6

IRISH JUSTICE

EXHIBITED IN THREE SPECIMENS

OF THE

PROCEDURE

OF THE

IRISH LAND COMMISSION.

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Houses of the Oireachtas

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In the debate in the House of Lords, on the 27th July, 1883, when the Marquess of Waterford called attention to the evidence taken by the Select Committee of the House of Lords appointed to inquire into the working of recent legislation in reference to land in Ireland and its effect upon the condition of the country, the Duke of Argyll said, "He had not had time to examine "very carefully the reply of the Commissioners to the report of "the Select Committee, but he observed that the Commissioners "took this ground, 'We are judicial persons; you have no right "'to inquire into our decision.' Let their lordships recollect "what Parliament had done. They had committed to three "gentlemen absolute and uncontrolled power over the whole "agricultural property of the Irish people. These gentlemen had "not a single principle to guide them, but were vested with "absolute discretion to redistribute property in Ireland as they "pleased. The Land Court was a legal Court, but it was not a "Court of Law. It was a Court which administered, by the will "of Parliament, the absolute discretion of three individual men. "Under these circumstances, their lordships had a right, and the "public had the right, to inquire into the principles upon which "the Commissioners were acting. There must be some members "of the House now present who might recollect the great speech "delivered in that House by one of the greatest speakers who "ever shook its walls—he meant Lord Lyndhurst—on an

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" occasion on which he condemned the conduct of a govern-
" ment of which he (the Duke of Argyll) happened to be
" a member, in taking what he thought an unconstitutional
" and illegal step against the received and acknowledged practice
" of the Constitution. Lord Lyndhurst said, in his most
" solemn manner and in his most solemn tone, 'My Lords,
" ' jealousy is the spirit of our Constitution, jealousy, not envy;
" ' not envy of everyone and everything that is above us, which
" ' is one of the meanest feelings of mankind, but jealousy in
" ' the high sense in which it is used in the Old Testament,
" ' when Jehovah said, "I am a jealous God." '

" The glory of nations was law, the administration of law;
" law based on no unsettled principles and guarded by the judges
" of the law, surrounded by ermine and removed from all popular
" passions and prejudices; but when Parliament appointed three
" men, two of whom were laymen, and one of whom only had a
" judicial character, and when Parliament gave those men absolute
" power over the property of other men—not on any known prin-
" ciple either of statute or common law—when Parliament gave
" them absolute and free discretion to do what they pleased, with
" no court of appeal, but with every court of appeal specifically
" excluded by Act of Parliament, he maintained Parliament had
" committed an act which, in principle, amounted to a barbarous
" piece of legislation; and they were bound to keep the public
" eye and their own eye jealously upon the operation of such a
" Court. That was what he wished to say in answer to the
" accusations of those gentlemen that this House was acting
" unconstitutionally in venturing to inquire upon what principle
" they had proceeded." Ten years and a half have passed by since these words were spoken, and the recent action of the Land Commission at Armagh is a demonstration that Parliament should keep a jealous eye " upon the operation of such a Court."

The following report is taken verbatim from the *Armagh Guardian* of 10th November, 1893:—

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SCENE IN THE CHIEF LAND COURT.

Commissioners Won't Look at Samples.

On Thursday night an unusual incident took place in the Chief Land Commissioners' sittings at Armagh during the re-hearing of the case of E. T. Wakefield, landlord, and Jane Turkington, tenant. The holding is situate on the Cloncur estate at Portadown, the area being 4a. 0r. 0p.; old rent, £4, judicial rent, £2 15*s.*; and Court valuer's valuation, £2 2*s.*

When the tenant's evidence was finished, Mr. J. B. Atkinson (Carleton, Atkinson and Sloan) stated that the landlord appealed because the Court valuer described the nature of the subsoil wrongly, as weak sand, whereas it was rich marl; and whilst the rent fixed would be fair on a sandy soil it was unfair to the landlord on a marl subsoil. The landlord had tried this farm in seven places and proved the subsoil, and he had specimens in court, and also of the crops grown thereon.

Mr. Justice Bewley—We had samples of grass sent to us in Dublin, and I suppose it was from this gentleman, but we sent it back.

The landlord himself, a member of the English Bar, aged about 70, then entered the box.

Mr. Wakefield deposed to farming the adjoining land to tenant's, and swore that he secured great crops therefrom. He denied the accuracy of the Court valuer's report, which stated the subsoil was sand; it was not sand but rich marl, which was most beneficial under stiff peat or spent bog, and as he said produced luxuriant crops of grass, turnips, mangold, flax and wheat. He had samples of the produce and of the subsoil in Court and would show them to the Court.

Mr. Wakefield was about to show the samples, which were all alongside the witness box, when

Mr. Justice Bewley said—Mr. Wakely, or Wakefield, or whatever they call you, stand down.

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Mr. Wakefield, who was about getting the samples, seemed as if he had only partly heard, and was surprised and looked at the Court, when Mr. Justice Bewley again called, "Stand down, sir."

Witness—I have not finished my evidence.

Mr. Atkinson—May I not produce the samples?

Mr. Justice Bewley—Call the next witness.

A policeman here came over to the box and Mr. Wakefield left it.

Mr. M'Bride, C.E., then gave evidence supporting the landlord's case.

When the evidence was concluded, Mr. Atkinson said his case was closed, subject to the production of the samples which he wished to put in evidence.

Mr. Justice Bewley—Loftie and Cochrane. (The next case.)

The next case was then gone into. The incident created much stir and surprise in Court.

With reference to this case, the following appeared in the *Irish Times*' Parliamentary Report of 24th November, 1893:—

WAKEFIELD *v.* TURKINGTON.

Mr. Darling asked the Chief Secretary to the Lord Lieutenant of Ireland whether his attention had been directed to the report of the case of Wakefield *v.* Turkington, recently heard before the Irish Land Commission, at Armagh, which was published in the *Armagh Guardian* of 10th November, from which it appears that sworn evidence was given before the Court that the Court valuer had wrongly described the nature of the subsoil as weak sand, whereas it was, in fact, rich marl; that while Mr. Wakefield was in the course of giving evidence to this effect, Mr. Justice Bewley addressed him, saying, "Mr. Wakeley, or Wake-"field, or whatever they call you, stand down"; that Mr. Wakefield said he had not finished his evidence, but Mr. Justice

Bewley ordered the next witness to be called, before the appellant's evidence had been concluded; and whether any remedy exists where a Court valuer has made a mistake in the nature of the thing he assesses?

Mr. Asquith: The Judicial Commissioner mentioned is at present on circuit, and as it is necessary to communicate with him upon the matter, the Chief Secretary will be glad if the hon. member will postpone the question until next week.

No answer has as yet been given to this question.

On the 25th November, the following letter was addressed to the Chief Secretary to the Lord Lieutenant of Ireland:—

KILMORE,
RICHHILL, CO. ARMAGH,
25th November, 1893.

SIR,

I observe that a question has been put down in the House of Commons by Mr. Darling with reference to the recent conduct of Mr. Justice Bewley in the case of Wakefield, landlord, Turkington, tenant, reported in the *Armagh Guardian*. I was present in Court during the hearing of the entire case; the report in the *Armagh Guardian* fails to convey the very strong animus shown by the judge against Mr. Wakefield. At the very commencement of his evidence the judge made an attack on the witness, charging him with a suppression of facts, which Mr. Wakefield's subsequent evidence showed to be unfounded, though his explanation did not produce any apology from the judge. With reference to the practice of the Land Commission in sending to report on the value of holdings valuers who are not produced in Court for examination, I am able to state, on the authority of one of the most distinguished judges on the Irish Bench, that their practice is illegal; it is the case that under sec. 48, sub-sec. 4, of the Land Act of 1881 the Land Commission have power, in determining any question relating to a holding, to

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direct an independent valuer to report his opinion on any matter the Commission may desire to refer to such valuer, but I have been advised by the present Solicitor-General for Ireland that the question to be referred under that section must be one that arises during the hearing before the Land Commission, and that the valuer must be an altogether independent valuer, and not a gentleman holding a permanent situation on the staff of the Land Commission; and that the Land Commission have no right to leave the whole case to be decided by his report. The late Chief Justice May, in Adams *v.* Dunseath, in the Court of Appeal, said—"I do not agree with Judge O'Hagan in his view "of the function of the Commissioners upon an appeal from the "decision of the Sub-Commissioners. This is not an appeal to "a superior Court to be heard upon the same evidence as was "heard before the Court below, *but is a rehearing upon which the* "*whole case is open, and fresh evidence may be adduced, and it* "*seems to me the duty of the tribunal of appeal is to form its own* "*independent judgment upon the evidence brought before it.*" And Lord Justice FitzGibbon, on the same occasion, said, "Even "where the Land Commissioners have, in the 43rd section, "thought it 'expedient' to delegate the consideration of "the matter in the first instance to a Sub-Commission, "any person aggrieved is entitled to require the case to "be reheard by the Commissioners themselves, *and to have* "*their judgment independently exercised upon it as a question* "*calling for the exercise of their highest qualifications.* I am "confident that upon that question, as between the present "parties and all others affected by like considerations, *the* "*judgment, and the only judgment to which the law has confided* "*its final settlement, viz., the judgment of the Court of the Land* "*Commission, will henceforth be exercised with due regard to the* "*statements of the law, which it has been our duty now to pro-* "*nounce, but in all other respects upon its own responsibility.*" If you make inquiry you will find that the Land Commission do

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not act in accordance with the law as laid down in the passages I have quoted. I wish to bring under the notice of Her Majesty's Government the fact that in the case of the Trustees of Fox, landlord, and Langan,* tenant, which was a case that came on for rehearing at Mullingar before the Irish Land Commission, in which, as one of the parties interested, I was about to give evidence on the part of the Trustees, and was in the

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* John Langan, who died intestate in January, 1881, was tenant on the Fox estate under a lease which expired at his death.

His widow, with his two sons and two daughters, who were her step-children, resided on the farm after his death, but no administration was taken out, no new letting was made of the farm on the expiration of the lease, and rent was received as before and receipts given by the landlord's agent in the name of the representatives of John Langan. By accepting rent in October, 1881, a new tenancy was created between the landlord and the representatives of the deceased tenant, which tenancy is a future tenancy within the meaning of the Land Law (Ireland) Act, 1881. Thomas Langan, who was one of the sons living on the farm with his step-mother and brother and two sisters, brought the rent to the agent, who never recognised him as tenant, and would have had no power to do so. In 1887, Thomas Langan applied to the agent for a permanent reduction of rent under the Land Act. Not knowing that the holding was held as a future tenancy, the agent inquired if the deceased tenant had made a will and what family he had left, and learning that he had left a widow, who was then living on the farm, with other children of the deceased tenant, the agent informed him that it would be necessary for administration to be taken out and one of the next of kin nominated to succeed to the tenancy, in pursuance of sec. 3 of the Land Law (Ireland) Act, 1881. Thomas Langan did not take these steps, and served a notice in his own name to have the rent fixed. He was subsequently informed that the Land Court would have no power to fix a rent, and that his first step was to take out administration. The question had already been raised in a similar case before the late Mr. Justice O'Hagan, Mr. Commissioner Litton and Mr. Commissioner Vernon, who dismissed the applicant's originating notice, although he had been the sole occupant of the farm for several years. The case came before the Irish Land Commissioners on a rehearing from the Assistant Commissioners, who had made an order, which was illegal, appointing Thomas Langan limited administrator to his father. The question of law was argued before the Land Commissioners, who decided in favour of Thomas Langan, and refused to state a case for the Court of Appeal or to allow an appeal to the Court of Appeal, on the ground that the question was frivolous and vexatious. The very same question has, within the last few weeks, come before the Court of Appeal in Ireland, in an appeal from one of the revising barristers, where it has been decided that a person in the same position as Thomas Langan was is not entitled to the franchise; in other words, if Thomas Langan were to have applied to be placed on the Parliamentary register for his father's farm at the same time that he applied to have the rent of his farm fixed the application would have been dismissed, and yet the Land Commissioners their predecessors having given a contrary decision—refused to allow an appeal on the ground that the question was frivolous and vexatious.

witness-box for that purpose, when Mr. Justice Bewley refused to allow me to be sworn, and, in the most insulting tone, shouted to me, "Stand down, sir." As I was not examined in the case, though anxious to give evidence which would have had an important bearing on it, I believe the order made, affirming the order of the Sub-Commission, was illegal. Section 8 of the Land Act of 1881 enacts that "after hearing the parties" the Court "may determine what is such fair rent," and I submit that if the Court refuses to allow a party to the case—as I was—to be sworn, the case has not been reheard in pursuance of section 44 of the said Act. I am most desirous of being examined, but know of no means to compel the Land Commission to rehear the case, which, I submit, has not up to the present been reheard. A most important question of law arose, but the Court decided it against the Trustees, and refused, on an application subsequently made in Dublin, to allow the Trustees to appeal to Her Majesty's Court of Appeal in Ireland, or to state a case for the consideration and decision of the said Court of Appeal, on the ground that the question raised was frivolous and vexatious. As the question raised went to the root of the jurisdiction of the Court to fix a rent at all in the case, and no appeal was allowed, the Trustees applied to the Exchequer Division of the High Court of Justice in Ireland for a writ of prohibition to restrain the Land Commission from enforcing their order; and but for the fact that on the hearing of the prohibition new evidence was adduced on the part of the tenant, which was held to establish the relationship of landlord and tenant between the parties, and thereby to confer jurisdiction, the writ of prohibition would have issued with costs against the Land Commission; but the new evidence I have referred to established that the new tenancy, which was held to have been created between the parties, was a future tenancy, and that therefore if that evidence had been before the Land Commission they would have been obliged to dismiss the case.

Although the Land Commission are aware of this fact, they have not rescinded their order, as they have power to do under their Act. I have to request that the facts I have stated may be thoroughly investigated, and measures taken to give redress to the parties interested.

I have the honour to be
Your obedient servant,
HENRY A. JOHNSTON.

To the Right Hon. THE CHIEF SECRETARY
to the Lord Lieutenant of Ireland.

To this letter the following reply has been received:—

IRISH OFFICE,
GREAT QUEEN STREET, S.W.
27*th November*, 1893.

SIR,

Mr. Morley desires me to acknowledge the receipt of your letter of the 25th inst. in regard to Wakefield, landlord, and Turkington, tenant, which shall have his attention.

I am, Sir,
Your obedient Servant,
L. C. DOWDALL.

HENRY A. JOHNSTON, Esq.

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REV. RICHARD JOHNSTON, LANDLORD, JOHN HALL, TENANT.

With reference to this case, which also came before the Irish Land Commission at Armagh, the following correspondence has taken place:—

KILMORE,
RICHHILL, CO. ARMAGH,
29th November, 1893.

SIR,

I have the honor to acknowledge the receipt of your post card informing me that in the case of John Hall, tenant, Rev. R. Johnston, landlord, which recently came before the Irish Land Commission, the Court had confirmed the rent fixed by the Sub-Commission. At the date of the originating notice the rent of the holding of 4a. 1r. was £5 13*s*., the poor law valuation being £5. This rent the Sub-Commission reduced to £3 10*s*. At the rehearing by the Land Commission the tenant produced no evidence as to the value of the holding, nor as to any improvements made during the tenancy. The landlord, on the other hand, examined a skilled valuer, one who, having followed his profession in this neighbourhood for many years, is by all classes admitted to be an authority as to the value of land in the County Armagh. He deposed that £5 3*s*. 4*d*. would be a fair rent, and, further, that ten years ago he valued the same farm at ten per cent. higher, and that no improvements had been carried out by the tenant. The solicitor for the tenant brought forward no evidence to discredit this witness's testimony, and the cross-examination did not lead to the slightest departure from his sworn statements when under direct examination. It was, moreover, proved on the part of the landlord, that up to the year 1888 the holding had consisted of 4a. 3r. 36p., held at the yearly rent of £6 15*s*. 6*d*., and that in the above-mentioned year the landlord, by request of the tenant, had, in consideration for his surrender of 2r. 36p., paid him the sum of £10 and

reduced the rent from £6 15*s.* 6*d.* to £5 13*s.*, which latter rent the tenant had agreed to pay, thus showing, I submit, that at the original rent he had a very substantial interest in the farm.

In confirming the award of the Sub-Commission the Land Commissioners do not appear to have kept solely in view the evidence proved before them, nor to have taken into consideration the fact that the tenant did not attempt to refute that advanced on the landlord's behalf, and they will, doubtless, now recognise that their decision was not in accordance with the facts proved on oath in their Court, and take steps to relieve the landlord from the consequences of an erroneous judgment.

It will be within the recollection of the Commissioners that in the case of Adams *v.* Dunseath, the following statement was made by the late Chief Justice May with reference to an appeal from a Sub-Commission: "This is not an appeal to a "Superior Court, to be heard upon the same evidence as was "before the Court below, but is a rehearing upon which the "whole case is open and fresh evidence may be adduced; and "it seems to me *the duty of the tribunal of appeal is to form its* "*own independent judgment upon the evidence brought before it;*" and that speaking from the same Bench Lord Justice FitzGibbon said "any person aggrieved is entitled to require his case to be "reheard by the Commissioners themselves, and to have "*their judgment independently exercised upon it,*" as a question calling for the exercise "of their highest qualifications."

I am,

Yours faithfully,

HENRY A. JOHNSTON.

To the REGISTRAR,
Irish Land Commission.

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REPLY.

THE IRISH LAND COMMISSION,
24, UPPER MORRISON STREET, DUBLIN,

E., No. 21,735. *4th December*, 1893.

JOHN HALL, T.

Rev. R. JOHNSTON, L.

SIR,

I am directed by the Irish Land Commissioners to acknowledge the receipt of your communication, dated the 29th ult., and to inform you that they must decline to enter into a correspondence with you on the subject of their decision.

Your obedient Servant,

JOHN H. FRANKS.

H. A. JOHNSTON, Esq.

KILMORE,
RICHHILL, Co. ARMAGH,
December 13th, 1893.

SIR,

I have the honor to enclose a copy of a letter addressed by me to the Registrar of the Irish Land Commission in acknowledgment of a postal card, which intimated the confirmation of an order made by a Sub-Commission, reducing the rent of John Hall from £5 13*s*. to £3 10*s*., though the poor law valuation is £5. It will be observed that I have drawn attention to the fact that the tenant produced no evidence whatever as to the value of the holding, nor as to any improvements alleged to have been carried out by him, and that he made no attempt to disparage the landlord's testimony on these points. There is, as you are doubtless aware, no appeal from the Land Commission on the question of the amount of rent fixed by them, but, inasmuch as very grave injustice has been done to the landlord, I communicated with them so that, being in possession of the evidence, they might reconsider the case,

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which they have power to do, and give a judgment based on the evidence sworn before them. A copy of their reply is enclosed, from which it will be seen that they merely state that they decline to enter into a correspondence. I have no wish to do so, but a miscarriage of justice having occurred, I brought the matter under their notice in the hope that they would rectify the error, and, as they have failed to do so, I most respectfully solicit that the correspondence may be referred by you to the Lord Chancellor of Ireland, in order that the case may be reviewed and decided in accordance with the evidence given on oath in the Land Commission Court.

I am,

Your obedient Servant,

HENRY A. JOHNSTON.

To the Right Hon. THE CHIEF SECRETARY
to the Lord Lieutenant of Ireland.

REPLY.

IRISH OFFICE,
GREAT QUEEN STREET, S.W.,
28*th December*, 1893.

SIR,

With reference to your letter of the 13th instant, Mr. Morley desires me to say that he understands that the decision of the Land Commissioners in question was given in open Court, but that, as a matter of courtesy, a postcard was sent to the landlord's agent informing him of the decision. The Executive Government have no statutable power to review the decisions of the Land Commissioners sitting as a Court of Appeal.

I am, Sir,

Your obedient Servant,

L. C. DOWDALL.

HENRY A. JOHNSTON, Esq.

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KILMORE,
RICHHILL, CO. ARMAGH,
January 1*st*, 1894.

SIR,

I have to acknowledge the receipt of Mr. Dowdall's letter of 28th December, stating that, with reference to my letter of the 13th ult., you understand that the decision of the Land Commission in question was given in open Court, but that, as a matter of courtesy, a postcard was sent to the landlord's agent, informing him of the decision, and that the Executive Government have no statutable power to review the decision of the Land Commission sitting as a Court of Appeal. My complaint is that the Land Commission, who are not a Court of Appeal, heard a case at Armagh, and, without any notice to the parties, announced a decision in Dublin which there was not a scintilla of evidence to support. That decision was communicated to the landlord by a postcard addressed to his agent, who, in acknowledging its receipt, pointed out "that the Land Commission, in confirming "the award of the Sub-Commission, do not appear to have kept "solely in view the evidence proved before them, nor to have "taken into consideration the fact that the tenant did not "attempt to refute that advanced on the landlord's behalf, and "that they will, doubtless, now recognise that their decision "was not in accordance with the facts proved on oath in their "Court, and take steps to relieve the landlord from the conse-"quences of an erroneous judgment." As the Land Commission communicated with the parties through the post, there was no other means of drawing their attention to the evidence but by letter; and although they have power to rescind their order and make a fresh order in accordance with the evidence, they evade the question by saying that they "must decline to enter into a "correspondence."

My letter to you of the 13th ult. is a charge which I am prepared to prove on oath of deliberate culpable misconduct on

the part of the Land Commission in discharge of their duty under the Land Law (Ireland) Act, 1881. I did not ask the Executive Government to review their decision, but that the correspondence might be referred to the Lord Chancellor of Ireland, in order that the case may be reviewed and decided by the Land Commission in accordance with the evidence given on oath in their Court. Should the Land Commission persist in keeping in force an order which there was no evidence whatever to justify, but was contrary to the evidence, which the tenant did not even attempt to refute, then I submit that Her Majesty's Government should take the necessary steps in Parliament to have the Commissioners removed from their office.

I am,

Your obedient Servant,

HENRY A. JOHNSTON.

To the Right Hon. THE CHIEF SECRETARY
to the Lord Lieutenant of Ireland.

REPLY.

IRISH OFFICE,
GREAT QUEEN STREET, S.W.,
8th January, 1894.

SIR,

Mr. Morley desires me to acknowledge the receipt of your letter of the 1st inst., and to say that he is advised that the Executive has no power to refer the papers in question to the Lord Chancellor, or in any way to interfere in the matter. The action of the Land Commission in the case in question is altogether judicial, and beyond the control of the Executive Government.

I am, Sir,

Your obedient Servant,

L. C. DOWDALL.

HENRY A. JOHNSTON, Esq.

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KILMORE,
RICHHILL, CO. ARMAGH,
January 11*th*, 1894.

SIR,

I am very much surprised to learn that you have been advised that "the action of the Land Commission in the case in "question is altogether judicial and beyond the control of the "Executive Government." It has apparently been overlooked that it has been decided by the Exchequer Division of the High Court of Justice that the Land Commission is not a Court of Law, and that they are only "deemed to be the Court" when the party taking proceedings under the Land Act elects to proceed before them, instead of the Civil Bill Court of the county, which is the only Court referred to in the Land Act of 1881. It has been, I believe, the practice both in England and Ireland for the Lord Chancellor to investigate complaints against County Court Judges as well as magistrates, and I know of a case in which a complaint against a County Court Judge in Ireland was a few years ago referred to the Lord Chancellor. Such being the case it is plain that the Executive Government would have the power to communicate with the Lord Chancellor with reference to a complaint against a County Court Judge such as I have made against the Land Commission, and as the Land Commission are only "deemed" to be the Civil Bill Court, it follows that the Lord Chancellor has the power to make the same investigation as to the misconduct of the Land Commission as he has of a County Court Judge. I have also to point out that by section 55 of the Land Law (Ireland) Act, 1881, the Land Commission are obliged to make an annual report to the Lord Lieutenant of their proceedings under the Act, and that every such report has to be laid before Parliament. As I have conclusively shown that the action of the Land Commission is under the control of the Executive Government,

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I have to request that the very serious complaint I have made with reference to the case of John Hall may be investigated.

I am,
Your obedient Servant,
HENRY A. JOHNSTON.

To the Right Hon. THE CHIEF SECRETARY
to the Lord Lieutenant of Ireland.

REPLY.

IRISH OFFICE,
GREAT QUEEN STREET, S.W.,
13*th January*, 1894.

SIR,

Mr. Morley desires me to acknowledge your letter of the 11th instant on the subject of the recent action of the Land Commissioners, and to say that he is unable to add anything to his decision already communicated to you.

I am, Sir,
Your obedient Servant,
L. C. DOWDALL.

HENRY A. JOHNSTON, Esq.

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