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SOME PRACTICAL SUGGESTIONS

CONCERNING

The Land Law (Ireland) Bill.

BY

JAMES F. V. FITZGERALD, ESQ.

BARRISTER-AT-LAW.

[FOR PRIVATE CIRCULATION ONLY.]

DUBLIN:

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PREFACE.

When an intended statute is so complicated and deals with such vast interests as the measure put forward in the Land Law (Ireland) Bill, a few practical remarks on some of its probable results and possible amendment require little apology; and although some of the suggestions hereinafter contained would, if adopted, mitigate the severity of some of the provisions of an Act which, all must admit, will be one of extreme rigour against a class who, as a body, have deserved well of their country and their dependents, yet I believe they are nothing more than justice requires, and that they would greatly facilitate the working of the proposed statute.

J. F. G.

18 *Kildare-street,*
Dublin, April 27th, 1881.

THE LAND LAW (IRELAND) BILL.

PART I.

CLAUSE I. "The tenant for the time being of every tenancy to which this Act applies may sell his tenancy," &c.

There is a latent ambiguity here. Tenant in clause 44 is defined to be a "person occupying land under a contract of tenancy, and includes the successors in title to a tenant." The case of a holding having devolved on several persons who hold it jointly is a very common one. As regards the landlord they are one person, and the receipts are given to "the representatives of" the original tenant. I presume it is not intended to confer on each of such individuals a right to sell his undivided share of the holding. But though I do not believe it to be the true construction, it is a possible one under the definition, and ought, I think, to be guarded against.

CLAUSE 1 (6). As the tenant, no matter for what cause ejected, has a right to claim for improvements made by himself and his predecessors, it would appear reasonable that the landlord, even in the case of ejectment for non-payment of rent, should have the right, if the tenant sells his holding (clause 13), to claim out of the purchase-money damages for the deterioration of the holding by the tenant or his predecessors.

CLAUSE 2. As a rule, the will of a tenant is never

proved, and the landlord is ignorant of its provisions. The personal representatives of the tenant should be bound under some penalty to give notice to the landlord, within a prescribed period after the tenant's death, of the provisions of his will with relation to his holding, or of his intestacy, as the case might be. The penalty might, perhaps, be a power to the landlord to require a sale of the holding.

Clause 3 (2). In order to make the provisions of this section mutual, there should be a penalty on a tenant unreasonably applying to the Court to reduce his rent. A pecuniary fine would generally prove a mockery, but there might be a power reserved to the landlord to resume possession of the holding on payment of a certain number of years' purchase of the reduced rent unreasonably demanded, or some other reduced sum to be fixed by the Court. Indeed, for the reasons given afterwards, I think when a tenant applies for a valuation, the landlord should always have the option of accepting the valued rent or buying out the tenant's interest.

Clause 4 (1). The statutory condition that the tenant shall pay his rent at the appointed time is destroyed by section 13, which relegates the landlord for his remedy to the statutes regulating ejectment for non-payment of rent, which require at least a year's rent to be due before they will authorise a decree for possession, and even then the tenant has six months to redeem. One of the few countervailing advantages which the proposed Act could offer to landlords as some

compensation for the depreciation of their property which its operations must entail (Report of the Bessborough Commission, par. 93) would be a "quick, sharp, and decisive remedy for the recovery of rent" (O'Conor Don's Report, page 44). The landlord might, perhaps, be authorised to bring an ejectment founded on notice to quit, if the rent were more than six months in arrear.

Clause 4 (2). It seems strange to require the notice from the landlord here mentioned. The tenant under the statutory tenure should be bound to keep his holding in proper tenantable order and condition, as if he had covenanted to do so under a lease. As re-entry for conditions broken can only be by decree of the Court, any trifling dilapidation or deterioration being made, a pretext for forfeiting the tenant's interest would be sufficiently guarded against. The words after the word "soil," where it occurs the first time, to the end of the sub-section, should be omitted.

Clause 4. Among the reasons authorising the resumption by the landlord of a holding under the decree of the Court might be included, viz., "that the holding actually adjoined land in the landlord's occupation, and that he *bonâ fide* wanted it for his own use," which, without pecuniary injury to the tenant, would be a benefit to such landlords as will continue resident, and who actually farm their own land.

It is difficult to understand why the power of the Court to give the decree for resumption here mentioned should be limited to a statutory tenancy con-

sequent on an increase of rent;—why should it not extend to a tenancy consequent on a reduction of rent? Ought a landlord be prevented from benefiting his estate for the future, because the rent which he has hitherto charged for it is the highest he could get?

Clause 5. It is an improvement that the scale of compensation should be calculated on the rent not on the Poor-Law valuation, which is very unequal. I think it is to be regretted that in another part of the Bill the rent paid, and not the valuation of the holding, is not made the criterion of such independence in the tenant as would entitle him to contract himself out of the Act.

Clause 5. As this clause merely amends the Land Act of 1870 in the specified particulars, leaving the rest unrepealed, I presume the appeal from the decision of the chairman of the County Court respecting compensation for disturbance (and for improvements also), will be to the going Judge of Assize; but claims of this kind will probably become very rare under the new Act, and, leaving them to the decision of the Judge of Assize, may in some degree relieve the Commissioners, who are sure to be overworked.

Clause 5. If my view be correct, it will also follow that a tenant may, under section 12 of the Land Act of 1870, if his holding is rated over £50 a year, contract himself out of claims under the Land Act, i.e., for disturbance and improvements, while he cannot do so as regards the benefits to be conferred by the proposed Land Law Act under a valuation of £150.

CLAUSE 6. Leaves the claim for improvements to be substantially governed by section 4 of the Land Act of 1870. It would be a boon to the legal profession, and aid the ends of justice if the maps of the Ordnance Survey were made *primâ faciê* evidence (which, strictly speaking, they are not at present, though some of the County Court Judges receive them) of the existence at the date of the completion of the Survey (1842, I think), of the fences and other improvements laid down in them.

CLAUSE 7. The first thing which must strike anyone reading this clause is its want of mutuality in not giving the landlord power to apply to the Court for a valuation of his rent.

If the interest on the value assigned to the tenant's interest by the Bill is to be deducted from the present rent, the general result will be that the average rent of holdings under £30 a year will be reduced below the Government valuation. Mr. J. B. Greene's evidence before the Bessborough Commission (745), is to the effect, that after making an allowance for the tenant's improvements, a revaluation of the country would average 33 per cent. above the present valuation. The average selling price of fee-simple estates is somewhat under 21 years' purchase of the rental (Thom's Almanac 1881, p. 660); and the value of the tenant's interest, as fixed by the Bill, would be seven years' rent, or one-third of the fee. If interest on this amount be deducted from a rent one-third over the valuation, it will bring the rental below it, that is,

below a standard, concerning which the Bessborough Commission Reports (par. 64), that "it was clearly established that, even when it was made, it was considered below the fair letting value of the land." In short, the most extreme proposal of the Land League did not exceed this.

I am, however, unwilling to suppose that this is the meaning of the Bill; the true view to take of the tenant's interest is, that it is not in derogation of, but in addition to the landlord's. But, outside Ulster, it is an interest which, to use an old law phrase, has been *in gremio legis*, owing to insecurity.

We learn from the evidence of Mr. Vernon (one of the most extensive land agents in Ireland), before the Committee on Valuation (Parliamentary Papers, 1869, vol. IX., 3010-3019), that the land in Ulster is let as high, if not higher, than in other parts of Ireland, quite irrespective of tenant-right; but, taking this into account, the combined value of the landlord and tenant's interest exceeds thirty years' purchase of the rental. Even in the South, if there were no agitation, six or seven years' purchase of the rent could generally have been got for the tenant's interest, and my observation of sales in the Land Judge's Court leads me to believe that land in the owner's hands sells for at least a similar number of years' purchase over that let to tenants. I believe, therefore, that there is an occupation value of land, in excess of the landlord's interest, even where the land is let pretty nearly at the full rent a solvent tenant is willing to pay; and if the intention of the Bill is to secure the

rent shall be such, that in an average year the tenant's interest would sell in the open market for a sum equivalent to the one he would be entitled to were he evicted. I see nothing in the valuation clause which need make most landlords apprehensive of a material reduction of their rents.

Clause 7 (3) (*a*). It should certainly be enacted that, among the "circumstances of the case, which would justify a variation" from the rule here laid down, payment of a rent for a certain number of years should be taken into account, as recommended in the 55th paragraph of the Report of the Bessborough Commissioners. Many tenants who have paid the same rent for twenty, thirty, and even forty years (aye, and a hundred years), will apply to have them lowered (O'Conor Don's report, p. 39). Is it intended that such rents are to be subject to reduction without any regard to the period for which they have been paid? and that, too, without compensation to the landlord! It is demonstrated that, taking one year with another, they are such as a tenant can pay and live. Can it be contended that in these cases the tenant is entitled to a greater interest than the sum (if any) which he can get in the market for his right of occupancy at the rent reserved? The responsibility of giving a direction on this point properly belongs to Parliament. The consideration is so eminently just that the Court could hardly altogether overlook it; but to leave it entirely to judicial decision would be to expose the judge to a torrent of villification and invective. Moreover, it is only by some such provision that the enormous mass of

litigation, to which the Bill, if it becomes law, will give rise, can be reduced to a manageable compass.

Judges and valuators are both liable to error. The Irish County Courts are inundated by a flood of perjury, and it is to be apprehended that in many instances the Court may, from these causes, fix a rent lower than, having regard to the tenant's interest, would be just to the landlord. It would promote real justice if the landlord, in case the tenant obtained a reduction of rent from the Court, had the option of purchasing the tenant out, by paying him the value of his improvements (if any) and compensation for disturbance to be calculated at the scale laid down in the Act on the rent judicially fixed. I think a provision of this kind would be a material check to agitation for unreasonable reductions of rent.

In case the landlord had a power to apply to the Court to value rent an analogous power should be reserved to the tenant in the event of the landlord applying, and in case the tenant thought the rent fixed too high, of compelling the landlord to purchase his interest at the scale in the Act calculated in the judicial rent, in addition to the sum (if any) found due to the tenant for improvements.

Clause 7 (7). It is difficult to see why the limitation of the power of the Court to authorise resumption is introduced here. Why should a landlord be prevented from benefiting his estate, if he pays the value of the tenant's interest, because the Court has fixed the rent?

PART III.

JUDICIAL LEASES.

CLAUSE 9. In the case of a proposed tenant of a holding not subject to a subsisting tenancy, surely there ought to be a power in the Court to sanction a covenant to deliver up possession at the end of the term, so that the lessee should not be deemed a future tenant at the expiry of the lease. And where the land to be let is actually in the landlord's occupation, I think the Court should have power to sanction a lease for a shorter term, which should, nevertheless, exclude the holding from the Act.

PART IV.

CLAUSE 13 (1). The six months after the execution of the decree here mentioned appears analogous to the six months allowed for redemption, after the execution of a decree in ejectment for nonpayment of rent, which is one of the most objectionable and anomalous features of the Irish Land Laws, practically compelling the landlord to leave the land derelict for six months. It is to be regretted that the recommendation of the Bessborough Commission (par. 43), has not been adopted, and a similar provision introduced here, namely, a suspension of the execution of the decree for six months: but when executed it should be final.

CLAUSE 13 (3), (2). Inasmuch as the new tenure will

practically amount to a kind of statutory lease, the lessee ought to be to some extent stopped from denying his lessor's title. In an eviction for the breach of any statutory condition, the same easy and cheap proof of title, namely, receipt of rent for a certain period, might be adopted; and the landlord saved the trouble and expense of procuring the assent of incumbrancers, and tracing, perhaps, a long title.

Clause 14. The power of the Court to appoint a limited administrator should be extended to meet the case of where the holding is assigned with the consent of the landlord, even if there be no sale, *e.g.*, where some child of the deceased tenant is in America, and it is agreed among those who remain, that one of them shall become tenant of the holding, there would arise a difficulty about assigning it to him, though all the available parties might be agreed.

Clause 15. It seems strange that a subtenancy should continue after the interest out of which it was created was determined. There was no privity between the superior landlord and the occupier. This clause would confer on the middleman a power to create a higher estate in his tenant than he himself possesses.

Moreover, clause 47 provides that "holdings subject to existing leases shall remain in force to the same extent as if this Act had not passed, and holdings subject to existing leases shall be regulated by the provisions contained in such leases;" including, of course, the ordinary covenant to deliver up possession at the end of the term, but this provision makes it impossible for the lessee to give clear possession.

Again, the word "otherwise" would include ejectment for non-payment of rent; at present, in such an ejectment, the occupiers have to be served with notices, in order to give them an opportunity of redeeming the interest about to be evicted; for the future they will have no object in redeeming, as they continue tenants under clause 15; and the landlord is left without remedy, except a personal one, against the defaulting lessee.

Suppose a tenant takes a holding valued at £150 a year, contracts himself out of the proposed Act, and covenants against subletting, and then sublets immediately and is ejected for breach of the covenant or otherwise, nevertheless, under clause 15, his sub-tenants would have the claims of ordinary tenants against the superior landlord.

Clause 17. It is unfortunate that the valuation and not the amount of rent paid, has been taken to be the measure of the tenant's ability to make a contract for himself. A valuation of £150 in many mountain pastures would represent a rent of £500 or £600 a year. An instance is mentioned in the evidence before the Bessborough Commission, where a farm, rented at £1,000 a year was valued at £100. It would be better to say a tenant paying £200 or £250 a year rent and upwards is sufficiently independent (as he is) to contract himself out of the proposed Act; but, taking the valuation of his farm as the measure of his independence, tends to keep up the idea that there is some fixed proportion between the valuation and a fair rent, an idea which is destitute of foundation, and

calculated in the present state of the country to be injurious to those proprietors whose rents are considerably above the valuation, although they may, in fact, be cheaper than other lands let at the valuation. (J. Leahy, Esq., Q.C., "Parliamentary Papers," 1869, vol. ix., 1,822. S. M. Hussey, Esq., Evidence before Mr. Shaw Lefevre's Committee, 1878; 4,907, &c. &c.)

Clause 18. It would greatly facilitate the working of Part V. of the proposed Act if limited owners were empowered to leave a portion of the purchase-money of their land outstanding by way of mortgage, puisne to the Commissioners' loan on the security of the land sold. The mortgage might include a proviso that the loan should not be called in for some years. Such a security is not one in which trustees could invest without a special power; it is, nevertheless, one which will gradually become good. If Part V. of the Bill works at all by agreement between landlord and tenant, the difference in the price demanded and offered will in the first instance be small, about one or two years' purchase of the rent. Many tenants have not got the amount required beyond the Government advance to purchase their holdings, and it would enable these to pay a better price, and it would also be cheaper for themselves, to get the money from the landlord rather than from the local usurers.

PART V.

Liberal as are the provisions in this part of the Act, it is doubtful if tenants will largely avail themselves of them. If they find they can get a better bargain under Part II. of the Bill, and especially if the agitation is permitted to continue, and they think they will get the land cheaper still, they will not purchase. Landlords must look with great anxiety on this portion of the Bill, as upon the working of this part depends whether or not a great injustice is done to them as a class. The Report of the Bessborough Commissioners virtually admits this in paragraph 95, which says, "By providing funds liberally for the purpose of purchase, by judicious arrangements for the conduct of sales, and by energetically pushing the work through the agency of a body specially constituted to do it, we consider that means may be provided for satisfying all, or nearly all (what a pregnant word is nearly) which the landlords have in this respect a right to demand." If the provisions of this part of the Bill fail to attract a sufficient number of purchasers for land, utter ruin must overtake those unfortunate persons whose estates are forced into the market, and who may have done no wrong whatever, and they have a right to demand that every precaution shall be taken to guard against this result.

Clause 19 (*a*). The proportion of purchase-money which the Commissioners are authorised to advance to the tenant is much lower than that recom-

mended in the Report of the Bessborough Commission (paragraph 92). In many cases the occupation interest of the tenant would be so considerable that the whole could be safely advanced. But unless the recommendation in the Report is (at the least) carried out, it cannot be said that the Government have done all they could in the way of providing funds.

Clause 19 (*b*). Is the interest on the Government loan to have priority over, or is it to be puisne to the fee-farm rent? Probably the latter was intended, as the 25 per cent., by which it is provided that the fee-farm rent should be less than the rent a solvent tenant would pay, would be about the interest on the proportion of money advanced. If the landlord consented to postpone the rent to the interest on the loan, there seems no reason why the entire purchase-money could not be safely advanced. Probably a provision to this effect would be an improvement to the Bill.

The provisions of this clause are inconsistent with the construction put on clause 7 by many persons, that interest on the amount of the disturbance claim fixed by the Bill is to be deducted from the rent a solvent tenant would pay; for it is evidently absurd to expect a tenant to purchase a holding subject to three-fourths of a certain rent, when he could acquire the statutory tenure (in case his rent was £30 a year, or under) without any fine for two-thirds of the same rent.

Clause 19 (3). I cannot help thinking that a power to the Commissioners in cases in which they

thought it would be proper, to acquire a good title by advertising in a manner similar to that adopted by the Commissioners of Public Works, when making advances under the provisions of the Land Improvement (Ireland) Act, 1860, would prove a useful addition to this part of the Bill.

Clause 19. As it is highly desirable to extinguish mid-interests, a power to advance money to grantees under existing fee-farm grants, in order to enable them to purchase the superior interest, might well be included in this part of the Bill, and would carry out the recommendation of the Bessborough Commission contained in paragraph 98 of the Report.

Clause 20 (1.) Probably the Commissioners would have power to purchase part of an estate under this clause, but it would be an improvement if the words "or convenient portion of an estate," were introduced after the word estate.

Clause 20 (3). Surely, the hard-and-fast lines as to the number of tenants, and the amount of rent they pay, here laid down as inexpedient, and a wide discretion should be left to the Commissioners.

In counting the number of tenants able and willing to purchase, are joint-tenants to be counted as one or several?

Clause 22 (1). For a long time to come, except the occupying tenants, few persons will care to invest money in land. The advance of three-fourths of the purchase-money at 5 per cent. will supply a compa-

ratively limited class of tenant-purchasers, especially if the Land League conspiracy to purchase land for less than two-thirds of its average selling value is continued. Repayment at a lower rate, and extended over a longer time and a larger amount of advance, as recommended in the Report of the Bessborough Commissioners, paragraph 92, would supply a larger number of purchasers. It cannot be said "that every facility has been given for sales to the State, short of actual compulsion on the State to take over all the land offered to them" (par. 93), on which alone the Commissioners rest the approximate (par. 95) justice of the measures they recommend, unless this, at least, is done.

Clause 24 (1) (*a*). The Commissioners should not have greater power to object to a purchaser than the landlord has under clause 1. Beyond this the restriction will prove vexatious.

Clause 25 (4). This is a dangerous provision; the taxation in the Act referred to is (sect. 14) largely thrown on the landlord; in many places a majority of the associated cesspayers are members of the Land League, and anyone acquainted with the shameless jobbery of the Special Baronial Sessions in 1879-80, may well fear that the wildest schemes may receive a guarantee, without any power of revising it, as there need be no presentment by the Grand Jury or fiat by the judge to validate the presentment of a Special Baronial Sessions. There is not now any

such tremendous pressure for relief as to require the abrogation of these ordinary safeguards.

Clause 27. No indication has ever been given of the amount which it is intended to propose to Parliament to grant. Unless it be very large, an inadequate market will be provided for land; for purchasers for the future will practically be limited to the tenant class.

Clause 28. (3). It may be advisable to limit the amount of the advance made by the Commissioners, in the first instance; but why should they not have power, under special circumstances, to report to the Treasury that over £5,000 should be advanced? Why should the discretion of the Treasury be so limited?

Clause 31. The unsatisfactory nature of the County Court, as a tribunal for deciding land cases, has been commented upon by both parties. The amount of property submitted to its decision is vastly greater than was ever before contemplated for a court constituted as it is. The County Court Judge's jurisdiction is limited with regard to every species of action, save as to land. If the Government undertake the supervision of millions of property, they are bound to provide a suitable staff to administer it. The tribunal must, of course, be a local one, in the first instance; but desirability of appointing salaried professional valuators to assist the Judge has been pointed out by so many witnesses before the Bessborough Commission, that it is to be hoped it will be pressed earnestly on the Government, and accepted by them.

Clause 31 (4.) The practical effect of this provision would be to throw the valuation into the hands of local engineers—the assistant county surveyors—who are, as likely as not, to be incompetent valuers, and whose local connections and small pay would be sure, among a suspicious people, to lay them open to imputations of being improperly influenced. The valuators suggested in the last paragraph ought to be first-rate men, unconnected with the district, and sufficiently highly salaried to place them above suspicion; moreover, if they were salaried their fees for valuing (if any) could be reduced to the lowest figure—a thing of vital importance both to landlord and tenant, where such an amount of property will have to be valued.

Clauses 36 and 37. Startling as is the power given to a single Commissioner to decide all questions of law and fact, the power to delegate his authority to an Assistant-Commissioner is even more surprising. The unknown Assistant-Commissioner may sit as a Court of Appeal from the County Court Judge; and, although possibly a layman, he may be called to decide irrevocably the most complicated questions of law arising under this most intricate Act. An appeal should lie from the decision of an Assistant-Commissioner, and I should hope to see the constitution of the Commission itself greatly strengthened, both by an increase in their number, so as to enable them to sit as two Courts with more than one member in each, and also by the introduction of a larger judicial or legal element, all holding office during good behaviour, not during pleasure; were their tenure of office the latter, any un-

popular decision would be immediately followed by an agitation to secure the removal of the offender.

Clause 40 (4). Great expense may attend the procedure here mentioned, a regular staff of valuers in the pay of the Commission is almost indispensable, if economy and independence are required.

Clause 44. The definition of "contract of tenancy" should include a letting of land for less than a year; otherwise the tenant for less than a year in section 16, would not be a tenant at all within the meaning of the next definition.

The definition of "tenancy" is confused "Tenancy" where it occurs in the body of the definition, being evidently used to express "tenure." "The interest of a tenant in his holding so long as his tenure thereof shall last," would be a better definition.

Clause 46 (2). A great deal of land bears an accommodation value from proximity to villages which could hardly be called towns, but in which fairs and markets are held; surely this exception should extend to all land which bears an accommodation value over and above the ordinary letting value.

Clause 46 (3). Again the unfortunate reference to the valuation as a measure of value—£70 rent would be better.

Clause 46 (7). Why is "the expression in the document" essential? Is not the fact of the letting being for temporary convenience a question for

the judge, and should he not be able to decide on the whole evidence, whether documentary or otherwise?

It would be a wise provision to exclude holdings in rundale from the operation of the proposed Act; to perpetuate these is to stereotype misery and squalor.

Clause 47. Written contracts for yearly tenancies would appear not to fall within this saving clause, but it is hard to see why (unless the tenant could show they had been extorted or otherwise improperly procured from him) they should be put on a different footing from other leases and made so much waste paper.

Clause 48. One practical effect of this clause will be that the County Court Judge at the October Quarter Sessions will have power to revise the rents due in September (supposing the Bill to become law before then), which seems contrary to the intentions of clause 7 (4).

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