulations shall, from and after this date and until further order take effect and be in force in the Land Commission and Land Judge's Court respectively.

ORDER I.

CONSTRUCTION OF TERMS.

In these Regulations "High Court" shall mean the High Court of Justice in Ireland; "Land Commission" shall mean the Land Commission; "the Land Judge" shall mean the Land Judge of the Chancery Division of the High Court; "a Land Judge" shall include the Judicial Commissioner of the Land Commission when acting as a Land Judge; "Judicial Commissioner" shall mean the Judicial Commissioner of the Irish Land Commission or a Land Judge of the Chancery Division of the High Court acting as an additional Judicial Commissioner; "Examiner" shall include First Assistant Examiner and Assistant Examiner; "the Examiner" shall mean the Examiner to whom the proceedings in question are for the time being assigned; and "Land Commission Rules" shall mean General Rules of the Land Commission under the Land Purchase Acts.

ORDER II.

OFFICERS.

Examiners to
Land Judge and
Land Commission
to have
authority in
both Courts

1. For the purpose of discharging any duties that may be imposed on them in pursuance of Sub-section 3 of Section 23 of the Land Law (Ireland) Act, 1896, the Examiners attached to the Chamber of the Land Judge shall have all the powers and authority vested in, or to be exercised by the Examiners of the Land Commission, and the Examiners of the Land Commission

shall have all the powers and authority vested in, or to be exercised by the Examiners attached to the Chamber of the Land Judge. Regulations of Sept. 1896.

2. The Examiners shall have power to administer oaths and affirmations in all matters pending before a Land Judge. Power to administer oaths

3. The Examiners attached to the Chamber of the Land Judge and of the Land Commission shall have authority to send for any record, or document lodged in either Court which they may require for the discharge of their duties, and which is usually permitted to be removed from its place of custody for the use of an Officer of the Court. The Examiners shall see that records and documents so sent for are not inspected or used for any unlawful or improper purpose while in their custody. Power to send for records

4. The Accountant-General of the Supreme Court of Judicature in Ireland shall permit Guaranteed Land Stock or money to be lodged in the High Court by the Irish Land Commission, or by other persons, in pursuance of the order of a Land Commissioner. or the direction of an Examiner of the Land Commission, and shall, when required, issue the necessary authority to enable such lodgment to be made. Accountant-General shall permit money to be lodged by Order of Land Commission

ORDER III.

PAYMENT INTO THE HIGH COURT OF THE PROCEEDS OF SALES UNDER THE LAND PURCHASE ACTS.

1. The purchase-money of land sold under the Land Purchase Acts, less by such portion thereof (if any) as may be retained as a Guarantee Deposit, shall, unless the land has been sold by the Land Commission under a power of sale statutory or otherwise, be paid into the High Court to be distributed by a Land Judge among the parties entitled thereto— Cases in which purchase money is to be paid into the High Court.

- (a.) in all cases in which such land is the subject matter of proceedings which originated before the Land Judge;
- (b.) in all cases in which such land is the subject matter of proceedings which originated in the Land Commission where the lodgment of a Final Schedule of Incumbrances is necessary for the distribution of the purchase-money;*
- (c.) in any other case in which a Judicial Commissioner shall direct it to be so paid.

*This rule has been amended by omitting clause b. See rule 9th January, 1901, *post*, p. 642.

Regulations of Sept., 1896. 2. *Subject to any direction that may be given by a Judicial Commissioner, the Examiner shall certify if the lodgment of Final Schedule of Incumbrances may be dispensed with.**

Purchase money of land sold by Land Commission to be distributed by them 3. The purchase-money of land sold by the Land Commission under a power of sale statutory or otherwise, shall be retained and distributed by the Land Commission, unless a Judicial Commissioner otherwise directs.

Guarantee deposit 4. If in making a payment of purchase money into the High Court, the Land Commission retain any portion thereof as Guarantee Deposit, such Guarantee Deposit shall, subject to the rights of the Land Commission in respect thereof, abide the order of a Land Judge.

Appearances 5. When the purchase-money of land which is the subject-matter of proceedings which originated in the Land Commission has been paid into the High Court, it shall be the duty of the Solicitor for the Vendor to produce a certificate of the appearances (if any) that have been entered in the Land Commission to the Registrar of the Land Judges' Court, who shall thereupon cause appearances to be entered in his office for all persons named on such certificate as having entered general appearances, or special appearances requiring notice of proceedings in reference to the distribution of the funds; and the proper officer shall endorse the minute on the certificate to the effect that the appearances have been so entered in the Land Judges' Court. All subsequent appearances in relation to the distribution of the funds and matters connected therewith shall be entered in the proper office in the Land Judges' Court.

ORDER IV.

DISTRIBUTION OF PROCEEDS OF SALES UNDER THE LAND PURCHASE ACTS.

Existing rules and directions to apply with modifications 1. When the purchase-money of land sold under the Land Purchase Acts has been paid into the High Court, the subsequent proceedings in relation to the distribution of such purchase-money shall be in accordance with the General Rules, Orders, and Directions for the time being in force in relation to proceedings for the sale of Estates before the Land Judges with the following modifications:—

Entitling of documents. (a.) The Final Schedule of Incumbrances, and all statements, notices, orders, affidavits, consents, undertakings, etc.

* This rule is now abolished. See rule of 9th January, 1901, p. 612, *post*.

cates, and other documents for the purpose of such proceedings shall be headed, "In the High Court of Justice in Ireland, Chancery Division, Land Judges—Land Purchase Acts," and shall bear the record number (if any), and be entitled in the matter in which the proceedings originated.

Regulations
of
Sept., 1896

- (b.) In preparing and settling the Final Schedule of Incumbrances regard shall be had to the directions in the Appendix hereto.
- (c.) The Final Notice to Claimants shall be in Form 1, in the Appendix hereto, with such variations and additions as the nature of the case may require. In the absence of any special direction to the contrary, it shall not be necessary to serve the Final Notice on the purchaser or purchasers.

Preparation of
final schedules of
incumbrances.

Final notice to
claimants

2. If the land sold be the subject matter of proceedings which originated in the Land Commission, the following additional regulations shall apply:—
- (a.) The Final Schedule of Incumbrances shall not be received for settlement until the certificate of the appearances entered in the Land Commission, with the minute of their entry in the Land Judges' Court endorsed, or a certificate that no appearances have been entered in the Land Commission, has been produced to the Examiner.
- (b.) The Final Schedule shall be lodged in the Examiners' office in the Land Commission, but it shall not be necessary to lodge it in duplicate, and the original shall be open to public inspection.
- (c.) Office copies of Final Schedules of Incumbrances, or of extracts therefrom, may be issued by the Keeper of Records of the Land Commission when the Schedule is in the custody of a Land Commission Examiner acting as an Examiner of the High Court, but such copies must be attested by an Examiner.
- (d.) All deeds and other documents which would in ordinary proceedings before the Land Judges be lodged with the Keeper of Deeds, shall be lodged in the Record Office of the Land Commission.

Additional
Regulations
when proceed-
ings originated
in Land
Commission

Lodgment of
final schedule of
incumbrances
for settlement

Not to be lodged
in duplicate.

Office copies of
final schedule of
incumbrances.

Deeds to be
lodged in Record
Office of Land
Commission.

Regulations
of
Sept., 1896

Final schedule
of incumbrances
lodged in Land
Judge's Court or
Land Commission may be
adopted

3. When a Final Schedule of Incumbrance has already been lodged in the Land Judges' Court or the Land Commission, a Land Judge may adopt such Schedule for the purpose of the distribution of the proceeds of the sales under the Land Purchase Acts on the estate, and in such case any further Final Notice to claimants shall be dispensed with, unless the Judge shall otherwise direct.

Claims under incumbrances created pending the proceedings and under judgment mortgages registered subsequently to the sale are allowed to be put on the schedule in proper priorities. *Finlay's Estate*, 29 Ir. L. T. R. 13.

ORDER V.

APPORTIONMENT AND REDEMPTION OF SUPERIOR INTERESTS.

The following regulations as to the apportionment, and redemption of Superior Interests as defined by Section 31 of the Land Law (Ireland) Act, 1896, shall apply when the land sold is the subject matter of proceedings which originated in the Land Judges' Court

I Apportionment.

Apportionment
of tithe rent-
charge payable
to Land
Commission

1. Applications for the apportionment of tithe rentcharge payable to the Land Commission, or of fixed annual instalments payable in lieu thereof, shall, unless a Land Judge otherwise directs, be made to the Land Commission in accordance with the Land Commission Rules

See Land Purchase Rules, March, 1897, Order XX., *post*, pp 830 832.

Apportionment
of land improve-
ment and drain-
age charges.

2. Applications for the apportionment of land improvement or drainage charges payable to the Commissioners of Public Works in Ireland, shall be made to such Commissioners, and the Examiner shall, if necessary, issue a requisition for that purpose. It shall be the duty of the solicitor having carriage of the proceedings to furnish such evidence and documents as may be required for the apportionment.

As to the apportionment of these rentcharges, see Land Act, 1887, Sec. 15, and notes thereto, *ante*, pp. 421-423. See also Sec. 72 of L. E. C. Act, 1858, *App.*, *post*, and Form 2, *post*, pp. 632-633

When the apportionment is by consent a statement of facts may be dispensed with. See L. C. Rules of 17th May, 1901, Or. II. r. 1, *post* p. 768

Applications for
apportionment
of other superior
interests to be
by statement of
facts

3. Applications for the apportionment of inappropriate tithe rent charges, quit or crown rents, rents, fees, services, rentcharges, or annuities, shall be made by Statement of Facts verified by the

Solicitor having carriage of the proceedings, or by such other person acquainted with the facts as the Judge may direct.

**Regulations
of
Sept., 1896.**

4. The Statement of Facts shall be fairly written on post paper, with sufficient margin, and shall be filed in the Registrar's Office. If the superior interest to be apportioned be charged upon other lands besides the estate of the owner in the matter, and it is proposed to apportion with a view of freeing the entire of the owner's land from the superior interest in question, it must be shown in the statement that such apportionment is expedient having regard to the contemplated sale of the residue of the estate or otherwise as the case may be.

**Preparation
and lodgment
of statement of
facts**

If the superior interest be contributed by the owners of the lands subject thereto in certain proportions, and it is proposed to apportion in like manner, the particulars of the origin of such contribution, whether under a partition or otherwise, should be set forth in the Statement.

The Statement shall be accompanied by an Ordnance Map, showing the entire lands out of which the superior interest to be apportioned is payable, and the portions between which it is proposed to apportion the same, and a certificate of the tenement valuation. The Statement shall be laid before the Judge, who shall make such order or direct such notices to be given as he shall think fit.

The map used for the purposes of the sale should be adopted when suitable.

5. When a Final Order for apportionment has been made a sealed counterpart thereof, written or printed on stout hand-made paper or parchment, shall be issued at the expense of the estate to the owner of the superior interest, and to the owner of any land upon which any portion of the superior interest which it is not intended to redeem has been apportioned. If four or more of such counterparts be required, the apportionment order shall be printed in such manner as the Judge may direct, and the original shall be filed in the Registrar's Office. If a map be referred to in the order it shall be drawn thereon by the Ordnance Survey Department.

**Sealed counter-
parts of
apportionment
order to be
issued to parties
interested;
printing of and
maps thereon**

6. A memorandum of the apportionment shall be endorsed by the Registrar upon the instrument creating the superior interest apportioned if such instrument be forthcoming.

**Memorandum of
apportionment
to be endorsed
on instrument
creating superior
interest.**

Regulations
of
Sept., 1896.
Forms of
statements of
facts

7. Statements of Facts for the apportionment of impropriate tithe rentcharge shall follow Form 2, for the apportionment of quit or crown rents shall follow Form 3, for the apportionment of rents, fees, duties, or services shall follow Form 4, and for the apportionment of rentcharges or annuities shall follow Form 5, with such variations and additions in each case as the circumstances may require.

See forms 2 and 3, *post*, pp. 632-634.

Certificate and
copy of state-
ment to be
lodged when
application is
for apportion-
ment of im-
propriate tithe
rentcharge, or
quit, or crown
rent

8. When application is made for the apportionment of an impropriate tithe rentcharge, or of a quit or crown rent, the tithe rentcharge or quit rent certificate, as the case may be, and a copy of the Statement of Facts shall be lodged with the original, and the Registrar shall, before presenting the Statement to the Judge, transmit such copy to the Superintendent of the Church Property Department of the Land Commission, or to the Quit Rent Office, as the case may be, for report.

Instrument
creating rent,
rentcharge, or
annuity to be
lodged with
statement

9. When application is made for the apportionment of any rent, fees, duties or services, or of a rentcharge or annuity, the instrument creating the superior interest to be apportioned shall be furnished with the Statement of Facts, unless it be already lodged in Court.

II. Redemption.

Application for
redemption of
superior
interests to be
made at hearing
of final schedule
of incumbrances.

10. Applications for orders for the redemption of all superior interests affecting the lands sold shall, if possible, be made at the hearing of the Final Schedule of Incumbrances, and the Judge's decision shall be signified by Rulings on the Schedule. Any person interested may, however, require an order to be made up in accordance with any such Ruling.

See notes to Land Act, 1896, Sec. 81, *ante*, pp. 569-572.

Redemption of
quit and crown
rents, tithe rent-
charge payable
to Land Commis-
sion, and land
improvement or
drainage
charges

11. When any quit or crown rent, tithe rentcharge payable to the Land Commission, or fixed annual instalments payable in lieu thereof, or land improvement or drainage charge, is being redeemed, the Solicitor having carriage of the proceedings shall produce to the Examiner at the vouching of the Final Schedule of Incumbrances, a receivable order from the Quit Rent Office, the Land Commission, or the Board of Public Works, as the case may be, to enable the redemption money and arrears, if any, to be lodged to the proper account in the Bank of Ireland. Such receivable order shall specify separately the amount of the redemption mon-

and of the arrears, and shall allow at least seven clear days from the date of vouching for lodgment.

Regulations
of
Sept., 1896.

As to the power of the Land Commission to order the redemption of head rents and rentcharges, see Land Act, 1887, Secs. 15 and 16, and notes thereto, *ante*, pp. 420-428.

12. The application for an order for the redemption of any other superior interest or of any apportioned part thereof shall, if made by the person entitled thereto, be made on notice to the Solicitor having carriage of the proceedings, and if made by such Solicitor shall be made on notice to the reputed owner of such superior interest. Service must also be made on such other persons as may have entered appearances requiring notice of such an application, or as would appear to be affected by such redemption.

Application for
Redemption of
other superior
interests to be
on notice.

The application should, where possible, be made at the hearing of the Final Schedule of incumbrances. See Rule 10, *ante*, p. 628.

In the case of redemption of tithe rent charge, where an estate is sold to tenants in the Land Judges Court, that Court is the proper tribunal to fix the redemption price: *Mundy's Estate* [1899] 1 Ir. R. 191.

13. When the redemption of any superior interest or of any apportioned part thereof shall have been ordered, unless the price be agreed upon between the parties, or the determining of it referred to the Judge, within fourteen days from the date of the Order, or within such further period as the Judge shall direct, the person who applied for such Order shall serve upon the other party a request in writing to appoint an arbitrator following Form 6.

Request to
appoint
arbitrator.

14. The Solicitor having carriage of the proceedings shall take the Judge's directions as to the appointment of an arbitrator on behalf of the owner of the lands. The submission to an Arbitration Court and the appointment of the arbitrator or arbitrators and umpire shall be in Form 7, or in accordance therewith, and shall be fairly written upon foolscap paper, with sufficient margin, and be lodged in the Registrar's Office before the first sitting of the Arbitration Court. It shall be the duty of the officer receiving such submission to arbitration to see that the signatures thereto, other than that of the Solicitor having carriage of the proceedings, are proved by affidavit.

Submission to
arbitration
court.

15. The award shall be on foolscap paper, with sufficient margin, and shall follow Form 8, as nearly as the circumstances of the case admit, and shall determine who is to bear the costs of the arbitra-

Award.

**Regulations
of
Sept., 1898.**

tion. When either party desires the award of a Court of Arbitration to be recorded, he shall within ten days from the making of such award serve notice on the opposite party of his intention to apply to the Court for such purpose. As soon as the Judge orders the award to be recorded it shall be filed in the Registrar's Office together with the submission.

Vouching of title to superior interest.

16. The person entitled to the price or compensation payable in respect of a superior interest shall, unless there be a sufficient reason to the contrary, attend before the Examiner on the vouching of the final schedule of incumbrances to prove his claim, and for that purpose shall, unless his title has already been investigated, file an affidavit setting forth concisely but accurately his title, and the particulars of all charges or incumbrances affecting his interest, and of any sum due for arrears or interest. Such affidavit may be lodged with the Examiner at any time after the final schedule of incumbrances has been ruled.

See directions as to preparation of this affidavit under the corresponding rule in the Land Commission Land Purchase Rules, Or. XX. r. 16, *post*, 834

Price of superior interest may be placed to separate credit and invested

17. If by reason of incumbrances affecting a superior interest or for any other reason the price or compensation payable in respect thereof cannot be distributed at the general allocation, the Judge may order such price or compensation to be paid into the Bank of Ireland to such credit as he may direct, and may make such order as may be just as to the investment thereof, and as to the payment of the dividends and interest thereon pending its distribution.

Memorandum of redemption of superior interest to be endorsed on instrument creating same

18. Except in the case of quit or crown rents, tithe rentcharge and land improvement or drainage charges, a memorandum of the redemption of a superior interest or of any apportioned part thereof shall be endorsed by the Examiner upon the instrument creating such superior interest, unless such instrument be retained in Court

ORDER VI.

SALES UNDER THE LAND PURCHASE ACTS ORDERED BY A LAND JUDGE

Documents to be lodged by solicitor in Land Commission.

1. When any sale under the Land Purchase Acts has been made by a Land Judge, the Solicitor for the purchaser, or the Solicitor having carriage of the proceedings, as the case may be, shall lodge in the Examiner's Office of the Land Commission the following documents:—

An attested copy of the rental (if any) upon which the estate or lot, as the case may be, was sold, with sealed map or maps annexed thereto. Regulations of Sept., 1896.

The privy of the Accountant-General for the lodgment of the advance.

The receipt for the lodgment of any portion of the purchase-money to be paid in cash by the purchaser.

An attested copy of any order made by a Land Judge as to the terms or conditions of the particular sale

Any other document which the Land Commission may require
The Land Commission shall then proceed to make the advance and vest and charge the holding in accordance with the Land Commission Rules.

2. Where sales to a number of purchasers have been made on any one estate at the same time, a single certificate comprising all the sales and a single privy for the lodgment of all the advances may be issued. Single certificate and privy comprising a number of sales may issue

3. If the conditions of sale or the Land Judge's order provide that the sales are to be made to the tenants free of expense, the amount of the stamp duty payable on the vesting orders shall be paid by the Solicitor having carriage of the proceedings, and he shall be entitled to the amount so paid as a first charge on the purchase-money, and the same may on application be paid to him notwithstanding that the final schedule of incumbrances may not have been lodged or ruled. Stamp duty to be paid by solicitor

ORDER VII.

TAXATION OF COSTS.

1. The costs of all proceedings in relation to sales under the Land Purchase Acts, the proceeds of which are distributed by the High Court, shall, whether such costs were incurred in relation to proceedings in the High Court or in the Land Commission, be taxed by one of the Taxing Masters of the High Court on notice to such persons as the Examiner may direct. To be taxed by a taxing master.

2. In the absence of any special Agreement between a Solicitor and his client, such costs shall, so far as the same were incurred in relation to proceedings in the High Court, be taxed according to the Schedule of Fees for the time being in force in relation to proceedings before the Land Judges, and so far as they were Scale of fees.

Regulations incurred in relation to proceedings in the Land Commission, shall
 of be taxed in accordance with the Schedule of Fees for the time
 Sept, 1896. being in force in relation to proceedings before the Land Commis-
 sion under the Land Purchase Acts.

FORMS PRESCRIBED BY REGULATIONS OF 18TH
 SEPTEMBER, 1896.

FORM 1.

Final Notice to Claimants and Incumbrancers.

In the High Court of Justice in Ireland.

Chancery Division—Land Judges.

Land Purchase Acts.

Title of Matter.

Take notice that the final schedule of incumbrances affecting [*Here describe the lands as they appear in the order for sale or originating statement, as the case may be, omitting the acreage in the case of entire townlands*] [parts of] which have been sold [and the residue of which it is contemplated selling] under the above Acts in fee simple freed and discharged from all superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896, and from all other charges and incumbrances, has been lodged in my office at [24, Upper Merrion Street, Dublin, (or) the Four Courts, Dublin]; and any person having any claim not therein inserted, or objecting thereto, either on account of the amount or of the priority of any charge therein reported as due to him or to any other person [*Here insert an special matter*], or for any other reason, is required to lodge an objection thereto stating the particulars of his demand and duly verified, with the registrar of the Court, on or before the day of 189 , and to appear on the following day, the day of 189, at o'clock, before Mr. Justice at his [Court (or) Chamber] at [*the Four Courts, Dublin, (or) 24, Upper Merrion Street, Dublin*], when instructions will be given for the final settlement of the schedule. And further take notice that any demand reported by such schedule liable to be objected to within the time aforesaid.

Dated this day of 189 .

Examiner.

Solicitor.

FORM 2.

Statement of Facts for the Apportionment of an Improprate Tithe Rentcharge.

Heading and Title of Matter.

The statement of facts of

Showeth—

1. That the lands described in the schedule hereto are subject to an annu-
 impropriate tithe rentcharge of £ s. d. payable to
2. That the said has been in receipt of the said rentchar-
 for [six years and upwards] as [*Here state whether as owner in fee simple, as tena-
 for life, as trustee, as lessee under a lease of the rentcharge, or how otherwise.*]
*the person entitled has not been in receipt of the rentcharge for six years, state of
 what period it has been paid to him.*]

3. That [parts of] the lands described in the first part of the said schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said owner]. **Regulations of Sept., 1898.**

4. That the lands described in the second part of the said schedule are the property of the said owner, but it is not intended selling them under the said Acts.

Variation when all the lands are not the property of the owner.

[4. That the lands described in the second part of the said schedule are not the property of the said owner, and the name and address of the reputed owner thereof is stated therein.]

5. That save the proceedings herein, there is not any suit or matter pending in any court in relation to the said rentcharge or lands, and that no person hereinbefore referred to as an infant, idiot, lunatic, or married woman—save [Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman.]

6. That it is expedient that the said rentcharge be apportioned, and the proposed apportionment set forth in the said schedule would be just and fair, having regard to the quantities and value of the lands and the rights of the persons interested.

Schedule referred to in the foregoing Statement.

Townland, Parish, Barony and County (Ordnance Survey Names only)	Reference to Map	Area in Statute Measure of each Townland or part of a Townland	Tenement Valuation	Proposed Apportionment	Observations
		A. R. P.	£ s. d.		
		FIRST PART.			
A.—Lands which have been sold.					
B.—Lands which it is contemplated selling.					
		SECOND PART.			
A.—Lands the property of the owner not intended to be sold.					
B.—Lands the property of	of				in the county of

I, the above-named _____, make oath and say that I have read the foregoing statement and the schedule thereto, and the same are true and accurate to the best of my knowledge, information, and belief.

Sworn, &c.

FORM 3.

Statement of Facts for the apportionment of Quit or Crown Rent.

Heading and Title of Matter.

The statement of facts of Showeth—

1. That the lands described in the schedule here to which form [part of] the ancient denomination of _____ are charged in the Crown Rental with a yearly

Regulations
of
Sept., 1896

(quit, crown, composition, or otherwise) rent of £ s. d. payable to Her Majesty the Queen under [Here specify the patent or other instrument creating the rent. If the application be for the apportionment of more rents than one, and they are charged upon different lands, there should be a separate schedule for each, and the statements should be varied accordingly] and which is in receipt from [A.B., or if the rent be contributed by two or more persons, the persons named in the said schedule in the proportions therein specified].

[Here add the circumstances (whether under the provisions of a deed or otherwise) in which the rent is so contributed.]

2. That [parts of the lands described in the first part of the said schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said owner]

3. That the lands described in the second part of the said schedule are not the property of the said owner, and the names and addresses thereof are stated therein

Variation when all the lands are the property of the owner.

[3. That the lands described in the second part of the said schedule are the property of the said owner, but it is not intended selling them under the said Acts

4. That no apportionment of the said rent has heretofore been made.

5. That save the proceedings herein, there is not any suit or matter pending any court in relation to the said lands, or to the rents and profits thereof, and that no person hereinbefore referred to is an infant, idiot, lunatic, or married woman save [Here state the particulars of any suit or matter, and the names of any person under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman].

6. That it is expedient that the said rent should be apportioned, and that the proposed apportionment set forth in the said schedule would be just and fair having regard to the quantities and value of the lands and the rights of the parties interested.

Schedule referred to in the foregoing Statement.

Townland, Barony and County (Ordnance Survey Names only)	Reference to Map	Area in Statute Measure of each Townland or part of a Townland	Tenement Valuation	Names and Addresses of Owners of reputed Owners	Persons by whom Quit or Crown Rent has heretofore been paid and in what proportions	Proposed Apportionment
		A. R. P.	£ s. d.		£ s. d.	£ s. d.
FIRST PART						
A.—Lands which have been sold.						
B — Lands which it is contemplated selling						
SECOND PART.						

Affidavit as in Form 2.

FORM 4.

Statement of Facts for the Apportionment of Rent, Fees, Duties, or Services.

Regulations
of
Sept., 1896.

Heading and Title of Matter with the following addition —

And in the matter of the apportionment of a rent of £ s. d. (or otherwise as the case may be) created by an indenture of [fee-farm grant or lease] dated the day of 18 .

The Statement of facts of Showeth—

1. That by the above-mentioned indenture of fee-farm grant (or lease) which was made between A. B. of the one part and C. D. of the other part, the said A. B. [in pursuance of the provisions of the Renewable Leasehold Conversion Act, or otherwise as the case may be] granted (or demised) to the said C. D. the lands described in the schedule hereto and in the said indenture described as [Here insert the description of the lands as in the grant or lease] to hold to the said C. D. and his heirs for ever (or his executors, administrators, and assigns for the term of, &c.) subject to the yearly rent of £ s. d., payable half-yearly as therein mentioned, and to certain conditions, covenants, and agreements on the grantee's (or lessee's) part therein contained [Here state shortly the particulars of any instrument or circumstances by which the lands were partitioned, or by which any special liability for, or indemnity against any portion of the rent was created, with such statement of the devolution of title as may be necessary to make the statement of facts intelligible to the Judge].

2. That E. F. of , is the owner of the said rent of £ s. d., and has been in receipt thereof for years and upwards.

3. That the said (i.e., the person making the statement of facts) has made inquiries to ascertain if there is any superior rent affecting the interest of the said E. F., and to the best of his knowledge, information, and belief, there is no such superior rent (or otherwise, as the case may be).

4. That [parts of] the lands described in the first part of the said schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said owner.]

5. That the lands described in the second part of the said schedule are not the property of the said owner, and the names and addresses of the reputed owners thereof are stated therein.

Variation when all the lands are the property of the owner.

[5. That the lands described in the second part of the said schedule are the property of the said owner, but it is not intended selling them under the said Acts.]

6. That save the proceedings herein there is not any suit or matter pending in any court in relation to the said rent or lands, and that no person hereinbefore referred to is an infant, idiot, lunatic, or married woman—save [Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman].

7. That it is expedient that the said rents should be apportioned, and the proposed apportionment set forth in the said schedule would be just and fair, having regard to the quantities and value of the lands, and the rights of the parties interested.

Regulations
of
Sept, 1896.

Schedule referred to in the foregoing Statement.

Townland, Barony and County (Ordnance Survey Names only)	Reference to Map	Area (statute Measure of each Townland or part of a Townland)	Tenement Valuation	Names and Addresses of Owners or reputed Owners	Proportions in which the Rent has heretofore been paid	Proposed Apportionment	Observations
FIRST PART.							
A.—Lands which have been sold.							
B.—Lands which it is contemplated selling.							
SECOND PART.							

Affidavit as in Form 2

FORM 5.

Statement of Facts for the apportionment of a Rentcharge or an Annuity.

Heading and Title of Matter, with the following addition —

And in the matter of the apportionment of a rentcharge (or annuity) of £
created by a deed dated the day of 18 .

The statement of facts of

Showeth—

1. That by the above mentioned deed, dated the day of
18 , and made between [*Here state the parties to the deed and its nature, whether a marriage settlement or otherwise.*] A.B. being then seized in fee of the lands described in the schedule hereto charged the same with an annuity of £
in favour of C.D. [*Here specify the particulars of the rentcharge or annuity, whether the same was perpetual, for a term of years, for a life or lives, or by way of jointure, and the particulars of any term of years vested in trustees for securing such rentcharge or annuity. Here also state shortly the particulars of any instrument or circumstances by which the lands were partitioned or by which any special liability for, or indemnity against any portion of the rentcharge or annuity was created, with such statement of the devolution of title as may be necessary to make the statement of fact's intelligible to the Judge*]

2. That E. F. of is the owner of and in receipt of the said rentcharge (or annuity).

3 That the [parts of] the lands described in the first part of the said schedule have been sold under the Land Purchase Acts, [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said owner.]

4. That the lands described in the second part of the said schedule are not the property of the said owner, and the names and addresses of the reputed owners thereof are stated therein.

Variation when all the lands are the property of the owner

[4. That the lands described in the second part of the said schedule are the property of the said owner, but it is not intended selling them under the said Acts.]

Regulations
of
Sept., 1896

5. That, save the proceedings herein, there is not any suit or matter pending in any court in relation to the said rentcharge (or annuity) or lands, and that no person hereinbefore referred to is an infant, idiot, lunatic, or married woman—save [Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman.]

6. That it is expedient that the said rentcharge (or annuity) should be apportioned, and the proposed apportionment set forth in the said schedule would be just and fair, having regard to the quantities and value of the lands, and the rights of the parties interested.

Schedule referred to in the foregoing Statement

Townland, Barony and County (Ordnance Survey Names only)	Reference to Map	Area in Statute Measure of each Townland or part of a Townland	Tenement Valuation	Names and Addresses of Owners or reputed Owners	Proportion in which the Rentcharge or Annuity has heretofore been paid	Proposed Apportionment	Observations
		A. R. P.	£ s. d.		£ s. d.	£ s. d.	
				FIRST PART.			
A.—Lands which have been sold					}		
B.—Lands which it is contemplated selling							
				SECOND PART.			

Affidavit as in Form 2

FORM 6

Request to appoint an Arbitrator

Heading and Title of Matter.

Sir,—I hereby require you to appoint an arbitrator to determine the price to be paid for the [Here describe the superior interest or the apportioned part thereof, as the case may be] which has been ordered to be redeemed by order made in this matter and dated the day of 189 , a copy of which is annexed hereto, and all other matters which it appertains to the Court of Arbitration to determine pursuant to the Land Purchase Acts.

And take notice that if for the space of fourteen days from the date of the service of this request upon you, you fail to appoint such arbitrator, I shall apply to the Court to determine the price, as is provided by the said Acts.

Dated this day of 189 .

(Signed) E.F.

[Here follows a copy of the order for the redemption. If no formal order has been drawn up, a copy of an extract from the final schedule of incumbrances showing the particulars of the superior interest and the Judge's ruling thereon should be annexed.]

Regulations
of
Sept., 1896

FORM 7.

Submission to Arbitration and Appointment of Arbitrator and Umpire.

Heading and Title of Matter.

Whereas the Honourable Mr. Justice _____, upon the _____ day of _____ 189____, made an order in the following terms, viz — [Recite in full the order for redemption]

or,

[Whereas the following is an extract from the final schedule of incumbrances in this matter which was ruled by the Honourable Mr. Justice _____, on the _____ day of _____ 189____ — [Here recite the particulars of the superior interest as they appear on the schedule, with the Judge's ruling thereon.]

It is hereby agreed by and between *A.B.*, the solicitor having the carriage of the proceedings herein, acting by direction of the Judge on behalf of the said owner and *C.D.*, the owner (or tenant for life or otherwise, as the case may be) of the said [Here describe the superior interest] to refer the determining of the price of the said (superior interest or apportioned part) so ordered to be redeemed, to the award of *E.F.*, of _____, and *G.H.* of _____, pursuant to the provisions of the Land Purchase Acts. Now the said *A.B.* hereby appoints the said *E.F.* to be and act as his arbitrator herein, and the said *C.D.* hereby appoints the said *G.H.* to be and act as his arbitrator.

Dated this _____ day of _____ 189____.

(Signed) *A.B.*

Signed by the said *C.D.* in presence of _____ (Signed) *C.D.*

The said *E.F.* and *G.H.* the arbitrators so hereby appointed, do hereby announce themselves as entering upon the matters herein referred to them, in accordance with the provisions of the Land Purchase Act, appoint *L.M.* of _____ to be and act as umpire in case of differences between them.

Dated, &c.

Witness.

(Signed) *E.F.*

(Signed) *G.H.*

FORM 8.

Award.

Heading and Title of Matter.

Whereas the Honourable Mr. Justice _____, by Order, dated the _____ day of _____ 189____, ordered that [Here describe the superior interest or apportioned part thereof] should be redeemed. And whereas *A.B.* and *C.D.*, being unable to agree upon the price to be paid for (such rent or otherwise as the case may be), have referred the determining of the price to be paid to *E.F.* and *G.H.* And by writing under their hands, dated the _____ day of _____ 189____, the said *A.B.* hath appointed *E.F.* to be and act as his arbitrator herein, and the said *C.D.* hath appointed *G.H.* to be and act as his arbitrator herein*

Now we, the said arbitrators, having taken upon ourselves the burden of the reference, and having duly weighed and considered the documentary and other evidence given before us, do hereby publish our award in writing, in manner following, that is to say.

We award and adjudge that the price to be paid for the said (rent or otherwise as the case may be) is to be the sum of £ _____

And we do further adjudge and award (that each party do bear his own costs the arbitration, and that they do pay in equal proportions our fees and expenses such arbitrators, or otherwise, as the case may be).

In witness whereof we have hereunto set our hands this day of 189 Regulations
 (Signed) *E.F.* *of*
 Signed and published in the presence of (Signed) *G.H.* *Sept, 1896*

Umpire's Award where Arbitrators are unable to agree.

*Proceed as before down to**

And whereas the said arbitrators so thereby appointed did, by writing under their hands, dated the day of 189 , before entering into the matter so referred to them, appoint me, *L.M.*, to be and act as umpire in case of difference between them. And whereas the said *E.F.* and *G.H.* have failed to make their award concerning the said price within twenty-one days after the said day of 189 (*or as the case may be*).

Now I, *L.M.* having taken upon myself the charge of this reference, and having heard, examined, and considered the allegations, witnesses, and evidence of both parties concerning the said price, do make this my award, in writing, of and concerning the said price in manner following, that is to say —

I award and adjudge, &c. (*as before*).

DIRECTIONS AS TO THE PREPARATION AND SETTLEMENT OF DRAFT FINAL SCHEDULES OF INCUMBRANCES.

1. When bringing in the draft final schedules of incumbrances for settlement the Solicitor should lodge—

- (a.) The rulings on title.
- (b.) The draft requisition for searches as settled.
- (c.) The registry of deeds and judgment searches.
- (d.) Certificates from the Quit Rent Office, the Land Commission, and the Board of Public Works specifying respectively the Quit or Crown Rents, the rentcharges or title annuities, and land improvement or drainage charges affecting the lands.
- (e.) A certificate as to whether deeds have been lodged subject to lien.
- (f.) Office copies of any orders that may have been made for apportionment or redemption of superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896; and if the proceedings originated in the Land Judge's Court.
- (g.) A certificate of the claims filed, and office copies of all such claims.

2. If the proceedings originated in the Land Commission the schedule shall, unless the Judge otherwise directs, be settled as regards all the lands comprised in the originating statement, except such as are therein stated to be excluded from the proceedings.

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of
Sept., 1896.

3. The schedule shall show all charges which, having regard to the abstract of title, and the result of the searches, shall appear to affect the lands, or to be a lien upon or payable out of the purchase-money; and the charges shall be placed in such order of priority as may appear to be in conformity with the *prima facie* rights of the parties; and shall also show, as nearly as can be ascertained, the sum due for principal, and such schedule shall also state the names of the several persons who may be entitled to the surplus fund after payment of charges.

4. Charges in equal priority should receive the same number and a distinguishing letter, and there should be a statement at the foot that they are in equal priority.

5. The name, description, and address of every party entitled to any charge should be accurately stated, and the date of registering, parties' names, and short description of the instrument by which it is created; if it is founded upon a judgment, the sum recovered, the year, and term, and court, and the names of the parties to the judgment should be stated. When the claimant is not the original mortgagee, the devolution should be concisely but accurately stated as far as practicable.

6. Superior interests affecting the lands (except rentcharges, or annuities in the nature of incumbrances) should usually appear in priority to all incumbrances and to the costs of the proceedings.

7. Annual charges, such as quit rents, tithe rentcharges, head rents, Board of Works charges and annuities, should be described as such; but when an order for their redemption has been made, a note of it should be inserted in the column "Particulars of Demand"; and if the price has been fixed, it should be inserted in the "Principal" column, and, unless each of such charges affects all the lands the denominations which each affects should be stated.

8. Costs awarded by order to any party against the fund, and costs of lodging deeds pursuant to notice or order, should appear as distinct items on the schedule but costs awarded to any claimant as payable with his demand, and the costs of the proof of any claim on the schedule, and the arrears of any rent, rentcharge, or annuity should not appear as distinct items, but be inserted in the proper column opposite the particulars of the demand.

9. When the proceedings originated in the Land Commission and the vendor a tenant for life, there should be set out, after the demand of the trustees of the settlement for the residue, any charges upon the life estate, describing them as such.

10. If different portions of the estate are subject to different incumbrances, the schedule should be prepared in parts; but if there be common incumbrances well, they should be set out *in extenso*, and vouched in one part only, and brief referred to in the other parts.

11. The Examiner shall endorse in the fold of the draft schedule any special directions as to the form or publication of the final notice to claimants.

LAND COMMISSION AND LAND JUDGE.

RULES.

DATED OCTOBER 26TH, 1896, UNDER SECTION 23 OF THE LAND LAW
(IRELAND) ACT, 1896.

STATUTORY RULES AND ORDERS, 1896, No. 927.

Jurisdiction of Judicial Commissioner and Land Judge.

It is this day ordered, pursuant to the provisions of the 23rd Section of the Land Law (Ireland) Act, 1896, that the following rules shall from and after this date, and until further order, take effect and be in force in the Land Commission and Land Judge's Court respectively.

1. There shall be vested in the Land Judge of the Chancery Division all the jurisdiction and powers conferred on or exercisable by the Judicial Commissioner of the Land Commission, by or under any statute or any Rules for the time being in force made under the provisions of any statute, in respect of—

- (i.) any matter arising under the Land Purchase Acts as amended by the Land Law (Ireland) Act, 1896; and
- (ii.) any appeal or re-hearing under the Land Law Acts, as amended by the Land Law (Ireland) Act, 1896.

2. There shall be vested in the Judicial Commissioner of the Land Commission all the jurisdiction and powers existing at the commencement of the Land Law (Ireland) Act, 1896—

- (i.) of the High Court or any Judge thereof, either as successors of the Landed Estates' Court and the Judges thereof, or under the Record of Title (Ireland) Act, 1865, or the Local Registration of Title (Ireland) Act, 1891; and
- (ii.) of the Land Judge of the Chancery Division and of the Receiver Judge under any enactment conferring any jurisdiction upon either of such Judges as such.

3. The jurisdiction and powers hereby conferred on the Land Judge and Judicial Commissioner respectively shall be exercised by and distributed between them in such manner as they shall from time to time arrange.

Rules of Oct.,
1896.

The proceeds of any sale under the Land Purchase Acts paid or transferred into the High Court shall be distributed by a Land Judge, and for the purpose of such distribution such Land Judge shall have all such jurisdiction and powers as are conferred on and exercisable by the Land Commission in addition to any other jurisdiction and powers he otherwise possesses.

5. Where a sale has been ordered by a Land Judge under the Land Purchase Acts, the Land Commission shall have the same jurisdiction and powers to carry such sale into effect and to vest the lands sold in the purchases as they have where a holding is sold by a landlord to a tenant, and it is agreed that such sale shall be carried out by a vesting order of the Land Commission.

6. The Court of the Land Commission in Dublin shall, when hearing appeals or re-hearing cases, be held at the Four Courts, Dublin.

9th day of January, 1901.

It is this day ordered, pursuant to the provisions of the 23rd Section of the Land Law (Ireland) Act, 1896, that Order III. of the Regulations made in pursuance of the said Section, and dated 18th September, 1896, be amended by omitting clause (b) of Rule 2 and by omitting Rule 2.

See these rules, *ante*, pp. 623-624

LAND COMMISSION AND LAND JUDGE

RULES.

DATED JANUARY 23RD, 1897, IN RELATION TO PROCEEDINGS UNDER SECTION 40 OF THE LAND LAW (IRELAND) ACT, 1896

Rules of
Jan., 1897

It is this day ordered that the following Rules and Orders shall from and after this date and until further order take effect and be in force in relation to proceedings under Section 40 of the Land Law (Ireland) Act, 1896

ORDER I.

Construction of Terms.

Definitions

In these Rules and Orders "the Act" shall mean the Land Law (Ireland) Act, 1896; "Land Commission" shall mean the Irish Land Commission; "registrar" shall mean the registrar of the Land Judges' Court; and "examiner" shall mean the examiner attached to the chamber of the Land Judge, but shall not include the examiners of the receiver's office.

ORDER II.

Preparation of Returns and Proceedings towards obtaining a Report of the Land Commission.

Rules of
Jan., 1897.

1. The estates coming within the provisions of Sub-section (1) of Section 40 of the Act in respect of which the Land Judge shall in the first instance issue a request to the Land Commission pursuant to the provisions of the said Section, shall, subject as hereinafter mentioned, be those which have been already offered for sale in the Land Judges' Court, over which a receiver has been appointed, and the rents and profits receivable in respect of which appear from the last receivers' account passed before the date hereof to be insufficient to discharge in full the expenses of management and all outgoings including the interest on incumbrances charged thereon.

Class of estate
in respect of
which requests
are to be issued
in first instance.

2. It shall be the duty of the registrar and the assistant examiner of the receiver office forthwith to prepare returns of the estates so circumstanced, stating as regards each estate the names of the owner and petitioner, the date of the order first appointing a receiver, the date or dates at which the estate has been offered for sale, the number of the tenants and the total amount of the yearly rents and profits receivable, as shown by the last receiver's account passed, the total amount of the annual outgoings including interest on incumbrances, so far as the same are disclosed, and the actual sum received for rents and profits during the last year dealt with in such account: Provided always that estates situate within or partly within a congested districts county may be excluded from such return.

Returns to be
prepared

3. The first of such returns shall include those estates over which a receiver was appointed in or prior to the year 1881, and each succeeding return shall comprise estates over which a receiver was appointed within a period of five years

Periods covered
by returns

4. Each return shall be laid before the Land Judge, who, subject as hereinafter mentioned, shall thereupon from time to time direct that such request as in the said Section provided shall issue to the Land Commission in respect of each estate appearing in such return, either in the priority of the date of the order appointing a receiver over the estate or in such other priority as under the circumstances of the case may appear to him to be just.

Request to be
issued in respect
of estates in
return

Rules of
Jan., 1897.

Notice prior to
issue of request.

5. The Land Judge shall from time to time select from each such return such number of estates as he shall consider can be conveniently dealt with at one time, and to which *prima facie* the provisions of Sub-section (1) of Section 40 of the Act are applicable. Such matters shall be entered in the Judge's list, and for ten days prior to the day appointed for disposing of the same, a notice in Form No. 1 in the schedule to these Rules, or in such other form as the Judicial Commissioner and the Land Judge shall from time to time direct, shall be published in the Court List each day.

Issue of request
on application
by person
interested.

6. The Land Judge may also, on the application of any person interested (a) in any estate coming within the provisions of Section 40 of the Act, or in the sale thereof, direct that such request shall issue, if the circumstances of the case appear to him to make such course desirable.

(a) The solicitor having carriage is, however, the proper person to make the application. Any other party moving will not be entitled to costs unless it is shown that the solicitor having carriage has refused to move. *Hill's Est.*, 3 I. W. L. R. 71 (Ross, J.).

Form of
application.

7. Such application may be made *ex parte*, and shall be grounded on an affidavit setting forth the facts which are relied upon as showing that the estate is one to which the provisions of the said Section apply; but before any direction that such request shall issue is given, the matter shall be entered in the Judge's list, and such notice thereof shall be given as is by Rule 5 of this Order provided in respect of the matters therein mentioned, with any necessary modifications.

Preparation of
request.

8. In all cases where the Land Judge directs that such request shall issue, it shall be prepared by the solicitor having carriage in the proceedings in the matter, and shall be in Form No. 2 in the schedule to these Rules, or such other form as the Judicial Commissioner and the Land Judge may from time to time direct, and when signed by the Judge it shall be lodged with the secretary of the Land Commission.

Court rental
to accompany
request.

9. Whenever a rental shall have been settled in the Land Judges' Court of the estate which shall be the subject of such request, two copies of such rental, one of which shall be attested and have a sealed map annexed, shall be lodged with the request.

10. If no rental of such estate shall have been settled, then, if the Land Judge shall so direct, the solicitor having carriage of the proceedings shall lodge with the request a rental prepared by himself, setting forth as accurately as the means at his disposal will permit, the names of the lands as given on the Ordnance Survey, and the county, barony, in which they are situate, the name of each tenant, the area in statute measure of the land comprised in each holding, the tenement valuation, the tenure of each tenant, the yearly rent and gale days, and if the rent is a judicial one, the date at which it was fixed, and whether by the Land Commission or the Civil Bill Court. Along with such rental shall be lodged the surveyor's report and map, if there has been a survey, or if there has been no survey a map and schedule of areas prepared in accordance with the Land Commission Rules so far as they are applicable. Provided, however, that where a final notice to tenants has been served, but a rental has not been settled, the Judge may, if he thinks fit, postpone the issuing of such request to the Land Commission for inspection until the rental shall have been finally settled.

Rules of
Jan. 1897.

Special rental
when court
rental not
settled

11. In every case a copy of the last account passed by the receiver (where there is a receiver), and a certificate of the existing tenement valuation shall be lodged with the request. The solicitor having carriage of the proceedings shall also furnish to the Land Commission such other documents as they may require.

Copy of
Receiver's
account to be
lodged with
request

12. When the returns referred to in Rule 2 of this Order have been prepared, further returns shall from time to time be prepared, in like form, and for the like periods, of all other estates, for the time being pending for sale in the Land Judges' Court to which the provisions of Sub-section (1) of Section 40 of the Act are *prima facie* applicable, and the like proceedings shall be taken in respect of such returns and the estates therein respectively mentioned as are by the several Rules of this Order directed to be taken in respect of the returns mentioned in Rule 2, and the estates referred to in Rule 1, with such modifications, if any, as the circumstances may require.

Returns of other
estates and pro-
ceedings therein

ORDER III.

Abstract of Title and Ascertainment of Superior Interests.

1. If the abstract of title to the estate has not been lodged, the solicitor having carriage of the proceedings shall prepare and lodge

Lodgment of
abstract of title.

Rules of
Jan, 1897.

the abstract within 21 days after the request to the Land Commission to inspect and report has been issued, or within such further time as the examiner shall certify to be reasonable.

Persons having
carriage of
proceedings to
ascertain
superior
interests

2. When an estate has been referred to the Land Commission for inspection and report, the solicitor having carriage of the proceedings shall at once proceed to ascertain what superior interests, as defined by Section 31 of the Act (if any), affect the lands, and the names of the owners or reputed owners of such interests; and he shall obtain certificates from the Quit Rent Office, the Land Commission, and the Board of Public Works specifying respectively the quit or crown rents, tithe rentcharges, or tithe annuities, and land improvement or drainage charges affecting the lands.

See Land Act, 1896, Sec. 31, and notes thereto, *ante*, pp. 567-572

Persons in
receipt of head
rents, &c., are to
furnish
evidence

3. All persons in receipt of or entitled to any rent, fees, duties, services, or royalties issuing out of or to be rendered in respect of the lands ordered to be sold, or any part thereof, shall be bound to furnish to the solicitor having carriage of the proceedings such evidence as may be necessary to enable his compliance with Rule 2 of this Order; and such persons shall be entitled to their costs reasonably incurred in connection therewith, the same to be paid by such person or persons, or in such manner as the Judge may direct

Requisition by
examiner,
punishment for
disobedience

4. The Judge may, upon the application of the solicitor having the carriage of the proceedings, authorise the examiner to issue a requisition under his hand requiring any such person as aforesaid to furnish on oath such evidence as may be necessary to enable compliance with Rule 2 of this Order, and any person refusing or wilfully omitting without sufficient reason to comply with such requisition within the time thereby limited shall be deemed guilty of a contempt of Court, and may be dealt with accordingly.

ORDER IV.

Report of Land Commission.

Report to be
lodged in Regis-
trar's office for
public inspection

The Report of the Commissioners when made shall be transmitted to the registrar and shall be laid by him before the Judge, who may either refer it back to the Land Commission for further report upon any matter, or may direct it to be lodged in the registrar's office for public inspection. Any person interested may obtain an office copy of a report so lodged on payment of the usual fees.

ORDER V.

Rules of
Jan., 1897.

Notice of Intended Sales under Land Purchase Acts.

1. When the report has been lodged in the registrar's office, the solicitor having carriage of the proceedings shall attend before the examiner to have a day fixed for the consideration of the report by the Judge, and shall prepare and have settled by the examiner a notice of the intended sales under the Land Purchase Acts, which shall be in Form No. 3 in the schedule, hereto, with such variations as the nature of the case may require, or in such other form as the Judicial Commissioner and the Land Judge shall from time to time direct.

Person having carriage of proceedings to prepare notice.

2. The notice shall be served upon the owner or owners, upon all persons who have entered appearances, or upon their respective solicitors, and upon all such other persons (including the reputed owners of any superior interest which it may be necessary to redeem, or to apportion and redeem) as the examiner shall by writing endorsed on such notice direct, and copies thereof shall be transmitted through the consolidated notice office to the several persons reported by the Land Commission to be in occupation of the lands as tenants or otherwise to the postal addresses stated in such report, and the notice may be published in such newspapers, and be posted in such manner as the Judge may direct.

Service and publication of notice

3. All services, publications, and postings shall be made not later than twenty-one days before the date fixed for the consideration of the report by the Judge unless he shall otherwise direct.

Services and publications to be made twenty-one days before date fixed for consideration of report.

4. Not less than one week before the date fixed for the consideration of the report, the solicitor having carriage of the proceedings shall attend in the examiner's office to vouch the services, publications, and postings of the notice of the intended sales under the Land Purchase Acts.

Vouching of services and publications.

ORDER VI.

Offers for purchase by Persons other than the Tenants.

1. It shall be the duty of the solicitor having carriage of the proceedings to submit to the Judge upon the consideration of the report, any offers that may have been made by any person other than a tenant for the purchase of the estate or any part thereof.

Solicitor having carriage of proceedings to submit offers received.

Rules of
Jan., 1897
Form of offers

2. Such offers shall be in such form as the Judicial Commission and the Land Judge may from time to time direct, and may be made subject to such conditions as to the time for which they shall remain binding on the person making the same, or otherwise, as to the Land Judge may seem fit.

ORDER VII.

Offers by Judge to sell to Tenants

Order that offers
be made.

1. The particulars and conditions of the Judge's offer to sell to the person appearing to be in occupation as tenant of each holding shall be written by him on the rental or taken down in writing by the examiner, together with the limit of time for the acceptance of such offer from the date of the communication thereof, and an order shall be made that offers be prepared in accordance with such directions.

As to the procedure where the person to whom an offer is to be made is a minor or of unsound mind, see Rules of July, 1898, *post*, pp. 650 651.

Offers to be
prepared and
communicated
by Land
Commission

2. A certified copy of the order shall be transmitted to the secretary of the Land Commission, and the orders shall thereupon be prepared in accordance with such directions by the Land Commission, and shall be in such form as the Judicial Commission and the Land Judge may from time to time direct, and the Land Commission shall communicate such offers to the persons respectively appearing to be in occupation as tenants, without delay.

Land Commission
to notify
acceptance of
offers; consequent
proceedings

3. The Land Commission, in all cases where the offers are accepted and the conditions fulfilled, shall notify the fact to the Judge and to the solicitor having carriage of the proceedings, and the latter shall forthwith take the necessary proceedings and furnish the necessary documents to enable the Land Commission to convey the several holdings in the respective purchases.

Land Commission
to notify
non-acceptance
of offers

4. If the offers or any of them be not accepted within the time limited, the Land Commission shall report to the Judge thereon and shall notify the fact to the solicitor having carriage of the proceedings.

Order deeming
tenant to have
accepted offer
not to be made
without notice

5. The Judge shall not make an order under Sub-section (1) of Section 40 of the Act that a tenant be deemed to have accepted the offer made to him without causing notice to be given to such tenant.

6. When any such order is made, the solicitor having carriage of the proceedings shall forthwith lodge an office copy thereof with the secretary of the Land Commission.

Rules of
Jan., 1897

Copy of order
to be lodged
with Land
Commission

ORDER VIII.

Appeals.

1. Any person aggrieved by any order of the Land Judge made in proceedings under Section 40 of the Act, may within ten days after the date of such order, apply to the Judge for liberty to appeal, and when such liberty is refused may apply to the Court of Appeal for liberty within one week after such refusal. Where liberty is granted the notice of appeal shall be lodged within fourteen days thereafter.

Application for
leave to appeal
to be made
within ten day
of date of order.

2. The Court of Appeal or the Judge may require the person appealing against any such order to lodge in Court to the credit of the matter, within a time to be named, such sum as the Court or the Judge may consider proper, and if such sum is not lodged within the time fixed, the order giving liberty to appeal shall stand discharged.

Security for
costs

3. When the appeal has been disposed of any sum so lodged shall be paid to such person or persons as the Court of Appeal or Judge may direct.

Payment out of
deposit

ORDER IX.

Obstruction to, or Delay in conduct of Proceedings.

1. It shall be the duty of the receiver to furnish to the person having carriage of the proceedings, or to his solicitor, or to any officer of the Court or of the Land Commission, such information, documents, and assistance as they or any of them may require in relation to the proceedings under Section 40 of the Act.

Receiver to
furnish infor-
mation.

2. Any Receiver under the Court refusing to furnish such information, documents, or assistance, or in any way interfering with or obstructing the person having carriage of the proceedings, or his solicitor, or any officer of the Court or of the Land Commission in discharge of their duties under the said Section, or under these Rules and Orders, or dissuading or endeavouring to dissuade any person from accepting an offer to sell made to such person by the Judge, shall be reported to the Judge, who, if he considers that

Refusal to give
information or
obstruction of
proceedings a
contempt of
court.

**Rules of
Jan., 1887.**

misconduct is proved, may discharge such receiver from any receivership which he may hold under the Court, or deal with him as guilty of contempt of Court.

Costs in case of
delay

3. The examiner shall keep a special record of proceedings under Section 40 of the Act, and shall report to the Judge any delay in the conduct of such proceedings, and when certifying for the taxation of costs, if there has been undue delay in the conduct of any proceeding he shall so state in his certificate, and no costs shall be allowed in respect of any proceeding which has been unduly delayed without the direction of the Judge.

ORDER X.

Costs.

Costs

1. In every proceeding under Section 40 of the Act, the Judge shall have full power and discretion as to the giving or withholding of costs and expenses, and as to the persons by whom and the funds out of which the same shall in the first instance or ultimately be paid, repaid, and borne, and shall and may apportion the same amongst such parties, and in respect of interest, rents, or income, and principal or corpus, as he shall think fit.

**FURTHER RULES IN RELATION TO PROCEEDINGS
UNDER SECTION 40 OF THE LAND ACT, 1896.**

The 2nd day of July, 1898.

It is this day ordered that the following rules shall, from and after this date and until further order, take effect and be in force in relation to proceedings under Section 40 of the Land Law (Ireland) Act, 1896:—

1. Where a person to whom it is necessary that an offer should be made in pursuance of the above-mentioned Section is a minor, or a person of unsound mind, not so found by inquisition, the Land Judge of the Chancery Division of the High Court of Justice in Ireland may appoint a guardian of such person for the purpose of any proceedings under the said Section, and may from time to time change such guardian.

2. It shall be the duty of any person who shall under the foregoing rule be appointed guardian *ad litem* of a person of

unsound mind within ten days from the date of his appointment to lodge with the Registrar in Lunacy a copy of the order appointing him as such guardian, and to apply to the Lord Chancellor for such order (if any) as may be required.

Rules of
2nd July,
1898.

RULES UNDER LUNACY REGULATION ACT, 1871

The 2nd of July, 1898.

I, the Right Honourable EDWARD BARON ASHBOURNE, Lord High Chancellor of Ireland, in exercise and pursuance of the powers in this behalf vested in me by the Lunacy Regulation (Ireland) Act, 1871, and of all other powers me thereto enabling, do hereby order and direct that every notice or return given or made to the Registrar in Lunacy by the Guardian *ad litem* of a person alleged to be of unsound mind appointed by the Land Judge pursuant to any rule made under the Land Law (Ireland) Act, 1896, shall set forth the name, residence, and description of such Guardian; the name, last residence, present abode, and description of the person alleged to be of unsound mind; the name, residence, and description of the person in whose custody or care the person alleged to be of unsound mind is; and the age, and full particulars of the property of such last-mentioned person. Such return shall have annexed thereto a copy of the order made by the Land Judge, and a docket of the application (if any) intended to be made to the Lord Chancellor in Lunacy. And if it shall appear that such application can be made under the provisions of the 68th Section of the Lunacy Regulation (Ireland) Act, 1871, the procedure shall, notwithstanding any General Orders heretofore made under the said last mentioned Act, be as follows:—

1. The said Registrar shall, immediately on receipt of such notice or return, and on being satisfied that the application is within the provisions of the Section aforesaid, direct one of the Medical Visitors to visit the person alleged to be of unsound mind, and to make such report as is directed by the 11th Section of the said Act, and such Medical Visitor shall inform the person alleged to be of unsound mind of the nature of the application, and that if he objects to the suggested order he is, within four days, to give notice in writing to the Registrar in

Rules of
2nd July,
1898.

Lunacy. And the Medical Visitor shall in his report specially certify that he has so informed the person alleged to be of unsound mind, and shall further state whether such person was, in his opinion, capable of understanding or exercising such right of objection.

2. On the expiration of the period of four days from the date of the visit of the Medical Visitor the said Registrar shall submit to the Lord Chancellor the report of the Visitor, together with the order made by the Land Judge, and any evidence lodged in support of the application, and the notice of objection (if any) received from the person alleged to be of unsound mind, and the Lord Chancellor may, on consideration of the same, either make an order thereon without any attendance of counsel, solicitor, or parties, or may direct the application to be set down for hearing, or may refer it to the Registrar in Lunacy to make particular inquiry respecting any matter to which the application relates.

Every notice or return given or made by such Guardian *ad litem* as aforesaid shall be deemed to be a return made under the provisions of the 68th Section of the Lunacy Regulation (Ireland Act, 1871).

FORMS IN PROCEEDINGS UNDER LAND ACT, 1896
SEC 40.

FORM No. 1.

LAND LAW (IRELAND) ACT, 1896. SECTION 40.

The following cases will appear in the list of the Honourable Mr. Justice on the day of next. [*Here insert the names.*]

The Judge will on the above-mentioned day consider and determine whether the conditions mentioned in Sub-section (1) of Section 40 of the said Act apply to the said estates respectively, and will hear any application then made on behalf of any persons interested in any of such estates or in the sale thereof, founded upon special circumstances applicable to any of such estates, in reference to the issue of a request to the Land Commission under the provisions of the said Section.

FORM No. 2.

REQUEST TO LAND COMMISSION TO INSPECT AND REPORT.

In the High Court of Justice in Ireland.

Chancery Division—Land Judges.

In the matter of the Estate of

Owner,

Ex parte

Petitioner

I request the Land Commission to cause the lands mentioned in the sched

annexed hereto, being the estate (or part of the estate, directed to be sold by order made in this matter dsted day of 18 , to be inspected, and that a report shall be made by two Commissioners respecting such estate, the circumstances thereof, and the price at and the conditions under which the sale of the holdings to the tenants under the Land Purchase Acts can properly be made.

Forms under Sect. 40.

SCHEDULE of lands above referred to.

FORM No. 3.

NOTICE OF INTENDED SALES UNDER THE LAND PURCHASE ACTS.

In the High Court of Justice in Ireland.

Chancery Division—Land Judges.

In the matter of the Estate of

Owner,

Ex parte

Petitioner.

Whereas the Land Commission have, in pursuance of the 40th Section of the Land Law (Ireland) Act, 1896, caused the lands described in the schedule hereto which have been ordered to be sold in this matter to be inspected, and have reported respecting the said lands, and the circumstances thereof, and the price at, and the conditions under which the sale of such lands to the tenants thereof under the Land Purchase Acts can properly be made, let all persons take notice that the report of the Land Commission has been lodged with the registrar of this Court for public inspection, and will come before the Honourable Mr. Justice for his consideration on day, the day of 189 , at o'clock, at his Court at the Four Courts, Dublin, when all parties interested are at liberty to attend; and meanwhile offers for the purchase of the said lands, or any part thereof, may be sent to the solicitor having carriage of the proceedings, who will submit any such offers to the Judge on the consideration of the report.

Dated this day of 189 .

Examiner.

Solicitor having carriage of proceedings.

SCHEDULE.

[Here insert the lands, using the Ordnance survey names only, and stating the barony and county, and, if part only of a townland is being dealt with, the area in statute measure of such part.]

CHANCERY DIVISION—LAND JUDGES.

Rules of
Jan., 1902

As to sales to
tenants under
Land Purchase
Acts

RULES OF 10TH DAY OF JANUARY, 1902.

1. In the case of an Estate comprising holdings which are agricultural or pastoral, or partly agricultural and partly pastoral, the Judge may dispense with the Consolidated Final Notice to Tenants and adjoining Owners and Occupiers, required by the 24th General Order of 15th July, 1859, and may dispense with the settlement of the rental required by the 25th General Order of the 15th July, 1859, altogether, or to such an extent as he shall think right.

2. In all such cases the Examiner shall, so far as possible, ascertain what are the superior interests to which the estate is liable, and the names of the reputed owners thereof, and what rights of indemnity (if any) exist as against other lands.

3. As soon as the Examiners' rulings have been issued, the Solicitor having carriage shall obtain an order for survey as heretofore, and the Surveyor shall be required, if necessary, to report upon sub-lettings and sub-divisions, and such other matters as the Examiner may direct.

4. The Solicitor having carriage of the proceedings shall then prepare a notice in Form X in the Schedule to these Rules annexed, and shall serve it, with a copy of the Ordnance Survey map, on the owners and occupiers of all lands adjoining the estate.

5. If any objections to the above notice shall be filed they shall be brought before the Judge for adjudication, in the same manner and on notice to the same parties as the existing General Orders prescribe with regard to objections to the Consolidated Final Notice to Tenants and adjoining Owners and Occupiers.

6. As soon as possible after receiving the Survey and Report thereon, the Solicitor having carriage of the sale, shall prepare and have settled by the Examiner a Schedule of tenancies. This Schedule shall contain the same particulars as are now supplied in a Rental, with the addition of a column showing (if possible) the tenement valuation of each holding.

In case it appears from the said Report or otherwise, that disputes exist as between the tenants themselves, or as between the tenants and the estate, the Solicitor having carriage shall divide the Schedule into two parts—part I. for cases in which no disputes arise, and part II. for cases in which such disputes as aforesaid exist.

7. In case the Solicitor having carriage is unable to prepare a Schedule of tenancies from documents, from information supplied by Agents or Receivers, or otherwise, he shall prepare a notice in the form in the Schedule hereto annexed, marked Y, and shall cause such notice to be served upon or circulated among the tenants on the estate.

**Rules of
Jan., 1902.**
As to sales to
tenants under
Land Purchase
Acts.

8. On receiving the Returns to the said notice, in cases where such notices have been served, the Solicitor having carriage of the proceedings shall check the same with the Report of the Ordnance Survey Department, and, if there is a Receiver over the Estate, with the Receiver's last account before preparing the Schedule of tenancies.

9. When the Schedule of tenancies has been prepared and settled by the Examiner, the matter shall be brought before the Judge in Court on notice to the Owner, to all persons who have entered appearances in the matter, to all reputed owners of Superior Interests and to the Crown, where there is a reversion in the Crown; and thereupon the Judge, on hearing the parties and considering the evidence, may direct that negotiations shall be entered upon as between the parties interested and the tenant, with a view to Sales under the Land Purchase Acts, and that the Solicitor having carriage of the proceedings may arrange with the tenants for procurement of proposals to purchase and applications to the Irish Land Commission for advances. Such proposals and applications shall be in a form to be approved of by the Irish Land Commission.

10. When such proposals and applications for advances have been procured, they shall be lodged with the Irish Land Commission, accompanied by the order of the Judge above referred to, and an attested copy of the Schedule of tenancies and such other documents as the Land Commission shall require

11. When the Irish Land Commission shall have notified their sanction of the advances applied for, the matter shall be entered in the Judges' Chamber List, on notice to the same persons as prescribed by Rule 9, for consideration of such proposals and for their acceptance, if approved of.

12. If, on the hearing aforesaid, any person whose interest is affected, objects to the acceptance of such proposals, the Solicitor having carriage of the sale shall proceed to settle and serve the Consolidated Final Notice to Tenants and adjoining Owners and

Rules of
Jan., 1902.

As to sales to
tenants under
Land Purchase
Acts.

Occupiers, and to have a Rental settled as prescribed by the existing General Orders. If, in consequence of an unreasonable objection, the Estate incurs loss, the Judge may make such order in respect of the costs of the parties as may seem to him to be just.

13. In any case in which a Consolidated Final Notice to Tenants and adjoining Owners and Occupiers has been actually served before these Rules come into operation, the settlement of the Rental shall be proceeded with in the manner prescribed by the existing General Orders.

SCHEDULE REFERRED TO IN THE FOREGOING RULES.

FORM X.

Notice to Owners and Occupiers of adjoining Lands.

In the Matter of the Estate of

Owner;
Petitioner.

Notice is hereby given, that the Lands set forth in the Schedule hereto and delineated on the accompanying Map, have been ordered to be sold in this Matter, and will be sold by the Court, subject to such rights of way and other rights and easements as shall at the date of such sale legally exist and affect the same.

If any person alleges that the Boundaries of the said Lands are incorrectly shown upon the accompanying Map, he must lodge his objection, in writing, in the Registrar's Office of the said Court, on or before the day of 19 , otherwise the said Map shall be treated as conclusive and binding upon all persons.

Such objection must be verified by affidavit entitled as above and sworn, if out of Dublin, before a Commissioner of Oaths.

(To be signed by the Examiner and the Solicitor having carriage of the Sale.)

FORM Y.

Notice to the Tenants.

In the High Court of Justice in Ireland, Chancery Division—
Land Judges.

Owner;
Petitioner.

The Tenants of the Owner on the lands mentioned in the Schedule hereto are required to take notice that a sale of the said lands has been ordered by the Court, and the several tenants are hereby required to furnish to me the particulars of their several tenancies on the accompanying form,* and to forward the same to me not later than

(To be signed by the Solicitors having carriage.)

(Schedule of Lands above referred to.)

N.B.—It is intended that the tenants shall have an opportunity to purchase under the Land Purchase Acts. Any omission to furnish the particulars required or any inaccuracy in filling up the form may deprive the tenant of the advantage of an early sale.

*This form can be obtained at any law stationer's.

COUNTY COURTS.

RULES UNDER LANDLORD AND TENANT ACT, 1870.

[29th October, 1870.]

* It is this day ordered by the Court for Land Cases Reserved that the following shall be the Rules for proceedings under Part I. of the Landlord and Tenant (Ireland) Act, 1870:—

Rules of
1870.

Proceedings in respect to Claims.

1. All applications and disputes under the Landlord and Tenant (Ireland) Act, 1870, shall be heard in the division of the county where the land or some part thereof is situated, unless the Chairman (a) shall otherwise direct, on being satisfied that the same can be more conveniently tried in any other division. But the Chairman (a) may, at his discretion, hear any interlocutory motion arising in the course of any such proceeding in any division of his county.

Proceedings in
respect of claims

(a) Now the County Court Judge.

2. At each of the ordinary sessions now held in each year there shall be for each division of the county, and in one town in such division, a separate part of such sessions for the disposal of business under this Act, to be termed the Land Session, of the commencement of which notice shall be given at the time and in the manner now by law directed with respect to the holding such ordinary sessions; but for the year 1871 such notice may be given on or before the 1st of January, 1871.

3. Notices of claim under the 16th Section of said Act shall be in the Form No. 1, 2, 3, or 4 [as the case may be] in the Appendix to these Rules, or as near thereto as circumstances will admit.

See these forms, *post*, pp. 671-672.

* These Rules, though issued by a Court which has ceased to exist (see Judicature Act, 1877, Sec. 23 (2) and Land Act, 1881, Sec. 47, *ante*, p. 332), are still in force as regards all proceedings in the County Courts under the Land Act, 1870, being continued among other "existing Rules" by the preamble to the County Court Rules of 1890. Appeals from the County Court, under the Act of 1870, are now heard by the Land Commission, and are regulated by Rules issued by that body. See notes to Rules 38 & 39, *infra*, pp. 665 and 666.

Rules of
1870.

4. The limits of time within which Notices of Claim may be served shall be as follows:—

Every tenant who may claim to be entitled to compensation under the Act may serve notice of his claim (if any);—

a. As soon as he shall have been served by his landlord with notice to quit, or with an ejection, or disturbed by any act of the landlord within the meaning of the said Statute;—

b. In case of a tenancy for an uncertain term, as soon as the term shall have expired;—

c. In case of a tenancy for a term certain, when the term shall be within six months of its expiration;—

d. In case of a tenant who shall give notice of surrender, with such notice or after its service;—

e. In every case the notice of claim (if any) shall be served before the tenant quits or is deprived of possession by his landlord, or at latest within one calendar month thereafter, subject however to the provision contained in the next Rule, and to the discretionary power hereinafter given to the Chairman (a).

(a) See Rule 12, and notes thereto, *post*, p. 650.

5. Notices of claim may be served up to the 1st day of January, 1871, though the time limited by these Rules for service thereof might otherwise have expired.

6. A copy of every notice of claim and of every notice of dispute shall, within one week after its service, or within such other time as the Chairman shall direct, be delivered to the Clerk of the Peace, who shall duly record the same, with the date of delivery thereof to him, in a book to be kept for such purpose.

Service of Notices of Claim.

Service of
notices of claim

7. The service of notices of claim on any landlord, or, in his absence, on his known agent, shall be effected in such manner (except as to the time of service), as now by law prescribed for ordinary civil bill processes, but may be effected by others than the process servers of the Court, where the service is to be made without the county.

8. Where a landlord is resident out of the county, the Chairman may, on application to him for such purpose, direct service of the Notice of Claim or of any other proceeding under this part of the Act, to be effected within such time, and in such manner, whethe

by registered letter or otherwise, as he may think fit; or may declare that any service already effected shall be good service of the same. Rules of
1870

9. All Notices of Claim shall be served one calendar month, at the least, before the first day of the Land Session at which the claim thereunder shall be entered for hearing.

Service of Notices of Dispute.

10. The notice of dispute by the landlord shall be in the Form 5 or 6 in the Appendix to these Rules (a), or as near thereto as circumstances will admit, and the same, together with a copy of any set-off or claim relied on by him, shall be served within twenty-one days from the service on him of the notice of claim (subject to the discretionary power hereinafter given to the Chairman (b)), and shall be served in the manner now by law prescribed for the service of ordinary civil bills; but the Court may, in its discretion, upon facts duly verified, allow substituted service thereof, or direct any other mode of service. Service of
notices of
dispute

(a) See these Forms, *post*, p. 672.

(b) See Rule 12 and notes thereto, *post*, p. 660.

Entry in Court of Notices of Claim and Dispute.

11. Every notice of claim or of dispute shall contain, if issued by an attorney, his name and place of business, or if not issued by an attorney, shall contain the name and residence of the claimant or person issuing the same; and service of the notice of dispute, and of all subsequent proceedings in the course of such dispute, may be effected by service thereof at such place of business or residence, as the case may be; and if the tenant's claim be consequent upon the service of an ejectment, the notice of claim may be served either as hereinbefore prescribed by these rules, or at the residence of the attorney for the plaintiff, mentioned in such ejectment. Entry in Court
of notices of
claim and
dispute

12. If either tenant or landlord shall have failed to serve, or to lodge, a notice of claim or of dispute, or any other notice in the course of the dispute, within the times or in the manner herein limited, the Chairman may, on the application of such party, if he shall think sufficient excuse (a) exists, and upon such terms as to costs, or otherwise, as he shall think fit, declare such service as may have been effected to be sufficient service, or enlarge the time (b) Extension of
time for service
of notices.

Rules of
1870.

for such service, or lodgment, and if he think fit adjourn the hearing.

(a) The fact that negotiations for a new tenancy were pending with the landlord was held by Judge WATERS to be a "sufficient excuse" for the non-service of a claim for improvement for a year and five months after a writ of possession had been executed in an ejectment for non-payment of rent, and the claim was heard and allowed. On appeal to the Land Commission, O'HAGAN, J., refused to interfere with the discretion of the County Court Judge. *Walsh v. Fitzgerald*, 21 I. L. T. R. 82. Time was also extended by Judge OVEREND for serving notice of claim where litigation had been pending between the parties as to the tenant's right of restitution. *Smyth v. Hogg*, 27 I. L. T. R. 103.

(b) When a writ of possession was executed on November 17th, and a claim for improvements served on the 25th of August following, there being no excuse for the delay, Judge WATERS refused to extend the time, and dismissed the claim with costs. *Shanahan v. Marquis of Waterford*, 22 I. L. T. R. 76. A claim served two years after possession was taken, was dismissed by Sir F. BRADY as being too late. *Mellon v. Charlemont*, Donn. 323.

13. Where a notice of claim shall have been served, the tenant shall, after the service of the notice of dispute, or in case of no notice of dispute being served, then after the expiration of the time for serving notice of the same, lodge such notice of claim in due course, for hearing, with the Clerk of the Peace, at the next ensuing Land Session, giving one week's notice to the opposite party; or if the next Land Session shall take place before the expiration of one calendar month from the original service of such notice of claim, then at the second next ensuing Land Session; and in the event of the tenant failing to lodge his claim for hearing in such manner, he shall not be at liberty thereafter to do so, unless the Chairman shall, by reason of special circumstances, and on such terms as he may think fit, otherwise direct.

14. Where a dispute shall have arisen, the parties may, at any time before such dispute shall have been decided by the Chairman by any agreement in writing signed by them respectively, or by their agents duly authorized, settle such dispute; and thereupon the said parties shall cause a copy of such agreement, also duly signed by them, or by their said agents, to be delivered to the Clerk of the Peace, who shall duly record the same.

15. The claimant may, at any time before setting down his claim for hearing, by notice in writing delivered to the Clerk of the Peace require his claim to be dismissed as against all or any of the respondents, with costs, and the Court may pronounce a dismissal accordingly, and such notice shall operate as a relinquishment

his claim, and the Clerk of the Peace shall forthwith file such notice, and enter the same in the record of notice and dispute book, hereinafter mentioned, and, at the expense of the claimant, forward a copy thereof to each of the respondents.

Rules of
1870.

Registration of Improvements.

16. The notice of intention by a landlord or tenant to register improvements under the sixth Section of the Act, together with a copy of the schedule specifying such improvements, shall be served on the opposite party two months, at the least, before application shall be made to the Landed Estates' Court to file the schedule of such improvements.

Registration of
Improvements.

The notice is to be served in the same manner as a notice of claim under Rule 7. See General Order of 15th February, 1873 (Donnell's Land Cases, p. 429).

17. The landlord or tenant receiving such notice and disputing the claims made by the schedule shall, within one month after such receipt, serve notice on the opposite party that he disputes such claim either in the whole or in part, specifying the particulars so disputed, and that he will apply to the Civil Bill Court to determine the matter, and shall also, within such period, deliver a copy of such notice to the Clerk of the Peace, who shall record the same.

18. Upon the due service of such notice and copy, a dispute shall be deemed to have arisen in respect of such alleged improvements, and the same shall be heard within such time and in such manner, and subject to the same regulations as other cases under these rules.

If no notice of dispute is served within the time limited by Rule 17, the person claiming may file the schedule of improvements, in the Court of the Land Judge, on production of a certificate from the Clerk of the Peace. When a notice of dispute is served, a certificate is issued as to the result after the case is heard. The schedule must be on parchment, and must be verified by affidavit. See General Order of 15th February, 1873. Donnell's Land Cases, pp. 429, 430.

As to the practice, &c., on filing the schedule in the Court of the Land Judge, see Madden's L. J. Practice. 3rd. Edit., pp. 316-318 and pp. 594-600.

19. The discretionary powers with respect to the service and lodgment of notices given to the Chairman hereinbefore, shall apply to all notices respecting the registration of improvements under the sixth Section.

Practice of the
Court.

Practice of the Court.

20. The practice, forms, and rules in force and used in the Civil Bill Courts with respect to civil bills and civil bill ejectments,

Rules of
1870.

including all powers of amendment, shall, subject to these rules and orders, and so far as the same are not inconsistent with them, or with any of the provisions of the Landlord and Tenant Act (Ireland), 1870, be adopted with reference to proceedings under the said Act, so far as the same are applicable, *mutatis mutandis*.

21. The service of all notices relied on for any purpose shall, unless admitted by the opposite party, or otherwise allowed by the Chairman, be proved on oath at the hearing.

22. If at the hearing it shall appear to the Chairman that the case comes within the provisions of the 20th Section of the Statute, or that the interests of persons not represented before the Chairman are involved, he may adjourn such hearing and direct such notice to be given to said persons as to him shall seem fit.

Where the interests of a person not represented before the County Court Judge appeared to be involved, FITZGERALD, B., remitted the case to the County Court to be reheard upon notice being given to this person *Fitzsimons v. Clive*, 12 I. L. T. R. 85.

See further, notes to L. & T. Act, 1870, Sec. 20, *ante* p. 183, and *Walsh v Fitzgerald*, 21 I. L. T. R. 82.

23. The Chairman shall be at liberty to review, rescind, or vary any order previously made by him at any land session during the continuance of the ordinary sessions, of which such land session shall form a part, but not afterwards, except upon the application in Court of both parties, or their consent in writing.

The Land Commission, by whom appeals under the Land Act, 1870, are now heard (see Sec. 47 of the Land Act, 1881, *ante*, p. 332), have the power of rescinding or varying their orders at any time (see Land Act, 1881, Sec. 48 (5), *ante* p. 334), and as they can also extend the time for appealing under Rules of 1897, *post*, No. 22 in case of any error in a decree, the matter may be set right by them at any time on an appeal.

Fees for Proceedings under the Act.

Fees for proceedings under the Act

24. In all proceedings under this Act the fees specified in the Schedule (A) to these Rules annexed shall be the lawful fees and emoluments for the discharge of the duties therein specified by the persons therein named, and no other fees or emoluments shall be recoverable for the discharge of such duties, or be allowed in any bill of costs between party and party, or in any decree, dismissal order, or award.

This Schedule is now superseded by the Schedule under the County Court Rule 1890. See, *post*, pp. 716-718.

Taxation of Costs.

25. The Chairman shall have power to give or withhold the costs (a) in the whole, or in part, of any proceedings under this Act, and to order the same, or any portion thereof, to be paid by the opposite party, together with the reasonable expenses of necessary witnesses, and such expenses as he may consider to have been properly incurred in making copies of documents, or in making maps or surveys for the information of the Court; to be recoverable in the same manner as sums awarded for compensation (b) or decreed under this Act.

Rules of
1870.
Taxation of
costs

(a) Costs are usually allowed to the tenant, except where very unreasonable claims are made. Thus where a claim for £609 was reduced to £110, *Morris, J.*, refused to allow the tenant any costs. *Hurley v. O'Brien*, 7 I. L. T. R. 175, Donn. 464. On the other hand, if the claim is dismissed, the landlord is usually allowed the costs of the dismissal. Where the claim and set-off were both extravagant in amount, *Fitzgerald, J.*, refused to allow costs to either party. *Murphy v. Deane*, 10 I. L. T. R. 149. See Schedule of costs, *post*, pp. 716-718.

(b) As to how "sums awarded for compensation" are recoverable, see L. & T. Act, 1870, Sec. 23, and notes thereto, *ante*, p. 187.

As to the recovery of costs, in case of an appeal to the Land Commission under this Act, see notes to Land Commission Rules of January, 1897, No. 97, *post*.

26. The Chairman shall, in all proceedings under this Act, upon request of either party or his attorney, tax the costs between party and party (a) and include the same in his decree or dismissal, order, or award, when costs shall have been given against the opposite party; and shall, at the like request, tax the costs between attorney and client (b) in such proceedings; and no costs shall be recovered in respect of any proceedings under this Act in the Court of the Chairman, or preparatory thereto, unless the same shall have been so taxed.

(a) For schedule of costs, see, *post*, pp. 716-718.

(b) The taxation of costs as between solicitor and client under this Rule is a ministerial and not a judicial Act. The County Court Judge cannot make any order for payment of such costs; and as the certificate determines nothing as to the liability of the client, it cannot be quashed by writ of certiorari. *Reg. v. County Court Judge of Tyrone*, 10 L. R. Ir. 217 (Q. B. D.).

Regulations as to Clerks of the Peace.

27. The Clerks of the Peace shall keep in their offices separate books in which shall be entered all notices of claim, dispute, or set-off, lodged with them in pursuance of the foregoing Rules, and all Orders, Interlocutory or Final, made in the matter of such disputes, to be called The Record of Claim and Dispute Books,

Regulations as
to Clerks of the
Peace.

Rules of
1870.

which shall be accessible to the public between the hours of twelve and three o'clock daily (Sundays, Christmas Day, and Good Friday excepted), on payment to the Clerks of the Peace of the fee of One Shilling for each search to be made.

28. The Clerks of the Peace shall also keep Court Books, and shall enter therein the names of the witnesses examined at any hearing, with the date and description of any document used upon such hearing, and the orders of the Chairman, and shall sign the same, to be countersigned by the Chairman.

29. The decree, dismiss, or order of the Chairman shall be in the Form No. 7, 8, 9, or 10 in the Appendix to these Rules annexed, or as near thereto as may be, according to the circumstances of the case.

See these forms, *post*, pp. 673-674.

30. The Clerk of the Peace shall, before each sitting, make out a list for the Chairman, of all cases for hearing under this Act, and deliver or transmit the same to the Chairman.

31. All notices or documents relating to any matter under this Act may be delivered to the Clerk of the Peace either by giving the same to him personally at his office, or to any Clerk or Assistant in charge of such office, there and not elsewhere, or by sending the same through the General Post Office in a prepaid letter duly registered, and addressed to the Clerk of the Peace at his office in the town where the same shall be kept, posted in such time as to admit of its delivery in the ordinary course within the periods herein required for the delivery of such notices.

32. Where a Search shall be required from the Clerk of the Peace for any matter recorded in his Office under these Rules, a requisition in writing for such purpose shall be delivered to him specifying the particulars required, and he shall thereupon file such requisition and deliver with all reasonable expedition to the person demanding the same, a certificate signed by him setting forth the particulars so required.

33. The Clerks of the Peace shall be entitled to receive for the filing such requisition, making such search, and delivering such certificate, the fee of Two Shillings.

Deposits by Landlords of Compensation Money.

34. Deposits by landlords of compensation money, under the 21st Section of the Act, (a) shall be made in the Branch Banks of the Bank of Ireland in the respective counties, or, if no such branch exists in a county then in such other Bank or Branch Bank within the same as the Chairman shall direct.

Rules of
1870.
Deposits by
landlords of
compensation
money.

(a) See that Section and notes thereto, *ante*, p. 186.

35. To effect such deposit the landlord shall obtain a docket, signed by the Clerk of the Peace, authorizing the lodgment of the sum in the bank, in the name of the Clerk of the Peace, to the credit of the claim.

36. No deposit so made shall be drawn out without an order of the Chairman, made on notice to the landlord, or on consent in writing of the parties.

37. Where any deposit shall have been so made the sum deposited shall be paid out only on the cheque of the Clerk of the Peace, countersigned by the Chairman of the County, which cheque, so countersigned, shall be a sufficient warrant to the bank for such payment.

Appeals.

38. Any person dissatisfied with any Order of the Chairman under this Act may appeal therefrom within *one week* (a) from the last day of the ordinary Sessions in the town in which such Order shall be made, on giving notice of appeal in writing to the opposite party or to his attorney, and on lodging a copy of such notice with the Clerk of the Peace, within said period of a week.

Appeals are now heard by the Land Commission instead of by the Judge of Assize: Land Act, 1881, Sec. 47 (*ante*, p. 332). They are regulated, accordingly, by Rules issued by the Land Commission. See Rules of January, 1897, Nos. 60, 61, 81, *post*, pp. 731 and 736.

(a) Notice of appeal may now be served at any time within *two months* from the last day of the *Land Sessions* at which the decision has been given: Land Commission Rules of January, 1897, No. 81, *post*, p. 736.

39. When such order shall have been made in the county or the county of the city of Dublin, then (except as hereinafter mentioned), such appeal shall be taken to the next ensuing sitting of the judges to be selected by the Court for land cases reserved; and when such order shall have been made elsewhere then to the Judge or Judges of assize at the next ensuing assizes; (a) but if the same shall be

Rules of
1870.

held within ten days from the termination of the ordinary sessions in the town in which such order was made, then to the second next sittings or assizes thereafter.

Appeals are now to the Land Commission in all cases. See notes to Rule 38, *ante*.

Where a claim was dismissed by the chairman in consequence of there being no appearance for the claimant, LAWSON, J., refused to hear it on appeal, on the ground that by so doing he would be constituting the Assize Court an original tribunal for the hearing of land claims *Burnside v. Merter's Co.*, 11 I. L. T. R. 60. The Land Commission have, similarly, held, since the passing of the Land Act, 1881, that they have no original jurisdiction under the Land Act, 1870: *O'Connor v. Perry*, 30 L. R. Ir. 388; 26 I. L. T. R. 48; *Knipe v. Armstrong*, 15 I. L. T. R. 64.

(a) As to the effect of these words, see *Burns v. Collum*, 4 L. R. Ir. 493; 14 I. L. T. R. 27.

40. The Clerk of the Peace shall enter in the record of claim and dispute book the order of the Judge or Judges to be made on such appeal, and any directions given by them or him thereon, and shall also enter therein any order or directions made by the Court for Land Cases Reserved, (a) when such order or directions shall be transmitted to him.

(a) The jurisdiction of the Court for Land Cases Reserved has been transferred to the Court of Appeal by Judicature Act, 1877, Sec. 23, Sub-sec. 2.

Arbitration.

Arbitration

41. The reference of any dispute under said Act to an Arbitration Court, and the appointment of the arbitrator or the arbitrators and umpire, and be in the Form numbered (11) in the Appendix to these Rules, or in accordance therewith, and be signed by both parties; and such reference, with the nomination of the arbitrator or arbitrators and umpire, as the case may be, shall be lodged with the Clerk of the Peace before the first sitting of the Arbitration Court thereunder.

See as to arbitrations generally, Schedule to Land Act, 1870, *ante*, p. 279, and Form No. 11, *post*, p. 674. And see note to Rule 154 of Rules of January, 1897 *post*, p. 756.

42. The Clerk of the Peace shall forthwith, on receipt of such reference and nominations, and on being satisfied by affidavit or statutory declaration as to the signatures thereto, enter the same in the Record of Claim and Dispute Book; and thereupon an application or report in the matter of such arbitration may be entertained by the Civil Bill Court, and such order may be made thereon under the 25th Section of said Act, as the Chairman may think right.

43. Where either party desires the award of a Court of Arbitration to be recorded, he shall, ten days before the first day of the Land Session next ensuing the making of such award (if sufficient interval shall exist, and if not, then before the next following Session), serve notice on the opposite party of his intention to apply to the Chairman for such purpose, which application shall be heard, in regular course, according to the practice of the Court.

44. On the hearing of such application, the Court may, if it shall think fit, and if such award substantially decides the dispute referred, order the same to be recorded; and the award shall thereupon be duly recorded by the Clerk of the Peace in the Record of Claim and Dispute Book.

45. Reference of a dispute to an Arbitration Court may be made at any time before the first day of the Land Session at which such dispute may be entered for hearing; or afterwards with the consent of the Chairman.

Limited Owners.

46. The application for an order to charge a holding with an annuity in respect of any compensation agreed on and paid to a tenant under the 27th Section, shall be in the Form (A) in the Appendix to these Rules, or as near thereto as the case will admit, and shall be accompanied by a map or plan of the holding proposed to be charged, showing the contents thereof in acres, and the bounds (with the names of the adjoining occupiers) enlarged from the Ordnance Survey to the scale of 25 344 inches to a statute mile. The application shall be verified by the affidavit of the limited owner (or of some other person allowed by the Chairman) in the Form (B) in the Appendix to these Rules, and shall, with a copy thereof, be lodged with the statement and map, in the custody of the Clerk of the Peace amongst the records of the office, two months before the commencement of the Land Sessions at which the application is to be made.

See *Domville's Estates*, 7 I. L. T. R. 55; Donn. 394; and notes to Landlord and Tenant Act, 1870, Sec. 42, *ante*, p. 195

47. The Clerk of the Peace shall, on receipt of such application, and on payment to him of the necessary postal fee for transmission of the same as a registered letter, forward the copy by post, so registered, to the Chairman for perusal.

County Courts.

Definitions.

These Rules the word order shall include ruling.

Order shall include any Act of Parliament, will, or licence constituting the title of the limited owner, or the first estate of inheritance.

Deputy Clerk of the Peace shall include the Deputy Clerk of the Peace.

Computation of time for the purposes of these Rules, shall be by mean calendar month; and when the computation is by days, Sunday shall be excluded, and the days shall be counted of the first, and inclusive of the last.

ADDITIONAL RULES UNDER LAND ACT, 1870.

Saturday, June 1, 1872.

It is this day ordered by the Court for Land Cases Reserved that the following Rules shall be added to the Rules of the 24th of October, 1870, for proceedings under Part I. of the Landlord and Tenant (Ireland) Act, 1870—

1. That no case pending in the Chairman's Court, Court of Assize, or Court for Land Cases Reserved, shall abate or be suspended by the death of any of the parties thereto.

2. That in case of the death of any such party, the Court in which such cause is or shall be pending may direct such notice to be given to such person or persons, or deem any notice or notice that may have been given to any persons to be sufficient, and may make such order for the further proceedings in the cause as the Court shall seem fit; and such Court shall be at liberty to proceed with and hear and determine the cause as if no such death had taken place (a), and may, if necessary, hear and determine the cause *ex parte*.

(a) Where claimant died after a decree for compensation had been made by the County Court Judge, PALLIS, C.B., allowed his son to appear on appeal without making an order appointing him a limited administrator, and directed that the compensation, if any, should be paid to the personal representative of deceased. *Pour v. Rotten*, 9 I. L. T. R. 96, Donn. 497.

(Rules 3 & 4 provide a schedule of costs and fees, which is now superseded by that under the County Court Rules, 1890, pp. 716-718.)

COUNTY COURTS.

APPENDIX TO THE RULES OF 1870.

Rules of
1870.

FORMS FOR USE IN ORDINARY LAND CASES.

No. 1.

FORM OF A NOTICE OF CLAIM FOR DISTURBANCE.

Landlord and Tenant (Ireland) Act, 1870.

County of Limerick.

Division of Newcastle.

A. B., Tenant of the lands of Mount Hawk,
in the barony of and parish of

Claimant;

C. D., of Landlord of
the above-named Tenant, in respect of
the said lands,

Respondent.

The said A. B., asserting that he is disturbed in the occupation of such lands by the act of his landlord [here state nature of the alleged disturbance], claims compensation for the loss sustained by him in quitting his holding as follows:—

 years' rent thereof (the holding being valued at per annum),
and the annual rent being £ s. d.

The said A. B. also claims compensation for improvements made on said lands by himself, and by , his predecessor in title [if such is the case], viz.:—[Here state nature of improvements if claimed for, such as permanent improvements, reclamation of waste lands, ordinary improvements, &c., as the case may be]

(Signed) A. B.

Dated 1st August, 1870.

[Every item of demand must be specified with as much particularity as practicable; including date, amounts, and the nature and description of the claim.]

No. 2.

FORM OF A NOTICE OF CLAIM FOR IMPROVEMENTS WHERE THE TENANT CLAIMS FOR IMPROVEMENTS ONLY.

* [Heading and particulars as in Form No. 1.]

The said A. B. claims compensation for improvements made on the said lands by the said A. B. [or by E. F., his predecessor in title, or by both, as the case may be], as follows:—[enumerate and describe the alleged improvements as in the preceding form.]

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1870.

No. 3.

FORM OF A NOTICE OF CLAIM BY AN ULSTER TENANT IN CASE OF DISTURBANCE, NOT CLAIMING UNDER ANY ULSTER TENANT-RIGHT CUSTOM.

[*Heading and particulars as in Form No. 1.*]

The said *A. B.*, asserting that he is disturbed in the occupation of the said land now held by him by the act of his landlord [*Here state nature of alleged disturbance and not claiming the benefit of any Ulster Tenant-right Custom, claims compensation for the loss sustained by him in quitting his holding [here adapt the preceding forms to the statement of the present claim].*]

No. 4.

FORM OF A NOTICE OF CLAIM IN RESPECT OF AN ULSTER TENANT-RIGHT CUSTOM.

[*Heading and particulars as in Form No. 1.*]

The said *A. B.* claims to be entitled to the benefit of the following Tenant-right Custom, viz. [*here set out the right claimed*] or claims the following sum as due to him by way of compensation under a tenant-right custom, &c. [*as before*].

No. 5.

FORM OF A LANDLORD'S NOTICE OF DISPUTE OF THE WHOLE CLAIM.

[*Heading and particulars as in Form No. 1.*]

Take notice, that I, the said *C. D.*, landlord of the said *A. B.*, dispute the claim and every part thereof, made by him for compensation in respect of the lands Tubber, and that in the event of the claim of the said *A. B.*, or any portion thereof being allowed, I will rely upon the following items of set-off in satisfaction and reduction of said claim.

[*Here enumerate and describe the items of the alleged set-off with as much particularity as possible, including dates, amount, and the nature and description thereof.*]

(Signed) *C. D.*

No. 6.

FORM OF A LANDLORD'S NOTICE OF DISPUTE OF A PORTION OF A CLAIM.

[*Heading and particulars as in Form No. 1.*]

Take Notice, that I, the said *C. D.*, landlord of *A. B.*, dispute the following items of the claim made by him for compensation in respect of the lands Tubber:—

	£	s.
No. 1. The item for the erection of buildings - - - -	20	
No. 2. The item for unexhausted tillages and manures - - -	50	
But I admit and am willing to allow the item, No. 3, for gates and fences - - - - -	10	

And I hereby give notice that I will rely upon the following items of set-off namely:—

No. 7.

FORM OF DECREE.

[Heading and particulars as in Form No. 1.]

By the Chairman of Quarter Sessions for the county of [Wicklow].

The Court having heard and investigated a claim, duly made and prosecuted under the said Act, in which the claimant sought compensation in respect of [disturbance in his holding of the said lands to the amount of £] and for [improvements affected therein to the amount of £] and for [], and in which the said *C. D.*, admitted or disputed such claim, and relied on a claim for [set-off, &c.] (as the case may be); or, if no appearance by the Respondent) [and it appearing to the Court that notice of said claim was duly served upon the said *C. D.*]* and it appearing to the Court that the said *A. B.* has established his claim for [here state particulars of loss sustained by the tenant in quitting his holding which have been] and for [here state the particulars of improvements and payments to predecessors allowed] making together the sum of £ , and it further appearing that the said *C. D.* has established [here state particulars of any set-off, objection, default, or conduct of the tenant, allowed or taken into account] making together the sum of £ , [or has failed to establish his said claim]. It is adjudged that after deducting the said sum of £ from the said sum of £ , there is due by the said *C. D.* to the said *A. B.* the sum of £ in respect of the said claim, which said sum of £ the said *C. D.* is hereby ordered to pay to the said *A. B.*, together with the sum of £ for costs and £ for expenses of witnesses. And the several Sheriffs of the respective counties of Ireland are hereby commanded, notwithstanding any liberty, within their bailiwicks, to enter the same, and take in execution the [body or goods, as the case may be] of the respondent(s) to satisfy the said sum of £ and costs.

Dated this day of in the year one thousand eight hundred and seventy.

Sum recovered	-	-	-	-	-	£
Costs	-	-	-	-	-	£
Witnesses' expenses	-	-	-	-	-	£
Warrant	-	-	-	-	-	£

E. F.—Chairman of Quarter Sessions for said County.

G. H.—Clerk of the Peace for the said County.

I. K.—Attorney for the claimant(s).

* [NOTE.—If any default or unreasonable conduct of either party under the 18th Section has been relied on at the hearing, the decree should notice the fact, and specify the allowance or disallowance of the claim and the sum (if any) awarded in respect of such item.]

No. 8.

FORM OF DISMISS.

[Heading and particulars as in Form No. 1.]

By the Chairman, &c. [Proceed as in last form to*.]

And it appearing to the Court that the said *A. B.* has failed to establish his said [several claims] or his said claim in respect of [see preceding form], but has established his said claim in respect of to the amount of £ . And it further appearing that the said *C. D.* has established his claim for [see preceding form] to an amount equalling [or exceeding] the said sum of £ . It is therefore

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1870.

ordered that the claimant's said claim be, and the same is hereby dismissed, and that the respondent(s) do recover against the claimant(s) the sum of £ cos of this dismiss, together with for witnesses' expenses. And the several sheriff in Ireland are hereby commanded, notwithstanding any liberty within the respective bailiwicks, to enter the same, and take in execution the claimant's [bod or goods, *as the case may be*] to satisfy and pay the respondent(s) the said cost obtaining this dismiss.

Dated at , this day of one thousand eight hundred and seventy.

Cost of dismiss - - - - - £
Witnesses' expenses - - - - - £

E. F.—Chairman of Quarter Sessions for said County

G. H.—Clerk of the Peace of said County.

T. K.—Attorney for the respondent(s).

No. 9.

FORM OF DECREE ON A CLAIM UNDER AN ULSTER TENANT-RIGHT CUSTOM.

[*Heading and particulars as in Form No. 1.*]

By the Chairman, &c.

The Court having heard and investigated a claim duly made and prosecuted under the said Act, in which the Claimant made a claim in respect of a certain Ulster Tenant-right custom, that is to say [*here set out the right claimed*],* [*her adapt Form No. 7 to the circumstances of this case*]

No. 10.

FORM OF DISMISS OF A CLAIM UNDER AN ULSTER TENANT-RIGHT CUSTOM.

[*Heading and particulars as in Form No. 1.*]

By the Chairman of Quarter Sessions for said County. [*Proceed as in last for to* and then adapt Form No. 8 to meet the circumstances of the case*]

No. 11.

FORM OF SUBMISSION TO ARBITRATION AND APPOINTMENT OF ARBITRATORS AND UMPIRE.

[*Heading and particulars as in Form No. 1.*]

WHEREAS John Smith has claimed for compensation under this Act, in respect the lands in the title hereof, the sum of £ , by reason of disturbance in occupation, by the act of the said Patrick Power [*as the case may be*], and a sum of £ , for improvements effected thereon, as appears by the notice claim bearing date the , lodged on the day of , in the of the Clerk of the Peace. And whereas the said Patrick Power disputes the claim, and relies, moreover, in satisfaction or reduction of same, upon a set amounting to £ , for , or £ , damages for [*as the case may be*], as appears by the notice of dispute, bearing date the day of lodged in the office of the Clerk of the Peace.

It is hereby agreed by and between the said parties, to refer such dispute to order, award, and final determination of A. B., of , and C. D., of

Forms under Land Act, 1870.

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purauant to the provisions of the said Landlord and Tenant (Ireland) Act, 1870. in that behalf provided. Accordingly the said John Smith hereby appoints A. B., of , to be and act as his arbitrator herein, and the said Patrick Power hereby appoints C. D., of , to be and act as his arbitrator in accordance with the provisions of the said Landlord and Tenant (Ireland) Act, 1870.

Rules of 1870.

Dated this day of

(Signed) JOHN SMITH.

Witness—

(Signed) PATRICK POWER.

Witness—

The said A. B. and C. D., the arbitrators so hereby appointed, do hereby, and before entering upon the matters herein referred to them, in accordance with the said Act appoint E. F., of , to be, and act as Umpire, in case of difference between them.

Dated this day of

(Signed) A. B.

C. D.

Witness—

FORMS FOR USE IN CASES OF LIMITED OWNERS.

A.

FORM OF APPLICATION BY A LIMITED OWNER TO THE CHAIRMAN OF QUARTER SESSIONS FOR A CHARGING ORDER, IN RESPECT OF COMPENSATION AGREED ON, AND PAID.

Landlord and Tenant (Ireland) Act, 1870.

To the Chairman of Quarter Sessions of County of

County of
Division of
In the case of the Estate of A. B., a limited owner of land, said C. D., the person entitled to the first subsequent estate of inheritance therein.

The Applicant sheweth as follows:—
1. That under a deed dated the day of 18 , and made between, &c. [or, under the last will of , dated the day of , and duly executed], the Applicant is entitled to an estate for the term of his life, and for his own benefit, in the lands of

2. That the estate in the lands subject to the trusts of such deed [or. will], as in estate in fee-simple (or, an estate for lives, or years renewable for ever, or as the case may be).

3. That the said C. D., of , now residing at (the post town of which is , in the county of), is the person now entitled to the first estate of inheritance in said lands, expectant on the determination of the Applicant's estate therein.

4. That the said C. D. is of full age, and not under any disability [if an infant, lunatic, &c., state the fact, and the name and residence of the guardian, committee, &c.].

5. That the Applicant has been in receipt of the rents and profits of said lands since the day of , 18 .

Rules of
1870.

6. That the Applicant on the day of , agreed with *E. F.*, of , then being a tenant [from year to year, or as the case may be], of a portion of said lands, called , specified in the map hereto annexed, containing acres, or thereabouts, to pay to him the sum of £ , as the amount of compensation payable to him for [disturbance, improvements, &c., as the case may be], under the 27th Section of said Act.

7. That such agreement was a fair and equitable one, as between him and such tenant, having regard to the said Act, and that he has paid the said sum of £ , to the said *E. F.*

8. That the Applicant now seeks for an order to charge the said holding of in respect of such payment, with an annuity of £ , to be limited in favour of the Applicant *A. B.*, his executors, administrators, and assigns, to be payable for a term of thirty-five years, from the day of [the date of the payment of the principal sum].

[Signature of Applicant and Residence].

[Map of Holding, with the bounds and names of adjoining occupiers, to be annexed, enlarged from the Ordnance Survey to the scale of 25 344 inches to a statute mile.]

B.

FORM OF AFFIDAVIT VERIFYING THE APPLICATION BY A LIMITED OWNER FOR A CHARGING ORDER IN RESPECT OF COMPENSATION PAID.

[Heading and particulars as in Form A.]

A. B., of , in the county of , maketh oath and saith, that he has read the accompanying application for a Charging Order, signed by him, or by— [as the case may be], and that the contents thereof are true, to the best of his knowledge, information, and belief.

[Signature of deponent.]

C.

FORM OF NOTICE TO BE SERVED ON THE PERSON HAVING THE FIRST ESTATE OF INHERITANCE IN THE LANDS, BY A LIMITED OWNER WHO HAS LODGED HIS APPLICATION FOR A CHARGING ORDER IN RESPECT OF COMPENSATION AGREED ON AND PAID.

SIR,—Take notice that an application has been lodged by me with the Clerk the Peace for the county of , claiming to be the limited owner of the lands , in the county of , praying that the Chairman of the said county may order the holding of , late in the occupation of *E. F.*, as my tenant, to be charged in my favour with an annuity of £ for the term of thirty-five years in respect of the sum of £ paid by me to the said *E. F.* by agreement, compensation to him for [disturbance, improvements, &c., as the case may be] under the 27th Section of the Land Improvement (Ireland) Act, 1870, as mentioned in my application; and I hereby give you notice, that you are stated therein to be the person having the first estate of inheritance in said lands, within the meaning of the said Act; and that such application will be heard at the Land Session to be held at on the day of next, at which if you object to such application, you are hereby required to attend; or in default the Chairman will proceed as he may deem right.

A. B. [Limited Owner

To *C. D.* [the person having the first estate of inheritance in the lands] to be addressed to his residence and post town.

D.

Rules of
1870.FORM OF A CHARGING ORDER FOR AN ANNUITY IN RESPECT OF COMPENSATION AGREED
ON AND PAID BY A LIMITED OWNER.

[Heading and particulars as in Form A.]

By the Chairman of the Quarter Sessions of the County of .

It appearing to the Court that the said [A. B.] being a limited owner of the lands of , in the said county, on the day of 18 agreed with [E. F.], then being tenant to him [*state tenant's interest*] of a portion of the said lands called , containing acres, or thereabouts, to pay to the said [E. F.] the sum of £ , as the amount of compensation payable for disturbance, improvements, &c. [*as the case may be*] under the 27th Section of said Act, and that the said [A. B.] had paid to the said [E. F.] the amount of said compensation.

And it appearing that the said [A. B.] duly caused to be served personally [*or, if otherwise, state mode of service*] on [C. D.], the person entitled to the first estate of inheritance in said lands, a notice signed by the said [A. B.] stating the fact of such agreement and payment, and his intention to apply for an order to charge such holding with an annuity of £ in his favour for the term of thirty-five years, and the said [C. D.] having appeared before the Court, was duly heard [*or in case of no appearance, say, And whereas proof was given to the Court that twenty-one days' previous notice of the intention of the said [A. B.] to make such application had been duly served on the said [C. D.], or his agent, &c.*] And it having been proved to the satisfaction of the Court that the said sum of £ was paid by the said [A. B.] to said [E. F.] Now, it is hereby ordered that the lands of , containing acres, in the barony of , and county of , as specified in the map lodged in this case in the Office of the Clerk of the Peace for the said county, be charged with an annuity of £ in favour of the said [A. B.], his executors, administrators, and assigns, for the term of thirty-five years, payable on the day of in each year, commencing from the day of

18 .

[Follow the words of the Orders made by the Chairman.]

E.

FORM OF APPLICATION BY A LIMITED OWNER TO THE CHAIRMAN OF QUARTER SESSIONS
FOR AN ORDER OF CONFIRMATION OF A LEASE, OR PROPOSED LEASE.

To the Chairman of Quarter Sessions of the County of .

County of
Division of
In the case of A. B. (a Limited Owner)
seeking for an Order of Confirmation of a
Lease, [*or proposal for a Lease.*]

The Applicant sheweth as follows:—

1. That he is entitled to an Estate for his life, and for his own benefit, in the lands of , in the barony of . and county of , under a deed dated the day of , made between, &c. [*or under the last will, or &c., of , dated the day of , and duly executed.*]

2. That he is in receipt of the rents of said lands

3. That he has granted [*or has proposed to grant*] to [C. D.] an agricultural lease of the lands of , containing acres, or thereabouts, part of said estate, the date of such lease or agreement being the day of

18 .

Rules of
1870.

4. That such lease [*or proposed lease*] is for the term of years [*as the case may be*], at the yearly rent of £ which is a fair yearly rent for the same, the general tenement valuation thereof being £ ; and that the applicant has not received, or contracted for, nor will he receive or contract for any consideration in the nature of a fine, premium, or foregift for said lease [*or proposed lease*].

5. That the holding thus leased [*or proposed to be leased*] does not include any mansion-house or demesne lands.

The applicant, therefore, applies that such lease [*or proposed lease*] may be confirmed by the Court.

[*Signature of applicant.*]

Verification.

A. B., of , in the county of , maketh oath and saith, that he has read the accompanying application for an Order of Confirmation of a Lease, signed by him, or by [*as the case may be*], and that the contents thereof are true, to the best of his knowledge, information, and belief.

[*Signature of deponent*]

F.

FORM OF APPLICATION BY A TENANT [*OR PROPOSED TENANT*] TO THE CHAIRMAN OF QUARTER SESSIONS FOR AN ORDER OF CONFIRMATION OF A LEASE, OR PROPOSED LEASE.

To the Chairman of Quarter Sessions of the County of .

The Applicant sheweth as follows.—

County of
Division of

In the case of E. F., a tenant [*or proposed tenant*] seeking for an Order of Confirmation of a lease [*or proposed lease*]

1. That [A. B.] of in the county of , and now residing at , is, as limited owner, entitled to an estate for his life, and for his own benefit, in the lands of , in the barony of , and county of .
2. That the said [A. B.] is in receipt of the rents of said lands, and has by lease bearing date the day of granted the lands of , containing acres, or thereabouts, part of said estate to applicant, as tenant for

term of years [*as the case may be*], and that he is now in possession thereof [*If a proposal for a lease alter the preceding paragraph accordingly.*]

3. That the yearly rent reserved on said lease [*or proposed to be reserved*] is £ , and is a fair yearly rent for the same, the general tenement valuation thereof being £ ; and that the applicant has not given, or contracted for, nor will he give, or contract for any consideration in the nature of a fine, premium, or foregift for said lease [*or proposed lease*].

4. That the holding thus leased [*or proposed to be leased*] does not include an mansion-house or demesne lands

The applicant, therefore, applies that such lease [*or proposed lease*] may be confirmed by the Court.

[*Signature of applicant.*]

Verification.

A. B., of , in the county of maketh oath and saith, that he has read the accompanying application for an Order for Confirmation of a Lease, signed by him, or by [*as the case may be*], and that the contents thereof are true to the best of his knowledge, information, and belief.

[*Signature of deponent.*]

COUNTY COURT RULES, 1890.

ORDER VI.

7. Where the defendant in any action brought under the provisions of the 30th, 31st, 32nd, or 33rd Sections of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," or under the 45th, 46th, or 82nd Sections of the same Act, shall not have a residence in the county in which the civil bill is returnable, and brought under Sec. 1 of the 37 & 38 Vic., c. 66, or any Act extending or amending the same, the civil bill shall be served on the defendant therein fifteen clear days before the return day.

Rules of
1890.
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8. Where the defendant in any action brought under the provisions of the 30th, 31st, 32nd, 33rd, 45th, 46th, or 82nd Sections of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," has not a residence in the county in which the civil bill in such action is returnable for hearing, service of the said civil bill may be made by any person, and such service out of the county may be proved orally or by affidavit. Such affidavit to be lodged and filed with the clerk of the peace. But where the defendant in such civil bill has a residence in the county in which such civil bill is returnable for hearing, the same shall be served by one of the process officers of the court.

10. In all actions brought under the provisions of the 32nd and 33rd, 45th, 46th, or 82nd Sections of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," the civil bills shall be returnable for hearing, in the division of the county where the lands, or any part of them, lie, in respect of which the plaintiff in such civil bill brings his suit, unless the defendant has a residence in the county and then in the division where the defendant resides.

11. In all actions brought under the provisions of the 30th or 31st Sections of "The Landlord and Tenant Law Amendment Act (Ireland), 1860," (a) when brought by the Landlord in the county where the lands lie, the civil bill shall be returnable for hearing in the division of the county where the lands, or any part of them, lie, in respect of which the plaintiff brings his suit; and when brought in the county where the defendant has a residence, in the division of the county in which such residence is.

(a) See notes to these Sections, *ante*, pp. 61-62.

ORDER XXIII.

Ejectment for Non-payment of Rent—Decree—Restitution.

1. At the hearing of every ejectment for non-payment of rent the clerk of the peace shall enter in the ejectment book the sum of money ascertained to be due and owing for rent, and the time up to which the same is due, and the clerk of the peace shall compare with such entry the statement in the decree in such ejectment of the amount of rent so ascertained to be due before he signs his name to such decree; and the clerk of the peace shall certify on such decree the amount of rent so ascertained, and the date up to which the same is due.

2. In ejectments for non-payment of rent, when the plaintiff obtains a decree for possession, he shall annex to the decree, for the signature of the Judge, the bill of costs claimed against the so doing no execution for costs shall be awarded by such decree.

3. Where the defendant in a civil bill ejectment for non-payment of rent, or any other person entitled to redeem the lands evicted by a decree for possession had in such ejectment proceedings, is desirous to obtain a writ of restitution to be restored to the possession of the land after such decree has been executed, such person shall serve a notice upon the plaintiff in said civil bill ejectment in the form in the schedule to these rules annexed, (a) fifteen clear days before the first day of the sessions to which the application for such writ of restitution is intended to be made.

(a) See, *post*, p. 707.

4. The application for a writ or order of restitution to restore party to the possession of lands under the 70th Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," (c) shall be made in the division of the county in which the ejectment decree has been obtained.

(a) See as to restitution generally notes to L. & T. Act, 1860, Sec. 71, *ante*, pp. 1 to 128.

5. The writ of restitution, ordering a defendant to be restored to the possession of lands from which he had been evicted in a decree in an ejectment for non-payment of rent, shall be in the form in the schedule hereto annexed.

See, *post*, p. 708.

6. When notice of an application for a writ of restitution has been served pursuant to the 70th Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," the plaintiff in the civil bill ejectment decree, if he intends claiming any rent not included in the civil bill ejectment, or which may have become due since the signing of the decree, shall give two clear days' notice of such his intention to the party so applying for such writ of restitution.

7. Where a decree for possession in an ejectment for non-payment of rent has been executed, and the landlord has been put into possession, and before the period of six months has expired for the redemption of the lands so evicted, any further rent has become due in respect of said lands, the party applying to the court for a writ of restitution to be restored to the possession of the said lands mentioned in said decree for possession, shall, before such writ of restitution issues, pay over or lodge in court such further rent as may be awarded by the court, in addition to the sum ascertained to be due for rent and costs by said decree.

8. Where the landlord has been put into possession of lands under a decree for possession in an ejectment for non-payment of rent, and the tenant or party entitled to apply for a writ of restitution shall require such landlord to account for the profits of the lands received by him whilst he was so in possession, such tenant or party so applying for a writ of restitution shall, in the notice that such application will be made, inform the landlord that he will be called on to account, at the hearing of the application for such writ of restitution, for such profits.

9. Where there are several defendants in an ejectment for non-payment of rent, and a decree shall be made ordering the costs to be paid by some or one of the defendants to the exclusion of the others, should the parties or party who are so exonerated from the payment of costs by such decree apply for a writ of restitution to be restored to the possession of the premises after such decree has been executed, they must, in addition to the rent and arrear of rent due out of said premises, lodge in Court the costs payable to the plaintiff in the suit, if not previously paid.

Rules of
March, 1897

ORDER XXIII.A.*

1. In all civil bill ejectments for non-payment of rent for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character, the civil bill shall state specifically that:—

(a.) There is no person in occupation as tenant otherwise than as immediate tenant to the plaintiff of the premises sought to be recovered or any part thereof, and the plaintiff claims to recover clear possession of the same premises, and to have the decree in the action executed against all persons in occupation of the same; or

(b.) There is or are a person or persons in occupation as tenant or tenants otherwise than as immediate tenant or tenants to the plaintiff of the premises sought to be recovered or some part thereof.

In case the plaintiff alleges that there is any person in occupation as tenant otherwise than as immediate tenant to the plaintiff of the premises sought to be recovered or any part thereof the civil bill ejectment shall, so far as reasonably can be done, state the name of every such person, and show what portion of the said premises is occupied by him; and shall further state as to such person whether the plaintiff admits, denies, or is ignorant as to his right, under Section 12 of the Land Law (Ireland) Act, 1896 (59 & 60 Vic. c. 47), notwithstanding a decree for the plaintiff in the ejectment, to retain possession as immediate tenant to the plaintiff of the portion of the said premises so in his occupation, and not to have such decree executed against him. In case the plaintiff denies the right under the said Section of any such person as aforesaid, notwithstanding a decree for the plaintiff in the ejectment, to retain possession as immediate tenant to the plaintiff of the portion of the said premises so in his occupation, and not to have such decree executed against him, the civil bill ejectment shall state the facts on which the plaintiff relies in denial of such right. The civil bill ejectment shall be in such one of the Forms Nos 3A, 3B, and 3C, in the Appendix, as shall be applicable to the case, with such variations as circumstances may require, and shall in the cases of the said Forms Nos. 3B and 3C have added thereto the note in the said Forms respectively contained.†

* Made in pursuance of Section 12 of the Land Law (Ireland) Act, 1896, 13th March, 1897.

† See these forms, *post*, pp. 691-695.

2. Where a civil bill ejectment for non-payment of rent for the recovery of a holding or of lands including a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character, has been served on any person in occupation of such holding as sub-tenant thereof, and such person merely claims to be entitled under Section 12 of the Land Law (Ireland) Act, 1896 (59 & 60 Vic., c. 47), notwithstanding a decree for the plaintiff in the action, to retain possession of such holding as immediate tenant to the plaintiff, and not to have such decree executed against him, he shall serve notice accordingly. The notice shall state whether such person intends to defend in respect of all the premises sought to be recovered or part only thereof, and shall in the latter case describe such part with reasonable certainty. It shall also state full particulars of his sub-tenancy, including the rent payable in respect thereof, the gale days, and the amount then due for arrears of such rent up to the last gale day, and the name of his immediate landlord. Such notice shall be served five clear days before the return day on the plaintiff or his solicitor, and a copy thereof shall be lodged by the person serving same with the Clerk of the Peace on the entry day.

**Rules of
March, 1897.**

3. In the case of every ejectment for non-payment of rent to which Section 12 of the Land Law (Ireland) Act, 1896, applies, it shall be the duty of the Clerk of the Peace to enter in the Ejectment Book full particulars of the special statements required by Rule 1 of this Order, and of every notice served under Rule 2 of this Order; and at the hearing of such ejectment to enter in the Ejectment Book every order or ruling of the Court in respect of such matters, and to compare with such entry the statements in the decree in such ejectment as to any of the said matters before he signs his name to such decree.

4. The decree for possession in an ejectment for non-payment of rent to which Section 12 of the Land Law (Ireland) Act, 1896, applies, shall be in such one of the Forms Nos. 19B and 19C in the Appendix hereto, as shall be applicable to the case, with such variations as circumstances may require.

See these forms, *post*, pp. 700-702.

ORDER XXIV.*

Land Law (Ireland) Act, 1887.

1. When an ejectment is brought in any Civil Bill Court for the non-payment of the rent of a holding for which a judicial rent has not been fixed, the defendant having a right to apply to have a fair rent of such holding fixed, if he intends to apply to such Court to fix a fair rent for the holding, shall within six days after the service of the ejectment upon him serve a notice upon the plaintiff in such ejectment of such his intention. Such notice shall be in the form in the schedule hereto.

See Form 119, *post*, p. 710.

2. Service of the notice mentioned in the preceding rule upon the solicitor for the plaintiff at the address given by him on such ejectment, shall be the proper mode of serving such plaintiff, and such notice may be served either by being delivered to such solicitor at such address or else to some person there who shall be in his employment, or by being transmitted to such address by a registered letter. The time of service of such notice in the last-mentioned case shall be deemed to be the time when such notice should by ordinary course of post reach such address.

3. Two copies of the notice to fix a fair rent shall be delivered to the Clerk of the Peace of the county in which the holding is situated four days at least before the holding of the Civil Bill Court at which such notice is to be disposed of.

4. It shall be the duty of the Clerk of the Peace to enter such notice in the ejectment book along with the ejectment, and to record in such ejectment book any order made by the Judge with reference to the rent of the holding. In all other respects such application and the proceedings thereon shall be dealt with and treated as if the notice were an originating notice to fix a fair rent under the provisions of the Land Law (Ireland) Act, 1881, and the rules made thereunder.

(By order of 21st February, 1891, it is provided that Rules 5, and 14 of Order XXIV. of the County Courts (Ireland) Order 1890, shall be annulled, and the following Rules substituted thereof which shall be read as Rules 5, 6, and 14 of the said Order XXIV)

* As amended by Order of 21st February, 1891.

5. The summary of the notice mentioned in the 7th Section of the Land Law (Ireland) Act, 1887, shall be in the form in the schedule hereto, *with such variations as circumstances may require.** The manner of posting such summary on a police barrack shall be by affixing same to the notice board on such barrack, or on some other conspicuous place on the front of such barrack. The manner of posting such summary on a courthouse, shall be by affixing same to the door of such courthouse, or some other conspicuous place on the front of such courthouse. The time within which such summary shall be so posted shall be within fourteen days after sending the registered letter containing a copy of the said notice to the tenant of the holding, or within such further time as the Judge shall sanction or direct.

6. Service of the notice mentioned in the 7th Section of the Land Law (Ireland) Act, 1887, by sending a copy thereof in a registered letter (a) addressed to the tenant,* *and by sending a copy thereof, by registered letter, to every person served with the process in such ejectment, who at the time of the service of the notice shall be in possession of the land, addressed to every such person upon the land,* shall be good service of such notice on all the persons required to be served therewith under the provisions of said Section.

(a) The service is complete on the day the registered letters are posted, even though they may not be received until a subsequent day (per MORRIS, C.J.): *Reg. v. Justices of Carlow*, 24 L. R. Ir., at p. 494; see also *Vandeleur v. M'Grath*, 20 L. R. Ir. 437.

7. If at the time of the service of the notice mentioned in the 7th Section of the Land Law (Ireland) Act, 1887, no person who has been served with the process of ejectment for non-payment of rent shall be in possession of the land mentioned in such ejectment, service of such notice may be effected by posting a copy thereof in a manner similar to that hereinbefore in Rule No. 5 provided for posting the summary therein mentioned.

8. The time within which a copy of the notice mentioned in the said 7th Section of the Land Law (Ireland) Act, 1887, must be filed in Court shall be twenty-one days after the service thereof. Such copy shall be so filed by delivering same to the Clerk of the Peace, who shall thereupon duly file same in his office.

9. The mode of proving service of all notices under the Land Law (Ireland) Act of 1887, and of the date or dates of such service,

* The words in italics were added by Order of 21st Feb., 1891, to the Original Rule.

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(if it appear from the affidavit or affidavits filed that the requisite notice was duly served), to fill up and sign when required so to do, and thereupon, and not before, the said decree for possession if otherwise in force may be executed.

The Clerk of the Peace should not part with the possession of the decrees until he is satisfied that the notice has been served, and that the prescribed period has elapsed: *Reg. v. M'Grath*, 24 L. R. I. 391 (Exch. D.).

ORDER XXV.

Applications to fix Fair Rents under the Provisions of the Land Law (Ireland) Acts, 1881 and 1887.

Directions to the Court Valuers.

1. On the delivery of the originating notice to the court valuer he shall ascertain the Ordnance Sheet or Map which contains the lands proposed to be valued, and shall thereupon forward to the Clerk of the Peace a requisition for such Ordnance Sheet or Map, in the form in the Schedule to these Rules, addressed to the Land Commission, and the Clerk of the Peace shall countersign the same and transmit it to the Land Commission at least seven days before the date on which such Ordnance Sheet or Map shall be required.

2. When making his report, the Court Valuer shall prepare the said Ordnance Sheet or Map in accordance with the directions contained in the form in the Schedule to these Rules, and shall fill up and sign the said form, and transmit the same and the said Ordnance Sheet or Map so prepared, together with his report, to the Clerk of the Peace.

It is not necessary, now, for the party applying to lodge a map. See Rules 134 and 136 of the Land Commission Rules, January, 1897, *post*, pp. 751-751.

ORDER XXVI.

Applications under Section 37 of the "Landlord and Tenant Law Amendment Act (Ireland), 1860"

1. Notices of application to annul or vary any precept or any order or conviction, under the 37th Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," shall be in the form in the schedule hereunto annexed, (a) or as near thereto as the circumstances of the case will permit, and such notices shall be served *two* clear days before the first day of the sessions next following the service of such precept, the date of such order, or the conviction, in case there shall be *two* clear days intervening between such service, date, or conviction and the first day of the

sessions; and if not, then such application shall be made at the sessions next following.

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(a) See, *post*, p. 709; and see notes to the Section referred to, *ante*, pp. 71-72.

2. Where any party shall claim compensation for any loss or damage caused by the procuring of any precept or order mentioned in the 35th Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," he shall serve a notice upon the opposite party from whom he claims such compensation, and such notice shall be in the form in the schedule hereunto annexed, and the same shall be served fifteen clear days before the first day of the sessions at which such claim is to be made.

3. Applications under the 37th Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," to annul or vary precepts, orders, or convictions, or for compensation for any loss or damage caused by procuring such precept or order, shall be made in the division of the county where the premises, or some portion of them, lie, in respect of which such precept, order, or conviction has been issued or made, unless the opposite party resides in the county, and out of such division, and then in the division of the county where such opposite party resides.

4. Notices under the 37th Section of the "Landlord and Tenant Law Amendment Act (Ireland), 1860," to annul or vary any precept, order, or conviction, or notice claiming compensation for loss and damage caused by such precept or order, shall, where the opposite party has a residence in the county, be served by the process officer of the Court in the manner in which ordinary civil bills are directed to be served, but where such opposite party has not a residence in the county, the same may be served by any person.

5. Notices to annul or vary any precept or order, or claiming compensation for loss or damage caused by the procuring of the same, or to annul any conviction made at petty sessions, shall contain the addition and residence of the party who shall cause the same to be served and of the opposite party; and service of the same on the opposite party therein named shall be effected by serving the parties as prescribed for the service of ordinary civil bills.

For Fees and Costs in such cases see County Courts Schedule of Fees, Part VI., *post*, p. 715.

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1890.

FORMS PRESCRIBED BY THE COUNTY COURTS
(IRELAND) ORDERS, 1890.*

No. 2.

Civil Bill Ejectment against a Permissive Occupant.

County of _____ Division of _____ A. B., of _____ in the County of _____ [Residence and addition of Plaintiff] Plaintiff; C. D., of _____ in the said County of _____ and Division of _____ [Residence and addition of each Defendant], Defendants	}	Whereas the Plaintiff, on the day of _____, in the year one thousand eight hundred and delivered to the defendant [the lands of _____] to be by him the Defendant occupied or taken care of as servant (or caretaker, or herdsman, or per- missive occupant, or strictly at the will of the Plaintiff or at sufferance, as the case may be) for the Plaintiff. at [state wages if any]
---	---	--

And Whereas the Plaintiff on the _____ day of _____, required the Defendant to deliver up the same to the Plaintiff, but the Defendant refused or omitted so to do, and has since the said day kept the possession of said premises from the Plaintiff. The Defendant, therefore, is hereby required personally to appear at the County Court, to be held at _____, in the division and county aforesaid, on the _____ day of _____ next, to answer the Plaintiff's bill for the withholding of the possession of the premises in manner aforesaid.

Dated this _____ day of _____ 18 _____.

Signed on behalf of the Plaintiff.
Solicitor.
Residence of Solicitor.

No. 3.†

Civil Bill Ejectment for Non-payment of Rent where One Year's Rent due.

County of _____ Division of _____ A. B., of _____ in the County of _____ [Residence and addition of Plaintiff], Plaintiff; C. D., G. H., and J. K., of _____ in the said County of _____ and Division of _____ [Residence and addition of each Defendant], Defendants.	}	Whereas the Defendant (or one of the Defendants) holds [part of the lands of _____] situate at _____, in the parish of _____ and barony of _____, and in the Division of _____ and county of _____ aforesaid, as tenant to the Plaintiff _____ under a lease (or contract of tenancy) for a term un- expired (or as a tenant from year to year, as the case may be), at the yearly
---	---	---

rent of _____ . And whereas the sum of _____ of the said rent, being one full year's rent due and ending on the _____ day of _____

* Such only of the forms as have reference to cases where the relation of Land lord and Tenant exists, are included.

† This form is for use in the case of all holdings not within Land Act, 1896, Sec 12. For forms in cases coming within that Section, see three following forms.

last, became and still is due to the Plaintiff in respect of the said premises. [And whereas the Defendants, G. H. and J. K., respectively are in actual possession of the premises, as under-tenants thereof], and no other persons are in such possession.

The Defendants therefore and all persons having or claiming any interest in the premises are hereby required personally to appear at the County Court, to be held at . . . in the division and county aforesaid, on the . . . day of . . . next, to answer the Plaintiff's bill for recovery of the possession of the premises, by reason of the matters aforesaid.

Dated this . . . day of . . . , 18 . . .

Signed on behalf of the Plaintiff.

Solicitor.

Residence of Solicitor.

(To be Indorsed.)

The Plaintiff(s) claim(s) after all just and fair allowances up to the time of bringing this ejectment £ . . . , being for . . . years' rent up to the day of . . . ; the times at which the same accrued due being as follows —

Rent due and ending the . . . day of . . .	£ . . .
Rent due and ending the . . . day of . . .	£ . . .

And if the amount thereof be paid to the Plaintiff or solicitor, or known agent, or receiver, together with the sum of ten shillings in full of all costs of such ejectment proceedings within ten days from the service hereof, all further proceedings will be stayed.

Solicitor.

Residence.

No. 3A.*

[For use in the case of Agricultural Holdings, within Land Act, 1896, Sec. 12.]

LAND LAW ACTS.

Civil Bill Ejectment for Non-payment of Rent where One Year's Rent is Due, and where no part of the premises is in Occupation of a Sub-tenant.

[Heading, and names of parties, as in Form No. 3.]

Whereas the Defendant [or one of the Defendants] hold part of the lands of . . . situated in the Parish of . . . and Barony of . . . and in the Division of . . . and County of . . . aforesaid, as tenant to the Plaintiff [under a Lease or contract of tenancy for a term unexpired or as a tenant from year to year as the case may be] at the Yearly Rent of . . .

And Whereas the sum of . . . Pounds . . . Shillings and . . . Pence of the said Rent, being One full Year's Rent [and arrears] due and ending on the . . . day of . . . last (being the gale day next before the date of this Ejectment); became, and still is, due to the plaintiff in respect of the said Premises. And Whereas there is no person in occupation as tenant otherwise than as immediate tenant to the Plaintiff of the Premises, or any part thereof.

And Whereas the Defendant . . . is in actual possession of the said Premises and no other person is in such possession.

The Defendant . . . therefore and all persons having or claiming any interest in the Premises are hereby required personally to appear in the County Court, to be held at . . . in the Division and County aforesaid, on the . . . day of . . . next, to answer the Plaintiff's Bill to recover the clear possession of

*Forms 3A, 3B, and 3C, and also Forms 19A, 19B, and 19C, are prescribed by County Court Rules, Order 23A, ante, p. 684, made pursuant to 12th Section Land Law Act, 1896, dated 13th March, 1897.

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1880.

the whole of the Premises and to have the Decree executed against all persons in occupation of the same.

[To be dated and signed as in Form No. 3.]

The Plaintiff claim after all just and fair allowance up to the time of bringing of this Ejectment £ being for Year's rent [and arrears] up to the day of 189 , the time at which the same accrued due being as follows.—

Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189

And if the amount thereof, or in cases within Section 16 of the Land Law (Ireland) Act, 1896, the sum of two years' rent, should so much be due, be paid to the Plaintiff, or Solicitor or known Agent or Receiver, together with the Sum of Ten Shillings, in full of, all Costs of such Ejectment proceedings, within Ten days from the service hereof, all further proceedings in this action will be stayed.

No. 3B.*

[For use in the case of Agricultural Holdings, within Land Act, 1896, Sec. 12.]
LAND LAW ACTS.

Civil Bill Ejectment for Non-payment of Rent where One Year's Rent is Due, and where the Entire of the Premises is in the occupation of Sub-tenants.

[Heading, and names of parties, as in Form No. 3.]

Whereas [or one of the Defendants] held part of the Lands of situated in the Parish of and Barony of and in the Division of and County of aforesaid, as Tenant to the Plaintiff [under a Lease or a contract of tenancy for a term unexpired or as tenant from year to year, as the case may be] at the Yearly Rent of

And Whereas the sum of of the said Rent, being One full Year's Rent [and arrears] due, and ending on the day of last, being the gale day next before the date of this Ejectment, became, and still is, due to the Plaintiff in respect of the said Premises

And Whereas the Defendant is in occupation of [state part] as sub-tenant thereof.

And the Defendant is in occupation of [state part] a sub-tenant thereof, and the Defendant is in occupation of [state part] as sub-tenant thereof.

And Whereas no other person is in occupation of any other part of the said Premises.

And Whereas the Plaintiff admits the right of the Defendant under Section 12 of the Land Law (Ireland) Act, 1896, notwithstanding a Decree of possession for the Plaintiff to retain possession as immediate tenant to the Plaintiff of said part of said premises, so as aforesaid in his occupation, and not to have such Decree executed as against the said

And Whereas the Plaintiff denies any such right in the said for the reasons following.

[Here state reasons, e.g.: The said part of said premises do not constitute

* See note to Form 3A, ante, p. 691.

holding to which the Section applies: or, the non-payment of the said rent was due to the non-payment of rent by the said ; or any other matters which show that the said Section does not apply to the case of the said .]

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1890.

And Whereas the Plaintiff is ignorant as to such right of the said under the said 12th Section.

The Defendants therefore, and all persons having or claiming any interest in the Premises, are hereby required personally to appear at the County Court, to be held at in the Division and County aforesaid, on the day of next, to answer the Plaintiff's Bill to recover the possession of all the said Premises, as against [the immediate tenant], and to recover clear possession from the said [the Defendant whose rights are denied], and to have execution for the same, and to recover clear possession from the said [the Defendant of whose rights the Plaintiff is ignorant] save so far as the said establishes such right as aforesaid in respect of the Premises in his occupation as above mentioned, and to have execution for the same.

[To be dated and signed as in Form No. 3.]

The Plaintiff claim after all just and fair allowances up to the time of the bringing of this Ejectment £ being for year's rent [and arrears] up to the day of 189 the times at which the same accrued due being as follows:

Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189

And if the amount thereof, or in cases within Section 16 of the Land Law (Ireland) Act, 1896, the sum of two years' rent (if so much be due) be paid to the Plaintiff, or Solicitor, or known Agent or Receiver, together with the Sum of Ten Shillings, in full of all Costs of such Ejectment proceedings, within Ten days from the service hereof, all further proceedings in this action will be stayed.

Solicitor.

Residence.

NOTE.—If any person served with this Civil Bill is in occupation of the whole or any part of the said lands as sub-tenant of a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character, and merely claims to be entitled under Section 12 of the Land Law (Ireland) Act, 1896, notwithstanding a Decree for possession for the Plaintiff in this action to retain possession of such holding as immediate tenant to the Plaintiff, and not to have such Decree executed against him, he shall serve his notice accordingly. The notice shall state whether he so defends in respect of all the said lands or part only thereof, and shall in the latter case describe such part with reasonable certainty. The notice shall also state full particulars of such sub-tenancy, including the rent payable in respect thereof, the gale days, and the amount then due for arrears of such rent up to the last gale day, and the name of such person's immediate landlord. The notice shall be served five clear days before the return day on the Plaintiff or his solicitor, and a copy thereof shall be lodged by the person serving same with the Clerk of the Peace on the entry day.

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No. 3c.*

[For use in the case of *Agricultural Holdings*, within Land Act, 1896, Sec. 12.]

LAND LAW ACTS.

Civil Bill Ejectment for Non-payment of Rent where One Year's Rent is Due, and where Part only of the Premises is in the Occupation of Sub-tenants.

[*Heading, and names of parties, as in Form No. 3.*]

Whereas the Defendant [*or one of the Defendants*] hold part of the Lands of situated in the Parish of and Barony of and in the Division of and County of aforesaid, as Tenant to the Plaintiff [*under a Lease or contract of tenancy for a term unexpired or as tenant from year to year, as the case may be*] at the Yearly Rent of And Whereas the sum of of the said Rent, being One full Year's Rent [*and arrears*] due and ending on the day of last, being the gale day next before the date of this Ejectment, became, and still is, due to the Plaintiff in respect of the said Premises.

And Whereas the Defendant is in occupation of [*state part*] as sub-tenant thereof. And Whereas is in occupation of [*state part*] as sub-tenant thereof. And Whereas is in the occupation of [*state part*] as sub-tenant thereof, and the Defendant is in occupation of the residue of the said premises as immediate tenant to the Plaintiff under the said [*Lease, &c.*] And Whereas no other person is in occupation of any part of the said Premises. And Whereas the Plaintiff admits the right of the said under Section 12 of the Land Law (Ireland) Act, 1896, notwithstanding a Decree for possession for the Plaintiff in this action to retain possession as immediate tenant to the Plaintiff of the said so as aforesaid in his occupation, and not to have such Decree executed against him, but denies such right in the said for the reasons following:

[*Here state the reasons, e.g.: The said part of the premises do not constitute a holding to which the Section applies: or, the non-payment of the said rent was due to the non-payment of rent by the said; or any other matters which show that the said Section does not apply to the case of the said.*]

And Whereas the Plaintiff is ignorant as to such right of the said under Section 12.

The Defendants therefore, and all persons having or claiming any interest in the Premises are hereby required personally to appear at the County Court, to be held at in the Division and County aforesaid, on the day of next, to answer the Plaintiff's Bill to recover the possession of all the said Premises, as against the said [*the immediate tenant*] and to recover clear possession, and have execution for the same, of the part of the said Premises in the occupation of [*here state the name of the immediate tenant and of the under-tenant whose right is denied*], and to recover clear possession, and to have execution for the same, of the said part of the said premises in the occupation of the said [*here state name of under-tenant of whose right the Plaintiff is ignorant*], save so far as the said establish such right as aforesaid in respect of the premises so in his occupation as above mentioned.

[*To be dated and signed as in Form No. 5.*]

The Plaintiff claim after all just and fair allowances up to the time of this bringing of this Ejectment £ being for year's rent [*and arrears*] up to the day of 189 the times at which the same accrued due being as follows:

* See note to Form 3a, ante, p. 691.

Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189
Rent due and ending the	day of	189

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And if the amount thereof, or in cases within Section 16 of the Land Law (Ireland) Act, 1896, the sum of two years of such rent (if so much be due) be paid to the Plaintiff, or Solicitor, or known Agent or Receiver, together with the Sum of Ten Shillings, in full of all costs of such Ejectment proceedings, within Ten days from the service hereof, all further proceedings in this action will be stayed.

NOTE.—If any person served with this Civil Bill is in occupation of the whole or any part of the said lands as sub-tenant of a holding agricultural or pastoral, or partly agricultural and partly pastoral in its character, and merely claims to be entitled under Section 12 of the Land Law (Ireland) Act, 1896, notwithstanding a Decree for possession for the Plaintiff in this action to retain possession of such holding as immediate tenant to the Plaintiff, and not to have such Decree executed against him, he shall serve a notice accordingly. The notice shall state whether he so defends in respect of all the said lands or part only thereof, and shall in the latter case describe such part with reasonable certainty. The notice shall also state full particulars of such sub-tenancy, including the rent payable in respect thereof, the gale days, and the amount then due for arrears of such rent up to the last gale day, and the name of such person's immediate landlord. The notice shall be served five clear days before the return day on the Plaintiff or his solicitor, and a copy thereof shall be lodged by the person serving same with the Clerk of the Peace on the entry day.

No. 6.

Civil Bill Ejectment for Overholding.

[*Heading, and names of parties, as in Form No. 3.*]

Whereas C.D., one of the Defendants, lately held part of the lands of _____ in the parish of _____ and barony of _____ and in the division and county aforesaid, as tenant to the Plaintiff under a lease (or contract of tenancy) for the term of _____ (or from year to year), at the yearly rent of £ _____, which tenancy determined on the _____ day of _____ last:

And whereas the several Defendants are in the actual possession of the premises, and no other person is in possession of any part thereof, as tenant or under-tenant.

The Defendants, therefore, and all persons claiming to have any interest in the premises are hereby required personally to appear at the County Court, to be held at _____ in the division and county aforesaid, on the _____ day of _____ next, to answer the Plaintiff's bill for recovery of the possession of the premises, by reason of the matters aforesaid.

[*To be dated and signed as in Form No. 3.*]

No. 7.

Civil Bill Ejectment for deserted Tenements.

[*Heading, and names of parties, as in Form No. 3.*]

Whereas the Defendant holds part of the lands of _____ in the parish of _____ of _____ and barony of _____ and in the division of _____

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aforsaid, as tenant to the Plaintiff under a lease (or contract of tenancy) thereof for a term still subsisting (or from year to year), at the yearly rent of £ , and whereas the sum of £ of the rent aforsaid, ending on the day of last, became and still is due to the Plaintiff, after all just and fair allowances.

And whereas the Defendant on the day of 18 , deserted and abandoned the premises, leaving them unoccupied (or leaving the lands or the greater portion of them to remain uncultivated or unemployed, contrary to the course of husbandry and without sufficient distress to be found thereon, or carrying away the stock or crop thereof).

The Defendant is, therefore, hereby required personally to appear at the County Court to be held at in the division and county aforsaid, on the day of next, to answer the Plaintiff's bill for the recovery of possession of the premises by reason of the matters aforsaid.

[Dated and signed as in Form No. 3.]

No. 8.

Civil Bill for Arrears of Rent under 45th Section of the Landlord and Tenant Law Amendment Act (Ireland), 1860.

[Heading, and names of parties, as in Form No. 3.]

The Defendant is hereby required personally to appear at the County Court, to be held at , in the Division and County aforsaid, on the day of next, to answer the Plaintiff's bill for that the Defendant is indebted to the Plaintiff [here state how the Plaintiff is entitled, whether in his own right or how otherwise] in the sum of £ , being an arrear of rent due by the Defendant [or, if the Defendant is sued in his representative capacity, state by whom due, and whether Defendant is executor or administrator] to the Plaintiff in respect of rent in arrear payable by the said Defendant [if executor or administrator, say, as such executor or administrator as aforsaid] to the Plaintiff out of the lands of , up to and for the day of , which lands (or a part of which) are situate in the said county of , and Division of , and are held under a certain [here state lease or other contract of tenancy, and the date and parties thereto].

[Dated and signed as in Form No. 3.]

No. 9.

Civil Bill for Use and Occupation of Lands or Premises under the 46th Section of the Landlord and Tenant Law Amendment Act (Ireland), 1860.

[Heading, and names of parties, as in Form No. 3.]

The Defendant is hereby required personally to appear at the County Court to be held at , in the Division and County aforsaid, on the day of next, to answer the Plaintiff's bill, for that the Defendant is indebted to the Plaintiff [here state how the Plaintiff is entitled whether in his own right or how otherwise] in the sum of £ , being a reasonable satisfaction for the use and occupation of the lands of [or premises consisting of , for ending the day of , which lands [or part of which lands] of are situate in the county of , and division of , and have been held and

occupied by the Defendant [or if the defendant is sued in his representative capacity, state by whom, and whether the defendant is executor or administrator],
 from the day of to the day of
 [Dated and signed as in Form No. 3.]

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 1890.

No. 10.

Civil Bill for the Recovery of Lands held under an Acknowledgment.
 23 & 24 Vict., c. 154, s. 80.

[Heading, and names of parties, as in Form No. 3.]

Whereas the Plaintiff lately obtained a Civil Bill Decree in Ejectment for the possession of (amongst others) the premises hereinafter mentioned, then in the occupation of the Defendant, and lately held at the yearly rent of £ and by an agreement made between the Plaintiff and the Defendant after such decree, and upon the execution thereof the said Defendant on the day of in the year signed an acknowledgment pursuant to the statute that he held and occupied the lands and tenements then in his occupation as hereunder specified, being all that [describe the lands as in the acknowledgment] situate in the parish of (or barony of) and division and county aforesaid, by the leave and license, and for and on behalf of, and at the will of the Plaintiff, and promised that he would when required by the Plaintiff or his authorized agent or receiver, deliver up to the Plaintiff or such agent or receiver the possession of the said premises in his occupation. And whereas the Defendant, though required by the Plaintiff (or his agent), on the day of , to deliver up to the Plaintiff (or his agent), the possession of the said premises, has refused to do so, and has withheld the possession thereof from the Plaintiff, the Defendant therefore and all persons having or claiming any interest in the premises in question are hereby required personally to be and appear at the County Court, to be held at in the division and county aforesaid, on the day of next, to answer the Plaintiff's bill brought by him for recovery of the possession of the premises by reason of the matters aforesaid.

[Dated and signed as in Form No. 3.]

No. 19.*

Decree in Ejectment for Non-payment of Rent.

[Heading, and names of parties, as in Form No. 3.]

It appearing to the Court that the Plaintiff caused a Civil Bill to be brought at this present sittings against the Defendant for recovery of [describe the premises as in the Civil Bill] held by Defendant, as tenant thereof to the Plaintiff at the yearly rent of , which Civil Bill was brought on the ground that one year's rent of said premises was in arrear and unpaid. And it appearing to the Court that the said Civil Bill was duly served upon requiring the Defendant and all persons claiming any interest in the said premises to appear at the said sittings to answer the said Bill, and that no other person was in the actual possession of the said premises, as tenant or under-tenant. And it appearing to the Court that the said premises were held by the said Defendant as tenant thereof to the Plaintiff at the yearly rent of and that

* For use now only in cases of holdings not within Land Act, 1887, Sec. 7, or Land Act, 1896, Sec. 12. See three following forms, prescribed by Rules of March, 1897, for cases within either of these Sections.

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the sum of _____ being the amount of one year's rent _____ and
arrear of rent up to the _____ day of _____ was due and owing to the
said Plaintiff by the said Defendant _____ in respect of the said tenancy
at the time of service of the said Civil Bill, after all just and fair allowances

It is therefore ordered and decreed by the Court that the Plaintiff be put
into the possession of the said premises; and the Sheriff of the said county
is hereby commanded to put the Plaintiff into the possession of the said premises.

And it is further ordered and decreed by the Court that the Plaintiff do recover
from the Defendant _____ costs, and the several Sheriffs of Ireland are
also hereby commanded to take in execution the goods of the said Defendant
to satisfy the said costs.

Dated at _____ this _____ day of _____
County Court Judge for the said county.
Clerk of the Crown and peace for the said county.
The Plaintiff, or
Solicitor for the Plaintiff.

Certificate of Rent Due.

I certify that the sum of _____ pounds, _____ shillings, and
pence, being _____ years' rent and arrears, was ascertained to be due and
owing in the above Decree by the County Court Judge for rent up to the
day of _____ 18 _____

Signed, _____
Clerk of the Crown and Peace.

(*Sheriff's warrant to be added*)

FORM 19A.*

LAND LAW (IRELAND) ACT, 1887.

Decree in Ejectment for Non-payment of Rent of Holding.

[*Heading, and names of parties, as in Form No. 3.*]

It appearing to the Court that the Plaintiff caused a Civil Bill to be brought
at this present Sittings against the Defendant for recovery of ALL THAT AND
THOSE [*describe the premises as in the Civil Bill*] situate and being in the Parish
of _____, Barony of _____, Division of _____, and
County aforesaid, and which said Premises were held by [*the Plaintiff's immediate
tenant*] the Defendant as Tenant thereof to the Plaintiff [*or one of them*] at the
Yearly Rent of _____ [*under a Lease or Contract of Tenancy bearing date
the _____ day of _____ 18 _____ for a term still unexpired, or as Tenant
from year to year, as the case may be*] which Civil Bill was brought on the ground
that One Year's Rent [*and upwards*] of said Premises was in arrear and unpaid
And it appearing to the Court that said Civil Bill was duly served upon

_____ requiring the Defendant and all persons claiming an
interest in the said Premises to appear at the said Sittings, to answer the sa-
id Bill, and that no other person was in the actual possession of the said Premises
as Tenant or Under-Tenant. And it appearing to the Court that the said Premises
were held by the said Defendant [*the Plaintiff's immediate tenant*] as Tenan-
t thereof to the Plaintiff [*under a Lease, &c., as case may be*] at the Yearly Rent
of _____. And the Court having determined that the said Premises
are a holding to which the 7th Section of the Land Law (Ireland) Act, 1887
applies, and that the same are not nor is any part thereof in the occupation
of a Tenant _____, within the 12th Section of the Land Law (Ireland) Act, 1886, a

* Prescribed by Rules of March, 1897 (made in pursuance of Land Act, 1887
Sec. 12) where there are no sub-tenants on the holding.

that the Defendant [*the Plaintiff's immediate tenant*] is not an "immediate landlord" of the said holding, within the meaning of the same Section, and having ascertained that the sum of £ was at the commencement of this Action and still is due to the Plaintiff on foot of the said Rent, up to and including the gale thereof which accrued due on the day of 18 , (being the gale day next before this Action), after all just and fair allowances. It is ordered and decreed that the Plaintiff do recover the possession of the said Premises, and do also recover from the Defendant the sum of Pounds, Shillings, and Pence, as and for costs. And it is Further Ordered that the Clerk of the Crown and Peace do upon Affidavit or Affidavits to be filed in his office, ascertain the date of the service of the notice mentioned in sub-section 1 of the said 7th Section of the said Act of 1887, and further that in the event of the Defendants or some or one of them, or some other person having a specific interest in the tenancy, not lodging with him the sum of £ [*amount of rent due, if it does not exceed two years' rent, otherwise amount of two years' rent*] as and for [*two years of, or the sum so due for*] the said rent and the further sum of £ for costs, the said two sums making together the sum of £ within six calendar months from the said date, the said Clerk of the Crown and Peace do when so required at or after the expiration of the said period of six months fill up the Certificate hereon endorsed by inserting the said date, and do sign the said Certificate. And it is further ordered that when the said Certificate shall have been so signed, *but not sooner*, the Sheriff of the said County do, and he is hereby commanded to put the Plaintiff into possession of the said lands. And the several Sheriffs in Ireland are hereby commanded to take in execution the goods of the said Defendant to satisfy the said costs. Dated at in the said County this day of 189 Costs and Expenses of Witnesses £

County Court Judge for said County.
Clerk of Crown and Peace for said County.
Solicitor for the Plaintiff.

Certificate to be signed by the Clerk of the Crown and Peace not earlier than six calendar months after the service of the notice under s. 7, s-s. 1, of the Land Law (Ireland) Act, 1887, but before the execution of the within decree. I certify that the Notice mentioned in Section 7, Sub-section 1, of the Land Law (Ireland) Act, 1887, was duly served on the day of 18 , as appears by the Affidavit filed in my office, that the period of six calendar months from the date of such service has expired, and that the sum £ [*aggregate of rent not exceeding two years and costs*] within mentioned has not been deposited or lodged with me within such period of six months.

Dated this day of 189 .
Clerk of the Crown and Peace.

Certificate to be signed by the Plaintiff's Solicitor before the Execution of this Decree.

I certify that the above-mentioned sum of £ is still due and unpaid.
Dated this day of 189 .
Plaintiff's Solicitor.

County of to wit. of and
I authorise and empower of and

Rules of
1890.

of Bailiffs, or either of them and their Assistants to execute the within Decree.

Given under my Hand and Seal this day of 18 .

The sum to be levied under the within Decree for Costs is £

Sheriff of the said County.

FORM 19B.*

LAND LAW ACTS.

Decree in Ejectment for Non-payment of Rent where the Entire Holding is in the Occupation of Sub-tenants who are entitled to retain Possession under Section 12 of Land Law (Ireland) Act, 1896.

[*Heading, and names of parties, as in Form No. 3.*]

It appearing to the Court that the Plaintiff caused a Civil Bill to be brought at this present Sittings against the Defendant for recovery of ALL THAT AND THOSE [*describe the premises as in the Civil Bill*] situate and being in the Parish of Barony of Division of and County aforesaid, and which said Premises were held by [*the immediate Tenant of the Plaintiff*], the Defendant as Tenant thereof to the Plaintiff [*under a Lease (or Contract of Tenancy) bearing date the day of , and made between, &c., for a term still unexpired (or as tenant from year to year) as the case may be*], at the Yearly Rent of which Civil Bill was brought on the ground that One Year's Rent [*and upwards*] of said Premises was in arrear and unpaid. And it appearing to the Court that said Civil Bill was duly served upon [] requiring the Defendants, and all persons claiming any interest in the said Premises to appear at the said sittings to answer the said Bill, and that no other person was in the actual possession of the said Premises as Tenant or Under-Tenant. And it appearing to the Court that the said Premises were held by the said Defendant [*the immediate Tenant of the Plaintiff*] as Tenant thereof to the Plaintiff as aforesaid, at the Yearly Rent of And the Court having determined that the said Premises consist entirely of holding which in the occupation of as Tenant within the 12th Section of the Land Law (Ireland) Act, 1896, and that the said Defendant [*the immediate Tenant of the Plaintiff*] [*is or are*] "immediate Landlord" of the said Premises within the same Section, and having ascertained that the sum of £ : was due to the commencement of this Action, and still is, due to the Plaintiff on foot of the said Rent, up to and including the gale thereof which accrued due on the day of 18 (being the gale day next before the Action) after all just and fair allowances. It is ORDERED AND DECREED that the Plaintiff do recover against the Defendant [*the immediate Tenant of the Plaintiff*] THE POSSESSION OF THE SAID PREMISES, and do also recover from the Defendant [*the immediate Tenant of Plaintiff*] the sum of Poun Shillings and Pence, as and for costs. And the several Sheriffs in Ireland are hereby commanded to take in execution the goods

See note to Form 3a, ante, p 691.

the said Defendant [*the immediate Tenant of the Plaintiff*] to satisfy the said costs.

Rules of
1880

Dated at in the said County this day of 189 .
County Court Judge for the said County.
Clerk of the Crown and Peace for the said County.
Solicitor for the Plaintiff.

Costs and Expenses of Witnesses, £

Total, £

County of to wit.

I authorise and empower of and
of Bailiffs, or either of them and their assistants to levy under
the within Decree the sum of Pounds Shillings and
Pence, for costs.

Given under my Hand and Seal this day of 18 .
Sheriff of the said County.

FORM 19c.*

LAND LAW ACTS.

Decree in Ejectment for Non-payment of Rent of a Holding where part only is in Occupation of Sub-tenants, who are entitled to retain Possession under Section 12 of Land Law (Ireland) Act, 1896.

[*Heading, and names of parties, as in Form No. 3.*]

It appearing to the Court that the Plaintiff caused a Civil Bill to be brought at this present Sittings against the Defendant for recovery of ALL THAT AND THOSE [*describe premises as in Civil Bill*] situate and being in the Parish of Barony of Division of and County aforesaid, and which said Premises were held by [*the immediate Tenant or Tenants of Plaintiff*] the Defendant as Tenant thereof to the Plaintiff [*under a Lease or Contract of Tenancy bearing date and made between for a term still unexpired or as Tenant from year to year, as the case may be*] at the Yearly Rent of which Civil Bill was brought on the ground that One Year's Rent [*and upwards*] of said Premises was in arrear and unpaid. And it appearing to the Court that said Civil Bill was duly served upon requiring the Defendants, and all persons claiming any interest in the said Premises, to appear at the said Sittings, to answer the said Bill, and that no other person was in the actual possession of the said Premises as Tenant or Under-tenant. And is appearing to the Court that the said Premises were held by the said Defendant [*the immediate Tenant of the Plaintiff*] as Tenant thereof to the Plaintiff [*under a Lease, &c., as case may be*] at the Yearly Rent of . And the Court having determined that the said Premises include holding in the occupation of as tenant, within the 12th Section of the Land Law (Ireland) Act, 1896, and that the Defendant [*the immediate Tenant of the Plaintiff*] "immediate landlord" of the said holding, within the meaning of the same Section, and [*is or are*] in occupation of the remainder of the said premises, and having ascertained that the sum of £ : : was at the commencement of this Action, and still is, due to the Plaintiff on foot of the said Rent, up to and including the gale thereof which accrued due on the

* See note to Form 3a, ante, p. 691.

Rules of
1880.

day of 18. (being the gale day next before the Action), after all just and fair allowances. It is ORDERED AND DECREED that the Plaintiff do recover against the Defendant [*the immediate Tenant of the Plaintiff*] the possession of the said Premises, and do also recover from the Defendant the sum of Pounds Shillings and Pence, as and for costs. And it is Further Ordered that in the event of the Defendants or some or one of them or some other person having a specific interest in the tenancy not lodging with the Clerk of the Crown and Peace the sum of £ as and for [*two years or the sum so due for*] the said Rent, and the further sum of £ for Costs, the said two sums making together the sum of £ within six calendar months from the date hereof the said Clerk of the Crown and Peace do sign the Certificate endorsed hereon. And it is Further Ordered that when the said Certificate shall have been so signed but not sooner, the Sheriff of the said County do, and he is hereby commanded to put the Plaintiff into possession of the said Premises, save the Holding as as aforesaid in the occupation of the Defendants [*here name Defendants entitled to retain possession*] and the several Sheriffs in Ireland are hereby commanded to take in execution the goods of the said Defendant [*the immediate Tenant of the Plaintiff*] to satisfy the said costs.

Dated at in the said County this day of 189

County Court Judge for said County.
Clerk of Crown and Peace of said County
Solicitor for the Plaintiff.

Costs and Expenses of Witnesses, £

Total, £

Certificate to be signed by the Clerk of the Crown and Peace before the Execution of this Decree.

I certify that the sum of £ [*aggregate of Rent not exceeding two years and costs*] has not been lodged with me within six calendar months from the date of this Decree.

Dated this day of

Clerk of Crown and Peace

Certificate to be signed by the Plaintiff's Solicitor before the Execution of this Decree.

I certify that the above-mentioned sum of £ and costs is still due and unpaid.

Plaintiff's Solicitor

County of to wit.

I authorise and empower of and of Bailiffs, or either of them, and their Assistants, to execute the within Decree, by putting the Plaintiff into possession of the within-mentioned premises, save the Holding at the date of said Decree in the occupation of [*here state name of Defendant entitled to retain possession*], by levying under the said Decree the sum of o for Costs.

Given under my Hand and Seal this day of

The sum to be levied under the within Decree for Costs is £

Sheriff of said County.

No. 20.

Decree where the Civil Bill is grounded on the Overholding of the Tenant.

[*Heading, and names of parties, as in Form No. 3.*]

It appearing to the Court that the Plaintiff caused a civil bill to be brought against the Defendant at this present sittings praying to be put into the possession of all that and those situate, lying, and being in the parish of barony of county of and division aforesaid, containing or thereabouts, in the possession of the Defendant which civil bill was brought on the ground that the tenant overheld the said premises; and it appearing to the Court that the said civil bill was duly served, requiring the Defendant and all persons claiming any interest in the said premises, to appear at the said sittings, to answer said bill; and it appearing that said premises were held by the Defendant from the Plaintiff at the yearly rent of and that Defendant's interest determined on the day of last by [*set forth the mode of determination*].

It is therefore ordered and decreed by the court, that the Plaintiff be put into the possession of the said premises, and the Sheriff of the said county is hereby commanded to put the Plaintiff into the possession of the said premises.

And it is further ordered and decreed by the court, that the Plaintiff do recover from the said Defendant [*insert amount*] costs. And the several Sheriffs of Ireland are hereby commanded to take in execution the goods of the Defendant to satisfy the said costs.

[*Dated and signed as in Form No. 19.*]

(*Sheriff's warrant to be added.*)

No. 21.

Decree where the Civil Bill is grounded on the Desertion of the Premises.

[*Heading, and names of parties, as in Form No. 3.*]

It appearing to the Court that the Plaintiff caused a civil bill to be brought against the Defendant at the present sittings, praying to be put into possession of situate in the parish of and in the barony of county of and division aforesaid, containing or thereabouts, in the possession of the Defendant , which civil bill was brought on the ground that the tenant had deserted the said premises; and it appearing by the certificate of and Esquires, two of Her Majesty's Justices of the Peace for the said county, that they had together gone to and viewed the said premises, and that the same were deserted and left unoccupied by the Defendant, and that there was not any distress thereon sufficient to countervail the arrear of rent then due thereout; upon due proof thereof; and that the said civil bill, and also a copy of the said certificate, were duly served on the Defendant, requiring him to appear at the said sittings to answer the said bill; and it appearing that being year's rent of said premises, was justly due and owing by the Defendant to the Plaintiff, after all fair and just allowances, and that the said premises were deserted and left unoccupied by the Defendant , and that there was not any distress on the same to satisfy the said rent:

It is therefore ordered and decreed by the Court that the Plaintiff be put into the possession of said premises, and the Sheriff of the said county is hereby commanded to put the Plaintiff into possession thereof. And it is further ordered and decreed by the Court that the Plaintiff do recover from the Defendant costs; and the several Sheriffs of Ireland are hereby commanded to take in execution the goods of the Defendant to satisfy the said costs.

[*Dated and signed as in Form No. 19.*]

(*Sheriff's warrant to be added.*)

Rules of
1890

No. 22.

Decree against a Permissive Occupant.

[*Heading, and names of parties, as in Form No. 3.*]

It appearing to the Court that the Plaintiff caused a civil bill to be brought at this present sittings against the Defendant, praying to be put into possession of (*premises*) situate in the parish of _____, barony of _____, and county of _____, and division aforesaid, which were occupied by the said Defendant, by permission of the Plaintiff (as caretaker, herdsman, or servant to the Plaintiff, or as permissive occupant, or strictly at the will of the Plaintiff, or at sufferance, as the case may be), who continued to withhold the possession thereof from the said Plaintiff, though duly required to give up the same; and it appearing to the Court that the said Defendant was so appointed caretaker (or herdsman, or servant, or permissive occupant, &c., as before), as aforesaid, and that he was duly required by the Plaintiff, on the _____ day of _____ to deliver up the same to the Plaintiff, but that he has refused so to do, and continues to withhold possession of the said premises from the Plaintiff it is therefore ordered and decreed by the Court that the Plaintiff be put into possession of the said premises, and the Sheriff of the said county is hereby commanded to put the Plaintiff into the possession thereof, and it is further ordered and decreed by the Court that the Plaintiff do recover from the said Defendant _____ costs, and the several Sheriffs of Ireland are hereby commanded to take in execution the goods of the Defendant to satisfy the said costs.

[*Dated and signed as in Form No. 19.*]

(*Sheriff's warrant to be added.*)

No 23.

Decree for the balance of Rent and Costs under the 61st Section of the 'Landlord and Tenant Law Amendment Act (Ireland), 1860.'

[*Heading, and names of parties, as in Form No. 3*]

It appearing to the Court that the Plaintiff duly caused a civil bill to be brought at this present sittings against the Defendant, praying to be put into possession of _____, situate in the parish of _____, and barony or _____, in the division aforesaid [*describing the premises as in the civil bill*], which civil bill was brought on the ground that _____ years' rent of the said premises was in arrear and unpaid, and the Plaintiff claimed by the said civil bill the sum of £ _____ as and for rent due and owing to him at the time of service thereof. And whereas the Defendant disputed that the said sum of £ _____ was due for rent at the time of the service of the said civil bill, and did, in pursuance of the statute deposit with the Clerk of the Peace for the said county the sum of £ _____ for rent, and the sum mentioned in the civil bill process for costs, and did obtain a certificate of such lodgment.

And it appearing to the Court upon the hearing of the said civil bill that the sum of £ _____ was actually due to the Plaintiff for rent of the said premises in the said civil bill mentioned at the time of the service thereof, and that the sum so deposited by the Defendant was not sufficient to pay the same.

And the Plaintiff having in open Court elected to take the sum of money so deposited with the Clerk of the Peace in lieu of the possession of the said premises It is hereby ordered and decreed that the said sum of money so deposited by the said Defendant be paid over to the Plaintiff. And it further appearing to the Court that the sum of £ _____ over and above the said sum

Rules of
1890.

No. 48.

Attornment by Under-tenants or Occupiers of Lands recovered in ejectment upon the execution of a Civil Bill Decree for delivering possession where the Under-tenants attorn as tenants to the Plaintiff.

Whereas A.B. of _____ hath lately obtained a Civil Bill Decree for the lands and tenements in the tenancy or occupation of the persons undername _____ respectively. Now we whose names are hereunder subscribed upon the execution of the decree in the said action according to the statute in that behalf, with the assent to the said A.B. (or C.D., the solicitor for the plaintiff) in the said action testified by the said [A.B. or C.D.] signing these presents, do hereby severally and respectively attorn and become tenants to the said A.B. of the several premises situate at the several places, and for the terms and commencing at the time mentioned, and set opposite to our respective names in the schedule hereunder written, and do hereby severally agree to pay such respective rents for the same and from such several periods or times as in the schedule expressed, and we have severally given unto the said A.B. or his agent, the sum of one penny in the name of attornment and in part of the said rents. (* Provided always that if the said tenements shall in the due course of law be redeemed, in pursuance of the statutes in such cases made and provided, these presents shall thenceforth be void.)

As witness our hands this _____ day of _____ 18 _____.

Tenants' Name	Tenement	Yearly rent (or as the case may be)	When due	Term of the Holding (as the case may be)	Commencement of the Term
		£ s. d.			
C. D., ..			May 1 and Nov. 1	One year	1 November or 29 Sep (or such day as may be agreed on)
E. F., ...			Mar. 25 and Sept. 29		
G. H., ...			May 1 and Nov. 1		

Solicitor for the Plaintiff
Sheriff,
or
Sheriff's Officer.

Witness.

No. 49.

Acknowledgment by Occupiers of Lands recovered in Ejectment upon Execution of a Civil Bill Decree for Delivery of Possession where the Parties do not agree to an Attornment as Tenants.

We whose names are hereunder subscribed upon the execution of the decree in this action, with the assent of the said A.B. (or C.D., the solicitor for the Plaintiff) in the said action, testified by the said solicitor signing these presents hereby acknowledge that we respectively occupy the tenements mentioned in the foot hereof by the license, and at the will of the said A.B., and that we severally and respectively, when required by the said A.B., or his authorized agent or receiver, deliver up to the said A.B., or his authorized agent or receiver

* This proviso to be added where the Civil Bill ejectment shall have been non-payment of rent.

the possession of the said premises in our respective occupation as set opposite to our respective names in the schedule hereunder written.

Rules of
1880.

(* Provided always that if the said premises shall in due course of law be redeemed in pursuance of the statutes in such case made and provided, these presents shall thenceforth be void.)

As witness our hands this day of

Occupiers' Names	Tenements
C. D., 	
E. F., 	
G. H., 	

Solicitor for the Plaintiff
Sheriff,
or
Sheriff's Officer.

Witness.

No. 50.

NOTICE OF APPLICATION FOR A WRIT OF RESTITUTION TO RESTORE A PARTY TO THE POSSESSION OF LANDS EVICTED FOR NON-PAYMENT OF RENT.

[Title as in Decree.]

Whereas the Plaintiff in this action, on the day of , did prefer a civil bill before the County Court Judge of the said county of at , against the Defendant [state several Defendants, if more than one], to obtain the possession of [describe the lands sought to be restored accurately], situate [describe locality], which said premises were held by the Defendant (or by X.Y., naming him) as tenant thereof to the Plaintiff, under a demise thereof made the day of , for a term of from the day of (or lives, as the case may be, and if for lives, state if it be a fact that they are still in being, or as tenant from year to year), at the yearly rent of £ .

And whereas by the decree of the said County Court held at in and for the said county, on the day of , it was decreed that the said Plaintiff should be put into possession of the said premises. And by the said decree the sum of £ was ascertained to be due and owing for rent of the said premises, and the sum of £ for costs, and such sum of £ was endorsed on said decree as due for rent.

And whereas the said Plaintiff did, on the day of duly obtain the possession of the said premises under said decree, and is now in the possession of the same under and by virtue thereof: And whereas I am one of the Defendants in said decree (or, and whereas I am interested in the lease or other contract of tenancy of the lands in said ejectment decree mentioned in manner following, stating how).

* This proviso to be added where the Civil Bill ejectment shall have been for non-payment of rent.

Rules of
1890.

And whereas the rent and arrears of rent and full costs so ascertained by said decree have been and now are lodged with the clerk of the peace for said county of _____ take notice that you are hereby required personally to appear at the County Court to be held at _____, in the division and county aforesaid, on the _____ day of _____, when and where I shall apply that writ of restitution shall issue, to restore me to the possession of the said land and premises in said decree mentioned, and of which you have taken possession under and by virtue of the same.

And you are hereby required to show cause, if you can, why such writ of restitution should not issue, and why I should not be restored to the possession of the said premises.

No. 51.

WRIT OF RESTITUTION RESTORING A PARTY TO THE POSSESSION OF LANDS EVICTED FOR NON-PAYMENT OF RENT.

[Title as in Decree.]

By the County Court Judge.

Whereas the plaintiff in this action on the _____ day of _____ did prefer his civil bill against the defendant in this action to obtain the possession of [describe the lands accurately] and situate _____ and which said premises were held by _____ as tenant to the plaintiff under a demise there [state the nature of the demise as set out in the civil bill and decree] at the year rent of £ _____. And whereas the said plaintiff on the _____ of _____ in the year _____ did obtain a decree for possession of the said premises, and by the said decree the sum of £ _____ was ascertained to be due and owing for rent, and £ _____ for costs.

And whereas on the _____ day of _____ the said plaintiff duly executed the said decree and entered into possession of the premises in the said decree mentioned.

And whereas the defendant (or E.F., who has satisfactorily shown to the Court that he has an interest in the said lands or premises [state how] he has within six months after the execution of the said decree, duly lodged all rent and arrears of rent, and full costs with the clerk of the peace for the said county of _____; and it further appearing to the Court that the defendant (or E.F., as the case may be) duly caused notice to be served on the said plaintiff that he the defendant (or E.F.) would apply to the Court to be restored to the possession of said premises in said decree mentioned.

Whereupon and upon due proof of such judgment, and that such notice duly given, and it appearing to the Court that the said defendant (or E.F.) is entitled to be restored to the possession of the said premises, it is hereby ordered by the Court that such decree for possession, bearing date the _____ day of _____ is hereby vacated. And it is further ordered and decreed that the said defendant (or E.F.) and all other parties interested in the said premises be restored to his or their former interest therein, and that the said defendant (or E.F., as the case may be) be put in possession of the same.

And the sheriff of the county of _____ is hereby commanded to put said defendant (or E.F.) into possession of the said premises.

No. 52.

NOTICE FOR ANNULLING OR VARYING A PRECEPT SERVED ON A PARTY UNDER
23 & 24 Vic., c. 154, s. 35.

Rules of
1880

SIR,

Whereas , one of Her Majesty's Justices of the Peace for the county of , by precept under his hand and seal, bearing date the day of [here set out the subject-matter of such precept] And whereas such precept has been obtained by you upon the affidavit of , and the same has been duly served upon me, and I feel aggrieved by such precept [state how]. Now I hereby give you notice that I shall apply to the County Court Judge for the county of , on the day of next, at , that such precept shall be annulled or varied (stating how and in what respect to be varied): and take further notice that I shall apply for the costs of annulling (or varying) said precept.

No. 53.

NOTICE FOR ANNULLING AN ORDER OF THE COURT OF PETTY SESSIONS MADE UPON
THE HEARING OF THE APPLICATION OF A PARTY SERVED WITH A PRECEPT UNDER
THE 23 & 24 VIC., CAP. 154, SEC. 35.

SIR,

Whereas , one of Her Majesty's Justices of the Peace for the county of , issued his precept under his hand and seal bearing date the day of whereby [set out precept], and whereas I am interested in the services and in the work which said precept commanded me to desist from doing [state how], and whereas after the service of said precept, the subject matter of such precept was brought before the Petty Sessions Court, for the purpose of having the same precept rescinded [or varied, stating in what manner], and whereas the said Petty Sessions Court declined and refused [as the case may be, stating the order]. Now, take notice, that I shall apply to the County Court Judge for the county of , on the day of , at that such order may be annulled [or varied, and how], and I shall apply for the costs of such application.

No. 54.

NOTICE FOR ANNULLING OR VARYING A PRECEPT OR ORDER OF THE COURT OF PETTY
SESSIONS, AND CLAIMING COMPENSATION FOR LOSS AND DAMAGE BY REASON OF THE
PROCURING OF SUCH PRECEPT OR ORDER.

SIR,

Whereas you caused to be issued and to be served upon me a certain precept under the hand and seal of one of Her Majesty's Justices of the Peace for the county of and bearing date the day of commanding [set out the precept accurately] or obtained at the Court of Petty Sessions an order [stating it], and whereas by reason of the issuing of such precept [or by the making of such order] I have sustained loss and damage [state how]. Now, take notice that I shall apply to the County Court Judge for the county of on the day of , at that such precept [or order] may be annulled [or varied], and I shall seek to obtain from such County Court Judge £ being reasonable compensation for loss and damage caused by the procuring such precept to be issued [or causing such order to be made] [or preventing the same from being varied] and I shall apply for the costs of annulling or varying such precept

Rules of
1880.

No. 119.

NOTICE OF APPLICATION BY A TENANT UNDER THE LAND LAW (IRELAND) ACT,
1887, TO THE CIVIL BILL COURT TO FIX FAIR RENT (a).
LAND LAW (IRELAND) ACTS, 1881, 1887.

County of
Division of

A.B.,
of
in the County of

Plaintiff;

C.D.,
of
in the County of
and Division aforesaid,

Defendant

NOTICE OF APPLICATION by a Tenant under the Land Law (Ireland) Act, 1887
to the Civil Bill Court, to fix Fair Rent.

WHEREAS the above-named Plaintiff, has brought a Civil Bill Ejectment for non-payment of the rent of the above holding, which is held from year to year [or under a lease dated the day of , and made between for the term of as the case may be] at the yearly rent of £ and in respect of which an originating notice of a application to fix a fair rent has [or has not] been lodged in the Civil Bill Court of the County, I, C.D., the above-named Defendant, intend to apply to the Court for an Order fixing the Fair Rent to be paid for the above holding.

Dated this day of 188

Signed,

Residence
Post Town

To (the Plaintiff in ejectment).

This Schedule to be filled up by the Tenant when the Poor Law Valuation of the Holding is £10 or over £10 a year

SCHEDULE OF IMPROVEMENTS

In respect of which evidence is intended to be produced, or which are intended to be relied on by the Tenant as having been made by him or his predecessors in title, with the dates at which the same were made, according to the best of the Tenant's knowledge and belief.

Mode of service of notice
served on this day of

No. 120.

SUMMARY OF NOTICE TO BE SERVED AFTER JUDGMENT IN EJECTMENT FOR NON-PAYMENT OF RENT, UNDER THE 7TH SECTION OF THE LAND LAW (IRELAND) ACT 1887.

IN THE CIVIL BILL COURT.
County of
Division of

Between A.B.,

and

Plaintiff

C.D. and E.F.,

Defendant

(a) See Sec. 6 of that Act, ante, p. 403.

To *C.K.* and *E.F.*, &c.

A Decree for the recovery of the lands of _____ for non-payment of rent has been recovered by the above-named *A.B.*

Rules of
1890.

Any person entitled by law to redeem the said lands must do so within a period of six months from the service [or posting] of the notice. Such person must pay to *A.B.* [landlord's name], at _____, or *G.H.* [agent's name] at _____, or lodge with the Clerk of the Crown and Peace the rent, arrears, and costs within the said period of six months. The particulars of the rent and costs are as follows:—[set them out as in the Judgment or Decree.*]

On service [or posting] of the notice, the persons to whom the notice is addressed, being in possession of any part of the lands, are deemed to be in possession as caretakers only, and not as tenants.

Dated the _____ day of _____ 188____
Signed, †

SCHEDULE OF FEES IN COUNTY COURTS UNDER
RULES OF 1890.

PART V.

EJECTMENTS ON THE TITLE, FOR OVERHOLDING, FOR RECOVERY OF POSSESSION OF
LAND, AND FOR NON-PAYMENT OF RENT.

A SCALE OF FEES, COSTS, and CHARGES to be paid to COUNSEL and SOLICITORS in cases of CIVIL BILL EJECTMENT—(a) on the Title, under the 14 & 15 Vic., cap. 57, sec. 79, and 37 & 38 Vic., cap. 66, as amended by the 40 & 41 Vic., cap. 56, sec. 54—for Overholding—for Recovery of Possession of Land held under acknowledgment made on the execution of a writ of habere—or under the 14 & 15 Vic., cap. 57, sec. 82; and (b) for non-payment of Rent, as well between party and party as between Solicitor and Client.

(a) ON THE TITLE, &c.

COUNSEL'S FEES.	£	s.	d.
To Plaintiff's counsel	1	1	0
To Defendant's counsel	1	1	0
To plaintiff's or defendant's counsel, when, in the opinion of the Judge, questions of importance are involved, a fee not exceeding	2	2	0
To plaintiff's and defendant's counsel, on appeals, not exceeding	2	2	0

* Even though part of the rent may have been subsequently paid. See *ante*, p. 447.

† Personal signature by the landlord or his agent is not necessary: *Browne v. Kinsella*, 24 L. R. Ir. 99. See *ante*, p. 408.

Rules of
1890.

SOLICITORS' COSTS AND CHARGES.		
<i>To Plaintiff's Solicitor.</i>		
4	For attending, taking instructions, reading over leases, deeds, wills, or other documents	0 10 0
5	For drawing the civil bill and all notices or summonses	0 2 6
6	For every copy actually served or posted, for the first copy	0 2 6
	For each additional copy	0 1 0
7	For advising the proofs, entering for, and attending hearing, and all other charges	1 1 0
	To be increased to a sum not exceeding £2 2s. when the Judge shall, having regard to the circumstances of the case, so order at the hearing.	
8	For drawing decree, and all duties in relation thereto, drawing costs and attending taxation	0 5 0
	For preparing instructions for counsel and copy, when counsel is allowed	0 10 0
<i>To the Defendant's Solicitor.</i>		
10	For taking instructions, advising the proofs, drawing all notices or summonses, and attending the hearing	1 1 0
	To be increased to a sum not exceeding £2 2s. when the Judge shall, having regard to the importance or difficulty of the case, so order at the hearing.	
11	For drawing any dismiss, drawing costs between party and party, and attending to get same compared, signed and taxed	0 5 0
12	For preparing instructions for counsel and copy, when counsel is allowed	0 10 0
<i>In proceedings for Recovery of Possession of deserted Premises.</i>		
13	For attending, drawing, and obtaining the Magistrate's certificate	0 10 0
	The above scale of fees to apply also to cases in which the Judge shall consider the title to any corporeal or incorporeal hereditaments to have been chiefly in question (under the 37 & 88 Vic., c. 66, as amended by the 40 & 41 Vic., c. 56, sec. 54).	
APPEALS.		
To the solicitors for the parties respectively the same costs and charges on appeals as on the hearing in the Court below.		

(b) NON-PAYMENT OF RENT.

		£ s. d.	On Appeal
COUNSEL'S FEES.			
To Plaintiff's Counsel	-	1 1 0	not exceedh 2 2
To Defendant's Counsel	-	1 1 0	not exceedi 2 2

Altered, see
Order, 9th Sept.,
1887, p. 518.

			On Appeals	Rules of 1880.
SOLICITORS' COSTS AND CHARGES.				
<i>To Plaintiff's Solicitor.</i>				
1	For attending, taking instructions, reading over leases and wills or other documents	0 10 0	—	
2	For drawing the civil bill, with indorsement of the amount of rent due, and all notices or summonses	0 2 6	—	
3	For every copy thereof actually served or posted, for the first copy	0 2 6	—	
4	For every additional copy	0 1 0	—	
5	For advising the proofs, drawing affidavit (when required), to verify ejectment, entering the cause, and attending the hearing	1 1 0	—	
6	For preparing instructions and copy for counsel if counsel allowed	0 5 0	—	
7	For drawing decree and statement on warrant of amount of rent then due, attending the Judge, to sign and signing, drawing the costs, and attending taxation thereof	0 3 4	—	
<i>To Defendant's Solicitor.</i>				
8	For taking instructions, advising the proofs, drawing all notices and summonses, and attending the hearing	1 1 0	—	
9	For drawing any dismissal, drawing costs, and attending taxation thereof	0 3 4	—	
10	For preparing instructions and copy for counsel, when counsel allowed	0 5 0	—	
APPEALS.				
11	To solicitors for the parties respectively the same fees on appeals as on the hearing in the Court below.			

N.B.—The costs of Appeals are now regulated by Orders of Supreme Court, dated 23rd Feb. 1885, and 22nd June, 1885.

RULES OF THE 9TH DAY OF SEPTEMBER, 1887.

* SCALE OF FEES, COSTS, AND CHARGES to be paid to COUNSEL and SOLICITOR in EJECTMENTS FOR NON-PAYMENT OF RENT, as between Party and Party.

COUNSEL'S FEES.		s.	d.
To Plaintiff's Counsel in each case			
Where the Annual Rent does not exceed £10	0 10 0		
Where the Annual Rent exceeds £10 and does not exceed £20	1 1 0		
Where the Annual Rent exceeds £20	2 2 0		
Like Fees to Defendant's Counsel.			

* This Scale of Fees was published, in pursuance of the directions contained in Sec. 33, Sub-sec. 2, of the Land Act, 1887 (*ante* p. 444). It has been held only to apply to holdings which are within the Land Acts of 1881 and 1887: *Rosse v. Sylvester*, 27 I. L. T. R. 109 (PALLES, C.B.). *Anon.*, 24 I. L. T. & S. J. 373 (MURPHY, J.). The old scale is still in force as regards non-agricultural holdings. See *ante*, p. 711.

Rules of
1890

The COSTS and CHARGES to be paid to SOLICITORS, under the provisions of this SCHEDULE, are to be paid in all cases exclusive of Outlay properly and necessarily incurred.

SOLICITOR'S COSTS AND CHARGES IN EJECTMENTS FOR NON-PAYMENT OF RENT.

	Where Annual Rent does not exceed £10	Where Annual Rent exceeds £10, but does not exceed £20	Where Annual Rent exceeds £20, but does not exceed £100
<i>To the Plaintiff's Solicitor.</i>			
	s. d.	s. d.	£ s. d.
1 For drawing and signing the Civil Bill and all notices and summonses and copy - - - - -	2 0	2 6	0 3 0
2 For each additional copy - - - - -	0 6		0 0 6
3 Instructions for hearing, advising, and drawing affidavit to verify, and preparing proofs - - - - -	3 0		0 10 0
4 Entering the Civil Bill, attending and conducting the case at hearing, and for all other charges incident to the hearing, <i>when counsel not allowed</i> - - - - -	6 0		1 0 0
5 Entering the Civil Bill and attending the hearing with counsel, and all other charges incident to the hearing, <i>when counsel allowed</i> - - - - -	6 0	12 0	1 0 0
6 For drawing decree and all duties in relation thereto - - - - -	2 0	2 6	0 3 0
7 In all the foregoing cases where counsel is allowed, there shall be allowed to the plaintiff's solicitor for preparing instructions and brief to counsel - - - - -	2 6	5 0	0 7 6
<i>To Defendant's Solicitor.</i>			
1 For instructions and preparing proofs, drawing all notices and summonses - - - - -	2 0	2 6	0 3 0
2 For attending and conducting the case at hearing, and for all other charges incident thereto, <i>when counsel not allowed</i> - - - - -	6 0	12 0	1 0 0
3 For preparing the proofs and any summons or notice for any purpose, attending the hearing with counsel, and for all other charges incident thereto, <i>when counsel allowed</i> - - - - -	6 0	12 0	1 0 0
4 For drawing any dismiss, drawing costs, and attending taxation - - - - -	2 0	2 6	0 3 0
5 In all the foregoing cases where counsel is allowed there shall be allowed to the defendant's solicitor for preparing instructions and brief to counsel - - - - -	2 6	5 0	0 7 6

PART VI.

Rules of
1860

PROCEEDINGS TO ANNUL PRECEPT, ORDER, OR CONVICTION.*

A SCALE of FEES, COSTS, and CHARGES, to be paid to COUNSEL and SOLICITORS in Cases in relation to annulling a Precept, Order, or Conviction, as well between party and party as between Solicitor and Client.

COUNSEL'S FEES.		£	s.	d.
	To counsel for the applicant, - - - - -	1	1	0
	To counsel for the opposite party, - - - - -	1	1	0
SOLICITOR'S COSTS AND CHARGES.				
<i>To the Solicitor for the Applicant.</i>				
1	For drawing notice to annul, or vary precept, order, or conviction, or notice for compensation and copy, - - - - -	0	1	6
2	For each additional copy actually served, - - - - -	0	0	6
3	For attending, taking instructions for hearing on notice to annul or vary precept or on claim for compensation as aforesaid, drawing the necessary proofs, entering notice, and attending hearing, and for all charges exclusive of instructions to counsel when counsel allowed, not exceeding, - - - - -	0	10	0
4	For drawing order of the Judge, - - - - -	0	2	6
5	For drawing instructions and copy for counsel when allowed, - - - - -	0	5	0
	To the solicitor for the opposite party the like fees as to the solicitor for the Applicant, items, 3, 4, and 5.			

* Under L. and T. Act, 1860, Sec. 37. See ante, p. 71.

PART VII.

RESTITUTION OF POSSESSION.

A SCALE of FEES, COSTS, and CHARGES, to be paid to COUNSEL and SOLICITORS, in case of RESTITUTION of POSSESSION, within the 23rd & 24th Vic., Cap. 154, Sec. 71, as well between party and party as between Solicitor and Client.

Where the application for Restitution shall be opposed, and shall be refused, the following Costs shall be paid and payable by the Applicant to the Landlord or other person claiming under the Decree in Ejectment, who shall appear to oppose such application.

		£	s.	d.	On Appeals		
COUNSEL'S FEES.		£	s.	d.	£	s.	d.
	To counsel, for the landlord or other person claiming under the decree in ejectment, - - - - -	1	1	0	} Not exceeding 2 2 0		
SOLICITOR'S COSTS AND CHARGES.							
1	For taking instructions, preparing and entering notice of application, attending hearing, and all charges (save instructions for counsel when counsel allowed) - - - - -	1	1	0			
	To be increased to a sum not exceeding £2 2s. when the Judge shall, having regard to the circumstances of the case, so order at the hearing.						
2	For preparing instructions for counsel when allowed	0	5	0			

APPEALS.

3. The same fees on appeals as on the hearing in the Court below.

Rules of
1890

PART IX.

THE LANDLORD AND TENANT (IRELAND) ACT, 1870.

SCHEDULE OF COSTS AND FEES SETTLED UNDER THE 31ST SECTION OF THE ABOVE ACT, AND THE 40 & 41 VIC., CAP. 56, SECTION 83.

Costs and Fees of Proceedings in respect of Claims and Disputes under Sections 16 to 24 (inclusive) of the "Landlord and Tenant (Ireland) Act, 1870."

CLAIMANT'S COSTS	£ s d.
Fees to be allowed for counsel not to exceed the following scale ;	
To counsel where sum decreed shall not exceed £50 - -	1 1 0
To counsel where sum decreed shall exceed £50 and not exceed £100 - - - - -	2 2 0
To counsel where sum decreed shall exceed £100 and not £300	3 3 0
In all cases where sum decreed shall exceed £300 - -	5 5 0
Refresher fee for the second and each following day the case shall be at hearing - - - - -	1 1 0
RESPONDENT'S COSTS.	
To counsel where sum claimed shall not exceed £100 - -	1 1 0
Where same shall exceed £100 and not exceed £200 - -	2 2 0
Where same shall exceed £200 and not exceed £400 - -	3 3 0
Where same shall exceed £400 - - - - -	5 5 0
Refresher fee for the second and each following day the case shall be at hearing - - - - -	1 1 0
The same fees on appeals	
Fees to counsel in costs between solicitor and client to be regulated by the sum claimed according to the scale for Respondent's costs.	
To the Claimant's solicitor attending, taking instructions in all land cases, reading over deeds, leases, wills, or other documents where the sum decreed shall not exceed £50 - -	0 6 8
When the sum decreed shall exceed £50 and not exceed £100 -	0 13 4
When the sum decreed shall exceed £100 - - - - -	1 0 0
Drafting and engrossing notice of claim or dispute, and schedules thereto when sum decreed does not exceed £50 -	0 3 4
When the sum decreed shall exceed £50 and not exceed £100 -	0 6 8
When the sum decreed shall exceed £100 - - - - -	0 1
For the first copy thereof - - - - -	0 2 6
For every other copy lodged, served, or posted - - - - -	0 1 0

RESPONDENT'S COSTS— <i>con.</i>	£ s. d.	Rules of 1880.
Advising the proofs, examining witnesses, noting evidence, extracting and noting deeds, wills, leases, or other necessary documents, and preparing for the hearing, when the sum decreed shall not exceed £50 - - - - -	0 6 8	
When the sum decreed shall exceed £50, but shall not exceed £100 - - - - -	0 13 4	
When the sum decreed shall exceed £100 - - - - -	1 0 0	
Attending the hearing and conducting the case when the sum decreed shall not exceed £100 - - - - -	2 0 0	
When the sum decreed shall exceed £100 - - - - -	3 0 0	
Attending to obtain consent to act as guardian ad litem, and drawing consent therefor - - - - -	0 6 8	
Drafting and engrossing any decree, dismiss, order, or award, with necessary recitals, and attending the Judge for approval and for his signature - - - - -	0 6 8	
Brief instructions for counsel, and attending him when the sum decreed does not exceed £50 - - - - -	0 6 8	
When sum decreed exceeds £50 but not £100 - - - - -	0 13 4	
When sum decreed exceeds £100 - - - - -	1 0 0	
Briefs for counsel of necessary documents, 1s. per sheet of six folios, but in no case to exceed twelve sheets.		
Attendance to lodge notice of claim or dispute with the Clerk of the Peace - - - - -	0 3 4	
Attendance to lodge claim with the Clerk of the Peace, and entering cause for hearing - - - - -	0 3 4	
Notice for hearing and copy for service - - - - -	0 2 6	
Instructions to prepare agreement settling dispute, drawing and engrossing same, attending parties, witnessing execution	1 1 0	
Duplicate copy agreement for lodgment - - - - -	0 2 6	
Attending the Clerk of the Peace to record same - - - - -	0 3 4	
Notice of withdrawal of claim, copy for lodgment with the Clerk of the Peace, and copies for service - - - - -	0 2 6	
Attendance on Clerk of the Peace to record notice - - - - -	0 3 4	
Attendance on Clerk of the Peace for docket of deposit of compensation money, and afterwards at bank lodging same - - - - -	0 6 8	
Notice of appeal and copy - - - - -	0 2 6	
Copy for Clerk of the Peace - - - - -	0 1 0	
Attending to lodge - - - - -	0 3 4	
Submission to arbitration and attending execution by parties - - - - -	0 6 8	

Rules of
1890

RESPONDENT'S COSTS— <i>con.</i>		£ s. d.
Affidavit verifying signatures and attendance to file	-	0 3 4
For all proceedings in Arbitration Court, like charges, as in cases before the Judge.		
Notice of application to record award	-	0 2 6.
Attendance to enter with Clerk of the Peace	-	0 3 4
Fees on hearing, as in cases of disputed claims.		
Drawing costs between party and party and attending the Judge for taxation	-	0 3 4
Postal fees as paid.		
COSTS AND FEES ON APPEALS.		
Costs and fees to be allowed on the same scale, so far as the same may be applicable, and to be taxed by the Clerk of the Peace under the direction of the Appellate Judge.		
RESPONDENT'S COSTS.		
To respondent's solicitor like fees and costs in all cases, with this distinction, that his fees and costs are to be regulated by the sum claimed, and not by the amount decreed.		
FEES AND COSTS OF REGISTRATION OF IMPROVEMENTS UNDER SECTION 6.		
Notice of intention to register, with schedule of improvements, copies thereof, services, and attendances to lodge with Clerk of the Peace, same fees as in cases of claims for compensation.		
Requisition for search, attendance on Clerk of the Peace to lodge requisition for search and for certificate of search	-	0 3 4
In case a dispute arises on a claim to register improvements, then the costs of the proceedings in the Civil Bill Court to be in the discretion of the Judge, who shall be at liberty to award to either party a sum for costs to be paid by his opponent, but not exceeding	-	10 0 0
and		
In case of appeals from orders made under Section 6 of the Act, the costs of the appeals to be in like manner in the discretion of the appellate Judge, and subject to a like limit of	-	10 0 0
LIMITED OWNERS.		
In the case of an application for an order to charge a holding under Section 27 of the Act, the costs shall be in the discretion of the Court, and (if allowed) they shall be on the scale of costs as in the case of disputed claims.		
In all proceedings for confirmation of agricultural leases under the 28th Section, the costs of resisting the confirmation to be in the discretion of the Court, and if allowed, not to exceed	-	10 0 0

LAND COMMISSION.

RULES UNDER THE LAND LAW ACTS.

RULES OF 2ND DAY OF JANUARY, 1897.

It is this day ordered that the following General Rules shall from and after this date until further order take effect, and be in force in the Land Commission in relation to all proceedings under and in pursuance of the Land Law Acts, and that all previous Rules shall cease to be in force as regards all proceedings commenced or continued after the said date. It is likewise ordered that such of the Rules as are expressly or by manifest implication applicable to proceedings in the Civil Bill Court, under the said Acts, shall, from and after this date, take effect and be in force in the several Civil Bill Courts in Ireland.

**Rules of
Jan., 1897.**

1. All rules and regulations of the late Commissioners of Church Temporalities in Ireland in force prior to the 13th day of September, 1881, pursuant to the 8th Section of the Irish Church Act, 1869, shall remain and continue in force and be applicable to all proceedings which shall be necessary in relation to the administration of Church Temporalities in Ireland until further order, as fully as if the Church Temporalities Commission were in existence.

The property and powers of the Church Temporalities Commissioners were transferred to the Land Commission by 44 & 45 Vict., cap 71.

2. All rules heretofore in existence in the Civil Bill Court, inconsistent with the following General Rules, so far as proceedings under the Land Law Acts are concerned, are hereby annulled, as regards all proceedings commenced or continued after this date.

DEFINITIONS.

3. In the construction of these Rules the word "Court" shall mean the Court having jurisdiction in the case, *i.e.*, either the Civil Bill Court or the Land Commission, as the case may be.

4. The word "order" shall include decree, award, ruling, and adjudication of the Court in any case.

Rules of
Jan., 1897.

5. The word "county" shall include county of a city, and county of a town, and a riding of a county, where such county of a city, county of a town, or riding, is appointed for Civil Bill purposes.

6. The expression "Clerk of the Peace" shall include the Clerk of the Crown and Peace.

7. The expression "appeal" shall include a re-hearing before the Commissioners.

Under this Rule, every notice requiring a re-hearing of a case already heard by a Sub-Commission must bear an impressed stamp as a "notice of appeal." See Rules 88 and 89, *post*, pp. 737-738. It was decided under Rules in force previously to 1883 that a notice of re-hearing did not require a stamp. *Kieran v. Caruth*, 19 I. L. T. R. 1.

8. The expressions "Secretary of the Land Commission," "Accountant of the Land Commission," and "Registrar of the Land Commission" shall include every person who for the time being shall respectively discharge the duties of the Secretary, Accountant, or Registrar of the Irish Land Commission.

9. In the computation of time for the purpose of these Rules the word "month" shall mean calendar month, and the period of a month shall not be extended by reason of any intervening holiday but when the time limited is a fortnight or any less period, the time so limited shall be extended by any intervening holiday or holidays except Sundays.

10. Whenever the time limited expires on a Sunday or other holiday it shall be extended to the next open day.

11. "Holiday" shall, as regards the Land Commission, mean any day on which the offices of the Land Commission shall be closed, pursuant to the Rules.

12. The Offices of the Land Commission shall be open on every day in the year except Sundays, Good Friday, the Saturday before Easter, the Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the three following days, and any other day as regards which the Land Commission shall notify that the Office shall be closed.

13. The Offices of the Land Commission shall be open daily from ten o'clock, a.m., until four o'clock, p.m., except on Saturday when they shall close at one o'clock, p.m.

14. The Court of the Land Commission shall sit in such places and for such districts as they shall from time to time notify, for the purpose of hearing appeals from the Civil Bill Courts, and of re-hearing cases heard by Sub-Commissions; and all sittings in Dublin for the purpose of hearing appeals or re-hearing cases shall be held at the Four Courts, Dublin.

The provision as to sitting at the Four Courts is new.

ASSISTANT COMMISSIONERS.

Sub-Commissions.

15. (*Rescinded by Rule of 13th March, 1899, post.*)

16. The existing Assistant Commissioners, except such as are Permanent Civil Servants of the Crown within the meaning of Section 17 of the Superannuation Act, 1859, shall hold office for the periods for which they were respectively appointed, and every Assistant Commissioner, except as aforesaid, appointed after the 11th day of September, 1896, and before the 31st day of December, 1897, shall hold office until the 31st day of December, 1897, and every Assistant Commissioner, except as aforesaid, subsequently appointed shall hold office for such period as shall be specified by order of the Land Commission, subject in all cases to the provisions of the Land Law (Ireland) Act, 1881.

As to the tenure of Assistant Commissioners, see Land Purchase Act, 1891, Sec. 28 (7) p. 482, *ante*.

17. Sub-Commissions shall consist of such number of Assistant Commissioners as the Land Commission may from time to time direct.

The corresponding rule of 1883 (No. 17) provided that Sub-Commissions should ordinarily consist of three Assistant Commissioners, but might consist of a greater or less number.

18. Each Sub-Commission shall act by virtue of an instrument of delegation under the Seal of the Land Commission, and shall possess the powers therein specified, subject to the right of the Land Commission to revoke, alter, or modify all powers so delegated; but the Land Commission reserves to itself the power of making orders in any case so delegated.

19. The Sub-Commission shall hold its sittings in the court-houses of Quarter Sessions or Petty Sessions, or, failing these, in such places as the Sub-Commission shall find most suitable, having

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Jan., 1897.

regard to the matters coming before them for their decision and the convenience of the parties.

20. It shall be the duty of the Sub-Commission or of one or more of its members to visit in person the holding in every case in which a fair rent is fixed, or it appears that such visit may conduce to a just decision.

The former rule only required a holding to be visited where the Sub-Commission deemed that such visit might conduce to a just decision.

PROCEDURE.

21. Procedure under the Land Law Acts shall be by notices, as hereinafter directed. All notices and affidavits shall be on paper of foolscap size, with proper margin.

Power to amend notices, &c., was given by the rule corresponding to this, in the Rules of 1881. The court appears to have inherent power to amend under Sec. 48 of the Act of 1881. See notes to that Section, *ante* p. 336, as to what amendments will and will not be allowed.

22. The Court shall have power to enlarge or abridge the time appointed by the Rules, or fixed by any order, for doing any act or taking any proceedings, upon such terms, if any, as the case may require, and any such enlargement may be applied for and ordered after the expiration of the time appointed or allowed.

The time for the service of Notice of Appeal was extended: *In re Parnell's Estate*, 32 Ir. L. T. R. 162; *Mitchell v. Daly*, 1 Greer 153, and *Meade's Estate*, 4 Greer 49. Extension of time was refused: *Crampton v. Bruce*, 33 Ir. L. T. R. 100, *sub non* *Bruce v. Compton*, 1 Greer 94; *Farnham v. Tierney*, 34 Ir. L. T. R. 13, 2 Greer 97 and *Joyce v. Gleeson*, 35 I. L. T. R. 117; *Joly v. Byrne*, 26 I. L. T. R. 146; *Brozic v. Lane* 26 I. L. T. and S. J. 420.

The Land Commission has no jurisdiction to extend the time for appealing from a decision of the Civil Bill Court prescribed by Rule 81, *post*: *Green v. Burrows*, 35 I. L. T. R. 86; 1 N. I. J. R. 119, 3 Greer, 247.

23. The first notice of application to the Court seeking its decision upon any question which the Court has jurisdiction to decide under the Land Law Acts, shall be termed an originating notice [and the original of each such notice shall bear an impressed stamp of the value of one shilling].

The words in brackets were not in the Rules of 1883.

Service of
originating
notice

24. Every originating notice shall designate the Court selected either the Civil Bill Court or the Land Commission. It shall be first served on the opposite party, that is to say, on the landlord or tenant, or other person or persons sought to be bound by it

decision of the Court, and forthwith after such service, or the last of such services, if more than one, two copies thereof shall be served on the Clerk of the Peace, or one copy on the Land Commission, according to the Court selected.

As to transfer of proceedings from the Civil Bill Court to the Land Commission, see Rules 72, 77, *post* pp 733-735.

The landlord must be named and described in the originating notice. Such a descriptive phrase as "the representatives of A.B. deceased" is insufficient *Howard v. Conway*, R. & D. 19; 15 I. L. T. R. 101; MacD. 363. But, where a landlord's estate had become vested in assignees in bankruptcy, the Court amended the originating notice by describing the landlord as "assignees of —" *Hannen v. Donville*, R. & D. 33.

As to service of originating notices, see notes to rule 30, *post*, p. 724.

The application to fix a fair rent must be accompanied by the extract from the Valuation Books prescribed by Rule 2 of Rules of 20 July, 1899, *post*, p. 764.

25. Whenever a notice or other document is by these Rules required to be served on the Clerk of the Peace, two copies thereof shall, except where otherwise provided, be so served, in order to enable the duplicate to be transmitted as hereinafter directed.

26. The original of every originating or other notice shall bear an endorsement stating the time and mode of service on the party or parties served [and such endorsement shall be signed by the party effecting the service].

The words in brackets are new.

27. In the case of an originating or other notice, which by these Rules should be served on the Clerk of the Peace, or on the Land Commission, as the case may be, as well as upon the opposite party, the opposite party shall be first served, and the copy or copies served on the Clerk of the Peace or the Land Commission shall bear a copy of the endorsement on the original as to the time and mode of service on the party or parties served.

28. As soon as an originating notice has been served upon the Clerk of the Peace or the Land Commission, as the case may be, as well as upon the party or parties, the matter shall be deemed to be in Court as a case to be decided.

Until this is done the case is not in Court: *Moore v. Thompson*, 28 I. L. T. R. 68.

29. Service of any originating or other notice shall except as hereinafter provided be effected either by personal service of a copy thereof or by leaving a copy thereof at the house or place of

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residence of the person intended to be served or at his office, warehouse, counting-house, shop, factory, or place of business with the wife, child, father, mother, brother, sister, or any relative of the person intended to be served or with any relative of his wife or with any servant or clerk of the person intended to be served, the person with whom such copy shall be left being of the age of sixteen years and upwards, or it may be effected by registered letter in the cases hereinafter mentioned. The original notice shall except as hereinafter provided be retained by the party upon whose behalf it has been served.

30. Service upon a landlord may also be effected by serving, in any of the modes prescribed by the foregoing Rules, his land-agent to whom the tenant's rent has been usually paid. A Company may be served by leaving a copy at the office or place of business of such company with any clerk or servant of the company of the age above-mentioned. Service upon a Corporation aggregate (not being a company) may be effected by delivering a copy to the Town Clerk, Clerk, Secretary, or Treasurer, of such Corporation, or to the person in whose name the Corporation may lawfully sue or be sued, or by leaving the same at the office of such person, with his clerk or servant of the age above-mentioned.

Where there are two or more landlords, all must be served; service on one part-owner not being good as against the others: *M'Closkey v. Cook*, 15 I. L. T. R. 82; R. & D. 20; MacD. 364.

Where a landlord dies after having been served with an originating notice, it is necessary to serve his representative *In re Vandeleur*, R. & D. 23. And where an order is made continuing the proceedings against his successor, that also must be served: *Woods v. Lord Lurgan*, MacD. 351.

See further, as to procedure in case of the death of either landlord or tenant, Land Act, 1881, Sec. 14, *ante*, and Land Act, 1870, Sec. 59, *ante* (incorporated by Sec. 38 of the Act of 1881).

Where the landlord is a minor, he must be served by his guardian *Marsh v. Moreland*, R. & D. 18; *In re Mauleverers*, minors, R. & D. 19; *Bethel v. Waddell* 18 I. L. T. & S. J. 40.

If there is no guardian the Court has power to appoint one under Sec. 61 of the Land Act, 1870 (incorporated by Sec. 38 of the Act of 1881); and the appointment may be made before the proceedings are commenced: *Carr v. Gray*, 23 I. L. T. R. 89 (County Court).

Service on the clerk of a landlord's agent in his office is good service. Personal service is not necessary in such a case *Falconer v. Cramsie*, R. & D. 63; 16 I. L. T. R. 47; MacD. 363.

Where a receiver has been appointed over the landlord's estate service upon him of an originating notice is sufficient *Hannen v. Domville*, R. & D. 33; MacD. 364.

Proceedings will not be set aside on the ground that a party has not been personally served unless it is distinctly shown that the notice has not come to h

hands *Falconer v. Cramsie*, R. & D. 63; 16 I. L. T. R. 47; MacD. 363. See also *Emerson v. Brown*, 8 Scott's N. R. 219.

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As to substitution of service, see Rule 34, *post*, and notes thereto.

31. Whenever in any notice served on behalf of a landlord the address in the United Kingdom of such landlord or of his agent is stated pursuant to the forms in the Schedule to these Rules, service of any future notice on such landlord in the same proceeding may be effected by registered letter directed to such address of the landlord or agent until a change of such address has been notified to the Court and the opposite party.

Service by post is not complete until the notice reaches the person in due course of post. *Re Purnell's Estate*, 32 Ir. L. T. R. 162, 1 Greer 135.

But if delayed in the post, a notice will be deemed to have been served on the date on which it ought to have been delivered: *Sheridan v. Mayo*, 2 N. I. J. R. 206.

32. Whenever in any notice served by or on behalf of a tenant [or person other than a landlord] the Post Office from which such tenant or person receives his letters is stated pursuant to the forms [in the Schedule to these Rules], service of any future notice on such tenant or person in the same proceeding may be effected by registered letter directed to such tenant or person at such Post Office. For the purpose of this and the foregoing Rule as regards the address of either landlord or tenant, the word "notice" shall include an originating agreement and an originating agreement and declaration.

The words in brackets were not in the Rule of 1883.

33. The receipt of the Post Office for a registered letter proved to have been duly directed to the party intended to be served, and proved to have contained a true copy of the notice required to be served, shall be sufficient *prima facie* proof of due service on the party to whom it is directed. A letter shall be deemed to have been duly directed to the party intended to be served when it has been directed to him at the address stated by him to be his address in a notice, or, if more than one, the last notice served by him on the party sending the letter. The statement by a tenant or person other than a landlord in a notice of the Post Office from which he receives his letters shall, for the purpose of this Rule, be deemed a statement of his address until he notifies to the Court and to the opposite party a change of address. The address of either landlord or tenant stated in an originating agreement or an originating agreement and declaration shall be deemed to be the true address until some other address is notified.

See note to Rule 31, *supra*.

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Substitution of
Service.

34. The Court shall have power to direct such substituted or other service, or the substitution of notice for service, or such service out of the jurisdiction as it shall under the circumstances deem just.

Where both landlord and agent resided out of the jurisdiction, the court permitted substitution of service of originating notice by sending a registered letter addressed to the agent at the address to which the rent was always sent: *Brady v. Vernes*, 15 I. L. T. R. 81; MacD. 364. But service of an originating notice by registered letter is insufficient, unless by order of the court: *Forsythe v. Shaw*, 15 I. L. T. R. 94. Substitution of service upon the solicitors for the landlord was allowed where the landlord was a minor and his guardian resided in England. *Newell's Estate*, MacD. 364. Substitution of service on the ground of disturbance in a district will only be granted upon its being shown that such disturbance is actually existing at the time, and that personal service would be dangerous. *Meagher v. Fitzgibbon, Doherty v. Hazlett*, 15 I. L. T. R. 93. See also *Taylor v. Simpson*, 15 I. L. T. R. 102.

In granting applications for orders substituting service the court will not give costs *Baldwin v. Heas*, R. & D. 7; MacD. 348.

Service on Land
Commission or
Clerk of Peace

35. Notices may be served upon the Land Commission and the Clerk of the Peace respectively through the post, directed, in the former case, to the Secretary of the Irish Land Commission, Dublin, and, in the latter, to the Clerk of the Peace at his office in the county town. Documents [other than notices] required to be transmitted to the Land Commission or the Clerk of the Peace may be sent and directed in like manner.

The words in brackets were not in the Rule of 1883.

Signing of
Originating
Notices.

36. An originating notice may be signed by, or in the name and by the authority of a landlord or tenant or other party making an application to the Court without a solicitor, or it may be signed by or in the name and by the authority of a solicitor for a landlord or tenant or such other party as aforesaid.

The omission of the signature to an originating notice is a material omission but the court may amend the notice by inserting it: *Hempenstall's Estate*, 26 I. L. T. R. 80.

Solicitor.

37. Every notice signed by a solicitor shall state the address of the office at which notices on him are to be served. In every case in which a party is represented by a solicitor, service upon such solicitor at the address so given shall be the proper mode of serving such party, and notices may either be served by being left at such address or else transmitted to such address by registered letter.

This rule must be strictly complied with. Service by ordinary letter was held bad by MERRITT, J.: In *O'Sullivan v. Warden* (1 N. I. J. R. 248) it was held

that personal service upon a solicitor in Tralee, his office being in Killarney, was bad; but see *contra*: *Fitzpatrick v. Murphy*, 6 I. W. L. R. 88.

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38. Where a landlord or tenant served with an originating or other notice desires to be represented by a solicitor, all notices served on behalf of such landlord or tenant after the appointment of such solicitor, shall be signed by or in the name and by the authority of such solicitor.

39. In no case shall the name of a solicitor be appended to a notice without his authority. Any notice served in violation of this Rule may be treated by the Court as a nullity.

40. When at any stage a party not previously represented by a solicitor desires to be so, his solicitor shall serve upon the opposite party notice of his appointment, and shall transmit a copy or copies (according to the Court selected) thereof to the Clerk of the Peace or the Land Commission, as the case may be

41. Any party shall be at liberty at any time to change his solicitor by notice served by the new solicitor on the former solicitor, and also on the opposite party, and the Clerk of the Peace or Land Commission, as the case may be. The Court shall have power, on the application of the former solicitor, to stay the proceedings until his costs are paid, or to make an order directing the client to pay such costs, or such other order in relation to the costs as the Court shall deem just.

42. Any affidavit, affirmation, or declaration to be used in the Civil Bill Court under the Land Law Acts may be sworn or taken before any Clerk of the Peace, or any Justice of the Peace for the County or Borough in which such affidavit, affirmation, or declaration is sworn or made, or any person who for the time being under any statute, or the Rules made in pursuance of the provisions of any statute, may be authorised to take affidavits, affirmations, and declarations in causes or matters depending in the High Court of Justice in Ireland, and shall, before being used, be lodged with the Clerk of the Peace of the county in which such Civil Bill Court shall be held. Affidavits.

The court, as a rule, requires *viva voce* evidence upon all questions of fact, and affidavits will not be received; as, for instance, when a question is raised whether lands are townparks or not: *Lawler v. Moore*, R. & D. 17; 15 I. L. T. R. 65; *Walsk v. Fletcher*, 4 Greer 29; or whether the lands are occupied under an agistment contract or not: *Wade v. Handy*, 1 Greer 149; or where there is a question as to

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the existence of a lease: *Nicoll v. Bourke*, R. & D. 21. But when a clear question of law only is involved the court will hear and decide it upon affidavit *Farrelly v. Doughty*, 15 I. L. T. R. 100, MacD. 400.

43. Any affidavit, affirmation, or declaration to be used before the Land Commission may be sworn or taken before any Justice of the Peace for the County or Borough in which such affidavit, affirmation, or declaration is sworn or made, or any person who for the time being under any statute, or the Rules made in pursuance of the provisions of any statute, may be authorised to take affidavits, affirmations and declarations in causes or matters depending in the High Court of Justice in Ireland, and shall, before being used, be lodged with the Land Commission, or with the Sub-Commission, if the case has been remitted to and is pending before a Sub-Commission, and is sworn for the purpose of being used before such Sub-Commission.

44. Whenever any affidavit or document purports to be signed by a marksman, his signature shall be witnessed by a Commissioner for taking Affidavits, a Justice of the Peace, a Solicitor, a Clergyman, or a Poor Law Guardian, and such person shall certify by writing under his hand that the document was duly read over and explained to such marksman, and that he appeared to fully understand the same.

45. All affidavits, affirmations, or declarations shall be expressed in the first person of the deponent, and drawn up in numbered paragraphs.

46. All affidavits, affirmations, or declarations, except where otherwise provided, shall state the deponent's occupation, quality, and place of residence, and also in the usual form his age, and also what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are.

47. All persons authorised to take affidavits to be used in the Civil Bill Court or before the Land Commission, shall certify in the jurat of every affidavit taken by them the place of taking such affidavit and that they know either the deponent himself or some person named in the jurat who certifies his knowledge of the deponent.

48. No affidavit, affirmation, or declaration having in the jurat or body thereof any interlineation, alteration, or erasure shall without leave of the Court, or, in the case of the Land Commission, of a Commissioner, be filed, read, or made use of in any matter depending in Court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person taking the affidavit, affirmation, or declaration, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit, affirmation, or declaration to be written on the erasure are re-written and signed or initialled in the margin of the affidavit, affirmation, or declaration by the person taking it.

49. A certified copy of any order, whether made by a Sub-Commission or the Land Commission or a Commissioner, or a certificate of the filing by the Land Commission of an originating agreement or of an originating agreement and declaration, may be had on application to the Land Commission and payment of a fee of one shilling, and where an order has been made, or an originating agreement and declaration has been filed by the Civil Bill Court, a copy of such order or a certificate of such filing may be had on application to the Clerk of the Peace and payment of a like fee.

Certified
copies

50. Certified copies of documents including affidavits shall, if obtained from the Clerk of the Peace, be certified by him.

51. Certified copies of documents including affidavits required from the Land Commission shall be certified by an officer of the proper department, and in cases before the Land Commission copies of affidavits, affirmations, or declarations made by or on behalf of the parties shall, if transmitted with the originals, be compared and certified free of charge.

52. Certified copies of documents or certificates shall (save where otherwise provided) be charged for at the rate of three half-pence per folio of seventy-two words; provided that the minimum charge shall be 3d. All payments for copies of documents or certificates shall be threepence. All payments for copies of documents or certificates shall be denoted by County Court or Land Commission stamps, according as the same have been obtained from the Clerk of the Peace or the Land Commission.

53. A fee of threepence shall be chargeable for any Search in the Books of the Land Commission to ascertain whether in any particular case a Judicial Rent has been fixed on a holding.

Searches.

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Subpœnas

54. Summonses for the attendance of witnesses and production of documents before the Land Commission or any Sub-Commission may be in Form No. 65, and shall be signed by the Registrar or Assistant Registrar of the Land Commission, or where proceedings are pending before a Sub-Commission may be signed by any member of such Sub-Commission; and in all proceedings in the Civil Bill Court under the Land Law Acts such summonses may also be in Form No. 65, and shall be signed by the Clerk of the Peace.

In *McDonnell v. Gosford* (35 I. L. T. R. 117), the court refused to allow a subpoena to issue for the attendance of court valuers at the hearing of a fair rent appeal.

Consolidation of
proceedings.

55. Where the same question is substantially raised in two or more cases for hearing before the same Court, or where it shall for any reason seem expedient to the Court it shall be lawful for the Court by order to direct that such cases shall be heard together, or that the proceedings in any one or more of such cases may be stayed; and the Court shall have the same power of consolidating proceedings as the High Court of Justice has with respect to actions.

Intervenients.

56. The Court, on the application of any person claiming to have an interest, may make an order giving him liberty to intervene, and thereupon he shall be deemed to be a party and shall have the same rights as regards the proceedings, and shall be bound thereby in like manner as if he had been an original party sought to be bound by the decision of the Court.

Application for liberty to intervene should, as a rule, be made on notice; but in some cases a conditional order will be made on an *ex parte* application. *Jordan v. Gibbs*, 25 Ir. L. T. R. 27 (BEWLEY, J.). The Rule does not apply to a proceeding that is over. Per Fitzgibbon, L. J. in *Evans v. Peyton*, 1895, 2 Ir. R. at p 133. The Land Commission has no jurisdiction to make an order under this Rule in a Country Court case, unless an appeal has been taken: *Magourisk v. Macan* 28 Ir. L. T. R. 15.

Mortgagees will, as a general rule, be allowed to intervene under this Rule. In *Bradshaw v. Bradshaw*, MacD. 360, a fair rent had been fixed on consent, the tenant being the landlord's son. A mortgagee was, however, allowed to intervene and serve notice of appeal; and on the appeal the originating notice was dismissed and the whole proceedings set aside as collusive. (Unreported on appeal.)

For decisions prior to the passing of the Land Act, 1896, as to how far an order fixing a fair rent as against a mortgagor, was binding on mortgagees: See *Clark v. Hall*, 24 L. R. Ir. 316, 22 L. R. Ir. 388; *O'Rourke Estate*, 23 L. R. Ir. 49; and notes to Land Act, 1881, Sec. 5, *ante* pp. 252-253.

See now Sec. 10, ss. 1, Land Act, 1896. *Roulston v. Caldwell*, [1895] 2 Ir. R. 13

57. The Court shall have power, in any proceedings pending

before it, to direct any person appearing to have an interest, to be served with notice of the proceedings, and such person shall thereupon have the same rights as regards the proceedings as if he had been an original party sought to be bound by the decision of the Court, and shall, if the Court so order, be bound by the proceedings. A person so directed to be served shall be served with a notice, which may be in Form No. 66.

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58. Whenever the Civil Bill Court has cognizance of any case under the Land Law Acts the case shall not be listed for hearing until the lapse of a month after due service of the originating notice, unless by consent or on application the Court direct it to be heard sooner

**Duty of Clerk
of Peace**

59. It shall be the duty of the Clerk of the Peace to cause every originating notice to be entered in a book, to be called the "Land Law Acts Case Book," in consecutive numbers, and also to forthwith transmit the duplicate notice received by him to the Secretary of the Land Commission; and every notice or other document served on the Clerk of the Peace subsequently in the same case, shall be likewise noted in the said book under the same number, and the duplicate thereof shall be forthwith transmitted to the Secretary of the Land Commission.

60. It shall be the duty of the Clerk of the Peace to forthwith transmit to the Secretary of the Land Commission certified copies of all orders made by the Judge of the Civil Bill Court under the Land Law Acts or the Landlord and Tenant (Ireland) Act, 1870.

61. The Clerk of the Peace shall within one month after receiving the same forward to the Land Commission a certified copy of every award recorded under Section 25 of the "Landlord and Tenant (Ireland) Act, 1870," or Section 40 of the "Land Law (Ireland) Act, 1881."

62. The Registrar of the Land Commission shall cause an abstract of every originating notice received by the Secretary of the Land Commission from any Clerk of the Peace to be entered in a book to be called the "Land Law Acts Case Book," according to counties and in consecutive numbers, and shall cause every subsequent notice and order in the same case, received from the Clerk of the Peace, to be entered in such book under the same number.

**Duty of
Registrar.**

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63. The Registrar of the Land Commission shall cause an abstract of every originating notice served on the Land Commission to be entered in books kept according to counties, and shall cause every subsequent notice and order in the same case to be entered in the proper book under the same number. When the case is ready to be heard by any Sub-Commission, the notices served in each such case shall be transmitted to the Sub-Commission, and shall be returned with the order of the Sub-Commission to the Land Commission.

**Process
servers**

64. The process servers of any county or riding, or the summons servers of any Petty Sessions district, may be employed, within their respective districts, to serve notices under the Land Law Acts whether originating or otherwise, and each of them so employed shall be entitled to charge one shilling as a fee for the service or services of each notice, whether originating or otherwise, for which fee he shall be bound to serve a copy on the party or parties, and transmit by post one copy to the Land Commission, at its Office in Dublin, or two copies to the Clerk of the Peace, as the case may be, the party employing him paying the postage, if any, and he shall be further bound to endorse on the copy sent to the Land Commission, or on both of the copies sent to the Clerk of the Peace the time and mode of service on the party or parties served, and he shall be further bound to endorse on the original the time and mode of service as well on the parties as on the Clerk of the Peace or Land Commission [and to sign all such endorsements].

The words in brackets were not in the previous Rules.

65. It shall be also the duty of process servers and summons servers, when required, to attend in Court and prove the service and posting of notices. Where such attendance is before the Land Commission or any Sub-Commission, the process servers or summons servers may be allowed for their expenses in so attending, such sum, to be paid by such party as the Land Commission or Sub-Commission may direct.

**Lodgment of
money in Court**

66. In every case in which a question arises with respect to rights to money which the Court has power to decide, any party may pay money into Court in the manner by these Rules provided to be dealt with according to the rights of the parties.

67. Whenever money is to be paid into Court, pursuant to the

Land Law Acts or these Rules, such payment shall be made into the branch bank of the Bank of Ireland in the respective counties, or, if no such branch exists in the county, then into such other bank or branch bank, for transmission to the Bank of Ireland, as the Judge of the Civil Bill Court or the Land Commission shall direct

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68. To effect such payment into Court, where the Court having jurisdiction shall be the Civil Bill Court, the person paying shall obtain a docket, signed by the Clerk of the Peace, which may be in Form No. 67, authorizing the lodgment of the sum in the bank in the name of the Clerk of the Peace, to the credit of the matter specified by number and county, and, on making such lodgment, the person making such lodgment shall deliver or transmit by registered letter to the Clerk of the Peace the bank receipt for such lodgment.

69. No money so lodged shall be drawn out without an order of the Judge of the Civil Bill Court, made on consent in writing of the parties, or, upon application by any of the parties and on notice to the others.

70. Where any lodgment shall have been so made, the amount lodged shall be paid out only on a cheque, signed by the Clerk of the Peace, and countersigned by the Judge of the Civil Bill Court.

71. To effect such payment into Court, where the Court having jurisdiction shall be the Land Commission, the person paying shall obtain a docket, signed by the Accountant of the Land Commission, which may be in Form No. 68, authorizing the lodgment of the sum in the bank in the name of the Irish Land Commission, and no money so lodged shall be drawn out without an order of the Land Commission or of a Commissioner. [Upon any application to pay out money so lodged, a certificate of funds, signed by the Accountant, must be produced.]

The words in brackets were not in the previous Rules.

72. When proceedings shall be commenced in the Civil Bill Court any application to the Land Commission to transfer such proceedings from the Civil Bill Court to the Land Commission shall be made within one fortnight after the date on which the originating notice shall have been served (*a*) on the party making the application, unless on special grounds the Court shall otherwise direct. Every application made for the purpose of transferring

Transfer of cases from Civil Bill Court to the Land Commission.

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proceedings from the Civil Bill Court to the Court of the Land Commission shall be supported by an affidavit that such application is not made for the purpose of delay, and the Court may in the order made upon such application impose such terms upon either party as to the Court may appear just or reasonable.

When proceedings are commenced in the Civil Bill Court, either party has a right to transfer the case into the Land Commission Court, unless good cause can be shown against the transfer. Such an application is not in the nature of an application to change the venue in a personal action. *Shiel v. Borrowes*, R. & D. 35, 15 I. L. T. R. 112. Claims for compensation under the Land Act, 1870, cannot be so transferred, as the Land Commission Court is invested with no original jurisdiction to try such cases. *Knipe v. Armstrong*, 15 I. L. T. R. 64; *MacD* 413; though it is now the tribunal to try appeals in claims under that Act (see Land Act, 1881, Sec. 47, and notes thereto, *ante*, p. 332).

(a) Where service is accepted, the time runs from the date of acceptance. *Ganley v. Dartrey*, 30 Ir. L. T. R. 158.

73. Notice of such application to transfer shall be given to the Clerk of the Peace, and to the opposite party, and also to the Land Commission. The notice to transfer served on the Land Commission shall bear an endorsement stating the date and mode of service on the opposite party and on the Clerk of the Peace, and it may be in Form No. 69. There shall be sent therewith to the Land Commission a copy of the originating notice which shall have endorsed thereon a statement of the date of service of the originating notice on the applicant.

74. Cause against making such transfer, specifying grounds by reason of which such transfer would be unjust or unreasonable may be shown within one fortnight after service of the notice of application to transfer on the person so showing cause, and may be in Form No. 70, and such notice of cause shall be served within the time limited upon the opposite party, and also upon the Land Commission in the usual way. The notice of cause served on the Land Commission shall bear an endorsement stating the date and mode of service on the opposite party.

75. If no notice of cause is served within the time limited a order of transfer will be made as of course, and a certified copy of such order shall be transmitted by the Land Commission to the Clerk of the Peace.

76. When cause is shown, the party applying for the transfer may, within one fortnight from the date of service of the notice of cause upon the Land Commission, serve notice of motion upon

the opposite party and upon the Land Commission applying to disallow the cause shown, and the Land Commission shall hear and determine such application, and may impose such terms upon either party as may appear just or reasonable. When cause is shown and no such notice of motion is served within the time aforesaid an order refusing to transfer the case will be made as of course by the Land Commission, and in either of the foregoing cases a certified copy of the order shall be transmitted by the Land Commission to the Clerk of the Peace.

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It is not the practice to give the costs of this motion. *Moore v. M'Donnell*, 31 Ir. L. T. R. 163, 3 Ir. W. L. R. 232.

77. After notice of an application to transfer proceedings shall have been served on the Clerk of the Peace, the case shall not be proceeded with in the Civil Bill Court until the Clerk of the Peace shall have received from the Registrar of the Land Commission a certified copy of the order made upon the application to transfer the proceedings.

78. Every order of the Land Commission or of any Commissioner shall bear the signature of the Registrar or Assistant Registrar of the Land Commission. Every order of a Sub-Commission shall, unless the Land Commission otherwise directs, be signed by the members of the Sub-Commission by whom such order was made, or in the case of any member or members dying or ceasing to hold the office of Assistant Commissioner, then by the member or members surviving or continuing in such office, and such signature shall be valid notwithstanding that at the time of actual signature the person or persons so signing may no longer be a member or members of such Sub-Commission. Where all the members of the Sub-Commission have died or ceased to hold the office of Assistant Commissioner such order may by direction of the Land Commission be signed by the Registrar or Assistant Registrar of the Land Commission. These provisions shall apply to orders pronounced as well before, as after the coming into force of these Rules. Every order of the Land Commission or of any Commissioner or of any Sub-Commission shall bear date as of the day on which such order was actually pronounced.

Signing and
dating of orders

79. Any person (a) aggrieved by any order of one Commissioner, Appeals
or by any order of a Sub-Commission, and who desires to have the case re-heard, shall, within two months after the date of such order,

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serve on the opposite party a notice of appeal which may be in Form No. 71, and thereupon shall, within ten days from the date of such service, transmit to the Land Commission the original notice of appeal duly stamped, (b) which shall be endorsed with the time and mode of service on the opposite party [and such endorsement shall be signed by the person who effected such service] (c)

Under the rules in force before 12th December, 1883, notices of re-hearing did not require a stamp. See *Kieran v. Caruth*, 19 I. L. T. R. 1

See, further, as to appeals from Sub-Commissions, Land Act, 1881, Sec. 44, and notes thereto, *ante*, p. 330.

(a) *i.e.*, the landlord or tenant. An agent is not a person aggrieved within this rule

(b) See Rules 88 and 89, *post*, and *Joyce v. Gleeson*, 35 Ir. L. T. R. 117, 1 N. Ir. Jur. 142.

(c) The words in brackets were not contained in the previous rules.

80. (*Repealed by Stat. R. & O. 568 of 20th July, 1899, Rule 5 post.*)

81. Any person aggrieved by the decision of any Civil Bill Court as to any matter (a) with respect to which an appeal lies to the Land Commission, and who desires to appeal therefrom, shall within two months (b) from the last day of the Land Sessions at which such decision shall have been made, serve notice of appeal on the opposite party, which may be in Form No. 72, and thereupon shall, within ten days from the date of such service, lodge with the Clerk of the Peace the original notice of appeal duly stamped together with a copy thereof, and both the original and the copy so lodged shall be endorsed with the time and mode of service on the opposite party, and such endorsement shall be signed by the person who effected such service.

(a) This apparently includes Appeals under the Land Act of 1870.

(b) The Land Commission cannot extend the time for appealing prescribed by this Rule, as it has no jurisdiction in the matter until an appeal has been taken from the County Court Judge. *Green v. Burrows*, 35 I. L. T. R. 86; 1 N. I. J. R. 119.

82. The Clerk of the Peace shall forthwith transmit the original stamped notice so endorsed to the Land Commission, certifying thereon the date of the last day of the Land Sessions at which the decision appealed from was made.

83. In every case of appeal to the Land Commission from Civil Bill Court the notice of appeal when lodged with the Clerk of the Peace shall be accompanied by the certified extract from the

*Valuation Books mentioned in Rule 80; ** and it shall be the duty of the Clerk of the Peace forthwith to transmit to the Land Commission such extract, with the original notice of appeal and also, where a fair rent has been fixed, a certified copy of the Schedule under Section 1 of the Land Law (Ireland) Act, 1896. A notice of appeal from a Civil Bill Court which shall not be so accompanied will not be received by the Land Commission.

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84. In every case of appeal to the Land Commission from a Civil Bill Court where an inspection of the holding has not been directed by the Court, the notice of appeal lodged with the Clerk of the Peace shall be accompanied by the proper sheet of the Ordnance Survey Map, showing the boundary of the holding marked by a coloured line, *and the certified extract from the Valuation Books mentioned in Rule 80; ** and it shall be the duty of the Clerk of the Peace forthwith to transmit to the Land Commission such Map *and extract,** with the original notice of appeal. A notice of appeal from a Civil Bill Court which shall not be so accompanied will not be received by the Land Commission.

85. Every notice of appeal shall specify definitely the grounds upon which the appeal is intended to be prosecuted, as indicated in Forms No. 71 and No. 72.

This Rule has been made in compliance with Land Act, 1896, Sec. 22. See notes to that section, ante p. 561.

86. Where on the hearing of an application before a Commissioner, a Sub-Commission, or a Civil Bill Court a party is represented by a solicitor, service of notice of appeal from the order made on such application on such party may be effected by serving such solicitor.

Even though such solicitor may not be instructed to act in the appeal.

87. An appeal to the Land Commission may be withdrawn by the appellant at any time before the appeal is opened in Court, upon the terms of paying the costs, necessarily and properly, incurred, of the opposite party up to notice of withdrawal. Where an appeal is withdrawn otherwise than in Court, the appellant shall forthwith serve notice of withdrawal on the opposite party.

88. Every original notice of appeal, (a) in cases where the annual rent issuing out of the holding prior to the date of the order

* The words italicised in Rules 83 and 84 have been repealed by Rules of 20th July, 1899, No. 5, post, p. 705.

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appealed from exceeds the sum of £10, shall bear an impressed stamp or stamps of the value of ten shillings.

(a) This apparently includes appeals under the Land Act, 1870.

89. In cases where the annual rent issuing out of the holding prior to the date of the order appealed from is £10 or less than £10, the original notice of appeal shall bear an impressed stamp or stamps of the value of one shilling

Appeals to, and
statement of
case for, Court
of Appeal in
Ireland

90. An application for leave to appeal to Her Majesty's Court of Appeal in Ireland, or a requisition to have a case stated for Her Majesty's Court of Appeal in Ireland, shall be made within one fortnight after the decision complained of.

As to the procedure when an order is made under this Rule, see Rule 93, *post*.

91. The statement of a case in respect of any question of law proposed to be submitted by way of appeal to Her Majesty's Court of Appeal in Ireland, shall, if made on the application of any party, be prepared by the party making such application, and, after having been submitted to the opposite party, who shall be at liberty to make such observations and alterations thereon as he shall think fit, shall be lodged with the Registrar of the Land Commission, and settled by the Judicial Commissioner.

92. After the Draft Case has been settled by the Judicial Commissioner, and has been transmitted to the party having the Carriage of the Proceedings in order to have the same engrossed, the engrossment and Draft Case shall be returned to, and lodged with, the Registrar of the Land Commission within ten days after the date of its transmission as aforesaid, and in default thereof the order giving liberty to state a case shall stand discharged, unless the Court shall by special order otherwise direct, and the costs shall abide such order as the Court shall deem just. After the engrossment has been lodged with the Registrar of the Land Commission it shall, when perfected, be transmitted by him to the proper officer of Her Majesty's Court of Appeal in Ireland.

The case should be engrossed on judicature paper, and on one side of each sheet only.

93. An order giving liberty to appeal or to have a case stated shall be prosecuted by the lodgment of the appeal in the office of Her Majesty's Court of Appeal in Ireland, or of the draft case pursuant to Rule 91, with the Registrar of the Land Commission

within one month from the date of the order going leave to appeal, or to have such case stated as aforesaid; and if not so prosecuted within the period aforesaid, the order giving such liberty shall at the expiration of the said period of one month stand discharged, unless the Court shall by special order otherwise direct.

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94. Consents on the part of the Land Commission shall be signified under its seal, and consents of any corporation shall be signified under the seal of such corporation, (a) and consents by individuals shall be signified in writing under their hands, or those of their agents, duly authorized in that behalf. Nothing in this Rule shall, however, prevent the Court from acting, if it deem fit, upon a consent given in open Court, according to the usual practice of Courts of Justice. [Where a consent or undertaking given in Court by or on behalf of one of the parties, forms the basis of, or a material element in, the order of the Court, the giving of such consent or undertaking and the terms of it shall be fully set out in such order.]

Consents

(a) An agent who has power under seal so to do may sign on behalf of a corporation.

The words in brackets were not in the former Rules.

95. In all cases in which a tenant is a party to any agreement under the Land Law Acts, or to any consent in writing in any matter under the said Acts, his signature thereto shall be witnessed by a Commissioner for taking Affidavits, a Justice of the Peace, a Solicitor, a Clergyman, or a Poor Law Guardian, (a) but the witness must not in any case be a person in the employment of the landlord, (b) and, where the tenant is a marksman, the witness shall certify under his hand that such agreement or consent was read and explained to the tenant, and that he appeared to fully understand the same.

The provisions of the Rule as to the witnessing of the tenant's signature must be strictly carried out and will not be relaxed, except when there is extreme difficulty in obtaining one of the persons specified to be a witness to the instrument *Sweeney v. Carter*, R. & D. 30; *Ex parte Tilsen*, 15 I. L. T. R. 102; *MacD.* 375.

(a) Or by an Urban or Rural District Councillor. See Rules of 20th July, 1899, No. 3 *post*.

(b) A bank manager is a competent witness to an agreement, though the landlord keeps an account at his bank: *Good v. Lewis*, 30 Ir. L. T. R. 52; 2 Ir. W. L. R. 52.

96. Where a party desires to issue a writ of *feri facias* for the recovery of costs awarded to him, his solicitor shall serve on the

Recovery of
c. 101a

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party against whom the order has been made, a demand, which may be in Form No. 73. Such service may be effected personally or by registered letter. If such costs shall not have been paid within 21 days from the date of such personal service, or of the posting of such registered letter, a writ of *feri facias* shall be issued on application at the Registrar's Office, and on production to the proper officer of the following documents:—(a) A certificate of non-payment which may be in Form No. 74, signed by the solicitor applying for such writ; (b) the certificate of taxation where the costs have not been measured; (c) the Post Office receipt for the posting of the registered letter containing the notice of demand, or where personal service has been effected, an affidavit proving such service.

97. In every case in which the Land Commission shall award the payment of costs amounting to one pound sterling at the least, and in which a writ of *feri facias* shall be issued to enforce payment thereof, it shall be lawful for the party taking out such writ to add to such costs the sum of five shillings as and for the costs of and incident to the taking out of such writ, and to include the same in the amount to be levied thereunder.

The Court allowed a writ of *feri facias* to issue under Rule 78 of 1883, which was in identical terms with this Rule, to enforce payment of the costs of an appeal from a decree for compensation for improvements under the Land Act, 1870 *O'Brien v. Leader*, 30 L. R. Ir. 531.

See generally as to costs, Rules as to Solicitor's fees, *post* pp 765-768.

SALE OF TENANCIES.

Sale of
tenancies

98. A tenant intending to sell his tenancy shall give notice to his landlord, which may be in Form No. 1.

As to sale of tenancies generally, see Land Act, 1881, Sec. 1, and Land Act, 1896, Sec. 19, and notes thereto, *ante*, pp. 230 240 and 560.

The notice may be served a considerable time before the sale takes place *McFarlane v. Cinnamon*, 25 Ir. L. T. R. 45. (BEWLEY, J.)

It seems that this and the following Rules apply only to cases where an actual transfer of the tenancy is proposed to be made by way of sale or mortgage. See definition of "sale," Land Act, 1881, Sec. 57, and notes thereto, *ante*, p. 352. The Act does not avoid or prohibit equitable charges, as it does not prohibit and provide for the avoidance of unauthorised assignments of the tenancy. (per PALLES C. B.) *Farrelly v. Waller*, 28 L. R. Ir., at p. 130. A tenant who creates such charges need not serve notice on his landlord, or otherwise comply with the following Rules; but on the other hand the landlord's rights are not in any way interfered with by the creation of such equitable charges *Farrelly v. Waller*, 2 L. R. Ir. 122. (C. A.)

99. If the landlord desires to purchase the tenancy and ha

disagreed with the tenant in respect of such purchase, he shall within one fortnight from the date of service on him of the tenant's notice in Form No. 1 serve upon the tenant, and also upon the Clerk of the Peace or the Land Commission, as the case may be, an originating notice to ascertain the true value of the tenancy, which may be in Form No. 2, and shall therewith transmit to the Clerk of the Peace or the Land Commission a copy or copies (according to the Court selected) of the tenant's notice in Form No. 1.

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The effect of the service of the notice prescribed by this rule, within the proper time, is, at once to make the landlord the purchaser of the holding under the statute, at a price to be ascertained by the Court: *Burns v. Graham*, MacD. 361. The tenant cannot afterwards withdraw his notice: *Farrelly v. Waller*, 28 L. R. Ir. 122. (C. A.) See notes to Land Act, 1881, Sec. 1, *ante*, p. 232. Notice served on 30th Dec., 1889, to sell on 16th January, 1890, was held sufficient, though the sale did not take place until 31st October, 1890.

When service is accepted time would appear to run from the date of acceptance: *Ganley v. Dartry*, 30 Ir. L. T. R. 158, Fitz. 298.

Though the service may be late, the Court may at any time declare it valid: *Burns v. Graham (ubi supra)*.

Non-acceptance by the tenant of the landlord's offer constitutes a disagreement: *Clark v. Taylor* [1898], 2 Ir. R. 586; 32 Ir. L. T. R. 86, 4 I. W. L. R. 115; 1 Greer, 30, 90 (C. A.). See notes to Land Act, 1881, Sec. 1 (3), *ante*, p. 233.

As to setting aside an originating notice to fix true value, see *Ballantine v. Gosford*, 1 N. I. J. R. 231.

100. In default of a landlord either agreeing with a tenant, or such other person as may have given notice of intention to sell the tenancy, to purchase, or applying to the Court to ascertain the true value of the tenancy within one fortnight after service of notice of intention to sell, the tenant, or such other person as aforesaid, may, at the expiration of the said period of one fortnight, or with the written consent of the landlord, before such expiration, sell the tenancy pursuant to the Land Law (Ireland) Act, 1881, and shall thereupon give notice to the landlord of the name of the purchaser, and of the consideration agreed to be given for the tenancy. Such notice may be in Form No. 3, with any necessary changes.

101. An application by a landlord to the Court to declare a sale to be void under Section 1, Sub-section 5 of the Land Law (Ireland) Act, 1881, shall be made to the Court within one fortnight after the sale shall have come to the landlord's knowledge, and such application shall be by originating notice which may be in Form No. 4.

See notes to the Sub-section referred to, *ante*, pp. 235-236.

As to when time begins to run, see *Ketch v. Gormanstown*, 30 Ir. L. T. R. 103.

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102. Where a tenant has sold his tenancy and the landlord refuses to accept the purchaser as tenant on alleged reasonable grounds he shall within one fortnight after receiving the notice of the name of the purchaser [or after the sale shall have come to his knowledge] serve upon the tenant notice of his refusal, which may be in Form No. 5.

The words in brackets were not contained in the former Rule.

103. If the tenant disputes the reasonableness of the landlord's refusal, he shall, within one fortnight after receiving the landlord's notice in Form No. 5, serve upon the landlord, and also upon the Clerk of the Peace of the county, or the Land Commission, as the case may be, an originating notice, which may be in Form No. 6, and shall therewith transmit to the Clerk of the Peace, or the Land Commission, a copy or copies (according to the Court selected) of the landlord's notice in Form No. 5, and also of the tenant's notice in Form No. 3, if the same has been served

104. Where the landlord objects to the purchaser of a tenancy and asserts that his objection is conclusive, by reason of such permanent improvements as are mentioned in Section 1, Sub-section 6 of the said Act, having been made and substantially maintained by him or his predecessors in title, and not by the tenant or his predecessors in title, he shall within one fortnight after having received notice of the name of the purchaser, or after the sale shall have come to his knowledge, give notice to the tenant, which may be in Form No. 7.

105. If the tenant disputes the fact of such improvements having been made and substantially maintained by the landlord and his predecessors in title, he shall, within one fortnight after having received the notice in Form No. 7, serve upon the landlord and on the Clerk of the Peace of the county, or the Land Commission, as the case may be, an originating notice, which may be in Form No. 8 and he shall therewith transmit to the Clerk of the Peace or the Land Commission a copy or copies (according to the Court selected) of the landlord's notice in Form No. 7.

106. Where a sale of a tenancy has taken place at the instance of a person other than the tenant, and the landlord refuses to accept the purchaser of the tenancy as a tenant on alleged reasonable grounds, he shall within one fortnight after receiving the notice of

the name of the purchaser, or after the sale shall have come to his knowledge, serve upon the person or persons who sold the tenancy, and upon the tenant, if alive, notice of his refusal, which may be in Form No. 5 or No. 7, as the case may be, with the necessary changes; and if the reasonableness of the landlord's refusal is disputed, the person disputing the grounds of refusal shall within one fortnight after receiving the notice either in Form No. 5 or No. 7, serve upon the landlord and the Clerk of the Peace or the Land Commission, as the case may be, an originating notice which may be in Form No. 6 or No. 8, as the case may require, with the necessary changes, and he shall transmit to the Clerk of the Peace or the Land Commission a copy or copies (according to the Court selected) of the landlord's notice in Form No. 5 or No. 7.

107. Where a landlord, on the application of a tenant, consents that his property in improvements shall be sold along with the tenancy, pursuant to Section 1, Sub-section 8, of the said Act, such consent may be in Form No. 9.

108. Where the landlord's property in improvements is so sold accordingly, the landlord and tenant jointly, or either separately, may, within three weeks after the sale, serve an originating notice on the Clerk of the Peace of the county, or the Land Commission, as the case may be, which may be in Form No. 10. If the application be not made jointly the party applying shall within one fortnight after the sale also serve the originating notice on the opposite party.

The landlord's improvements can only be sold with the tenancy, under Sec. 1 (8), "on the application of the tenant." Where the tenant does not so apply, the Court has no jurisdiction to grant an application by the *landlord* to have the purchase money of the tenancy and such improvements apportioned. *Meade v. Taylor*, 17 I. L. T. R. 116; MacD. 329.

109. A landlord making a claim in respect of arrears of rent or other breaches of the contract or conditions of tenancy, shall give notice to the outgoing tenant and to the purchaser, or, if a sale of the tenancy has taken place at the instance of a person other than the tenant, then also to such person. Such notice, which may be in Form No. 11, with any necessary changes, shall be given within one fortnight after the landlord receives notice of the name of the purchaser, if the landlord does not object to the purchaser; or, in case the landlord does object to the purchaser, then within one fortnight after such objection shall have been adjudicated upon or withdrawn.

See Land Act, 1881, Sec. 1 (9), and notes thereto; *ante* p. 23³.

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110. If the outgoing tenant, or such other person mentioned in Rule 109, does not, within one fortnight after receiving notice in Form No. 11, give notice, in Form No. 12, to the purchaser that he disputes the landlord's claim, or any part thereof, the purchaser shall, on the expiration of such period of one fortnight, pay to the landlord, out of the purchase-money, the amount of such claim.

111. If the outgoing tenant, or such other person mentioned in Rule 109, disputes such claim, or any part thereof, he shall, within one fortnight after receiving notice in Form No. 11, give notice to the landlord and to the purchaser, which may be in Form No. 12 with any necessary changes, specifying the amount which he admits and the amount which he disputes, and the purchaser shall thereupon forthwith pay to the landlord the amount admitted, if any, and shall pay the residue into Court in the manner by these Rules provided, to be dealt with as provided by Section 1, Sub-section 10, of the said Act

112. Where a sale of a tenancy is about to take place under a writ of execution by any execution creditor other than the landlord, such execution creditor shall, at least one fortnight before the day of sale, give notice to the landlord of his intention to sell, and such notice may be in Form No. 13.

See Land Act, 1881, Sec. 1 (14), and notes thereto, *ante*, pp. 239-240.

Notice of sale by an execution creditor need now only be served on the landlord; and if the landlord is himself the execution creditor no notice is necessary unless "he is desirous to purchase the tenancy otherwise than at the sheriff's sale," as to which case see Rule 113, *post*.

Under the rule in force before 1883 (Rules of 1881, No. 82), it was necessary to serve notice upon the tenant also, whether the landlord or a third party was the execution creditor. Under the corresponding rule of 1883 it was held, however that, in an ejection by the assignee of the sheriff, it was unnecessary for the plaintiff to give evidence of the service of the notices, that the onus of proving their non-service lay upon the defendant, and that the Court would presume, in the absence of evidence to the contrary, that all notices requisite to the regularity of the sale had been given. *Goddard v. Ryan*, 10 L. R. Ir. 309; *MacD.* 324.

In that case it was also strongly argued on behalf of the plaintiff (1) that the rule was altogether *ultra vires*, and (2) that the non-observance of it did not render the assignment void. These questions are still open, as the Court did not find it necessary to decide them. See also *Fisgate v. Callan*, 15 I. L. T. & J. 617.

113. If the landlord desires to purchase the tenancy he shall within one fortnight after receiving notice in Form No. 13, serve upon the tenant, the sheriff of the county, the execution creditor and also upon the Clerk of the Peace, or the Land Commission, a

the case may be, an originating notice, to ascertain the true value of the tenancy, which may be in Form No. 14, and he shall therewith transmit to the Clerk of the Peace, or the Land Commission, a copy or copies (according to the Court selected) of the execution creditor's notice in Form No. 13. Pending the decision of the Court on this originating notice the sale by the sheriff shall be suspended.

Before a landlord serves upon a tenant an originating notice to fix the "true value" of the tenancy, there must have been an offer to purchase, and a disagreement as to price. *Clark v. Taylor*, [1898] 2 I. R. 586; *Mullan v. Trasil*, [1898] 2 I. R. 378. But where a landlord, inadvertently, served a notice to ascertain true value before having made an offer to purchase, the Court, though it treated the notice as void, extended the time for service of a fresh notice after such offer and disagreement (if any). *Quinn v. Waterford*, 35 I. L. T. R. 85; 1 N. I. J. R. 120. See further on this subject, notes to Land Act, 1881, Sec. 1, *ante*, p. 233.

114. Where the landlord is himself the execution creditor, and is desirous to purchase the tenancy, otherwise than at the sheriff's sale, he shall, within one fortnight after the lodgment of the writ with the sheriff of the county, serve on the tenant, on the sheriff, and on the Clerk of the Peace, or the Land Commission, as the case may be, an originating notice, to ascertain the true value of the tenancy, and such notice may be in Form No. 15. Pending the decision of the Court on this originating notice the sale by the sheriff shall be suspended.

115. In case the landlord does not serve the notice prescribed by either of the preceding Rules within the time aforesaid, the sheriff may proceed to sell according to the exigency of the writ lodged with him.

116. The amount of the true value when declared by the Court, less by any sum ordered to be paid thereout for costs, or otherwise, shall be paid by the landlord to the sheriff as purchase-money, to be dealt with by him as if the same were obtained at public sale, provided that if the landlord would have been entitled in that capacity to receive all or portion of the purchase-money if the sale had been made by the sheriff in the ordinary way, he shall be entitled to retain the whole or portion of the value ascertained by the Court as the case may be; and in case of dispute the amount so to be retained shall be settled by the Court.

117. Where the sale takes place by the personal representative of a deceased tenant, he shall give notice to the landlord of the inten-

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tion to sell, which notice may be in Form No. 16, stating therein that he gives the notice in his capacity of personal representative; and if the landlord desires to purchase the tenancy, and has disagreed with the personal representative in respect of such purchase, he shall, within one fortnight after receipt of such notice, serve upon the personal representative and upon the Clerk of the Peace or the Land Commission, as the case may be, an originating notice to ascertain the true value of the tenancy, and such notice may be in Form No. 2, with the necessary changes, and he shall therewith transmit to the Clerk of the Peace or the Land Commission a copy or copies (according to the Court selected) of the notice in Form No. 16, and the future proceedings shall be carried out in the same manner as in the case of a tenant himself selling.

118. Where the sale takes place by the assignees in bankruptcy of the tenant, or by a person having carriage of sale of the tenancy under the order of any Court, the assignees, or the person having carriage of the sale, shall give notice to the landlord and to the tenant of the intended sale, which notice may be in Form No. 17. And if the landlord desires to purchase the tenancy, and has disagreed with such persons or person in respect of such purchase he shall, within one fortnight after receipt of such notice, serve upon the tenant, the person selling, and the Clerk of the Peace or the Land Commission, as the case may be, an originating notice to ascertain the true value of the tenancy, and such notice may be in Form No. 14, with the necessary changes, and he shall therewith transmit to the Clerk of the Peace or the Land Commission a copy or copies (according to the Court selected) of the notice in Form No. 17, and the future proceedings shall be carried out in the same manner as in the case of a tenant himself selling.

119. Notice pursuant to Section 1, Sub-section 16, of the said Act, of the sum claimed to be due to the landlord for arrears of rent, or on account of breaches of the contract or conditions of tenancy, may be given in Form No. 18 by the landlord to the tenant within one fortnight after receiving notice from the tenant of the intended sale of the tenancy, and if the tenant disputes the amount so claimed, and determines to proceed with the sale, he shall serve an originating notice of application to the Court, which may be in Form No. 19; and if no purchaser is found within three months after the service of the landlord's notice in Form No. 18, to give the

same or a greater sum, the landlord shall serve an originating notice applying to the Court to be adjudged the purchaser of the tenancy at the sum so claimed by him, which may be in Form No. 20. **Rules of
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120. Notice served on the landlord nominating a person to succeed to the tenancy, pursuant to Section 3 of the Land Law (Ireland) Act, 1881, may be in Form No. 21. Notice of the bequest of a tenancy to one person only and of the assent of the personal representative to such bequest may be in Form No. 22. If the landlord in either case objects to accept such person as tenant on such grounds as would have entitled him to object in the case of a sale of the tenancy, he shall give to the personal representative of the deceased tenant or to the legatee, as the case may be, a notice, which may be in Form No. 23, or in Form No. 24, as the case may require. If the landlord's grounds of refusal are disputed, the personal representative may serve an originating notice seeking the decision of the Court, which may be in to Form No. 6 or No. 8, as the case may be, with the necessary changes.

121. If the landlord requires a sale to be made under Section 3 of the said Act, he shall give to the personal representative of the deceased tenant notice, which may be in Form No. 25, and if the personal representative fails to sell the same pursuant to the statute, the landlord may serve an originating notice which may be in Form No. 26, and thereupon the Court may direct the landlord to proceed to sell the tenancy by auction, in such manner and with such conditions as it may think fit, and may direct all proper persons to concur in the assignment to the purchaser, and the purchase-money shall be paid into Court in the manner by these Rules provided to abide such order as the Court shall think fit to make regarding it

122. It shall be lawful for the Court, on application (if it deems that justice so requires), to name a person by and on whom, in place of the tenant or landlord, notices may be served respecting the sale of a tenancy.

**RESUMPTION OF HOLDING UNDER SECTIONS 5 OR 8 OF THE LAND
ACT OF 1881.**

123. An application by the landlord to the Court for resumption of the holding, or part thereof, pursuant to Section 5, or to Section 8, Sub-section 3, of the Land Law (Ireland) Act, 1881, shall be by originating notice, which may be in Form No. 27. **Resumption of
holding under
Sections 5 or 8
of the Land
Act, 1881.**

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FAIR RENT.

124. An application to the Court by a Lessee to fix a fair rent shall be made by originating notice, which may be in Form No. 28.

125. An application to the Court by a person other than a Lessee to fix a fair rent shall be made by originating notice, which, if the application is to fix the fair rent for a holding payable during the first statutory term, may be in Form No. 29 or No. 30, as the case may be, or if the application is to fix the fair rent payable during the second statutory term may be in Form No. 31 or No. 32 as the case may be; and unless such application is made by the landlord and tenant jointly a copy shall be served upon the opposite party.

The landlord must be named and described in the originating notice. "The Representatives of ———, deceased," is not sufficient *Howard v. Conway*, R & D. 19; 15 I. L. T. R. 101; MacD. 363. (See Rule 24, *ante*, and notes thereto. As to service of an originating notice, see Rules 29 and 30, and notes thereto and as to substitution of service, see Rule 34, and notes thereto.

In *Morrisey v. Humble* and *Waters v. Crosthwaite*, 18 I. L. T. R. 18, 19, it was held that a tenant might serve a second originating notice, notwithstanding the dismissal of a prior one, on the ground of sub-letting. Similarly in a leasehold case *Butler v. Hutchinson*, 28 Ir. L. T. R. 22 (L. C.).

As to fixing fair rents generally, see Land Act, 1881, Sec. 8, and Land Act 1887, Sec. 1.

Where there are several distinct holdings, even under the same landlord, there should be separate originating notices for each. *Dereham v. Hamilton*, R. & I 103; MacD. 373

126. An application to the Court by a lessee who desires to be deemed and declared a tenant of a present tenancy, but who does not at the same time require a fair rent to be fixed for the holding shall be made by originating notice, which may be in Form No. 31. The landlord, within one month from the date of the service of such notice upon him, may, if he thinks fit, serve a notice on the lessee which may be in Form No. 34, disputing the right of the lessee to be deemed a tenant of a present tenancy. A copy or copies (according to the Court selected) of such notice shall also be served on the Clerk of the Peace or the Land Commission, as the case may be within the time aforesaid.

127. If no such notice is served by the landlord within the time aforesaid, or such time as may on special application to the Court be allowed, then an order may be made declaring that the Lessee is to be deemed a tenant of a present tenancy. If notice is served by

the landlord disputing the right claimed by the Lessee, the application shall be listed for hearing and determined by the Court.

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Jan., 1897.

128. An application to the Court by a joint tenant or tenant in common under Section 5, Sub-section (3), of the Land Law (Ireland) Act, 1896, to fix a fair rent upon portion of a holding separately worked and occupied by him, shall be made by originating notice, which may be in Form No. 35, and such originating notice shall be served on each of the other joint tenants or tenants in common of the holding, as well as on the landlord.

129. An originating notice shall not be withdrawn save by leave of the Court, given on consent, which may be in Form No. 36, or on due notice to the opposite party.

A landlord is not entitled as of right to have a fair rent fixed on an application by the tenant: *Reg (Gosford) v. Irish Land Commission*, 34 I. L. T. R. 219.

Leave to withdraw an originating notice by a tenant to have a fair rent fixed was refused: *Connolly v. Stewart*, 2 N. I. J. R. 160; 4 Greer 195 (L. C.).

130. Where an originating notice to fix a fair rent is served by a tenant in the case of a holding of which the Tenement Valuation shall not be under £10, such originating notice shall state, in a schedule endorsed, the particulars of any improvements in respect of which evidence is intended to be produced or which are intended to be relied on by the tenant, as having been made by him or his predecessors in title, with the dates at which the same were made according to the best of the tenant's knowledge or belief; [and where an originating notice to fix a fair rent is served by a landlord in the case of such a holding as aforesaid, the tenant shall, within a fortnight from the service on him of such notice, serve on the landlord similar particulars in writing of any improvements in respect of which evidence is intended to be produced or which are intended to be relied on by the tenant as having been made by him or his predecessors in title, and shall within the like period transmit a copy or copies (according to the Court selected) of such particulars to the Clerk of the Peace or the Land Commission as the case may be.] The Court may, on special grounds, make an order that particulars shall be given where the tenement valuation is under £10, or shall be given by either landlord or tenant in any other case not provided for by any rule of Court.

Schedule of
improvements.

The words in brackets were not contained in the former rule. (No. 108 of Rules of 1883.)

Supplemental Rules, issued the 13th March, 1899, (see p. 763. *post*) now require particulars as to drains claimed, in cases where the tenement valuation is under £10. The same Rules require a landlord to serve similar particulars of claims by him for improvements, or contributions to improvements.

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Application by
andlord to
allow tenant's
application to fix
a fair rent

131. When the landlord intends to submit to the Court that the tenant's application to fix a fair rent should be disallowed on the grounds mentioned in Section 8, Sub-section 4, of the Land Law (Ireland) Act, 1881, he may serve notice in Form No. 37.

Application by
a person who
claims to be
entitled to
surrender

132. An application to the Court by a person who claims to be entitled to surrender his estate in a holding, part whereof only is sublet, to ascertain and determine what should be the fair rent of the part not sublet, shall be by originating notice, which may be in Form No. 38.

Schedule of
particulars
recorded

133. Where the Court fix a fair rent for a holding, the Schedule under Section 1 of the Land Law (Ireland) Act, 1896, shall be in Form No. 39.* Where a fair rent is fixed by a Sub-Commission such Schedule shall, unless the Land Commission shall otherwise direct, be signed by all the Assistant Commissioners by whom the case has been heard, and where it is fixed by the Civil Bill Court such Schedule shall be authenticated in such manner as the County Court Judge may direct.

* Forms 39, 39A, and 39B have been substituted by Rules 20 July, 1899, Stat. R & O. 568, *post* p. 764

Maps and
Schedules

134. In all cases in which a rent is fixed by a Sub-Commission and in cases referred by a County Court Judge to a valuer for report in which a rent is fixed by a Civil Bill Court, the exterior boundaries of the holding shall be carefully marked on the Ordnance Survey map of the holding with a red-coloured line by one of the Assistant Commissioners or the County Court Valuer, as the case may be, and each class of land shall be marked by him on the map with a distinctive letter corresponding with the letter used in the said Schedule to designate such class. Such map shall bear a certificate by the Assistant Commissioners or County Court Valuer by whom the holding has been inspected, as the case may be, certifying that the boundaries so marked correspond with those pointed out on inspection, and in cases heard by a Sub-Commission shall be transmitted by the Deputy-Registrar of the Sub-Commission to the Land Commission with the order and other documents in the case and in cases heard by a Civil Bill Court shall be sent by the County Court Valuer to the Clerk of the Peace. Where an order fixing fair rent is made in such case by a Civil Bill Court, the map furnished by the County Court Valuer shall be transmitted by the Clerk of the Peace to the Secretary of the Land Commission along

with the certified copy of such order, or where in such case no inspection of the holding has been directed by the Court a certificate to that effect shall be transmitted by the Clerk of the Peace along with such certified copy of the order.

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135. Any party requiring a certified copy of the Schedule mentioned in Rule 133 to be sent to him by post, shall forward a requisition in Form No. 40, to the Clerk of the Peace or the Land Commission, as the case may be, and such requisition shall bear a County Court or Land Commission stamp or stamps of the value of one shilling. Where the certified copy is furnished before the time for appealing, or serving notice for a re-hearing has expired, it shall bear an endorsement stating that fact.

136. Any party requiring a certified copy of the map of the holding referred to in the said Schedule in any case heard by a Sub-Commission or in any case heard by a Civil Bill Court, in which a map furnished by a County Court Valuer has been transmitted to the Land Commission, shall forward a requisition in Form No. 41 to the Secretary of the Land Commission, and such requisition shall bear a Land Commission stamp or stamps of the value of three shillings.

137. If a specified value for a tenancy has been fixed, and the landlord, having received notice of the tenant's intention to sell, claims to purchase the tenancy, but there is a disagreement between the landlord and the tenant as to the amount to be paid for such tenancy having regard to the provisions of Section 8, Sub-section 5, of the Land Law (Ireland) Act, 1881, either party may make application to the Court to ascertain the amount of the purchase-money under the said Sub-section, and such application shall be made by originating notice, which may be in Form No. 42, or Form No. 43, as the case may be.

Specified value cannot be fixed since the passing of the Land Act, 1896. See Section 20 of that Act, and notes thereto, *ante*, p. 560.

138. Either party may demand from the other, before the hearing of such application as mentioned in the last foregoing Rule, and, if necessary, may apply to the Court for, particulars of the case intended to be made either as to increase of value by means of improvements or diminution of value by dilapidations of buildings or deterioration of soil.

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Agreement as to
Fair Rents

139. Where a landlord and a tenant of a present tenancy agree what is the then fair rent of the holding, pursuant to Section 8, Sub-section 6, of the Land Law (Ireland) Act, 1881, they may enter into an originating agreement and declaration which may be in Form No. 44 or No. 45, according as the rent is fixed for the first or the second statutory term.

As to how an agreement should be witnessed, see Rule 95, *ante*, p. 739

As to fixing fair rents by consent in general, see *Gray v. Gosford*, MacD. 372, and *Kepple v. Rathdonnell*, MacD. 370, and see Rule 144, *post*.

The statutory term runs from the rent day next, succeeding the making of the agreement. *Dunne v. Nettles*, 30 Ir. L. T. R. 145; sub nom *Dunne v. Knolles*, [1896] 2 Ir. R. 671; [1898] 2 Ir. R. 308, C. A. reversing the decision of the Land Commission Court.

But if the agreement provides that the judicial rent shall begin on a particular date, it will be carried into effect *Fullon v. Templetown*, [1898] 2 Ir. R. 321, C. A., 32 Ir. L. T. R. 125.

See Section 17, ss. (1) f. and ss. (2) of the Land Act, 1896, *ante*, pp. 556 557.

“No stamp duty shall be deemed to have been or to be chargeable upon an agreement entered into between a landlord and tenant pursuant to Sub-section (f) of Section 8, or Sub-section 2 of Section 20 of the Land Law (Ireland) Act, 1881.” (45 and 46 Vict., c. 72, s. 10.)

Unless the agreement be duly signed and filed in accordance with Rule 140 the landlord is not bound thereby, and may recover rent at the former rate *Givan v. Moffitt*, 14 L. R. Ir. 252. This does not apply to agreements under Sec 20, ss. 2, *ante*, p. 295, which are binding, though not made according to this Rule *McCarthy v. Warmington*, 29 Ir. L. T. R. 149.

The signature of the agent of the landlord is sufficient *Mercer's Company*, 3 Ir. L. T. R. 47, over-ruling *Jones v. Haire*, MacD. 375, and *Maher v. Carrow* MacD. 375.

Specific performance of a contract to sign an agreement and declaration fixing fair rent can be enforced. See judgment of LAWSON, J., *Givan v. Moffitt*, 14 I. R. Ir., at p. 257; and *Beauclerk v. Hanna*, 23 L. R. I. 144, 23 I. L. T. R. 26 (V.C.)

As to setting aside an agreement fixing a fair rent, see *Driscoll v. Riordan*, 2 I. L. T. R. 93. Notes to Land Act, 1881, Sec. 8, *ante*, p. 272, and notes to Rule 143, *post*.

140. The agreement and declaration aforesaid shall, within one month after the date thereof, be lodged with the Clerk of the Peace of the county, or with the Land Commission, as the case may be, and the Clerk of the Peace or Land Commission shall file the same at the expiration of three months from the lodgment thereof, if no notice of objection to the filing thereof shall have been in the mean time received; or it may be filed at such other time as the Court shall direct: and on the same being filed the Civil Bill Court or the Land Commission shall give to the landlord and tenant respectively a certificate in Form No. 46, on payment of the prescribed fee.

Agreements improperly filed may be taken off the file on the application of any person interested. *McGovern v. Peyton*, 27 Ir. L. T. R. 138, but not after a change of parties. *Evans v. Peyton*, [1895] 2 Ir. R. 127 (C. A.), reversing the decision of the L. C., 28 Ir. L. T. R. 81. If the agreements are in all respects regular there is no jurisdiction to take them off the file even on consent: *Murray v. Scottish Provident Institution*, [1894] 2 Ir. R. 44.

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In *Beaulerk v. Hanna* (23 L. R. Ir. 144, 23 Ir. L. T. R. 26), after a decree for specific performance by *Chatterton, V. C.*, an agreement signed on December 12th, 1888, which provided that the judicial rent should commence from 1st November, 1884, was received and filed by the Land Commission. (See 23 L. R. Ir., p. 151, note.)

141. Where the agreement and declaration is lodged with the Clerk of the Peace a copy thereof shall be also lodged with him, which it shall be his duty to forthwith transmit to the Land Commission.

142. The Land Commission may direct periodical notices of the lodgment of all originating agreements and declarations, whether with the Clerk of the Peace or with the Land Commission, to be published in such newspapers as it shall think fit.

143. It shall be lawful for either landlord or tenant, or any incumbrancer or other person having an interest in a holding the subject of an originating agreement and declaration, within three months (a) from the lodgment of any such agreement and declaration, to serve notice on the Clerk of the Peace or the Land Commission, as the case may be, and also on the parties or opposite party of an application that the said agreement and declaration be not filed on the ground of fraud or surprise, or some other sufficient ground stated in such notice, and supported by affidavit, and thereupon the said agreement and declaration shall not be filed without the order of the Court, and either party may apply by motion on notice for such order.

(a) As to setting aside agreements after this period has elapsed, see *Driscoll v. Riordan*, 24 Ir. L. T. R. 93 (L. C.); *McGovern v. Peyton*, 27 Ir. L. T. R. 138; *Evans v. Peyton*, 28 Ir. L. T. R. 81; *Kelly v. Sheiton*, [1899] 2 Ir. R. 557; 5 Ir. W. L. R. 16, 1 Greer, 160; and *Dobbyn v. M'Naughten*, 2 Greer, 35, where an agreement was set aside on the application of the mortgagee of the tenant's interest. A similar application, made after the lapse of two years, was refused. *Kennedy v. Bruce*, 6 Ir. W. L. R. 41; 34 Ir. L. T. R. 80; 2 Greer, 129; and see *Cusey v. Maunsell*, 33 Ir. L. T. R. 162, where an application by a tenant to have an agreement fixing a fair rent set aside more than a year after it was filed, was refused.

The Court will not, on the application of a landlord, set aside an agreement fixing a fair rent entered into between a tenant and a sub-tenant, as such agreement does not bind the landlord unless the parties were legally authorised to make it. *McCannell v. Brown*, 35 L. T. R. 245, 4 Greer 25; *Clifford v. Clifford*, 1 N. I. J. R. 200, 35 I. L. T. R. 103.

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Consents to fix
rent in pending
cases

144. Where a landlord and a tenant of a present tenancy desire to enter into a consent as to the fair rent to be paid for a holding in respect of which an originating notice in Form No. 29, 30, 31, or 32 has been served, such consent may, if the parties desire an order to be made on the originating notice, be in Form No. 47.

145. Where a landlord and a tenant of a present tenancy in a holding in respect of which an originating notice in Form No. 29, 30, 31, or 32 has been served, have entered into an agreement and declaration in Form No. 44 or 45, the originating notice must be withdrawn in the manner prescribed by Rule 129 before the agreement and declaration can be lodged with the Clerk of the Peace or the Land Commission.

146. Where a landlord and a lessee have agreed as to the fair rent to be paid for a holding in respect of which an originating notice in Form No. 28 has been served, the consent may be in Form No. 48.

147. Where a lessee has served an originating notice in Form No. 33, and has been declared a present tenant by order of the Court either by default of cause shown or after hearing, the landlord and the tenant may proceed to have a judicial rent fixed according to any of the modes of procedure by which a fair rent can be fixed in respect of a present tenancy.

Modification of
Forms 31, 32,
45, 50, when
first statutory
term has arisen
by the accept-
ance of an
increased rent

148. When the first statutory term has arisen under Section 4 of the Land Law (Ireland) Act, 1881, on the demand by a landlord of an increase of rent from a tenant of a present tenancy, and the acceptance of such increase by the tenant, Forms Nos. 31, 32, 45, and 50 may be modified by stating the names of the landlord and tenant respectively at the date of such demand of increase of rent and the date at which such increase was made, instead of the name of the landlord and tenant in the order or agreement fixing the fair rent, and the Record Number of the case as stated in such order or agreement.

FIXING FAIR RENT BY VALUERS APPOINTED BY THE LAND COMMISSION.

Fixing Fair
Rent by valuer

149. A landlord and a tenant desirous of having the fair rent of holding determined by the Land Commission in accordance with report to be made by a valuer or valuers, to be named by the Land Commission, shall serve upon the Land Commission an originatir

notice, which may be in Form No. 49 or No. 50 (according as the rent is to be fixed for the first or the second statutory term), applying to have a fair rent fixed and consenting that such fair rent shall be determined pursuant to the report of the valuer or valuers appointed by the Land Commission. The Land Commission may thereupon appoint a valuer or valuers, and may make a conditional order fixing the fair rent pursuant to such report. When fixing such a fair rent, the Land Commission shall ascertain and record (unless both landlord and tenant shall otherwise request) in the form of a Schedule the several matters prescribed by Section 1 of the Land Law (Ireland) Act, 1896, and such Schedule may be in Form No. 39, and shall be authenticated by the signature of a Commissioner.

See Rules 9th November, 1898 (*post*, p. 761), as to fixing rent without a hearing in Court on reference to Court Valuers, provided an originating notice has been served.

The decision of the valuers under this and the preceding Rule is tantamount to an award of arbitrators, and will not be set aside, except on substantial grounds. *Moloney v. Gore*, MacD. 372; *Fitzell v. Sands*, MacD. 373. See also *Gray v. Gosford*, MacD. 372.

150. The substance of the conditional order shall be notified by the Land Commission to both parties. Cause against the conditional order being made absolute shall be shown by notice of motion, which shall be served on the opposite party and on the Land Commission, not later than ten days after the notification by the Commission of the substance of the conditional order. Such notice, showing cause, shall be supported by affidavits, and it shall specify—1st, The grounds on which the conditional order should not be made absolute; and 2nd, The order which the party showing cause asks the Court to make. The Court on hearing such motion, may, if it be of opinion that the conditional order should not be made absolute, remit the case to the same valuer or valuers, or send it to be reported on by other valuers, or may send the case down to be heard before a Sub-Commission in the usual course, or may make such other order as, under the circumstances, it may deem right. If no notice of cause is served within the time limited an order will be made as of course making the conditional order absolute.

151. In cases where an originating notice by a landlord or tenant to fix a fair rent has already been served, it shall be competent for

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the landlord and tenant, by consent, which may be in Form No. 51, to agree that instead of the case being heard in the ordinary way the fair rent may be determined by the Land Commission in accordance with a report to be made by a valuer or valuers in the same manner, and with the same right of showing cause as in the preceding Rules provided.

The uniform practice under this and the preceding Rule has been that no cause should be allowed against the conditional order unless there has been some mistake of law or fact on the part of the valuers. The Court will not disturb the order made merely upon evidence of value *Rice v. Byrne*, 2 Greer, 20; 5 I. W. L. R. 29 (MEREDITH, J.).

See now, also, Rules of 9th November, 1898, as to fixing rent by Court Valuers without a hearing in Court. (*post*, p. 761.)

ARBITRATION.*

Arbitration.

152. The reference of any dispute under "The Land Law (Ireland) Act, 1881," to an Arbitration Court, and the appointment of the arbitrator or the arbitrators and umpire may be in the Form No. 52, and be signed by both parties; and such reference, with the nomination of the arbitrator or arbitrators and umpire, shall be lodged with the Clerk of the Peace or with the Land Commission, as the case may be, before the first sitting of the Arbitration Court thereunder, but the Court may, on special grounds, dispense with this requirement.

See also Sec 40 of the Land Act, 1881, *ante*, p. 328; and *Woodside v. Massey*, 2 L. R. Ir. 604; 25 Ir. L. T. R. 69. (C. A.) Where the reference to arbitration has not been lodged with the Court in compliance with this Rule, neither party can be compelled to produce the reference, and the award cannot be recorded *Lee v. Dysert*, R. & D. 243.

153. The Clerk of the Peace or the Registrar of the Land Commission shall forthwith, on receipt of such reference and nominations, and on being satisfied by affidavit or statutory declaration as to the signatures of the landlord and tenant thereto, enter the same the former in the Land Law Acts Case Book, and the latter in a book to be kept by him for the purpose; and thereupon any application or report in the matter of such arbitration may be entertained by the Court, and such order may be made thereon as the Court may think right.

154. Where either party desires the award of the Court

* The attention of parties is called to the 25th section of the Landlord and Tenant (Ireland) Act, 1870, and to the Schedule of Rules in respect of Arbitration annexed to that Act, which are in force, and must be observed as regards proceedings under the Land Law (Ireland) Act, 1881. [Note appended to Rule Land Commission; see *ante*, pp. 188 and 210.]

Arbitration to be recorded in the Civil Bill Court, he shall, ten days before the first day of the Land Sessions next ensuing the making of such award (if sufficient interval shall exist, and if not, then before the next following sessions), serve notice on the opposite party and on the Clerk of the Peace of his intention to apply to the Court for such purpose, which application shall be heard, in regular course, according to the practice of the Court; and when he desires it to be recorded by the Land Commission he shall, within one month after the making of such award, serve notice for that purpose on the opposite party and the Land Commission.

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155. On the hearing of such application, the Court may, if it shall think fit, and if such award substantially decides the dispute referred, order the same to be recorded; and the award shall thereupon be duly recorded by the Clerk of the Peace in the Land Law Acts Case Book, or by the Registrar of the Land Commission

JUDICIAL LEASES.

156. Where a landlord and a tenant agree to a judicial lease pursuant to Section 10 of the Land Law (Ireland) Act, 1881, the landlord shall cause a draft of such lease to be prepared, containing such provisions as may have been agreed on between the parties. Such draft shall be transmitted either to the Clerk of the Peace, or to the Secretary of the Land Commission, according to the Court selected, together with an originating notice of application, which may be in Form No. 53, containing the particulars therein mentioned. Notice of such application, which may be in Form No. 54, shall be served upon the tenant, and also upon the mortgagees of the interests of the landlord and tenant respectively, and on such other incumbrancers, and such trustees, persons in remainder, and other persons as the landlord shall deem expedient having regard to the state of his title, and the Court may at any time direct such verification of the particulars, and such further inquiries to be made, notices to be served, documents to be furnished, and advertisements to be published, as it shall deem fit.

Judicial leases.

157. Where the draft lease is approved of by the Court, such approval shall be signified by an endorsement on the draft signed by the County Court Judge, or a Commissioner, as the case may be, and the lease shall be engrossed in duplicate from such draft, and when executed by the parties shall also be signed by the County Court

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Judge or sealed with the seal of the Land Commission, as the case may be.

A form of Judicial Lease has been issued by the Land Commission, but its use is not compulsory. See *past*, p. 808.

FIXED TENANCIES.

Fixed tenancies.

158. Where a landlord and a tenant agree that a tenancy shall become a fixed tenancy, such agreement shall be embodied in writing, which may be in Form No. 55, and attested as to the tenant's signature in manner prescribed by Rule No. 95, and the same shall be transmitted to the Clerk of the Peace or the Land Commission, according to the Court selected, together with an originating notice of application which shall contain a copy of the agreement, and may be in Form No. 56, and shall also contain the particulars therein mentioned. Notice of such application, which may be in form No. 54, with the necessary changes shall be given, and the further proceedings therein shall be as in the case of proceedings upon applications to the Court to sanction judicial leases. Where the agreement is sanctioned by the Court, such sanction shall be signified by an endorsement on the originating notice signed by the County Court Judge or a Commissioner, as the case may be, and the original agreement, if sanctioned, shall be signed by the County Court Judge or sealed with the seal of the Land Commission, as the case may be, and a certified copy shall be issued on application to either party on payment of the fee of one shilling.

See as to fixed tenancies Sec. 12 of Land Act, 1881, and notes thereto, *ante*, p. 280.

RULES RELATING TO PART IV. OF THE LAND LAW (IRELAND) ACT, 1881.

Application to
restrain pro-
ceedings during
statutory term.

159. An application to the Land Commission under Section 13, Sub-section 4, of the Land Law (Ireland) Act, 1881, shall be made by originating notice, which may be in Form No. 57, and shall be supported by the affidavit of the tenant setting forth the grounds of such application, and notice of the application shall be served upon the landlord and on the Land Commission.

Application to
sub-let for use
of labourers.

160. If a tenant is desirous of letting portion of his holding for the use of a labourer or labourers *bona fide* employed and required for the cultivation of the holding, he shall serve upon the landlord and upon the Clerk of the Peace or the Land Commission as the case may be, an originating notice, which may be in Form No. 58.

161. If a landlord is desirous of resuming a holding pursuant to Section 21 of the Land Law (Ireland) Act, 1881, he shall either within the last three months of the term granted by the lease or other contract of tenancy, or within three months after the termination of such lease or contract of tenancy, serve upon the tenant and upon the Clerk of the Peace or the Land Commission, as the case may be, an originating notice, which may be in Form No. 59.

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Application to
resume posses-
sion.
Section 21,
Land Act, 1881.

RULES RELATING TO PROCEEDINGS UNDER SECTIONS 10, 13, AND 17,
OF THE LAND LAW (IRELAND) ACT, 1896.

162. An application under Section 10, Sub-section 2, of the Land Law (Ireland) Act, 1896, shall be made to the Court within six months after the person entitled to receive the rent of a holding on the cesser of the interest or possession of a limited owner, mortgagor or mortgagee has become so entitled, and such application shall be by originating notice, which may be in Form No. 60 or No. 61, according to the nature of the relief sought.

Application by
successor in
estate disputing
fair rent, &c

163. Where the estate of the immediate landlord for the time being is determined during the continuance of a tenancy from year to year, and two or more persons are entitled in severalty as superior landlords, an application under Section 13 of the Land Law (Ireland) Act, 1896, to apportion the rent previously paid by the tenant shall be by originating notice, which may be in Form No. 75, and shall be served on the tenant and on all persons who by virtue of the said Section are to be deemed landlords to the tenant of the tenancy.

Application for
apportionment
of rent on
severance
of landlord's
interest.

164. An agreement entered into between a landlord and tenant under the provisions of Section 17 of the Land Law (Ireland) Act, 1896, may be in Form No. 62.

Agreements
under Section
17

An agreement under the provisions of Section 17 seems to require a stamp, such an agreement not being expressly exempted by 45 and 46 Vict., c. 72, s. 10. See notes to Rule 139, *ante*, p. 732; and to Land Act, 1896, Sec. 17, *ante*, p. 557.

The agreement may be signed by an agent acting under power of attorney: *Wilson v. Mercers Co.*, 21 January, 1898.

165. Such agreement shall within one month after the date thereof be lodged with the Land Commission, and shall be filed by the Land Commission at the expiration of three months from the lodgment thereof, or from the service of such notice or notices as in Rule 167 mentioned, if no notice of objection to the filing thereof shall have been in the meantime received, or may be filed at such

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other time as the Land Commission may direct; and on the same being filed the Land Commission shall give to the landlord and tenant respectively a certificate in Form No. 63, on payment of the prescribed fee.

Conditions to
protect interests
of remainder-
man, &c

166. There shall be lodged in the Land Commission along with the said agreement, unless the Land Commission otherwise directs, a statutory declaration by the landlord, stating whether he is or is not a limited owner or a mortgagor or mortgagee in possession, or is or is not both a limited owner and a mortgagor or mortgagee in possession, and, in the case of his being such, stating who is or are the person or persons entitled presumptively on the cesser of his interest or possession, or his interest and possession, to receive the rent of the lands mentioned in the agreement, and the residence or residences of such person or persons; and the Land Commission may require the correctness of such statements to be vouched by the production of such evidence, documentary or otherwise, as may appear necessary. Such statutory declaration may be in Form No 64, with such modifications as the circumstances may require.

167. Where the landlord is a limited owner or a mortgagor or mortgagee in possession, or is both a limited owner and a mortgagor or mortgagee in possession, he shall as soon as practicable after the lodgment of the said agreement in the Land Commission, cause a notice of the application to file such agreement to be served on the person or persons so presumptively entitled as aforesaid, or in the event of any such person being under disability, then upon such other person or persons as the Land Commission shall by order direct; and before such agreement is filed affidavits of service of the said notice shall be lodged in the Land Commission. Provided always that, if the Land Commission thinks fit, the service of such notice may be dispensed with, where the Land Commission is satisfied that, in the case of a limited owner, the person entitled to the first vested estate in remainder expectant on the determination of the estate of such limited owner, and, in the case of a mortgagor in possession, the first mortgagee, consents to the lodgment of such agreement.

168. It shall be a condition for the validity of any such agreement that where the landlord is a limited owner or a mortgagor or mortgagee in possession, he shall not have received or thereafter receive any fine or premium or personal benefit or advantage of any

kind as a consideration for entering into such agreement. An agreement violating such condition shall be void.

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169. It shall be lawful for any person having an interest in the lands mentioned in any such agreement within three months after the lodgment thereof, or the service of such notice or notices as aforesaid, whichever shall last happen, to serve notice on the Land Commission, and also on the parties thereto, of an application that the said agreement be not filed, on the ground of fraud or collusion, or the payment or promise of a fine or premium, or some other sufficient ground stated in such notice, and supported by affidavit, and thereupon the said agreement shall not be filed without an order of the Court, and either party may apply by motion on notice for such order.

170. The Land Commission may direct periodical notices of the lodgment of all originating agreements with the Land Commission to be published in such newspapers as it shall think fit

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RULES OF 9TH OF NOVEMBER, 1898.

It is this day ordered that the following general Rules shall, from and after this date until further order take effect, and be in force in the Land Commission in relation to proceedings under the Land Law Acts, and shall be read in conjunction with the Rules under these Acts, dated the 2nd day of January, 1897, so far as same are applicable.

1.—In cases where an Originating Notice of application by Landlord or Tenant to fix Fair Rent has been served, the Landlord and Tenant may agree that the application shall, in the first instance, be referred to two Court Valuers to be named by the Land Commission, and directed by them to report to the Court—pursuant to the provisions of the Land Law (Ireland) Act, 1881—as to the Fair Rent. A consent for the purpose may be in Form No. 76.

2.—The Valuers shall visit the lands, after due notice to the parties; and having inspected and examined the holding, shall forward their Report to the Court, and shall state in the Report all such facts and circumstances as may be required for the purpose of enabling the Court to form a judgment as to the subject-matter of the Report.

See Forms 76 and 77, *post*, pp. 805-806.

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3.—The amount of the Fair Rent, as estimated by the Valuers, shall be notified to the parties, who may obtain copies of the Report; and the Commissioners will make an order fixing the Fair Rent in accordance with the Valuers' Report, unless either party, within one month from the date of the above notification serves a Notice (which may be in the Form No. 77) requiring the case to be heard; in which event the application shall be listed for hearing before the Commissioners themselves, when the Court will decide the case, having regard to the Report of the Valuers and the evidence offered by the parties: or the Commissioners may delegate the matter to a Sub-Commission if they think such a course advisable.

See Supplemental Rule, 17th April, 1899, *post*, p. 764, which provides for cases where an originating notice has not yet been served.

These Rules are only intended to apply to cases where there is no dispute as to rent. In the case of a future tenancy a consent in Form 76 was held not to be an estoppel, and the originating notice was dismissed on the ground that the Court had no jurisdiction to fix a fair rent *Fingall v. Beverard*, 35 Ir. L. T. R. 134 (MEREDITH, J.).

RULES AS TO ASSISTANT COMMISSIONERS.

(13th of March, 1899.)

It is hereby ordered that Number 15 of the General Rules date the 2nd day of January, 1897, shall as from this date be rescinded and that the following Rules shall have effect:—

Assistant Commissioners at present in office shall be eligible for re-appointment on the expiration of their present term of office.

The following persons shall be competent to be appointed for the first time to the office of Assistant Commissioner:—

Practising barristers and solicitors of not less than six years standing.

Persons possessing the following qualifications:—

- (a.) A practical acquaintance with the value of land in Ireland, and knowledge of the methods of land valuation;
- (b.) Knowledge of the principles of land surveying and mapping, including skill in computing areas from maps and plans.
- (c.) General educational fitness; and
- (d.) Physical health, and capacity for active outdoor work in connection with land valuation.

And it is further ordered that temporary Assistant Commissioners appointed by His Excellency the Lord Lieutenant after the date hereof and before the 31st day of March, 1902, shall hold office subject to the provisions of the "Land Law (Ireland) Act, 1881," up to and including the 31st day of March, 1902, save that where any such temporary Assistant Commissioner has attained the age of sixty-five he shall not be appointed or re-appointed for a continuous period greater than one year.

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RULES SUPPLEMENTAL TO NO. 130 OF THE RULES OF 2ND JANUARY,
1897.
(13th of March, 1899.)

It is hereby Ordered that the following Rules shall come into operation and effect on the 1st day of April, 1899, and shall apply to Originating Notices served on or after that day.

1.—Where an Originating Notice to fix a Fair Rent is served by a Tenant in the case of a holding, the Tenement Valuation of which is under £10, such Originating Notice shall state in a Schedule endorsed thereon, the amount, if any, claimed by the Tenant for drains in respect of which evidence is intended to be produced.

2.—Where an Originating Notice to fix a Fair Rent is served by a Landlord, such Originating Notice shall state in a Schedule endorsed thereon, the particulars of any improvements or contributions to improvements in respect of which evidence is intended to be produced, or which are intended to be relied on by the Landlord as having been made by him or his predecessors in title, with the dates at which the same were made according to the best of his knowledge and belief.

3.—Where an Originating Notice to Fix a Fair Rent is served by a Tenant, the Landlord shall within one month from the service on him of such notice, serve on the Tenant similar particulars in writing of such improvements or contributions as aforesaid, and shall within the like period transmit a copy or copies (according to the Court selected) of such particulars to the Land Commission, or the Clerk of the Peace, as the case may be.

As to the practice of the Land Commission in ordering particulars, either of improvements by the tenant, or of contributions by the landlord, before these rules came into operation, see *M'Callaghan v Nasservena*, MacD. 356, and *Darnley's Est.*, MacD. 358.

Rules of -
20th July,
1899.

RULE OF 17TH OF APRIL, 1899.

SUPPLEMENTAL TO THE RULES OF 9TH NOVEMBER, 1898.

In cases where an Originating Notice has not yet been served, and the Landlord and Tenant are desirous of having the Fair Rent of a holding fixed by the Land Commission, and have agreed that the matter shall, in the first instance, be referred to two Court Valuers to be named by the Land Commission, and directed by them to report to the Court in accordance with the above Rules, the Landlord and Tenant may serve upon the Land Commission an Originating Notice in Form No 78 or No. 79, appended hereto according as the Fair Rent is to be fixed for a First or Second Statutory Term.

See notes to Rules of 9th November, 1898, *ante*, p. 762, and Forms Nos. 78 and 79, *post*, pp. 806-7.

RULES OF JULY 20TH, 1899.

It is hereby ordered that the following Rules shall from and after this date, and until further Order, take effect and be in force in relation to all proceedings under the Land Law Acts.

1.—Where in connection with any proceedings under and in pursuance of the Land Law Acts, the parties are by the General Rules of the Irish Land Commission, dated the 2nd day of January, 1897, and the Forms thereunder, as well as by any Rules incorporated therewith, required, in setting forth the particulars of a holding, to state the name of the Poor Law Union within which such holding is situate, they shall henceforth, in lieu thereof, specify the name of the Rural, or Urban, or partly Rural and partly Urban District, within the meaning of the Local Government (Ireland) Act, 1898, within which the holding which is the subject of the proceedings is situate, and all Forms issued under the Rules in question shall from the date be deemed to stand amended accordingly, and after the date hereof no notice shall be received (except by leave of the Court) unless the particulars now required to be furnished are supplied.

2.—Where an application is made to the Court to fix a Fair Rent of a holding, such application shall be accompanied (a) by an Extract from the Valuation Books, showing for the year referred to in the Local Government (Ireland) Act, 1898, as the Standard Financial Year, the valuation of the agricultural land

and other hereditaments comprised in the holding (such extract to be certified by the proper officer of the Valuation Office in Dublin), or (b) by the prescribed certificate issued by the Secretary of the County Council, including the Town Clerk of a County Borough, in accordance with the provisions of Section 54 (10) of the Local Government (Ireland) Act, 1898.

Rules of
20th July,
1899.

3.—Urban and Rural District Councillors shall be qualified to witness the signature of a tenant, as well as the other persons referred to in No. 95 of the General Rules of the 2nd January, 1897.

4.—Where a Fair Rent is fixed by the Court after the day upon which the Local Government (Ireland) Act, 1898, comes into operation, and which is referred to in that Act as the Appointed Day, the Schedule under Section 1 of the Land Law (Ireland) Act, 1896, shall be in Form No. 39, 39A, or 39B, appended hereto, according as the holding is situate in a Rural District, or partly in a Rural and partly in an Urban District, or in an Urban District, within the meaning of the Local Government (Ireland) Act, 1898, respectively, and the Form No. 39 prescribed by No. 133 of the General Rules of the 2nd January, 1897, shall cease to be applicable from that day.

5.—Number 80 of the Rules of the 2nd January, 1897, and so much of Numbers 83 and 84 of these Rules as refer to the certified extract from the Valuation Books, are hereby rescinded, save in cases where the Order appealed against bears date on or before the day referred to in the foregoing Rule as the Appointed Day.

RULES AS TO SOLICITOR'S FEES AND COSTS.

(2ND JANUARY, 1897.)

1. In all proceedings under the Land Law Acts the fees specified in the schedule to these Rules annexed, shall be the lawful fees and emoluments for the discharge of the duties therein specified by solicitors, and, subject to the powers by the said Acts, or hereinafter given to the Court, no other fees or emoluments shall be recoverable for the discharge of such duties, or be allowed in any bill of costs, between party and party, or (in the absence of special agreement) (a) between solicitor and client. They shall be taxable (b) in the Court of the Land Commission by the Registrar, or other officer of

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the Commission, to whom the duty may be assigned, and in the Civil Bill Court by the Clerk of the Peace, his Deputy, or principal Assistant.

As to the recovery of costs ordered to be paid under this and the following Rule see Rule 97, *ante*, p. 740. Where a writ of *faciās* is issued the party taking out is entitled under that Rule to a fee of five shillings.

(a) A "special agreement," to override the schedule of costs, must be an agreement in writing, as contemplated by the Solicitors Act, 1870. *Manley v. Massereene* MacD. 346.

(b) As a general rule, the Court will not refer for taxation costs which had been long time furnished; but under special circumstances this may be done. *Mahony v. Given*, MacD. 347.

Excessive charges form such special circumstances, on account of which costs may be referred for taxation more than a year after they have been furnished. *Mahony v. Given* (*ubi supra*).

2. The fees specified shall include all outlay except postage, Court fees, fees for service, fees to counsel, and expenses of process servers and witnesses.

3. The Court in all cases shall have power, when a solicitor specially employed outside the district where he usually practises, or under other special circumstances, to increase the fees allowed to the solicitor for any party beyond the amount specified in the schedule, and this either as between party and party, or as between solicitor and client, or both.

As to the nature of the "special circumstances" under which the Court may increase the fees payable to solicitors, and as to the costs which will be allowed in such cases, see *Manley v. Massereene*, MacD. 346, and *Connolly v. Stewart*, 4 Gr. 134.

4. Where two or more cases, involving similar questions, arising with respect to holdings held under the same landlord, and heard at the same place and sittings, the Court shall have power to award to the solicitor conducting the same a bulk sum for his costs in respect of all the cases in which he so appears, and, if necessary, to settle the proportions in which the same shall be borne and received respectively.

5. The Court shall have power to give or withhold the costs either in the whole or in part of any proceedings under the said Acts, and to direct the same or any portion thereof, to be paid by either party, and generally to make such orders with reference to the payment of costs as having regard to the circumstances of any case it shall deem meet.

As a general rule no costs are awarded to either party on the hearing of an application to fix a fair rent; but if the conduct of either party be such as to deserve reprobation, such cases may be treated as exceptions (per O'HAGAN, J., *Adams v. Dunseath*, MacD., at p. 17). And where there is a direct contradiction between the parties on a question of importance, such as the existence of the Ulster tenant-right, the successful party may be awarded costs. *Philips v. Westera*, MacD. 343.

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Costs when awarded

Where an originating notice is dismissed on the ground that the holding is not within the Acts, costs are in general awarded to the landlord. As to the mode of recovering such costs, see Rules 96 & 97, *ante*, pp. 739-740.

Costs may, however, be refused to a successful party on sufficient grounds, such as his having recklessly made charges against the good faith of his opponent *M'Keague v. Hutchinson*, MacD. 516.

Where cases have been adjourned upon the terms of one party paying the costs of the day, the payment of such costs is a condition precedent to the case being called on again: *O'Hara v. M'Geough*, 16 I. L. T. R. 36; MacD. 348. For scale of costs of the day, see *post*, p. 772.

Under "special circumstances" costs may be increased; as to which see *Manley v. Masserene*, MacD. 348, and Clause 3, *ante*.

Where a case is struck out owing to the non-appearance of the tenant, even though he is in no default, the landlord is entitled to costs *Murphy v. Caldwell*, MacD. 345.

In granting motions for the substitution of service the Court will not give costs *Baldwin v. Heas*, R. and D. 7; MacD. 348.

Where a landlord persisted in a motion for particulars after intimation from the tenant's solicitor that he would give every information in his power, the landlord was ordered to pay the costs *M'Can v. Parnell*, MacD. 349.

As to issuing execution for costs, see Rules of January, 1897, Nos. 96 & 97, *ante*, pp. 739-740.

As to the effect of the Land Act, 1881, upon costs in the High Court in actions for rent not exceeding £20 and in ejectments, see Land Act, 1881, Sec. 51, and notes thereto, *ante*, pp. 839-340.

6. The schedule of fees hereby settled is intended to be the remuneration for all business done as well before as after the case is opened in Court. If the case be not opened in Court one-half only of the specified fees shall be allowed.

See *Smith v. Duffy*, 82 Ir. L. T. R. 112.

7. The costs on appeal before the Land Commission shall follow the same scale, but subject to be increased by the Court where the appeal is not heard in the same county in which the case was heard below.

The rule of the Court as to costs of appeals and re-hearings was laid down by O'HAGAN, J., in *Smith v. Smith*, MacD. 343, as follows:—If the decision of the Court below is sustained the appellant, whether landlord or tenant, pays the costs. If the landlord be the appellant he is entitled to costs against the tenant only in case the old rent is restored. If the rent be fixed higher than the decision of

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the Sub-Commission, but lower than the old rent, each party bears his own cost unless there are exceptional circumstances in the case.

General Rules as to costs upon appeals have now been issued. See page 76 *post*.

If the appeal be withdrawn the respondent is entitled to such costs as were properly and necessarily incurred up to the date of withdrawal. See *Colquhoun Estate, MacD.* 343.

Where the appeal is on a question of law, the successful party is, as a rule, entitled to costs. See *Shinnick v. Beresford, MacD.* 516.

The Court has power under this Rule to increase the scale costs where the appeal is not heard in the same County in which the case was heard below; but this power is only exercised in special cases, and under exceptional circumstances. *Newton v. Kavanagh, 32 I. L. T. R. 52.* (MEREDITH, J.)

8. Where an appeal is withdrawn before being listed (a) for hearing no costs shall be allowed, unless it is shown that the same were properly incurred.

(a) *i.e.*, in the revised list. The amount usually allowed is five shillings over and above outlay properly and necessarily incurred.

9. Where an appeal is withdrawn after being listed for hearing such costs shall be allowed as have been properly incurred up to receipt of notice of withdrawal, but in such case the solicitor's fee shall not exceed one-half of the fee specified in the Schedule hereto. An appeal may be withdrawn when called on for hearing in Court.

This Rule applies even when no notice of withdrawal has been given to the solicitor for the opposite party. *Wise Lowe v. Ahern, 29 I. L. T. R. 56.*

10. Where costs have been incurred by Receivers, Executors and others in proceedings in the Land Commission Court, directed or sanctioned by an Order of the High Court or Court of Bankruptcy, and such Court has ordered the costs so incurred to be taxed as between solicitor and client, such costs may be taxed by the proper officer of the Land Commission Court, and in the absence of any such direction as hereinafter mentioned, shall be taxed according to the ordinary scale of costs of proceedings in the Land Commission Court. Special expenses and fees shall be allowed if the Order of the High Court or Court of Bankruptcy directs that the costs shall be taxed as if upon a special agreement for allowing such expenses and fees, and every such taxation by the proper officer of the Land Commission Court shall be without prejudice to further allowance by the High Court or Court of Bankruptcy if it should think fit.

**GENERAL RULES AS TO COSTS UPON RE-HEARINGS IN
FAIR RENT CASES, SUBJECT TO ANY SPECIAL
ORDER THE COURT MAY MAKE IN PARTICULAR
CASES.**

When the Landlord Appeals.

- If the Judicial rent be affirmed . Tenant entitled to costs
 If the Judicial rent be reduced . Ditto.
 If the Judicial rent be increased, } Each party abides his own costs.
 but former rent not restored }
 If the former rent be restored . Tenant pays costs.

When the Tenant Appeals.

- If the Judicial rent be affirmed . Landlord entitled to costs.
 If the Judicial rent be increased . Ditto.
 If the Judicial rent be reduced . Each party abides his own costs.

When Landlord and Tenant both Appeal.

Save in Special Cases, each party abides his own costs

When an Appeal is withdrawn, prior to the opening of the case in Court, the Respondent is entitled to claim any costs that have been necessarily and properly incurred by him up to the date of the withdrawal of Notice of Re-hearing given to the other party.

SCHEDULE OF FEES.

SALE OF TENANCIES.

	£ s. d.
For all proceedings consequent on a tenant's notice of his intention to sell his tenancy where an originating notice is served, from the first originating notice up to and including the payment and distribution of the purchase-money.	
Where the rent of the holding mentioned in the tenant's notice of intention to sell does not exceed £5,	1 0 0
Where such rent exceeds £5 and does not exceed £15,	2 0 0
Where such rent exceeds £15, and is under £50,	3 0 0
Where rent exceeds £50,	5 0 0

The above scale shall likewise apply:

1. In case of sale by an execution creditor, assignee in bankruptcy, personal representative, or other person selling the tenancy:

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2. Where the landlord makes application to the Court to sell the tenancy by reason of the default of the personal representative to nominate a successor to the tenancy or sell.

FAIR RENT.

	£	s.	d.
Where application is made to fix a fair rent.			
For all proceedings from the originating notice to the final order of the Court			
Where the rent stated in the originating notice does not exceed £5,	0	10	
Where it exceeds £5, but does not exceed £15,	1	0	
Where it exceeds £15, but does not exceed £50,	2	0	
Where it exceeds £50, but does not exceed £100,	3	0	
Where it exceeds £100,	4	0	
Where the application to fix a fair rent is made by a lessee or grantee the above fees shall be increased one half.			

Where Counsel is employed.

Instructions for counsel's brief, and attending counsel, where rent is over £5, and under £50,	0	6	
When £50, or over,	0	13	
Brief of documents for each sheet of six folios,	0	1	

In cases of agreements fixing the fair rent of holdings, and agreements under Section 17 of the Land Law (Ireland) Act, 1896.

For all proceedings from the preparation of the agreement to the obtaining the certificate of the filing thereof.

If the rent stated in the agreement do not exceed £5,	0	5	
If it exceed £5, but do not exceed £15,	0	10	
If it exceed £15, but do not exceed £50,	1	0	
If it exceed £50,	2	0	

JUDICIAL LEASES AND FIXED TENANCIES.

To the solicitor preparing a judicial lease, for preparing and furnishing the draft lease, obtaining the approbation thereof by the Court, engrossing the lease and counterpart, and obtaining the execution of the same by all necessary parties, and the signing by the County Court Judge (or the sealing by the Land Commission, and all things incidental to the above matters (except the stamp duty on the lease and counterpart, Court fees, fees to counsel, and postage)

If the rent, subject to which the lease is made, do not exceed £5,	1	0	
If it exceed £5, and do not exceed £30,	2	0	
If it exceed £30,	5	0	

If a solicitor be employed by the opposite party—to such solicitor for approving of draft lease and attending in Court to consent whenever necessary, half the foregoing fees.

For preparing the agreement to create a fixed tenancy (where the approval of the Court is required) and all subsequent proceedings, up to and including the execution and approval of the grant.

The same fees as in the case of a judicial lease.

MISCELLANEOUS.

£ s. d. Rules as to Costs Jan, 1897.

The following shall be the scale of fees where the rent stated in Notice of Application exceeds £5, and does not exceed £50:—Where the rent does not exceed £5 the fees shall be one-half, and where the rent exceeds £50 the fees shall be double of the following:—

In case of application by a tenant to restrain proceedings under a notice to quit.	
To the tenant's solicitor for preparing the affidavit in support of the application, settling the originating notice, and also for the proceedings down to the final order of the Court,	1 0 0
To landlord's solicitor if the application be resisted,	1 0 0
In case of application by tenant to let portion of a holding for the use of labourers.	
For all proceedings from the originating notice to the final order of the Court.	
To the tenant's solicitor,	0 10 0
To the landlord's solicitor if the application be resisted,	0 10 0
In case of an application by the landlord for the resumption of a holding under Section 5, Section 8, or Section 21 of the Land Law (Ireland) Act, 1881.	
For all proceedings from the originating notice to the final order of the Court.	
To the solicitors of the landlord and tenant respectively,	0 10 0
In case of application under Section 10 of the Land Law (Ireland) Act, 1896.	
For all proceedings from the originating notice to the final order of the Court.	
To the applicant's solicitor,	0 10 0
To the tenant's solicitor, if the application is resisted,	0 10 0
In case of application for apportionment of rent under Section 13 of Land Law (Ireland) Act, 1896.	
For all proceedings from the originating notice to the final order of the Court.	
To the applicant's solicitor,	0 10 0
To the solicitor of the opposite party where the application is resisted,	0 10 0
In case of applications under Section 17 of the Land Law (Ireland) Act, 1881, and Section 9 of the Land Law (Ireland) Act, 1896.	
To the solicitor of the applicant for preparing the affidavit in support of the application, settling the notice of motion, and for the proceedings down to the final order of the Court,	1 0 0
To the solicitor of the tenant, if the application is resisted,	1 0 0

COUNSEL'S FEES.

Where rent of holding is under £30,	1 1 0
Where rent is £30 or over,	2 2 0
Where the rent exceeds £100, the above fees may, if deemed just, be increased at the discretion of the Taxing Officer.	

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TAXATION OF COSTS.

	£ s. d.
To solicitor attending taxation,	0 6 8

FEES FOR PROFESSIONAL VALUERS.

Where rent of holding is under £30,	0 10 6
Where rent is £30 and under £50,	1 1 0
Where rent is £50 and under £100,	2 2 0
Where the rent exceeds £100, the above fees may, if deemed just, be increased at the discretion of the Taxing Officer.	

COSTS OF MOTION (WHEN ALLOWED).

Where rent as stated in originating notice is under £10,	0 10 6
Where rent as so stated is £10 and under £30,	1 1 0
Where rent as so stated is £30 and under £100,	2 2 0
Where rent as so stated is £100 and over,	3 3 0
The above scale may be varied by the Court in any particular case.	

COSTS OF THE DAY.

Where rent as stated in originating notice is under £10,	0 10 6
Where rent as so stated is £10 and under £30,	1 1 0
Where rent as so stated is £30 and under £100,	2 2 0
Where rent as so stated is £100 and over,	3 3 0

SCHEDULE OF FORMS.

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FORM No. 1 (Rule 98).

County _____

Record No _____

LAND LAW ACTS.

PARTICULARS—[The following particulars must be accurately filled up].

Name of Landlord, and Residence
of Landlord if known, . . . }

Name and Residence of Landlord's
Agent, if any . . . }

Name and Residence of Tenant . . . }

Post Office from which Tenant re-
ceives his Letters . . . }

HOLDING—

County			* Poor Law Union			Electoral Division		
† Name by which Lands are known on Ordnance Survey Map, }								
Area in Statute Measure			Rent of Holding			Tenement Valuation		
A	R.	P.	£	s	d.	£	s	d.

NOTICE OF INTENTION TO SELL TENANCY.

Take notice, that it is my intention to sell my Tenancy in the above holding
[To be dated and signed by the Tenant.]

To _____
The Landlord of the above holding.

FORM No. 2 (Rules 99 and 117).

‡ [Heading same as in Form No. 1 with the addition of the words "The Proceedings under this Notice are intended to be carried on before the"

[State either "Civil Bill Court of the County," or "Land Commission," at choice of Party.]

*Now Rural or Urban District. See rules of 20th July, 1899, p. 764, ante.

† This can be ascertained by reference to the Poor Rate Receipts, or from the Clerk of the Union.

‡ If the personal representative of a deceased tenant gave notice of intention to sell, the heading should be the same as Form No. 16.

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ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO ASCERTAIN TRUE VALUE OF
TENANCY WITH A VIEW TO PURCHASE.

Having received notice from you of your intention to sell the tenancy in the above holding, and having disagreed with you as to the terms of the purchase thereof by me, I, electing to purchase the same under Section 1 of the Land Law (Ireland) Act, 1881, apply to the Court to ascertain the true value thereof.

[To be dated and signed by the Landlord or his Solicitor]

To _____

The Tenant of the above holding,

or the personal representative of a deceased tenant.

FORM No. 3 (Rule 100).

*[Heading same as Form No. 1.]

NOTICE BY TENANT OF THE NAME OF PURCHASER (OTHER THAN LANDLORD), AND OF THE
CONSIDERATION AGREED TO BE GIVEN.

I have agreed to sell the tenancy in the above holding. The name of the Purchaser is _____ of _____ and the consideration agreed to be given by him to the purchase is £ _____

[To be dated and signed by the person who sold the tenancy]

* If the sale was made by an Execution Creditor the heading should be the same as Form No. 13, if by the personal representative of a deceased tenant the heading should be the same as Form No. 16; or if by the Assignees in Bankruptcy, or person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 4 (Rule 101).

*[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO DECLARE SALE OF TENANCY VOID

I apply to the Court to declare void the sale made or agreed to be made by _____ and I make this application because you have failed to _____

[State either "Give me notice of your intention to sell the tenancy;" or, "Give notice of the name of the purchaser;" or, "Give me notice of the consideration agreed to be given for the tenancy."]

[To be dated and signed as in Form No. 1]

To _____

The Tenant of the above holding,

And the person by whom sale was made.

* If the sale was made by an Execution Creditor the heading should be the same as Form No. 13; if by the personal representative of a deceased tenant the heading should be the same as Form No. 16, or if by the Assignees in Bankruptcy, or person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 5 (Rules 102 and 106).

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Jan. 1897

*[Heading same as Form No. 1.]

NOTICE OF REFUSAL BY LANDLORD TO ACCEPT PURCHASER AS TENANT ON REASONABLE
GROUNDS.

I refuse to accept of the purchaser named in your notice of
the day of 18, as my Tenant on the following reasonable
grounds:—

[State specifically the grounds on which the Purchaser is objected to.]

[To be dated and signed by the Landlord, or by his Agent on his behalf.]

* If the sale was made by an Execution Creditor the heading should be the same as Form No. 13; if by the personal representative of a deceased tenant the heading should be the same as Form No. 16; or if by the Assignees in Bankruptcy, or a person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 6 (Rules 103, 106, and 170).

*[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY TENANT TO DECLARE LANDLORD'S GROUNDS OF
REFUSAL OF PURCHASER NOT REASONABLE.

I dispute your grounds of refusal to accept as your Tenant of
the purchaser of the tenancy in the above holding, and I apply to the Court to
declare your grounds of refusal not reasonable.

[To be dated and signed by the person disputing the grounds of refusal or his
Solicitor.]

* If the sale was made by an Execution Creditor the heading should be the same as Form No. 13, if the sale was made by the personal representative of a deceased tenant, or where a person has been nominated to succeed to the tenancy, or where notice of the bequest of a tenancy has been served, the heading should be the same as Form No. 16, or if the sale was made by the Assignees in Bankruptcy, or a person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 7 (Rules 104 and 106).

*[Heading same as Form No. 1.]

NOTICE BY LANDLORD OF OBJECTION TO PURCHASER WHEN IMPROVEMENTS HAVE BEEN
MADE AND SUBSTANTIALLY MAINTAINED BY LANDLORD OR HIS PREDECESSORS.

I assert that the permanent improvements on the above holding, in respect of
which, if made by you or your predecessors in title, you would have been entitled to
compensation under the provisions of the Landlord and Tenant (Ireland) Act, 1870,
as amended by the Land Law (Ireland) Act, 1881, have been made and substantially
maintained by me or my predecessors in title, and not by you or your predecessors
in title.

And I refuse to accept of the purchaser named in your notice
of the day of 18 as my tenant.

[To be dated and signed by the Landlord, or by his Agent on his behalf.]

* If the sale was made by an Execution Creditor the heading should be the same as Form No. 13, if by the personal representative of a deceased tenant the heading should be the same as Form No. 16, or if by the Assignees in Bankruptcy, or a person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

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FORM No. 8 (RULES 105, 106, and 120).

*[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY TENANT DISPUTING THE FACT OF IMPROVEMENTS HAVING BEEN MADE AND SUBSTANTIALLY MAINTAINED BY LANDLORD OR HIS PREDECESSORS.

I dispute your assertion that the improvements mentioned in your Notice of the day of 18 have been made and substantially maintained by you or your predecessors in title, and I consequently dispute the validity of your objection to of as the purchaser of the tenancy, and I apply to the Court for its decision.

[To be dated and signed by the person disputing the landlord's objection to purchaser, or his Solicitor.]

* If the sale was made by an Execution Creditor the heading should be the same as Form No. 13, if by the personal representative of a deceased tenant the heading should be the same as Form No. 16, or if by the Assignees in Bankruptcy, or a person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 9 (Rule 107).

[Heading same as Form No. 1.]

NOTICE OF CONSENT BY LANDLORD THAT IMPROVEMENTS MADE OR PAID FOR BY HIM OR HIS PREDECESSORS SHALL BE SOLD ALONG WITH THE TENANCY.

I consent that the permanent improvements on the above holding which have been [made or paid for] by [me or my predecessors in title, solely or jointly with you, or jointly with your predecessors in title] shall be sold along with your tenancy in the above holding.

[To be dated and signed by the Landlord, or by his Agent on his behalf.]

FORM No. 10 (Rule 108).

[Heading same as Form No. 1.]

ORIGINATING NOTICE OF APPLICATION TO HAVE PURCHASE MONEY OF TENANCY AND LANDLORD'S IMPROVEMENTS APPORTIONED.

The tenancy in, and the Landlord's improvements upon, the above holding have been sold together, and having produced the sum of £ , [I or we] apply to the Court to apportion the said sum of £ , as between the respective values of the said tenancy and the said improvements.

[To be dated and signed by the Landlord and Tenant, or their Solicitor, if application be by both; by the one making the application if made by one only, or by his Solicitor.]

To _____

[The Landlord of the above holding, or the Tenant of the above holding, if made by one only; if made by both to be omitted.]

FORM No. 11 (Rule 109).

Rules of
Jan., 1897

*[Heading same as Form No. 1.]

NOTICE OF CLAIM BY LANDLORD AGAINST OUTGOING TENANT FOR ARREARS OF RENT, OR OTHER BREACHES OF THE CONTRACT OR CONDITIONS OF TENANCY.

Take notice, that I claim the sum of £ _____, of which the following are the particulars:

[State here particulars in respect of which the sum is claimed, as for instance—
Arrears of Rent, £ _____, stating gales; Breach of a contract to repair, £ _____
Total, £ _____.]

[To be dated and signed by the Landlord, or by his Agent on his behalf.]

To _____

The outgoing Tenant of the above holding and the Purchaser.

*If the sale was made by an Execution Creditor the heading should be the same as Form No. 13; if by the personal representative of a deceased tenant, the heading should be the same as Form No. 16, or if by the Assignees in Bankruptcy, or a person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 12 (Rule 111).

*[Heading same as Form No. 1.]

NOTICE BY OUTGOING TENANT ADMITTING OR DENYING THAT THE SUMS CLAIMED BY LANDLORD ARE DUE.

["I admit that the sum of £ _____ claimed by the notice of the _____ day of _____ 18 _____; " or "I deny that the sum of £ _____ claimed by the notice of the _____ day of _____ 18 _____ or any sum in respect of the matter stated in the said notice; " or "I admit that the sum of £ _____ in respect of _____ (as mentioned in the notice of the _____ day of _____, 18 _____), is due by me; but I deny that any further sum in respect of the matter mentioned in the said notice"] is due by me.

[To be dated and signed by the person or persons giving the notice.]

To _____

The Landlord of the above holding and the Purchaser.

*If the sale was made by an Execution Creditor the heading should be the same as Form No. 13, if by the personal representative of a deceased tenant, the heading should be the same as Form No. 16, or if by the Assignees in Bankruptcy, or a person having carriage of the sale under the order of any Court, the heading should be the same as Form No. 17.

FORM No. 13 (Rule 112).

Particulars:—

Name of Landlord, and Residence of { _____
Landlord, if known - - - { _____
Name and Residence of Landlord's { _____
Agent, if any - - - { _____
Name and Residence of Tenant } _____
Name and Residence of Execution { _____
Creditor - - - - - { _____
Post Office from which Execution { _____
Creditor receives his Letters - { _____

[Particulars of arca as in Form No. 1.]

Rules of
Jan., 1897.

NOTICE OF INTENTION TO SELL HOLDING BY EXECUTION CREDITOR.

Take notice that it is my intention, as an Execution Creditor of the above Tenant, under a judgment for £ dated , to sell the tenancy in the above holding by Sheriff's sale on the day of next.

[To be dated and signed by Execution Creditor, or his Solicitor on his behalf.]

To _____

The Landlord of the above holding.

FORM No. 14 (Rules 113 and 118)

[Heading same as Form No. 13 or 17, as the case may be]

with the addition of the words

"The Proceedings under this Notice are intended to be carried on before the Court

*[State either "Civil Bill Court of the County," or "Land Commission," at choice of Party.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO ASCERTAIN TRUE VALUE OF TENANCY WITH A VIEW TO PURCHASE, WHEN SALE IS MADE UNDER A JUDGMENT, OR OTHER PROCESS OF LAW, AGAINST THE TENANT, OR FOR THE PAYMENT OF THE DEBTS OF A DECEASED TENANT.

Having received notice from you as of the above Tenant of your intention to sell the tenancy in the above holding, I elect to purchase the same under Section 1 of the Land Law (Ireland) Act, 1881, and I apply to the Court to ascertain the true value thereof.

[To be dated and signed by the Landlord or his Solicitor]

To the person serving notice of intention to sell, and to the Tenant, and, if sale under execution, to the Sheriff of the county.

FORM No. 15 (Rule 114)

[Heading same as Form No. 2]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD, BEING ALSO EXECUTION CREDITOR TO ASCERTAIN TRUE VALUE OF TENANCY WITH A VIEW TO PURCHASE.

Take notice that I, the above-named Landlord, being also an Execution Creditor of the above-named Tenant, under a writ of for £ : elect to purchase the tenancy in the above holding, under Section 1 of the Land Law (Ireland) Act, 1881, and I apply to the Court to ascertain the true value thereof.

[To be dated and signed by the Landlord or his Solicitor]

To _____

The Sheriff of the County of _____

And to _____

The Tenant of the above holding.

FORM No. 16 (Rule 117).

Rules of
Jan., 1897.

Name of Landlord, and Residence of {
Landlord, if known }

Name and Residence of Landlord {
Agent, if any }

Name and Residence of Personal {
Tenant }

Name and Residence of Personal {
Representative }

Post Office from which Personal Re- }
presentative receives his Letters }

[Particulars of area, &c., as in Form No. 1.]

NOTICE OF INTENTION TO SELL TENANCY BY PERSONAL REPRESENTATIVE OF DECEASED
TENANT.

Take notice that it is [my or our] intention as [Executor, or Executors, or
Administrator] of the said Tenant to sell the tenancy in the above holding.

[To be dated and signed by the Personal Representative.]

To _____
The Landlord of the holding.

FORM No. 17 (Rule 118).

[Heading same as Form No. 16, substituting names and residence of assignees in
bankruptcy, or person having carriage of sale, for those of personal
representatives.]

NOTICE OF INTENTION TO SELL HOLDING, IF GIVEN BY ASSIGNEES, IN BANKRUPTCY OR
PERSON HAVING CARRIAGE OF SALE UNDER THE ORDER OF ANY COURT.

Take notice that it is [my or our] intention as [Assignees in Bankruptcy of the
above Tenant, or having carriage of the sale of the tenancy, under an order of the
[set out name of Court] dated the _____ day of _____ 18 __,] to sell the tenancy
in the above holding.

[To be dated and signed by the person or persons giving the notice.]

To _____
The Landlord of the above holding.

To _____
The Tenant of the above holding.

FORM No 18 (Rule 119).

[Heading same as Form No. 1.]

NOTICE BY LANDLORD OF INTENTION TO PURCHASE TENANCY AS A MEANS OF SECURING
THE SUM DUE TO HIM FOR ARREARS OF RENT AND BREACHES OF CONTRACT OF
TENANCY.

Take notice that I claim that the sum of £ _____ is due to me by you, of
which the following are the particulars —

[State particulars briefly here, as for instance—Arrears of Rent (specifying gales),
£ _____ ; Breach of contract to repair, £ _____ ; Total, £ _____]

Rules of
Jan., 1887.

and that I am not desirous of purchasing your tenancy in the above holding otherwise than as a means of securing the payment of the said sum of £ , but that I claim to be declared the purchaser of the said tenancy at that sum if you determine to proceed with the sale, and if no purchaser can be found within three months after the service of this Notice who will give the said sum of £ or a greater sum.

[To be dated and signed by the Landlord, or his Agent on his behalf.]

To _____, the Tenant of the above holding.

FORM No. 19 (Rule 119).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY TENANT DISPUTING SUMS CLAIMED TO BE DUE BY LANDLORD.

I dispute that the sum of £ claimed by your Notice of the day of 18 is due by me to you; and I apply to the Court to have it determined whether any, and, if any, what sum is due by me to you in respect of the matters mentioned in your said Notice.

[To be dated and signed by the Tenant or his Solicitor.]

To _____, the Landlord of the above holding.

FORM No. 20 (Rule 119).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO BE ADJUDGED THE PURCHASER OF A HOLDING AT THE SUM CLAIMED FOR ARREARS OF RENT AND BREACH OF CONTRACT.

I apply to the Court to be adjudged the purchaser of your holding at the sum of £ stated as due by you to me in my notice of the [state date of notice of intention to purchase as means of securing arrears of rent, and breach of contract] of

[To be dated and signed by the Landlord or his Solicitor.]

FORM No. 21 (Rule 120).

[Heading as in Form No. 16.]

NOTICE BY PERSONAL REPRESENTATIVE OF TENANT NOMINATING PERSON TO SUCCEED TO TENANCY.

[I (name), the Executor, or we, the Executors named in the will, dated day of 18 , or I, the Administrator of the personal estate] of the above-named Tenant, hereby nominate [name and address of person nominated] being a [Legatee named in the said will, or a person entitled to a share of the personal estate of the said Tenant under the Statute of Distributions] to succeed to the Tenancy of the above-named Tenant in the above holding.

[To be signed by the Executor or Executors, Administrator or Administrators.]

FORM No. 22 (Rule 120).

[Heading as in Form No. 16.]

Rules of
Jan, 1897.

NOTICE BY LEGATEE OR PERSONAL REPRESENTATIVE OF BEQUEST OF A TENANT'S
HOLDING TO ONE PERSON ONLY.

Take notice that the above holding was bequeathed by the will of the said
[Tenant] , deceased, to of . And that the personal represen-
tative of the said deceased Tenant has assented to the said bequest.

[Dated and signed as in Form No. 1.]

FORM No. 23 (Rule 120).

[Heading as in Form No. 16.]

NOTICE OF REFUSAL BY LANDLORD TO ACCEPT LEGATEE OR NEXT OF KIN AS TENANT
ON REASONABLE GROUNDS.

I refuse to accept [insert name of Legatee or next of kin] of the person
named in your Notice of the day of 18 , on the following reason-
able grounds: [State specifically the grounds on which the Legatee or next of kin
is objected to.] [To be signed by the Landlord, or his Agent on his behalf].

To _____, the Executor or Executors, or the Administrator or Administrators or
the Legatee of the Tenant.

FORM No. 24 (Rule 120).

[Heading as in Form No. 16.]

NOTICE BY LANDLORD OF REFUSAL TO ACCEPT LEGATEE OR NEXT OF KIN AS TENANT
WHERE IMPROVEMENTS HAVE BEEN MADE AND SUBSTANTIALLY MAINTAINED BY THE
LANDLORD OR HIS PREDECESSORS.

I assert that the improvements on the above holding, in respect of which, if
made by the Tenant or his predecessors in title, he would have been entitled to
compensation under the provisions of the Landlord and Tenant (Ireland) Act,
1870, as amended by the Land Law (Ireland) Act, 1881, have been made and
substantially maintained by me or my predecessors in title, and not by the
above-named Tenant or his predecessors in title; and I refuse to accept
of the person named in your notice of the day of 18
as my Tenant.

[To be signed by the Landlord, or by his Agent on his behalf.]

To _____, [the personal Representative of the deceased Tenant].

FORM No. 25 (Rule 121).

[Heading as in Form No. 16.]

NOTICE BY LANDLORD REQUIRING PERSONAL REPRESENTATIVE TO SELL.

Take notice that as you, being the personal Representative of the above-named
Tenant, have not nominated [insert "One of the Legatees under his will," or "One
of the persons entitled in distribution to his personal estate] to succeed to his
tenancy in the above holding, I hereby require you to sell the said tenancy.

[To be signed by the Landlord, or his Agent on his behalf.]

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Jan. 1897.

FORM No. 26 (Rule 121).

[Heading as in Form No. 16.]

with the addition of the words

"The proceedings under this Notice are intended to be carried on before the [state either "Civil Bill Court of the County," or "Land Commission at choice of Party].

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO SELL TENANCY BY REASON OF DEFAULT OF PERSONAL REPRESENTATIVE TO NOMINATE SUCCESSOR OR TO SELL.

As you, being the personal Representative of the above-named Tenant, have not nominated one of the ["Legatees under his will," or "Persons entitled to distribution to his personal estate"] to succeed to his tenancy in the above holding, and have failed to sell the said tenancy, although required by me, by notice dated the day of 18 , to sell the same, I apply to the Court to direct a sale of the said tenancy.

[Dated and signed as in Form No. 24.]

FORM No. 27 (Rule 123).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD FOR RESUMPTION OF WHOLE OR PART OF A HOLDING.

I apply to the Court for an order authorizing the resumption of the part of the above holding, containing [if entire holding is sought to be resumed, strike out the words, "the part of," and the subsequent description] or thereabout described in the map or tracing accompanying this Notice, for a reasonable and sufficient purpose, having relation to the good of the [holding or estate] named [state specifically the purpose].

[To be signed by the Landlord or his Solicitor.]

FORM No. 28 (Rule 124).

PARTICULARS—(As in Form No. 1, substituting word "lessee" for "tenant," and naming Court selected, as in Form No. 2).

HOLDING.

ORIGINATING NOTICE OF APPLICATION BY LESSEE TO FIX FAIR RENT.

I, the Lessee, being in *bona fide* occupation of the above holding, apply to the Court for an Order fixing the fair rent to be hereafter paid for the above holding, which is held under a †Lease bearing date the day of made by to for the Term of at the yearly rent of £

To [To be dated and signed by the Lessee or his Solicitor.]

The Landlord of the above holding.

† The term Lease includes an Agreement for a Lease.

(This Schedule is to be filled up by the Lessee when the Tenement Valuation of the holding is £10 or over £10 a year.)

SCHEDULE OF IMPROVEMENTS

In respect of which evidence is intended to be produced, or which are intended to be relied on by the Lessee as having been made by him or his predecessors in title, with the dates at which the same were made according to the best of the Lessee's knowledge and belief.

FORM No. 29 (Rule 125).

[Heading same as Form No. 2.]

Rules
Jan., 1897

ORIGINATING NOTICE OF APPLICATION BY TENANT, OR LANDLORD AND TENANT
JOINTLY, TO FIX FAIR RENT.

I [or we], the [Tenant, or Landlord and Tenant, as the case may be], apply to the Court for an order fixing the Fair Rent to be hereafter paid for the above holding.

[To be dated and signed by the party or parties making the application, or by his or their Solicitor.]

To _____
The Landlord of the above holding, if application be not made jointly.

SCHEDULE OF IMPROVEMENTS CLAIMED.

FORM No. 30 (Rule 125).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO FIX FAIR RENT.

I, _____, the Landlord of the above holding, having demanded that the Rent of the above holding should be increased to £ _____ a year, which the Tenant has declined to accept [or having failed to come to an agreement with the Tenant as to the Rent, viz. (state specific nature of disagreement)], apply to the Court for an Order fixing the fair rent to be hereafter paid for the above holding

[To be dated and signed by the Landlord or his Solicitor.]

FORM No. 31 (Rule 125).

SECOND STATUTORY TERM.

PARTICULARS—[As in Form No. 1.]

HOLDING.

County			* Poor Law Union			Electoral Division		
Name by which Lands are known on Ordnance Survey Map. [This can be ascertained by reference to the Poor Rate Receipts or from the Clerk of the Union]								
Area in Statute Measure			Rent of Holding and Gale Days			Tenement Valuation		
A	R.	P.	£	s.	d.	£	s.	d.
			Gale Days,					
Name of Landlord in Order of Agreement fixing Fair Rent			Name of Tenant in Order of Agreement fixing Fair Rent			Record No. of Case as stated in Order of Agreement fixing Fair Rent		

* Now Rural or Urban District; see Rules 20th July, 1899, ante, p. 764.

Rules of
Jan., 1887.

The proceedings under this Notice are intended to be carried on before the [state either "Civil Bill Court of the County," or "Land Commission" at choice of party].

ORIGINATING NOTICE OF APPLICATION BY TENANT, OR LANDLORD AND TENANT
JOINTLY, TO FIX FAIR RENT.

I [or we] the [Tenant, or Landlord and Tenant, as the case may be], apply to the Court for an Order fixing the Fair Rent to be hereafter paid for the above holding upon which a Fair Rent has already been fixed by [Here state whether by order or by agreement. Date of the order or of the filing of the agreement to be given as accurately as possible], dated (or filed) the day of , 18 .
[To be dated and signed by the party or parties making the application, or his or their Solicitor.]

To———[The Landlord, if application be not made jointly].

SCHEDULE OF IMPROVEMENTS CLAIMED.

FORM No. 32 (Rule 125).

SECOND STATUTORY TERM.

(Particulars as to area, parties, &c., as in Form No. 31.)

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO FIX FAIR RENT.

I, , the Landlord of the above holding, upon which a Fair Rent has already been fixed by [state whether by order or by agreement. Date of the order or of the filing of the agreement to be given as accurately as possible] dated (or filed) the day of 18 , having demanded that the Rent of the above holding should be increased to £ a year, which the Tenant has declined to accept [or having failed to come to an agreement with the Tenant as to the Rent, viz. [state specific nature of disagreement] apply to the Court for an Order fixing the Fair Rent to be hereafter paid for the above holding.

[To be dated and signed by the Landlord or his Solicitor.]

FORM No. 33 (Rule 126).

[Heading and Particulars as in Form No. 28.]

ORIGINATING NOTICE OF APPLICATION BY LESSEE, WHO DESIRES TO BE DEEMED AND
DECLARED TENANT OF A PRESENT TENANCY, BUT DOES NOT REQUIRE A FAIR RENT
TO BE FIXED.

1. I, , the Lessee, am in *bona fide* occupation of the above holding which is held under a Lease bearing date the day of made by to for the Term of at the yearly rent of £ .

2. I desire to be deemed and declared tenant of a present tenancy in the said Holding.

[To be signed by the Lessee or his Solicitor.]

To —— [the Landlord of the above holding].

The term Lease includes an Agreement for a Lease.

Notice of the Landlord's intention to dispute the right of Lessee (Form 34) must be served on the Lessee and the Court within one month from the service of the application.

FORM No. 34 (Rule 126).
[Heading same as Form No. 28.]

Rules of
Jan., 1897.

NOTICE BY LANDLORD DISPUTING RIGHT OF LESSEE TO BE DEEMED AND DECLARED TENANT OF A PRESENT TENANCY WHERE A FAIR RENT IS NOT SOUGHT TO BE FIXED.

I, _____, the Landlord, submit to the Court that you are not, under the provisions of the Land Law Acts, entitled to be deemed tenant of a present tenancy in the holding mentioned in your originating notice served on me, on the grounds that [state the grounds intended to be relied on in opposition to the right claimed by the Lessee].

[To be dated and signed by the Landlord or his Solicitor.]

FORM No. 35 (Rule 128).

PARTICULARS.—

Name of Landlord and Residence of Landlord, if known,
Name and Residence of Landlord's Agent, if any,
Name and Residence of Tenant making the Application,
Post Office from which Tenant receives his Letters,
Names and Residences of other Joint Tenants or Tenants in Common of Holding,

HOLDING.

County			Rural or Urban District			Electoral Division		
Name by which Lands are known on Ordnance Survey Map								
Area in Statute Measure			Rent of Holding			Tenement Valuation		
A.	R.	P.	£	s.	d.	£	s.	d.
Area of portion of Holding separately occupied, in respect of which application is made				Proportion of Rent payable by Tenant applying				
A.	B.	P.	£	s.	d.			

The proceedings under this Notice are intended to be carried on before the [state either "Civil Bill Court of the County," or "Land Commission," at choice of party].

ORIGINATING NOTICE BY JOINT TENANT OR TENANT IN COMMON TO FIX FAIR RENT OF PORTION OF HOLDING SEPARATELY WORKED AND OCCUPIED BY HIM.

I, _____, one of the [joint tenants or tenants in common, as the case may be], of the above Holding, apply to the Court for an order fixing the rent to be

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Jan., 1897.

hereafter paid for the above-mentioned portion of the said Holding separately worked and occupied by me.

[To be signed by the party making the application or his Solicitor]

To _____ [the Landlord and the other Joint Tenants or Tenants in Common].

FORM No. 36 (Rule 129).

Application and consent to withdraw an originating notice.

[Particulars of Holding as given in Originating Notice.]

Application to withdraw.

I hereby apply to the Court for leave to withdraw the Originating Notice of an Application to the Court to [here state nature of application, e.g., to fix a fair rent, &c.] lodged in this case.

[To be signed by the person who lodged the Originating Notice, or his Solicitor]

Name and description of Witness to Signature (where necessary),

Consent to withdraw.

I hereby consent that the Originating Notice in this case be withdrawn.

[To be signed by the other party in the case or his Solicitor.]

Name and description of Witness to Signature (where necessary),

[If the person hereby consenting is the Tenant of the holding, his signature must be witnessed in the manner mentioned in Rule 95. The signature of a Solicitor need not be witnessed.]

Ruling.

Let the Originating Notice in this case be withdrawn.

Dated this day of 19

(Signature.)

FORM No. 37 (Rule 131).

[Heading same as Form No. 1.]

Notice by landlord to resist application to fix fair rent.

I submit that you are not entitled to have the rent to be hereafter paid for the above holding fixed by the Court, for I say that the permanent improvements upon the above holding, in respect of which, if made by you or your predecessors in title, you would have been entitled to compensation under the provisions of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Land Law (Ireland) Act, 1881, have been made by me or my predecessors in title, and have been substantially maintained by me and my predecessors in title, and no made or acquired by you or your predecessors in title.

[To be signed by the Landlord or his Agent on his behalf.]

FORM No. 38 (Rule 132).

PARTICULARS—

Name of Head Landlord and Residence, if known,
Name and Residence of Head Landlord's Agent, if any,
Name and Residence of Middleman,
Post Office from which Middleman receives his Letters,

Part of HOLDING not sublet.

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County			Rural or Urban District			Electoral Division		
Name by which Lands are known on Ordnance Survey Map }								
Area in Statute Measure of part not sub-let			Rent under Lease			Tenement Valuation of entire Lands under Lease		
A.	R.	P.	£	s.	d.	£	s.	d.
Of part Sublet								
A.	R.	P.						

The proceedings under this Notice are intended to be carried on before the [state either "Civil Bill Court of the County," or "Land Commission," at choice of party].

ORIGINATING NOTICE OF APPLICATION BY MIDDLEMAN WHO CLAIMS TO BE ENTITLED TO SURRENDER HIS ESTATE IN A HOLDING PART WHEREOF IS SUBLET, TO ASCERTAIN AND DETERMINE THE FAIR RENT OF THE PART NOT SUBLET.

1. I hold under a lease bearing date the day of made by to for the term of at the yearly rent of £ the lands of containing — A. — R. — P., of which the lands specified in the heading hereof form a part.

2. The rent paid by the sub-tenants of the said lands has been reduced by or with the sanction of the Court, so that, when added to what would be the fair rent of the part of the holding which is not sublet, it is of less amount than the rent payable by me.

3. I apply to the Court to ascertain and determine, for the purpose of a surrender, the Fair Rent of the part not sublet.

[To be dated and signed by the party making the application, or his Solicitor]

To _____

The Head Landlord of the Holding.

FORM No. 39.*

SCHEDULE referred to in the order of even date herewith fixing a fair rent
Holding in Rural District of _____
Land Law (Ireland) Act, 1896.

Particulars of Holding ascertained and recorded pursuant to Section 1 of the above Act, and Section 55 of the Local Government (Ireland) Act, 1898.

County Record No. Landlord No. of Ordnance Sheet
Tenant Date upon which holding inspected day 189

Who attended inspection on behalf of Landlord?

Who attended on behalf of Tenant?

1. Give a concise description of the holding and the buildings thereon, stating

* Forms 39, 39A, and 39B are prescribed by Rules of 20th July, 1899. See *ante*, p. 764.

Rules of
20th July,
1899.

particulars of aspect, elevation, water supply, situation as to markets, railways, and county roads, etc. Also state how the holding is used, i.e., as a tillage farm or as a mixed farm, or as a grazing or dairy farm, if mainly a grazing or dairy farm state carrying power.

2. Is the holding suitably used? What is the present condition of the holding as to cultivation, and of the holding and the buildings thereon, as to deterioration or otherwise? If there is deterioration, state how it is shown and has apparently been caused, and give like particulars as to any improved condition

3. Particulars of Tenement Valuation, Rates, &c.

A. (1.) Tenement Valuation of Agricultural Land in Holding .	£
(2.) Tenement Valuation of Non-Agricultural Hereditaments in Holding	£

Total Tenement Valuation £

B Standard Amount under Local Government (Ireland) Act, 1898, Section 54, for

(1.) County Cess upon Agricultural Land in Holding £
(2.) Poor Rate upon Agricultural Land in Holding £
(3.) County Cess and Poor Rate upon Non-Agricultural Hereditaments in Holding	£

Total Standard Amount of Rates on Holding £

The Benefit to the Tenant from the Agricultural Grant is half the above stated amount of the County Cess upon Agricultural Land, and the benefit to the Landlord from said Grant is half the above stated amount of Poor Rate upon Agricultural Land.

4. If the tenancy has been purchased since the passing of the Landlord and Tenant (Ireland) Act, 1870, give the date of each sale and amount of purchase money.

5. State the annual sum which should be the fair rent of the holding on the assumption that all improvements thereon (including Buildings) were made or acquired by the Landlord and give details of Valuation.

Description of the several classes of land with the quantities of each class set out separately, giving the rate per acre. The several classes of grass and tillage land to be so specified that it may be apparent how much of each description is contained in the holding; each class separately valued to be marked with a letter to correspond with a letter on the map, and the boundaries of such class to be indicated on the map [Schedule of Classes of Land]

[The rate per acre to be estimated on the basis of the Tenant paying a total rate equivalent to the Standard Amount of County Cess and Poor Rate in respect of the Holding as set out in paragraph 3, less by the amount of benefit to the Landlord from the Agricultural Grant in respect of the Poor Rate.]

Specify any additions for buildings, and for mountain grazing, turbarry outside holding, right of seaweed, or any other rights or privileges, or for proximity or otherwise.

Specify any deductions for special outgoing affecting the holding or for inconvenience of access, sufficient water supply, or other disadvantages.

Annual sum which should be the fair rent of the holding on the assumption above stated £

6. State the improvements on holding made wholly or partly by, or at the cost of or acquired, by the Landlord.

7. State the Improvements on the holding made wholly or partly by the Tenant or at his cost.

Rules of
20th July,
1892.

Nature and Character of each such Improvement	Present capital value	Increased letting value due thereto	Date when made, as near as can be ascertained	Extent (if any) to which the Landlord has paid or compensated the tenant in respect of each such improvement	Deduction from the rent on account of each such improvement

8. State any other matters in relation to the holding that have been taken into account in fixing the fair rent thereof.

9. Fair Rent of the Holding £

FORM No. 39A.

SCHEDULE referred to in the order of even date herewith fixing a fair rent Holding partly in Rural District of _____ and partly in Urban District of _____
[Particulars as in Form No. 39, except those under 3rd heading, which are as follow.]

3. Particulars of Tenement Valuation, Rates, &c.

- A. (1.) Tenement Valuation of Agricultural Land in part of Holding in Rural District £
(2.) Tenement Valuation of Non-Agricultural Hereditaments in part of Holding in Rural District £
(3.) Tenement Valuation of part of Holding in Urban District £

Total Tenement Valuation of Holding £

B. Standard Amount under Local Government (Ireland) Act, 1898, Section 54, for—

- (1.) County Cess upon Agricultural Land in part of Holding in Rural District £
(2.) Poor Rate upon Agricultural Land in part of Holding in Rural District £
(3.) County Cess and Poor Rate upon Non-Agricultural Hereditaments in part of Holding in Rural District £

Total Standard Amount of Rates upon part of Holding in Rural District £

The benefit to the Tenant from the Agricultural Grant is half the above-stated amount of the County Cess upon Agricultural Land, and the benefit to the Landlord from the said Grant is half the above-stated amount of Poor Rate upon Agricultural Land.

- C. Average amount of Poor Rate Payable by Tenant in respect of the part of Holding in Urban District excepting such deduction from the Rent (if any) as he may be entitled to make under Section 53 of the Local Government (Ireland) Act, 1898 £

FORM No. 39B.

SCHEDULE referred to in the order of even date herewith fixing a fair rent Holding in Urban District of _____

[Particulars as in Form No. 39, except those under 3rd heading, which are as follow.]

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- 3 Particulars of Tenement Valuation, Rates, etc.,
 (a.) Tenement Valuation of Holding £
 (b) Average amount of Poor Rate Payable by Tenant in
 respect of Holding excepting such deduction from Rent
 (if any) as he may be entitled to make under Section 13
 of the Local Government (Ireland) Act, 1898 .. £

FORM No. 40 (Rule 135)

IRISH LAND COMMISSION.

[OR CIVIL BILL COURT, COUNTY OF .]

REQUISITION FOR COPY OF SCHEDULE OF PARTICULARS OF HOLDING ASCERTAINED AND
 RECORDED PURSUANT TO SECTION 1 OF THE LAND LAW (IRELAND) ACT, 1896.

Landlord,

Tenant,

County,

*Record No.

I require a Copy to be made of the Schedule of Particulars of
 Holding ascertained and recorded in the above case heard
 at on the

* day of 18

Name,

Address to which Copy is to be sent,

* It is requisite that the correct date and Record No. should be stated on the
 Requisition.

To the Secretary of the Land Commission,

or Clerk of the Peace of the Co. of

N.B.—A County Court or Land Commission Stamp (as the case may be) is to be
 affixed at the time of applying for the Copy.

ADHESIVE
STAMP,
1s.

FORM No. 41 (Rule 136).

IRISH LAND COMMISSION

REQUISITION FOR COPY OF MAP OF HOLDING FURNISHED BY ASSISTANT COMMISSIONERS
 OR COUNTY COURT VALUER.

Landlord,

Tenant,

County,

*Record No.

I require a copy to be made of the Map furnished by the
 Assistant Commissioners [or by the County Court Valuer] in
 the above case heard at on the

* day of 18

Name,

Address to which Copy is to be sent,

* It is requisite that the correct date and Record No. should be stated on the
 Requisition.

To the Secretary of the Land Commission

N.B.—A Land Commission Stamp is to be affixed at the time of applying for the
 Copy.

ADHESIVE
STAMP,
1s.

FORM No. 42 (Rule 137).
[Heading same as Form No. 2.]

Rules of
Jan., 1897

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO ASCERTAIN AMOUNT BY WHICH SPECIFIED VALUE OF TENANCY SHOULD BE INCREASED OR DIMINISHED

Having received notice from the Tenant of his intention to sell his tenancy, and being desirous to buy the same, but having disagreed with the Tenant as to the price to be paid by me therefor, I apply to the Court to ascertain the amount by which the purchase-money should be increased above or diminished below the value of £ , specified in the order of the day of 18

[To be dated and signed by the Landlord or his Solicitor.]

FORM No. 43 (Rule 137).
[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY TENANT TO ASCERTAIN AMOUNT BY WHICH SPECIFIED VALUE OF TENANCY SHOULD BE INCREASED OR DIMINISHED.

Having given notice to the Landlord of my intention to sell my tenancy, and having disagreed with the Landlord as to the price to be paid to me therefor, I apply to the Court to ascertain the amount by which the purchase-money should be increased above or diminished below the value of £ , specified in the order of the day of 18

[To be dated and signed by the Tenant or his Solicitor.]

FORM No. 44 (Rule 139).

N.B.—The original of this Agreement, and not the copy, is to be lodged. No stamp required

[Names and addresses of parties as in Form No. 1.]

HOLDING—

County			Rural or Urban District			Electoral Division		
Name by which Lands are known } on Ordnance Survey Map }								
Area in Statute Measure			Rent of Holding existing prior to this Agreement			Tenement Valuation		
A.	R.	P.	£	s.	d.	£	s.	d.

ORIGINATING AGREEMENT AND DECLARATION BETWEEN THE LANDLORD AND TENANT OF A PRESENT TENANCY, FIXING FAIR RENT OF HOLDING.

We hereby agree and declare that £ yearly is the fair rent of the above holding, and we apply to the ["Civil Bill" or "Land Commission"] Court to file this agreement to the intent that the said Rent of £ may be the Judicial Rent of the holding.

Dated this day of 18

(1.) Signature of Landlord.

(2.) Signature of Tenant. The Tenant's signature must be witnessed by a Commissioner for taking Affidavits, by a Justice of the Peace, by a Solicitor, by a

Land Commission.

Rules of
Jan., 1897

Clergyman, or a Poor Law Guardian, but such witness must not be in the employment of the Landlord.

Signed by _____ in my presence

(3.) And I certify that the above agreement and declaration has been read and explained to the tenant in my presence, and that he appeared to fully understand the same. [To be added if Tenant be a marksman, but not otherwise.]

Signature and Qualification of Witness _____

FORM No. 45 (Rule 139).

N.B.—The original of this Agreement, and not the Copy, is to be lodged.
No Stamp required.

Second Statutory Term.

[Names and addresses of parties as in Form No. 1.]

LAND LAW ACTS.

HOLDING.

County			Rural or Urban District			Electoral Division		
Name by which Lands are known } on Ordnance Survey Map }								
Area in Statute Measure			Rent of Holding existing prior to this Agreement, and Gale Days			Tenement Valuation		
A.	R.	P.	£	s.	d.	£	s.	d.
			Gale Days,					
Name of Landlord in Order or Agreement fixing Fair Rent			Name of Tenant in Order or Agreement fixing Fair Rent			Record No. of case as stated in Order or Agreement fixing Fair Rent		

To the [State either "Civil Bill Court of the County" or "Land Commission," at choice of parties].

ORIGINATING AGREEMENT AND DECLARATION BETWEEN THE LANDLORD AND TENANT OF A PRESENT TENANCY FIXING FAIR RENT OF HOLDING.

We hereby agree and declare that the sum of _____ yearly is now the Fair Rent of the above holding upon which a Fair Rent has already been fixed by [State whether by order or agreement. Date of the order or of the filing of the agreement to be given as accurately as possible], dated (or filed) the _____ day of 18____, and we apply to the [State either "Civil Bill Court of the County," or "Land Commission," at choice of parties] Court to file this Agreement, to the intent that the said Rent of £ _____ may be the Judicial Rent of the holding.

[Signatures, &c., as in Form No. 44.]

Forms under Land Law Acts, 1881 to 1896. 793

FORM No. 46 (Rule 140).

Rules of
Jan., 1897.

CERTIFICATE OF FILING OF ORIGINATING AGREEMENT AND DECLARATION.

It is hereby certified that on the day of 18 , an Agreement and Declaration in writing under the hands of the Landlord and Tenant, dated the day of 18 , was filed in Court pursuant to the provisions of Section 8, Sub-section 6, of the Land Law (Ireland) Act, 1881, and that the same was in the words and figures following.

Dated this day of 18

Signature of the Keeper of Records of the Irish Land Commission or the Clerk of the Peace, as the case may be.

[Set out the Originating Agreement and Declaration in full.]

FORM 47 (Rule 144).

[Heading as in Form No. 29, 30, 31, or 32, as the case may be.]

CONSENT TO FIX FAIR RENT IN PENDING CASE.

Whereas the ["Tenant" or "Landlord"] made application to the Court for an Order fixing the Fair Rent to be paid for the holding above described.

Now it is consented to and agreed upon by the parties, Landlord and Tenant respectively, testified by the Signature of the said Tenant and by the Signature of [the said Landlord, or ——— for and on behalf of the said Landlord]:—

First.—That the Fair Rent of the said holding shall be fixed at the annual sum of £ subject to the Landlord's right of sporting as mentioned in the 5th Section of the Land Law (Ireland) Act, 1881.

Second.—That it shall not be necessary for the Court to ascertain and record the particulars mentioned in Section 1 of the Land Law (Ireland) Act, 1896.

Third.—[State here any special conditions either as to Payment of Rates, or amendment of Originating Notice, as to particulars of holding, &c.]

[Signatures as in Form No. 44.]

FORM 48 (Rule 146).

[Heading same as in Form No. 28.]

CONSENT TO FIX FAIR RENT OF A LEASEHOLD IN A PENDING CASE.

Whereas the Lessee made application to the Court for an Order fixing the Fair Rent to be paid for the holding which was stated to be held under lease dated and made by to for the term of at the yearly rent of £

Now it is consented to and agreed upon by the parties, Lessor and Lessee respectively, testified by the signature of the said Lessee and by the signature of [the said Lessor, or ——— for and on behalf of the said Lessor]:

First.—That the Court shall declare the said Lessee to be a Tenant of a present Tenancy.

Second.—That the Fair Rent of the said holding shall be fixed at the annual sum of £ subject to the Landlord's right of sporting as mentioned in the 5th Section of the Land Law (Ireland) Act, 1881.

Third.—That it shall not be necessary for the Court to ascertain and record the particulars mentioned in Section 1 of the Land Law (Ireland) Act, 1896.

Fourth.—[State here any special conditions either as to Payment of Rates, or amendment of Originating Notice, as to particulars of holding, &c.]

[Signatures, &c., as in Form No. 44.]

Rules of
Jan, 1897.

FORM No. 49 (Rule 149).

[This Form requires a shilling impressed stamp, and the original must be lodged with the Land Commission.]

PARTICULARS.—[As in Form No. 1.]

TO THE LAND COMMISSION.

ORIGINATING NOTICE OF APPLICATION BY LANDLORD AND TENANT JOINTLY TO FIX FAIR RENT WITH CONSENT TO BE BOUND BY A REPORT TO BE MADE BY A VALUER OR VALUERS TO BE NAMED BY THE LAND COMMISSION.

We, the Landlord and Tenant, apply to the Court for an order fixing the Fair Rent of the above holding, and we consent that the same may be determined by the Land Commission, in accordance with a report to be made by a Valuer or Valuers to be named by the Land Commission, and that the Land Commission may make an order in accordance with such report, unless cause be shown to the contrary, within ten days after the service by the Land Commission on us, respectively, of a notification of the substance of the conditional order made on such application.

And we further agree [state any special agreement as to game, or payment of rates or dispensing with Schedule under s. 1 (1) of L. L. (Ir.) Act, 1896].

[Signatures, &c., as in Form No. 44.]

APPOINTMENT OF VALUERS.

The Land Commission hereby names Mr. _____ and Mr. _____ to report upon the Fair Rent of the above Holding, and upon the several matters to be ascertained and recorded by the Court under Section 1, Sub-section (1), of the Land Law (Ireland) Act, 1896.

REPORT OF VALUERS.

We, the Valuers named by the Land Commission, having, to the best of our skill and ability, inspected and examined the above Holding, and all alleged improvements thereon, and having had regard to the interests of the Landlord and Tenant respectively, and having considered the circumstances of the case holding, and district, do hereby REPORT that in our opinion the Fair Rent of the above Holding should be the annual sum of £ _____, and in the accompanying Schedule we have reported on the several matters to be ascertained and recorded by the Court under Section 1, Sub-section (1), of the Land Law (Ireland) Act, 1896.

Dated this _____ day of _____ 19 _____

Signature of Valuer,

Do.

N.B.—This Form is only applicable to Tenants from year to year.

FORM No. 50 (Rule 149).

[This Form requires a shilling impressed stamp, and original must be lodged with the Land Commission.]

Second Statutory Term.

[Particulars same as in Form No. 31.]

TO THE LAND COMMISSION.

ORIGINATING NOTICE OF APPLICATION BY LANDLORD AND TENANT JOINTLY TO FIX FAIR RENT WITH CONSENT TO BE BOUND BY A REPORT TO BE MADE BY A VALUER OR VALUERS TO BE NAMED BY THE LAND COMMISSION.

We, the Landlord and Tenant, apply to the Court for an Order fixing the Fair Rent of the above holding, upon which a Fair Rent has already been fixed [here state whether by order or agreement. Date of the order or of the filing of t

agreement to be given as accurately as possible], dated (or filed) the day of
18 , and we consent that the same may be determined by the Land Commission, in accordance with a report to be made by a Valuer or Valuers to be named by the Land Commission, and that the Land Commission may make an order in accordance with such report, unless cause be shown to the contrary within ten days after the service by the Land Commission on us, respectively, of a notification of the substance of the conditional order made on such application.

And we further agree [*state any special agreement as to game, or payment of rates or dispensing with Schedule under s. 1 (1) of L. L. (Ir.) Act, 1896*].

[*Signatures, &c., as in Form No. 44.*]

Appointment of Valuers.

The Land Commission hereby names Mr. and Mr. to report upon the Fair Rent of the above Holding, and upon the several matters to be ascertained and recorded by the Court under Section 1, Sub-section (1), of the Land Law (Ireland) Act, 1896.

Dated, &c.

Report of Valuers.

We, the Valuers named by the Land Commission, having, to the best of our skill and ability, inspected and examined the above Holding, and all alleged improvements thereon, and having had regard to the interests of the Landlord and Tenant respectively, and having considered the circumstances of the case, holding, and district, do hereby report that in our opinion the Fair Rent of the above Holding should be the annual sum of £ and in the accompanying Schedule we have reported on the several matters to be ascertained and recorded by the Court under Section 1, Sub-section (1), of the Land Law (Ireland) Act, 1896.

[*Signatures of Valuers.*]

FORM NO. 51 (Rule 151).

[*Heading same as in Originating Notice.*]

CONSENT IN PENDING CASE TO FIX FAIR RENT TO BE DETERMINED BY THE LAND COMMISSION IN ACCORDANCE WITH A REPORT TO BE MADE BY A VALUER OR VALUERS TO BE NAMED BY THE LAND COMMISSION.

We, the Landlord and Tenant, hereby consent that the Fair Rent of the above holding may be determined by the Land Commission, in accordance with a report to be made by a Valuer or Valuers to be named by the Land Commission, and that the Land Commission may make an order in accordance with such report, unless cause be shown to the contrary within ten days after the service by the Land Commission on us, respectively, of a notification of the substance of the conditional order made on such application.

And we further agree [*state any special agreement as to game, or payment of rates, or dispensing with Schedule under s. 1 (1) of L. L. (Ir.) Act, 1896, and if tenant be a lessee insert a provision that the Court shall declare the lessee to be a tenant of a present tenancy*].

[*Signatures, &c., as in Form No. 44.*]

APPOINTMENT OF VALUERS.

The Land Commission hereby names Mr. and Mr. to report upon the Fair Rent of the above Holding, and upon the several matters to be ascertained and recorded by the Court under Section 1, Sub-section (1), of the Land Law (Ireland) Act, 1896.

[*To be signed by the Secretary.*]

Rules of
Jan., 1887

REPORT OF VALUERS.

We, the Valuers named by the Land Commission, having, to the best of our skill and ability, inspected and examined the above Holding, and all alleged improvements thereon, and having had regard to the interests of the Landlord and Tenant respectively, and having considered the circumstances of the case, holding, in the district, do hereby REPORT that in our opinion the Fair Rent of the above Holding should be the annual sum of £ _____, and in the accompanying Schedule we have reported on the several matters to be ascertained and recorded by the Court under Section 1, Sub-section (1), of the Land Law (Ireland) Act, 1896.

[Signatures of Valuers.]

FORM No. 52 (Rule 152).

[Heading as in Form No. 1.]

REFERENCE OF DISPUTE TO ARBITRATION.

The Landlord and Tenant hereby refer the dispute between them as to [state specifically nature of dispute] to the Arbitration and Award of [Names, Residence and description of Arbitrators]. And in case of difference between them, to the Umpirage of the Umpire below nominated and appointed by the said _____ and _____ the Arbitrators above-named, and agree to abide by the Arbitration or Umpirage, as the case may be, when made.

And in pursuance of the above submission, We the said _____ and _____ the above-named Arbitrators, do hereby nominate and appoint [Name, Residence and description of Umpire] to be Umpire herein in case of difference between us [To be signed by the Landlord or his Agent, and by the Tenant, and by the two Arbitrators.]

FORM No. 53 (Rule 156).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO SANCTION JUDICIAL LEASE.

I apply to the Court to sanction the Lease [to be for 31 years or upwards], a draft of which is herewith transmitted. I am [absolute or limited] owner of the land comprising the said holding. My interest is [state interest of limited owner, viz., Tenant for life or otherwise. To be omitted if Landlord is absolute owner].

The other persons interested in the said lands are [give names and descriptions of other persons interested, viz., persons entitled in remainder, &c., and names of Trustees, if any, in Settlement. To be omitted if Landlord is absolute owner].

The said lands are subject to the incumbrances mentioned in the schedule hereto [to be omitted if the Landlord's interest is unincumbered]. The persons interested in the said incumbrances are [to be omitted if the Landlord's interest is unincumbered]. No person interested in the said lands (*for to my knowledge in the said incumbrances is an infant, idiot, lunatic, or married woman, except [to be omitted if Landlord is absolute owner. *To be omitted if Landlord's interest is unincumbered] the Tenant interest is [state either that the Tenant's interest is unincumbered, or if incumbered state briefly the incumbrance, and in whom vested].

[To be dated and signed by the Landlord or his Solicitor.]

To _____

Clerk of the Peace for the County, or Secretary of the Land Commission.

[For Form of Judicial Lease, see post, p. 808.]

FORM No. 54 (Rule 156).

[Heading same as Form No. 1.]

Rules of
Jan., 1897.NOTICE BY LANDLORD TO PERSON INTERESTED OF APPLICATION HAVING BEEN MADE TO
SANCTION JUDICIAL LEASE.]

Take Notice, that I have applied to the [state either "Civil Bill Court of the County" or "Land Commission," as the case may be] to sanction a lease by me to the above Tenant of the above holding at the rent above stated, for the term of years, from the day of 18, and this notice is served on you in order that you, if so advised, may appear upon the hearing of such application.

[To be signed by the Landlord, or by his Agent on his behalf.]

To the Tenant of the above holding. And to the Mortgagees of the Landlord and Tenant respectively, and such other Incumbrancers, and such Trustees, Persons in remainder, or persons as the Landlord shall deem it expedient to serve.

FORM No. 55 (Rule 158).

[Heading same as Form No. 1.]

AGREEMENT BY LANDLORD AND TENANT THAT AN EXISTING TENANCY SHALL BECOME A
FIXED TENANCY.

We agree that the tenancy now existing in the above holding shall become a fixed tenancy upon the following conditions:—

The Tenant shall pay the annual fee-farm rent of £ (to be subject to revaluation by the Court every* years).

[Signatures, &c., as in Form No. 44.]

To—

The Clerk of the Peace for the County or The Land Commission.

FORM No. 56 (Rule 158).

[Heading as in Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO SANCTION AN AGREEMENT BY
LANDLORD AND TENANT THAT AN EXISTING TENANCY SHALL BECOME A FIXED
TENANCY.

I apply to the Court to sanction the Agreement, which is herewith transmitted for a fixed Tenancy—and a copy of which is as follows.—[Set out copy of the agreement].

I am [absolute or limited] owner of the lands comprising the holding.

My interest is [state interest of limited owner, viz., as tenant for life or otherwise—to be omitted if Landlord is absolute owner].

The other persons interested in the lands are [follow the other statements in Form 53 to end].

FORM No. 57 (Rule 159).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY TENANT TO LAND COMMISSION TO RESTRAIN
PROCEEDINGS ON NOTICE TO QUIT DURING THE CONTINUANCE OF STATUTORY TERM.

I apply to the Land Commission for an Order restraining you from taking further proceedings to enforce the Notice to Quit, dated the day of 18, which you have served upon me.

And I undertake to abide such Order as to the payment by me to you of damages

* To be omitted if rent be not intended to be subject to revaluation. As may be agreed on, but not to be less than 15.

Rules of
Jan., 1897.

for the breach of Statutory Conditions in respect of which you have served the said Notice to Quit and as to Costs as the Land Commission may think fit to make which application will be based on my affidavit, sworn the day of 18 a copy of which is herewith sent.

[To be signed by the Tenant or his Solicitor.]

FORM No. 58 (Rule 160).

[Heading same as Form No. 2.]

ORIGINATING NOTICE OF APPLICATION BY TENANT TO AUTHORIZE LETTING OF LAND FOR THE USE OF LABOURERS.

The above holding contains statute acres of tillage land. I apply for the sanction of the Court to my letting acres, roods perches, of the above holding for the use of Labourers *bona fide* employed and required for the cultivation of the holding [state whether with or without dwelling-houses].

The situation of the part of my holding which I propose so to let [has or has not been approved by the Landlord].

In the Schedule endorsed hereon I have set out the quantity of land in each letting, and the rent I propose to charge for each.

[To be dated and signed by the Tenant or his Solicitor.]

To—

The Landlord of the holding

FORM No. 59 (Rule 161).

[Heading same as Form No. 1.]

The proceedings under this Notice are intended to be carried on before the [stat either "Civil Bill Court of the County," or "Land Commission," at choice of Party]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD TO RESUME HOLDING ON EXPIRATION OF LEASE EXISTING AT THE DATE OF THE PASSING OF THE LAND LAW (IRELAND ACT, 1881).

I apply to the Court for authority to resume the above holding for the purpose of [occupying the same as a residence for myself, or occupying the same as a home farm in connection with my residence, or providing a residence for a member of my family]

[To be dated and signed by the Landlord or his Solicitor.]

FORM No. 60 (Rule 162).

[Particulars as in Form No. 31, the Name and Residence of successor in estate (or in possession, as the case may be) of late Landlord to be set out instead of that of the Landlord.]

ORIGINATING NOTICE OF APPLICATION BY SUCCESSOR IN ESTATE [or IN POSSESSION] OF LATE LANDLORD TO HAVE THE FAIR RENT OF HOLDING VARIED.

I, Successor in Estate [or in possession] of, late a Landlord of the above holding, apply to the Court that the Fair Rent of the above holding fixed by [her state whether by order or agreement. Date of the order or of the filing of the agreement to be given as accurately as possible], dated (or filed) the day of 18 be varied, on the ground that the former Rent of the said holding was reduced by reason of a fine or premium having been paid to the said [insert name of late landlord] [or, that the Fair Rent fixed was unreasonable].

[To be dated and signed by the party making the application, or his Solicitor]

FORM No. 61 (Rule 162).

[Title same as in Form No. 60.]

Rules of
Jan., 1897.

ORIGINATING NOTICE OF APPLICATION BY SUCCESSOR IN ESTATE [*or* IN POSSESSION] OF LATE LANDLORD FOR AN ORDER DECLARING THAT APPLICANT AND TENANT SHALL BE IN THE SAME POSITION AS IF SECTION 10 OF THE LAND LAW (IRELAND) ACT, 1896, HAD NOT BEEN ENACTED.

I, Successor in Estate [*or* in possession] of, late a Landlord of the above holding, apply to the Court for an order declaring that I and the Tenant shall be in the same position as if Section 10 of the Land Law (Ireland) Act, 1896, had not been enacted, on the grounds [*state the special circumstances on which the application is based*], which circumstances were not brought to the knowledge of the Court on the hearing of the application to have a Fair Rent fixed of the above holding.

[To be signed by the party making the application or his Solicitor.]

FORM No. 62 (A)* (Rule 164).

CONSOLIDATION OF HOLDINGS.

[Particulars as in Form No. 1.]

ORIGINATING AGREEMENT BETWEEN LANDLORD AND TENANT UNDER THE 17TH SECTION OF THE LAND LAW (IRELAND) ACT, 1896.

We hereby agree* that the holdings described in the First and Second Schedules be consolidated (*or* the holding described in the First Schedule be consolidated with the portion of a holding described in the Second Schedule, *or* the portion of land described in the Second Schedule, be added to the holding described in the First Schedule), and that such consolidated holdings shall be henceforth a single holding held under a present tenancy from year to year (*or* such enlarged holding shall be henceforth held under a present tenancy from year to year), and that the sum of £ yearly is now the Fair Rent of such holding and shall commence from the day of 18, and be payable half-yearly on every day of and day of, and that the statutory term in the said tenancy shall commence from the day of 18, and continue for a term of years from that date (if the tenancy so long subsists): and we apply to the Land Commission to file this agreement [*signatures, etc., as in Form No. 44*].

FORM No. 62 (B).

(Heading and Particulars as in Form 62 (A).)

PARTITION OR DIVISION OF HOLDING.

We hereby agree that the holding described in the First Schedule be partitioned (*or* divided) into the two holdings described in the Second and Third Schedules, and that the holding described in the Second Schedule be held by A.B. and the holding described in the Third Schedule by X.Y. (*or* that each of the holdings described in the Second and Third Schedules be held by A. B.) under a present tenancy from year to year, and that the sum of £ yearly is now the Fair Rent of the holding described in the Second Schedule, and the sum of £ yearly is now the Fair Rent of the holding described in the Third Schedule, and that such rents shall commence, &c. (*Remainder as in Form 62 (A)*.)

* This and the following three Forms have been issued by the Land Commission in substitution for Form No. 62 in the Rules as originally issued.

Rules of
Jan., 1897.

FORM No. 62 (c).

(Heading and Particulars as in Form 62 (A).)

SURRENDER OF PORTION OF HOLDING.

We hereby agree that the lands described in the Second Schedule, being portion of the holding described in the First Schedule, be surrendered by A. B. (*tenant*) to C. D. (*landlord*), and that the holding of the said A. B. shall henceforth be the lands described in the Third Schedule, and shall be held under a present tenancy from year to year. (*Remainder as in Form 62 (A).*)

FORM No. 62 (D).

(Heading and Particulars as in Form 62 (A).)

ABRIDGMENT OF STATUTORY TERM, CREATION OF NEW STATUTORY TERM, AND
FIXING OF FAIR RENT.

We hereby agree that the statutory term subsisting in the tenancy of the above mentioned holding upon which a judicial rent was fixed by [*insert particulars of order or agreement and declaration fixing fair rent*], dated (*or filed*) the day of 18 , 18 , abridged so as to terminate on the day of 18 , and that a further statutory term in the said tenancy shall commence from the day of 18 and continue for a term of years from that date (if the tenancy so long subsists), and that the sum of £ yearly is now the Fair Rent of such holding and shall commence from the said day of 18 , and be payable half-yearly on every day of and day of . and we apply, &c.]

[Signatures, &c., as in Form No. 44.]

FORM No. 63 (Rule 165).

CERTIFICATE OF FILING OF ORIGINATING AGREEMENT UNDER SECTION 17 OF LAND LAW
(IRELAND) ACT, 1896.

It is hereby certified that on the day of 18 , an agreement in writing under the hands of the Landlord and Tenant, dated the day of 18 , was filed in the Land Commission pursuant to the provisions of Section 17, Section (3) of the Land Law (Ireland) Act, 1896; and that the same was in the words and figures following —

Dated this day of 18 .

Signature of the Keeper of Records of the Irish Land Commission.

[Set out the Agreement in full.]

FORM No. 64A* (Rule 166).

FORM OF STATUTORY DECLARATION UNDER SECTION 17 OF THE LAND LAW (IRELAND)
ACT, 1896.

Absolute Owner Unincumbered.

I of in the County of do solemnly and sincerely declare —

1. *That I am absolute owner as tenant in fee simple of the lands of the barony of and County of which include the lands comprised in an originating agreement dated the day of , 18 , made between me and (*or*, in the several originating agreements the particulars of which are set out in the Schedule hereto).

2. That the said lands are not subject to any mortgage.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

* This and the three following Forms have been issued by the Land Commission in substitution for Form 64 in the Rules as originally issued.

FORM No. 64 (B).*

Rules of
Jan, 1897.

(Heading same as in Form No. 64 (A).)

Absolute Owner Incumbered.

1. (As in Form 64 (A).)

2. That the said lands are subject to certain incumbrances, and the first mortgage thereon is dated the day of , 18 , and was made between (state parties) and is now vested in of in the County of ; and the said is presumptively entitled on the cessor of my possession of the said lands to receive the rent (or rents) of the lands comprised in the said agreement (or agreements).

3. That the said is not under any disability or, is [state the nature of the disability, and if there is no guardian, committee, etc., to represent the person under disability, state who may be properly appointed by the Land Commission to be served with notice on his behalf].

[Remainder as in Form 64 (A).]

FORM No. 64 (C).*

(Heading same as in Form No. 64 (A).)

Limited Owner Unincumbered.

I of in the County of do solemnly and sincerely declare —

1. That under the provisions of the will of the late dated, &c. (or of an indenture of settlement dated the day of , 18 , and made between (state parties) I am a limited owner of the lands of in the barony of and County of , which include the lands comprised in an originating agreement dated the day of , made between me and (or, in the several originating agreements the particulars of which are set out in the Schedule hereto).

2. That of in the County of is entitled to the first vested estate in the said lands in remainder expectant on the determination of my estate as such limited owner, and is presumptively entitled on the cessor of my interest in the said lands to receive the rent (or rents) of the lands comprised in the said agreement (or agreements).

3. (As in Form No. 64 (B).)

4. That the said lands are not subject to any mortgage. (Remainder as in Form No. 64 (A).)

FORM No. 64 (D).*

(Heading same as in Form No. 64 (A).)

Limited Owner Incumbered.

I of in the County of do solemnly and sincerely declare:—

1. That under the provisions of [Acre state whether Will or Indenture of Settle-

* See note on p. 800, ante.

Rules of
Jan., 1897.

ment, setting forth the parties and dates] I am a limited owner of the lands of _____ in the barony of _____ and County of _____, which include the lands comprised in an originating agreement, dated the _____ day of _____, 189____, and made between me and _____, or, in the several originating agreements, the particulars of which are set out in the Schedule hereto.

2. That _____ of _____ in the County of _____ is entitled to the first vested estate in the said lands, in remainder expectant on the determination of my estate as such limited owner, and is presumptively entitled on the cesser of my interest in the said lands to receive the rent of the lands comprised in the said agreement.

3. That the said _____ is not under any disability, or, is [state the nature of the disability, and if there is no guardian, committee, etc., to represent the person under disability, state who may properly be appointed by the Land Commission to be served with notice on his behalf].

4. That the said lands are subject to certain incumbrances, and the first mortgage thereon is dated the _____ day of _____ 18____, and was made between [here set out the parties] and is now vested in _____ of _____ in the County of _____; and the said _____ is presumptively entitled on the cesser of my possession of the said lands to receive the rent of the lands comprised in the said agreement.

5. That the said _____ is not under any disability; or, is [give particulars as in paragraph 3].

And I make this solemn declaration, &c.

Land Law Acts.

FORM No. 65 (Rule 54).

SUMMONS FOR WITNESSES.

[State names of Landlord and Tenant.]

[State "Civil Bill Court of the County of _____," or "Land Commission."]

The undernamed person is hereby required, pursuant to the Statute in that behalf, personally to appear and give evidence in this case on behalf of [state the person on whose behalf attendance is required] before [the Civil Bill Court, or the Land Commission, or a Sub-Commission] at the sittings (or Court House) in the town of _____ in the County of _____ on the _____ day of _____ at the sitting of the Court, and so from day to day until the matter is disposed of, and then and there to produce the documents set forth in the Schedule annexed hereto, and herein to fail not under the penalty of £10.

[If the case be before the Civil Bill Court, this Summons must be signed by the Clerk of the Peace. If the case be before the Land Commission, it must be signed by the Registrar, or Assistant-Registrar, of the Land Commission, or if the case is pending before a Sub-Commission may be signed by a member of such Sub-Commission.]

FORM No. 66 (Rule 57).

Rules of
Jan., 1897.

[Heading same as Form No. 1.]

NOTICE TO A PARTY APPEARING TO HAVE AN INTEREST.

A case being pending before the [state either "Civil Bill Court of the County," or "Land Commission," as the case may be] for the purpose of [state purpose, such as fixing a fair rent, or whatever the purpose may be], and it appearing that you have, or claim to have, an interest, take Notice that upon service hereof on you, you shall have the same rights of appearing in Court, of intervening, and being served with Notice in the case, and you may be bound in the same manner as if you had been a person named in the originating Notice herein.

FORM No. 67 (Rule 68).

[Heading same as Form No. 1.]

CIVIL BILL COURT—RECEIVABLE ORDER.

NOTICE TO BANK TO RECEIVE LODGMENT.

Receive a lodgment of £ by which place in my name to credit of the above matter and number.

[To be signed by the Clerk of the Peace, or Crown and Peace.]

To the Cashiers of the Bank of Ireland.

FORM No. 68 (Rule 71).

Land Law Act.

THE IRISH LAND COMMISSION—RECEIVABLE ORDER.

Landlord _____ County _____
Tenant _____ Record No. _____

NOTICE TO BANK TO RECEIVE LODGMENT.

Receivable Order, No.

Name of Payer,

Address,

On or before 19 , please to receive £ which place to the credit of the Cash Account of the Irish Land Commission.

Dated this day of 19

_____ Accountant of the Irish Land Commission.

To the Cashiers of the Bank of Ireland.

FORM No. 69 (Rule 73).

[Heading same as Form No. 1.]

NOTICE TO TRANSFER PROCEEDINGS FROM CIVIL BILL COURT TO LAND COMMISSION.

I apply to the Land Commission to transfer the proceedings in this case from the Civil Bill Court of the County of to the Land Commission.

[To be signed by the party making application for Transfer, or by his Agent or Solicitor.]

To the party originating the proceedings, the Clerk of the Peace for the County, and the Secretary of the Land Commission.

[A copy of the Originating Notice must be transmitted with this notice to the Secretary of the Land Commission.]

Rules of
Jan., 1897.

FORM No. 70 (Rule 74).

[Heading same as Form No. 1.]

NOTICE TO SHOW CAUSE AGAINST APPLICATION TO TRANSFER PROCEEDINGS FROM
CIVIL BILL COURT TO LAND COMMISSION.

I show cause against the proceedings upon my Originating Notice of the day of 18, being transferred from the Civil Bill Court of the County of to the Land Commission, for I say that [state specifically grounds on which it would be unjust or unreasonable that proceedings should be transferred].

FORM No. 71 (Rule 79).

[Heading same as Form No. 1.]

NOTICE REQUIRING CASE TO BE REHEARD BEFORE THREE COMMISSIONERS.

I am aggrieved by the Order of [state by whom order made, viz., Sub-Commission or by single Commissioner] made at on the day of 18, whereby it has [state substance of Order], and I require my case to be reheard before three Land Commissioners sitting together.

This notice of rehearing is intended to be prosecuted on the ground [here state definitely the ground or grounds of appeal intended to be relied on as a matter of law, as for example, that the holding is demesne land, town parks, or any other ground excluding the holding from the Acts] [if the appeal is not taken on a question of value this paragraph should be struck out] that the rent fixed by the Sub-Commission ought to be [increased or reduced, as the case may be], inasmuch as [here state definitely the ground or grounds of appeal intended to be relied on, as for example, "the deduction from the rent made on account of the dwelling-houses and offices erected by the tenant is excessive [or insufficient], or "no deduction [or an excessive deduction] has been made on account of 6A. of land reclaimed by the tenant," or "the acreable rent assessed on the lands of Class A [or on all the lands described in the Schedule under Section 1 of the Land Law (Ireland) Act, 1896 is too low [or too high]."

[To be dated and signed by the party requiring his case to be reheard, or by his Solicitor.]

To [the opposite party whether landlord or tenant].

And the Secretary to the Land Commission.

N.B.—Where the Appeal is from an Order fixing a rent for a Second Statutory Term the Notice should be headed "Second Statutory Term."

FORM No. 72 (Rule 81).

[Heading same as Form No. 1.]

NOTICE OF APPEAL FROM CIVIL BILL COURT.

I am aggrieved by the Order of the Civil Bill Court of the county of made at on the day of 18, wheret it has

[Remainder as in Form No. 71.]

FORM No. 73 (Rule 96).

[Heading as in Originating Notice.]

Rules of
Jan., 1897.

NOTICE DEMANDING PAYMENT OF COSTS AWARDED.

Whereas, by an order dated the day of 18 , and made by
it was ordered that the above-named should pay to the above-named.

And whereas such costs have been taxed at the sum of £ : : [~~strike out
if costs have been measured by Order~~]. Now I of as Solicitor for the
above-named hereby require you the said to pay to me at my office
[address] the said sum of £ : , within 21 days from the date hereof.
And take notice that unless the said sum is paid to me on or before the said date,
I shall apply to the Irish Land Commission to issue a Writ of Execution, to compel
payment of the same, together with the Costs of the issue of such Writ.

Dated this day of 19 .

[The demand should bear the date of posting, as shown by receipt for registered letter.]

[To be signed by the Solicitor making the demand.]

To _____

FORM No 74 (Rule 96).

FORM OF CERTIFICATE OF DEMAND FOR, AND OF NON-PAYMENT OF, COSTS AWARDED.

County,
Record No.,
Landlord,
Tenant,

I, of Solicitor for the above-named hereby certify that,
on the day of , I caused a Notice in the prescribed form to be
served [*personally or by registered letter*] on the above-named requiring
to pay the sum of £ : for Costs, as in the said Notice stated.

The Post Office Receipt for such registered letter is attached hereto. The said
letter has not been returned to me undelivered through the Dead Letter Office
[*strike out if personal service*].

And I further certify that the said sum has not, nor has any part thereof, been
paid to me or to any person on my behalf, and I require upon behalf of the said
 that a Writ of Execution shall forthwith issue from the Court of the Irish
Land Commission against the goods and chattels of the said at the suit of
the said for the recovery of the said sum of £ : , together with
the sum of Five Shillings as and for the Costs of the issue of such Writ.

[To be dated and signed as in Form No. 73.]

FORM No. 75 (Rule 163).

[Particulars as in Form No. 1.]

ORIGINATING NOTICE OF APPLICATION FOR APPORTIONMENT OF RENT UNDER SECTION 13
OF LAND LAW (IRELAND) ACT, 1896.

I, being interested in the above holding as (one of the Landlords, or, as
the case may be) apply to the Land Commission Court that the rent of £
per annum previously paid by the Tenant in respect of the above holding shall be
apportioned between the several persons entitled to the landlord's interest therein
according to the value of the land held by them respectively.

[To be signed by Applicant or his Solicitor.]

To [the Tenant and the several Landlords].

Rules of
Nov., 1898,
and
April, 1899.

FORM No. 76.*

[Heading as in Originating Notice.]

CONSENT OF LANDLORD AND TENANT THAT ORIGINATING NOTICE TO FIX FAIR RENT BE REFERRED TO TWO VALUERS, TO BE NAMED BY THE LAND COMMISSION; AND THAT THE COURT MAY MAKE AN ORDER FIXING THE FAIR RENT PURSUANT TO THE REPORT OF THE VALUERS.

The [Landlord or Tenant (or Lessee)] having served an Originating Notice of application to have Fair Rent fixed, we, the Landlord and [Tenant or Lessee] hereby consent that the matter may be referred, in the first instance, to two Court Valuers, to be named by the Land Commission, and to be directed by them to report as to the Fair Rent; that the Land Commission may make an Order in accordance with the Report of the Valuers, unless either party requires the case to be heard in Court; in which event the case shall be listed for hearing in pursuance of the provisions of the Rules in this behalf, and that it shall not be necessary for the Court to ascertain and record in the form of a Schedule the particulars mentioned in Section 1 of the Land Law (Ireland) Act, 1896.

And we further agree [state agreement as to game and as to poor rates and county cess].

And that the Court shall declare that the Lessee be deemed to be a Tenant of a present Tenancy in the holding. [To be struck out if tenancy not leasehold.]

Signature of Landlord or of Agent or Solicitor on his behalf,

Signature of Tenant or of Solicitor on his behalf,

[The Tenant's Signature must be witnessed by a Clergyman, by a Solicitor, by a Commissioner for taking Affidavits, or by a Poor Law Guardian, but the Witness must not be in any case a person in the employment of the Landlord.]

APPOINTMENT OF VALUERS.

The Land Commission hereby names Mr. _____ and Mr. _____ to act as Valuers in this matter, and directs them to report upon the Fair Rent of the above holding.

[To be signed by the Registrar.]

FORM No. 77.*

[Heading as in Originating Notice.]

I, the [Tenant or Landlord, as the case may be] hereby require the application to fix a Fair Rent in this case to be heard.

[To be signed by the party requiring a hearing or the Solicitor.]

To [the opposite party, whether Landlord or Tenant].

And the Secretary to the Land Commission.

FORM No. 78.†

[This form requires to be stamped with a Shilling Impressed Stamp, and when executed must be lodged with the Land Commission.]

[Particulars as in Form No. 1.]

ORIGINATING NOTICE OF APPLICATION BY LANDLORD AND TENANT JOINTLY TO FIX FAIR RENT, WITH CONSENT THAT THE APPLICATION SHALL BE REFERRED TO TWO COURT VALUERS TO BE NAMED BY THE LAND COMMISSION, AND THAT THE COURT MAY MAKE AN ORDER FIXING THE FAIR RENT PURSUANT TO THE REPORT OF THE VALUERS UNLESS EITHER PARTY REQUIRES THE CASE TO BE HEARD IN COURT.

We, the Landlord and the Tenant, apply to the Court for an Order fixing th

* Forms 76 and 77 are prescribed by Rules of November 1898, *ante*, p. 761.

† Forms 78 and 79 are prescribed by Rule of 17th April, 1899, *ante*, p. 764.

Fair Rent of the above Holding; and we hereby consent that the matter may be referred in the first instance to two Court Valuers, to be named by the Land Commission, and to be directed by them to report as to the Fair Rent; that the Land Commission may make an Order in accordance with the report of the Valuers, unless either party requires the case to be heard in Court; in which event the case shall be listed for hearing in pursuance of the provisions of the Rules in this behalf, and that it shall not be necessary, save where such case has been referred to a Sub-Commission, for the Court to ascertain and record in the form of a Schedule the particulars mentioned in Section 1 of the Land Law (Ireland) Act, 1896. Rules of
April, 1899.

And we further agree [*state agreement as to game*].

And that the Court shall declare that the lessee be deemed to be a tenant of a present tenancy in the holding. [*To be struck out if tenancy not leasehold.*]

[*Signatures, &c., as in Form No. 44.*]

Schedule of Improvements Claimed.

APPOINTMENT OF VALUERS.

The Land Commission hereby names Mr. _____ and Mr. _____ to act as Valuers in this matter, and directs them to report upon the Fair Rent of the above holding.

[*To be signed by the Registrar.*]

FORM No. 79.*

[*This form requires to be stamped with a Shilling Impressed Stamp, and when executed must be lodged with the Land Commission.*]

SECOND STATUTORY TERM.

[*Particulars as in Form No. 51.*]

TO THE LAND COMMISSION COURT.

ORIGINATING NOTICE OF APPLICATION BY LANDLORD AND TENANT JOINTLY TO FIX FAIR RENT, WITH CONSENT THAT THE APPLICATION SHALL BE REFERRED TO TWO COURT VALUERS TO BE NAMED BY THE LAND COMMISSION, AND THAT THE COURT MAY MAKE AN ORDER FIXING THE FAIR RENT PURSUANT TO THE REPORT OF THE VALUERS, UNLESS EITHER PARTY REQUIRES THE CASE TO BE HEARD IN COURT.

We, the Landlord and the Tenant, apply to the Court for an Order fixing the Fair Rent of the above Holding, upon which a Fair Rent has already been fixed by [*here state whether by Order or by Agreement*], dated the [*date to be given as accurately as possible*] day of _____ 18 ____ . And we hereby consent that the matter may be referred in the first instance to two Court Valuers, to be named by the Land Commission, and to be directed by them to report as to the Fair Rent; that the Land Commission may make an Order in accordance with the Report of the Valuers, unless either party requires the case to be heard in Court; in which event the case shall be listed for hearing in pursuance of the provisions of the Rules in this behalf, and that it shall not be necessary, save where such case has been referred to a Sub-Commission, for the Court to ascertain and record in the form of a Schedule the particulars mentioned in Section 1 of the Land Law (Ireland) Act, 1896.

And we further agree [*state agreement as to game*].

And that the Court shall declare that the Lessee be deemed to be a Tenant of a present Tenancy in the holding. [*To be struck out if tenancy not leasehold.*]

[*Signatures as in Form No. 44.*]

Schedule of Improvements Claimed.

* Forms 78 and 79 are prescribed by Rule of 17th April, 1899, *ante*, p. 764.

Rules of
Jan, 1897.

APPOINTMENT OF VALUERS.

The Land Commission hereby names Mr. _____ and Mr. _____ to act as Valuers in this matter, and directs them to report upon the Fair Rent of the above Holding.

Dated this _____ day of _____
By Order,

Registrar.

*FORM OF JUDICIAL LEASE.

DESCRIPTION OF HOLDING.

County _____
Poor Law Union _____
Electoral Division _____
Townland, as known on Ordnance Survey Map _____

Descriptive Particulars, Boundaries, &c

Area in Statute Measure

A.	R.	P.

NOTE—The Map endorsed on this Lease purports to be a correct delineation of the lands as shown on Ordnance Sheet No. _____, of County of _____

By this Judicial Lease, made the _____ day of _____ 188 _____ of _____ in the County of _____ hereinafter styled the Landlord, demises unto _____ of _____ in the County of _____ hereinafter styled the Tenant, the holding above described, together with all rights and easements heretofore enjoyed therewith, and subject to all rights or easements heretofore usually enjoyed in, upon, or over the holding by any person other than the Tenant. The rights to be enjoyed by the Tenant during this Lease shall include

[Here set out any special rights such as turbarry, mountain runs, rights of way, &c.]

The term of this Lease shall be _____ years from _____. The rent of the holding shall be £ _____ per annum, payable half-yearly, in equal gales on every _____ and _____ the first half-yearly gale to fall due on _____ 188 _____. This rent shall be over and above all deductions, save for quit-rent, crown-rent, and income tax, and the Landlord's proportion of poor rate, and county cess.

The Landlord and the Tenant hereby agree that during this Lease they shall be respectively bound by the conditions endorsed hereon and which have been extracted from the 5th Section of the Land Law (Ireland) Act, 1881, and the Landlord ["does" or "does not," as the case may be] require that the right of shooting and taking game, and of fishing and taking fish, shall belong exclusively to him.

The words "statutory term," wherever they occur in the said endorsed conditions shall be read as meaning and comprising the term granted by this lease.

In case the Tenant break any of the said conditions, Nos. 2, 3, 4, 5, or 6, the Landlord may put an end to the Lease by a notice to quit, such notice to be _____ half-year's notice in case the condition broken be No. 4, and a year's notice if the condition broken be either No. 2, 3, 5, or 6, and in any case the notice may end on any gale day, but such notice shall not take effect if it be withdrawn by writing before the day on which it expires, and the Tenant shall have the same right to be relieved from the liability to be compelled to quit his holding in consequence of such breach as is given in the case of a statutory term by Section 13, Sub-section 4 of the said Act, also endorsed hereon.

In this Lease the word "Landlord" includes the said _____ his heirs and assigns and the word "Tenant" includes the said _____ his heirs, executors, administrators, and assigns.

Signed, sealed, and delivered, &c.

* This form is issued by the Irish Land Commission, but its use is not obligatory. A map must be endorsed on the Lease. As to the preparation, execution, &c., see Rules of January, 1897, Nos. 156, 157, ante, p. 757.

IRISH LAND COMMISSION.

 RULES

UNDER

THE LAND PURCHASE ACTS.

16th day of March, 1897.

It is this day ordered that the following General Rules and Orders shall, from and after this date and until further order, take effect and be in force in the Irish Land Commission in relation to all proceedings under and in pursuance of the Land Purchase Acts as defined by the Land Law (Ireland) Act, 1896, and that all Rules and Orders, except the Rules dated this day in relation to proceedings under Part V. of the said Act, shall cease to be in force as regards all proceedings commenced or continued after this date; save that as regards proceedings now pending, where these Rules and Orders are not applicable, the general Rules and Orders in force at the date hereof shall remain in force as if these Rules had not been made.

Rules of
March, 1897.
Order I
—

 ORDER I.

CONSTRUCTION OF TERMS.

1. In these Rules, unless the context otherwise requires, "Land Commission" shall mean Irish Land Commission; "Commissioner" shall mean one of the Irish Land Commissioners; "the Judicial Commissioner" shall mean the Judicial Commissioner of the Land Commission; "a Judicial Commissioner" shall include the Land Judge of the Chancery Division of the High Court of Justice in Ireland; "a Land Judge" shall include the Judicial Commissioner of the Land Commission when acting as a Land Judge; "High Court" shall mean Her Majesty's High Court of Justice in Ireland; "Court" shall mean Court of the Irish Land Commission; "holiday" shall mean any day upon which the

Rules of
March, 1897.
Ords I-III.

offices of the Land Commission shall be closed; "the Commissioner," and the "Examiner" shall respectively mean the Commissioner or Examiner to whom the proceeding in question is referred; and all other expressions shall have the meaning assigned to them by the Land Purchase Acts.

ORDER II.

EXAMINERS AND REGISTRAR.

1. The Examiners and Registrar shall perform their respective duties in person; provided that when any Rule or Order direct that any act shall be done, or duty discharged by an Examiner or by the Registrar, the same may be done or discharged, in the case of an Examiner, by the First Assistant Examiner, or a Assistant Examiner, with the sanction of the Judicial Commissioner; and in the case of the Registrar, by such officer as the Judicial Commissioner shall for that purpose from time to time appoint.

ORDER III.

TIME.

1. In the computation of time for the purpose of these Rules and Orders, the word "month" shall mean calendar month, and the period of a month shall not be extended by reason of any intervening holiday, but when the time limited is a fortnight or an less period, the time so limited shall be extended by any intervening holiday or holidays except Sundays.

2. The computation of time by days shall be exclusive of the first and inclusive of the last day.

3. Whenever the time limited expires on a Sunday or other holiday it shall be extended to the next day on which the office of the Land Commission shall be open.

4. The Court shall have power to enlarge or abridge the time appointed by these Rules and Orders, or fixed by any Order, for doing any act, or taking any proceedings, upon such terms, if any, as the justice of the case may require, and any such enlargement may be applied for and ordered after the expiration of the time appointed or allowed.

ORDER IV.

ORIGINATING STATEMENT.

1. All proceedings for sale under the Land Purchase Acts shall, unless the sale be by the Land Judges, be commenced by the lodgment of an originating statement.

2. The statement shall be in accordance with Form 1, in the Appendix hereto, with such variations as the nature of the case may require, or in such other form as the Land Commission may from time to time direct. It shall be fairly written on post paper, book-wise, with sufficient margin, and with a parchment back, shall be divided into paragraphs, and shall be verified by the affidavit of the vendor or vendors, or, if a Commissioner shall so permit, by the vendor's solicitor, who shall state in the affidavit the reason why the statement is verified by him and not by the vendor. The person verifying the statement shall, before making his affidavit, make all reasonable inquiries to ascertain what superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896 (if any), affect the land.

See that Section, *ante*, p. 567, and Form 1, *post*, p. 871.

3. The statement shall include all lands which the vendor intends to sell, and any of his lands upon which his tenants have rights of grazing or turbary, and, if the vendor intends selling part only of any townland, the statement shall include the entire of such townland, or so much thereof as belongs to the vendor. The statement may include all lands which are held by the vendor under a common or partly common title, or which are subject to any common incumbrance, but the vendor may, if he desire, insert a statement after the name of any townland to the effect that the same, or any particular part thereof, is excluded from the proceedings. The Ordnance Survey names only of the townlands shall be used in the originating statement, and if the estate comprises part only of a townland, it must be so stated.

4. No originating statement shall be lodged comprising any land in respect of which proceedings for sale, or for declaration of title, are pending before the Land Judges.

5. When a person desires to sell under the Land Purchase Acts land comprised in an originating statement already lodged, the former vendor's interest in which he shall have acquired by purchase or otherwise before such vendor had agreed to sell such land

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March, 1897.

Ord. IV.

Proceedings to
be commenced
by originating
statement

Form, and
verification of.

Lands to be
included in.

Not to include
lands the subject
matter of pro-
ceedings before
the Land
Judges.

Directions when
land to be sold
is included in
an originating
statement
already filed by
another person.

Rules of
March, 1897.
Ord IV.

to the tenant or tenants thereof, such person or his solicitor shall before lodging an originating statement, take the Examiner's direction as to its preparation, with a view to avoiding the repetition of matter disclosed by the statement already lodged, or in the course of the proceedings in the former matter, and as to how far the abstract of title and other documents already lodged may be utilised in the new proceedings. The statement, when lodged, shall be referred to the Commissioner to whom the statement and proceedings in the former matter stood referred.

Statement to be
endorsed with
vendor's address
for service, or
the name and
address of his
solicitor

6. Each originating statement shall be endorsed with the name and registered place of business of the vendor's solicitor, or, if the vendor is not represented by a solicitor, with an address within the municipal boundary of the city of Dublin to be called the vendor's address for service, where notices, orders, and other documents may be left for him.

Filing, and
reference to a
Commissioner

7. The statement shall be filed in the Registrar's office, and the Registrar shall endorse thereon the date of filing. Every statement shall be marked with the record number indicating the order in which it has been received, shall be entered in the index of cases and record of proceedings, and shall be referred to such Commissioner, and in such rotation as the Land Commission may from time to time direct, and all subsequent proceedings usually conducted before one Commissioner shall, save as may be otherwise directed by rule, be conducted before the Commissioner to whom the statement has been referred; provided that the statement and proceedings, or any matter arising thereunder, may at any time be transferred on the fiat of the Judicial Commissioner from one Commissioner to another, and on transfer of the statement and proceedings the minutes on the index of cases and record of proceedings shall be altered accordingly.

Amendment of
originating
statement.

8. No amendment shall be made in any originating statement that has been filed except by leave of the Commissioner, and in such manner as he may direct, and every such amendment shall be initialled and dated by the Registrar.

Supplemental
statement.

9. Additional statements when lodged shall be deemed to be supplemental to and shall be endorsed with the record number of the originating statement and with a distinguishing letter. Where however, a vendor who has already lodged an originating statement

desires to institute proceedings for the sale of additional lands, the title to, and incumbrances (if any) upon which are in no way common with the title to, or incumbrances upon the lands comprised in any originating statement already filed by him, the Commissioner may, if it shall appear to him expedient having regard to the special circumstances of the case, permit an originating statement to be lodged, and to receive a new record number.

Rules of
March, 1897.
Order IV.

10. The originating statement, when filed, shall be laid before the Commissioner, who shall endorse thereon directions as to the service of the notice of filing, the publication of the general notice to claimants, the payment of interest on the purchase money, and such other matters as they may think fit. The notice of filing shall be in Form 2, or such other form as the Commissioner may direct. Subject to any directions that may be given by the Commissioner, it shall be served upon all persons named in the originating statement as entitled to any superior interest or incumbrance affecting the lands (except Her Majesty the Queen, the Commissioners of Public Works in Ireland, or the Land Commission). The general notice to claimants shall be in Form 3.

Notice of filing
and general
notice to
claimants.

See this Form, *post*, p. 874.

11. When the vendor has lodged an originating statement in accordance with the General Rules dated 15th August, 1891, it shall not be necessary for him, unless the Commissioner shall otherwise direct, to lodge any further originating statement in respect of land therein comprised; but before lodging any agreement for purchase, the vendor or his solicitor shall attend before the Examiner, and take his directions as to the further proceedings. If the Examiner be satisfied that there is no superior interest affecting the land which would necessitate further service of the notice of filing, or further publication, he shall endorse on the originating statement a certificate to that effect, and the agreement for purchase may thereupon be lodged. If it shall appear to the Examiner that further service or publication is necessary, he shall lay the originating statement before the Commissioner for directions, and, before doing so, he may require the vendor to furnish such further evidence by affidavit or otherwise as may be necessary.

Proceedings
when originat-
ing statement in
accordance with
Rules, dated
15th August,
1891, has been
lodged.

Rules of
March, 1897
Ords. V.-VII.

To be lodged
with originating
statement

Shall include
all lands in
statement

Vendor, or his
solicitor to be
responsible for
accuracy of

Vendor or his
solicitor to
furnish docu-
ments and
evidence

Returns to
requisitions.

ORDER V.

NOTICES AND REQUISITIONS TO THE QUIT RENT OFFICE AND BOARD OF PUBLIC WORKS, AND REQUISITION AS TO TITHE-RENTCHARGE

1. Together with the originating statement there shall be lodged in duplicate for transmission through the Notice Office notices and requisitions to the Quit Rent Office and Board of Public Works in Forms 4 and 5. There shall also be lodged a requisition as to tithe rentcharge in Form 6.

See these Forms, *post*, pp. 875-876.

2. The notices and requisitions shall include all the lands comprised in the originating statement, and if part only of any townland be included, the words "part of" must be inserted before the name of such townland.

3. The vendor or his solicitor shall be responsible for the accuracy of the notices and requisitions, and if any of them be found to be inaccurate in any particular, the costs thereof may be disallowed on taxation.

4. It shall be the duty of the vendor or his solicitor to furnish to the Quit Rent Office and Board of Public Works respectively such documents and other evidence as may be necessary to enable them to comply with the requisitions.

5. As soon as the returns to such requisitions have been made and noted, the requisitions, with the returns endorsed, shall be transmitted to the vendor or his solicitor.

ORDER VI.

LIS PENDENS.

As soon as the originating statement has been filed, the vendor or his solicitor shall register the matter as a *lis pendens*, and the Registrar shall, if so required, sign a certificate of the filing of the originating statement for this purpose in Form 7.

See this Form, *post*, p. 877.

As to the effect of registration of a *lis pendens*, see *Brewers Co.'s Estate*, L. R. Ir. 479; 27 Ir. L. T. R. 83.

ORDER VII.

APPEARANCES.

"Appearance Book" to be kept in Registrar's office.

1. An "Appearance Book" shall be kept in the Registrar Office, in which any person claiming to be interested in the subject matter of any proceedings shall be at liberty, either personally or by

his solicitor, to enter an appearance for the purpose of being served with notices of such proceedings; and any person so appearing may withdraw his appearance.

**Rules of
March, 1897.
Ord. VII**

2. If a person appears by a solicitor, the name and registered place of business of such solicitor shall be stated. If the appearance be not by a solicitor, the person appearing shall give an address within the municipal boundary of the city of Dublin where notices may be left for him; and such address may be altered by him from time to time.

Name and address of solicitor, or address for service to be stated.

3. An appearance may be either general for the purpose of receiving notice of all proceedings in the matter, or special in order that the person appearing may have notice of any particular proceeding to be therein specified, or for the purpose of giving a consent or otherwise binding the party. The appearance, if general, must state whether the person appearing requires notice of the conditional sanction of all sales.

Appearance may be general or special

4. If the Commissioner considers that an appearance, whether general or special, has been entered without sufficient cause, he may direct such appearance to be cancelled, or he may direct a general appearance to be varied to a special one; and he may order the person appearing without sufficient cause, or entering a general appearance when a special appearance would have been sufficient, to pay the costs of any notice or other document that may have been served upon such person.

Appearance entered without sufficient reason may be cancelled, and person appearing ordered to pay costs.

5. Every person entering or withdrawing an appearance, or altering his address for service, shall give notice thereof in writing to the vendor or his solicitor; and no second or other appearance by any person in any one matter shall be permitted until the previous appearance be withdrawn.

Notices to be served of entry, withdrawal, or variation of appearance.

6. All appearances shall be entered in the appearance book accurately and in a legible hand in the presence of the officer in charge of the book, whose duty it shall be to see that the proper notices are served.

To be entered accurately in presence of officer.

7. The Registrar, or an officer of his department, shall, if required, sign a certificate in Form 8, specifying the appearances that shall have been entered in any matter, or a certificate in Form 9 of the entry of any particular appearance.

Certificate of appearances.

See these Forms, *post*, pp. 877-878.

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Ord. VIII.

Vendor's ad-
dress for
service to be
entered on
record of
proceedings
Change of
solicitor or
address by
vendor

8. The vendor's address for service, or, if he be represented by solicitor, the name and registered place of business of such solicitor shall be entered upon the record of proceedings.

9. Should the vendor desire to change his address for service, or his solicitor, or to appear in person, notice of the change shall be served upon the solicitor (if any) whose name appears on record as representing the vendor, and upon all persons who have entered appearances in the matter, and thereupon the entry on the record of proceedings shall be varied.

ORDER VIII.

SERVICES.

Persons who
may be served
through Notice
Office.

1. Any vendor or purchaser who has made or joined in an application to the Land Commission, and any person who has entered a general or special appearance in a matter may be served with any order or notice in the matter through the Notice Office of the Land Commission; and any person who has served a notice of motion may be served in the same manner with any order or notice having relation to such notice of motion; and any person who has been served with a conditional order, and against whom such order has been made absolute, may be served in the same manner with any order or notice.

Other services
to be personal,
or at the
residence.

2. Except in the cases aforesaid, any person whom it may be necessary to serve with any order or notice must be served personally, or at his residence, unless the Commissioner authorizes some other mode of service.

What consti-
tutes service at
the residence.

3. Service at the residence must be at the residence where the party is residing at the time, and should be upon the wife, husband, father, mother, son, daughter, brother or sister, or domestic servant of the party intended to be served. The person to whom the document is delivered must be of the age of sixteen years or upwards and must be requested to give such document to the person to whom the same is intended. Service at a place of business shall not be deemed service at the residence.

Original to be
shown except
in certain cases.

4. In the case of any order, notice, or other document sealed and signed by an officer of the Court, the original should be shown unless it shall appear that such a course would be impractical.

from the fact that parties residing far apart had to be served within a limited period.

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Order VIII.**

5. Every person requiring to have a notice or other document served through the Notice Office shall, before the hour of two o'clock in the afternoon, or, if the day be a Saturday, before noon, leave with the proper officer the document which he shall require to have so served, together with as many copies thereof as he shall require to have served, and in the case of a notice of motion, two copies thereof for the use of the Court. The document required to be served, and also the copies thereof left for the use of the Court, shall have written at foot thereof or endorsed thereon the name and registered place of business of each solicitor, and the address for service of each party appearing in person on whom the same is to be served, and in the case of a solicitor the name of the party for whom he has appeared. There shall also be left at the same time envelopes directed to the several persons to be served at the several registered places of business and addresses for service endorsed on the document to be served. The person requiring the document to be served, or his solicitor, shall mark upon every copy thereof which he shall require to have served, and also upon each copy left for the use of the Court, that the same has been compared with and is a true copy of the document required to be so served, and shall sign the same with his name or the initial letters thereof, and every such person or solicitor shall be responsible for the accuracy of every such copy.

**Method of
service through
Notice Office.**

6. The officer shall compare and check the addresses on the several envelopes with the names and addresses on the document to be served, and see that they correspond, and place the copies for service in their respective envelopes and secure the same, and place them with the official letters to be despatched the same day, and he shall enter in the register of notices a minute of the despatch of such copies and mark the entry with his initials. The originals of all documents transmitted through the Notice Office shall be filed, except in the case of a notice, or other document sealed or signed by an officer of the Court, which may be retained by the person requiring the same to be served, provided he lodges a copy for filing.

**Duty of the
Officer receiving
the notice.**

7. Where any notice or other document is served through the Notice Office, the certificate of the proper officer that such notice

**Certificate of
Officer to be
proof of service
through Notice
Office.**

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VIII-IX.

Substituted
service

or other document was duly transmitted by post shall be proof of the service thereof.

8. Every application for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made. Whenever any such order shall be made, a copy thereof shall be served along with the notice or other document, as the case may be.

Places and
other docu-
ments to be
printed if six
or more copies
are required.

9. Every notice or other document of which six or more copies are required must be printed.

ORDER IX.

LODGMET AND DELIVERY OF DEEDS, &c.

Method of
lodgment

1. Deeds, muniments of title, and other documents directed to be lodged in Court, either in pursuance of General Rules and Orders, or of an order or ruling made in any matter, shall, unless otherwise directed, be lodged in the Record Office of the Land Commission and the person lodging the same shall bring in two schedules of such documents, one of which will be returned to him receipted by the Keeper of Records. If the documents are being lodged in pursuance of a notice or order, a copy of such notice or order must be produced at the time of the lodgment.

Persons having
custody of
deeds must
lodge same if
ordered.

2. Any person having the custody of any deed or document relating to lands the subject matter of proceedings before the Land Commission shall, if so ordered, and on such terms as the Court may think just, produce or lodge the same in Court for the purpose of such proceedings.

Mortgagee or
owner of
superior interest
not obliged to
lodge his deeds
until paid.

3. A mortgagee or a person entitled to a superior interest shall not be obliged to part with the instruments creating his security, or dealing with it, until the order for payment of his demand is made but he shall be bound in the meantime to furnish copies thereof, required, on payment of the ordinary charges, and to produce the originals if required by order of a Commissioner, or if the Examiner shall certify that such instruments are required for the vouching of the abstract of title.

Liens on deeds.

4. The Court may make such order as may be just, as to the liability of any person lodging deeds, muniments of title, or other documents or as to payment of the costs of lodging the same.

5. Before applying for an order upon any person to lodge deeds or other documents, notice must be served upon such person in Form 11 (a), with such variations as the circumstances of the case may require; and when making the application there must be produced evidence that the person against whom the order is sought has the documents required in his custody, power, or procurement, and a certificate from the Keeper of Records that such documents have not been lodged.

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Notice to lodge
and order for
lodgment

(a) See this Form, *post*, p. 880.

6. Any solicitor or other person who is ordered to lodge deeds or other documents in Court shall, if he claims to have a lien on such documents, file an affidavit stating the particulars of such lien, and refer to such affidavit in the schedule of documents lodged, otherwise the lien may be disallowed.

Person claiming
lien must file
affidavit stating
particulars

7. Any person failing without sufficient cause to lodge in Court documents in his possession, power, or procurement, relating to lands the subject matter of proceedings before the Land Commission, within ten days of the service upon him of the notice referred to in Rule 5 of this Order, may be made liable for the costs of any application to the Court that may become necessary by reason of his default.

Person failing to
lodge deeds in
pursuance of
notice may be
made liable for
costs.

8. The Examiners shall have authority to order the delivery of documents lodged in the Record Office, on an undertaking to return the same being given, or finally, but the Examiner shall, if he thinks necessary, direct notice of an application for such order to be given. They may also give any person whom they may consider entitled to do so liberty to inspect any documents so lodged. The Keeper of Records shall not, save as aforesaid, or save to an officer of the Land Commission, deliver any deeds or documents except by Order of the Commissioner.

Delivery or
inspection of

ORDER X.

ABSTRACT OF TITLE.

1. At any time after the filing of the originating statement, and not later than one month from the first conditional sanction of an advance, the vendor or his solicitor shall lodge with the Keeper of Records an abstract of the vendor's title, together with the original deeds and other muniments of title not theretofore lodged in Court. If the original of any document be not procurable, a copy, or such

To be lodged
with Keeper of
Records

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other evidence of its contents as can be obtained shall be lodged, except in the case of an outstanding mortgage of which the vendor or his solicitor has no copy, and the original of which is available for inspection.

If the deeds are numerous a deed box shall be lodged of such size as may be directed by the Keeper of Records, and in all cases a schedule of the deeds lodged must accompany the abstract.

The Keeper of Records shall receipt the abstract and issue a certificate of its lodgment, which shall forthwith be lodged in the Examiner's Office.

Preparation and verification of. **2.** The abstract shall include all lands comprised in the originating statement, and shall be fairly and legibly written in roundhand on small brief paper, and on one side only, and with proper and distinct margins for the several parts of the instruments abstracted, and shall be verified by the solicitor by whom the same shall have been prepared, by an affidavit in Form 12 (a). Abstracts of title shall be prepared in accordance with the directions in that behalf in the Appendix hereto.

(a) See this Form, *post*, p. 880, and directions as to the preparation of abstracts of title, *post*, pp. 898-900.

If land be registered, land certificate to be lodged in lieu of abstract of title. **3.** If the title to the lands be registered under the Local Registration of Title (Ireland) Act, 1891, the land certificate with the *lis pendens* entered thereon shall be lodged in lieu of an abstract of title.

ORDER XI.

RULINGS ON TITLE, AND ASCERTAINMENT OF SUPERIOR INTERESTS.

Rulings on title. **1.** The rulings on title and directions for searches when given shall be transmitted to the vendor or his solicitor, and any requisitions thereon must be discharged on personal attendance before an Examiner, and the mode in which each requisition is discharged shall be entered on the rulings and in the title-book. No person except an officer of the Commission, shall write upon the rulings.

Requisition for searches. **2.** The draft requisition for searches in the Registry of Deeds shall be in Form 13 (a), and shall be lodged in the Examiner's Office for settlement within one week of the issue of the directions for searches unless such directions necessitate the production of further evidence

The requisition must be lodged in the Registry of Deeds within three days from the settlement of the draft.

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(a) See this Form, *post*, p. 881.

3. If the lands, or any part thereof, be held by the vendor under fee-farm grant or lease, the Examiner shall, when ruling the title, make such requisitions as may be necessary to ascertain the particulars of any superior interest that may affect the lands; and all persons in receipt of, or entitled to any rent, fees, duties, services, or royalties issuing out of, or to be rendered in respect of the lands, shall be bound to furnish to the vendor, or his solicitor, such evidence as may be necessary to enable him to comply with such requisitions; and such persons shall be entitled to their costs reasonably incurred in connection therewith, the same to be paid by the vendor, or out of the proceeds of the sales.

Persons in receipt of head rents, &c., must furnish evidence as to superior interests

ORDER XII.

AGREEMENT FOR PURCHASE AND APPLICATION FOR AN ADVANCE.

1. Agreements between vendor and tenant for the sale and purchase of a holding, with application for an advance, shall be in Form 10 (a), or such other form as the Land Commission may from time to time direct. All such agreements shall be on stout writing medium paper, and be endorsed with the record number, title of the matter, county and tenant's name, and shall be signed by both vendor and tenant, or some person acting under a power of attorney on behalf of either of them, and shall be verified by the affidavit of the tenant, and bear an Inland Revenue stamp or stamps to the value of sixpence, which must be cancelled according to law. Agreements shall be prepared in accordance with the directions in that behalf annexed to the form.

Form of Agreement.

(a) See form of agreement, *post*, pp. 878-880. As to the effect of the agreement on the liability of the tenant to pay rent and interest respectively, see Land Act, 1896, Sec. 35, and notes thereto, *ante*, pp. 575-576.

Agreements, if fraudulent, or if obtained in any improper manner, may be set aside, and orders sanctioning advances thereon may be rescinded. As to when, and under what circumstances, this course will be taken, see notes to L. P. Act, 1885, Sec. 2, *ante* p. 867. The jurisdiction of the Commission as to rescinding agreements, &c., is derived from the 37th Section of the L. E. C. Act, 1858 (pp. 937-8, *post*, which is incorporated by the 10th Section of the L. P. Act, 1885 (*ante*, p. 880).

2. When the Agreement is signed by a person acting under power of attorney, the power of attorney or, if the original is enrolled in

Power of attorney to be lodged.

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Agreement to be
lodged within
one month.

Schedule to be
lodged with
agreements.

Agreement not
to be received
if inaccurately
prepared.

Map to be
lodged with
agreement for
purchase

Number and
size of maps

Certificate of
valuation and
schedule of
areas

the High Court, a certified copy thereof shall be lodged and submitted to the Examiner to certify whether it is sufficient.

3. No Agreement shall be received after the expiration of one month from the date of the execution thereof by the tenant, unless it has to be executed by a person residing out of the United Kingdom, in which case it must be lodged within two months of the execution thereof by such person.

4. When two or more agreements for purchase in any one estate are lodged at the same time, they shall be accompanied by a summary by way of schedule in such form as the Land Commission may from time to time direct.

5. No agreement for purchase shall be received which is not accurately filled up in accordance with the rules and directions, or which does not correspond with the schedule of areas furnished with the map

ORDER XIII.

MAPS AND SURVEYS.

1. Every agreement for purchase, subject as hereinafter mentioned, shall be accompanied by an Ordnance map, on the 6-inch scale, neatly mounted on strong linen, distinguishing thereon the exterior boundaries of the holding or holdings, and by such evidence of area as is hereinafter provided. Where the holdings are so small that the 6-inch scale is insufficient, an Ordnance map on the 25 3/4-inch scale may be used, or an enlargement of the smaller holdings may be made.

2. Maps shall be prepared and furnished by townlands, or groups of townlands; and should, when practicable, not exceed 18 inches by 12 inches in size, and in every case the names of the adjoining townlands should be shown upon the map. In no case should different maps be used for sales of different holdings upon the same townland

3. The maps must be accompanied by a certificate of the tenement valuation, and by a schedule of areas giving the contents of each separate plot and the total area of each holding, and shall be in the form used by the Ordnance Survey Department or such other form as the Land Commission may from time to time direct.

4. If, for the purposes of proceedings in the Landed Estates Court, or Land Judges' Court, a survey of the estate has been made by the Ordnance Survey Department, the rental map shall be used if suitable. With the rental map shall be lodged a copy of the rental (if procurable), and a copy of the Ordnance Surveyor's report, accompanied by an affidavit from the vendor, his agent, or a competent surveyor in the employment of the vendor, stating that the several holdings are correctly marked on the map as they then exist, and the affidavit must state that the deponent visited the lands and examined the map upon the grounds.

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Landed Estates
or Land Judges'
Court rental
map to be used
if suitable

5. If there has been no such survey as aforesaid, or if the rental map be unsuitable, the latest revised Ordnance sheet, having the holdings marked thereon at the General Valuation Office, and verified in like manner, may be used.

Ordnance sheet
marked at
General Valuation
Office may
be used

6. When trifling alterations have to be made in rental maps, or maps marked at the General Valuation Office, they shall be neatly made in a distinctive colour by a competent surveyor, who shall amend the areas as shown in the Ordnance Surveyor's report, or schedule of areas, and verify the same by an affidavit in which he shall state his qualification.

Alterations in
map to be made
and verified by
surveyor

7. Existing estate maps where suitable, and provided they are accompanied by proper evidence of area, and correspond with the Ordnance Survey as to names and townland boundaries, may be accepted at the discretion of the proper officer.

Estate maps
may be used if
suitable

8. If the General Valuation Office map be very inaccurate or otherwise unsuitable, and if existing estate maps be not adopted, an Ordnance map with the holdings correctly delineated thereon, and accompanied by a schedule of areas, and certified by a competent surveyor, who shall state his qualifications, may be lodged; but where surveys of estates are necessary, they shall be made by the Ordnance Survey Department.

Surveys.

9. Directions for surveys by the Ordnance Survey Department may be obtained in the Agreements for Purchase Office, and the solicitor applying shall prepare such directions in Form 14, and shall furnish with it an Ordnance sheet, showing the lands to be surveyed, and a certificate of the tenement valuation. With respect to surveys or revisions of surveys made by the Ordnance Survey Department, or maps or copies of maps and other documents drawn

Orders for
survey; pay-
ment of account
liability of
solicitor.

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by or obtained from that department, the account shall be paid by the person at whose instance the work was done, or his solicitor, before the maps are delivered, or at such other period as that department shall direct. Every solicitor shall be personally responsible for the costs of any such survey made in pursuance of a direction issued at his instance.

ORDER XIV.

INSPECTION OF HOLDING.

Reference to
Inspector.

1. Agreements for purchase and applications for advances shall be referred to an Inspector (being the Resident Inspector or one of the Assistant Commissioners), to report as to the security for the advance and such other matters as the Land Commission may direct, and in such form as they may from time to time direct.

Inspection may be dispensed with if the Commissioner be otherwise satisfied as to the security for the advance. See Order 1, Rule 1, of Rules of 17 May, 1901, *post*, p. 868.

Copies of report
may be obtained.

2. The parties to the agreement or application may obtain certified copies of such report on payment of the prescribed fees.

Inspector to
notify date of
inspection to
parties

3. Due notification of the intention to inspect a holding shall be given by the Inspector to the parties to the agreement on application.

Inspector to
ascertain bound-
aries, and
certify map.

4. Upon the inspection the boundaries of the holding shall be ascertained by the Inspector, and the map, with such alterations if any as he shall find necessary, shall be certified by him to be correct

ORDER XV.

CONDITIONAL SANCTION OF ADVANCE OR AGREEMENT FOR PURCHASE; NOTIFICATION TO PARTIES.

Decision on
application to
be by order
endorsed
thereon

1. The decision of the Commissioner on an application for an advance, or that an agreement for purchase shall be carried into effect by vesting order, shall be signified by a minute or order endorsed upon the agreement or application and signed by the Commissioner.

Holding in two
counties

2. When a holding is situated in more counties than one the Commissioner, having regard to the area and value of the holding, shall determine and state in the order conditionally sanctioning the advance in which county such holding shall be deemed to be for the purposes of the Purchase of Land (Ireland) Act, 1891.

3. Except in the case of sales by the Land Judges or by the Land Commission, no advance shall be conditionally sanctioned until the services of the notice of filing of the originating statement and the publication of the general notice to claimants have been vouched in the Registrar's Office, and a certificate to that effect has been endorsed upon the originating statement by the proper officer.

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Advance not to be sanctioned until services and publications are vouched.

4. There shall be kept in the Agreements for Purchase Office a register of the persons directed to have notice of the filing of the originating statement, or who have entered appearances in the matter requiring notice of the sanction of sales, and their postal addresses, or those of their solicitors, and such persons or their solicitors may change the addresses from time to time, or have the register otherwise corrected; provided every address so registered shall be one within the United Kingdom. Notice of the conditional sanction of every sale shall be transmitted through the post to the vendor and purchaser and all persons whose names appear on the register, or to the respective solicitors of such of the aforesaid persons as may be represented by solicitors; and any person whose rights may be prejudiced by the sale may within fourteen days of the date of such notice apply to the Commissioner upon notice to the other persons interested to vary or discharge his order.

Conditional sanction to be notified to persons interested

5. If in the course of the investigation of the title, or otherwise in the course of the proceedings, a superior interest or incumbrance not disclosed in the originating statement is found to affect the lands, it shall be the duty of the Examiner to take the directions of the Commissioner as to the service of notice of the filing of the originating statement and of the sanction of such sales as may have been conditionally sanctioned upon the persons entitled to such superior interest or incumbrance, and no advance shall be conditionally sanctioned, nor shall any sale be completed until the services of such notices as may be directed have been vouched.

Notice to owners of superior interest and incumbrances not disclosed in originating statement.

6. When the Examiner ascertains that the claim of any person whose name is registered as entitled to notice of the sanction of sales has been discharged, he shall direct the name of such person to be struck out of the register.

Person whose claim has been discharged not to receive further notifications.

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Order XVI.

When
requisitions on
title are dis-
charged,
Examiner to
cause draft
vesting order
to be prepared,
or certify that
agreement may
be fixed.

ORDER XVI.

VESTING ORDER.

1. As soon as the requisitions on title or other requirements preliminary to the making of a vesting order have been complied with, the Examiner shall either cause a draft of the vesting order to be prepared, or shall, if the Commissioner, with the assent of the Judicial Commissioner, permits a vesting order to be dispensed with, endorse upon the agreement for purchase a certificate to the effect that the same may be fiated by the Commissioner, specifying in such certificate the conditions, exceptions, and modifications (if any) subject to which the agreement may be so fiated.

Draft vesting
order to be
settled by
Examiner and
approved by
Commissioner.
Examiner
may direct two
or more
holdings to be
vested by one
order

2. All draft vesting orders shall be settled by the Examiner and submitted to the Commissioner for approval.

3. When two or more vesting orders on the same estate would, if made separately, be in a common or partly common form, the Examiner may direct that either the whole or any portion of the estate shall be vested in the several purchasers by a single order.

Maps on vesting
orders

4. No map shall be endorsed upon, or referred to, in a vesting order unless a map of the lands being vested has been prepared for the purpose of proceedings in the Landed Estates Court, Ireland or the Land Judges' Court, and is attached to a conveyance, order or rental in such proceedings; in which case a copy of such map may be endorsed on the vesting order by the Ordnance Survey Department, and shall be referred to in such vesting order, and shall be sealed therewith.

Formerly the maps attached to the conveyances or vesting orders were not referred to therein, and were consequently of little value. A map of premises attached to a Landed Estates Court Conveyance, but not referred to in, or by it, is not, it has been held, admissible in evidence to explain or control the deed. *Wyse v. Leahy*, I. R. 9, C. L. 384 (C. P.).

Where a portion of lands not in the occupation of the tenant purchaser was erroneously included in the statement of the area, and in the map annexed to the vesting order, it was held by JOHNSON, J., that the whole instrument was controlled by the words "in the occupation of the purchaser as such tenant" attached to the description of the premises, and that the tenant purchaser did not acquire a title to the disputed portion, although the map was referred to in the descriptive words of the vesting order: *Quin v. Hewson*, 26 I. L. T. S. & J. 534. PORTER, M. R., has also held that a map upon a vesting order is not conclusive as to boundaries. *Thompson v. Flanagan*. (Unreported. *Ex rel. G. FETHERSTONHAUGH, K.C.*).

See as to the effect of a vesting order generally L. P. Act, 1885, Sec. 8, and notes thereto, *ante*, pp. 376-7

5. The purchaser, or if the price of the land sold be inclusive of all expenses incidental to the purchase, the vendor or other the person having carriage of the proceedings, or their respective solicitors shall, when so directed by the Examiner, either have the purchaser's vesting order stamped, or lodge in Court the amount of the stamp duty payable thereon, or on the fiat in lieu thereof. The Examiner or an officer of his department shall assess the amount of the duty to be lodged in Court, and issue the necessary authority to enable its lodgment.

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Amount of
stamp duty
to be lodged

6. Vesting orders and fiats, when examined and certified by the Examiner, shall be presented to the Commissioner for execution, and in every case shall, unless already stamped, be accompanied by a receipt for the lodgment of the stamp duty payable thereon.

Execution of
vesting order, or
signing of fiat.

7. The vesting orders when executed, or the agreements for purchase when fiated, shall, unless already stamped, be delivered by an officer of the Land Commission to the proper officer of the Inland Revenue for stamping.

Stamping of
vesting order
or fiat.

8. A copy of every vesting order shall be filed in the Land Commission.

Copy of vesting
order to be filed.

9. An application to have a vesting order, or fiat in lieu thereof, corrected or rectified shall be by motion to a Judicial Commissioner; and a minute of the order for rectification when made shall be endorsed on the vesting order, or agreement for purchase, as the case may be, and signed by the Registrar.

Rectification of
vesting order.

ORDER XVII.

PROOF OF OCCUPANCY.

1. No vesting order or fiat in lieu thereof shall be executed, nor shall any advance to a purchaser be made, unless the Examiner be satisfied that the purchaser was alive, and, if he be tenant of the lands purchased, that he was in occupation of such lands within fourteen days of the date of the vesting order, fiat, or advance, as the case may be.

Examiner to be
satisfied as to
occupancy of
purchaser before
execution of
vesting order or
fiat.

2. The vendor or other the person having carriage of the proceedings, or their respective solicitors, shall when required produce to the Examiner an affidavit, sworn not more than three days previously, verifying the occupancy of such of the purchasing

Affidavit of
occupancy.

Rules of March, 1897. tenants on the estate as are in occupation of their respective holdings, and to whom advances are about to be made, or
Orders XVII.-XIX. whose vesting orders are about to be executed, or agreement about to be filed. Such affidavit shall be in Form 15, and shall be made by the vendor, his agent, or some person who from local knowledge is capable of deposing to the facts therein stated.

See Form, *post*, p. 881.

ORDER XVIII.

MAKING OF ADVANCE AND CHARGING ORDER.

Advance not to be made if interest be fourteen days in arrear

1. No advance shall be made to any purchaser who is *fourteen days (a)* in arrear in the payment of any portion of the interest on his purchase money which has become payable.

(a) Now "two months." See Rule of 29th April, 1899, *post*, p. 667.

If advance does not exceed three-fourths of price, balance to be lodged in Court.

2. An advance which does not exceed three-fourths of the price to be paid for the holding shall not be made until the purchase shall have lodged in Court the balance of such price when such balance is payable in cash.

This rule was framed to meet cases coming within Land Purchase Act, 189 Sec. 7, where no guarantee deposit is required to be lodged. If the amount of the advance exceeds three-fourths of the purchase money, and a guarantee deposit retained, the balance payable in cash need not necessarily be lodged in Court in the case of an unincumbered estate *Skinnars Co. v. Campbell*, 28 I. L. T. R. 1. (BEWLEY, J.), overruling *Skinnars Co. v. M'Vey*, 26 I. L. T. R. 115 (Commissioner MACCARTHY).

Final order for advance

3. The final order for the making of an advance shall be prepared and certified by the Examiner, and shall, if the nature of the proceedings allow, bear even date with the vesting order or fiat as the case may be, and be presented to the Commissioner for signature therewith.

Charging order.

4. The vesting order shall, when practicable, charge the holding with the repayment of the advance. If a separate charging order be necessary, it shall be prepared by the Examiner, and shall be signed by the Commissioner, and sealed with the seal of the Land Commission.

ORDER XIX.

REGISTRATION OF PURCHASER'S OWNERSHIP.

Particulars to be transmitted to Registrar of Titles

1. The particulars as to the holding to be prepared and transmitted by the Land Commission to the Registrar of Titles, in order

that the title of the purchaser to the ownership of the holding may be registered pursuant to the Local Registration of Title (Ireland) Act, 1891, shall be as follows:—

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(a.) The record number (if any) and title of the matter in which the purchase was made.

(b.) The date of the vesting order or fiat as the case may be.

(c.) The name, postal address, and occupation or other description of the purchaser.

(d.) The townland or townlands with the area in statute measure of the portion of each comprised in the holding, and the county and barony, and, if necessary for the purpose of identification, the parish in which each townland is situated.

(e.) The tenure of the purchaser at the date of the purchase as stated in the agreement for purchase, or ascertained by the Land Commission.

(f.) The particulars of the annuity payable in respect of the advance (if any) made by the Land Commission for the purchase of the holding.

(g.) The particulars of any other rentcharge reserved in the vesting order.

(h.) The particulars of any exceptions or reservations or superior interests subject to which the vesting order or fiat is made.

(j.) The particulars of any easement, right or appurtenance which the vesting order may declare the sale to be subject to or freed from.

(k.) Any other matter which the Examiner may consider necessary for the purposes of registration.

2. Such particulars shall be embodied in a schedule which shall be prepared and certified by the Examiner, and signed by the Commissioner immediately after the execution of the vesting orders or the fiat of the agreements for purchase as the case may be. Each Examiner shall, if practicable, include in a single schedule the particulars of all holdings comprised in the vesting orders, or agreements for sale, which he may present to the Commissioner for execution, or fiat on any one day; provided that if two or more holdings be vested by a single order a separate schedule may be used as regards the holdings comprised in such order.

**The particulars
to be in a
Schedule.**

The particulars may be furnished by transmitting a copy of the vesting order. See Rule of 19th March, 1900, p. 867, *post*.

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Schedule to be
accompanied by
map

3. The schedule shall be accompanied by an Ordnance sheet having the several holdings delineated thereon as they appear on the map used for the proceedings unless there be a map endorsed upon and referred to in the vesting orders, in which case a copy of such map may be endorsed upon the schedule by the Ordnance Survey Department, or the vesting orders may be produced to the Registrar of Titles for inspection.

Schedule to be
delivered to
Registrar of
Titles.

4. The schedule shall be lodged in the office of the Registrar of Titles by an officer of the Land Commission.

ORDER XX.

APPORTIONMENT AND REDEMPTION OF SUPERIOR INTERESTS.

I.—Apportionment.

Apportionment
of tithe rent-
charge and
instalments in
lieu thereof pay-
able to the
Commission.

1. Applications for the apportionment of tithe-rentcharge payable to the Land Commission, and of fixed annual instalments payable in lieu thereof, shall be made in Forms 16 and 17, and shall be lodged with the Superintendent of the Church Property Department of the Land Commission.

See Forms, *post*, pp. 882-3.

Apportionment
of land improve-
ment and drain-
age charge

2. Applications for the apportionment of land improvement, or drainage charges payable to the Commissioners of Public Works in Ireland shall be made to such Commissioners, and the Examiner shall, if necessary, issue a requisition for that purpose. It shall be the duty of the vendor or his solicitor to furnish such evidence and documents as may be required for the apportionment.

Applications for
apportionment
of other superior
interests to be
grounded on
statement of
facts.

3. Applications for the apportionment of inappropriate tithe-rentcharges, quit or crown rents, rents, fees, duties, services, rentcharges, or annuities, shall be made by motion or notice grounded upon a statement of facts.

As to the apportionment of these rentcharges, see Land Act, 1887, Secs. 15 and 16, Land Act, 1896, Sec. 31; and notes thereto, *ante*, pp. 408 and 570-2. See also Sec 72 of L. E. C. Act, 1858, p. 942, *post*, and Forms 16 to 21, *post*, pp. 881-6.

When the apportionment is by consent a statement of facts may be dispensed with. See Rules of 17th May, 1901 Or. II., r. 1, *post* p. 868.

Preparation and
lodgment of
statement of
facts.

4. The statement of facts shall be verified by the vendor, or his solicitor, or by such other person acquainted with the facts as the Commissioner may direct, and shall be fairly written on post paper, with sufficient margin, and filed in the Registrar's Office. If the

superior interest to be apportioned be contributed by the owners of the lands subject thereto in certain proportions, and it is proposed to apportion in like manner, the particulars of the origin of such contribution, whether under a partition or otherwise, should be set forth in the statement.

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The statement shall be accompanied by and refer to an Ordnance map, showing the entire lands out of which the superior interest to be apportioned is payable, and the portions between which it is proposed to apportion the same, and shall also be accompanied by a certificate of the tenement valuation.

The map used for the purposes of the sale should be adopted when suitable; but the Commissioner may dispense with a map where it does not appear to him to be required.

5. No final order for apportionment shall issue until the sale, or, if there be more sales than one, until one of the sales under the Land Purchase Acts which necessitated the apportionment has been completed either by the payment of the purchase money into Court, or by the execution of the vesting order, or fiat of the agreement for purchase. The person at whose instance such order is made shall, if required, furnish a draft of such order and the same shall be settled by the Registrar.

Final order not
to issue till sale
completed.
Draft to be
furnished
if required

6. When a final order for apportionment has been made a sealed counterpart thereof, written or printed on stout hand-made paper or parchment, shall, except as hereinafter provided, be issued at the expense of the estate to the owner of the superior interest, and to the owner of any land upon which any portion of the superior interest which it is not intended to redeem has been apportioned. If four or more of such counterparts be required, the apportionment order shall be printed in such manner as the Land Commission may direct, and the original shall be filed in the Registrar's Office. If a map be referred to in the order it shall be drawn thereon by the Ordnance Survey Department. In the case of a quit or crown rent no such counterpart shall issue at the expense of the estate without the direction of the Commissioner.

Sealed
counterparts
of apportion-
ment order
to be issued
to parties
interested;
printing of and
maps thereon.

7. A memorandum of the apportionment shall be endorsed by the Registrar upon the instrument creating the superior interest apportioned if such instrument be forthcoming.

Memorandum of
apportionment
to be endorsed
on instrument
creating superior
interest.

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Forms of state-
ment of facts.

8. Statements of facts for the apportionment of impropriate tithe-rentcharges shall follow Form 18; for the apportionment of quit or crown rents shall follow Form 19; for the apportionment of rents, fees, duties, or services shall follow Form 20; and for the apportionment of rentcharges or annuities shall follow Form 21, with such variations and additions in each case as the circumstances may require.

See these Forms, *post*, pp. 882-6.

Certificate and
copy of state-
ment to be
lodged when
application is
for apportion-
ment of im-
propriate tithe
rentcharge, or
quit or crown
rent.

9. When application is made for the apportionment of an impropriate tithe-rentcharge or of a quit or crown rent, the tithe-rentcharge or quit rent certificate, as the case may be, and a copy of the statement of facts shall be lodged with the original, and the Registrar shall transmit such copy to the Superintendent of the Church Property Department of the Land Commission, or to the Quit Rent Office, as the case may be, for report; and no application for apportionment shall be moved without the leave of the Commissioner until such report has been obtained.

Instrument
creating rent,
rentcharge, or
annuity to be
lodged with
statement

10. When application is made for the apportionment of any rent, fees, duties, or services, or of a rentcharge or annuity, the instrument creating the superior interest to be apportioned shall be furnished with the statement of facts, unless it be already lodged in Court.

II.—Redemption.

Redemption of
quit and crown
rents, tithe rent-
charge payable
to Land Com-
mission, and land
improvement, or
drainage
charges

11. When any quit or crown rent, or land improvement or drainage charge, is being redeemed, the vendor or his solicitor shall produce to the Examiner at the vouching of the allocation schedule, a receivable order from the Quit Rent Office, or the Board of Public Works, as the case may be, to enable the redemption money and arrears, if any, to be lodged to the proper account in the Bank of Ireland. Such receivable order shall specify separately the amount of the redemption money and of the arrears, and shall allow at least seven clear days from the date of vouching for lodgment. When tithe-rentcharge payable to the Land Commission or fixed annual instalments payable in lieu thereof are being redeemed, the vendor or his solicitor shall produce at such vouching a memorandum from the Church Property Department of the amount required for the redemption thereof, and of the arrears thereof.

As to the power of the Land Commission to order the redemption of head rents and rentcharges, see Land Act, 1887, Secs. 15 and 16; Land Act, 1896, Sec. 31, and notes thereto, *ante*, pp. 420-428 and 570-572. **Rules of March, 1897.**
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12. The application for an order for the redemption of any other superior interest or of any apportioned part thereof shall, if made by the person entitled thereto, be made on notice to the vendor, and if made by the vendor shall be made on notice to the reputed owner of such superior interest. Service must also be made on such other persons as may have entered appearances requiring notice of such an application, or as would appear to be affected by such redemption. Applications for redemption of other superior interests to be on notice

The application should, where possible, be made at the hearing of the Final Schedule of Incumbrances. See Rules of 17th May, 1901, Or. II., r. 2, *post*, p. 868

In the case of redemption of tithe rentcharge, where an estate is sold to tenants in the Land Judges Court, that Court is the proper tribunal to fix the redemption price. *Mundy's Estate* [1899], 1 Ir. R. 191.

13. When the redemption of any such superior interest as in the last preceding Rule mentioned (other than inappropriate tithe rentcharge) or of any apportioned part thereof shall have been ordered, unless the price be agreed upon between the parties, or the determining of it referred to the Land Commission, within fourteen days from the date of the order, or within such further period as the Commissioner shall direct, the person who applied for such order shall serve upon the other party a request in writing to appoint an arbitrator following Form 22. Request to appoint arbitrator

As to the rules for the conduct of arbitrations, see Land Act, 1887, Sec. 16, *ante*, p. 424; Land Act, 1870, Sec. 25, *ante*, p. 188; and the Schedule to the latter Act, *ante*, p. 210. See also Form 23, *post*, pp. 886-7.

14. The submission to an Arbitration Court and the appointment of the arbitrator or arbitrators and umpire shall be in Form 23, or in accordance therewith, and shall be fairly written upon foolscap paper, with sufficient margin, and be lodged in the Registrar's Office before the first sitting of the Arbitration Court. It shall be the duty of the officer receiving such submission to arbitration to see that the signatures thereto are proved by affidavit. Submission to Arbitration Court.

See Form, *post*, p. 886.

15. The award shall be on foolscap paper, with sufficient margin, and shall follow Form 24 as nearly as the circumstances of the case admit, and shall determine who is to bear the costs of the arbitration. When either party desires the award of a Court of Arbitra- Award.

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tion to be recorded, he shall within ten days from the making of such award serve notice on the opposite party of his intention to apply to the Court for such purpose. As soon as the Court orders the award to be recorded it shall be filed in the Registrar's Office together with the submission.

See Form, *post*, p. 887.

Vouching of
title to superior
interest

16. The person entitled to the price or compensation payable in respect of a superior interest, or his solicitor, shall, unless there be a sufficient reason to the contrary, attend before the Examiner on the vouching of the allocation schedule to prove his claim, and for that purpose shall, unless his title has already been investigated, file an affidavit which shall be prepared in accordance with the directions in the Appendix hereto (*a*), and such affidavit may be lodged with the Examiner at any time after the redemption of the superior interest has been ordered.

(*a*) See p. 900, *post*.

Price of
superior
interest may be
placed to separate
credit and
invested.

17. If by reason of incumbrances affecting a superior interest or for any other reason the price or compensation payable in respect thereof cannot be distributed at the general allocation, the Commissioner may order such price or compensation to be paid into the Bank of Ireland to such credit as he may direct, and may make such order as may be just as to the investment thereof, and as to the payment of the dividends and interest thereon pending its distribution.

See Land Purchase Act, 1891, Sec. 20, and notes thereto, *ante*, pp. 477-8

Memorandum of
redemption of
superior interest
to be endorsed
on instrument
creating same.

18. Except in the case of quit or crown rents, tithe-rentcharges, and land improvement or drainage charges, a memorandum of the redemption of a superior interest or of any apportioned part thereof shall be endorsed by the Registrar upon the instrument creating such superior interest, unless such instrument be retained in Court

ORDER XXI.

ALLOCATION.

I.—*Proceeds of sales by vendors to tenants not paid into the High Court.*

Vendor to
prepare alloca-
tion schedule.

1. As soon as an advance shall have been made, unless such advance has been paid into the High Court, the vendor or his solicitor shall prepare an allocation schedule in Form 25.

For Form see p. 888, *post*. This rule now applies only to cases in which the lodgment of a Final Schedule is dispensed with. See Or. III., r. 8, Rules of 17th May, 1901, *post*, p. 870.

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2. The allocation schedule shall be vouched before the Examiner, and the case shall be then listed by him for allocation by the Commissioner.

To be vouched
before Examiner
and listed for
payment

II.—*Interest on purchase money collected by the Land Commission.*

3. Applications for the payment of interest on purchase money, accruing between the date of the agreement for purchase and the date upon which the advance is made by any person other than the person in receipt of the rents at the date of the agreement for purchase, shall be made to the Commissioner by motion on notice.

Applications for
payment by
person not
in receipt of
rents.

III.—*Proceeds of the sale of a holding sold by the Land Commission.*

4. All moneys received in respect of the proceeds of the sale by the Land Commission of a holding which was subject to an annuity payable to them shall be lodged to a credit to be entitled "In the matter of Section 38 of the Land Law (Ireland) Act, 1896, and of the proceeds of the sale of the holding of [*here name the proprietor who obtained the advance from the Land Commission*] in the lands of _____, Barony, _____, County _____; " and the Examiner shall issue a privity or receivable order to enable such lodgment to be made. Moneys so lodged shall not be allocated except in pursuance of an order signed by a Commissioner.

To be lodged to
particular credits

5. All notices, affidavits, consents and orders in reference to the allocation shall be headed "Court of the Irish Land Commission" and be entitled as in Rule 4 of this Order.

Entitling to
documents.

6. It shall be the duty of the Solicitor to the Land Commission to obtain as soon as possible from the Commissioner an order for the payment of all moneys due to the Land Commission in respect of the holding, and of all expenses incurred by the Land Commission in relation to the sale or otherwise with respect to the holding, and if there be any surplus after such payments he shall fill up and transmit to the Examiner's Office a form specifying the date of the sale, the amount realised, the particulars of the payments made, the amount of the surplus, the date on which the advance was made to the purchasing tenant of the holding, the name of such tenant, the amount of the advance, and the full title of the matter in which such advance was made; and all subsequent directions and rulings

Solicitor to Land
Commission
to furnish
particulars of
fund to
Examiner.

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in reference to the matter shall, so far as possible, be written on such form. The Examiner shall thereupon send for the land certificate evidencing the title of the proprietor whose holding had been sold, and if it shall appear therefrom that the title to the tenancy prior to the purchase by the tenant had been investigated, the Examiner shall report as to who appears to him to be entitled to the surplus.

Examiner to
give directions

7. If such title has not been investigated, the Examiner shall send for the agreement for sale to the purchasing tenant, the lease (if any), and any other document in the custody of the Land Commission which would help to disclose the title of the tenant prior to his purchase, and he shall note the nature of the tenancy, the date at which according to the agreement for purchase the tenant became entitled, the incumbrances (if any) disclosed in the agreement for purchase, and any information as to the title of the former proprietor disclosed by the title books, collection books, or otherwise, and he shall give such directions for the guidance of the Solicitor to the Land Commission as he shall think fit in reference to communications to be addressed to the former proprietor, to incumbrancers, or to other persons appearing to be interested in such surplus.

Correspondence
to be dealt with
by solicitor to
Commission.

8. All correspondence in reference to the allocation shall be referred to and dealt with by the Solicitor to the Land Commission, subject to any directions given by the Commissioner or Examiner.

Application
for payment:
searches

9. All applications for payment shall, together with any accompanying evidence, be laid before the Examiner, who shall thereupon make such requisitions as he may think necessary. It shall not be necessary to require any search other than a common search against the lands, and if title is being shown to a yearly tenancy such search shall not commence prior to the 1st January, 1870, or the date of the creation of the tenancy if of a later date. If the amount involved be £50 or under, a hand search will be sufficient.

Payment will not be made to a sole trustee, even though one trustee only was originally appointed by the settlement: *Trench's Estate*, 26 I. L. T. R. 72; MacC. 116 This is also the practice of the Landed Estates Court. *Dickson's Estate*, I. R. 3 Eq 344.

It was held by LITTON, J., on a question of law reserved for him, that the Crown was entitled to payment out of the proceeds of sales, of legacy duty in respect of annuities created by the will of a deceased owner and charged upon the estate sold *Fermoy's Estate* (No. 2), MacC. 55.

10. If the applicant be represented by a solicitor, a copy of the Examiner's rulings shall be transmitted to such solicitor, and he shall be at liberty to write his replies opposite to the requisitions, but the requisitions are to be discharged by the Examiner upon the original rulings. If the applicant be not so represented and the amount involved be £50 or under, it shall be the duty of the Solicitor to the Land Commission to make the necessary searches, and, so far as possible, to comply with the requisitions of the Examiner, and any costs necessarily incurred by him shall be defrayed out of the fund.

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Discharge of
requisitions.

11. The Examiner shall, as soon as his requisitions shall have been complied with, make his report at the foot of his rulings as to the person or persons appearing to him to be entitled to receive payment of the fund, and such report shall be laid before the Commissioner, who shall proceed to make his order thereon. The report shall then be filed in the Registrar's Office.

Report and
payment.

IV.—General.

12. Upon every application for payment a certificate of funds signed by the Accountant must be produced.

Certificate of
funds to be
produced on
application for
payment.

ORDER XXII.

INVESTMENTS.

1. The stockbrokers for the time being appointed by the Lord Chancellor to carry out the investment of funds under the control of the Supreme Court of Judicature in Ireland shall be stockbrokers to the Land Commission; and such stockbrokers shall discharge their duties in such order or rotation or otherwise as the Land Commission may from time to time direct.

Stockbrokers of
Supreme Court
to act for Land
Commission.

2. Whenever an order shall be made for the purchase of stock or securities with money standing to the account of the Land Commission, the price shall not be paid to the broker until he shall have transferred to the account of the Land Commission stock or securities equal in value to the money to be invested, deducting his commission; and whenever an order shall be made for the sale of stock or securities standing to the account of the Land Commission, the same shall not be transferred until the broker shall have lodged in the Bank of Ireland to the account of the Land Commission the price thereof, deducting his commission.

Payment of
price and
transfer of
stock.

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Order XXIII.

To be in pounds
only.

Privity for
lodgment of

Register of

Registration of
guarantee
deposit lodged in
cash.

Registration in
other cases.

Registrar to
draw up direc-
tion as to
registration

ORDER XXIII.

GUARANTEE DEPOSITS.

1. Guarantee deposits shall be made of pounds only.

2. No guarantee deposit in cash shall be received unless accompanied by a privity in Form 26. Application for such privity shall be made by the party lodging the guarantee deposit, or his solicitor, and the privity shall be signed by the Examiner, and transmitted to the Accountant.

See Form 26, *post*, p. 888.

3. A register shall be kept in the Accountant's office of all guarantee deposits, stating the names of the persons entitled to or interested in them, the names of the persons entitled to receive the interest thereon, and the lands to which they apply, and the securities (if any) in which they are invested.

See as to investment of guarantee deposits, Land Act, 1887, Sec. 10, *ante*, p. 416, and L. P. Act, 1891, Sec. 23, *ante*, p. 479.

4. When a guarantee deposit is lodged in cash, the Accountant shall register it in the name of the person whose name appears in the privity, and the interest shall be payable to him from the date of the advance.

5. In all cases not otherwise provided for, the guarantee deposits shall be registered in the title of the matter until a Land Judge or the Commissioner, as the case may be, shall declare in whose name they are to be registered, and to whom the interest shall be paid, and such declaration, if made by the Commissioner, shall where practicable be made when the funds are being allocated.

6. When a Land Judge makes a declaratory order concerning the registration of guarantee deposits, or the payment of the interest thereon, the Registrar of the Land Commission shall draw up a direction in accordance with such order and transmit the same to the Accountant; and for that purpose it shall be the duty of the person at whose instance the order shall have been made, or of his solicitor, to furnish to the Registrar such documents as may be required.

The amount of the guarantee deposit is treated as part of the funds in the Land Judges' Court; and an application should be made on the allocation of funds in that Court, for an order declaring who are the persons entitled to it. An application should then be made to the Land Commission to have the guarantee deposit registered in their names.

7. The Accountant may upon the application of any person entered upon the register as entitled to or interested in a guarantee deposit, or of his solicitor, or, by leave of the Commissioner, upon the application of any other person, issue to such person a certificate of the entry on the register.

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Certificate of
entry on
register of.

8. Any person becoming entitled to or interested in any guarantee deposit may apply to the Commissioner for a ruling to have his rights as regards such guarantee deposit entered upon the register, and the Accountant shall enter a minute of such ruling on the register.

Transmission
of interest in

As to cases in the Land Judges' Court, see Rule 6, and note thereto, *ante*.

9. Applications for the investment of guarantee deposits shall be made on notice to all parties interested therein. All such investments shall be made in the name of the Land Commission, and the expenses of and incident to such investments shall be paid or provided by the applicant.

Investment of

See as to the investment of guarantee deposits, Land Act, 1887, Sec. 10, *ante*, p. 416, and L. P. Act, 1891, Sec. 23, *ante*, p. 479.

10. Upon all applications concerning guarantee deposits standing to the credit of matters, the certificate of the entry on the register of guarantee deposits shall be produced.

Certificate of
entry on register
to be produced
on all applica-
tions.

11. The dividends on the guaranteed land stock retained for guarantee deposits and the interest or dividends on guarantee deposits otherwise invested, shall be payable immediately after the respective dates upon which the Land Commission shall receive such interest or dividends, and shall on the occasion of the first payment after investment be calculated from the date of such investment. There shall be deducted from the first payment of dividend after investment (if not otherwise provided) the expenses of and incident to the investment, and the proportion of dividend which accrued up to the date of the investment. The proportion of dividend so deducted may be either retained by the Land Commission as uninvested guarantee deposits, or invested in the same securities at their discretion.

Payment of
interest on.

12. Applications for payment to the persons entitled thereto of guarantee deposits retained in respect of advances under the Purchase of Land (Ireland) Act, 1891, or the Redemption of Rent (Ireland) Act, 1891, shall be made by letter addressed to the

Application for
payment of
guarantee
deposits in
respect of sales
under Acts of
1891 to be by
letter.

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Secretary of the Land Commission. The application shall be referred to the Accountant, and if he certifies that no part of the guarantee deposit has been actually applied towards the payment of a debt declared to be irrecoverable, it shall be laid before the Commissioner for consideration and direction.

Payment out
of proportion
of guarantee
deposits in
respect of other
sales

13. The Accountant shall, as regards each estate, report from time to time to the Commissioner how much of the advances, made otherwise than under the Purchase of Land (Ireland) Act, 1891, or the Redemption of Rent (Ireland) Act, 1891, and in respect of which guarantee deposits have been provided, are ascertained to have been repaid at the end of each decade of the annuity, and the particulars of the entry on the register as regards such guarantee deposits. The Commissioner may thereupon make such order as may be necessary for the payment out of such guarantee deposits of a sum equal to the portion of the advance so ascertained to have been repaid.

Payment of
guarantee
deposits
generally.

14. When there has been repaid on account of any advance a sum equal to the guarantee deposit, the Accountant shall report the fact to the Commissioner, together with the particulars of the entry on the register. The Commissioner may thereupon make such order as may be necessary for the payment of the guarantee deposit, or any outstanding balance thereof.

Guarantee
deposit may be
placed to
separate credit
and invested.

15. If for any reason any sum payable in respect of a guarantee deposit under Rules 13 and 14 of this Order cannot be immediately paid to the person or persons entitled thereto, the Commissioner may order such sum to be paid to such credit as he may direct, and may make such order as may be just as to the investment thereof, and as to the payment of the dividends or interest thereon pending its payment out of Court to the person or persons entitled thereto.

ORDER XXIV.

PAYMENT INTO BANK OF IRELAND UNDER SECTION 14 OF THE LAND LAW (IRELAND) ACT, 1887.

Applicant to
attend before
Examiner.

1. Before making any application under Sec. 14, Sub-Sec. 1, of the Land Law (Ireland) Act, 1887, for payment of advances into the Bank of Ireland, the applicant or his solicitor shall attend before the Examiner with the documents and other evidence upon which such application is grounded.

2. The Examiner shall thereupon ascertain that all necessary preliminaries to the making of the advances have been complied with, and that the holdings could forthwith be vested in the purchasers, or the agreements for purchase fiated, and he shall issue a certificate or report to that effect, and shall state therein if he has any reason to believe that the parties are not entitled *prima facie* to carry out the agreements for sale, and any other matter which should be brought under the notice of the Commissioner.

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Report of
Examiner

3. The application to the Commissioner shall then be made on notice to all persons who have entered general appearances or appearances requiring notice of such an application, and such other persons as the Examiner may direct, and shall be grounded upon the report of the Examiner, the originating statement, the rulings on title, if issued, and any other evidence tending to show the nature and particulars of the vendor's estate in the lands, and the charges affecting the same.

Application to
Commissioner.

4. An order for payment into the Bank of Ireland shall not be made unless the vesting orders are ready for execution, or the agreements for purchase are ready to be fiated.

No order to be
made until
vesting orders
or fiats are
ready for
execution.

ORDER XXV.

APPOINTMENT OF TRUSTEES.

I.—Trustees for the purposes of the Settled Land Acts, 1882 to 1890.

To be by
motion on
notice.

1. Applications for the appointment of trustees for the purposes of the Settled Land Acts, 1882 to 1890, shall be made by motion on notice as in Form 27, with such modifications as the circumstances of the case may require.

As to the jurisdiction of the Land Commission to appoint trustees of the settlement generally, see Land Purchase Act, 1885, Sec. 13, Land Act, 1887, Sec. 23, and Land Purchase Act, 1891, Sec. 19 (3), and notes thereto, *ante*, pp. 382-3, and 431. As to what trustees are deemed to be "trustees of the settlement," see Settled Land Act, 1882, Sec. 2, Sub-sec. 8, and Settled Land Act, 1890, Sec. 16, App., *post*, pp. 949 and 956.

If trustees of the settlement die or retire, new trustees, with similar powers can now be appointed by deed under the Trustee Act, 1893; and it is not necessary in such a case to apply to the Court. See Settled Land Act, 1890, Sec. 17, App., *post*, p. 956.

The jurisdiction of the Land Commission to appoint trustees of the settlement extends only to cases where the settlement deals with the lands which are sold

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under the Acts to the tenants, not to settlements affecting head rents, rentcharges and annuities charged upon the lands which are being redeemed under the 16th section of the Land Act, 1887. *Dames Longworth's Estate*, 26 I. L. T. & S. J. 521 (BEWLEY, J.). In such cases the Land Commission can lodge the redemption money in the Bank of Ireland, under the 20th section of the L. P. Act, 189 (ante, p. 477), until trustees are appointed by the Chancery Division of the High Court: *Dames Longworth's Estate (ubi supra)*.

Procedure to be
otherwise, as in
Chancery
Division.

2. The procedure shall otherwise be in accordance with the General Rules and Orders and practice for the time being regulating the procedure in similar applications to the Chancery Division of the High Court, in so far as such rules, orders, and practice may be applicable.

II.—*Appointment under Section 66 of the Landed Estates Court Act*

Application to be
by statement
of facts

3. Applications for the appointment of trustees under Section 6 of the Landed Estates Court Act shall be made by statement of facts as in Form 28, with such modifications as the circumstance of the case may require. The statement shall be fairly written on post paper with sufficient margin, shall be verified by the affidavit of the applicant, or, if the Commissioner so permit, by the affidavit of his solicitor, and shall be filed in the Registrar's office.

See Form 28, *post*, p. 889, and the Section of the L. E. C. Act referred to Appendix, *post*, p. 940.

Documents to
be lodged
therewith

4. Together with the statement there shall be lodged a copy of the instrument creating the trusts, and any consents, or other documents necessary to support the application. The statement and other documents shall be laid before the Commissioner for his directions.

ORDER XXVI.

PARTITION AND EXCHANGE.

Application to be
in writing.

1. An application by either landlord or tenant for a partition, exchange, or division of land, held by tenants in common, or rural or intermixed plots, under Section 11 of the Purchase of Land (Ireland) Act, 1885 (a), shall be in writing on foolscap paper with proper margin, and shall be verified by the affidavit of the applicant, and be filed in the Registrar's Office. The application shall state:—

The names and addresses of the several tenants of the land held in common or rundale or intermixed plots.

(a) See the Section referred to, *ante*, p. 381.

The Ordnance Survey name and gross acreage of such land, and the barony and county in which it is situate. Rules of
March, 1897.

If the original letting was not a joint letting, when and how the holding came to be so held. Order **XXVI**

The terms of the original letting of such land by the landlord, and the amount of the gross yearly rent payable.

The names of the several tenants paying the said rent, and the proportions in which they pay it.

2. On the lodgment of any such application the Commissioner may appoint one or more surveyor or surveyors to inspect the lands, and divide the same into convenient and separate holdings, to apportion the gross rent payable out of the entire lands on such apportioned holdings, and to state the names of the tenants of such holdings, and the apportioned rents to be thenceforth payable by them. Appointment
of surveyor.

3. The surveyor's report and scheme for partition shall be lodged in the Registrar's Office, and notice thereof shall be given to the landlord, the several tenants, and all such other persons as the Commissioner shall direct, in Form 29. Lodgment of
surveyor's
report; notice
thereof

See Form 29, *post*, p. 890.

4. If no application be made to the Commissioner within fourteen days from such notice, or within such further time as the Commissioner shall direct, to vary or amend the said report and scheme for partition, and if it shall appear expedient to the Commissioner the same shall stand confirmed and a final order for partition shall be made in accordance with such report and scheme or in accordance with any order amending the same. Confirmation of
report.

5. No final order for partition, exchange, or division shall issue until the sale which necessitated such partition, exchange, or division, as the case may be, shall have been completed. Final order not
to issue until
sale completed.

6. A draft of the order shall be prepared by the applicant, or his solicitor, and lodged with the Examiner for settlement. Draft of order
to be lodged
with Examiner.

7. The draft order, when settled by the Examiner, and approved by the Commissioner, shall be printed in such manner as the Land Commission may direct. The engrossment shall be sealed with the seal of the Land Commission, and then laid before the Commissioner for his signature. Order to be
printed and
signed by
Commissioner.

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Counterpart to
be issued to
each person
interested.

8. A counterpart of the order shall be issued to the landlord, and to each tenant entitled to a share of the lands.

ORDER XXVII.

SPECIFIC PERFORMANCE.

An application by a vendor or purchaser for a decree for specific performance shall be by motion on notice to the other party, and if such application be by the vendor, the notice of motion shall be served personally on the purchaser unless he be represented by a solicitor other than the vendor's solicitor, or unless the Commissioner shall otherwise direct.

As to the jurisdiction of the Land Commission to enforce specific performance of agreements for sale, see Land Act, 1887, Sec. 22, and notes thereto, *ante* p. 431.

ORDER XXVIII.

CHANGE OF PARTIES BY DEATH, &c.

Report of
Examiner to be
obtained when
applying to
continue
proceedings

1. A person claiming to be entitled to have the proceedings continued in his name by reason of the death of the vendor, or transmission or change of his interest, shall, before applying to the Commissioner, obtain a report from the Examiner upon his title to have the proceedings so continued in his name.

See as to the power of a tenant for life to complete a contract entered into by his predecessor in title, Settled Land Act, 1890, Sec. 6, p. 956, *post*.

Transmission
of interest of
purchasing
tenant by death
or otherwise.

2. If a purchasing tenant becomes divested of his interest in his holding by death, bankruptcy, assignment, or otherwise, after the agreement for purchase has been executed, but before the holding has been vested, or such agreement frustrated, the person claiming to be entitled to the purchasing tenant's interest in the holding, or a solicitor duly authorised on his behalf, shall attend before the Examiner to prove the title of such person, and that he is in occupation of the holding; and thereupon the Examiner may either himself take the direction of the Commissioner (such direction to be endorsed on the agreement for purchase) as to the person in whom the holding is to be vested, or he may direct a motion to be made on the subject.

An agreement for purchase does not now operate to convert the interest of the purchaser into real estate: Land Act, 1896, Sec. 32 (*ante*, p. 573).

As to the devolution of the purchaser's estate after the purchase is completed see Local Registration of Title Act, 1891, Secs. 22 and 84, App., *post*, pp. 957 and 959.

ORDER XXIX.

PERSONS UNDER DISABILITY.

1. The order appointing any person to act as guardian or next friend of a person under disability, shall be served on such guardian or next friend, and all notices and orders subsequently served upon such persons, shall be deemed to have been duly served upon the party so under disability.

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Service on guardian or next friend to be deemed good service

As to the jurisdiction of the Land Commission in case of parties being under disability, see Land Act, 1870, Secs. 59, 60, 61 (ante, pp. 204-5), incorporated by Land Act, 1881, Sec. 38 (ante, p. 327), and Land Purchase Act, 1885, Sec. 10 (ante, p. 380), which incorporates the 72nd section of the L. E. C. Act, 1858 (see App., post, p. 942).

A guardian to a minor will not be appointed by the Land Commission where the sale is by conveyance, or where the guardian would be required, not merely to carry on the proceedings, but to discharge other duties subsequently. *Corr's Estate*, 26 I. L. T. R. 139 (BEWLEY, J.).

2. When any married woman, not entitled for her separate use, joins in or consents to any application to the Land Commission, the Commissioner shall before making an order be satisfied that such married woman is aware of the nature and effect of the application, and that she freely consents thereto, and for this purpose an appointment shall be made with the solicitor for her attendance before the Commissioner, for the purpose of being examined, or the Commissioner may, at his discretion, appoint some solicitor to make such examination, who shall for that purpose be furnished with a copy of the application; and the solicitor so appointed shall certify to the Commissioner that he has made such examination, and the result thereof, and his certificate shall be verified by affidavit.

Consent of married woman

ORDER XXX.

MOTIONS AND ORDERS.

I.—Motions.

1. Applications to a Commissioner shall be made to him in person or in such manner as each Commissioner shall from time to time prescribe.

Applications to a Commissioner.

2. In the case of a motion on notice, a certificate of the appearances entered in the matter must be produced at the hearing of such motion.

Certificate of appearances to be produced at hearing.

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What notice to
be given,

3. There shall be at least two clear days between the service of a notice of motion and the day on which the same is heard, and, if the notice be served outside the municipal boundary of the city of Dublin, there shall be at least four clear days.

Ex parte
motions

4. If the application be made *ex parte*, the applicant shall, before moving the Commissioner, lodge with the Registrar a docket stating the nature of the application, and referring to the documents, or other evidence, upon which the same is grounded.

Applications to
be assigned to a
Judicial
Commissioner.

5. The following applications when made shall be assigned to a Judicial Commissioner:—

(a) In reference to requisitions on title made by an Examiner.

(b.) For appointment of trustees.

(c.) For a decree for specific performance.

(d.) In reference to the apportionment, redemption, or satisfaction of superior interests, other than applications for the payment of the redemption money or quit or crown rents, or rents or tithe-rentcharges payable to the Land Commission, or fixed annual instalments payable in lieu of tithe-rentcharge, or of land improvement or drainage charges.

(e.) By an incumbrancer, an owner of a superior interest, or other person interested to vary or discharge an order conditionally sanctioning an advance or agreement for purchase as being prejudicial to the interests of the applicant.

(f.) To continue proceedings in the name of a person claiming by reason of the death of the vendor, or transmission or change of his interest, when the Examiner's report is against the granting of the application.

(g.) Motions made by direction of an Examiner in reference to the title to a holding when a purchasing tenant become divested of his interest therein before the completion of the purchase.

Provided always that with a view to the prompt hearing of any such application, the Judicial Commissioner may at any time direct that any of such applications shall be assigned to the Commissioner before whom the proceedings in the matter are pending, or to such other Commissioner as he may appoint.

Side-bar orders.

6. The following shall be side-bar orders:—

(a.) To make a conditional order (other than an order for

attachment) absolute, when no cause has been shown, or the cause shown has been disallowed. Rules of March, 1897.

(b.) To allow cause shown and discharge conditional order when no motion has been made to disallow the cause. Orders XXX-XXXI

(c.) For an order on any person to lodge deeds.

(d.) For a writ of sequestration for disobedience to an order of the Court.

(e.) For a writ of *feri facias* to enforce payment of costs awarded by order.

(f.) For an order to the sheriff to put a purchaser from the Land Commission into possession of the lands purchased subject as is provided by Order XLVIII.

See this order, *post*, pp. 865-6.

II.—Orders.

7. Orders for payment or investment or for the sale of securities, or other rulings of the Commissioner in reference to the allocation of the fund may be entered on the allocation schedule. Orders which may be entered on the allocation schedule

8. Orders which are in the nature of directions to an officer of the Court to do, or to omit to do any act, or to act upon, or reject evidence tendered, or directions to the person having carriage of the proceedings as to the conduct thereof, shall be entered in the ruling book. Orders which may be entered in ruling book.

9. All other rulings and orders save such as are signed by a Commissioner, or such as are directed by rule to be printed, shall be entered in the order book. All others to be entered in order book.

10. All orders shall, unless otherwise directed by rule, be signed by the Registrar. To be signed by Registrar.

11. The Registrar shall, at the instance of any party interested, prepare an order in conformity with any ruling of a Commissioner entered upon the allocation schedule or ruling book. Registrar shall, if required, prepare order in conformity with any ruling.

ORDER XXXI.

CAUSE AGAINST CONDITIONAL ORDER.

1. Any person desiring to show cause against a conditional order must enter an appearance, and serve on the vendor and the person on whose application such order was obtained, or their respective solicitors, a notice of cause referring to any affidavit or other document on which he relies. Person showing cause to serve notice.

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XXXII.

Cause to be
allowed, unless
motion made to
disallow

Making con-
ditional order
absolute.

2. Unless the person at whose instance such order was obtained shall, within the time specified in the conditional order, or within four days thereafter, serve a notice of motion to make the same absolute, the person showing cause may have a rule entered in the Registrar's office, allowing his cause; and on such rule being entered he may proceed to tax his costs of resisting such conditional order.

3. If no cause be shown within the time specified, or if the cause be disallowed, the solicitor for the person who obtained the order shall attend in the Registrar's office to prove the services of the conditional order, and that no cause has been shown, or that the cause has been disallowed, and thereupon the Registrar shall, except in the case of an order for attachment, proceed to make up the absolute order.

ORDER XXXII.

EVIDENCE AND EXAMINATION OF WITNESSES.

I.—*Evidence generally.*

Evidence shall
be by affidavit,
or oral by leave
of Commissioner.

1. The evidence of witnesses shall, unless there be reason to the contrary, be by affidavit; but any witness may by leave of the Commissioner be examined orally before the Commissioner.

Office copies of
records may be
received.

2. All writs, records, pleadings, affidavits, and other documents that might be read and received in evidence in the High Court, may be read and received in evidence in the Land Commission; and office copies of all such writs and other records and documents shall be admissible in evidence to the same extent as the originals would be.

II.—*Examination of witnesses.*

Depositions of
witnesses

3. The depositions of witnesses examined orally shall be taken down in writing by the Registrar or other officer of the Court, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness; provided that the Commissioner may order any party who shall produce any witness or witnesses for examination, to provide a competent shorthand writer who shall be paid in the first instance by such party, to take down the evidence of such witness or witnesses under the direction of the Commissioner, and for the use of the Court; and the Commissioner shall make such order as he may consider just as to the cost of providing such shorthand writer; and the transcript of the notes of such shorthand writer shall be lodged with the Registrar.

and any party interested may have a copy of the same on payment of the sum of three half-pence for every seventy-two words.

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Witnesses to be subject to cross-examination.

4. Any witness examined orally shall be subject to cross-examination and re-examination; and when any party to proceedings shall have filed an affidavit, whether made by himself, or by any witness, such party, or witness, shall be subject to cross-examination and re-examination, and shall be bound to attend for the purpose of being so cross-examined, upon being served with notice to that effect two days before the time of such cross-examination if resident in Dublin or within ten miles thereof, or four days if resident elsewhere in Ireland, and upon tender to any such witness, other than the party himself, of his reasonable expenses; and such expenses shall be paid in the first instance by the person requiring such cross-examination.

5. Application to have a witness or witnesses examined by commission shall be made by motion on notice. The commission shall be in Form 30; shall be sealed with the seal of the Court, and signed by the Registrar; and shall issue on such terms or conditions as to costs or otherwise as the Commissioner may think fit; and the examination shall in all respects be subject to the regulations for the time being in force for the examination of witnesses by commissions issuing out of the High Court, as if the Land Commissioner were the Judge, and the Court of the Land Commission were the High Court.

Examination by commission.

See Form 30, *post*, p. 890.

III.—*Summonses for attendance of witnesses.*

6. Summonses for the attendance of witnesses, and for the production of documents before the Land Commission shall be in Form 31, and shall be signed by the Registrar.

Form of

See Form 31, *post*, pp. 890-1.

7. The service of a summons shall be effected by delivering a copy thereof, and at the same time producing the original. The reasonable travelling expenses of the witness must be tendered when the summons is being served.

Service of expenses

8. Any person wilfully disobeying a summons, or order for his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of Court, and may be dealt with accordingly.

Punishment for disobedience to.

And see Order XXXIV., r. 1, *post*, p. 851.

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XXXIII.

Before whom to
be sworn in
Ireland.

ORDER XXXIII.

AFFIDAVITS.

1. Affidavits, affirmations, or declarations sworn or made in Ireland, may be sworn or made before any person authorized to administer oaths for the purposes of the High Court, or before a Justice of the Peace for the county or borough in which the affidavit, affirmation, or declaration is sworn or made.

Before whom
to be sworn out
of Ireland

2. Affidavits, affirmations, or declarations may be sworn or made in England or Scotland, or the Channel Islands, or the Isle of Man, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Judge Court, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place, respectively, or before any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign country, or any British consul-general, consul vice-consul, acting consul, pro-consul, or consular agent, exercising his functions in any foreign place in that country or place, and the Commissioners and other officers of the Land Commission shall take judicial notice of the seal or signature, as the case may be, of any of the aforesaid persons.

Preparation

3. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. The affidavit shall state the description and true place of abode of the deponent, and also what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are.

Jurat.

4. The time and place of swearing the affidavit shall be stated in the jurat, and all persons authorized to take affidavits for the Land Commission, shall certify in the jurat of every affidavit taken by them that they know either the deponent himself or some person named in the jurat who certifies his knowledge of the deponent. When an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the

deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Commissioner is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

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5. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall without leave of the Commissioner, be filed, read, or made use of in any matter, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the person taking the affidavit, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the person taking it

Alterations to be
authenticated

6. The Commissioner may, on such terms as he may think fit, receive any affidavit notwithstanding any defect or irregularity in the form thereof or in the jurat, and may direct a memorandum to be made on the document that it has been so received.

Commissioner
may receive
notwithstanding
irregularity

7. No affidavit shall be sufficient if sworn before the vendor in the matter, his agent, or solicitor, or if sworn before the solicitor for the person on whose behalf the affidavit is to be used.

Not to be sworn
before the
vendor or
solicitor for
party

8. Any affidavit which would be insufficient if sworn before the solicitor for a party to the proceedings, shall be insufficient if sworn before such solicitor's partner or clerk, agent or correspondent, or the clerk or partner of such agent or correspondent.

Not to be sworn
before clerk or
agent, &c., of
solicitor for
party.

ORDER XXXIV.

SEQUESTRATION AND ATTACHMENT.

1. The Commissioner may, to enforce obedience to any order, cause a writ of attachment or sequestration to issue against any party in default.

Obedience to
order may be
enforced by
attachment or
sequestration.

I.—Sequestration.

2. Where any person is by any order directed to pay money into Court, or to do any other act within a limited time, and, after due service of such order, refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such order shall, at the expiration of the time limited for the performance thereof, be

In the case of
disobedience
to an order writ
of sequestration
may issue.

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entitled, without obtaining any order for that purpose, to issue writ of sequestration against the estate and effects of such disobedient person. Such writ shall have the same effect as a writ of sequestration in the Chancery Division of the High Court has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration heretofore been dealt with by the said Chancery Division.

Method of
obtaining
form of

3. Any person entitled to issue a writ of sequestration under the preceding rule shall, before issuing the same, apply to the Registrar to approve of one or more sequestrators, and to obtain directions as to his or their security and accounting. On a certificate from the Registrar of the approval of such person or persons the writ may be issued directed to such person or persons in Form 32, and it shall be sealed with the seal of the Land Commission and signed by the Registrar.

One sequestra-
tor shall be
named

4. One sequestrator only shall be named in the writ, unless the Commissioner shall otherwise direct.

Sequestrator to
give security

5. Every sequestrator shall enter into security by recognizance or otherwise, as the Commissioner shall direct, and the amount and nature of such security shall be directed, and the securities approved by the Registrar, upon the application mentioned in Rule 3 of this Order, or by the Commissioner. A sequestrator shall not enter upon the execution of the writ until he has obtained a memorandum signed by the Registrar, that he has duly perfected security.

Sequestrator to
account

6. Every sequestrator shall be bound to account before the Registrar, as shall be directed upon his appointment, or at any time by the Commissioner, and not less than once in every year unless the Commissioner shall otherwise direct.

See Or. 43, r. 7, R. S. C. Ir., 1891, which is almost identical in terms with this rule.

II.—Attachment.

To be applied
for on notice

7. No writ of attachment shall be issued without the leave of the Commissioner, to be applied for on notice to the party against whom the attachment is to be issued.

Form of
attachment or
committal.

8. Every writ of attachment and order of committal for contempt shall be headed "Court of the Irish Land Commission, Land Purchase Acts," and, if issued in consequence of disobedience to

order, shall be entitled in the matter in which such order was made. The writ of attachment or order of committal shall be directed to the sheriff of the county where the party to be attached or committed resides or is to be found, or to any peace officer, or to such other person as the Commissioner may direct, and shall be sealed with the seal of the Land Commission and signed by the Registrar. In the case of a committal order the order shall recite the particulars of the disobedience or other contempt occasioning its issue.

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See Or. 44, rr. 2 and 3, R. S. C. Ir., 1891, which are almost identical in terms with this rule.

ORDER XXXV.

QUESTIONS OF LAW AND APPEALS.

1. When a Commissioner desires to submit a question of law for the hearing and determination of a Judicial Commissioner, he may by ruling refer the proceedings before him to a Judicial Commission for the purpose of having the question determined, or, in a case signed by him, state the question of law he requires to have determined; and he shall give such directions as to the service of notice as he may deem necessary.

Submission of
question of law
by a Commis-
sioner

See L. P. Act, 1885, Sec. 17, *ante*, p. 886, L. P. Act, 1891, Sec. 28 (8), *ante*, p. 483.

2. An appeal from the decision of a Commissioner acting alone shall, if the appeal be on a question of law, be brought by notice of motion within fourteen days from the date of such decision. The notice shall state the name of the Commissioner whose decision is appealed against, and shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected.

Appeal on
question of law -
notice of.

As to appeals from the decision of a single Commissioner under the L. P. Acts, see L. P. Act, 1891, Sec. 29, *ante*, p. 483; and as to appeals to the Court of Appeal by way of case stated and otherwise, see Land Act, 1881, Sec. 48 (*ante*, p. 333), and L. P. Act, 1885, Sec. 22 (*ante*, p. 887). See also Land Act, 1896, Sec. 41, and notes thereto, *ante*, pp. 586-7.

3. A Judicial Commissioner may direct notice of appeal, or an application to determine a question of law, to be served on all or any parties to the proceedings, or upon any person not a party, and in the meantime he may postpone or adjourn the hearing upon such terms as may be just; and he may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties.

Judicial
Commissioner
may direct
notices to be
served

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Requisition to
have order of a
Commissioner
not made on
question of law
reconsidered
by three
Commissioners

4. A requisition to have the order of a Commissioner not made upon a question of law reconsidered by a Judicial Commissioner and two other Commissioners shall be in Form 33, and shall be lodged in the Registrar's Office within fourteen days from the date of such order. The requisition shall be laid before a Judicial Commissioner who, if he thinks it desirable that the case should be reheard, shall direct a notice to be served as provided by Rule 2 of this Order.

See Form, 33, *post*, p. 891.

Amendment of
notice of appeal

5. Any notice of appeal may be amended at any time as a Judicial Commissioner may think fit. Additional evidence may be used on the hearing of the appeal or on the re-consideration of the order of a Commissioner when an order giving liberty to do so has been made on a special application for that purpose to a Judicial Commissioner.

ORDER XXXVI.

SALE BY A LANDLORD TO A TENANT IN CONSIDERATION OF A FINE AND A RENTCHARGE.

Form of
agreement

1. An Agreement between landlord and tenant for the sale and purchase of a holding in consideration of the tenant paying a fine and engaging to pay the vendor a rentcharge, with application for an advance may be in Form 10, with the following addition after "fee-simple" in clause 1 of the agreement, viz:—"in consideration of a fine of £ , and of a perpetual yearly rentcharge £ , which the said tenant hereby engages to pay."

See form of agreement, *post*, pp. 878-880. As to the effect of the agreement on the liability of the tenant to pay rent and interest respectively, see Land Act, 1896, Sec. 35, and notes thereto, *ante*, pp. 575-576.

Agreements, if fraudulent, or if obtained in any improper manner, may be set aside, and orders sanctioning advances thereon may be rescinded. As to when and under what circumstances, this course will be taken, see notes to L. P. Act, 1885, Sec. 2, *ante*, p. 367. The jurisdiction of the Commission as to rescinding agreements, &c., is derived from the 37th Sec. of the L. E. C. Act, 1858 (pp. 93 *post*), which is incorporated by the 10th Sec. of the L. P. Act, 1885 (*ante*, p. 3

Application for
further advance
for redemption
of rentcharge.

2. An application for a further advance for the redemption of the rentcharge shall be by agreement between the owner of the rentcharge and the registered owner of the holding for the sale and purchase of the rentcharge, with application for an advance, and shall be in such form as the Land Commission may from time to time direct.

ORDER XXXVII.

PURCHASE BY A TENANT FROM THE LAND JUDGES.

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1. The application by a tenant for an advance to enable him to purchase his holding from the Land Judges shall be in Form 34, or such other form as the Land Commission may from time to time direct. The application shall be on stout writing medium paper, and endorsed with the county, title of the matter, and tenant's name, and shall be signed and verified by the tenant or by some person acting under a power of attorney from him. The application shall be prepared in accordance with the directions in that behalf annexed to the Form.

Form of
application.

See Form 34, *post*, p. 892.

2. With such application there shall be lodged a copy of the Court rental.

Rental to be
lodged with
application.

3. If a number of tenants on the same estate are purchasing, the applications should, when practicable, be all lodged together, and may be lodged by the person having carriage of the proceedings before the Land Judges.

All applications
on one estate
should be lodged
together.

ORDER XXXVIII.

PURCHASE OF ESTATES BY THE LAND COMMISSION FOR RE-SALE, AND
NEGOTIATIONS OF SALES BY THE LAND COMMISSION.

1. No application to the Land Commission to purchase an estate the subject matter of proceedings before the Land Judges for re-sale to the tenants shall be entertained unless a Land Judge shall certify that sales to the occupying tenants cannot conveniently be effected unless the Land Commission purchase such estate.

Application for
Land Commission to purchase
estate from Land
Judges not to be
entertained
without the
certificate of a
Land Judge.

2. The person making the application shall lodge in the Agreements for Purchase Office a copy of the Court rental and undertakings by the several tenants to buy their respective holdings in Form 35 (a), specifying the prices they propose to pay and the amounts of the advances they require.

Documents to
be lodged.

3. When a landlord desires to sell his estate to the Land Commission for the purpose of re-sale to the tenants, and has lodged an originating statement, he may make application to the Land Commission in Form 36 (a), and he shall satisfy the Commissioner that a competent number of the tenants are able and willing to purchase

Sales to the
Land Commission
by landlord.

(a) See Forms Nos. 85 and 36, *post*, pp. 892-3.

Rules of
March, 1897.

Orders
XXXVIII,
XXXIX

Applications by
tenants to Land
Commission to
purchase estates

their holdings, and shall obtain from a competent number of the tenants, undertakings to purchase their holdings, which may be in Form 35 (a), with such variation as may be necessary.

4. When the prescribed number of tenants on any estate desire that the Land Commission shall purchase an estate for re-sale to them, they shall lodge undertakings in Form 35 (a), with such variations as may be necessary, and they shall also lodge such sum as the Commissioner may require, to cover the expenses of negotiation and valuation.

(a) See Forms 35 and 36, *post*, pp. 892 and 893.

Negotiation of
sales by the Land
Commission

5. When either landlord or tenant desires the sale to be negotiated and completed through the medium of the Land Commission, an application for that purpose may be made in the Agreements for Purchase Office, and the Commissioner may entertain the application, provided the party applying undertakes to pay the necessary expenses of such negotiation.

ORDER XXXIX.

Matter to be
referred to
Commissioners
in rotation

SALES UNDER SECTION 40 OF THE LAND LAW (IRELAND) ACT, 1896 *

1. Where a request is issued to the Land Commission by the Land Judge, under the provisions of Section 40, Sub-section 1, of the Land Law (Ireland) Act, 1896, the matter shall be submitted to two Commissioners (other than the Judicial Commissioner) in such rotation as the Land Commission shall from time to time direct.

Inspection

2. The subject of such request shall then be referred by such two Commissioners to an Inspector (being the Resident Inspector or one of the Assistant Commissioners) to report in such form and as to such matters as the Land Commission may from time to time direct.

Reference in
case of
difference

3. In the event of Two Commissioners not agreeing as to the report to be made to the Land Judge in pursuance of such request the submission to them shall stand discharged, and thereupon the matter shall be submitted to two Commissioners (of whom one at least shall not be one of those to whom the matter was originally submitted) in such rotation as the Land Commission may from time to time direct; and such two Commissioners may act on any report

* See also Rules of 23 January, 1897, in relation to proceedings under Section 40 in the Land Judge's Court, *ante*, pp. 642-650

of an Inspector in the matter already made, or may require such further inspection or report as to them shall seem fit.

Rules of
March 1897.

4. Where owing to special circumstances it may appear desirable, the Judicial Commissioner may transfer the matter from the Commissioners to whom under Rule 1 hereof it would stand referred to such other two Commissioners as he shall think fit.

Orders
XXXIX,
XL, XLI
Power to
transfer under
special
circumstances

ORDER XL.

PRELIMINARY EXPENSES.

If it shall appear to the Commissioner necessary to make a survey or a preliminary inquiry in respect of any application, he may, before entertaining it, require the applicant to lodge such sum as he may consider sufficient to cover the reasonable expenses of such survey or inquiry; and the Commissioner may require such statements, rentals, or other documents to be furnished and verified, as he may think fit.

ORDER XLI

PROCEEDINGS UNDER THE REDEMPTION OF RENT (IRELAND) ACT, 1891.

1. An application by a lessee or grantee to redeem his rent pursuant to Section 1 of the Redemption of Rent (Ireland) Act, 1891, or, in the alternative, to be deemed a tenant of a present tenancy and to have a fair rent fixed shall be made by originating notice on foolscap paper in Form 37, which shall bear an impressed stamp of the value of one shilling, and shall be served upon the lessor or grantor in the manner provided by the rules in force for the time being in relation to proceedings under the Land Law Acts as regards the service of such notices upon landlords. When such notice shall have been served, the original thereof, with the service or services endorsed thereon, shall be lodged in the Land Commission.

Application to
be by originating
notice: service
of.

See Form 37, *post*, p. 893, and as to the service of the originating notice, Rules of Jan., 1897, Nos. 24 to 35, *ante*, pp. 722-726.

2. The lessor or grantor may within two months from the service on him of the originating notice, lodge in the Land Commission a consent to such redemption on stout writing medium paper in Form 38; and he shall transmit a notice in Form 39, of the lodgment of such consent, by registered letter, addressed to the lessee or

Consent to
redemption.

Rules of
March, 1897.
Order **XLI**

grantee at the postal address stated in the originating notice, or, if the lessee or grantee be represented by a solicitor, to such solicitor at his registered place of business.

See Forms 38 and 39, *post*, pp 894-895.

Reference to a
Commissioner

3. The originating notice and consent shall be referred to such Commissioner and in such rotation as the Land Commission may from time to time direct; provided that all originating notices and consents in which the same lessor or grantor is named shall be referred to the Commissioner to whom the first of such originating notices and consents shall have been referred; and provided that if a vendor has lodged an originating statement, all originating notices and consents in which he shall be named as lessor or grantor shall be referred to the Commissioner to whom such statement stands referred, and all subsequent proceedings shall be had in the matter commenced by the lodgment of such statement. The proceedings under every originating notice and consent shall be subject to transfer from one Commissioner to another on the fiat of the Judicial Commissioner as in the case of proceedings under an originating statement.

Proceedings
towards obtain-
ing conditional
order for
redemption

4. When the lessee or grantee receives notice of the lodgment of a consent to the redemption, he shall lodge in the Agreements for Purchase Office a map of the holding and evidence of area in accordance with the Rules as to Maps to be lodged with agreements for purchase, in so far as such Rules are applicable, and a certificate of the tenement valuation, unless these shall have been already lodged by the lessor or grantor. The lessee or grantee shall then enter the application for hearing before the Commissioner upon notice to the lessor or grantor, stating the affidavits and other documents by which he intends to support his application. If the Commissioner is of opinion that the lessee or grantee is *prima facie* entitled to have his rent redeemed, he may make a conditional order for its redemption subject to the general rules applicable to the case being complied with.

Originating
statement and
title.

5. Within one month from the date of such order the lessor or grantor shall lodge an originating statement and abstract of title unless the holding be comprised in an originating statement and abstract of title already lodged; and the lessee or grantee shall furnish the Examiner with such evidence of his title to the holdin

as may be required, and for that purpose he, or his solicitor, shall attend before the Examiner and take his directions.

Rules of March, 1887.

Orders XLI., XLII.

Application for an advance.

6. The lessee or grantee may, within fourteen days from the date of the conditional order for redemption, lodge an application for an advance of the whole or any portion of the redemption money, which application shall be on foolscap paper in Form 40; and shall be verified by the affidavit of the lessee or grantee.

See Form 40, *post*, p. 895.

7. If a notice of the filing of the originating statement has been served, the conditional order for redemption shall be notified in the same manner as is prescribed for the notification of the conditional sanction of sales. If the originating statement only comprises the lessee's or grantee's holding a notice in Form 41 shall be substituted for the notice of filing.

Notification to incumbrancers and others interested.

See Form 41, *post*, p. 896.

8. If the lessor or grantor does not lodge a consent to the redemption within the prescribed time, or if the Commissioner makes an order declaring that the lessor or grantor has caused unreasonable delay in carrying the redemption into effect, the originating notice shall be dealt with as an application by the lessee or grantee to be deemed a tenant of a present tenancy, and have a fair rent fixed; and all subsequent proceedings shall be had thereon as if the originating notice had been served by a lessee under the Land Law Acts; and the lessee or grantee shall, if the Poor Law valuation of the holding is not under £10, within twenty-one days from the expiration of the time within which the consent might have been lodged, or from the making of such order as aforesaid, serve upon the lessor or grantor the particulars of any improvements in respect of which evidence is intended to be produced, or which are intended to be relied on by the lessee or grantee as having been made by him or his predecessors in title with the dates at which the same were made, according to the best of the lessee's or grantee's knowledge or belief. The Court may, on special grounds, make an order that particulars shall be given when the valuation is under £10.

Proceedings towards fixing fair rent in event of consent not being lodged or of delay. Filing

ORDER XLII.

ENTITLING AND FILING OF DOCUMENTS.

1. All statements, notices, orders, affidavits, consents, undertakings, certificates, and other documents for the purpose of any

Certified copies.

Rules of
March, 1897.

Orders
XLII.,
XLIII.

motion or proceeding, including proceedings for redemption under the Redemption of Rent (Ireland) Act, 1891, shall, unless otherwise directed by Rule, be headed "Court of the Irish Land Commission—Land Purchase Acts," and be endorsed with the Record Number. and shall be entitled "In the Matter of the Estate of A B, a Vendor of Land," or, if the Vendor or Vendors be a trustee or trustees for sale or with power of sale, "In the Matter of the Estate of A.B. and C.D., trustees for sale (*or*, with power of sale) under the Will dated _____ of E.F. deceased (*or*, of the Estate of E F under Indenture dated _____), Vendors of Land."

2. All affidavits, consents, undertakings, and notices shall be fairly written or printed on foolscap paper, with sufficient margin, and filed in the Registrar's Office.

ORDER XLIII.

CERTIFIED COPIES AND PRODUCTION OF DOCUMENTS

Certified copies. 1. Copies of affidavits or of statements of facts made by the parties filing the same shall be compared and certified free of charge, if they are lodged along with the originals and are fairly and accurately written. Save as aforesaid, certified copies of affidavits, orders, and other documents filed or lodged in the Land Commission shall be made in the office and certified by an officer of the proper department. Such copies shall (save where otherwise provided) be charged for at the rate of three half-pence per folio of seventy-two words; provided that the minimum charge shall be 3d. Copies of agreements for purchase and of Inspectors' Reports shall be furnished at a uniform charge of 1s. each. All payments for copies shall be denoted by Land Commission stamps.

Copies of certain
documents not
to issue without
leave.

2. No certified copy shall be issued without the leave of a Commissioner of any abstract of title or document connected therewith, or of any conveyance to a tenant, or vesting order, nor shall a certified copy of an agreement for purchase between vendor and purchaser be issued without the like leave except to the vendor or purchaser or their respective solicitors.

Production of
records in other
courts

3. If any person requires the production of any deed or document in the custody of the Land Commission on the trial of any action, or the hearing of any civil bill, cause, or matter, or in any other legal

proceedings, civil or criminal, and it is necessary that an officer of the Land Commission should attend to produce the same, application should be made to a Commissioner. The Secretary, or, in his absence, the Keeper of the Records, shall arrange what officer shall attend.

Rules of
March, 1897.

Orders
XLIII,
XLIV.

ORDER XLIV.

SOLICITORS.

1. Solicitors shall attend in person on the following occasions:—

To attend in
person on cer-
tain business

(a.) On all motions before a Commissioner.

(b.) When discharging requisitions on title before an Examiner.

(c.) On the settlement and vouching of allocation schedules.

(d.) When applying to an Examiner for directions, or for a certificate, or report.

2. In any of the above cases, however, when a solicitor is unavoidably absent, he may be represented by his Dublin agent, being a registered solicitor, or by his own or his Dublin agent's registered apprentice, or competent registered clerk.

May be repre-
sented by
Dublin agent
or registered
clerk.

3. For the purposes aforesaid, any solicitor desirous of employing an apprentice or clerk for transacting business, shall sign a certificate, stating the name of such apprentice or clerk, and that he is a fit and competent person to transact such business, and undertaking to be responsible for the acts of such apprentice or clerk in the ordinary transaction of business. Such certificate shall be in Form 42, and on being produced to the Keeper of Records the same shall be entered in a book to be called "The Clerks' Registry Book," and such apprentice or clerk shall be considered as the representative of the solicitor for the purpose of the proceedings until the same shall be revoked by such solicitor; such revocation shall be entered in "The Clerks' Registry Book."

Registered
apprentice or
clerk.

See Form 42, *post*, p. 896.

Every solicitor shall be responsible to the Court for the acts of his registered apprentice or clerk in the ordinary transaction of business.

Every registered apprentice or clerk shall be bound, if called upon so to do by any officer of the Court, to produce a certificate of his registration, signed by the Keeper of Records in Form 43.

See Form 43, *post*, p. 896.

Rules of
March, 1897.

Orders
XLIV,
XLV,
XLVI.

Suspension of
solicitors.

4. Any solicitor may be suspended or prohibited from practising before the Land Commission by order of a Commissioner.

ORDER XLV.

DELAY IN CONDUCT OF PROCEEDINGS.

Duty of person
having carriage
of proceedings
to prosecute
same

1. No agreement for purchase shall be withdrawn without the leave of the Commissioner; nor shall the several proceedings therein be stayed or delayed beyond the time at which the same respectively might be taken without the sanction of the Commissioner; and it shall be the duty of the person having the carriage of any proceedings or his solicitor to prosecute the same with due diligence and effect, according to the course of the Court, and to take the Commissioner's directions upon any cause of delay which may arise.

May be
summoned to
explain delay

2. The Commissioner shall from time to time investigate the state of each matter and the proceedings therein; and if any case appears not to have been prosecuted with due diligence, the person having the carriage of the proceedings or his solicitor shall be required by notice in writing to attend before the Commissioner to explain the reason of the delay. The Commissioner may, if he think fit, transfer the carriage to some other party interested, or may dismiss the proceedings, and in either case may make such order as may seem right as to costs, and may order the transfer of all papers and documents connected with the case.

ORDER XLVI.

Costs.

Commissioner
have power to
give and with-
hold.

1. The Commissioner shall have full power and discretion as to the giving or withholding of costs and expenses, and as to the persons by whom, and the funds out of which the same shall in the first instance, or ultimately be paid, repaid, or borne, and may apportion the same amongst such parties, and in respect of interest, rents, or income, and principal, or corpus, as they shall think fit.

Expenses of
negotiating
sales.

2. When preliminary expenses have been incurred in the negotiation of the terms of sale, the Commissioner may, if he thinks fit, allow as part of the costs in the matter such sum to cover the expenses of such negotiations as he shall consider reasonable.

3. In all cases in which the Commissioner shall award costs to any party, he may by order direct payment of a sum in gross in lieu of taxed costs, and also direct by and to whom such sum in gross shall be paid.

Rules of March, 1897.

Order XLVI

Commissioner may award gross sum in lieu of taxed costs

The solicitor for the landlord cannot, in the absence of a retainer by the tenant, recover costs from him incurred in connection with the sale, even where the words are struck out of the agreement, which are directed to be struck out in case the tenant is to bear his own costs of the purchase. *Reeves v. Kelly*, 26 I. L. T. R. 92 (Q.B.D.).

4. In the absence of any agreement to the contrary between a solicitor and his client, the costs incurred in the course of proceedings in the Land Commission under the Land Purchase Acts, shall be taxed according to Part I. of the schedule of fees in the appendix hereto (a); such costs shall, unless the proceeds of the sales be paid into the High Court, be taxable by the Solicitor to the Land Commission on notice to such persons as the Examiner shall certify. The certificate of such Solicitor shall be final if not varied by the Commissioner.

Costs to be taxed in accordance with Part I. of schedule of fees, and on notice

(a) Where this schedule is not applicable costs are to be taxed according to the schedule in analogous proceedings in the Land Judge's Court, Rules of 17th May, 1901, Or. V., *post*, p. 870.

5. The costs of any proceeding which is delayed beyond the time limited therefor by any rule or order shall not be allowed on taxation without the direction of the Commissioner.

Costs of delayed proceeding not to be allowed, except by order.

6. No costs shall be allowed in respect of the service or publication of any notice, order, or other document, where the copy served or published does not correspond with the original.

If document served be inaccurate no costs to be allowed.

7. No costs of a supplemental originating statement, or of the amendment of an originating statement shall be allowed without the direction of the Commissioner.

No costs of supplemental originating statement or of an amendment to be allowed except by order.

8. The Examiner shall certify on the back of the abstract of title whether the whole, or any and what portion of the costs thereof should be allowed; and such allowance shall (unless otherwise expressed in the certificate) refer as well to the readings as to the abstract itself. The officer taxing such costs shall have regard to such certificate unless it be varied by the Commissioner. The costs of a supplemental abstract of title shall be taxed as if the additional matter had been embodied in the original abstract, unless the Examiner certifies that separate costs are to be allowed.

Costs of abstract of title to be certified for.

Rules of
March, 1897.
Order XLVI.

Costs of
affidavits, &c.,
used for title or
to vouch ser-
vices, &c

Costs of
agreements for
purchase may be
disallowed

Costs of
apportionment
of quit and
crown rent and
tithe rent-
charge

Counsel's fees

Costs of owners
of superior
interests and
incumbrancers.

Approval of
agreement on
behalf of tenant.

Costs of vesting
orders in sales
contracted
before 15th
August, 1896

9. If the costs of any affidavit or other document used for the discharge of requisitions on title, or in proof of services, publications or postings, are to be allowed on taxation, the Examiner or other officer whose duty it shall be to read such affidavit or other document shall so certify on the back thereof.

10. It shall be the duty of the Examiner when settling the draft vesting order, or certifying that the agreement for purchase may be ratified, to disallow the whole or some portion of the costs of an agreement for purchase which he considers has not been prepared with reasonable accuracy, care, and skill; and the taxing officer shall have regard to the Examiner's ruling unless the same be varied by the Commissioner

11. Except by direction of the Commissioner, no costs shall be allowed of any application for the apportionment of a quit or crown rent or inappropriate tithe-rentcharge, unless the Examiner has certified that an apportionment is necessary.

12. Counsel's fees shall not be allowed on the taxation of costs without the direction of the Commissioner.

13. Every owner of a superior interest, and every incumbrancer shall have with his demand his costs properly incurred (including the costs of proving his demand), unless the Commissioner shall otherwise direct.

14. When a purchasing tenant desires that his agreement for purchase shall be approved of by a solicitor on his behalf, such solicitor shall be entitled to charge the tenant for such approval including all attendances and perusals incident thereto, a fee of 10s. 6d. where the purchase money shall not exceed £500, and a fee of £1 1s. where the purchase money exceeds £500.

15. The costs of vesting orders in proceedings to which the provisions of Part III. of the Land Law (Ireland) Act, 1896 (as to vesting order do not apply and in which more than one holding shall be vested by a single order shall be taxed in accordance with Part II. of the said schedule of fees, and it shall be the duty of the Examiner to disallow the whole, or some part of the costs of a vesting order the draft of which shall not have been prepared with reasonable care and skill. The taxing officer shall have regard to any ruling or certificate of an Examiner as to costs endorsed up

a draft vesting order, unless the same shall have been varied by the Commissioner.

Rules of
March, 1897

Orders
XLVI.-
XLVIII.

If in any matter, by reason of the vendor or his solicitor not having exercised due diligence in the collection of interest on purchase money, or conduct of the proceedings, more vesting orders are lodged than would otherwise have been necessary, the costs of such additional vesting orders shall be taxed as if the holdings had been included in the first vesting order made in the matter; provided that if the delay shall have been caused by the default of the vendor, the solicitor shall be entitled to be paid the difference between the reduced costs and the full costs by the vendor, or out of any portion of the proceeds of the sales payable to him. It shall be the duty of the Examiner to certify on the drafts of such additional vesting orders whether the full costs are to be allowed or not, and whether any costs are to be chargeable against the vendor personally.

ORDER XLVII.

PROCEEDINGS FOR RECOVERY OF COSTS.

1. In every case in which the Court shall award costs to be paid by any person, the person to whom such costs shall have been awarded or his solicitor may on application to the Registrar, obtain a writ of *feri facias* to enforce payment of such costs in Form 44.

Fy Fa may
issue

See Form 44, *post*, p. 897.

2. The person so applying must produce to the Registrar the order awarding the costs, the certificate of their taxation unless they shall have been measured by the Court, and a certificate by the solicitor for the applicant or by the applicant that the costs have been demanded and have not been paid.

Documents to
be produced on
application.

3. A sum of ten shillings and sixpence may be added to such costs for the costs of and incident to the issue of the writ.

Costs of the
writ.

ORDER XLVIII.

ORDER TO SHERIFF TO PUT PURCHASER INTO POSSESSION.

1. When a holding is sold by or at the suit of the Land Commission, the purchaser may at any time within one month after the execution of his conveyance or vesting order obtain by side-bar

Side-bar order
for possession.

Rules of
March, 1897.
Orders
XLVIII.-L.

motion an order for the sheriff to put him in possession of such lands or any part thereof upon production to the Registrar of an affidavit in Form 45. A purchaser requiring an order for possession after the expiration of the said period must apply to the Commissioner for such order. The order may be in Form 46.

See Forms 45 and 46, *post*, pp. 897-898.

Sec 16 of the L. P. Act, 1885, enabled such an order to be made by the Supreme Court or County Court of the county in which the holding was situate. This jurisdiction was conferred on the Land Commission by the 21st section of the Land Act, 1887. See these sections, *ante*, pp. 384 and 430.

The purchaser is liable to pay the instalments of the annuity which fall due after the execution of the Conveyance to him, even though he may not have obtained possession of the holding, and he cannot recover damages against the Land Commission by reason of the inability of the sheriff to execute the writ of possession issued under this Rule. *Irish Land Commission v. Maquay*, 28 L. R. Ir. 342, MacC. 71 (Ex. D.).

An order may now be made by the High Court putting the Land Commission into possession, before they exercise their power of sale for non-payment of sums due to them. See L. P. Act, 1891, Sec 25, *ante*, p. 480, and Rules of Supreme Court of June, 1892, *ante*, pp 612-613.

Order for
possession may
be made before
conveyance or
vesting order.

2. The Commissioner may, if he think fit, make an order for possession before the execution of the conveyance or vesting order to the purchaser, or notwithstanding that the purchaser shall not have made any demand of possession.

ORDER XLIX.

APPLICATION THAT ANNUITY BE NOT REDUCED AT END OF DECADE.

Application that
annuity be not
reduced

The application by the proprietor of a holding charged with an annuity that the annuity payable during the ensuing decade shall not be reduced, shall be in writing addressed to the Secretary of the Land Commission, and shall be accompanied by the receipt for the last payment of the annuity. Such application shall be made not less than one month prior to the end of the current decade.

ORDER L.

RETENTION OF LAND CERTIFICATE BY LAND COMMISSION.

Lodgment of
application for
advance to imply
consent to reten-
tion of land
certificate.

1. The lodgment with the Land Commission of an application for an advance shall imply a consent by the applicant that the land certificate issued on the first registration of the purchaser's ownership of the holding, and any further or other land certificate issued

in substitution therefor on transfer or transmission of the interest in the holding, shall be delivered by the Registering Authority to the Land Commission and retained by them so long as any money remains due in respect of the purchase annuity.

**Rules of
March, 1897**
**Orders
L.-LI.**

2. A copy of any land certificate so retained shall be issued by the Land Commission free of charge to the registered owner of the holding.

Copy to be
issued to owner.

(a) The sections of the Local Registration of Title Act, 1891, dealing specially with the registration of land sold under the Land Purchase Acts, will be found in the Appendix at pp. 956 962, *post*

ORDER LI

LETTERS ON OFFICIAL BUSINESS.

All letters on official business other than letters to the Solicitor of the Commission, shall be addressed to the Secretary, Irish Land Commission, Dublin, and not to a Commissioner or other officer of the Land Commission

Letters on
official business.

RULE OF 29TH OF APRIL, 1899.

It is this day ordered that Rule 1 of Order XVIII. of the Rules under the Land Purchase Acts, dated 16th March, 1897, shall be read and construed as if the words "two months" were substituted for the words "fourteen days" in the said Rule

RULE OF 19TH OF MARCH, 1900

It is this day ordered that, notwithstanding the provision of Rule 2, Order XIX., of the Rules dated 16th March, 1897, the particulars prescribed by Rule 1 of the same Order may be transmitted to the Registrar of Titles in the form of a copy of the Vesting Order, certified by the Examiner as "a true copy transmitted to the Registrar of Titles for the purpose of Registration," and the provision of Rule 3 of the same Order shall apply as if such copy were the Schedule therein referred to.

**Rules of 17th
May, 1901.**

Orders I.-II

RULES OF 17TH OF MAY, 1901.

**SUPPLEMENTAL TO AND AMENDING THE RULES DATED 16TH MARCH,
1897, 29TH APRIL, 1899, AND 19TH MARCH, 1900.**

It is this day ordered that the following General Rules and Orders shall, from and after this date, and until further order, take effect and be in force in the Irish Land Commission in relation to proceedings under and in pursuance of the Land Purchase Acts as defined by the Land Law (Ireland) Act, 1896.

ORDER I.

INSPECTION OF HOLDING.

Rule 1 of Order XIV. of the Rules dated 16th March, 1897, shall be amended by adding thereto the following proviso, viz. :—

Provided that if the Commissioner be otherwise satisfied as to the security for the advance, and that the purchaser is in the exclusive occupation of the holding, he may either dispense with the inspection, or limit the reference as he shall think fit.

ORDER II.

APPORTIONMENT AND REDEMPTION OF SUPERIOR INTERESTS.

Statement of
facts may be
dispensed with

1. Where the application for the apportionment of improprietary interests, such as tithes, rents, quit or Crown rents, rents, fees, duties, service charges, or annuities, is grounded on a consent or consents embodying the information necessary for making up the order, the Commissioner, if satisfied that the consent or consents have been signed by or on behalf of all necessary parties, may, if he think fit, dispense with the lodging of a statement of facts, and may thereupon make a final order for apportionment in the terms of such consent or consents.

Application for
redemption to
be made at
hearing of final
schedule of
incumbrances.

2. Applications for orders for the redemption of all superior interests affecting the land sold shall, if possible, be made at the hearing of the final schedule of incumbrances.

ORDER III.

Rules of 17th
May, 1901.

ALLOCATION.

Order III

Proceeds of Sales by Vendors to Tenants not paid into the High Court.

1. As soon as the registry of deeds and judgment searches shall have been made, and all acts appearing on them explained, a draft final schedule of incumbrances shall, unless dispensed with as hereinafter provided, be brought in by the vendor or his solicitor for settlement by the Examiner. Such schedule shall show all charges which, having regard to the abstract of title, the result of the searches or otherwise, shall appear to affect the lands, or to be a lien upon or payable out of the purchase money, and shall be prepared in accordance with directions to be issued by the Judicial Commissioner.

Final schedule of incumbrances.

2. The schedule of incumbrances, when settled, shall be listed for hearing before the Judicial Commissioner in Court, and all subsequent proceedings in relation to the allocation of the fund shall be conducted before him.

Judicial Commissioner to rule schedule of incumbrances and allocate.

3. Subject to any direction that may be given by the Judicial Commissioner the lodgment of a schedule of incumbrances shall be dispensed with where the Examiner shall certify such schedule to be unnecessary.

Schedule of incumbrances dispensed with in certain cases.

Contemporaneously with the filing of the schedule or incumbrances a final notice to claimants shall be prepared by the vendor or his solicitor and settled by the Examiner; it shall follow a form to be prescribed by the Judicial Commissioner, with such additions as the nature of the case may require, and shall be in every case served on the following classes of person unless otherwise directed:—

Final notice to claimants

- a. All persons named as claimants on the schedule.
- b. All persons who have lodged deeds subject to lien.
- c. All persons who have entered general appearances in the matter, or special appearances requiring notice of the lodgment of the schedule.

It shall also be served on such other persons and shall be published in such manner as may be directed.

5. Any person may file an objection to the schedule of incumbrances within the time specified in the notice, which objection shall state the facts and documents relied on in support thereof, and shall be verified by the affidavit of the objector, or, if the Judicial

Objections to schedule of incumbrances.

Rules of 17th
May, 1901.
—
Orders
III - V
—

Commissioner allows, of his solicitor, or, in special cases, of such person as may be allowed. Notice of every objection must be served at the time of the filing thereof on the vendor or his solicitor, and on the persons affected thereby; and on the hearing of the schedule such objections shall be heard and disposed of.

Vouching
services of
final notice
to claimants

6. Not less than two days before the day appointed for the hearing of the schedule, the vendor or his solicitor shall attend at the Examiners' office for the purpose of vouching the services and publications of the final notice to claimants, and shall produce a certificate of any objections filed, and the receipt of the Keeper of Records for the lodgment of registry of deeds and judgment searches made in the matter.

Rulings on
schedule of
incumbrances

7. The rulings of the Judicial Commissioner made on the hearing of the schedule of incumbrances may be entered on the schedule in a column reserved for that purpose, but the Judicial Commissioner shall, at the instance of any party interested, cause to be prepared an order in conformity with any such ruling, which shall be entered in the "Order Book." The schedule so ruled shall not be taken out of the Office without permission of a Commissioner.

8. Rule 1 of Order XXI. of the Rules, dated 16th March, 1897, relating to the preparation of allocation schedules, shall apply only to cases in which the lodgment of a final schedule of incumbrances is dispensed with.

ORDER IV.

ABSTRACT OF TITLE.

So much of the Directions as the preparation of Abstracts of Title in the Appendix to the Rules dated 16th March, 1897, as provides that an extract from the patent under which the lands are held shall be given is hereby rescinded.

ORDER V.

Costs.

The costs of any proceeding under these Rules to which the schedule of fees in the Appendix to the Rules, dated 16th March, 1897, is not applicable shall be taxed according to the schedule of fees now in force in relation to the same or analogous proceedings before the Land Judges.

FORMS UNDER LAND PURCHASE ACTS.

Rules of
March, 1897.

FORM 1.
ORIGINATING STATEMENT.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.
Record No. .

In the matter of the Estate of *A.B.*, a Vendor of Land.
The statement of the said *A.B.*, of in the County of
SHOWETH:

1. That the said *A.B.* is owner of the lands described in the First Schedule hereto, which lands are held by the tenure therein stated, and that he is now and has been in possession of and in receipt of the rents and profits of the said lands since the year 18 .

[If there be more Vendors than one their respective estates and interests must be specified.]

Variation where the Vendor is Tenant for life.

[1. That the said *A.B.* is owner as tenant for life of the lands described in the First Schedule hereto, which lands are held by the tenure therein stated, and that he is now and has been in possession of and in receipt of the rents and profits of the said lands since the year 18 .

That of is entitled to the next estate in the said lands in remainder expectant upon the determination of the said life estate.

That of and of are Trustees with power of sale of the said lands under the (Settlement or Will) dated the day of 18 (*Here describe instrument.*)

(If there be no power of sale, and the Trustees were appointed for the purposes of the Settled Land Acts, 1882 to 1890, state so.)

Variation where the Vendors are Trustees for Sale.

1. That the said *A.B.* and *C.D.* are owners as trustees for sale of the lands described in the First Schedule hereto, which lands are held by the tenure therein stated, and that of is now and has been in possession of and in receipt of the rents and profits of the said lands since the year 18 , and that the persons beneficially entitled to the proceeds of the sale thereof are [*Here state names and addresses, and as far as possible the respective shares of the parties.*]

Variation where the Vendors are Trustees with power of Sale.

[1. That the said *A.B.* and *C.D.* are trustees with a power of sale of the lands described in the First Schedule hereto with the consent in writing of *E.F.* of in the County of , which lands are held by the tenure therein stated. That the said *E.F.* is owner as tenant for life (*or otherwise*) of the said lands, and has been in possession of and in receipt of the rents and profits of the said lands since the year 18 . That of is entitled to the next estate in the said lands in remainder expectant upon the determination of the said life estate.]

Rules of
March, 1897.

Variation where the Vendor is a Mortgagee in possession with power of Sale.

[1. That the said *A.B.* is mortgagee in possession with power of sale of the lands described in the First Schedule hereto under an Indenture of Mortgage, dated the day of 18 , from *C.D.* to the said *A.B.*, which lands are held by the tenure in the said Schedule stated. That the said *A.B.* entered into possession of the said lands as mortgagee on the day of 18 , and has so continued to the present time. That *E.F.*, of in the County of , is entitled to the equity of redemption in the said lands under the said Indenture of mortgage.]

2. That the said *A.B.* became entitled as such owner as aforesaid under the dated the day of 18 . [*Here state when and under what instrument or how he became entitled; a copy of the instrument must be lodged if required.*].

3. That the said *A.B.* has set forth in the said First Schedule the particulars of all superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896 [save such rentcharges and annuities as are incumbrances on the lands and are set forth in the Second Schedule hereto], which he knows, or believes, to affect the said lands, and, so far as the same are known to him, the dates of, and parties to the instruments (if any) creating such superior interests, and the names and addresses of the persons entitled thereto.

Variation if there are no Superior Interests.

[3. That there are no superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896, affecting the said lands.]

4. That all the charges and incumbrances [other than the charges hereinbefore referred to] affecting the said lands are fully set forth in the Second Schedule hereto.

Variation if the Lands be Unincumbered.

[4. That there are no charges or incumbrances (other than the charges hereinbefore referred to) affecting the said lands.]

5. That there are not any proceedings pending in any Court of Justice in relation to the said lands or any part thereof or to the receipt of the rents and profits thereof, and that no person interested therein is an infant, idiot, lunatic or married woman—save [*Here state the names of persons (if any) excepted, and the names and addresses of, as the case may be, the Guardian of Infant, Committee of lunatic or husband of married woman.*]

6. That the said *A.B.* contemplates selling the said lands or some parts thereof under the Land Purchase Acts, in fee-simple, freed and discharged from all superior interests and incumbrances—save [*Here insert the particulars of any superior interests which it is intended the sale shall be made subject to*] and requires the title to the residue of the said lands to be investigated for purposes of registration under the "Local Registration of Title (Ireland) Act, 1891."

To be inserted when vendor desires interest under agreements to be paid to agent

7. That *C.D.* of is the land agent of *A.B.* and in receipt of the rents and profits of the said lands on his behalf, and the said *A.B.* is desirous that any interest payable under Section 35, Sub-section (2), of the Land Law (Ireland) Act 1896, shall be paid to the said *C.D.*

8. And the said *A.B.* desires that this statement shall be received by the Irish Land Commission as the basis for carrying out the said intended sales, and that he may have such further aid and relief incidental to such sales as the nature of the case may require, according to the judgment of the Court.

Signature of Vendor,

FIRST SCHEDULE referred to in the foregoing Statement.

Rules of
March 1897.

Denominations (Ordinance Survey Names), Barony and County	Quantity of Land, Statute Measure, in each denomination	Total number of Tenants on each denomination	Total of Rents payable by Tenants on each denomination	Tenement Valuation of each denomination	Tenure by which the lands are held and particulars of Superior Interests (viz., any rent, fees, duties, or ser- vices, payable or to be tendered in respect of the lands, and any estates, exceptions, reservations, covenants, conditions, or agreements contained in any Fee-farm Grant, or other Con- veyance in Fee, or Lease under which the lands are held, and any reversion or estate expectant on the deter- mination of such lease, or of any term of years for which the lands are held), and dates of and parties to the in- struments creating such Superior Interests, and names and addresses of the persons entitled thereto	Observations

Note.—The 2nd, 3rd, 4th, and 5th columns must be accurately totted.

Signature of Vendor,

If the root of title to any denomination is a Conveyance or Declaration of Title by the Incumbered Estates Court, Landed Estates Court, or Land Judges' Court, the date of such Conveyance or Declaration of Title should be given in the observation column. If the lands are not held in fee simple, the date and particulars of the Grant or Lease under which they are held should be given. If any denomination cannot be sold under the Land Purchase Acts by reason of the vendor not being the immediate landlord of the occupying tenants, it is desirable that there should be a statement in the observation column to that effect, and to the effect that the lands in question are excluded from the proceedings; otherwise they will be included in the public notices.

SECOND SCHEDULE referred to in the foregoing Statement.

Date of Incumbrance	Name and Address of Incumbrancer	Particulars of Incumbrance	Sum due for Principal	Arrears of Interest or Annuity to last sale day	Special circumstances (if any) relating to each Incumbrance
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Signature of Vendor,

This Schedule should state concisely the manner in which the charge was created, whether by will, settlement, mortgage, judgment, or otherwise, and by whom. If the Incumbrances have been consolidated this should be stated, and any special circumstances, such, for example, as the terms on which an Incumbrance may be paid off or an annuity redeemed, or any exemption of a portion of the lands from the whole or any portion of the Incumbrance, or the liability of any other property or of any person to pay any Incumbrance, whether in exoneration of the lands or otherwise. If there are Incumbrances on the life estate they should be stated separately, thus:—1st part, Incumbrances on the Fee; 2nd part, Incumbrances on the Life Estate.

Affidavit.

I, A.B., the Vendor, make Oath and say:

That I have read the foregoing Statement and the Schedules annexed thereto, and I say that the said Statement and Schedules are true and correct in every particular to the best of my knowledge, information, and belief; and I further

Rules of say that there is not any person to my knowledge or belief who has or claims
 March, 1897. any estate, right, title, or interest in the said lands or any part thereof save as
 in the said statement is set forth.

Sworn, &c.

FORM 2.

NOTICE OF THE FILING OF AN ORIGINATING STATEMENT.

[*Heading and Title as before.*]

SIR,—Take notice that on the day of 189 , an Originating Statement was filed on behalf of the said Vendor affecting lands in the Barony of and County of , which it is contemplated selling under the Land Purchase Acts in fee-simple, freed and discharged from all superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896—save [*Here insert the particulars of any superior interests which it is intended the sale shall be made subject to*] and from all other charges and incumbrances and that your name appears in such statement as entitled to [*Here state the nature of the superior interest, charge, incumbrance, or other estate or interest to which the person is entitled*] and that your postal address is stated to be

to which address will be sent, as long as the Commission shall consider it necessary for the due protection of your rights, a notification of the conditional sanction of all sales of the said lands to the tenants, and such other notices in reference thereto as the Commissioner may direct. And further take notice that if no application to the contrary be made by you, by motion to the Commissioner upon notice to me, within fourteen days from the date of such notification, the sales will be completed in due course without further notice to you.

[*To be signed by the Solicitor for the Vendor*]

N.B.—Should your name or address be incorrectly stated above, you should fill up the annexed form and transmit it at once to the Land Commission. Should you desire the notification to be sent to a solicitor on your behalf, or that you should have notice of all further proceedings, you should instruct your solicitor to enter an appearance for you, and have the notifications sent to him

FORM 3.

GENERAL NOTICE TO CLAIMANTS.

[*Heading and Title as before.*]

Whereas an Originating Statement has, on the day of 189 , been filed affecting the lands of containing statute measure or thereabouts, situate in the Barony of and County

of , Let All Persons Take Notice that the said Vendor contemplates selling the said lands or some part thereof under the Land Purchase Act and that such sale will be made in fee simple freed from and discharged from all superior interests, as defined by Section 31 of the Land Law (Ireland) Act, 1896—save [*Here insert the particulars of any superior interests which it is intended the sale shall be made subject to*], and from all other charges and incumbrances. And Let all Persons having claims on the said lands Take Notice that they must enter appearances in the said matter for the purpose of being served with notice of the proceedings.

[*To be signed by the Examiner and Solicitor for the Vendor.*]

FORM 4.

NOTICE AND REQUISITION TO QUIT RENT OFFICE.

Rules of
March, 1897

[Heading and Title as before.]

Take notice, that an Originating Statement has been this day filed affecting the lands specified in the Schedule hereto, and that sales of such lands may be carried into effect by vesting order and made discharged from all superior interests as defined by Sec. 31 of the Land Law (Ireland) Act, 1896. I have to request that you will be good enough to state, for the information of the Court, on the duplicate sent herewith, whether the particulars of the rents payable to Her Majesty in respect of such lands are correctly specified in the said Schedule, and return the same to the Registrar at your earliest convenience.

[To be signed by the Solicitor for the Vendor.]

SCHEDULE referred to in the foregoing Notice.

Denominations (Ordnance Survey names), Barony and County	Area Statute Measure	No of Ordnance Sheet on which shown	Quit or Crown Rent paid	Name of Original Crown Patentee, and date of Patent	Tenure by which Lands are held by Vendor	Name of person in receipt of Rent Rent, if any be payable	Date of Conveyance or Declaration of Title (if any) by Incumberd Estates, Landed Estates, or Land Judges' Courts, name of Grantees and title of matter in which such Conveyance or Declara- tion was made
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NOTE.—All the columns of the Schedule must be filled in, and should correspond with the Originating Statement in so far as the particulars required are therein stated. If the particulars to be specified in the 5th column are not known the words "not known" should be inserted therein. If there be no head rent payable, or if the lands have not been the subject of a conveyance or declaration of title by the Incumbered Estates, Landed Estates, or Land Judges' Court, the word "none" should be inserted in the 7th and 8th columns respectively.

FORM 5.

NOTICE AND REQUISITION TO BOARD OF PUBLIC WORKS.

[Heading and Title as before.]

Take notice, that an Originating Statement has been this day filed affecting the lands specified in the schedule hereto, and that sales of such lands may be made discharged from all superior interests, as defined by Section 31 of the Land Law (Ireland) Act, 1896.

I have to request that you will be good enough to state, for the information of the Court, whether the lands are situate within a drainage district, and also the particulars of such charges (if any) as affect the said lands under any of the following Acts, viz:—

Land Improvement	-	-	-	10 Victoria, c. 33, and Acts amending the same.
Arterial Drainage	-	-	-	5 and 6 Victoria, c. 89, and Acts amending the same.
Piers and Harbours	-	-	-	9 and 10 Victoria, c. 3, and Act amending the same.
Relief of Distress	-	-	-	42 Victoria c. 4.
Land Law (Ireland) Act, 1881)	-	-	-	44 and 45 Victoria, c. 49, sections 19 and 31

Rules of March, 1897. In the event of any portion of the lands being subject to a charge under any of the said Acts, you are requested to state in the observation column of the said Schedule if your Board requires notice of the conditional sanction of the advances or agreements for purchase in respect of the lands so charged.

[To be signed by the Solicitor for the Vendor.]

SCHEDULE referred to in the foregoing Requisition.

Townlands, Barony and County (Ordnance Survey Names)	Area Statute Measure	Tenure by which the lands are held by the Vendor	Date of instrument creating charge	Nature of instrument	Act under which charge was made	Amount of Loan	Half-yearly Rent-charge	Date of Expiry	Name of person to whom loan was made, and observer
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N.B.—The vendor or his solicitor must fill up the first three columns, and responsible for their accuracy. If part only of any townland be included in the originating statement, the words "part of" must be inserted before the name of such townland in the above schedule.

FORM 6.

REQUISITION AS TO TITHES RENTCHARGE.

[Heading and Title as before.]

An Originating Statement having been filed this day affecting the lands described in the Schedule hereto, the Superintendent of the Church Property and Collection Department will please state the particulars of the Tithe Rent-charge payable in respect of the said lands.

[To be signed by the Solicitor for the Vendor.]

To be filled in by Solicitor
Barony of
County of

To be filled in by Church Property and Collection Department

Denominations (Ordnance Survey names only)	Area	Tenure of Vendor	Annual Ecclesiastical Tithe Rent-charge	Fixed Annual Instalments in lieu of Tithe Rentcharge	Annual Improprate Tithe Rent-charge	Names of Lay Improprators as stated in Applotment Book	Date of Certificates of Applotment	Average Amount of Poor Rate for last Five Years	Observations
	A R P		£ s. d.	£ s. d.	£ s. d.				

N.B.—If the Townlands be numerous they should be grouped according to Parishes in which they are situate.

FORM 7.

CERTIFICATE FOR REGISTERING A LIS PENDENS.

Rules of
March, 1897.

To the Registrar of Judgments. (Under 7 & 8 Vic., c. 90.)

SIR,—The following Memorandum or Minute contains the particulars of a Lis Pendens in the Court of the Irish Land Commission, which I require to be registered pursuant to the Statute.

Name of Solicitor
with the name of the
party for whom he is
concerned.

Name of the person whose estate is intended to be affected thereby	Usual or last known place of abode of such person	Title, trade, or profession of such person

In the Court of the Irish Land Commission.
Land Purchase Acts.

Title of the Matter.

Record No.

In the Matter of the Estate of

Vendor of Land.

Date of filing Original Statement, the

day of

, 189

I certify that the Lis Pendens described in the above memorandum or minute is now in existence.

[To be dated and signed by the Registrar.]

FORM 8.

GENERAL CERTIFICATE OF APPEARANCES.

[Heading and Title of Matter.]

Originating Statement filed

day of

189

Names of Persons appearing	Address for service, or name of Solicitor and registered place of business	Nature of Appearance; <i>i.e.</i> "General with notice of sanction of Sales," "General without notice of sanction of Sales," or "Special for the purpose of, &c."

I certify that the above is a correct abstract of all the Appearances which have been entered in this Matter, being [State the number] appearances in all.

Rules of
March, 1897.

FORM 9.
CERTIFICATE OF THE ENTRY OF AN APPEARANCE.
[Heading and Title of Matter.]

Name of Person appearing	Address for service, or name of Solicitor and registered place of business	Nature of Appearance, <i>i.e.</i> , "General with notice of sanction of Sales," "General without notice of sanction of Sale," or "Special for the purpose of, &c."
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I certify that the above is a correct abstract of an Appearance which has been entered in this Matter.

FORM 10.
AGREEMENT FOR SALE BETWEEN VENDOR AND TENANT.
COURT OF THE IRISH LAND COMMISSION.

An Agreement made the _____ day of _____ 189 , between _____ of _____ the Vendor of the holding described in the first part of the Schedule hereto, and _____ of _____ the Tenant in occupation of the said holding.

1. In case the Irish Land Commission shall advance the sum of £ _____ Guaranteed Land Stock to the said Tenant for the purchase of the said holding the said Vendor will sell and the said Tenant will purchase the same in fee simple, at the price of £ _____ which sum is to include all expenses incidental to the purchase.

2. The balance of the purchase money is to be paid as follows —

By a Cash payment by the Tenant of £ _____

By a Mortgage bearing £ _____ per cent. Interest, for £ _____

3. The Interest on the purchase money payable to the Land Commission pursuant to Sec. 35, Sub-sec. 2, of the Land Law (Ireland) Act, 1896, shall be at the rate of £ [Here insert the rate of interest agreed upon] per cent. per annum up to the date of the advance, and at the rate of £3 per cent. per annum from the date of the advance until the day from which the purchase annuity begins.

4. The Sale shall be carried out by means of a Vesting Order.

5. The Lodgment of this agreement with the Irish Land Commission is to be deemed an application by the said Tenant for an advance pursuant to the Land Purchase Acts, to be repaid as is by the said Acts provided.

SCHEDULE.

County	Barony	Electoral Division			
Reference to Map	Ordinance Survey names of Townlands (each on a separate line)	Area Statute Measure, of the portion of each Townland to be sold	Tenement Valuation	Rent paid by Tenant	Tenure of Tenant and particulars of fixing of rent if a Judicial one. (See directions endorsed as to the filling in of this column)
			£ s d.	£ s d.	
			First Part—Description of Holding		
			Second Part.—Additional land sold under the "Purchase of Land (Ireland) Amendment Act, 1889."		
			N.B.—These lands must not exceed 10 acres statute measure in area, unless the tenement valuation be £10 or under. If the lands are not separately valued the approximate valuation should be given.		

[Signatures of Vendor and Purchaser.]

*Affidavit.*Rules of
March, 1897.I,
follows.—

the before-named tenant, make Oath and say, as

1. That the particulars stated in the foregoing Schedule are true, to the best of my knowledge and belief.

2. I reside on and have been in the occupation of the said holding, and paying the rent therefor since the year 18 , and I hold the same as Tenant, as in the said Schedule is stated, and the said [Fee-farm Grant, Lease, or Agreement as the case may be] is in my [or if not, state in whose possession].

3. There is not any person in occupation of the said holding as Tenant or otherwise save as mentioned in the following Schedule —

Names of the Persons in occupation as under-tenants or otherwise	Area in Statute Measure	Rent (if any) payable by such occupiers	When payable	Tenure or nature of occupancy
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4. There is not any charge or incumbrance affecting my interest in the said holding save those specified in the following Schedule.—

Date	Name and Address of Incumbrancer	Particulars of Incumbrance, Mortgage, or otherwise	Principal Sum due
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SCHEDULE containing particulars of Mortgages, Charges created by deposit of Lease or otherwise, or Charges in favour of the Commissioners of Public Works in Ireland affecting the Tenant's interest in the Holding.

5. I have not obtained from or (except by this Agreement) applied to the Irish Land Commission for an advance of any sum for the purchase of any land.

[If the Tenant has previously applied for any advance write "save an advance of £ , do.," giving the particulars.]

DIRECTIONS AS TO THE PREPARATION OF THE AGREEMENT AND AFFIDAVIT.

The Agreement and Affidavit must be neatly and accurately prepared, without any blanks, and all clauses not applicable to the case must be struck out, otherwise the Agreement cannot be received.

When females are parties to the Agreement they must be described either as "spinster," "widow," or "wife of A.B."

The price and the advance must be in pounds only.

When it is intended that the Tenant shall pay the stamp duty on his Vesting Order the words "which sum is to include all expenses incidental to the purchase" should be struck out.

Clause 1. When additional land is being sold under the "Purchase of Land (Ireland) Amendment Act, 1889," insert after "in fee simple," "together with the additional land specified in the second part of the said schedule." Here also insert any rights of grazing, or turbary, or other rights which are appurtenant to the holding, and which are exercised over lands not included therein, e.g., "together with such right of grazing and cutting turf as has heretofore been exercised by the said Tenant upon the bog on the lands of *Blackacre*, in the possession of the said Vendor [or if the bog be tenanted] in the occupation of A.B.," and containing statute measures or thereabouts. Here also insert any exceptions or reservations coming within Sec. 31, Sub-sec. 2, of the Land Law (Ireland) Act, 1896, or any superior interests which the Vendor and Purchaser propose that the sale shall be subject to.

Rules of
March, 1897.

If the advance is of the whole purchase-money strike out Clause 2. In filing up the column headed "Tenure of Tenant," state whether the Tenant holds under Fee-farm Grant (giving date and parties), under Lease or agreement in writing (giving date, parties, and term) under a tenancy from year to year or how otherwise. If the rent be a judicial one, state on what date and how was fixed.

The Agreement must be signed by both Vendor and Tenant, or by some person acting under power of Attorney. An Attorney should sign thus, "A.B. by C.D. acting under power of Attorney." Trustees, or limited owners selling under the provisions of the Settled Land Acts, 1882 to 1890, must themselves sign the agreement.

The person taking the affidavit should not be the Vendor, his agent, or solicitor or the Tenant's solicitor

FORM 11.

NOTICE TO LODGE DEEDS, &c.

[Heading and Title of Matter.]

You are hereby required, within ten days from the service of this notice upon you, to inform me in writing, whether there are any, and if so, what deed, leases, counterparts of leases, maps, surveys, rentals, statements of title, or other documents in your custody or power, relating to the estate the subject of the Originating Statement filed in this matter, or to the charges thereon, namely—

[Insert particulars.]

And you are further required, within the same period, to lodge all such documents in this Court.

And you are hereby apprised, that if, having in your custody or power a such documents, you refuse or neglect to comply with this notice, and in consequence thereof an application to the Commissioner may become necessary, this notice will be used to charge you with the costs of such application.

[To be signed by the Solicitor for the Vendor.]

FORM 12.

AFFIDAVIT VERIFYING ABSTRACT OF TITLE.

I, _____ of _____, solicitor for the said Vendor, do hereby make oath and say —

1. I have read the foregoing abstract of title previous to swearing this affidavit and compared the same with the several deeds and documents therein abstracted so far as they are in the said abstract stated to be forthcoming.

2. The said abstract is a true and correct abstract of title to the lands described at the head thereof, and in the originating statement filed in this matter, and the several documents therein purporting to be abstracted are fairly and correctly abstracted to the best of my knowledge, information, and belief. I have in the schedule of documents intended to be lodged herewith, and indorsed by me previously to swearing this affidavit, set forth all deeds and muniments of title relating to the said lands which are in my power, possession, or procurement [Here may be added when necessary—"Except muniments of title bearing date prior to the root of title, and none of which relate to existing charges or affecting the title as abstracted," or "except documents which have already been lodged in Court in the course of the proceedings herein."]

Sworn, &c

FORM 13.

Rules of
March 1897.

DRAFT REQUISITION FOR SEARCHES IN THE REGISTRY OF DEEDS.

To the Registrar appointed by Act of Parliament for registering deeds,
wills, and so forth, in Ireland.

I require (by the direction of the Irish Land Commission) to have an abstract of every memorial registered in the Office for Registering Deeds, and so forth in Ireland, of all acts appearing on a search on the index of names only, by *A.B.*, from the day of 18 , to the day of
18 , by *C.D.*, from the day of 18 , to the date
of making the certificate upon this' requisition, &c., to affect the lands of

[Follow the rulings on title.]

excepting therefrom the memorials of the following deeds, viz. —[Here set out the exceptions consecutively numbered, stating the date and description of each instrument, the parties' names, the date of registration, the book and the number.]

[To be signed by the Solicitor for the Vendor.]

FORM 14.

DIRECTION FOR SURVEY BY ORDNANCE SURVEY DEPARTMENT.

[Heading and Title as before.]

Upon application of Mr. , Solicitor for the said Vendor, let it be referred to the Director of the Ordnance Survey Department to survey the lands specified in the Schedule hereto, and to furnish a map or maps on a suitable scale, and a report setting forth the names of the several occupying tenants, and the areas of their respective holdings, and also the particulars of the holdings of any sub-tenant of the said occupying tenants, and the names of such sub-tenants.

[To be signed by the Clerk in charge of Agreements for Purchase Office.]

FORM 15.

AFFIDAVIT VERIFYING OCCUPANCY.

[Heading and Title of Matter.]

I, of in the county of ,
aged 21 years and upwards, make oath and say:—

1. That the several persons named in the Schedule to this affidavit have agreed to purchase their respective holdings in the townlands therein named for the respective sums therein stated.

2. I know the said lands and the occupying tenants thereof, and I say that the said several persons in the said schedule named are still in the occupation of their respective holdings so as aforesaid purchased by them.

3. My means of knowledge of the facts above deposed to are [Here state whether deponent visited the land and when, or what communication be held with the tenants and when, or other his source of information].

Rules of
March, 1897.

FORM 16

THE IRISH LAND COMMISSION—CHURCH PROPERTY DEPARTMENT.

APPLICATION FOR THE APPORTIONMENT OF TITHE RENTCHARGE PAYABLE TO THE
IRISH LAND COMMISSION.

In the Matter of the } WHEREAS the lands mentioned in the First Schedule
Estate of } hereto are liable to the annual Tithe rentcharge therein
a Vendor of Land. } particularly mentioned, payable to the Irish Land
Commission. And Whereas that part of the said lands mentioned in the first
part of the Second Schedule hereto has been sold pursuant to the provisions of
the Land Purchase Acts. Now I, as Vendor in this matter apply to the Irish Land
Commission that the annual Tithe rentcharge so chargeable on said lands may
be divided and apportioned between the respective parts of said lands so sold and
unsold in manner set forth in the Second Schedule hereto.

Signature

SCHEDULES.

FORM 17.

THE IRISH LAND COMMISSION.—CHURCH PROPERTY DEPARTMENT.

APPLICATION FOR THE APPORTIONMENT OF FIXED ANNUAL INSTALMENTS IN LIEU OF
TITHE RENTCHARGE.

In the Matter of the } WHEREAS the lands mentioned in the first schedule
Estate of } hereto are liable to the annual Rentcharge therein
a Vendor of Land. } particularly mentioned, payable to The Irish Land
Commission for the period of years from the
First day of 18 and charged thereon by Merging Order, num
bered bearing date the day of 18
And whereas that part of said lands mentioned in the first part of the second
schedule hereto has been sold pursuant to the provisions of the Land Purchase
Acts. Now I, as Vendor in this matter, apply to the Irish Land Commission that
the annual Rentcharge so chargeable on said lands may be divided and apportioned
between the respective parts of said lands so sold and unsold in manner set forth
in the Second Schedule hereto.

Signature,

SCHEDULES.

FORM 18.

STATEMENT OF FACTS FOR THE APPORTIONMENT OF AN IMPROPRIATE TITHE
RENTCHARGE.

[Heading and Title of Matter.]

The Statement of Facts of

SHOWETH—

1. That the lands described in the Schedule hereto are subject to an annual
impropriate tithe rentcharge of £ a. d. payable to
of
2. That the said has been in receipt of the said rentcharge
for [six years and upwards] as [Here state whether as owner in fee simple, as tenant

for life, as trustee, as lessee under a lease of the rentcharge, or how otherwise. If the person entitled has not been in receipt of the rentcharge for six years, state for what period it has been paid to him.] Rules of
March, 1897

3. That [parts of] the lands described in the first part of the said Schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said Vendor].

4. That the lands described in the second part of the said Schedule are the property of the said Vendor, but it is not intended to sell them under the said Acts.

Variation when all the lands are not the property of the Vendor.

[4. That the lands described in the second part of the said Schedule are not the property of the said Vendor, and the name and address of the reputed owner thereof is stated therein.]

5. That save the proceedings herein there is not any suit or matter pending in any Court in relation to the said rentcharge or lands, and that no person hereinbefore referred to is an infant, idiot, lunatic, or married woman—save [Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman].

6. That it is expedient that said rentcharge be apportioned, and the proposed apportionment set forth in the said Schedule would be just and fair having regard to the quantities and value of the lands and the rights of the persons interested.

[SCHEDULE.]

FORM 19.

STATEMENT OF FACTS FOR THE APPORTIONMENT OF QUIT OR CROWN RENT.

[Heading and Title of Matter.]

The Statement of Facts of

SHOWETH—

1. That the lands described in the Schedule hereto which form [part of] the ancient denomination of _____ are charged in the Crown Rental with a yearly (quit, crown, composition or otherwise) rent of £ _____ s. _____ d. payable to Her Majesty the Queen under [Here specify the patent or other instrument creating the rent. If the application be for the apportionment of more rents than one, and they are charged upon different lands, there should be a separate Schedule for each, and the statement should be varied accordingly.] and which is in receipt from [A.B., or if the rent be contributed by two or more persons] the persons named in the said Schedule in the proportions therein specified. [Here add the circumstances (whether under the provisions of a deed or otherwise) in which the rent is so contributed.]

2. That [parts of] the lands described in the first part of the said Schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said Vendor].

3. That the lands described in the second part of the said schedule are not the property of the said vendor, and the names and addresses of the reputed owners thereof are stated therein.

Rules of
March, 1897.

Variation when all the lands are the property of the Vendor.

[3. That the lands described in the second part of the said Schedule are the property of the said Vendor, but it is not intended to sell them under the said Acts.]

4. That no apportionment of the said rent has heretofore been made.

5. That save the proceedings herein, there is not any suit or matter pending any Court in relation to the said lands, or to the rents and profits thereof, and that no person hereinbefore referred to is an infant, idiot, lunatic, or married woman—save [*Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman.*]

6. That it is expedient that the said rent should be apportioned, and the proposed apportionment set forth in the said schedule would be just and fair having regard to the quantities and value of the lands and the rights of the parties interested.

[SCHEDULE.]

FORM 20.

STATEMENT OF FACTS FOR THE APPORTIONMENT OF RENT, FEES, DUTIES OR SERVICES. Heading and Title of Matter with the following addition:—

And in the matter of the apportionment of a rent of £ s. d. (or otherwise as the case may be) created by an indenture of [fee-farm grant or lease] dated the day of 18

The Statement of Facts of

SHOWETH—

1. That by the above-mentioned indenture of fee-farm grant (or lease) was made between A.B. of the one part and C.D. of the other part, the said A.B. [in pursuance of the provisions of the Renewable Leasehold Conversion Act or otherwise as the case may be] granted (or demised) to the said C.D. the lands described in the schedule hereto and in the said indenture described as [*Here insert the description of the lands as in the grant or lease.*]

to hold to the said C.D. and his heirs for ever [*Or his executors, administrators and assigns for the term of, &c.*] subject to the yearly rent

£ s. d., payable half-yearly as therein mentioned, and to certain conditions, covenants, and agreements on the grantee's (or lessee's) part therein contained. [*Here state shortly the particulars of any instrument or circumstances by which the lands were partitioned, or by which any special liability for indemnity against any portion of the rent was created, with such statement of devolution of title as may be necessary to make the statement of facts intelligible to the Commissioner.*]

2. That E.F. of is the owner of the said rent of £ and has been in receipt thereof for years and upwards.

3. That the said (i.e., the person making the statement of facts) has made inquiry to ascertain if there is any superior rent affecting the interest of the said E and to the best of his knowledge, information, and belief, there is no such superior rent (or otherwise, as the case may be).

4. That [parts of] the lands described in the first part of the said schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said vendor].

5. That the lands described in the second part of the said schedule are not the property of the said vendor, and the names and addresses of the reputed owners thereof are stated therein. Rules of
March, 1897.

Variation when all the lands are the property of the Vendor.

[5. That the lands described in the second part of the said schedule are the property of the said vendor, but it is not intended to sell them under the said Acts.]

6. That save the proceedings herein there is not any suit or matter pending in any Court in relation to the said rent or lands, and that no person hereinbefore referred to is an infant, idiot, lunatic, or married woman—save [*Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman.*]

7. That it is expedient that the said rent should be apportioned, and the proposed apportionment set forth in the said schedule would be just and fair having regard to the quantities and value of the lands, and the rights of the parties interested.

[SCHEDULE.]

FORM 21.

STATEMENTS OF FACTS FOR THE APPORTIONMENT OF A RENTCHARGE OR AN ANNUITY.
Heading and Title of Matter, with the following addition.—

And in the matter of the apportionment of a rentcharge (or annuity) of £
created by a deed dated the day of 18 .

The Statement of Facts of
SHOWETH—

1. That by the above-mentioned deed, dated the day of
18 , and made between [*Here state the parties to the deed and its nature, whether a marriage settlement or otherwise.*]

A.B. being then seized in fee of the lands described in the schedule hereto charged the same with an annuity of £ in favour of *C.D.* [*Here specify the particulars of the rentcharge or annuity, whether the same was perpetual, for a term of years, for a life or lives, or by way of jointure, and the particulars of any term of years vested in trustees for securing such rentcharge or annuity. Here also state shortly the particulars of any instrument or circumstances by which the lands were partitioned or by which any special liability for, or indemnity against any portion of the rentcharge or annuity was created, with such statement of the devolution of title as may be necessary to make the statement of facts intelligible to the commissioner.*]

2. That *E.F.* of is the owner of and in receipt of the said rentcharge (or annuity).

3. That the [parts of] the lands described in the first part of the said schedule have been sold under the Land Purchase Acts [and it is contemplated selling under the said Acts the residue of such lands, and the same are the property of the said Vendor].

4. That the lands described in the second part of the said schedule are not the property of the Said Vendor, and the names and addresses of the reputed owners thereof are stated therein.

Rules of
March, 1897.

Variation when all the lands are the property of the Vendor.

[4. That the lands described in the second part of the said schedule are the property of the said Vendor, but it is not intended to sell them under the said Acts.]

5. That, save the proceedings therein, there is not any suit or matter pending in any court in relation to the said rentcharge (or annuity) or lands, and that person hereinbefore referred to is an infant, idiot, lunatic, or married woman save [Here state the particulars of any suit or matter, and the names of any persons under disability, giving the names and addresses as the case may be of the guardian of infant, committee of lunatic, or husband of married woman].

6. That it is expedient that the said rentcharge (or annuity) should be apportioned, and the proposed apportionment set forth in the said Schedule would be just and fair, having regard to the quantities and value of the lands, and the rights of the parties interested.

[SCHEDULE.]

FORM 22.

REQUEST TO APPOINT AN ARBITRATOR.

[Heading and Title of Matter.]

SIR,—I hereby require you to appoint an arbitrator to determine the price to be paid for the [Here describe the superior interest, or the apportioned part thereof as the case may be]

which has been ordered to be redeemed by order made in this matter and dated the day of 189 , a copy of which is annexed here and all other matters which it appertains to the Court of Arbitration to determine pursuant to the Land Purchase Acts.

And take notice that if for the space of fourteen days from the date of the service of this request upon you, you fail to appoint such arbitrator, I shall apply to the Court to determine the price, as is provided by the said Acts.

[Here follows a copy of the order for the redemption.]

FORM 23.

SUBMISSION TO ARBITRATION AND APPOINTMENT OF ARBITRATORS AND UMPIRE.

[Heading and Title of Matter.]

WHEREAS the Irish Land Commission, upon the day of 189 , made an order in the following terms, viz:—[Recite in full the order of redemption].

It is hereby agreed by and between A.B., the said Vendor, and C.D., the owner [Or tenant for life or otherwise as the case may be] of the said [Here describe the superior interest] to refer the determining of the price of the said [Superior interest or apportioned part] so ordered to be redeemed, to the award of E.F. and G.H. of pursuant to the provisions of the

Land Purchase Acts. Now the said *A.B.* hereby appoints the said *E.F.* to be and act as his arbitrator herein, and the said *C.D.* hereby appoints the said *G.H.* to be and act as his arbitrator. Rules of
March, 1897.

[Signatures of Parties.]

The said *E.F.* and *G.H.*, the arbitrators so hereby appointed, do hereby and before entering upon the matters herein referred to them, in accordance with the provisions of the Land Purchase Acts, appoint *L.M.* of to be and act as umpire in case of differences between them.

[Signatures of Arbitrators.]

FORM 24.

AWARD.

[Heading and Title of Matter.]

WHEREAS the Irish Land Commission, by order, dated the day of 189 , ordered that [Here describe the superior interest or apportioned part thereof] should be redeemed. And whereas *A.B.* and *C.D.*, being unable to agree upon the price to be paid for [Such rent, or otherwise as the case may be] have referred the determining of the price to be paid to *E.F.* and *G.H.* And by writing under their hands, dated the day of 189 , the said *A.B.* hath appointed *E.F.* to be and act as his arbitrator herein, and the said *C.D.* hath appointed *G.H.* to be and act as his arbitrator herein.*

Now, we, the said arbitrators, having taken upon ourselves the burden of this reference, and having duly weighed and considered the documentary and other evidence given before us, do hereby publish our award in writing, in manner following, that is to say:—

We award and adjudge that the price to be paid for the said [Rent or otherwise as the case may be] is to be the sum of £ . And we do further adjudge and award [That each party do bear his own costs of the arbitration, and that they do pay in equal proportions our fees and expenses as such arbitrators, or otherwise as the case may be.]

[Signatures of Arbitrators.]

UMPIRE'S AWARD WHERE ARBITRATORS ARE UNABLE TO AGREE.

[Proceed as before down to*.]

And Whereas the said arbitrators so thereby appointed did, by writing under their hands, dated the day of 189 , before entering into the matter so referred to them, appoint me, *L.M.*, to be and act as umpire in case of difference between them. And Whereas the said *E.F.* and *G.H.* have failed to make their award concerning the said price within twenty-one days after the said day of 189 (or as the case may be).

Now I, *L.M.*, having taken upon myself the charge of this reference, and having heard, examined, and considered the allegations, witnesses, and evidence of both parties concerning the said price, do make this my award, in writing, of and concerning the said price in manner following, that is to say.—

I award and adjudge, &c. [as before].

Land Commission.

Rules of
March, 1897.

FORM 25.
ALLOCATION SCHEDULE.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.

Mr. Commissioner
Record No. _____
In the Matter of the Estate of _____, a Vendor of Land.
Particulars of Fund to be allocated—

Order of Priority	Date	Name, Residence, and Addition of Claimant	Particulars of Demands	Principal	Interest or Arrears up to the day of 190	Costs	Total due for Principal, Interest and Costs	Date of Payment	Rulings of the Commissioner
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FORM 26.
PRIVITY FOR THE LODGMENT OF A GUARANTEE DEPOSIT.
[Heading and Title of Matter.]

Name of Tenant Purchaser	Townland (Ordnance Survey Name)	Barony	County	Amount of Advance	Amount of Guarantee Deposit
--------------------------	---------------------------------	--------	--------	-------------------	-----------------------------

Name of Depositor in full,
Postal Address,
Occupation or other description,
Issue receivable order to enable the above-named depositor to lodge the guarantee deposit above stated, which is to be registered in his name, pursuant to the Rule in that behalf.

[To be signed by the Examiner.]

FORM 27.
NOTICE OF MOTION TO APPOINT TRUSTEES, FOR THE PURPOSES OF THE SETTLED LAND ACTS, 1882 TO 1890.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.

Record No. _____
In the Matter of the Estate of *A.B.*, a Vendor of Land.
And in the matter of the estate of _____ situate at _____
in the County of _____ settled by a settlement made by an indenture dated the _____ day of _____ 18____, and made between [or, by the will of _____ dated _____ or as the case may be], and in the matter of the Settled Land Acts, 1882 to 1890.
Take notice that counsel will on the _____ day of _____ 189____ apply to Mr. Justice _____ on the part of _____ th *G.H.*, of _____ and *I.J.*, of _____ may be appointed trustees under the above-mentioned settlement for the purposes of the Settled Land Acts, 1882 to 1890, and that the costs of this application may be direct

to be taxed as between solicitor and client, and that the same, when taxed, may be paid out of the property subject to the said settlement, and that for that purpose all necessary directions may be given, which application will be grounded on, &c. Rules of
March, 1897.

FORM 28.

STATEMENT OF FACTS FOR THE APPOINTMENT OF TRUSTEES, UNDER SECTION 66 OF
THE LANDED ESTATES COURT ACT.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.

Record No.

In the Matter of the Estate of *John Brown*, a Vendor of Land, and of a Settlement dated the 9th day of *May*, 1861, executed on the marriage of *William Thompson* with *Jane Moore*.

The Statement of facts of *Jane Thompson*, formerly *Moore*, sheweth as follows:—

By an Indenture bearing date the 9th day of *May*, 1861, and made between *William Thompson* of the 1st part; me, the said *Jane Thompson*, then *Jane Moore*, of the 2nd part; and *A.B.* and *C.D.* of the 3rd part, being the settlement executed on the occasion of my marriage with the said *Wm. Thompson*, it was agreed that a sum of £10,000 should be vested in the said *A.B.* and *C.D.* as trustees upon the trusts therein mentioned, and (among others) in trust for the said *William Thompson* and *Jane Moore*, successively, during their lives, and after the decease of the survivor, for the children of the said marriage, as therein mentioned.

Pursuant to a power in the said settlement, the said trustees lent £5,000, part of the said trust moneys, to the above-mentioned *John Brown*, on the security of an Indenture of Mortgage, bearing date the 20th day of *June*, 1865, whereby the said *John Brown* conveyed certain lands to the said trustees, to secure the said sum of £5,000.

The said mortgaged premises, or part thereof, are the subject of proceedings for sale in this Court, in the Matter of the said Estate, and the said mortgage debt is still a charge upon the said premises.

The other trust funds are a sum of £5,000 *Consols*, now standing in the names of the said *A.B.* and *C.D.*

The said *A.B.* died on the 4th of *July*, 1879, the said *C.D.* was adjudicated a bankrupt on the 7th of *November*, 1882. It is therefore expedient that new trustees of the said settlement should be appointed in place of the said *A.B.* and *C.D.*

K.F. and *G.H.* (describing them) are fit and proper persons to be appointed, and they have consented to act as such trustees as by their undertaking dated the day of 189 , and filed herewith appears; there are no proceedings for the appointment of new trustees of the said settlement pending before any other Court.

The said *William Thompson* died on the 7th day of *March*, 1879. There are three children of the said marriage, *William*, *Sarah*, and *James*, of whom the two latter are infants, aged 19 and 17 respectively, and are now residing with me, the said *Jane Thompson*.

The Applicant submits that the said *C.D.* should be removed from being such trustee as aforesaid, and that new trustees should be appointed of the said settlement and trust funds by an Order of the Court, and that provision should be made for the payment out of the said trust fund, by such trustees when appointed,

of the costs of this statement, the order to be made thereon, and the proper and necessary proceedings thereunder.

Rules of
March, 1897.

[Signature, and Affidavit verifying statement.]

FORM 29.

NOTICE OF LODGMENT OF SURVEYOR'S REPORT AND SCHEME FOR PARTITION.

[Heading and Title of Matter.]

Take Notice that in pursuance of the order in this matter, dated the day of 189 , Mr. the surveyor thereby appointed, has lodged in the Registrar's Office of the Irish Land Commission, 24, Upper Merrion-street, Dublin, his report and map with scheme for partition of the Lands of , situate in the Barony of , and County of , and held , and further Take Notice that any person interested in said partition is at liberty to inspect the said report, map, and scheme, and that if no application be made to the Commissioner within fourteen days after the service of this notice to vary or amend the said report and scheme for partition the same shall stand confirmed and a Final Order for Partition will be made in accordance with such report map, and scheme.

FORM 30.

COMMISSION TO EXAMINE WITNESSES.

[Heading and Title of Matter.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth to [State name and address of examiner or commissioner appointed] greeting.

We hereby authorise you upon the day of 189 at , in the presence of the solicitors for the persons appearing in this matter, or in the presence of their or of any of their lawfully appointed substitutes, or otherwise notwithstanding the absence of any of them, to swear the witnesses who shall be produced for examination in the said matter, and cause them to be examined, and their depositions to be reduced into writing. We further authorise you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient. And We command you upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this Commission, to the Registrar of the said Court.

[Seal of the Irish Land Commission.]

FORM 31.

SUMMONS FOR THE ATTENDANCE OF WITNESSES AND FOR THE PRODUCTION OF DOCUMENTS.

[Heading and Title of Matter.]

You and each of you are hereby required to attend before Mr. Commissioner , at his Court [or Chamber] at 24, Upper Merrion-street.

Dublin, at the hour of _____ o'clock, on _____ day, the _____ day of _____ 189____, and from day to day there to be examined in relation to this matter. [In a summons for the production of documents here add "and you are also hereby required to produce to the Court all papers, documents, letters, writings, and other evidences in your power, possession, or procurement, relating to this matter," or otherwise as the case may be.] And herein fail not at your peril.

Rules of
March, 1897.

[To be signed by the Registrar]

FORM 32.

WRIT OF SEQUESTRATION.

[Heading and Title of Matter.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth to [Name and address of sequestrator] greeting.

Whereas by an Order made in this matter and dated the _____ day of _____ 189____, it was ordered that *A.B.* should [pay into the Bank of Ireland to the credit of this matter the sum of _____ or as the case may be]. Know you therefore that We, in confidence of your prudence and fidelity, have given, and by these presents do give to you full power and authority to enter upon all the messuages, lands, tenements and real estate whatsoever of the said *A.B.*, and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements and real estate, but also all his goods, chattels and personal estates whatsoever; and therefore We command you that you do at certain proper and convenient days and hours go to and enter upon all the messuages, lands, tenements and real estates of the said *A.B.*, and that you do collect, take, and get into your hands not only the rents and the profits of his said real estate, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands until the said *A.B.* shall [pay into Court to the credit of this matter the said sum of £ _____, or as the case may be], and clear his contempt, and this Court make other order to the contrary.

[Seal of the Irish Land Commission.]

FORM 33.

REQUISITION TO HAVE THE ORDER OF A COMMISSIONER NOT MADE UPON A QUESTION OF LAW RECONSIDERED BY A JUDICIAL COMMISSIONER AND TWO OTHER COMMISSIONERS.

[Heading and Title of Matter.]

I am aggrieved by the order of Mr. Commissioner _____, made in this matter and dated the _____ day of _____ 189____, whereby it was ordered _____ and I require to have the said order reconsidered by a Judicial Commissioner and two other Commissioners; and I certify that the question involved is not one of law.

[To be signed by the Solicitor for the Party aggrieved.]

Rules of
March, 1897.

FORM 34.

APPLICATION BY A TENANT FOR AN ADVANCE TO ENABLE HIM TO PURCHASE HIS
HOLDING FROM THE LAND JUDGES.

[*Heading and Title of Matter.*]

I, _____ the Tenant in occupation of the holding described in the first part of the Schedule hereto, *have been declared the purchaser of the Lands in the said Schedule described for the sum of £* _____ [or] *intend to offer the sum of £* _____ *for the Lands in the said Schedule described.*

The said lands have been [or] my offer will be conditional on the said lands being sold to me in fee-simple discharged from all superior interests, save [Here insert the particulars of any superior interests which the sale is made subject to] and I hereby apply to the Irish Land Commission to advance to me, pursuant to the said Acts, the sum of £ _____ *Guaranteed Land Stock, for the purpose of such purchase, which advance is to be repaid as is by the said Acts provided.*

SCHEDULE AND AFFIDAVIT.

[*Same as that to Form 10.*]

DIRECTIONS AS TO PREPARATION OF APPLICATION AND AFFIDAVIT.

The Application and Affidavit must be neatly and accurately prepared, without any blanks, and must correspond with the Court rental, otherwise the application cannot be received.

When the Tenant is a female she should be described either as "spinster," "widow," or "wife of *A.B.*"

In filling up the column headed "Tenure of Tenant," state whether the Tenant holds under Fee-farm Grant (giving date and parties), under Lease or agreement in writing (giving date, parties, and term), under a tenancy from year to year, or how otherwise. If the rent be a Judicial one, state on what date and how it is fixed.



FORM 35.

UNDERTAKING BY TENANT TO PURCHASE HIS HOLDING FROM THE LAND COMMISSION,
AND APPLICATION FOR ADVANCE.

[*Heading and Title of Matter.*]

I, _____ the Tenant in occupation of the holding described in the first part of the Schedule hereto, hereby propose and undertake as follows —

1. In case the said Commission buy the Lands described in the said Schedule, I will purchase the same from them in fee-simple at the price of £ _____, to be paid as follows:—

By an Advance to be made by the said Commission to me, of £ _____ *, Guaranteed Land Stock.*

By a Cash payment by me to the said Commission, of £ _____.

2. The Lodgment of this undertaking with the Irish Land Commission is to be deemed an application by me for an advance pursuant to the said Acts, to be repaid as is by the said Acts provided.

[*Schedule and Affidavit same as that to Form. 10.*]

DIRECTIONS AS TO PREPARATION OF UNDERTAKING AND AFFIDAVIT.

The Undertaking and Affidavit must be neatly and accurately prepared, without any blanks, and all clauses not applicable to the case must be struck out, otherwise the Undertaking cannot be received.

When the Tenant is a female she should be described either as "spinster," "widow," or "wife of *A.B.*"

CLAUSE 1.—When it is proposed to purchase additional land under the “Purchase of Land (Ireland) Amendment Act, 1889,” insert after “superior interests,” “together with the additional land specified in the second part of the said schedule.” Here also insert any rights of grazing, or turbary, or other rights which are appurtenant to the holding, and which are exercised over lands not included therein, *e.g.*, “together with such right of grazing and cutting turf as has heretofore been exercised by the said Tenant upon the bog on the lands of *Blackacre*, in the possession of _____, containing _____ statute measure or thereabouts.” Here insert also the particulars of any superior interests which the purchaser proposes the sale shall be made subject to.

Rules of
March, 1897.

FORM 36.

APPLICATION BY A LANDLORD TO THE LAND COMMISSION TO PURCHASE HIS ESTATE FOR RE-SALE.

[Heading and Title of Matter.]

I, the above-named Vendor, propose to sell to the Irish Land Commission for the sum of £ _____ guaranteed land stock, the lands comprised in the Originating Statement filed by me on the _____ day of _____ 189 _____, and I hereby apply to the Irish Land Commission to purchase the same for re-sale to the tenants thereof, and I undertake to pay to the Irish Land Commission the reasonable expenses incurred by them in connection with the said Sale.

Signature of Vendor,

N.B.—This Application must be accompanied by undertakings in Form 35 from the requisite number of tenants to buy their holdings. The Land Commission cannot buy an estate unless at least four-fifths in number and value of the tenants are prepared to buy their holdings.

FORM 37.

ORIGINATING NOTICE UNDER THE REDEMPTION OF RENT (IRELAND) ACT, 1891.

County _____

No. _____

COURT OF THE IRISH LAND COMMISSION.
REDEMPTION OF RENT (IRELAND) ACT, 1891.

Name of [“Lessor” or “Grantor”] and Residence, if known. } _____
 Name and Residence of the above person’s Agent, if any. } _____
 Name and Residence of [“Lessee” or “Grantee”] } _____
 Post Office from which he receives his letters. } _____

DESCRIPTION OF HOLDING.

County	Barony	Electoral Division			
Ordnance Survey Names of Townlands (each on a separate line)	Area, Statute Measure, of the portion of each Townland	Rent of Holding			Gross Poor Law Valuation
		£	s.	d.	£ s. d.

Rules of
March, 1897.

ORIGINATING NOTICE OF APPLICATION BY A ["Lessee" or "Grantee"] TO REDEEM
HIS RENT OR IN THE ALTERNATIVE TO FIX A FAIR RENT.

I, the ["Lessee" or "Grantee"] being in *bona fide* occupation of the above holding, which is held under a ["Lease" or "Fee-farm Grant"] dated the day of 18 , and made between [*state accurately the parties, and in the case of a Lease, the term*] at the yearly rent of £ , apply to the Court for an Order for the redemption of the said rent, or, in the alternative, for an Order fixing the Fair Rent to be hereafter paid for the said holding.

[Signature of Lessee or Grantee.]

FORM 38.

CONSENT TO REDEMPTION UNDER THE REDEMPTION OF RENT (IRELAND) ACT, 1891.

COURT OF THE IRISH LAND COMMISSION.

LAND PURCHASE ACTS.

In the Matter of the Estate of , a Vendor of Land.

I, the above-named Vendor, do hereby consent as follows, *viz.* :—

1. That the Court do make an order pursuant to the provisions of the Redemption of Rent (Ireland) Act, 1891, for the redemption of the rent specified in the Schedule hereto, payable to me out of the holding therein described, by the ["Lessee" or "Grantee"] named in the Originating Notice dated the day of 189 , which has been served on me.

2. That such redemption be carried into effect by means of a vesting order under the provisions of the Land Purchase Acts, vesting the said holding in the said ["Lessee" or "Grantee"] in fee-simple, freed and discharged from all superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896, and from all other charges and incumbrances.

3. That interest upon the redemption price of the said rent at the rate of four per cent. per annum shall be payable in lieu of the rent from the date hereof until such redemption price shall be paid into Court.

Provided that if the said ["Lessee" or "Grantee"] be not entitled to apply to redeem the said rent under the provisions of the Redemption of Rent (Ireland) Act, 1891, this consent shall be void.

[SCHEDULE]

County		Barony		Electoral Division	
Reference to Map (to be filled in by Land Commission)	Ordinance Survey Names of Townlands (each on a separate line)	Area Statute Measure, of the portion of each Townland to be sold	Tenement Valuation	Rent paid by tenant	Tenure of Tenant, <i>ie.</i> under Fee-farm Grant giving date and parties, or under Lease giving date, parties, and term
		A. R. P.	£ s. d.	£ s. d.	

Signature of Vendor,

FORM 39.
NOTICE OF LODGMENT OF CONSENT TO REDEMPTION.
[Heading as in Form 38.]

Rules of
March, 1897.

SIR,

Take notice that I have this day lodged in the Irish Land Commission a consent to the making of an order for redemption in pursuance of your Originating Notice, dated the day of 189 .
Solicitor for the said Vendor.

FORM 40.

APPLICATION FOR AN ADVANCE UNDER THE REDEMPTION OF RENT (IRELAND) ACT, 1891.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.

In the Matter of the Estate of

, a Vendor of Land.

Name of Tenant,

DESCRIPTION OF HOLDING.

[As in Schedule to Form 38]

Date of conditional order for redemption, the day of 189

Amount of Redemption price, £

Amount of Advance required, £

Amount to be paid in cash by Tenant, £

I, , the before-named Tenant, make Oath and say, as follows —

1. That the foregoing particulars of the holding are true, to the best of my knowledge and belief.

2. I reside on and have been in the occupation of the said holding and paying the rent therefor since the year 18 , and I hold the same as Tenant, as in the said Schedule is stated (and the said ["Fee-farm Grant" or "Lease"] is in my [or if not, state in whose] possession).

3. There is not any person in occupation of the said holding as Tenant or otherwise save as mentioned in the following Schedule —

Names of the Persons in occupation as under tenants or otherwise	Area in Statute Measure	Rent (if any) payable by such occupiers	When payable	Tenure or nature of occupancy

4. There is not any charge or incumbrance affecting my interest in the said holding save those specified in the following Schedule —

SCHEDULE containing particulars of Mortgages, Charges created by deposit of Lease or otherwise, or Charges in favour of the Commissioners of Public Works in Ireland affecting the Tenant's interest in the Holding.

Date	Name and Address of Incumbrancer	Particulars of Incumbrance, Mortgage, or otherwise	Principal Sum due

5. I hereby apply to the Irish Land Commission for an advance pursuant to the Land Purchase Acts of the sum specified above, the same to be repaid as is by the said Acts provided.

6. I have not obtained from or (except by this Application) applied to the Irish Land Commission for an advance of any sum for the purchase of any land [if the Tenant has previously applied for any advance, write "save an advance of £ , &c.," giving the particulars].

[Sworn, &c.]

Rules of
March, 1897.

FORM 41.

NOTICE OF CONDITIONAL ORDER FOR REDEMPTION UNDER THE REDEMPTION OF RENTS (IRELAND) ACT, 1891.

[Heading as in Form No. 38.]

SIR,—Take notice that on the day of 189 , an Originating Statement was filed on behalf of the said Vendor affecting part of the Lands of situate in the Barony of and County of , and containing acres roods and perches statute measure or thereabouts, in the occupation of Tenant to the said Vendor under dated the day of 18 , the yearly rent of £ ; and that the Court has by order dated the day of 189 , conditionally ordered the redemption of the said rent at the price of £ , and such redemption will be carried into effect by means of vesting order under the provisions of the Land Purchase Acts vesting the said lands in the said tenant in fee-simple, freed and discharged from all superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896, and from all other charges and incumbrances.

Your name appearing in the said Originating Statement as being entitled [here state the nature of the superior interest, charge, incumbrance, or other estate or interest to which the person is entitled] this notice is given to enable you to make any application to the Court that you may be advised in the event of such redemption being prejudicial to your rights.

And further take notice that if no application to the contrary be made by you by motion to the Commissioner upon notice to me, within fourteen days from the date of the service of this notice upon you, the redemption will be completed due course without further notice to you.

[To be signed by the Solicitor for the Vendor.]

FORM 42.

CERTIFICATE TO REGISTER APPRENTICE OR CLERK
COURT OF THE IRISH LAND COMMISSION.

I hereby certify that Mr. [name in full] is exclusively employed by me as ["Apprentice" or "Clerk"] and that he is a fit and competent person to transact my business in this Court; and I undertake to be responsible for his acts in ordinary transaction of my business in the said Court. And I further undertake to be responsible for his receipts for deeds and other documents, and for the safe custody and return of all deeds and documents obtained by him on my behalf.

[To be signed by the Solicitor.]

FORM 43.

CERTIFICATE OF REGISTRATION OF APPRENTICE OR CLERK.
COURT OF THE IRISH LAND COMMISSION.

I certify that Mr. is the registered ["Apprentice" or "Clerk"] of Mr. day of 189
Solicitor, of No. street.

Keeper of Record

FORM 44

WRIT OF FIERI FACIAS FOR COSTS.

Rules of
March, 1897.

[Heading and Title of Matter.]

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, to the Sheriff of the County of _____ greeting:—

We command you that, of the goods and chattels of _____ in your Bailiwick, you cause to be made the sum of _____ and also interest thereon at the rate of £4 per cent. per annum from the _____ day of _____, 19____, which by order of our Court of the Irish Land Commission, dated the _____ day of _____, 19____, was adjudged to be paid by the said _____ to _____ for costs in the said Order mentioned. And that you do cause the said money and interest to be paid to the said _____ in pursuance of the said Order, and do make a return to the said Court of the manner in which you shall have executed this Writ immediately after the execution thereof.

Dated this _____ day of _____ 19____.

Registrar.

Levy £ _____ and also interest thereon at £4 per cent. per annum from the _____ day of _____ 19____, besides Sheriff's poundage, fees, and expenses of execution, together with the sum of 10s. 6d. for the costs of this Writ.

This Writ was issued by _____ of _____ Solicitor for the said _____

The said _____ is a _____ and his place of abode is at _____ in your Bailiwick.

FORM 45.

AFFIDAVIT TO GROUND APPLICATION FOR ORDER FOR POSSESSION.

COURT OF THE IRISH LAND COMMISSION.

LAND PURCHASE ACTS.

In the Matter of the Holding of _____, in the Lands of _____ Barony _____ County _____ sold by the Irish Land Commission.

I _____ of _____ make Oath and say as follows.—

1. That on the _____ day of _____ last, I purchased from the Irish Land Commission that part of the lands of _____ containing _____ statute measure or thereabouts, situate in the barony of _____ and county of _____.

2. That on the _____ day of _____ last, the Irish Land Commission executed a conveyance to me of the said lands (or) by order vested the said lands in me, and that such conveyance (or) vesting order) was not made subject to any tenancies.

3. That on the _____ day of _____ last, I demanded from *E.F.*, whom I found in occupation of the said lands, the possession thereof, and he refused to give me such possession.

4. That at the time of making such demand I produced to the said *E.F.* a certificate under the hand of the Solicitor to the Irish Land Commission of my purchase and my title to the possession of the said lands.

Sworn, &c.

FORM 46.

ORDER TO SHERIFF TO PUT PURCHASER INTO POSSESSION.

[Heading and Title as in Form 45.]

Upon motion of _____ solicitor for *C.D.*, a purchaser in this matter, and on reading the conveyance by the Irish Land Commission to the said *C.D.*, dated the _____

Wills of
Maron, 1897 day of 189 of (or the order dated the day of 189, vesting in the said C.D.) that part of the lands of containing statute measure or thereabouts, situate in the barony of and county of and the affidavit of the said C.D., filed the day of 189.

It is ordered by the Court that the sheriff of the county of do, and he is hereby required and commanded immediately after sight or receipt hereof, to go to the said part of the lands of situate as aforesaid, and without delay to give or cause to be given to the said C.D., or his assigns, the full, quiet, and peaceable possession of the said part of the said lands, with all and singular the appurtenances, save and except the respective parts and portions of the said lands and hereditaments now or lately in the possession of, &c.

[To be signed by the Registrar.]

DIRECTIONS AS TO THE PREPARATION OF ABSTRACTS OF TITLE

The Ordnance Survey names of the lands to which title is being shown should be set forth at the head of the abstract, and if title is being shown to a portion only of any townland, the area in statute measure of such portion should be set out.

The date of every instrument abstracted, and of the registration or enrolment thereof, should be stated in the margin: if the instrument has not been registered a statement to that effect should appear in the margin. In the case of a will, the date of the document itself and of the granting of probate, and of the testator's death, should appear in like manner. It should also be stated whether the original instrument abstracted or a copy is lodged, and if the original be not lodged its absence should be accounted for. If neither the original nor a copy be forthcoming there should be a reference to the evidence from which the abstract was prepared.

The abstract should commence with the root of title. If the land is held in fee under a Crown grant, and unless the root of title be a conveyance by the Incumbered Estates Court, Landed Estates Court, or Land Judges, or a declaration of title, *an extract from the patent should be given, showing that there is no reversion in the Crown, that the lands are held in fee, and whether they are subject to quit or crown rent (a).* If the lands are held under lease the lease should be abstracted. It will not be necessary to state all the intermediate steps down to the date of the abstract. As a general rule it will be sufficient to derive title from some person absolutely entitled to the fee or to a lease about forty years prior. Every instrument relating to the title should be abstracted: even mortgages which have been paid off, the lands being re-conveyed, should be shortly noticed. An abstract ought to be a careful abridgment, not a mere copy of the instrument or of any part thereof. Conciseness may be obtained by avoiding the introduction of unnecessary or duplicate words to express the same idea, and by confining the abstract of common clauses to a mere reference to them: thus such language as—"a certain bond or

(a) The words here italicised have been rescinded. See Rules of 17th May, 1901 Or. IV., ante, p. 870.

obligation," "upon, to, and for," ought not to be used in an abstract, and is likely to lead to a ruling whereby a considerably less sum may be allowed as costs than would be allowed in the case of an abstract of equal length properly drawn. The names and descriptions of the parcels in a deed should be accurately set out; but if they are afterwards granted in any other deed by the same names and descriptions it will be sufficient in abstracting such other deeds to state that they are conveyed by the same names and descriptions as in the former deed. or, if the variance is very slight, it will be sufficient to show what the variance is. The same remark is applicable to wills. The common clauses in a deed, such as covenants for title, for quiet enjoyment, for further assurance, and against incumbrances for indemnity of trustees, payment of rent, cesser of terms, &c., should be referred to as briefly as possible *the contracts, consideration, and habendum should be more fully abstracted, and so should the limitations as far as may be necessary*: that is to say, if a limitation has taken effect, whereby it has become impossible that the subsequent limitations can take effect, the latter should not be abstracted, *e g.*, if any tenant in tail has after coming into possession executed a disentailing deed duly enrolled, the subsequent limitations should be omitted from the abstract. Recitals of deeds previously abstracted or recited should be referred to thus—"And reciting the deed of 14th July, 1847, abstracted (or recited), page 6." At the end of every deed it should be stated by what parties it has been executed, and with what solemnities (if any): and if it has been enrolled, or acknowledged by a married woman, or the acknowledgment certified, such facts, with the dates thereof, should be stated. If the instrument abstracted is a marriage settlement it should be immediately followed by a statement of the issue of the marriage, and of the dates of their respective births, and of the deaths of such of them as are dead. When an estate is transferred by the death of any person, the date of his death should be stated, and the date of the death of any person having powers of charging should be stated. When a person takes as heir, it is not enough to state that he is heir, it must be shown *how* he is heir by setting out so much of the pedigree as proves it. Births, deaths, and the facts of pedigree, when stated should be accompanied by a reference to the evidence by which such facts are proved.

"In every abstract the deduction of title to the lands should be carried on continuously from its commencement to its completion, and should not as a general rule be interrupted by introducing the deduction of title to charges or incumbrances, especially if such charges are still existing, or any other collateral matter. The title to such charges or incumbrances, if necessary, and the instruments dealing with them, should be set forth in a separate part of the abstract, with a proper heading for each charge or incumbrance; and a reference to the page of such devolution of title to the incumbrance should be made when the creation of the incumbrance is stated in its proper place.

When an abstract of title has been prepared for any purpose other than a sale in the Land Commission, it should be produced to the Examiner together with such evidence, if any, as may be necessary to show the purpose for which it was prepared, and his directions taken as to whether the title may merely be continued from the close of such abstract, or how far it may be utilised. Such abstract, if used for the purpose of a sale or mortgage effected not less than twelve years prior to the proceedings, may by permission of an examiner, to be given in writing in the fold thereof, be lodged without a verifying affidavit, but on the reading the Examiner may, if he deem it necessary, direct the same to be verified.

Rules of DIRECTIONS AS TO THE PREPARATION OF AFFIDAVITS UNDER
March, 1897. ORDER XX., RULE 16.

The title must be set out in the affidavit in as concise a manner as is possible, consistently with clearness. The effect of deeds, wills, and other documents should, as a rule, be given instead of an abstract in detail of their contents.

The affidavit must state in what manner it is proposed that the price or compensation shall be paid or applied. If the superior interest redeemed be subject to a quit or Crown rent, a matter which can in the case of a fee-farm or other rent be ascertained by an inspection of the schedule of incumbrances, such rent would generally be a first charge on the price or compensation, and should therefore be redeemed thereout. If the superior interest redeemed be an inappropriate title rentcharge, a certificate from the Quit Rent Office, showing whether the same be subject to a quit or Crown rent, must accompany the affidavit.

If such superior interest be subject to incumbrances, and it be proposed to apply the price or compensation in satisfaction or reduction of an incumbrance, the affidavit should not as a rule set forth the title subsequent to the instrument creating the incumbrance, save so far as may be necessary in order to show in whom such incumbrance is vested; but it should state the name or names of the person or persons entitled to the superior interest subject to incumbrances, and refer to the instrument under which he or they is or are so entitled.

If it be proposed to pay such price or compensation or part thereof to a person show that they are entitled to receive the same as being trustees with a power of sale, or trustees for the purposes of the Settled Land Acts, or otherwise, as the case may be.

If it be proposed to pay the price or compensation to trustees the affidavit should be made by such person or persons, and must contain a statement to the effect that the deponent has not charged, incumbered, or dealt with his estate in such superior interest, or the price or compensation representing the same, save as appears by the affidavit.

DIRECTIONS AS TO THE PREPARATION, SETTLEMENT, AND VOUCHING OF
FINAL SCHEDULES OF INCUMBRANCES.

16th day of January, 1901.

1. When bringing in the draft final Schedule of Incumbrances for settlement the Solicitor should produce—

- (a.) The Rulings on Title.
- (b.) The draft Requisition for Searches as settled.
- (c.) The Registry of Deeds and Judgment Searches.
- (d.) Certificates from the Quit Rent Office, the Land Commission, and the Board of Public Works specifying respectively the Quit or Crown Rents, Tithe-rentcharges or Tithe-annuities, and Land Improvement or Drainage charges affecting the lands.
- (e.) A Certificate as to whether Deeds have been lodged subject to lien.
- (f.) Office copies of any orders that may have been made for apportionment or redemption of superior interests as defined by Section 31 of the Land Law (Ireland) Act, 1896.
- (g.) A certificate of the appearances entered in the matter.

2. The Schedule shall be on writing large post paper, with parchment back, and shall be in form A. It shall, unless the Judge otherwise directs, be settled as regards all the lands comprised in the originating statement, except such as are therein stated to be excluded from the proceedings.

3. The Schedule shall show all charges which, having regard to the abstract of title, and the result of the searches, shall appear to affect the lands, or to be a lien upon or payable out of the purchase-money; and the charges shall be placed in such order of priority as may appear to be in conformity with the *prima facie* rights of the parties; and shall also show, as nearly as can be ascertained, the sums due for principal, and such Schedule shall also state the name or names of the person or persons who may be entitled to the surplus fund after payment of charges.

4. Charges in equal priority should receive the same number and a distinguishing letter, and there should be a statement at the foot that they are in equal priority.

**Rules of
Jan., 1901**

5. The name, description, and address of every party entitled to any charge should be accurately stated, and the date of registration, parties' names, and short description of the instrument by which it is created; if it is founded upon a judgment, the sum recovered, the year and term, and Court, and the names of the parties to the judgment should be stated. When the claimant is not the original mortgagee, the devolution should be concisely but accurately stated as far as practicable.

6. Superior interests affecting the lands (except rentcharges or annuities in the nature of incumbrances) should usually appear in priority to all incumbrances and to the costs of the proceedings.

7. Annual charges, such as Quit Rents, Tithe-rentcharges, Head Rents, Board of Works charges and annuities, should be described as such; but when an order for their apportionment or redemption has been made, a note of it should be inserted in the column, "Particulars of Demand"; and if the price has been fixed, it should be inserted in the "Principal" column; and, unless each of such charges affects all the lands, the denominations which each affects should be stated.

8. Costs awarded by order to any party against the fund, and costs of lodging deeds pursuant to notice or order, should appear as distinct items on the Schedule; but costs awarded to any claimant as payable with his demand, and the costs of the proof of any claim on the Schedule, and the arrears of any rent, rent-charge, or annuity should not appear as distinct items, but be inserted in the proper columns opposite the particulars of the demand.

9. When the vendor is a tenant for life, there should be set out, after the demand of the trustees of the settlement for the residue, any charges upon the life estate, describing them as such.

10. If different portions of the estate are subject to different incumbrances, the Schedule should be prepared in parts; but if there be common incumbrances as well, they should be set out *in extenso* and vouched in one part only, and briefly referred to in the other parts.

11. The Examiner shall endorse in the fold of the Schedule any

special directions as to the form, service, or publication of the Final Notice to Claimants.

**Rules of
Jan., 1901**

12. Four clear weeks from the date of the last service or publication should usually be allowed for filing objections to the Schedule, but the time may be curtailed where the title to the several charges has been shown, and no question as to the priority or validity of any charge is likely to arise, or where all the claimants have appeared by solicitor; provided that in no case shall less than ten days be allowed for filing objections, except by order of the Judicial Commissioner.

13. Publication of the final notice to claimants may be dispensed with by leave of the Judicial Commissioner where the title to the lands sold is registered under the Local Registration of Title (Ireland) Act, 1896, or in other proper cases where the general notice to claimants would appear to have given sufficient publicity to the proceedings.

14. When the final schedule of incumbrances is being vouched, the vendor's solicitor shall lodge with the Examiner a memorandum stating:—

- (a.) The particulars of the funds standing to the credit of the matter, distinguishing between cash and guaranteed land stock or other securities, and between money or securities retained as guarantee deposits or for any other purpose, or standing to a separate credit, and such as may be standing to the general credit of the matter;
- (b.) If any claim on the schedule of incumbrances affects particular denominations only, how much of the fund represents the proceeds of the sale of such denominations, and whether the entire has been sold or not, in so far as such information may be necessary for the allocation;
- (c.) The order asked for in respect of each claim;
- (d.) The order asked for concerning the rights of the parties as regards any guarantee deposit registered in the title of the matter, or whether it is desirable for any reason that the making of such order should be postponed.

15. Where any claimant whose name appears on the schedule of incumbrances desires to waive his claim or priority, either wholly or in part, he shall, unless the Judge shall otherwise direct, lodge

Rules of
1901.

a consent in writing signed by himself and verified, or signed by a solicitor who has appeared for him, provided such solicitor shall not also represent the vendor or any person whose interest might be hostile to that of the claimant.

FORMS.

FORM A.

FINAL SCHEDULE OF INCUMBRANCES.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.

Record No.

In the Matter of the Estate of *A.B.*, a Vendor of Land.

Schedule of Incumbrances and all claims on foot of Incumbrances affecting the Lands the subject of the Originating Statement filed the day of , 190 .
Lodged the day of 190 .

N.B.—Not more than three distinct charges should be inserted on any one page, nor should the statement of a charge be commenced at the foot of a page and carried over.

No	Date	Name, Addition and Residence of Claimant	Particulars of Demand	Principal	Rate per cent	Interest to the day of 19 .	Costs	Total due for Principal, Interest, and Costs	Direction issued to Accountant	Rulings of Judge
				£ s d		£ s. d.	£ s. d.	£ s. d.		

• FORM B.

FINAL NOTICE TO CLAIMANTS AND INCUMBRANCERS.
COURT OF THE IRISH LAND COMMISSION.
LAND PURCHASE ACTS.

Record No.

In the Matter of the Estate of *A B.*, a Vendor of Land.

Take Notice that the Final Schedule of Incumbrances affecting (*here describe the lands as they appear in the Originating Statement, omitting the acreage in the case of entire townlands*) [parts of] which have been sold [and the residue of which it is contemplated selling] under the above Acts in fee simple freed and discharge from all superior interests as defined by Section 31 of the Land Law (Ireland) Act 1896, and from all other charges and incumbrances, has been lodged in my Office at 24, Upper Merrion Street, Dublin; and any person having any claim therein inserted, or objecting thereto, either on account of the amount or the priority of any charge therein reported as due to him or to any other person [*here insert any special matter*], or for any other reason, is required to lodge a objection thereto, stating the particulars of his demand and duly verified, with the Registrar of this Court, on or before the day of , 190 , and to appear on the following day, the day of , 190 , at o'clock, before the Judicial Commissioner, at his Court at the Four Courts, Dublin, when he will adjudicate upon the several claims appearing on the Schedule, and upon any objections lodged thereto. And further Take Notice that any demand reported by such Schedule is liable to be objected to within the time aforesaid.

[To be signed by the Examiner and Solicitor for Vendor.]

SCHEDULE OF FEES UNDER LAND PURCHASE ACTS. Rules of
March, 1897.

PART I.

ABSTRACT.	£ s. d.
Drawing draft abstract, so far as the Examiner shall certify his appro- bat'on thereof, for every six folios, or fractional part thereof,	0 4 0
ADVERTISEMENT :	
Draft Advertisement,	0 6 8
Or, at option of Solicitor, per folio,	0 0 8
AFFIDAVIT :	
Draft affidavit. For the first six folios, or under,	0 4 0
For each additional folio,	0 0 8
For marking each exhibit,	0 0 6
When an affidavit is annexed to a document merely to verify or identify it, the entire is to be considered as one document, and no separate fees are to be allowed for attendance, draft, engrossment, copy, or signature.	
AGREEMENTS FOR PURCHASE : Applications and undertakings under Forms 34, 35, 36, and 40.	
Solicitor's fee for preparing and completing agreement for each sale on an estate, provided six months have elapsed since the completion of the previous sale, including all scrivenerly, and printing, fees, attendances, and other business incident to the preparation, lodg- ment, and verification of same, but exclusive of the expenses of maps and other necessary expenditure.	
For one such agreement or undertaking, the purchase money being under £500,	1 0 0
For one such agreement when the purchase money exceeds £500,	2 0 0
For more than one and not exceeding five such agreements in the same estate,	3 0 0
For each subsequent agreement after five, not exceeding 10,	0 10 0
For each subsequent agreement after ten, not exceeding 100,	0 6 0
For each subsequent agreement after 100,	0 4 0
ALLOCATION SCHEDULE :	
For preparing Allocation Schedule, for each item, except costs of sale,	0 5 0
AMENDMENTS :	
No charge to be allowed for any amendment in an Originating State- ment, Abstract of Title, or other document lodged in Court by a Solicitor, unless specially allowed.	
APPEARANCES :	
Entering an appearance and all attendances in relation to same,	0 6 8
APPOINTMENT OF TRUSTEES :	
Instructions and perusals,	0 15 4
For all business done up to and including the taking out of the order when Counsel employed,	6 6 0
When Counsel not employed,	4 4 0
(Counsel not to be allowed unless certified for.)	
APPORTIONMENT OF TITHES RENTCHARGE :	
Fee for preparing and lodging form of application for apportionment of Tithe rentcharge payable to the Land Commission (Forms Nos. 16 and 17), including calculations of apportionments, scrivenerly, instruc- tions and correspondence,	0 10 0
Or at the option of the Solicitor, per folio,	0 1 0

Rules of March, 1897	ATTENDANCES :	£ s. d.
	Attending on Client, or any person by his direction, not exceeding one hour,	0 6 8
	For each subsequent hour,	0 6 8
	Not to exceed in one day,	1 0 0
	For each day Cause or Motion in Day List and not at hearing, . .	0 6 8
	Each day it is at hearing,	0 13 4
	Not to exceed in one day,	1 0 0
	(A fee of 13s. 4d. is allowed on motions where an order is made up by the Registrar or pronounced by the Court)	
	Not to be allowed unless a competent person attends acquainted with the facts and proceedings in the cause, and having the proper documents in readiness.	
	Attending on each witness taking evidence,	0 6 8
	Attending Counsel with Brief, Case, or other instructions,	0 6 8
	And where two or more Counsel employed,	0 13 4
	Attending to settle and afterwards to read over the engrossment of an affidavit, but only one fee,	0 6 8
	To be increased according to circumstances, but never to exceed in town,	1 6 8
	Each newspaper in which an advertisement is inserted exclusive of charges by proprietors of newspapers,	0 3 4
	Attending printer to have notice or other document other than agreement printed,	0 6 8
	Attending to procure Accountant's Account or certificate of funds, . .	0 3 4
	Attending for certificate of deeds lodged,	0 3 4
	Attending for certificate of appearances, objections or claims lodged, each,	0 3 4
	To be increased according to circumstances, each to,	0 6 8
	Certificate of lodgment of Abstract of Title,	0 3 4
	Attending checking and examining map,	0 6 8
	Attending Examiner to settle and sign advertisement,	0 6 8
	Attending consultation of Counsel,	0 6 8
	Attending to obtain consent to act as Guardian <i>ad litem</i> , or next friend, . .	0 6 8
	Attending to procure consent to be signed by another Solicitor, . . .	0 6 8
	If to be signed by two,	0 13 4
	If by a greater number, but never to exceed,	1 0 0
	Attendance to vouch publication of notice to claimants,	0 3 4
	Attending to bespeak all necessary documents,	0 6 8
	Like to file same,	0 6 8
	If several affidavits or other document ought to be filed or bespoken at one time from one officer, the Taxing Officer is to exercise his discretion to increase this charge, but never to allow more than,	1 0 0
	Attending on Taxation of costs, each Solicitor whose costs are under taxation, and for the Solicitor or Solicitors opposing the taxation, for each 100 items or fractional part thereof,	0 6 8
	For all attendances to lodge money in Bank including the procuring of the privy,	0 13 4
	Attendance of Solicitor from his house for each day that he shall be necessarily absent, exclusive of all carriage expenses, but to include living,	3 3 0

Schedule of Fees under Land Purchase Acts. 907

	<i>£ s. d.</i>	<u>Rules of March, 1897.</u>
Attendance of Solicitor in the country when he shall return the same day, provided such distance from Dublin shall exceed twelve miles, to include living, but not carriage expenses,	3 3 0	
If twelve miles or less at the discretion of the Taxing Officer.		
Attendance of a clerk in the country (when necessary), including all expenses except carriage hire, for each day,	1 10 0	
Where a Solicitor shall be required to leave Ireland, whether to London or elsewhere, his travelling expenses shall be allowed according to the distance and convenience of travelling, and to the reasonable rate of expense which such Solicitor might incur in the same journey if solely engaged in his private affairs.		
Attendance at Valuation Office to bespeak Ordnance Map and Certificate of Valuation,	0 6 8	
Attending to register or enrol any deed or order, and for all duties relating thereto, including the returning of the deed or order, and the counting of same and memorial, and drawing and signing certificate and affidavit,	1 0 0	
Attending tenants or Solicitor for tenants for copy lease agreement or proposal where necessary,	0 6 8	
If the document be obtained through a Solicitor, such Solicitor to be entitled to a fee of 6s. 8d. for attendance therewith.		
Attending Registrar bespeaking and for order,	0 6 8	
CERTIFYING :		
Certifying any deed, instrument, or writing when required by the Court,	0 2 6	
COMMISSIONER OF OATHS .		
Commissioner's fee for affidavit for each deponent,	0 1 6	
Commissioner's fee for marking each exhibit,	0 0 6	
Not exceeding in all,	2 0 0	
CONSENTS :		
Drawing and signing consent, undertaking, or admission,	0 5 0	
Or at option of the Solicitor, per folio,	0 0 6	
CONSENT TO REDEEM UNDER REDEMPTION OF RENT ACT (FORM 38) :		
Fee for preparing, completing, and lodging consent to redemption under Redemption of Rent Act, 1891,	1 0 0	
CONVEYANCING :		
For drawing any deed, final order for partition, apportionment, memorial, or other instrument, per folio,	0 2 0	
Where the draft exceeds 100 folios, the excess to be allowed at per folio,	0 1 0	
Engrossing, per folio,	0 0 8	
COPIES :		
All copies of documents not herein provided for, each folio,	0 0 3	
Engrossing Abstracts of Title for the Examiner, for every six folios or under	0 2 0	
And for every additional six folios or fractional part thereof,	0 2 0	
Copy thereof for use, per folio,	0 0 4	
Engrossing affidavit, or statement of facts, for every six folios or under,	0 2 0	
And for each additional folio or fractional part thereof,	0 0 4	
Copy of all advertisements,	0 1 0	
Or at the option of the Solicitor, per folio,	0 0 3	

	£	s	d.
Rules of March, 1897.			
Copy schedule of deeds, per page of twenty-eight lines,	0	1	6
For engrossment on parchment, Requisition for Registrar of Deeds,			
five folios or under	0	5	0
If more than five, for each additional folio,	0	1	0
All necessary copies of such searches, for four office sheets and under,	0	1	0
For each subsequent folio,	0	0	3
COPIES			
Copy of all notices, for each copy, including postage stamp and envelope directed,	0	1	0
Copy Brief or Case for Counsel, for six folios or under	0	2	0
And for six folios or fractional part thereof,	0	2	0
Copy costs, per item,	0	0	0
Costs			
Drawing costs for taxation, per item,	0	0	0
Perusing costs for opposition on taxation, for each 100 items, or fractional part thereof,	0	3	0
Attending taxation of costs, for each 100 items, or fractional part thereof,	0	6	0
DRAFTS			
In computing the length of all documents used in this Court the folio to consist of 72 words.			
Draft brief for Counsel, for every six folios or fractional part thereof,	0	3	0
No perusals of any kind to be allowed preparatory to drawing pleadings, deeds, or other documents, either between party and party, or between Solicitor and Client.			
Drawing Schedule of deeds or documents, for each page of twenty-eight lines, cut post,	0	3	0
Docket or Requisition for search in the Registry Office, for draft of five folios or under,	0	5	0
If more than five folios, for each folio from the commencement,	0	1	0
Docket for search in any office, except the office of Registration of Deeds, including draft and one copy,	0	3	0
Drawing necessary receipt and signing when no attendance charged,	0	3	0
Drawing Case for Counsel, if less than six folios,	0	3	0
For each six folios or concluding part,	0	3	0
ENGROSSMENTS			
Engrossing any document other than a deed or memorial, per folio,	0	0	0
EXHIBITS			
Solicitor's fee for marking exhibits, for each exhibit,	0	0	0
FEEs			
Term fee (no term fee will be allowed in the Land Commission Court).			
Signing fee on any document requiring signature,	0	3	0
HAND SEARCH			
Fee for making hand-search, if engaged for not more than one hour,	0	6	0
If longer engaged, per hour	0	6	0
INSTRUCTIONS			
Ordinary instructions and instructions for briefs, apportionments, affidavits, objections, statements of facts, or to enter appearance, continuing proceedings in name of new party,	0	6	0
To be increased according to circumstances, but not to exceed (save by direction of a Commissioner),	3	0	0

Schedule of Fees under Land Purchase Acts.

909

£ s. d.

Rules of
March, 1897.

INSTRUCTIONS FOR DEEDS :

Such fees for instructions as, having regard to the care and labour required, the number and length of documents to be perused, and the other circumstances of the case, may be reasonable.

LETTERS.

Writing letter, signing, and entry, 0 3 4
If several of same import, for each one after the first, 0 2 0

LIS-PENDENS :

Fee on registering a lis-pendens (including stamp duty and outlay), 1 0 0
Fee on registering every subsequent lis-pendens—exclusive of outlay, 0 3 4

MARKING NAMES :

Marking the names of parties to be served on any notice, etc. 0 3 4

MOTIONS EX PARTE :

Attending to fill up and lodge Ex parte Motion docket, 0 6 8
Attending when motion heard, 0 6 8

MOTION ON NOTICE.

Attending when case in list and motion heard, 0 13 4
If the Case lasts all day, 1 10 0

NOTICES.

Drawing special notice, 0 5 0
Or, at option of Solicitor, per folio, 0 0 8
Drawing a common notice, 0 2 6

NEW SOLICITOR :

Fee to new Solicitor for reading documents and proceedings, 1 0 0
(To be increased under special circumstances by permission of the Commissioner.)

ORIGINATING STATEMENT :

Including all attendances and other business incident to the preparation lodgment, and verification of same, including printing and scrivenerly up to twenty folios, but exclusive of the expenses of maps and other necessary expenditure and travelling expenses where the purchase money does not exceed £500, 3 3 0
Where the purchase money exceeds £500, 4 4 0
If an Originating Statement is settled by Counsel his fee must be certified for by a Commissioner.

PERUSALS :

Perusing and abstracting deeds for Abstract of Title, for each skin of fifteen sheets, 0 3 0
Not more than eight skins to be allowed for any deed or instrument. No fee for perusing a document where the Solicitor has been paid for perusing same within a period of two years prior to the preparation of the Abstract.
Perusing or comparing any deed or instrument for purposes other than the Abstract of Title, for each skin, 0 2 0
Perusing Bill of Costs by Solicitor opposing taxation, for each 100 items, 0 3 4
Perusing affidavits and statements of fact where necessary, for each affidavit or statement, 0 1 0
Or, at option of Solicitor, per folio, 0 0 2

POSSESSION :

Fee for attending for order to Sheriff to put purchaser into possession, getting up order and lodging same with Sheriff, 1 0 0

<u>Rules of</u> <u>March, 1897.</u>	REQUISITIONS ·	£ s. d
	For filling, completing, and lodging requisition to have order of a Commissioner reconsidered,	0 5 0
	Drawing any other requisition,	0 5 0
	SEARCHES	
	Fee and attendance on search for judgments, etc., and for documents in any Public Office where made by officer, including attendance to bespeak, and for search, where only one such search,	0 13 0
	Where more than one such search, for each subsequent search after the first	0 6 0
	Filing docket for search,	0 3 0
	Fee and attendance on search in the Registry of Deeds, whether common or negative, made by Officer,	0 13 0
	If made by Solicitor, for each hour,	0 6 0
	Not to exceed in one day,	1 0 0
	Search by Solicitor for judgments or documents in Public Office, for each hour,	0 6 0
	Not to exceed in one day,	0 13 0
	SERVICE OF NOTICES OR OTHER DOCUMENTS NOT SERVED THROUGH NOTICE OFFICE :	
	In the City of Dublin, each person served,	0 2 0
	In the County of Dublin, or in any city or town other than Dublin,	0 5 0
	In other places,	0 10 0
	SIGNING FEE ·	
	Signing any document requiring signature,	0 3 0
	STATEMENT OF FACTS ·	
	Drawing any statement of facts,	1 1 0
	Or, at option of Solicitor, per folio,	0 1 0
	TAXATION OF COSTS	
	Drawing costs for taxation, per item,	0 0 0
	Attending to lodge and get day for taxation,	0 6 0
	Attending on taxation, for each 100 items,	0 6 0
	Preparing and engrossing Certificate of Costs,	0 3 0
	Or, at option of Solicitor, per folio,	0 0 0

PART II.

Costs of Vesting Order, including all attendances and other business incident to the preparation, lodgment, and completion of same, including the completion of copies, but exclusive of the necessary outlay, shall be as follows.—

Where the total purchase-moneys of the holdings included in such

	£ s. d
Vesting Order shall not exceed £500,	3 3
If over £500 and not exceeding £1,000,	4 4
If over £1,000 and not exceeding £2,000,	5 5
If over £2,000 and not exceeding £10,000,	6 6
If over £10,000,	10 10

And in addition in each case for the second and every additional holding included in a Vesting Order a sum of 5s.

RULES UNDER LAND PURCHASE ACTS, 1889 & 1901.

[20TH DAY OF JANUARY, 1902.]

**Rules of
Jan., 1902.**

It is this day ordered that the following General Rules shall, from and after this date, and until further order, take effect and be in force in the Irish Land Commission in relation to proceedings under the Purchase of Land (Ireland) Amendment Act, 1889, and the Purchase of Land (Ireland) (No. 2) Act, 1901.

1. An Agreement between the Vendor and Purchaser for sale and purchase of land under the provisions of the above-mentioned Acts shall (in cases where the sale of his holding is not about to be made to such Purchaser under the Land Purchase Acts) be in the form (No. 10A) in the Appendix hereto, or as near thereto as circumstances will permit.

See Form 10A, p. 912, *post*.

2. Where such purchaser is the proprietor of a holding charged with an annuity under the Land Purchase Acts, there shall be lodged with the agreement the Land Certificate, evidencing his title to such holding unless same be already lodged with the Land Commission.

3. Save as aforesaid, the proceedings in relation to sale and purchase shall be in accordance with the general rules, orders, forms, and directions at present in force in relation to sales under the Land Purchase Acts in so far as such rules, orders, forms, and directions may be applicable, PROVIDED that in any case in which the Judicial Commissioner is satisfied that the Vendor is *prima facie* entitled to carry out a sale or sales under the provisions of the above-mentioned Acts, he may, if the justice of the case so requires, by ruling signed by him, dispense with the observance of such of the said rules, orders, or directions as he may specify in such ruling.

Rules of
Jan., 1902.

APPENDIX.

FORM 10A.

AGREEMENT FOR SALE UNDER THE PURCHASE OF LAND (IRELAND) AMENDMENT ACT 1889, AS AMENDED BY THE PURCHASE OF LAND (IRELAND) (NO. 2) ACT, 1901, WHEN A SALE OF THE PURCHASER'S HOLDING IS NOT BEING MADE UNDER THE LAND PURCHASE ACTS.

COURT OF THE IRISH LAND COMMISSION.

An Agreement made the day of 19 between of hereinafter called the Vendor, and of hereinafter called the Purchaser.

1. In case the Irish Land Commission shall advance the sum of £ guaranteed land stock to the Purchaser for the purchase of the lands described in the Schedule hereto, being additional land within the meaning of the said Acts, the Vendor will sell and the Purchaser will purchase the same in fee simple [*here insert any exceptions, or reservations coming within Section 31, Sub-Section 2 of the Land Law (Ireland) Act, 1896, or any superior interests which the Vendor and Purchaser propose that the sale shall be subject to*] at the price of £ , which sum is to include *costs and expenses incidental to the purchase.**

2. The Sale shall be carried out by means of a Vesting Order.

3. The lodgment of this agreement with the Irish Land Commission is to be deemed an application by the Purchaser for an advance pursuant to the Land Purchase Acts, as amended by the Purchase of Land (Ireland) (No. 2) Act, 1901, to be repaid as is by the said Acts provided.

SCHEDULE.

[*N.B.—The lands must not exceed 10 acres statute measure in area, unless the tenement valuation be £10 or under. If the lands are not separately valued the appropriate valuation should be given and the map must show the relative positions of the lands and the existing holding.*]

And I, the above-named Purchaser, do hereby declare —

1. That the particulars stated in the foregoing Schedule are true to the best of my knowledge and belief.

2. That I am the [registered owner or tenant] of a holding in the townland of barony of and county of which was purchased by under the Land Purchase Acts for the sum of £ in the Matter of the Estate of a Vendor Land [or] I hold as tenant to [*here state name of landlord, tenure of tenant, and residence*]

3. That the land described in the said Schedule adjoins the said holding (or) required by me for the suitable and convenient use and enjoyment of said holding

4. That, save as is above disclosed, I have not obtained from or applied to the Irish Land Commission for an advance for the purchase of any land. [*If the Purchaser has previously applied for any advance write "save an advance of £, & giving the particulars.*]

[*To be signed by the Vendor and the Purchaser.*]

* If the purchaser is to pay the Stamp Duty the words in italics should be struck out.

RULES UNDER TURBARY ACT, 1891.

[15th of August, 1891.]

Rules of
Aug., 1891.

IT IS THIS DAY ORDERED that the following General Rules and Orders shall from and after this date, and until further orders, take effect and be in force in the Land Commission, under and in pursuance of the Turbary (Ireland) Act, 1891:—

See this Act, *ante*, pp. 453-7.

1. Where the Landlord of an Estate, upon which any Tenants have agreed to purchase their holdings, desires to sell any bog on such estate in his occupation to the Land Commission, he shall apply in Form No. 1, in the Appendix hereto, which shall state the name of the townland upon which the bog is situate, the area of such bog, and the tement valuation of the same, the names of the tenants on such estate who have been accustomed to exercise, whether as of right or by permission, any privilege of turbary over such bog, the terms as to payment (if any) by way of rent or otherwise for such right or privilege, and the conditions annexed to the exercise of the same, and the annual sums received for such payments. If any persons other than the tenants of such estate have been permitted to cut turf on such bog, the like particulars should be given; and in case where any rights of grazing or of cutting rushes or other rights upon such bog have been exercised, particulars of all such rights should be given.

Purchase of bog
by Land
Commission.

The Landlord shall also state in such application the price at which he is willing to sell such bog.

There shall be lodged with such application an Ordnance Map, upon which such bog shall be accurately defined, with any existing divisions thereof, whether for cutting or otherwise, and any roads or passages intersecting the same.

2. Where any holding, for the purchase of which an agreement has been entered into by a tenant, comprises a bog which is subject to a right of turbary exercisable by persons other than the purchaser of the holding, and the tenant of such holding, or any person exercising such right of turbary desires to have regulations made by the Land Commission for the exercise of such rights or for the affording reasonable facilities therefor, such person shall apply in Form No. 2, in the Appendix hereto, giving the particulars as to the holding therein prescribed, and stating whether the application is for regulations as to securing future reclamation or the affording reasonable facilities for the exercise of such rights.

Application to
have Regulations
made for exercise
of rights of
Turbary.

**Rules of
Aug. 1891.**
—
Limit as to such
applications.

3. In the case of any holding which has been purchased before the 5th day of August, 1891, under any of the Land Purchase Acts, or under the Irish Church Act, 1869, such application shall only be made by the proprietor of such holding.

Expenses.

4. If, upon the occasion of any such application, it shall appear expedient to the Land Commission, they may, before entertaining such application, require the applicant to lodge such sum as they may consider sufficient to cover the reasonable expenses incident to the making of such regulations.

Draft Regula-
tions to be
circulated
Objections
thereto

5. The regulations made in pursuance of the 4th Section of the Turbary (Ireland) Act, 1891, shall be made by order, and before making any such order there shall be circulated amongst the persons who shall appear to be affected thereby, in such manner as the Commissioner may direct, a draft of the proposed Regulations, and every person thereby affected may, within the time limited by the Commissioner, lodge an objection thereto, and the Commissioner may, before entertaining such objection, require the party lodging the same to give adequate security for the payment of any cost that may be awarded against him in the event of his objection being overruled.

The objection shall be entitled in the matter, shall be written on foolscap paper with sufficient margin, and shall state the facts and documents relied on in support thereof. It shall be verified by the affidavit of the objector and filed in the Registrar's office.

Sealed copies of
Order may be
obtained.

6. When the final order has been made, any party interested may obtain a sealed copy thereof upon payment of the usual scrivenerly fees.

Reference of
applications to
Commissioners.

7. Applications under the Turbary (Ireland) Act, 1891, in respect of bogs on any estate which may have been dealt with under the Purchase of Land (Ireland) Acts, 1885 or 1891, shall be referred to the Commissioner to whom such estate shall have been referred. All other applications under the said Act shall be referred to the Commissioners or any one of them in such rotation or otherwise as may from time to time be directed, provided that any application and the proceedings thereunder may at any time be transferred from any one Commissioner to another on the fiat of the Judicial Commissioner.

FORMS UNDER TURBARY ACT, 1891.

FORM 1.

COURT OF THE IRISH LAND COMMISSION.

TURBARY (IRELAND) ACT, 1891.

Record No.

In the Matter of the Estate of _____ a Vendor of Land.

I _____ of _____ the Landlord of the above estate, hereby offer to sell to the Irish Land Commission the bog upon the said estate, described in the Schedule hereto, and in the Originating Statement filed in this matter, for the sum of £ _____, and I apply to the said Commission to purchase the same under the provisions of the said Act, and I hereby certify that I have truly set forth in the said Schedule the names of all the tenants on the said estate who have been accustomed to exercise (whether as of right or by permission) any privilege of turbary, grazing, or cutting rushes, or any other privilege upon the said bog, and the particulars, extent, conditions, and terms as to payment (if any) by way of rent or otherwise attached to the exercise of such privileges, and also the names of all persons (if any) other than tenants who have been accustomed to exercise any of such privileges and the like particulars as regards the same. And I hereby agree that no contract entered into by the said Commission with me in pursuance of this offer shall be binding on them if the said Schedule be inaccurate in any substantial particular. The total of the annual payments I receive in respect of such privileges amount to £ _____

(Signature of Landlord.)

SCHEDULE

Ordnance Survey Names of Townlands upon which the bog is situate	Area in Statute Measure of the bog in each Townland	Reference to Map	Tenement Valuation	Barony	County
	A. R. P.		£ s. d.		
Names of Tenants on the Estate or other Persons who exercise any privileges on the Bog. Tenants on the Estate to be set out separately from other persons	Townlands upon which the holdings (if any) of such Tenants or other persons are situate	Full particulars of the nature and extent of the privilege, whether as of right or by permission, whether as appurtenant to a Tenancy or distinct therefrom	Particulars of payment (if any) for the exercise of such privilege	Special Conditions (if any) attached to the exercise of such privilege, and observations	

Rules of
Aug., 1891

FORM 2.

COURT OF THE IRISH LAND COMMISSION.

A.B. from C.D

In the Matter of the Turbary Act, 1891, and of a holding purchased by
Description of the holding to be taken, if possible, from the Vesting Order
or Conveyance.

Townlands, each to be given separately and Ordnance Survey names only to be used	Area in Statute Measure	Barony	County
	A. R. P.		

Name of present proprietor of holding,
Postal address,

I, _____ of (a) _____, *The proprietor of the above holding, or, a person having a right of turbary on the above holding* _____, do hereby apply to the Irish Land Commission to make regulations pursuant to the 4th Section of the said Act for securing that (b) *If the application be by the proprietor "the exercise of the rights of turbary specified in the schedule hereto shall not prevent the future reclamation of the bog on the said holding," or if by a person having a right of turbary "that I and the other persons named in the schedule hereto shall have reasonable facilities for the exercise of the rights of turbary therein stated."*

Dated this _____ day of _____ 18 _____.

Signature of applicant,

Postal address,

SCHEDULE.

Names of persons other than the proprietor who exercise rights of turbary on the bog on the holding	Townlands upon which the holdings (if any) of such persons are situate	Full particulars of the nature and extent of the rights of turbary, and whether they are exercised as appurtenant to a tenancy or distinct therefrom	Particulars of payment (if any) for the exercise of such rights of turbary	Special conditions (if any) attached to the exercise of such rights of turbary, and observations

I, _____, the said applicant, make Oath and say that I have in the foregoing Schedule truly set forth (c) *If not the proprietor insert "as far as is known to me"* the names of all the persons, other than the proprietor, who exercise rights of turbary on the bog on the said holding, the full particulars of the nature and extent of such rights, of the payments, if any, made therefor, and of the conditions, if any, attached to the exercise thereof.

Sworn, &c.

RULES, DATED MAY 21, 1900, MADE BY THE IRISH LAND COMMISSION
UNDER THE CONGESTED DISTRICTS BOARD (IRELAND) ACT, 1899,
SECTION 2.

Rules of
21st May,
1900.

(Stat. Rules and Orders, 1900, No. 340.)

It is this day ordered that the following Rules shall, from and after this date, and until further Order take effect and be in force in relation to proceedings under Section 2 of the Congested Districts Board (Ireland) Act, 1899.

In these Rules (except where the context otherwise requires)

“The Board” means “The Congested Districts Board.”

“The Commission” means “The Irish Land Commission.”

“The Commissioner” means one of the Irish Land Commissioners, and includes the Judicial Commissioner.

1. Every application by the Board under the Congested Districts Board (Ireland) Act, 1899, Section 2, shall be grounded on a Minute of the Board, and shall be commenced by a Request and Undertaking in the Form in the Appendix hereto (with such variations as the case may require) signed by the Secretary to the Board and lodged with the Registrar of the Commission.

2. Upon the lodgment of such Request and Undertaking the application shall be a proceeding pending in the Court of the Irish Land Commission, and thereupon the Request and Undertaking shall be laid before the Judicial Commissioner, who may either retain the proceeding before himself or may refer the same to such other Commissioner as he may direct.

3. The Commissioner before whom the proceeding is pending may require the production of such deeds and documents as shall appear to him necessary, and may give such directions as to service of notice or otherwise, as the case may require, and may, if and when satisfied that his requisitions have been complied with and directions carried out, make an Order granting the application of the Board either absolutely or subject to such conditions as he may embody in the Order.

4. Unless where herein otherwise expressly provided, all further proceedings consequent upon any such Order shall be had and taken in the like manner, and subject to the like rules of procedure as are

Rules of
21st May,
1900.

prescribed by the Rules for the time being in force under the Land Purchase Acts in relation to proceedings thereunder in the case of an advance made to a tenant for the purchase of his holding.

5. If and when a Final Order directs that an advance shall be made, the Commissioner may—

- (a) Pay the amount of such advance to the person or persons entitled thereto; or,
- (b.) If he deem it expedient so to do, and the case so requires, pay the advance into the Bank of Ireland to such credit as he may direct, and make such further orders, and with the like consequences, as in the case of an advance made to a tenant for the purchase of his holding.

6. Where the application is for the apportionment of impropriate tithe-rentcharges, quit or Crown rents, rents, fees, duties, services, rentcharges, or annuities, and is grounded on a Consent or Consents embodying the information necessary for making up the Order, the Commissioner, if satisfied that the Consent or Consents have been signed by or on behalf of all necessary parties, may, if he think fit, dispense with the lodgment of a statement of facts, and may thereupon make a Final Order for apportionment in the terms of such Consent or Consents. But, save as aforesaid, all such apportionments shall be carried into effect in accordance with the practice prescribed by the Rules for the time being in force under the Land Purchase Acts

7. As soon as any charge or burden for the discharge of which an Order for advance has been made has been paid off, or an Order for the apportionment or redemption of any superior interest which appears as a burden on the Land Certificate has been made, the Board shall cause the necessary steps for the amendment of the Register to be taken.

8. All Notices, Orders, and other documents shall be entitled in the same manner as the Request and Undertaking.

9. The Rules under the Land Purchase Acts, dated the 16th March, 1897, shall apply, *mutatis mutandis*, in any case not sufficiently provided for by these Rules.

Rules under Congested Districts Board Acts. 919

FORM.

Request and Undertaking.

Rules of
21st May,
1900

COURT OF THE IRISH LAND COMMISSION.

Land Purchase Acts and the Congested Districts Board (Ireland) Act, 1899,
Section 2.
Record No.

In the Matter of the Estate of the Congested Districts Board, formerly
the Estate of A. B.

And in the Matter of [a Fee-farm Rent of £ , payable thereout or a
mortgage for £ , charged thereon or as the case may be].

1. The Congested Districts Board, in the month of , 1 , purchased the
above estate for the benefit of the Congested Districts County of by means
of an advance of £ Guaranteed Land Stock made by the Irish Land Com-
mission, pursuant to the Land Law (Ireland) Act, 1896, Section 43.

2. The lands of in the Barony of and County of form part of the
said estate (or the said estate consists of the lands of, &c.). The said lands are
subject to [the following charge, that is to say, mortgage dated the day of
, 1 , and made between &c., to secure the sum of with interest, in
respect of which there is now due the sum of £ for principal, together with
interest thereon, from the day of last, [or the
following superior interest, that is to say, rent of £ created by Inden-
ture, dated, &c. *If the superior interest also affects other lands not comprised in
this estate the fact should be mentioned.*]

3. The said charge (or superior interest) appears as a burden on the Land Certificate folio No. . The (registered) owner thereof being D. E. of [or as the case may be].

In the case of
superior
interest where
the owner
thereof is not
registered, say
"Reputed."

4. The Congested Districts Board request the Irish Land Commission [to direct
that a sum of Guaranteed Land Stock equivalent at the price of the day to
£ be advanced and disposed of in discharging the said incumbrance
or to exercise their powers for the redemption, or for the apportionment and
redemption of the said superior interest] [or as the case may be].

5. The amount of the proposed advances taken together with all the previous
advances made to the Board on account of the said Congested Districts County
and not written off does not exceed the limit prescribed by the said Section 43,
or the limit as fixed by the Treasury under Section 4 of the Congested Districts
Board (Ireland) Act, 1899.

6. The Congested Districts Board undertake for the payment of any costs which
the Land Commission may award to any person in connection with this application
or the proceedings consequent thereon, and in such manner as the Land Com-
mission may direct.

[To be signed by the Secretary to the Congested Districts Board.]

PART III.

7 Wm. III.,
c 8

APPENDIX OF STATUTES.

7 WM. III., CHAP. 8 (IR.).*

AN ACT FOR REDRESS OF INCONVENIENCES FOR WANT OF PROOF OF THE DECEASES OF PERSONS BEYOND THE SEAS, OR ABSENTING THEMSELVES, UPON WHOSE LIVES ESTATES DO DEPEND.

WHEREAS divers lords of manors and others have used to grant estates by lease for one or more life or lives, or else for years determinable upon one or more life or lives; and it hath often happened, that such person or persons, for whose life or lives such estates have been granted, have gone beyond the seas and absented themselves for many years, that the lessors and reversioners cannot find out whether such person or persons be alive or dead, by reason whereof such lessors or reversioners have been held out of possession of their tenements for many years after all the lives upon which such estates depend are dead, in regard that the lessors and reversioners, when they have brought actions for the recovery of their tenements, have been put upon it to prove the death of their tenants, when it is almost impossible for them to discover the same; for remedy of which mischief so frequently happening to such lessors or reversioners, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and the Commons in the present Parliament assembled, and by the authority of the same. That if such person or persons, for whose life or lives such estates have been or shall be granted as aforesaid, shall remain beyond the seas, or elsewhere absent themselves in this realm, by the space of seven years together, and no sufficient and evident proof be made of the lives of such person or persons respectively, in any action commenced for the recovery of such tenements by the lessors or reversioners, their heirs or assigns; the judges, before whom such action shall be brought, shall direct the jury to give their verdict, as if the person so remaining beyond the seas, or otherwise absenting himself, were dead.

Persons absent seven years, deemed dead, if no proof given to the contrary.

2. (*Jurors upon such trial, the greatest part of whose estate held by lease for lives, may be challenged.*)

3. (*If said persons proved to have been living, lessee may re-enter and recover damages.*)

9 ANNE, CHAP. 8 (IR.).†

9 Anne, c.

AN ACT FOR THE BETTER SECURING OF RENTS, AND TO PREVENT FRAUDS COMMITTED BY TENANTS.

FOR the more easie and effectual recovery of rents reserved on leases for life or lives, term of years, at will or otherwise; be it

*For cases decided on the construction of this Act, see notes to L. & T. Act, 1860, sec. 72, *ante*, pp. 129-130.

†The cases decided under this Act are collected in notes to L. & T. Act, 1860, sec. 51, *ante*, pp. 98-99.

9 Anne, c. 8.

No goods to be taken in execution till landlord's rent, not exceeding one year, paid

enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by authority of the same. That from and after the twenty-ninth day of September in the year of our Lord God one thousand seven hundred and ten no goods or chattels whatsoever lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution or foreign attachment, *justicies* or *distringas*, on any pretence whatsoever, unless the party, at whose suit the said execution or foreign attachment, *justicies* or *distringas*, issued out, before the removal of such goods from off the said premises, by virtue of such foreign attachment, execution, or extent *justicies* or *distringas*, pays to the landlord of the said premises, or his bailiff, all such sum and sums of money as are or shall be due for rent for the said premises, at the time of the taking such goods or chattels by virtue of such foreign attachment, execution, extent *justicies* or *distringas*, provided the said arrears of rent do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution or foreign attachment, *justicies* or *distringas* is sued out paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment or foreign attachment, *justicies* or *distringas* as he might have done before the making of this Act: and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiffs the monies so paid for rent.

Landlord or agent, to make affidavit of the arrear, if required.

2. Provided always, that such landlord, or his agent, do make and produce an affidavit in writing (if thereto required by the plaintiff in such action or execution, or his agent) that such arrear of rent is really and *bona fide* due to such landlord or lessor; which oath the sheriff or sub-sheriff, or any justice of peace, or other magistrate, are hereby empowered to administer.

After expiration of lease, distress may be for arrears.

7. Whereas also lessees for life or lives, or for years, or at will frequently hold over the said lands and tenements demised after the determination of such leases; and whereas after the determination of such leases, or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof: be it hereby further enacted, that from and after the twenty-ninth day of September one thousand seven hundred and ten, it shall and may be lawful for any person or persons having any rent in arrear, or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases in the same manner as they might have done if such lease or leases had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant, or those claiming under him, from whom such arrears became due.

If made in six months, and during landlord's title and tenant's possession.

15 GEO. II., CHAP. 8 (IR.).*

15 Geo. II.,
c. 8.AN ACT FOR THE MORE EFFECTUAL SECURING THE PAYMENT OF RENTS,
AND PREVENTING FRAUDS BY TENANTS.

WHEREAS the several laws heretofore made for the better securing ^{11 G 2,} of rents, and to prevent frauds committed by tenants, have not ^{c 19, Eng} proved sufficient to obtain the good ends and purposes designed thereby; but the fraudulent practices of tenants, and the mischief intended by the said acts to be prevented, have of late years rather increased, to the great loss and damage of their lessors or landlords; for remedy whereof be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that from and after the first day of May in the year of our Lord one thousand seven hundred and forty-two, in case any tenant or tenants, any person or persons paying any rentcharge or rentcharges, fee-farmer or fee-farmers, lessee or lessees for life or lives, term of years at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the grant, demise, or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off, or from such premises, his, her, or their goods or chattels to prevent the grantee or grantees of rentcharges, grantor or grantors of fee-farms, landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved due or made payable; it shall and may be lawful to and for every grantee or grantees, landlord or lessor, landlords or lessors within this Kingdom, or any person or persons by him, her, or them, for that purpose lawfully empowered, within the space of twenty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods or chattels wherever the same shall be found, as a distress for the said arrears of rent, and the same to sell, or otherwise dispose of, in such manner, as if the said goods and chattels had actually been distrained by such grantee or grantees, lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; any law, custom, or usage to the contrary in anywise notwithstanding.

If tenants convey away goods to prevent distress landlords may in twenty days seize wherever found, and dispose as if in premises.

2. Provided always, that no landlord or lessor, or other persons entitled to such arrears of rent, shall take or seize any such goods or chattels as distress for the same, which shall be sold *bona fide*, and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud.

Unless before seizure sold to persons not privy.

5. And be it further enacted by the authority aforesaid, that from and after the first day of May, which shall be in the year of our Lord one thousand seven hundred and forty-two, it shall and may be lawful to and for every grantee or grantees of rentcharges, grantor or grantors of fee-farms, lessor or landlord, lessors or landlords, or his or their steward, bailiff, receiver, or other person or persons empowered by him, her, or them, to take and seize as a distress for arrears of rent any cattle, or stock of their respective tenant or tenants, feeding or depasturing upon any common appen-

Tenants stock on common appendant, &c., may be distrained, &c.

* See as to distress generally, notes to L. and T. Act, 1860, sect. 51, *ante*, pp. 93-99.

15 Geo. II.
c. 8.

dant or appurtenant, or any ways belonging to all or any part of the premises demised or holden; and the same to sell or otherwise dispose of in such manner, as if the said goods and chattels had actually been distrained by such grantee or grantees, grantor or grantors, lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; any law, custom, or usage to the contrary notwithstanding.

Inconveniences both to landlords and tenants on removal of distress

6. And whereas great difficulties and inconveniences frequently arise to landlords and lessors, and other persons taking distress for rent, in removing the goods and chattels or stock distrained off the premises, in cases where by law they may not be impounded and secured thereupon; and also to the tenants themselves many times by the damages unavoidably done to such goods and chattels or stock in the removal thereof: Be it enacted by the authority aforesaid, and from and after the said first day of May one thousand seven hundred and forty-two, it shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made of whatever nature or kind soever it may be, in such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress; and to appraise, sell, and dispose of the same upon the premises in like manner, and under the like directions and restraints, to all intents and purposes as any person taking a distress for rent may now do off the premises and that it shall and may be lawful to and for any person or persons whatever to come and go to and from such place or part of the said premises, where any distress for rent shall be impounded and lectured as aforesaid, in order to view, appraise, and buy, and also in order to carry off or remove the same, on account of the purchase thereof; and if any pound-breach or rescous shall be made of any goods, or chattels, or stock distrained for rent, and impounded or otherwise secured by virtue of this act, the person or persons aggrieved thereby shall have the like remedy, as in cases of pound-breach or rescous.

Distress may be impounded on the premises and sold.

25 Geo II.,
c. 18.

25 GEO. II., CHAP. 13 (1R.).*

Distress for rent, unless redeemed in 8 days, sold by public sale.

5. And whereas the manner in which distresses taken for rent services, fee-farm-rents, or rent charges, have been often disposed of have occasioned troublesome and vexatious suits; be it enacted by the authority aforesaid, That from and after the first day of May next all distresses lawfully taken for any such rent or arrears of rent shall, unless redeemed within eight days after the same shall be distrained as aforesaid, be sold by public sale to the highest and fairest bidder or bidders at such time or times, and in such convenient place or places, as the person distraining, his agent or bailiff shall for that purpose appoint; such person, his agent or bailiff after default made in redeeming such distress within the time aforesaid first causing one or more notice or notices in writing of the place and time intended for such sale to be posted up six days previous to the time of such sale in the next market town to such

Notices posted

* For other regulations as to the sale of goods distrained, see *ante*, pp. 97-8, and 9 & 10 Vic. c. 111, *post*, pp. 929-931.

place at the usual place in such market town for posting up public notices; and that the price and prices, for which such distress or distresses shall be *bona fide* then and there sold, shall be deemed and taken as between all the parties aforesaid, and all persons deriving under them respectively, to be the full and real value of such distress or distresses; and that such value shall not be afterwards questioned in any court of law or equity; and in case such distress or distresses shall be sold for more than is due and owing to the person or persons for whose benefit such distress or distresses shall be taken, such overplus, after deducting thereout all necessary expenses attending the taking and selling the said distress, shall be paid over to the person and persons from whom such distress and distresses shall be taken.

25 Geo II.
c. 13.

5 GEO. III., CHAP. 17 (IR.).†

AN ACT FOR ENCOURAGING THE PLANTING OF TIMBER TREES.

WHEREAS the distress this kingdom must soon be in for want of timber, is most obvious; and whereas it is equal to inheritors, whether tenants do not plant, or have a property in what they plant: be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the first day of September, one thousand seven hundred and sixty-six, tenants for lives renewable for ever, paying the rents and performing the other covenants in their leases, shall not be impeachable of waste in timber trees or woods, which they shall hereafter plant, any covenant in leases or settlements heretofore made, law, or usage to the contrary notwithstanding.

5 Geo III,
c 17.

Tenants not impeachable of waste in trees planted by them notwithstanding law or usage. Amended Geo. 3, 20 Sec. 11, 17, 18, Geo 3, c 35

2. Be it enacted by the authority aforesaid, That from the time aforesaid any tenant for life or lives by settlement, dower, courtesy, jointure, lease, or any office, civil, military, or ecclesiastical, impeachable of waste, or any tenant for years exceeding twelve years unexpired, shall plant sally, ozier, or willows, the sole property of such shall during the continuance of the term vest in the tenant, and he may cut and fell the same under the restrictions hereafter mentioned; and if such tenant shall plant any timber trees of oak, ash, elm, fir, pine, walnut, chesnut, horse chesnut, quicken, or wild ash, alder, poplar, or other timber trees, such tenant during the term shall be intitled to house boot, plow boot, cart boot, and car boot of such trees by him planted; and at the expiration of such term, or where such trees shall have attained maturity, which shall first happen, shall be intitled to the said trees or the value of them according to the directions hereafter mentioned, any covenant heretofore made, law, or usage to the contrary notwithstanding.

Tenant for Life or Lives by settlement, or above 12 years planting sally or willows, may fell under restrictions

3. Provided always, and be it enacted by the authority aforesaid, That each person so planting shall within six months next after such planting lodge with the clerk of the peace of the county, where such plantation is made, a certificate under the hand of the tenant, containing the number and kind of the trees planted, their height, and years growth at the time of planting, and a clear description

On certificate being lodged of the number kind, height, and growth, filed separate, and entered alphabetically.

† See Landlord and Tenant Act, 1860, sec. 31, and notes thereto, *ante*, pp. 62-64. See also Timber Act, 1888, *ante*, p. 450; *Peckland v. Sonerville*, 2 I. Ch. R., 289; *Ex. p. Armstrong*, 8 Ir. Ch. R. 80; and *Moore's Est.* 361 L. T. R. 14.

5 Geo III
c. 17.

of the places and manner wherein they shall be planted; which certificate shall be kept on a separate file among the records of the county, and entered in an alphabetical book by the denomination of the land in the said county; and such certificate or copy thereof attested by the acting clerk of the peace, shall be evidence of notice of such plantation in all courts; for filing of which certificate, alphabetizing the same in the book, and making and attesting a copy thereof, the clerk of the peace shall receive a fee of one shilling and no more, and a copy of such certificate six pence and no more and to which book and certificate all persons may resort, during each quarter sessions to be held for such county, without any fee.

4. (*Where term uncertain, tenant may, for one year after its expiration, enter and cut registered timber, making reasonable satisfaction for the trespass.*)

15 & 16 Geo.
III c. 26.

Trees deemed
timber within
this and every
other Act

15 & 16 GEO. III., CHAP. 26 (1R.).

3. And be it further enacted by the authority aforesaid, That a oak, beech, ash, elm, larch, sycamore, walnut, chesnut, cherry, lime, poplar, alder, quicken, or mountain ash, holly, timber, willow, aspen, birch, cedar, pine and fir trees, shall be deemed and taken to be timber trees, within the true meaning and provision of this act, and of every other act now in force in this kingdom relative to timber trees.

19 & 20 Geo
III., c. 30.

Lands held
under leases for
lives renewable
on payment of
fines as herein

19 & 20 GEO. III., CHAP. 30 (1R.).*

AN ACT FOR THE RELIEF OF TENANTS HOLDING UNDER LEASES FOR LIVES CONTAINING COVENANTS FOR PERPETUAL RENEWALS.

WHEREAS great parts of the lands in this kingdom are held under leases for lives with covenants for perpetual renewals upon payment of certain fines at the times therein respectively mentioned for each renewal; and whereas from various accidents and causes such tenants, and those deriving under them, have frequently neglected to pay or tender such fines within the times prescribed by such covenants after the fall of such lives respectively: and whereas many such leases are settled to make provision for families and creditors most of whom must be utterly ruined, if advantage shall be taken of such neglects, which will occasion much confusion and distress in the kingdom; and whereas it has been for a long time a received opinion in this kingdom, to which some decisions in courts of equity and declarations of judges have given countenance, that courts of equity would in such cases relieve against the lapse of time upon giving an adequate compensation to the persons, to whom such fines were payable, or their representatives: and to the end that such interests may not be defeated by a mere neglect, where no fraud appears to have been intended, upon making full satisfaction to the lessors, or those deriving under them; be it declared and enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, that courts of equity upon an adequate compensation being made

* For cases decided under this Act, see notes to Landlord and Tenant Act 1860, Sec. 72, ante, p. 130.

shall relieve such tenants and their assigns against such lapse of time, if no circumstance of fraud be proved against such tenants or their assigns; unless it shall be proved to the satisfaction of such courts, that the landlords or lessors, or persons entitled to receive such fines, had demanded such fines from such tenants or their assigns, and that the same had been refused or neglected to be paid within a reasonable time after such demand.

19 & 20 Geo.
III., c. 39.

2. Provided always, and be it enacted by the authority aforesaid, that in case the landlord shall find any difficulty in discovering his tenant or the assignee of such tenant, so as to make a demand on such tenant or assignee, that then and in every such case a demand made of the said fine on the lands from the principal occupier of the same, together with a notice of such demand, to be inserted for the space of two months in the London and Dublin Gazettes, shall be considered to all intents and purposes a demand within this Act.

If difficult to
discover tenant,
or assignee,
demand on the
lands as herein.

23 & 24 GEO. III., CHAP. 39 (Ir.).*

23 & 24 Geo.
III., c. 39

AN ACT TO AMEND THE LAWS FOR THE ENCOURAGEMENT OF
PLANTING TIMBER TREES.

WHEREAS the laws for the encouragement of tenants to plant timber trees have proved ineffectual: Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, any tenant for life or lives, by settlement, dower, courtesy, jointure, lease, or office civil, military, or ecclesiastical, impeachable of waste, or any tenant for years, exceeding fourteen years unexpired, who shall plant, or cause to be planted, any timber trees of oak, ash, elm, beech, fir, alder, or any other trees, shall be entitled to cut, fell, and dispose of the same, or any part of the same, at any time during the term.

Tenants for life
impeachable of
waste, &c., who
plant, may cut,
fell, and dispose
of the same
during the term.

2. Provided always, That any tenant so planting or causing to be planted, shall, within twelve calendar months after such planting, lodge with the Clerk of the Peace of the county, or county of a city where such plantation shall be made, an affidavit sworn before some justice of the peace of the said county, reciting the number and kinds of the trees planted, and the name of the lands, in form following:—

Tenants so
planting must
make affidavit of
number and
kind.

I, *A. B.*, do swear, that I have planted, or caused to be planted, within twelve calendar months last past, on the lands of _____, in the parish of _____, held by me from _____, the following trees [here reciting the number and kind of trees], and that I have given notice to the person or persons under whom I immediately derive, or his, her, or their agent, of my intention to register said trees, twenty days at the least previous to this day, and that I have given notice of my intention to register said trees, by publick advertisement in the *Dublin Gazette*, thirty days at the least previous to the date hereof, or else, " and that I have also given notice of the same in writing to the head landlord, owner or owners of said ground,

The oath.

* See 5 Geo. III., c. 17 (Ir.), and 15 & 16 Geo. III., c. 26, *ante*, pp. 925-6. See also notes to Landlord and Tenant Act, 1860, Sec. 31, pp. 62-4, *ante*; and Timber Act, 1888, p. 430, *ante*.

23 & 24 Geo. III., c. 39; or his or their agent, twenty days previous to the date hereof" [a the case may be].

Which affidavit the Clerk of the Peace is directed to keep on a separate file, amongst the records of the county, and to enter in an alphabetical book, by the denomination of the land; for filing which affidavit, alphabetizing the same, and making and attesting a copy thereof, the Clerk of the Peace shall receive one shilling, and for a copy of the affidavit given at any after time sixpence; and to which book and affidavit any person may resort, at and during any Quarter Sessions of the Peace for said county, paying three pence; and such Clerk of the Peace is hereby directed to read in open Court, at every general Quarter Sessions, all affidavits as aforesaid, which shall have been lodged with him at any time since the general Quarter Sessions next preceding the same, under the penalty of twenty shillings for every omission, to be recovered by civil bill by any person who shall sue for the same within twelve months after the Quarter Sessions at which he ought to have publickly read such affidavit.

Tenant may sell his right to person under whom deriving.

7. And whereas it may be advantageous to all persons concerned that the tenant may sell his or her right and title in said trees to the person under whom he or she may derive; be it enacted, that an tenant may sell his or her right, title, and property in said trees or coppices, or any part of the same, to any person under whom he or she may derive mediately or immediately, and that the person so purchasing shall have all rights, titles, and properties, and privilege therein, which are, or by this Act shall be secured to said tenant.

In writing with two witnesses, as herein.

8. Provided always, and to prevent disputes touching the sale or transfer of said trees or coppices, that no sale or transfer of the same shall be deemed good in law, unless and until the same shall be done in writing, and signed by said tenant with his or her name or mark, attested by two credible witnesses, and an attested copy of said writing or instrument lodged with the Clerk of the Peace in open Court, at some Quarter Sessions of the Peace for the county or county of a city, having been first proved to be a true copy by some credible witnesses upon oath before the justices at said sessions which copy the Clerk of the Peace is hereby directed to keep on the same file with the affidavits in this Act mentioned, and to alphabetize in the same book, and for so doing the Clerk of the Peace shall receive from the purchaser one shilling; and to said book an affidavit all persons shall have access at any time, paying sixpence; and an attested copy of the copy of such writing or instrument signed by the acting Clerk of the Peace, shall be deemed in all Courts to be evidence of the due registry of such writing or instrument, and such copy the Clerk of the Peace shall be at all times obliged to give on receiving sixpence; and any Clerk of the Peace refusing to give such copy within three days after it shall be demanded, shall forfeit the sum of five pounds, to be recovered by civil bill, by any one who shall sue for the same, within six months and if the head or principal landlord shall so purchase the said trees or coppices from an under-tenant, having a right to sell the same, then, from and after the registry of the sale as aforesaid, the said trees shall belong to said landlord in as full and ample manner as if they were his own original right or royalty, notwithstanding

standing any intermediate term that may exist between the term of the said under tenant, and the estate of the said landlord. **23 & 24 Geo. III., c. 39.**

9. And be it enacted, that when the term of the tenant entitled to the property of the trees, by this Act, shall be for life or uncertain, the said tenant shall have the same liberty for the space of one year after the expiration of his lease, to enter upon the said lands, and to cut, carry away, and dispose of the said trees, as if his lease had been unexpired (*making reasonable compensation for damages incurred by so doing*). Where lease uncertain, tenant shall have 1 year from expiration to cut, &c

21. And be it enacted, that nothing herein shall be construed to extend or relate to any trees planted, or to be planted in pursuance of any covenant contained in any lease, nor to affect or invalidate any such covenants. This Act not to extend to plantations by covenant.

22. And be it enacted, that nothing herein contained shall extend to tenants evicted for non-payment of rent. Nor to tenants, evicted for non-payment of rent.

9 & 10 VIC, CHAP. 111.*

9 & 10 Vict., c 111.

AN ACT TO AMEND THE LAW IN IRELAND AS TO EJECTMENTS AND DISTRESSES, AND AS TO THE OCCUPATION OF LANDS.

[28th August, 1846.]

(*Secs. 1 to 9 are repealed by the 1. & T. Act, 1860, "so far as they relate to the relation of landlord and tenant in Ireland."* See Sch. B to that Act, ante, p. 159.)

10. And be it enacted, that in all cases of distress for rent cognizable in any court whether superior or inferior, the person making any such distress shall at the time of making such distress deliver to the person in possession of the premises for the rent of which such distress shall be made, or, in case there shall not be any person found in possession, shall affix on some conspicuous part of such premises, a Particular in writing of the rent demanded, specifying the amount thereof, the time or times when the same accrued, and the name and place of abode of the person by whom, and (if the person who acts in the making of the distress be not the party claiming to be entitled to the rent for which the distress is made) the name of the person by whose authority such distress is made, or otherwise such distress shall be unlawful and void: Provided always, that if the person by whom or by whose authority such distress shall be made shall be the party substantially and beneficially entitled to the rent, such distress shall not be unlawful or void by reason that the person having the legal estate in the reversion is not named in such notice: Provided also, that if any such distress shall be in other respects sustainable and well founded, the same shall not be unlawful or void by reason that the amount of rent demanded by such notice shall not be the exact amount due if the mis-statement of such rent in such notice shall have been made by mistake, and without fraud or malice, or want of reasonable care. In all cases of distress for rent a written notice of the rent claimed shall be given

11. And be it enacted, that in every case of distress for rent a tender of the rent in arrear and of the charges of such distress at any time before the commencement of the sale of the property Distress not unlawful on account of mistakes, &c.

* See as to distress generally, notes to Landlord and Tenant Act, 1860, sec. 51, ante, pp. 93-99. In cases of distress for rent a tender of the amount before sale shall be sufficient to stay proceedings.

§ 10 Vict.
c 111

distrained shall be sufficient to stay the proceedings on such distress, and to entitle the person distrained upon to a return of the property so distrained; and the party whose goods shall be distrained shall be at liberty to plead such tender in bar to any avowry or cognizance, and shall be entitled to recover damages in an action on the case against the party by whom or by whose agent or bailiff the goods so distrained shall be withheld after such tender, and for the purposes of this Act the bailiff appointed in writing by the known agent or receiver of any landlord, or of the person substantially and beneficially entitled to the rent for which the distress shall be made, shall be deemed to be the bailiff of such landlord or person so entitled.

No distress for rent shall be lawful unless by virtue of a warrant properly signed

12. And be it enacted, that no distress for rent made otherwise than by the landlord of any premises, or his known agent or receiver in person, shall be lawful, unless made by virtue of a written or printed warrant or order to distrain signed by the landlord or person substantially and beneficially entitled to the rent for which the distress shall be made, or his known agent or receiver, directing the bailiff or other person to distrain the tenant or tenants, person or persons named therein, and bearing upon it the date when and the name of the place at which it is signed, nor unless such warrant or order shall be signed within twenty days next before the time when such distress shall be made: provided always that such warrant or order to distrain shall be free from the payment of any stamp duty.

Warrant free from stamp duty

The provisions of the 56 Geo III, c 88, authorizing the distraining of growing crops for rent repealed, except as to any distress commenced before the passing of this Act

13. And whereas by an Act passed in the fifty-sixth year of his late Majesty King George the Third, intituled "An Act to amend the law of Ireland respecting the recovery of tenements from absconding, overholding, and defaulting tenants, and for the protection of the tenant from undue distress," it is enacted, "that it shall be lawful for every lessor or landlord in that part of the United Kingdom of Great Britain and Ireland called Ireland, or his, her, or their steward, bailiff, receiver, or other person or person empowered by him, her, or them, to take and seize as a distress for arrears of rent all sorts of corn and grass, hops, roots, fruit, pulse, or other product whatsoever, which shall be growing on any part of the estates so demised or holden as a distress for arrears of rent, and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place on the premises so demised or holden, and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barns or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premises, and dispose of the same for satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress and sale, in the same manner as any other goods and chattels distrained for non-payment of rent": And whereas it is expedient that the said recited enactment should be repealed; be it therefore enacted, that the said enactment of the said recited Act shall be and the same is hereby repealed, save and except as to any distress made or commenced before the passing of this Act.

Party distraining for rent not to be deemed a

14. And be it enacted, that where any distress shall be made for any rent justly due, and any irregularity or unlawful Act sha

be afterwards done by the party distraining, or by his agents, the distress itself shall not be therefore deemed to be unlawful, nor the party a trespasser, *ab initio*, but the party aggrieved shall receive full satisfaction for the special damage sustained thereby, and no more, in an action of trespass or on the case, *and where such plaintiff shall recover he shall be paid his full costs*:* Provided always, that no tenant shall recover for such irregularity if tender of amends hath been made by the party distraining, or his agent, before action brought.

9 & 10 Vic.
c. 111.

trespasser *ab initio* by reason of subsequent irregularity

15. And whereas it is expedient to limit and regulate the costs of distresses in Ireland as it has been done in England by an Act passed in the fifty-seventh year of his late Majesty King George the Third, intituled "An Act to regulate the costs of distresses levied for payment of small rents," as amended by an Act of the seventh and eighth years of the reign of His late Majesty King George the Fourth; be it enacted, that from and after the passing of this Act no person whatsoever making any distress for rent, or for any rates, taxes, impositions, or assessments, where the sum demanded and due shall not exceed the sum of twenty pounds for and in respect of such rent or rates, taxes, impositions, or assessments, save as hereinafter provided, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take, or receive out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the Schedule (B) hereunto annexed, and appropriated to each Act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done: provided always that in any case in which a less amount than the amount specified in the said schedule shall have been prescribed by any Act or Acts of Parliament, or shall in pursuance of the provisions of or the power given by any Act or Acts of Parliament be specified in the warrant by which the distress or levy shall be made, such less amount only shall be demanded, taken, or levied for or in respect of such costs and charges; any thing in this Act to the contrary notwithstanding.

57 Geo. III,
c. 93, 7 & 8
Geo. IV, c. 17

No person making any distress for rent, taxes, rates, &c., where the sum due shall not exceed £20, to take other charges than mentioned in the schedule annexed, not to charge for any act, &c. not done

20. And be it enacted, that every broker, bailiff, or other person who shall make and levy any distress whatsoever shall, if the same shall be demanded by the party distrained, give a copy of his charges, and of all the costs and charges of the distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent, taxes, rates, impositions, or assessments demanded shall exceed the sum of twenty pounds, and upon default of so doing he shall be liable to forfeit any sum not exceeding forty shillings, to be recovered before any two Justices of the Peace acting for such district. (*Remainder of Section repealed by Statute Law Revision Act, 1892.*)

Brokers and others making any distress to give copies of their charges to the persons distrained.

* The words in italics are repealed by Statute Law Revision Act, 1892.

9 & 10 Vic,
c. 111.

SCHEDULE (B.).

Schedule of Limitation of Costs and Charges on Distresses for small rents, or rates, taxes, impositions, or assessments not exceeding twenty pounds.

	£	s.
Levying distress	0	2
Man in possession, per day each (but not exceeding two in number, unless upon information sworn before a Justice that a rescue or violence is apprehended)	0	2
All expenses of advertisements, if any such	0	5
Catalogues, sale, and commission, and delivery of goods, 1s. in the pound on the net produce of the sale, if sold by a licensed auctioneer; otherwise, 6d. in the pound on the net produce of the sale.		

11 & 12 Vic,
c. 47.

11 & 12 VIC., CAP. 47.

AN ACT FOR THE PROTECTION AND RELIEF OF THE DESTITUTE POOR EVICTED FROM THEIR DWELLINGS IN IRELAND.*

[14th August, 1848]

No writ, &c., for taking possession of Land in Ireland shall be executed on the days or within the times herein mentioned

WHEREAS it is expedient to regulate the time of executing process for taking possession of land, and to provide for the better relief of the destitute poor evicted from their dwellings in Ireland: Be it therefore enacted, &c., that from and after the passing of this Act no writ of *habere facias possessionem*, decree, order, or other process for the delivering up or taking possession of land in Ireland, shall be executed on any Christmas Day or Good Friday, nor on any day within the time after the commencement of two hours next before sunset, and before sunrise, or six o'clock in the morning whichever shall be latest.

Notice of execution of writ to be given by landowner, &c., to relieving officer of electoral division in which the same shall be situate

2. And be it enacted, that not less than forty-eight hours before any such writ, decree, order, or process as aforesaid for delivering up or taking possession of land on which there shall be any inhabited dwelling-house, or building used as a dwelling-house, shall be executed in any county in Ireland, the landowner or other person by whom or on whose behalf such writ, decree, order, or other process as aforesaid shall have been sued out, or his agent, shall give notice in writing to the relieving officer of the electoral division in which such land shall be situate, and such notice shall set forth the parish or barony, electoral division, and townland in which the land of which possession is so to be delivered up or taken is situate

Notice, how to be given.

3. And be it enacted, that every notice to be given to any relieving officer under this Act shall be given by delivering the same to such relieving officer, or by leaving the same, directed to such relieving officer, at his dwelling house or office, or by letter sent by the post directed to the relieving officer at such dwelling house or office; and in case the same shall be so sent by the post such notice shall be delivered directed, open and in duplicate, to the postmaster of any post office, and the postmaster shall compare the notice and the duplicate, and on being satisfied that they are alike shall forward one of them to its address by the post, and shall return the other to the party bringing the same, stamped with the stamp of the said post office; and such postmaster shall be entitled to have and receive from the person delivering such letter the rate

* For cases decided under this Act, see notes to Land Act, 1837, Sec. 7, and p. 410.

of postage payable for the same, and the sum of sixpence, and no more; and such stamped duplicate shall be evidence of the notice having been given on the day on which such notice would in the ordinary course of post, have been delivered at such dwelling-house or office of the relieving officer.

11 & 12 Vic.
c. 47.

4. (*Persons becoming destitute by becoming dispossessed may apply to relieving officer, who shall provide shelter, &c.*)

5. (*Notice to be given to any occupier of a dwelling-house who has not had notice in the action.*)

6. And be it enacted, that in case the landlord or other person by whom or on whose behalf such writ, decree, order, or other process shall have been sued out shall neglect or omit to serve the notice required by this Act to be served on the relieving officer, he shall forfeit and pay the sum of twenty pounds to the guardians of the union in which the land shall be situate; and such sum may be recovered by civil bill or otherwise, and shall be applied in aid of the rates of the electoral division in which such land shall be situate, and, in case such landlord or other person shall be resident out of Ireland, may be recovered from him by action at law; and the service of process in such action on the attorney or agent by whom such writ, decree, order, or other process may have been sued out shall be good service on such landlord or other person as aforesaid.

Penalty on
executing writ
without notice.

7. And be it enacted, that whosoever, with intent to dispossess any person actually dwelling in a house or other building used as a dwelling-house (whether such person shall be so dwelling under a continuing tenancy or holding over after the expiration thereof, or otherwise, shall, except so far as may be necessary to enable the sheriff or his officer to effect an entrance thereto, pull down, demolish, or unroof, in whole or in part, or cause to be pulled down, demolished, or unroofed, in whole or in part, such dwelling-house or building used as a dwelling-house, whilst such person or any of his family shall be actually within the same, shall be guilty of a misdemeanour.

The unroofing,
&c., of dwellings
for the purpose
of expelling the
occupier a mis-
demeanour.

RENEWABLE LEASEHOLD CONVERSION ACT (12 & 13 VIC., CHAP. 105).

AN ACT FOR CONVERTING THE RENEWABLE LEASEHOLD TENURE OF
LANDS IN IRELAND INTO A TENURE IN FEE.

[1st August, 1849.]

10. And be it enacted, that all covenants by law implied on the part of landlord or tenant upon any lease or under-lease in perpetuity to the owner of which a grant is made under this Act shall be implied upon such grant, and every covenant for payment of rent, and every other covenant contained in pursuance of this Act in any such grant as aforesaid, in substitution for a like covenant in the lease or under-lease to the owner of which such grant is made, where such last-mentioned covenant is of such a nature as that the burden thereof doth by law run with the land, and bind the assignee of such lease or under-lease, and every covenant implied under this Act upon any such grant where the burden of the implied covenant for which the same is in substitution was upon the owner of such

Covenants
running with
the lands.

12 & 13 Vic.,
c. 105.

lease or under-lease, shall run with the estate in fee simple into which the estate held under such lease or under-lease is converted under this Act, and the owner or assignee for the time being of such estate in fee simple shall be chargeable upon such covenant in the same manner and to the same extent as if he were owner or assignee of the term or interest created by such lease or under-lease, and such term or interest, and the estate out of which such lease or under-lease was derived, were still subsisting, and the benefit of such covenants shall run with the estate into which such estate is converted under this Act, and the owner or assignee for the time being of the estate created by such conversion shall have the full benefit of such covenants, and be entitled to maintain action thereon; and every covenant contained in pursuance of this Act in any such grant as aforesaid, in substitution for a like covenant in such lease or under-lease as aforesaid, where such last-mentioned covenant is of such a nature as that the burden thereof doth by law run with the estate out of which such lease or under-lease was derived, or bind the assignee of such estate, and every covenant implied under this Act upon any such grant where the burden of the implied covenant for which the same is in substitution was upon the owner of the estate out of which such lease or under-lease was derived, shall run with the estate into which such estate is converted under this Act; and the owner or assignee for the time being of the estate created by such conversion shall be chargeable upon such covenants in the same manner and to the same extent as if he were owner or assignee of such estate so converted, and such estate and lease or under-lease were still subsisting, and the benefit of such covenants shall run with the estate in fee simple into which the estate held under such lease or under-lease is converted under this Act, and the owner or assignee for the time being of such estate in fee simple shall have the full benefit of such covenant and be entitled to maintain actions thereon (a).

(a) See notes to L. & T. Act, 1860, sec. 12, *ante*, pp. 36-37.

Acquisition of
land charged
with fee-farm
rent to operate
as apportion-
ment of rent

16. And be it enacted, that where any fee-farm rent shall be charged upon any lands by any grant made under this Act, the acquisition of a part of such lands by the person entitled to such fee-farm rent, whether such acquisition shall be by descent, by purchase, or by escheat, shall operate so as to extinguish only a proportionate part of the rent to which such person shall be entitled, and the remaining part of such rent shall be recoverable out of the residue of such lands in the same manner as the whole rent would have been recoverable if such acquisition had not been made (a); and in such case such fee-farm rent shall be apportioned by the agreement of the persons interested, and, in default thereof, according to the relative amounts of the value of the lands so acquired and the value of the residue of such lands, in the same manner as rent service is now by law apportionable upon an alienation of the reversion in part of the lands.

(a) See L. & T. Act, 1860, Sec. 44, *ante*, p. 841.

Fee-farm rent
recoverable by
like remedies
as rent-service,
&c.

20.* And be it enacted, that the fee-farm rent made payable by any grant under this Act, or by any grant made after the passing of this Act, shall be recoverable in the same manner as rent service.

* This section is printed, omitting the portions repealed by Stat. Law. Reviser's Act, 1892.

of this Act, shall be recoverable by distress, ejectment for non-payment of rent, action of debt, covenant, and all other ways, means, remedies, actions, suits, or otherwise, by which rent-service reserved on any common lease or demise for a life or lives is or may be by law recoverable; and all the enactments relating to ejectment for non-payment of rent, distress, or other remedies for recovery thereof, shall apply to every such fee-farm rent as aforesaid, as fully and effectually as if the same were rent-service reserved on a lease for a life or lives; and in proceedings by ejectment for nonpayment of such fee-farm rent under the statutes for the time being in force in Ireland in relation to ejectment for nonpayment of rent made applicable under this act to such fee-farm rent as aforesaid, the receipt of such fee-farm rent for three years by the lessor of the plaintiff, or any person or persons through whom he claims, shall have the same force and effect as a similar receipt of rent-service reserved on any lease for life or lives would have in proceedings by ejectment for nonpayment of such rent under such statutes; and in actions of replivin, debt, or covenant, or other proceeding founded on such grant as aforesaid, proof that the said plaintiff or other person, or any person or persons through whom he claims, has or have been in possession or in the receipt of such fee-farm rent for three years shall be sufficient evidence of the title of the plaintiff or other person thereto, as in cases of ejectment for nonpayment of rent under the statutes in force in relation thereto; and if in any such action of ejectment as aforesaid judgment be given for the plaintiff, and execution executed, or if any entry be made in respect of such fee-farm rent as aforesaid, or by virtue of any condition for re-entry contained in any such grant as aforesaid, then the estate in the lands acquired under such judgment and execution or by such entry shall be of the like nature, and shall be subject to the same or the like uses, trusts, charges, liens, equities, rights, and incumbrances, as if such judgment and execution or such entry had been in respect of an estate in reversion, and of a rent or of a condition, as the case may be, incident thereto, and such estate in reversion had stood limited to the same uses and trusts, and subject to the same charges, liens, equities, rights, and incumbrances, to which such fee-farm rent stood limited or subject.

21.* And be it enacted, that if in any action of ejectment brought on account of the non-payment of any fee-farm rent made payable by any such grant as aforesaid, pursuant to the statutes for the time being in force in Ireland as to actions of ejectment for non-payment of rent (a), judgment be given for the plaintiff, and execution executed, and the person who has made default in payment of the rent, or the person who but for such ejectment would for the time being have been the party to make the payment from time to time thereafter becoming due, do not, within six calendar months from the time of such execution executed, do such acts or take such proceedings as are or may be by law necessary for the redemption of the lands from the said judgment and execution (all which acts and proceedings he is hereby authorized to do and take

12 & 13 Vic.
c. 105.

In ejectment
for nonpay-
ment of fee-
farm rent,
power to
redeem given
to certain
persons.

* This section is printed, omitting the portions repealed by Stat. Law. Rev. Act, 1892.

12 & 13 Vic.,
c 105.

in the same manner and with the same effect to all intents and purposes as if he were the tenant or lessee of the person causing such ejection to be brought), then and in every such case it shall be lawful for the owner of or any person having an estate or interest in any fee-farm rent made payable by any such grant as aforesaid out of the whole or any part of such lands, or for the owner of or any person having an estate or interest in the lands out of which such fee-farm rent is payable, or any part thereof, within nine calendar months after such execution executed, to do such acts and take such proceedings for the redemption of the said lands from the said judgment and execution, and for obtaining relief in respect of the same, as under the statutes last aforesaid any mortgagee of a lease might do or take for the redemption of such lease, or his estate or interest therein, from any judgment and execution in any action of ejection for nonpayment of rent pursuant to such statutes, and for obtaining relief in respect of the same; and any redemption made pursuant to such statutes shall operate so as to restore all estates and interests in rents or in lands which shall have been defeated by the entry or ejection, and when such redemption as last aforesaid has been made, or when any such redemption has been made under the statutes aforesaid by any mortgagee or any other person, which redemption he is hereby authorized to make, all sums of money paid or advanced on account thereof, and the costs thereof, shall be and be deemed a lien and charge in favour of the person paying the same, his executors or administrators, not only upon the estate or interest of the person making such default as aforesaid, but upon all the inheritance in which such estate or interest is subsisting, in priority to all other interest or charges whatever upon such inheritance, save and except any charges created under the Acts relating to the drainage of lands or to the improvement of lands in Ireland; and such sums of money and costs shall also be recoverable by the person paying the same from the person who has made such default, or his representatives, in and by an action of debt; and all sums of money paid and costs incurred in respect of such lien or charge by any person damnified thereby shall also be recoverable by such person from the person who has made default, or his representatives, in manner aforesaid; and it shall be lawful for any person having the benefit of such lien or charge, or damnified thereby as aforesaid, to apply by petition in a summary way to the Court of Chancery for the appointment of a receiver over such estate, interest, or inheritance, and which receiver it shall be lawful for the said Courts respectively to appoint and to continue until all such sums of money and costs, with interest and the costs of such petition and of the proceedings thereunder, are fully paid and discharged, and to make such order in reference to such petition as to such Courts respectively may seem fit.

(a) As to ejections for nonpayment of fee-farm rents, see Landlord and Tenant Act, 1860, Sec. 52, and notes thereto, *ante*, p. 102, and as to the right of redemption in such cases, see, *ante*, p. 124.

14 & 15 VIC., CHAP. 20.

14 & 15 Vic
c. 20.

AN ACT TO EXTEND THE REMEDIES PROVIDED BY THE RENEWABLE LEASEHOLD CONVERSION ACT, FOR THE RECOVERY OF FEE-FARM RENTS UNDER THAT ACT, TO ALL OTHER FEE-FARM RENTS, AND TO OTHER RENTS IN IRELAND RESERVED UPON GRANTS OF LAND IN WHICH THE GRANTORS HAVE NO REVERSION.

[3rd July, 1851.]

[Preamble repealed Stat. Law Rev Act, 1892.]

1. All the powers, remedies, provisions, and enactments referred to and contained in the said hereinbefore mentioned sections of the said recited Act (12 & 13 Vic., c. 105, ss. 20 & 21) shall henceforth extend and be applicable to all fee-farm rents, and also to other rents reserved and payable under any grants, conveyances, or written instruments granting or containing agreements for granting any lands, tenements, or hereditaments in fee simple, or for a life or lives, or for years, or for a life or lives and a term of years, or for a life or lives concurrent with a term of years, and reserving or purporting to reserve thereout rent payable to the grantor or party agreeing to make such grant, or to his or their respective representatives, where the person to whom such rent is or shall be payable has or shall have no reversion in such land; save and except that nothing in this Act contained shall give or confer or be deemed to give or confer any remedy by ejectment for non-payment of rent, in the case of any fee-farm rent or rent reserved upon any grant or agreement for a grant in fee (other than a fee-farm rent under the said recited Act); and save and except that nothing herein contained shall extend or refer to or include the provisions contained in the said twenty-first section of the said recited Act relating to the lien or charge in the said section mentioned.

Provisions of recited Act extended to Fee-farm and other Rents under Lease for Lives or for Years, save as herein excepted

[Remainder of the Section repealed by Stat. Law Rev. Act, 1892.]

LANDED ESTATES COURT ACT, 1858.
(21 & 22 VIC., C. 72.)21 & 22 Vic.
c. 72.

AN ACT TO FACILITATE THE SALE AND TRANSFER OF LAND IN IRELAND.*

[2nd August, 1858.]

37. The said "Landed Estates Court, Ireland," shall have all the powers, authority, and jurisdiction of a Court of Equity in Ireland, for the investigation of title, and for ascertaining and allowing incumbrances and charges, and the amounts due thereon, and settling the priority of such charges and incumbrances respectively, and the rights of owners and others, and generally for ascertaining, declaring, and allowing the rights of all persons in any land in respect of which application may be made under this Act, or in the money to arise from sales under this Act, upon

Court to be a Court of Record and shall have power, &c. of a Court of Equity.

* Secs. 37, 64, 65, 66, 68, 69, 70, 72, 73, and 76 of this Act are incorporated by Land Purchase Act, 1885, Sec. 10 (*ante*, p. 880), Secs. 79 to 82 are incorporated by Sec. 11 of the same Act (*ante*, p. 381). As a vesting order under the Land Purchase Acts, is given the same effect as a Landed Estates Court Conveyance (Land Purchase Act, 1885, Sec. 9), Secs. 61 and 62 of this Act, though not in terms incorporated by the Land Purchase Acts, are printed here also, for convenience of reference.

21 & 22 Vic.
c. 72.

such applications, and shall have the like authority and jurisdiction for enforcing, rescinding, or varying any contract for sale made under this Act, and in other matters incident to or consequent on a sale under this Act, as are vested in a Court of Equity in relation to a sale under the direction of such Court.

[Remainder of Section repealed by Stat. Law Rev. Act, 1893, No. 1]

Conveyance to purchaser to pass fee, subject to tenancies, but discharged from all estates and incumbrances.

61. Every such Conveyance executed as aforesaid by the said Judge purporting to pass an estate in fee-simple shall be effectual to pass the fee-simple and inheritance of the land, subject to such charges, tenancies, rights of common, or other easements, leases and under-leases, as may be expressed or referred to therein as aforesaid, but, save as aforesaid, and as hereinafter provided, discharged from all former and other estates, rights, titles, charges and incumbrances whatsoever of her Majesty, her heirs and successors, and of all other persons whomsoever; and every such conveyance or assignment executed by the said Judge upon the sale of a lease or rentcharge, or an annuity charged on land, or any partial or lesser estate than an estate in fee-simple, shall be effectual to pass the estate created or agreed to be created by such lease, then remaining unexpired, or by the Instrument creating such lesser or partial estate, rentcharge, or annuity, but subject as to such lease to the rent and covenants annexed to the reversion expectant on the determination of such lease and as to such instrument creating such rentcharge, annuity, or partial or lesser estate, subject to such tenancies, rights of common or other easements, leases, and under leases, as shall be expressed or referred to in such conveyance or assignment, but, save as aforesaid, and as hereinafter provided discharged from all rights, titles, charges, and incumbrances whatsoever affecting the leasehold estate or interest, rentcharge, annuity or partial or lesser estate: Provided always, that where any land or lease, or part thereof, shall be sold and conveyed or assigned subject to any annual charge or apportioned part thereof (as the case may be) shall remain and be charged on and payable out of such land, or part thereof, as in the conveyance or assignment shall be expressed.

Conveyance of a lease, rentcharge annuity, or partial estate to pass estate created by the instrument purporting to grant same

Conveyance, &c. not to affect certain charges made by virtue of 5 & 6 Vic, c. 39, and 10 & 11 Vic, c. 32, except where Court think fit to redeem Crown rents, &c

62. Provided always, that any conveyance, assignment, or declaration of title under this Act shall not prejudice or affect any rentcharge in lieu of tithes, Crown rent, or quitrent charge upon or issuing out of any land, or any charge made by virtue of an Act passed in the sixth year of Her Majesty, intituled an Act to promote the Drainage of Lands and Improvement of Navigation and Water Power in connexion with such Drainage in Ireland, and the Acts amending the same, or by virtue of an Act passed in the tenth year of Her Majesty, intituled an Act to facilitate the Improvement of Landed Property in Ireland, save where the said Court shall think fit to redeem or apportion the Crown rents or quitrents, or any part thereof, or to pay off or redeem the charge under the said Acts, or either of them, under the power hereinafter contained, and shall express in such conveyance and assignment that the land conveyed or assigned thereby is so conveyed or assigned discharged of all Crown rents or quitrents or charges under the said Acts or either of them, as the case may be, and in such case such land shall be so discharged accordingly: Provided always, that i

every case in which application shall be made to the Court for the sale or conveyance of, or declaration of title to, the fee-simple of any land, or hereditaments, the Judge, before making any final order for such sale, conveyance, or declaration, shall be satisfied that one calendar month's previous notice in writing of such application has been given to the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, on behalf of Her Majesty or her successors, stating full particulars of the land or hereditaments for the sale or conveyance of, or declaration of title to, which application has been or is intended to be made, and of any rent payable to Her Majesty or her successors in respect of the same.

21 & 22 Vic.
c. 72.

64. The Court shall, out of the purchase money to be received on any sale under this Act, where any sale has been made in any matter of a petition filed in the said Court, allow and pay such costs of and consequential on the application for the sale and the expenses of and incidental to the sale, according to the provisions contained in the twelfth section of the statute of the sixteenth and seventeenth of the reign of Her Majesty, chapter sixty-four, and the surplus of such purchase money, after payment of such costs and expenses, shall, under the order of the Court, be applied in or towards payment or satisfaction of the incumbrances or charges, if any, which affect such land or part thereof, according to their priorities, and shall, subject as aforesaid, be paid to the owner where such owner was absolutely entitled thereto, or, where not so entitled, be laid out in the purchase of land, which shall be limited and settled to the same uses, upon the same trusts, for the same purposes, and in the same manner as the land or part thereof sold stood settled or limited to, or such of them as shall be then subsisting or capable of taking effect; and until such money can be so laid out it may, under such order as aforesaid, be transferred or paid over to the trustees to be appointed or approved by the Court for the purpose of being so laid out as aforesaid, with such power for the investment thereof in Government Stocks, Funds, or securities in the meantime, and such directions for the payment of the income of such investment in the manner in which the rents of the land to be purchased would be applicable, as the Court shall think fit: Provided always, that if by mistake or otherwise any purchase money shall, under the provisions aforesaid, have been paid to any person or persons as being the person or persons absolutely entitled thereto when he or they were not so entitled, such money shall be deemed to have been paid to him or them upon an express trust to invest the same in the purchase of lands to be settled to the uses and upon the trusts to and upon which the lands sold stood limited, settled, and assured at the time of the sale.

Application of
purchase money.

65. Where the Judge shall be of opinion that from the nature of the case the proceedings must be protracted, the money so paid into the bank as aforesaid may, by order of the Court, be invested in the purchase of any stocks, funds, or annuities transferable at the Bank of Ireland in such manner as shall be directed by any general or special order of the Court, and until the same shall be sold by order of the Court for the purposes of this Act, the dividends thereof shall from time to time be applied, under the order of the Court, in like manner as the rents of the land or lease,

Court may invest
at instance of
parties for their
benefit.

21 & 22 Vic.,
c. 72

Where it is expedient to appoint, change, or remove, &c., trustees, Judge to make orders as to vesting property in new trustees as in 13 & 14 Vic., c. 60, and 15 & 16 Vic., c. 55

Court may vest property in new trustees

Court may provide for redemption of certain charges

or part thereof, from the sale whereof the money invested in such stocks, funds, or annuities has arisen, would have been applicable, the investments in and sale of such stocks, funds, and annuities to be made through a stockbroker or stockbrokers to be appointed by the Court by general or special order, as the Court may think fit.

66. Whenever in the course of proceedings in any petition matter pending before the Court it shall appear expedient to appoint, change, or remove trustees, it shall and may be lawful for the Judge to make such orders, and give such directions in reference to such appointment, change, or removal, and in reference to the vesting property in new trustees, as the Lord High Chancellor is empowered to make under the authority vested in him for such purposes by "The Trustee Act, 1850," and also by another Act passed in the session of Parliament holden in the fifteenth and sixteenth years of the reign of Her Majesty, intituled "An Act to extend the Provisions of the Trustee Act, 1850," and by any other Act which may be passed in relation to trustees.

67. Whenever the Court shall appoint or direct the appointment of trustees for any of the purposes of this Act, it shall be lawful for the Judge to make or to direct to be made such provision as he shall think fit for the appointment of new trustees on any event to be determined by the Court.

68.* It shall be lawful for the Court, with the consent in writing of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, to apportion any crown rent upon or amongst the several lands liable to the payment thereof, or to charge the whole of any such rent on any part of the lands charged therewith in exoneration of the remainder of such lands, and every such apportionment or exclusive charge shall be binding on the Queen's Majesty and on every corporation and person, and the apportioned parts of any such Crown rent, or any such Crown rent so exclusively charged, shall thenceforth be issuing out of and chargeable upon the lands whereon the same may be apportioned or exclusively charged, but no such apportionment or exclusive charge shall in any manner prejudice or affect any reversion or remainder of the Crown in any lands originally charged with any such rent so apportioned or exclusively charged, nor shall the sale of any apportioned part of any Crown rent, or of any Crown rent so exclusively charged, or of any interest in the reversion or remainder of the Crown in the same lands, affect the right or interest of the Crown in any other part of the lands originally charged with any rent so apportioned or exclusively charged, either as regards the rent remaining unsold, or the Crown's interest in the remainder or reversion of such lands or otherwise; and it shall also be lawful for the Court to sell any land, or part thereof, discharged from any Crown rent or quit rent which it may be enabled, and may, with the consent of the owner, think fit to purchase, or from any charge made by virtue of the said Acts of the sixth and tenth years of Her Majesty, or either of them, which it may, with such consent,

* Sec. 12 of the Crown Lands Act, 1894 (57 and 58 Vic., c. 43) provides that the power conferred by this section "shall extend to any quit rent or other perpetual rent payable to the Crown in respect of land in Ireland, and may be exercised whether the land liable to the payment of the rent is being sold by the High Court or not."

think fit to pay off or redeem; and in any such case the Court shall out of the money arising from the sale, and in preference to all other payments thereout, pay the consideration for the purchase of such Crown rent or quit rent, or such sum as may be necessary for paying off or redeeming such charge; and it shall be lawful for the Court, where it shall think fit, to purchase, with the consent of the said Commissioners of Woods, any estate or interest of the Crown, in remainder or reversion, in the whole or any part of the lands for the sale of or declaration of title to which application has been made, or to pay to any person entitled to any annual or other charge, not being an incumbrance according to the definition of this Act, who may consent to accept the same, a gross sum in discharge or by way of redemption thereof or of a part thereof, and where a part only of any land or lease subject to any incumbrance or charge is sold, to charge the part not sold with such incumbrance or charge, or an apportioned part thereof, in exoneration of the money arising from the sale, and to enable or authorize persons to release the money arising from the part so sold from any incumbrance or charge, or to relinquish their claim on such money in respect thereof, without impairing or affecting such incumbrance or charge as to the remaining part of the land or lease originally charged; and the Court, where it shall think fit, may invest or provide for the investment of money to meet any annual or periodical charge, or any other charge, incumbrance, or interest, where, by reason of such charge, incumbrance, or interest being contingent or otherwise, it shall appear to the Court proper or expedient so to do, and otherwise may make such orders and directions for applying the money arising from any sale in such manner as will secure the convenient application thereof for the benefit and according to the rights of the parties interested in the land or part thereof from the sale of which the same shall have arisen.

69. Provided always, that no payment under this Act towards discharge of what shall be due on any incumbrance or charge, not being payment in full, shall prejudice or affect any right or remedy of the incumbrancer or the person entitled to the charge in respect of the balance otherwise than against the land or part thereof, sold under this Act; and no payment under this Act for or in respect of any incumbrance or charge shall impair any right or equity of any persons out of whose estate such payment shall be made to be reimbursed or indemnified by any person or out of any other land or estate, except so far as the Court under any special circumstances shall order.

70. Where any money arising from a sale under this Act is not immediately distributable, or the parties entitled thereto cannot be ascertained, or where from any other cause the Court may think it expedient for the protection of the rights and interests therein, the Court, at its discretion, may order such money, or any stocks, funds, or securities in which the same may have been invested under this Act, to be transferred to the account of the Accountant General of the High Court of Chancery, or (where the case may require) of the High Court of Chancery in England, in the matter of the parties interested in the same, to be described as the Court

21 & 22 Vic.
c. 72.

No payment not being in full to affect right of incumbrancer: for balance, and no payment in respect of any incumbrance to impair remedy over.

Power to Court to order money to be paid into Court of Chancery.

21 & 22 Vic.
c 72

shall think fit and direct, in trust to attend the orders of such Courts respectively, and the Court may by its order declare the trust affecting such money, stocks, funds, or securities, so far as it may have ascertained the same, or state (for the information of the respective Courts) the facts or matters found by it in relation to the rights and interests therein, and the High Court of Chancery, Lord Chancellor, and Master of the Rolls, in England and Ireland respectively, may make such orders and give such directions in relation to any such moneys, stocks, funds, or securities as shall be so transferred to the account of the Accountant General of such respective Court, as such Court or Judge respectively might make or give in relation to any trusts, moneys, stocks, or securities paid in, transferred, or deposited under the Act passed in the eleventh year of Her Majesty, "for better securing Trust Funds, and for the Relief of Trustees," or the Act of the eleventh and twelfth year of the reign of Her Majesty, for extending to Ireland the said Act of the eleventh year of Her Majesty respectively.

[Remainder of Section repealed by Stat. Law Rev. Act, 1893.]

If land sold be subject to a lease, &c., comprising other land, or if part of lease in perpetuity, &c., be sold, Court may apportion the rent

72. If any land to be sold under this Act shall be subject to a lease or under-lease for years or lives comprising other land at an entire rent, it shall be lawful for the Court to apportion the rent between the land to be sold and the remainder of the land subject to such rent; and where it is intended to sell under this Act a part only of any lease in perpetuity or other lease, it shall be lawful for the Court, where it shall think fit, and (having regard to the rights and interests of the owner of the reversion) it shall appear to the Court just so to do, to apportion the rent reserved by such lease between the land to be sold and the remainder of the land; and the Court shall direct notices of any such intended apportionment as aforesaid to be given to such persons and in such manner as it shall think fit, and shall hear such parties as shall apply to them in relation thereto; and after such apportionment and after the sale shall be completed, the owners of the reversion in the respective lands shall have the like remedies for the apportioned rents against the lands out of which the same shall be payable, and the owners and occupiers thereof respectively, as were subsisting for the entire rent before such apportionment, and all the covenants, conditions, and agreements of every lease or under lease, except as to the amount of rent to be paid, shall, as regards the apportioned parts, remain in force in the same manner as they would have done in case no such application had taken place. Provided always, that the enactment in this section shall be deemed to apply to any rent reserved upon a lease, where the Court shall have sold or shall sell the reversion expectant upon such lease at different times or in different lots.

Provisions for persons under disability

73. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceedings under this Act, shall be a minor, idiot, lunatic, or married woman, the guardian committee of the estate and husband respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such persons respectively, if free from disability, might

have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act: but a married woman entitled for her separate use (with or without power of anticipation) shall, for the purposes of this Act be deemed a feme sole: Provided always, that where there shall be no guardian or committee of the estate of any such person as aforesaid being infant, idiot, or lunatic, or where any person, the committee of whose estate, if he were an idiot or lunatic, would be authorised to act for and represent such person under this Act, shall be of unsound mind, or incapable of managing his affairs, but shall not have been found idiot or lunatic under an inquisition, it shall be lawful for the Court to appoint a guardian of such person for the purpose of any proceedings under this Act, and from time to time to change such guardian; and where the Court sees fit it may appoint a person to act as the next friend of a married woman for the purpose of any proceeding under this Act, and from time to time remove or change such next friend.

21 & 22 Vict.
c. 72

76. Proceedings under this Act shall not abate or be suspended by any death or transmission, or change of interest, but in any such case of death or transmission, or change of interest, it shall be lawful for the Court, where it shall see fit, to require notices to be given to persons becoming interested, or to make any order for discontinuing, suspending, or carrying on the proceedings or otherwise in relation thereto, which to it may appear just.

Proceedings
not to abate
by death

79.* Where an application shall be made for a sale under this Act of an undivided share of any land, or where any such undivided share shall have been sold under this Act, and either before or after the conveyance or assignment thereof under this Act, the Court on the application of any party interested in such undivided share, or of the purchaser (as the case may be), and after causing to be given such notices to the owner or owners of the other undivided share or shares of the same land or lease as it may think fit, and hearing such parties interested in the respective shares as may apply to it, and making or causing to be made such inquiries as may enable it to make a just partition, may, if it shall think fit, make an order under its seal for the partition of such land; and in such order, or in a map or plan annexed hereto, shall be shown the part allotted in severalty in respect of each of the undivided shares in such land; and the Court shall have the like authorities, jurisdiction, and power in relation to such partition under the direction of such Court; and the part so allotted in severalty in respect of each such undivided share by such order for partition as aforesaid shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same if so allotted would have stood limited or been subject to in case such order had not been made; and the like order for the sale of a part allotted in respect of the undivided share to which the application for the sale shall relate may be made (where the order for partition is made before the sale), and the like proceedings had in relation to such sale, and the like conveyance

On application
for sale of an
undivided share,
or after sale
Court may, on
application of
party interested,
and giving
notices and
hearing parties,
make order for
a partition.

* Secs. 79, 80, 81, and 82 are incorporated by the 11th Sect. of the Land Purchase Act, 1885. *Ante*, p. 391.

21 & 22 Vic.
c. 72.

or assignment may be made of the part allotted in respect of the share sold (where the order for partition is made after sale, and before conveyance or assignment), and with the like consequence in the several cases aforesaid, as if the application for a sale, or the sale (as the case may be), had been in respect of the part so allotted as aforesaid; and where any land or lease, or part thereof, to be sold under this Act, is subject to any lease, under-lease, or tenancy under which the lessees, under-lessees, or tenants hold jointly, or as tenants in common, it shall be lawful for the Court on the application of any such lessee, underlessee, or tenants, and after causing to be given such notices as it may think fit, and hearing such parties as may apply to it, and making such inquiries as it may think necessary, to make an order under its seal for the partition, as between such lessees, under-lessees, or tenants of the land included in their lease, under-lease, or tenancy, and for the apportionment of the rent reserved or payable under such lease, under-lease, or tenancy; and after such order of partition the owners of the reversion in the respective parts of the land shall have the like remedies for the apportioned rents against the respective part out of which the same shall be payable, and the lessees, under-lessees, or tenants holding such respective parts, under such lease, under-lease, or tenancy, and such order of partition, as were subsisting for the entire rent before such partition and apportionment and all the covenants, conditions, and agreements of every such lease, under-lease, or tenancy, except as to the amount of rent to be paid, shall, as regards the respective parts allotted on such partition, and the apportioned parts of the rent, remain in force against the respective lessees, under-lessees, or tenants to whom under such partition such respective parts shall be allotted.

On application for sale, or after sale, Court, on application of party interested and with consent, may make order for exchange

80. Where an application shall be made for a sale under this Act of any land or part thereof, or where the same shall have been sold under this Act, and either before or after the conveyance or assignment thereof under this Act, if application be made to the Court by any party interested in such land, or by the purchaser (as the case may be) for the exchange of all or any part of such land for other land which the owner thereof may be willing to give in exchange, the Court may make or cause to be made such inquiries as they think fit, for ascertaining whether such exchange would be beneficial to the person interested in the respective lands, and cause such notices to be given to parties interested in the respective lands, as it may think fit; and if, after making such inquiries, and hearing such parties interested in the respective lands as may apply to them, the Court shall be of opinion that such exchange would be beneficial and that the terms thereof as proposed, or as modified by it, with the consent of such owner, as aforesaid, are just and reasonable, the said Court may make an order under their seal for such exchange accordingly, and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken up in such exchange under such order shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same condition

charges, and incumbrances, as the land given on such exchange would have stood limited or been subject to in case such order had not been made; and the like order for a sale may be made by the Court in respect of the land taken in exchange for any land to which the application for a sale shall relate (where the order for exchange is made before sale), and the like proceedings had in relation to such sale, and the like conveyance or assignment may be made in respect of the land taken in exchange for the land or part thereof sold (where the order for exchange is made after sale, and before conveyance or assignment), and with the like consequences in the several cases aforesaid, as if applicable for a sale, or the sale (as the case may be) had been in respect of the land taken in exchange.

21 & 22 Vict.
c. 72.

81. It shall be lawful for the Court, on the application of the owners of the several undivided shares (not subject to be sold under this Act, or as to which no proceedings for a sale under this Act shall be pending) of any land in Ireland who shall desire to effect a partition of such land, to make or cause to be made such inquiries as the Court may think fit for ascertaining whether such partition would be beneficial to the persons interested in such respective shares; and in case the Court shall be of opinion that the proposed partition would be beneficial and that the terms thereof are just and reasonable, it shall make an order under their seal for such partition accordingly; and in such order, or in a map or plan annexed thereto, shall be shown the part allotted in severalty in respect of each such undivided share, and the part so allotted in severalty in respect of such undivided share, by such order of partition shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same use, and be subject to the same conditions, charges, and incumbrances, as the undivided share in respect of which the same is so allotted would have stood limited or been subject to in case such order had not been made.

Partition may be made of lands where shares are not subject to be sold under this Act.

82. It shall be lawful for the Court, upon the application of the owner of lands in Ireland not subject to be sold under this Act, or as to which no proceedings for a sale under this Act shall be pending, who shall desire to effect an exchange of such lands, to make or cause to be made such inquiries as the Court may think fit for ascertaining whether such exchange would be beneficial to the persons interested in the respective lands; and in case the Court shall be of opinion that the proposed exchange would be beneficial, and that the terms thereof are just and reasonable, they shall make an order under their seal for such exchange accordingly; and in such order for exchange, or in a map or plan annexed thereto, shall be shown the lands given and taken in exchange respectively under such order; and the land taken upon such exchange under such order shall, without any conveyance or other assurance in relation thereto, go and enure to and upon the same uses and trusts, and be subject to the same conditions, charges, and incumbrances, as the land given upon such exchange would have stood limited or been subject to in case such order had not been made.

Exchanges may be made of lands not subject to be sold under this Act.

34 & 35 Vic.
c. 79.

34 & 35 VIC., CAP. 79.

AN ACT TO PROTECT THE GOODS OF LODGERS AGAINST DISTRESSES
FOR RENT DUE TO THE SUPERIOR LANDLORD.

[16th August, 1871

[*Preamble repealed Stat. Law Rev. Act, 1893, No. 2.*]Lodger, if dis-
tress levied, to
make declaration
that immediate
tenant has no
property in
goods distrained

1. If any superior landlord shall levy or authorise to be levied a distress on any furniture, goods, or chattels of any lodger for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord, or the bailiff or other person employed by him to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of such lodger; and also setting forth whether any and what rent is due and for what period from such lodger to his immediate landlord; and such lodger may pay to the superior landlord, or to the bailiff or other person employed by him as aforesaid, the rent, if any, so due as last aforesaid, or so much thereof as shall be sufficient to discharge the claim of such superior landlord. And to such declaration shall be annexed a correct inventory, subscribed by the lodger, of the furniture, goods, and chattels referred to in the declaration; and any lodger shall make or subscribe such declaration and inventory knowing the same or either of them to be untrue in any material particular, he shall be deemed guilty of a misdemeanour.

Penalty

2. If any superior landlord, or any bailiff or other person employed by him, shall, after being served with the before-mentioned declaration and inventory, and after the lodger shall have paid or tendered to such superior landlord, bailiff, or other person the rent, if any, which by the last preceding section such lodger is authorised to pay, shall levy or proceed with a distress on the furniture, goods, or chattels of the lodger, such superior landlord, bailiff, or other person shall be deemed guilty of an illegal distress, and the lodger may apply to a Justice of the Peace for an order for the restoration to him of such goods; and such application shall be heard before a stipendiary magistrate, or before two justices of the peace at any place where there is no stipendiary magistrate, and such magistrate or justices shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord shall also be liable to an action at law at the suit of the lodger, in which action the truth of the declaration and inventory may likewise be inquired into.

Proviso as to
payments by
lodger to
superior land-
lord.
Act not to extend
to Scotland.

3. Any payment made by any lodger pursuant to the first section of this Act shall be deemed a valid payment on account of a rent due from him to his immediate landlord.

4. This Act shall not extend to Scotland.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881.* ^{44 & 45 Vic.}
_{c. 41.}
(44 & 45 VICT., CAP. 41.)

[22nd August, 1881.]

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

Powers incident
to estate or
interest of
mortgagee.

- (i.) A power when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction or to rescind any contract for sale and to re-sell, without being answerable for any loss occasioned thereby; and
- (ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and
- (iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and
- (iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this Section, or in any subsequent Section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

(3.) This Section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This Section applies only where the mortgage deed is executed after the commencement of this Act.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold,

Conveyance
receipt, &c.,
on sale

* The Sections here printed are incorporated by the 18th Sect. of the Land Act, 1887. See *ante*, p. 423

44 & 45 Vic.
c. 41.

for such estate and interest therein as is the subject of the mortgage freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by deed under this Section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but a person damnified by an unauthorized, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgage property, or authorized to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right of priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received

Mortgagee's
receipts, dis-
charges, &c.

by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

44 & 45 Vic.
c. 41.

SETTLED LAND ACT, 1882.*
(45 & 46 VICT., CAP. 38.)

[10th August, 1882.]

Definitions.

2.—(1. Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of Court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

45 & 46 Vic.
c. 38.
—
Definition of
settlement,
tenant for
life, &c

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of

* See Land Purchase Act, 1885, Sec. 6, *ante*, p. 374, and Land Act, 1887, Secs. 14 and 16, *ante*, pp. 419 and 425.

45 & 46 Vic.
c 38.

sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.*

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) (*Provides that land shall include incorporeal hereditaments, an undivided share in land, &c.*)

Sale; enfranchisement; exchange; partition

Powers to
tenant for life
to sell, &c.

3. A tenant for life—

- (i.) May sell the settled land, or any part thereof, or any easement, right, or privilege, of any kind, over or in relation to the same; and
- (ii.) (*Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor*);
- (iii.) (*May make an exchange of the settled land, or any part thereof*);
- (iv.) (*Where the settlement comprises an undivided share in land may concur in making partition*).

Transfer of
incumbrances
on land sold, &c

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or an partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

Investment or other Application of Capital Trust Money.†

Capital money
under Act:
investment, &c.
by trustees or
Court.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

* This definition is extended by Settled Land Act, 1890, Sec. 16. See *post* p 956.

† Extended powers of investment of capital moneys arising on sales in the Land Purchase Department are given by Secs. 18 & 19 of the Land Purchase Act, 1891. See notes thereto, *ante*, pp. 473-477. See also Settled Land Act, 1887.

- (ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land: 45 & 46 Vic.
c. 38.
- (iii.) In payment for any improvement authorised by this Act.
- (iv.) In payment for equality of exchange or partition of settled land:
- (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land:
- (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life.
- (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines, or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land:
- (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes:
- (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge:
- (x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act:
- (xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

22. (1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly. Regulations
respecting
investments
devolution,
income of
securities, &c.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

45 & 46 Vic.
c. 38.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of these securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Contracts.

Power for tenant
for life to enter
into contracts.

31. (1.) A tenant for life—

- (i.) May contract to make any sale, exchange, partition, mortgage, or charge; and
- (ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and
- (iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and
- (iv.) May accept a surrender of a contract for a lease in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and
- (v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and
- (vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor;* but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

* See now, also, Settled Land Act, 1890, Sec. 6, *post*. p. 956.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof. 45 & 46 V10,
c 38.
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(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

Trustees.

38. (1.) If at any time there are no trustees of a settlement within the definition of this Act, or where in any other case it is expedient, for the purposes of this Act, that the new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of a tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for the purposes of this Act. Appointment of
trustees by
Court

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee shall for the purposes of this Act become and be the trustees or trustee of the settlement.

39. (1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee. Number of
trustees to act.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Limited Owners Generally.

58. (1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely): Enumeration of
other limited
owners, to have
powers of tenant
for life.

- (i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:
- (ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:
- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:

45 & 46 Vic.,
c. 38.

- (v.) A tenant for the life of another, not holding merely under a lease at a rent:
- (vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose:
- (vii.) A tenant in tail after possibility of issue extinct:
- (viii.) A tenant by the courtesy:
- (ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

Infants; Married Women; Lunatics.

Infant absolutely entitled to be as tenant for life

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

Tenant for life, infant

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Married woman, how to be affected.

61. (1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman, who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and

a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised ^{35 & 36 Vic. c. 38.}

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate. ^{Tenant for life, lunatic}

Ireland.

***65.** (1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided. ^{Modifications respecting Ireland}

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly. ^{40 & 41 Vict. c. 57.}

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exercisable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exercisable by those Courts under this Act. ^{40 & 41 Vict. c. 58.}

(8.) Rules and Orders for purposes of this Act, as far as it relates to Civil Bill Courts, may be made in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

* This section is printed, omitting portions repealed by Stat. Law Rev. Act, 1898.

53 & 54 Vic.,
c. 69.

SETTLED LAND ACT, 1890.

(53 & 54 Vic., Cap. 69.)

[18th August, 1890.]

*Completion of Contracts.*Power to
complete
predecessor's
contract

6. A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title.

*Trustees.*Trustees for the
purposes of the
Act.

16. Where there are for the time being no trustees of the settlement within the meaning and for the purposes of the Act of 1882, then the following persons shall, for the purposes of the Settled Land Acts, 1882 to 1890, be trustees of the settlement, namely:—

- (i.) The persons (if any) who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale, or, if there be no such persons, then
- (ii.) The persons (if any) who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not.

Application of
provisions of 44
& 45 Vic., c. 41,
as to appoint-
ment of trustees

17. (1.) All the powers and provisions contained in the Conveyancing and Law of Property Act, 1881, with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.*

(2.) This section applies and is to have effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the passing of this Act.

(3.) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act otherwise than under the provisions of the Conveyancing and Law of Property Act, 1881.

54 & 55 Vic.,
c. 66.

LOCAL REGISTRATION OF TITLE ACT, 1891.

(54 & 55 Vic., Cap. 66.)

[5th August, 1891.]

PART II.

*Register of Landowners.*Registration
when to be com-
pulsory and
when voluntary.

22. (1.) From and after the commencement of this Act the registration of the ownership of freehold land shall be compulsory where the land has been at any time sold and conveyed to or vested

* See now, Trustee Act, 1893, Secs 10, 11 and 12.

in a purchaser under any of the provisions of the Purchase of Land (Ireland) Acts,* and is subject to any charge in respect of an annuity or rentcharge for the repayment of an advance made under any of the said provisions on account of the purchase money. In all other cases first registration under this Act shall be voluntary.

(2.) Provision shall be made by general rules for the registration without any fee being charged therefor, of every person who shall within one year from the commencement of this Act make application for first registration as owner of land the registration of the ownership of which is by this Act declared to be compulsory.

(3.) Subject to the provisions of this Act all registration which is by this Act declared to be compulsory, and all registration of owners of statutory tenancies on the register of leaseholders shall be made in the proper local office, and all other registration of persons as owners of land under this Act shall be made in such office as shall be prescribed.

23.—(1.) In the case of any land the registration of the ownership of which is by this Act declared to be compulsory—

(a.) Where the sale has been made before the commencement of this Act the Land Commission may at any time, by notice in the prescribed manner, require the owner to register his ownership of the land under this Act, and thereupon, if the owner shall not within the prescribed time make application to be registered accordingly, the Land Commission may make application in the prescribed manner to have the ownership of the land registered under this Act.

(b.) Where the sale is made after the commencement of this Act the Land Commission or the Land Judge, as the case may be, shall forthwith, in order that the purchaser may be registered under this Act as owner of the land, transmit to the registering authority a notice in the prescribed form; and thereupon such registering authority shall, subject to the provisions of this Act and to general rules, proceed to register the purchaser accordingly.

(2.) Provision shall be made by general rules, in the event of the original purchaser having ceased by death or otherwise to be the owner of the land before such registration, for ascertaining the person who has become the owner of the land, and for his being registered under this Act as such.

(3.) For the purpose of any such registration as aforesaid, the registering authority shall have all the same and the like jurisdiction and powers in reference to compelling the disclosure of instruments and facts affecting the title, and in reference to the production of deeds and in reference to all other matters as if the purchaser or other owner, as the case may be, had made an application to be registered as owner of the land under this Act.

24.—(1.) Where it is proposed to sell any land under the provisions of any of the Purchase of Land (Ireland) Acts, and such land

* The redemption of a fee farm rent under the Redemption of Rent Act, 1891, is a sale of land within the meaning of this section; and registration is compulsory in such cases. In re *Keogh and Kettle* [1896]. 1 I. R. 285.

Landlord selling part of an estate may obtain certificate of title to remainder.

54 & 55 Vic.
c 66

is held under a title common to other land not proposed to be sold, the Land Commission shall, if so required by the vendor,* investigate the title to the whole or any part of such last-mentioned land, and shall issue in the prescribed manner a certificate of the title thereto, and in the event of an application being made for first registration by the owner of such last-mentioned land the registering authority may accept such certificate as evidence of the title of the person named therein as owner, as of the date of its execution.

(2.) In any case in which land has been sold to a tenant through the Land Commission, and the title to other land held under a common title has been investigated at the same time by the Land Commission, it shall be lawful for the vendor or his successor in title to apply to the Land Commission to issue to him a certificate in the prescribed form of the title to the vendor to such last-mentioned land, and if the Land Commission are of opinion that such title has been sufficiently investigated, they may, if they think fit, issue such a certificate, and such certificate shall have the same effect in all respects as a certificate issued under the preceding sub-section.

Where registration by ownership compulsory, no title acquired by transfer until registered

25. The following provisions shall apply to all freehold land the registration of the ownership of which is by this Act declared to be compulsory:—

(1.) A person shall not, under any conveyance executed on or after the commencement of this Act, acquire any estate in any such land until he is registered† as owner of the land, but on being so registered his title shall relate back to the date of the execution of the conveyance and any dealings with the land before the registration shall have effect accordingly: Provided that the foregoing provisions shall not apply to the conveyance of any estate expectant on an estate of freehold, whether the estate so expectant be in reversion or in remainder, or to any conveyance by way of mortgage or of transfer of mortgage.

(2.) On the death on or after the commencement of this Act of any owner of such land, when succession duty is paid by or on behalf of any person entitled to be registered as owner of the land or any part thereof, the Commissioners of Inland Revenue shall be entitled, and they are hereby required, to demand payment from such person of the amount of the fee which would be necessary to be paid for the registration of such person as owner of the land, and upon receipt of such payment they shall pay such amount to the central registering authority, and shall signify to such registering authority the name of the person and the land in respect of which the duty was paid, and thereupon such registering authority shall give such person notice that on production of the proper evidence he may be registered as owner of the land without further payment.

* A lessor or grantor who merely gives a consent to a redemption of rent under the Redemption of Rent Act, 1891, is not a "vendor" within the meaning of this section. Re *Lynch*, 29 I. L. T. R. 99.

† This applies only to conveyances *inter vivos*. There is no enactment which postpones, by reason of non-registration, the operation of a devise by will. *Torrish v. Orr and Smith* [1894] 2 I. R. 381.

A condition of sale precluding a purchaser from objecting by reason of non registration of title is, however, good. In re *Furlong and Bogan's Contract*, 31 L. R. I. 191. (V.C.)

26. An application for first registration as an owner of land may be made by such persons and shall, subject to the provisions of this Act, be made in such manner, and subject to such notice, and shall be supported by such examination or evidence of the title to the land, as may be prescribed.

54 & 55 Vic.
c. 66

Application for
first registration.

27. (1.) Subject to the provisions of this Act, every application for registration of a person as owner of land, or of any charge or burden, or of any right affecting, or of any leasehold estate derived out of, registered land shall be made in the office in which the first registration of ownership of the land shall have been made; and the register as regards any such land, charge, burden, right, or estate, shall mean the register kept in the office in which such first registration shall have been made.

Subsequent
registration to
be made in office
of first registra-
tion

(2.) Provision may be made by general rules for the transfer of the registration of any land from a local to the central office, or from the central to a local office, on the application of the owner, and with the prescribed consents, and after such transfer has been effected in the prescribed manner the register as regards any such land shall mean the register kept in the office to which registration has been so transferred

28. A person may be registered either—

Classes of owners
who may be
registered

- (1.) As full owner of land, that is to say, as tenant in fee simple thereof; or
- (2.) In the case of settled land, as limited owner of the land, that is to say, as tenant in tail or tenant for life thereof, or as having under the Settled Land Acts, 1882 to 1889, the powers of a tenant for life thereof.

29. (*Provisions for general note on the register in regard to burdens arising from previous interest of purchasing tenant.*)

PART IV.

Devolution of Interest in Freehold Registered Land sold under Purchase Acts.

83. This part of this Act shall apply to freehold registered land which shall have been at any time sold and conveyed to or vested in a purchaser under any of the provisions of the Purchase of Land (Ireland) Acts, and to no other land. For the purposes of this part of this Act "freehold registered land" includes leasehold registered land which is not of chattel tenure.

Application of
Part IV

84. (1.) Where any such land is vested in any person without right of survivorship to any other person, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.*

Devolution of
legal interest on
death in freehold
registered land
sold under
Purchase Acts

(2.) This section shall apply to any such land over which a person executes by will a general power of appointment as if it were land vested in him solely.

(3.) On the death either of a sole registered full owner or of the survivor of several registered full owners of any such land not

* See now, also, Land Act, 1896, Sec. 32 (4), *ante*, p. 573, which provides that neither an agreement for purchase under the Land Purchase Acts, nor a vesting order shall operate to convert the interest of the purchaser into real estate.

54 & 55 Vic.
c 66.

being registered as tenants in common, the personal representatives of the sole owner or survivor shall alone be recognised by the registering authority as having any right in respect of the land, and shall have the same powers of dealing with the land, and any registered dispositions by them shall have the same effect, as if they were the registered owners of the land.

(4) Where any such land is settled by the will of a testator dying after the commencement of this Act and there are no trustees of the settlement, the executors proving the will shall for the purposes of this Act be deemed to be the trustees of the settlement unless and until trustees of the settlement are appointed.

(5) Probate and letters of administration may be granted in respect of such land only, although there is no personal estate.

44 & 45 Vic,
c 41.

(6) Section thirty of the Conveyancing and Law of Property Act, 1881, shall not apply to any such land, without prejudice to anything done or any right acquired thereunder.

(7) This section applies only in cases of death after the commencement of this Act.

Succession to
beneficial
interest in
such land on
intestacy

85. (1) On the death of a person intestate as to any such land, the beneficial interest therein shall devolve upon and, subject to the provisions of this Act, be divisible among the same persons as if it were personal estate as to which he had died intestate.

(2) There shall be abolished as regards such land—

(a.) All existing rules of law and canons of descent, and of devolution by special occupancy, and

(b.) Tenancy by the curtesy; and

(c.) Dower.

Provided that a husband or wife married before the passing of this Act, who, but for this section, would have been entitled to tenancy by the curtesy, dower, or other estate or interest, shall, at his or her own option, be entitled to the same in lieu of the interest conferred on him or her by this Section.

(3) This Section applies only in cases of death after the commencement of this Act.

(4) This Section shall not apply to any freehold registered land of any person who is at the commencement of this Act entitled to that real estate, either in possession or in remainder or reversion, and is at that date, and remains thenceforth until his death, incapable, by reason of infancy or of unsoundness of mind, of disposing of that real estate.

Provisions as to
administration
of such land.

86. (1) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold such land as trustees for the persons by law beneficially entitled thereto, and those persons shall, subject to the provisions of this Act, have the same power of requiring a transfer thereof as they have of requiring a transfer of personal estate.

(2) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to such land so far as

the same are applicable, as if the land were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer such land. 54 & 55 Vic.
c. 66.

(3.) In the administration of the assets of a person dying after the commencement of this Act, seized of or entitled to any land to which this part of this Act applies, such land shall be administered in the same manner, subject to the same liabilities for debts, costs, and expenses, and with the same incidents as if it were personal estate: provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies.

87. (1.) At any time after the death of the owner of any such land, his personal representatives may assent, in the prescribed form, to any devise contained in the will of such deceased person, or may transfer the land to any person entitled thereto, as heir, devisee, or otherwise; and may make the assent or transfer, either subject to a charge for the payment of any money which the personal representatives are liable to pay or without any such charge; and on such assent or transfer, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or transfer. Provision for
registration of
heir or devisee
of such land.

(2.) At any time after the expiration of one year from the death of the owner of any such land, if his personal representatives have failed on the request of the person entitled to the land to transfer the land to that person, the court may, if it think fit, on the application of that person, and after notice to the personal representatives, order that the person so entitled be registered as owner of the land either solely or jointly with the personal representatives.

(3.) No fee shall be payable on any transfer under this Section by personal representatives to a person beneficially entitled to land.

(4.) The production of an assent by the personal representatives in the prescribed form shall authorise the registering authority to register the person named in such assent as the full owner or limited owner of the land, as the case may be.

88. Nothing in this part of this Act shall render any land to which it applies liable to probate duty or legacy duty, or exempt it from succession duty. Liability for
duty.

89. In relation to freehold registered land, to which this part of this Act applies, the following provisions shall have effect:— Meaning of
"heirs."

(1.) The word "heir" or "heirs" used as a word of limitation in any Act of Parliament, deed, or instrument passed or executed either before or after the commencement of this Act, shall have the same effect as if this Act had not passed.

(2.) The word "heir" or "heirs" used as a word of purchase in any Act of Parliament, deed, or instrument passed or executed before the commencement of this Act shall bear the same meaning as if this Act had not passed.

- 54 & 55 Vic.,
c. 66.
- (3.) The word "heir" or "heirs" used as a word of purchase in any Act of Parliament, deed, or instrument passed or executed after the commencement of this Act shall, unless a contrary intention appears, be construed to mean the person or persons, other than a creditor, who would be beneficially entitled to the personal estate of the ancestor if the ancestor had died intestate.
- (4.) Subject as aforesaid, references to the heirs of any person in any Act of Parliament, deed, or instrument passed or executed either before or after the commencement of this Act, shall be construed to refer to his personal representatives.

PUBLIC WORKS LOANS ACT, 1892.

(55 & 56 VIC., CAP. 61.)

55 & 56 Vic.,
c. 61.

Transfer of
powers as to
Irish Reproductive
Loan Fund
and Sea and
Coast Fisheries
Fund.
54 & 55 Vic.,
c. 48.

4.* Whereas by Section thirty-five of the Purchase of Land (Ireland) Act, 1891, the Irish Reproductive Loan Fund and the Sea and Coast Fisheries Fund, including all moneys due on foot of loans and for interest, dividends and other annual income payable on foot of such funds, save as in that Section mentioned, were placed at the disposal of the Congested Districts Board for Ireland for the purposes of that Act, and it is expedient to confer on that Board the powers and remedies for the recovery of the said moneys possessed by the Commissioners of Public Works in Ireland; therefore, the Congested Districts Board for Ireland shall have and may exercise for the recovery of any money due on foot of loans made by them out of the funds aforesaid or otherwise payable on foot thereof all such powers and remedies as are possessed in that behalf by the Commissioners of Public Works in Ireland, and a certificate under the hand of the secretary to the said Board stating the amount due in respect of any such loan together with interest thereon and any costs and charges in respect of any such loan or the recovery thereof shall have the same effect as a like certificate under the seal of the said Commissioners.

* This section is included in the Congested Districts Board (Ireland) Acts, as defined by Sec. 4 of the Congested Districts Board Act, 1894, *ante*, p. 507.

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