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THE

LAND QUESTION,

IRELAND.

No. XI.

FOREGONE CONCLUSIONS:

THE BESSBOROUGH COMMISSION.

APRIL, 1881.

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The following pages were in type before the introduction of Mr. Gladstone's new Land Bill; to which measure, based as it is in many details on the Report of Lord Bessborough's Commission, they will be found equally applicable.

April 11*th*, 1881.

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In August, 1879, a Royal Commission was appointed by Lord Beaconsfield's Government, under the presidency of His Grace The Duke of Richmond and Gordon, "to inquire into the depressed condition of the Agricultural interest, and the causes to which it is owing; whether those causes are of a permanent character, and how far they have been created, or can be remedied by legislation."

The land agitation in Ireland was started by Mr. Parnell and his associates about the same time, in anticipation of the distress likely to result during the ensuing winter, consequent on the extreme wetness of the summer of 1879; and, as it speedily assumed serious proportions, the attention of the Royal Commissioners was early and specially attracted to the condition of Agriculture, and those

dependent on agriculture, in Ireland. In view of probable legislation on the Irish Land Question, the Commissioners have published a Preliminary Report dealing briefly with the condition of agriculture and the tenure of land in Ireland. This preliminary Report is signed by the Chairman and twelve other Members of the Commission; including Mr. Bonamy Price, who adds a memorandum on certain points on which he dissents from the Report. Appended to the Report proper of the Commissioners, there is a separate Report, signed by six Members of the Commission, including Lord Carlingford, and Mr. Stansfeld.

In May, 1880, Mr. Gladstone succeeded Lord Beaconsfield as Prime Minister, and in July a second Royal Commission was issued, of which Lord Bessborough was appointed Chairman, "to inquire into and report upon the working and operation of the 'Landlord and Tenant (Ireland) Act, 1870,' and the Acts amending the same, and whether any, and what further amendments of the law are necessary or expedient, with a view (firstly) to improve the relation of Landlord and Tenant, in that part of the United Kingdom called Ireland, and (secondly) to facilitate the purchase by Tenants of their holdings." This Royal Commission proceeded to work with great activity, and the result of their labours is to be found in the Blue Book (Vol. I.) recently issued, containing no less than four Reports. The Report proper is signed by the Chairman, and by three of the four other Members of the Commission.

Two of the three, however, namely, The O'Conor Don and Mr. Shaw, publish supplementary Reports, and a separate Report is added by Mr. Kavanagh. We have thus six distinct reports, and Mr. Bonamy Price's Memorandum, as the outcome of the two Royal Commissions.

It is not our intention to analyse the constitution of these Commissions, but we think it right to call attention to the fact that Lord Carlingford and Mr. Stansfeld were added to the Duke of Richmond and Gordon's Commission by Mr. Gladstone, after his accession to power last year, in the room of Earl Spencer and Mr. Goschen, who had resigned.

The first thing that strikes us in considering the Reports of these Royal Commissions is the great diversity of opinion among the members composing them. That differences of opinion should exist, and find expression, is but natural; but it could scarcely have been anticipated that among the five members of Lord Bessborough's Commission only two should be found wholly in accord. There is less divergence among the members of the larger Commission, presided over by the Duke of Richmond and Gordon; but the opposition of opinion is quite as great as in the other case. We think that this want of harmony of opinion should convey a grave warning to all concerned in dealing with the Irish Land Question; it reflects but too faithfully the inherent difficulties that beset the question, and the nature of the conflicting interests involved; and it should cause those who are called upon to

formulate legislation on the subject to approach the task in a humble and cautious spirit. When men such as composed these Commissions differ so widely in their views, it is sufficiently plain that the Irish Land Question cannot be solved off hand by heroic measures, such as have conspicuously failed to settle it in the past.

The Report of Lord Bessborough's Commission, which is a very elaborate and ambitious document, professes to deal exhaustively with the whole question; but, when read in the light of a knowledge of the real condition of Ireland, it is found to be as remarkable for what it omits as for what it contains. We shall see this more clearly by-and-bye; for the present let it suffice to notice that, of the thirty-seven pages of which the Report consists, a single page exhausts all the Commissioners have to say on such important topics as the poor cottier tenants, the agricultural labourers, the reclamation of waste lands, and emigration; and that the Report, from beginning to end, does not contain one solitary substantive proposal on any of these important elements of the question.

It is necessary to remark that, when this Report was drawn up, the Commissioners had not before them the large mass of rebutting evidence which has since been sent in, and that so far they have based their Report upon *ex parte* statements—statements many of which have since been ascertained to be inaccurate, and in some cases devoid of foundation.

After describing briefly the proceedings of the Commission, the Report proceeds to discuss the nature and origin of the Ulster Tenant-Right, and of analogous customs existing in other parts of Ireland. It is not easy to follow the line of argument pursued, or to discern on what facts or principles it is based; but, stripped of the mass of verbiage in which it is swathed, the contention appears to be that, owing partly to the historical and social antecedents of the country, partly to the labour supposed to have been bestowed by the tenant in reclaiming and improving the land, partly to the implied acquiescence of the landlord where he did not actively dispute the claim, there survived or grew up a claim of ownership in the tenant to the land he cultivated, an idea which no lapse of time or vicissitude of fortune could eradicate. To quote the words of the Report, section 11, last sentence:—

"But the Irish farmer remained, as before, faithful to the soil of his holding, and persistent in the vindication of his right to hold it. In the result, there has in general survived to him, through all vicissitudes, in despite of the seeming or real veto of the law, in apparent defiance of political economy, a living tradition of possessory right, such as belonged, in the more primitive ages of society, to the status of the man who tilled the soil."

The Report of the Devon Commission is quoted to prove the existence of Tenant-right in Ulster, either recognized or connived at by the Landlords, at the time that Commission sat; and the existence of a claim to Tenant-right in other parts of the country which the Landlords did not allow, "either

openly or by sufferance, except in rare individual cases, and then upon a very much modified scale."

It is evident that Lord Bessborough's Commission does not attach much importance to Tenant-right, either in or out of Ulster, except as affording evidence in support of the alleged traditional right of partial ownership in the soil, which it is the object of the Report to establish. Indeed it is ultimately proposed that Tenant-right, as it now exists, should merge in the larger statutory tenure which is to be conferred on the tenants by legislation.

Neither does the Report look with much favour on leases. The section on the subject, No. 14, is worth quoting:—

"Many of those who have devoted thought to the settlement of the difficulty have come to the conclusion that the true remedy for all the evils of insecure tenure, and of discrepancy between law and tradition, lay in the gradual introduction and universal adoption of a system of Leases. The Report of the Devon Commission above quoted points in this direction. The tenants, however, refuse leases. The offer of security in their holdings for a term of years presents no attraction to them. They see in it, not a lengthening of the legal yearly tenancy, but a shortening of the continuous traditional tenancy. A lease generally involves an immediate increase of rent: at all events, rents are found almost invariably to be raised on its termination. It has seemed better to abide by the tradition, and trust to the easiness of the landlord, and the chapter of accidents. The number of leases in Ireland does not appear to be materially increasing; and this method of settling the land question has apparently become hopeless."

It is scarcely necessary to point out that this ingenious theory has no foundation in the facts of

the case. Leases were common enough in Ireland before the Famine of 1847; and it was the minute sub-division of the land under the leasehold system that rendered the country unable to make any stand against that fatal visitation. After the Famine, tenants would have been glad, as before, to get leases; but the Landlords, warned by the terrible ordeal through which they had just passed, were unwilling to grant them, and it is only since the passing of the Land Act of 1870 that there has been anything like a disinclination to accept leases manifested by agricultural tenants in Ireland, and that confessedly owing to the advantages conferred by the Act upon tenants from year to year.

The action of the Encumbered Estates Court, as a factor in the present position of the land question, is briefly referred to in section 15. We quote the passage in full:—

"Another cause which has operated in the same direction has been the extensive transfer, under the action of the Encumbered Estates Court and of the tribunals which have taken its place, ever since the famine of 1846, of ancient properties, previously managed in a more or less patriarchal fashion, to new owners. Most of the purchasers were ignorant of the traditions of the soil; many of them were destitute of sympathy for the historic condition of things. Some purchased land merely as an investment for capital, and with the purpose—a legitimate one so far as their knowledge extended—of making all the money they could out of the tenants, by treating with them on a purely commercial footing. A semi-authoritative encouragement was given to this view of their bargains by the note which it was customary to insert in advertisements of sales under the Court—'The rental is capable of considerable increase on the falling in of leases.' This hint has often been acted on, and rents greatly

above the old level—in some cases probably above the full commercial value—have been demanded and enforced, with the natural result, in a few years' time, of utterly impoverishing the tenants."

It is right to mention here that the Report before us bears remarkable testimony to the kindly and considerate dealings of the large Irish proprietors with their tenants. One or two extracts will suffice :—

'Thus, a tenant who pays his rent is very seldom evicted; and even if the rent falls into arrear, it has not been the general or the prevailing rule that ejectment should follow as a matter of course. Farms have remained in the same families, have descended from father to son, and are considered to be fully as much the family property of the tenant as the reversion of them is part of the family property of the landlord. These tenants have not been protected by law, or by any such general acknowledgment of their interest as could be called a local custom. Such protection as they had was due to the prevailing sentiment which affected the conduct, though it could not modify the legal rights, of landlords. . . . . Lastly, though the amount of rent was always at the discretion of the landlord, and the tenant had in reality no voice in regulating what he had to pay, nevertheless it was unusual to exact what in England would have been considered as a full or fair commercial rent. Such a rent, over many of the larger estates, the owners of which were resident and took an interest in the welfare of their tenants, it has never been the custom to demand. The example has been largely followed, and is to the present day rather the rule than the exception in Ireland."

It is rather hard on men who have treated their tenants with such consideration to find that their very generosity is turned into an argument for depriving them of their rights; that, because they forbore in the past to evict tenants in arrear of rent,

they are to be forbidden to do so in the future; and that, because they have hitherto been content to accept a rent below the fair letting value, they are to be practically prohibited from ever looking for more.

The Land Act of 1860—"Deasy's Act"—is dismissed with scant courtesy. The principle on which it was founded is too fatally at variance with that contended for in this Report to admit of any possible reconciliation. Hence it is contemptuously pooh-poohed. But let the Report speak for itself:—

> "The last step in the development of what may be called the English Land Law in Ireland was the passing of the Act of 1860, whereby it was enacted that 'the relation of landlord and tenant shall be deemed to be founded on the express or implied contract of the parties, and not upon tenure or service.' This enactment has produced little or no effect. It may be said to have given utterance to the wishes of the Legislature that the traditional rights of tenants should cease to exist, rather than to have seriously affected the conditions of their existence."

So far the Report has dealt with what may be called the historical aspect of the Irish Land Question, or, to speak more correctly, with what it professes to regard as its historical aspect; and it has dealt with it with the object of establishing the existence of a "possessory right" in the Irish Tenant on which to found a new system of land tenure in Ireland. Our feeling, as we read this earlier portion of the Report, is that we are reading not the grave and deliberate judgment of a quasi-judicial tribunal, or the summing-up of an impartial judge, but the sophistical special pleading of an advocate striving to palm off on the jury his own confused theories

as the real facts of the case. It is impossible to resist the conclusion that the framer of the Report entered upon his task with the foregone conclusion of finding grounds to justify the sweeping transfer of territorial rights from the Landlord to the Tenant, such as is afterwards recommended; and finding no such grounds either in the history or legislation of the country, antecedent to the Land Act of 1870, invented this theory of "possessory right" as best suited to his purpose. Putting aside for the present the novel doctrine that, because a man thinks he ought to have the property of another man, and desires to get it, the machinery of legislation is to be set in motion in order to gratify his wish irrespective of the wrong done to the man whose property is taken away, let us see how the Report regards the first effort to give practical effect to this peculiarly "Irish idea."

Speaking of the Land Act of 1870, it says:— "For the first time it was decided in some measure to recognise the *existing state of things*," meaning thereby the "possessory right" supposed to exist in the tenants. "The attempt was abandoned to establish by law the commercial system of dealing with tenancies of agricultural land." After referring to the Ulster Custom, the Report goes on: "Where the Ulster Custom did not exist, a legislative sanction was given *to the pre-existing sentiment* that a tenant ought not to be deprived of an interest, which, nevertheless, the statute did not in terms declare him to possess."

This is a good specimen of the manner in which the Report deals with the history of the Land Question. The Land Act is little more than ten years old. We can all recollect the circumstances under which it was passed; but we venture to say few will recognise the description of them which we have just quoted.

The Land Act was introduced, no doubt, in accordance with the "Irish ideas" of Mr. Gladstone and Lord Carlingford, then Mr. Chichester Fortescue; and those "ideas," which will be found faithfully represented in the Act, were first, to secure to the tenant the value of his improvements; and, secondly, to check or put a stop to "capricious evictions." So far from recognizing any "possessory right" in the tenants, as the Report would have us infer from the fact of compensation being granted for disturbance, the Land Act expressly denied its existence, by limiting the operation of the disturbance clause to the small tenancies, and providing a sliding scale for them. "Compensation for disturbance" was a pecuniary fine on Landlords for pressing their rights injuriously on small tenants—it was so regarded and so defended at the time—and it was no more a recognition of "possessory right" in the tenant to the soil he cultivates, than the "Ten Hours Factory Bill," which curtailed the power of the employer of labour, was a recognition of "possessory right," on the part of the operative, to a share in the mill in which he worked.

From this unfair attempt to press the Land Act

of 1870 into the service of the advocates of "possessory right," we can judge of the validity of arguments based upon theories drawn from less familiar sources; and, as the whole subsequent reasoning of the Report rests upon the supposed existence of this "possessory right," it is most important to understand clearly, at the outset, that it is really no more than a catching phrase, invented to give expression to the conjectures of the framer of the Report. If such a right existed—if it had even been seriously alleged to exist—before the passing of the Land Act, we scarcely think it would have been left for Lord Bessborough's Commission to discover and formulate it. It is only fair to say that there is no reference to any such right or claim in the separate Report by Lord Carlingford, who may be supposed to know something of the matter. On the contrary, that Report proves very conclusively that no such right or claim ever existed.

It will be observed that, while the introductory portion of the Report begins by tracing the existence of Tenant-right to "a *species of popular consent*, almost universal, though without legal sanction," and to "a *feeling* that tenants were entitled to an actual interest or right of occupancy in their holdings, larger than the legal tenancy"; it grows bolder as it advances, and finally speaks of the tenant's interest in his holding as a "genuine proprietary right." No proof is offered of the existence of the "popular consent" or the "feeling" any more than of the "genuine proprietary right"; nor of the

latter, except in so far as it is sought to infer it from the Land Act; but it is gradually written up to, and ultimately spoken of as though its existence had been regularly established. The reader of the Report having accepted the existence of the "popular consent," without perhaps bestowing a thought upon so vague and apparently harmless an expression, finds himself constrained, he knows not how, to admit the validity of the "possessory right" as well. He has become unconsciously familiarized with the idea; and having failed to mark the gradual steps by which he has been led on, from the original conjecture to the final assertion, he is in a fit state of receptivity for the bolder statements and proposals which follow. It is to be feared that many persons, not well acquainted with Ireland, and too busy or too careless to examine the matter for themselves, will be led to accept this theory of "possessory right" on the part of the tenant without question; and it is, therefore, most important to point out distinctly that it has no foundation in fact, and that nothing like proof of its existence is attempted in the Report. It is asserted, at first vaguely and cautiously, afterwards with greater boldness and exactness, but it is only asserted, not proved.

The idea of ownership thus claimed for the tenant is not to be confounded with the belief, common enough in some parts of Ireland, that the land is the property of the people, of which they were unjustly deprived in times, more or less re-

mote, by the numerous confiscations that took place. Such an idea would be at least intelligible as existing among a people so haunted by the associations of the past as the Irish generally are; but it could scarcely be advanced by a Royal Commission as a basis for legislation, or a reason for altering the land system of the country. The "possessory right" spoken of in the Report is of a far subtler and more complicated character, and loses none of its attractiveness from the vagueness with which it is formulated, or the mystery in which it is involved. If we seem to have dwelt too long upon this point, our excuse must be, that this alleged "possessory right" is really the foundation of the whole Report. If its existence be admitted, we cannot well oppose legislation designed to give it practical effect; if, on the other hand, it have no real existence, the demand for extreme legislative interference between landlord and tenant loses much of its force, and nearly all its sanction. The framers of the Report were well aware of the importance of setting up such a claim on behalf of the tenants, or they would scarcely have devoted so large a portion of their space to the attempt to establish it.

The Report next proceeds to deal with the Land Act of 1870, the special subject which the Commission was appointed to investigate. They dispose of it almost as summarily as they did of its predecessor of 1860; and state, without hesitation or qualification, that, "however useful as a temporary

measure, at a transitional period, it appears to us that the Land Act contained in itself the seeds of failure, as a permanent settlement. As such, now that it has been fairly tried, it is impossible to resist the conclusion that it has failed to give satisfaction to either party."

Again, in this paragraph we have a good example of the flippant style that characterizes this Report; and of the manner, already referred to, in which assertions, singularly economical of truth, are put forward as statements of recognized facts. If there was one plea more strongly urged than another in support of the Land Bill of 1870, it was its finality. As a final settlement of the question, it passed the House of Commons, and as a final settlement it was accepted, however reluctantly, by the House of Lords. Even its supporters admitted that it was an extreme measure, but they pleaded that it was final, and they claimed that it would be permanent. To speak of such a measure as "temporary" and "transitional" is an insult to the honesty of its author, and the intelligence of the Legislature which adopted it. And the assertion that it has been "fairly tried" is about as ingenuous as the suggestion that it was calculated to afford "satisfaction" to the Landlords.

Having thus disparaged Mr. Gladstone's Land Act of 1870, the Report proceeds to enumerate the points in which it has failed. First, "it has failed to afford the tenants adequate security, particularly in protecting them against occasional and unreason-

able increases of rent." We were not aware that the Land Act of 1870 was designed to afford tenants "security" against "occasional" increases of rent, or to interfere with rent at all, except in the case of "exorbitant" rents imposed upon holders of land rented at less than £15 a-year; and then only indirectly. It cannot therefore be said to have "failed" in this respect. What the Report appears to mean is that rents have been raised notwithstanding the existence of the Land Act, and that there is no provision in the Act to prevent this, except in the special case alluded to. They attribute the failure in this special case to the use of the word "exorbitant," quite ignoring the obvious alternative that, if the Act has remained a dead letter in this respect, the cause may be that rents in Ireland are generally moderate."

According to the Report, "this process" of raising rent "has gone far to destroy the tenant's legitimate interest in his holding. In Ulster, in some cases, it has almost 'eaten up' the tenant-right." This statement is so cautiously made that it is not easy to grapple with it. Such phrases as "it has *gone far* to," "in *some* cases," and "*almost* eaten up," are too vague for discussion. When the evidence in which the statement is based has been fully examined, we shall be in a position to judge how far this insidious system of raising rent has been general, and how far it has operated to "eat up" the tenant-right. Meanwhile, we believe that the imputation conveyed by the Commissioners is much exagge-

rated, and it certainly seems strange that the tenant-right which had survived through years of mere sufferance should be threatened with extinction as soon as it became legalized. Even if it can be shown that the value of tenant-right has deteriorated within the past few years, which we very much doubt, we should remember that causes have been at work during those years which have equally affected all kinds of agricultural property.

The Report adds that, even where rents have not been raised, even where there is no prospect, immediate or remote, of their being raised, the possibility that they can, and the fear that they may be raised, have tended to produce a general "feeling of insecurity" among tenants. There is no arguing against the possibility of contingencies of this sort; and, with all respect to the Commissioners, there is no possibility of removing them by legislation. Within the present generation capitalists and others were invited to invest money in Irish Land on the faith of an indefeasible title secured by Special Act of Parliament, and guaranteed by every possible sanction of Ministerial utterance. There are multitudes of such titles on which the ink is scarcely yet dry; is there no "feeling of insecurity" among those who have so recently purchased them?

There can be no doubt that this point of raising rent is the central pivot upon which the whole question turns. "Capricious" eviction is at an end—practically and irrecoverably dead. Eviction for

non-payment of rent, in some form or other, must survive as long as the relation of Landlord and Tenant exists, and as long as the payment of debts continues to be enforced by legal process. If the tenant cannot or will not pay his rent, he must vacate his holding, whether it be house or land. Discussion on such points is comparative waste of time. The practical question for the overwhelming majority of both Landlords and Tenants is the rent; and there is no fact to which the Report of Lord Bessborough's Commission bears stronger testimony than that Landlords in Ireland do not, as a rule, exact the full commercial rent of the land, as is done by Landlords in England and Scotland. But the Report urges that because some Landlords are in the habit of raising their rents, and because there is in consequence a "feeling of insecurity" among tenants, the system of free contract which has secured to the great majority of tenants land below the commercial rent is to be abolished, and a system of valued or arbitrated rents set up on its ruins.

Again, the Land Act of 1870 is reported to have failed, because a Landlord, if so minded, can resume possession of a holding by paying to the outgoing Tenant the full compensation provided by the Act itself. This also is an unfair charge against the Land Act, which did not propose to confer Fixity of Tenure on Irish Tenants, but simply to prevent the Landlords from turning them out of their holdings without compensation for the improvements

they had made, or which had been made by their predecessors; and, in certain cases, to restrict the power of eviction by imposing on the evicting Landlord a pecuniary fine, in the shape of compensation for disturbance. This was all the Land Act proposed to do, and the Commissioners do not pretend to say that it has not done this; but they seek to represent the new legislation, which they suggest, as an extension or development of the Land Act, rather than what it really is, a totally new departure in the land code of the country. They think, and justly, that many members of Parliament, who would shrink from adopting a new principle in legislation, if openly avowed, may be led to sanction it if presented as an improvement or extension of principles already recognized. Hence the Commissioners felt the importance of representing the organic changes that they propose as merely amendments of the Land Act of 1870.

Another and a more plausible complaint against the Land Act is that, instead of promoting harmony between Landlord and Tenant, it leads necessarily to litigation; and of so peculiar a character that the case begins by an award of the matter in dispute to one of the litigants, and compels the other to put up with a compensation in money, sure to be more or less inadequate. That the Land Act of 1870 tended to encourage litigation was not left for Lord Bessborough's Commission to discover; it was foretold while the Land Bill was passing through Parliament; and the only wonder is that it has produced

so little a result entirely due to the forbearance of the landlords. But, considering that before 1870 the Landlord could remove the tenant without compensation of any kind; that he was, by law, the absolute owner not only of the land, but of all improvements thereon and therein, it would seem to be a fairer statement of the case to say that the Land Act adjudged to one of the disputants, not the matter in dispute, but a substantial slice of the legal property of the other; and did so without a shadow of compensation, beyond the illusory promise that henceforth he would be securely protected in the enjoyment of the remainder.

The Land Act that, ten short years ago, was regarded as revolutionary for vesting in the tenant the presumptive ownership in all improvements, which had hitherto been the legally recognized property of the landlord, is now condemned because it did not go farther, and transfer to the tenant the joint ownership of the soil as well.

A specific charge is made against landlords in Ulster that they raise the rent on the eve of the sale of a tenant's interest, thereby depriving him of a portion of the value of his tenant-right. The Report states that this is a practice of recent introduction, and indirectly, if not directly, traceable to the Land Act. This is another of the points on which it would not be safe to speak until we have thoroughly examined the evidence. But granting for the moment that such a practice exists, let us ask whether, if a Landlord is ever to get an increase

of rent—even his share of the "unearned increment"—which the Report allows him to be entitled to—a more suitable time could be found for imposing it than on a change of tenancy. One would think that a Landlord who forbore for years—possibly for generations—to look for his share of the general improvement, from an unwillingness to demand it from an old tenant, was entitled to credit, if not praise, for his generous forbearance, and might without blame seek the increase from a new man with whom he had no old associations in common. Not so. The Report, ignoring completely the possibility of any element of justice on the Landlord's side, can see, in his effort to come by a portion of his own, nothing but a deliberate intention to "eat up" the tenant-right of the farm. The argument is that £1 added to the rent reduces the value of the tenant-right by £20—an admission, for which we thank the Commissioners, that the value of tenant-right is nearly, if not fully equal, to that of the fee-simple—but two important points are kept out of sight; first, that the outgoing tenant had enjoyed the farm for years, no matter how many, at a rent distinctly below the fair letting value; and secondly, that, if he had continued as tenant, his rent would not have been raised. Can anything be fairer than for a landlord to say to a tenant, "As long as you remain tenant I shall not seek to increase your rent; but if you leave, I shall expect more from your successor"? But this supposes that the Landlord has a tangible interest in the land;

while the contention of the Report is that, beyond the actual rent now paid, everything belongs to the tenant. In the very case we are considering the value of the tenant-right has been increased by the forbearance of the landlord; but, according to Lord Bessborough and his co-signatories, that increased value should belong exclusively to the tenant, and he should have the free and unfettered right to sell it, as it stands, to any chance purchaser he can find.

The Report alleges it as a further defect in the Land Act, that it is possible for a Landlord to evict a tenant, compensate him to the full extent required, and then get from an incoming tenant a sum sufficient to recoup him for all expenses, and leave a surplus. The Commissioners regard this as a serious defect to be removed only by mulcting the landlord in such a penal sum as shall effectually prevent his making sixpence by a change of tenant. Did it occur to the Commissioners that the difference between the compensation awarded by the Court, and the sum assumed to be received from the incoming tenant, might represent the value of improvements made by the Landlord himself; or the value of the margin between a low rent and a "fair" rent; or the value of the "unearned increment"; or numerous other incidents of the farm that will readily suggest themselves? In reference to this part of the subject, the Report, under the head of "illustrations from the evidence," gravely quotes a case, in which two unscrupulous knaves in

a southern county bid surreptitiously, each for a farm in the possession of the other, and got it, to the benefit of the Landlord, who evidently knew the men with whom he had to deal far better than did the County Court Judge, who seems to have wasted much good sympathy upon them. Most readers of this "very distressing" case will be inclined to say, "Serve them both right," and it certainly looks as if evidence on the point was not particularly abundant, to find such a "case" brought prominently forward.

The last charge brought against the Land Act of 1870 is, that it has operated to check the progress of improvement, and that it has contributed to bring about the present condition of affairs in Ireland! This is the very irony of fate. Let us hear the Commissioners' own words—

"In the result, the Land Act seems at its first passing to have stimulated tenants, especially in Ulster, to improve, while landlords' improvements were checked by it. In proportion, however, as its defects became apparent, the returning sense of insecurity has not only checked tenants' improvements, but has, in conjunction with other causes—recent scarcity and political excitement—contributed to bring about the present concerted refusal to pay rent, or to pay more than the amount of Griffith's valuation, which constitutes a grave crisis in the affairs of the country."

The Report next proceeds to consider how far the Land Act can be modified so as to meet this

new condition of affairs; and, as might have been foreseen, rejects the principle of that measure, which it describes to be "to increase the security of the tenant's interest in his holding by indirect means, while refusing him the direct protection which belongs to a proprietary right." The Report does not deem it advisable to proceed further on these lines; but it is careful to express approval of the Act as a "recognition of the actual condition of things." In other words, wherever the Act affords protection, however weak or inadequate, to the landlord's interests it is condemned; while those portions of it which can be pressed into the service of the tenants are approved. Finally, the proposal to extend the Ulster Custom to all Ireland is rejected on the assumption that "as legalized, it has proved insufficient"; and the ground having been thus cleared, the Commissioners proceed to make "proposals for legislation," which we shall give in their own words:—

40. "The principle which we adopt as a guide is that partially embodied in the Land Act, of giving legal recognition to the existing state of things. It appears to us that the conditions under which land has been held by yearly tenants in Ireland have been such, that the occupiers have, as a general rule, acquired rights to continuous occupancy which, in the interest of the community, it is desirable legally to recognize. We think the farmer should no longer be liable at law to the displacement of his interest in his holding, either directly by ejectment, or indirectly by the raising of his rent, at the discretion of the landlord. The landlord's right to eject should, we think, be limited to certain stated cases; and some way should be provided for the determination of the fair amount of rent to be paid in

cases of dispute. The legal effect of these changes may be described as amounting to the enlargement of the tenancy from year to year into a new kind of statutory tenure, defeasible only upon decree of the Land Court, for the breach of certain well ascertained conditions, and held subject to the payment of a rent, the amount of which should in the last resort be fixed, neither by the landlord nor by the tenant, but by constituted authority."

41. "To these two concessions, commonly spoken of under the names of Fixity of Tenure and Fair Rents, that of a right of Free Sale has usually been appended. This, also, on the same principle of recognizing the existing condition of things, we think it expedient to establish. In a word, so far as concerns yearly holdings within the Land Act of 1870, we advocate the reform of the Land Law of Ireland upon the basis known as 'The Three Fs,' *i.e.* Fixity of Tenure, Fair Rents, and Free Sale."

It is impossible not to be struck with the use of the word "advocate" in the closing sentence of this extract. It occurs again, in the same connexion, in Sections 48 and 49; and it expresses but too plainly the tendency of the whole Report. The Commissioners, almost in terms, avow themselves partizans—they do not suggest, or even recommend —they "advocate."

Having declared unreservedly in favour of "The Three Fs," as commonly understood, the Report proceeds to discuss them *seriatim*. No attempt is made to define any of the three terms, the exact force of which is left to be inferred partly from the term itself, and partly from the limitations proposed. Thus, "Fixity of Tenure" appears to mean that once a tenant has got possession of a piece of land, he acquires at the same time the right to

"continuous occupancy" for ever, provided that he does not subdivide or sublet, without the landlord's consent in writing; that he does not persistently waste the holding after notice in writing to desist; that he is not convicted of any serious criminal offence; that he does not persistently assert any right, not necessary to the cultivation of the soil, from which he is debarred by express or implied agreement with the landlord; and that he does not unreasonably refuse to allow the landlord to enter on the land to search for and take certain royalties, and in pursuit of game, or in order to view the holding.

There is not one of these limitations which is not calculated to afford grounds for litigation between landlord and tenant, especially when the appeal is to a tribunal created avowedly in the tenants' interest; but there is one of them so unique that it may well claim more than a passing notice. It is not particularly easy at any time to obtain convictions for serious criminal offences in Ireland; it is all but impossible in cases connected, however remotely, with land. We may readily judge what the prospect of a conviction for "any serious criminal offence" would become when the penalty would be not only that provided by law for the particular offence, whatever it might be, but the forfeiture of the prisoner's "fixity of tenure" in his holding!

The Report does not expressly include the payment of rent—fair or commercial—among the limitations of fixity of tenure; but we must suppose it

had some such limitation in view, when it recommends that "if the law of ejectment is retained, the landlord shall be entitled to maintain an ejectment *after* (the italics are ours) two years' rent is due." When two years' rent is due, the landlord may bring his ejectment for non-payment of rent; and if he can succeed in getting the necessary legal notices served, and obtains a decree for possession, the tenant is then to have six months more to redeem, and is to remain in possession until the expiration of these six months. Thus, at a most moderate computation, a defaulting tenant can hold possession of his land, for at least three years, in spite of the landlord, who may have some "unreasonable" necessity for the money; and during those three years he may violate all the other conditions of "fixity of tenure," with impunity—and finally, he may sell his interest, if he have any left, to a stranger who, in a few years, or the very next year for all the Report provides, may begin the same ingenious process of evasion over again. Nay more, for the breach of the carefully enumerated conditions of "fixity of tenure," the only remedy provided is that the landlord shall be "authorized to serve a notice to quit," or "entitled to compel the tenant to sell his holding." Indeed, this power of compelling the tenant to sell his holding is suggested as a substitute for ejectment "deserving of consideration."

Following the analogy of the Ulster Custom, the Report recommends that all arrears of rent should be paid out of the proceeds of the sale of a tenant's

interest; and looks to this provision for giving the landlord an advantage under the new system, which would in some measure compensate him for what he loses." This solicitude for the landlord's interest is very touching.

It is further recommended that a landlord may resume possession of a holding, or any part thereof, for a special purpose—such as building labourers' cottages, "on payment of the full selling price of the tenant's interest." It does not appear for whom these labourers are to work—scarcely for the landlord, who must be presumed to have no land of his own within reasonable distance, or he should not require the tenant's land; and, if for the tenant, why should the landlord be compelled to pay the tenant the full selling price of his interest? It is pretty plain that few labourers' cottages would be built under such conditions. And yet this is the only proposal, apparently designed to benefit agricultural labourers, which the Report contains from beginning to end.

But even the Commissioners themselves have some misgivings as to the honesty of their first "proposal for legislation." Let them speak for themselves.

"47. Even with these limits, there is no denying that the conferring of such a tenure upon the yearly tenants of agricultural holdings, that is to say upon the great body of Irish farmers, is, from the point of view of the existing law, a very considerable change, and would confer great advantages upon tenants. But from the point of view of the existing relations of landlord and tenant, on most well ordered estates, there is

already, and has been for generations, a virtual fixity of tenure, and the change would practically be not great, after all. The control of the landlord, which is now absolute at law, but confined in fact to very narrow lines, would be legally confined, in future, to those same lines on which it is now beneficially and generally exercised. There is a certain loss to the landlord, namely, that of his legal reversion, considered as a piece of substantive property. His greatest loss, however, would be that of sentiment—of the sentiment of ownership. In so far as the tenant is made into an owner, the landlord must be less of an owner than before. The strength of attachment with which men regard their property remains often undiminished even when the shadow of property, rather than property itself, is in question. Moreover, this sentiment of ownership is the shadow of more than a mere right of property—of political influence, once exclusively attached to the ownership of land, and of old family traditions, not to say in some cases of historic associations bound up with it. We do not under-estimate such considerations. We merely plead that all the circumstances must be taken into account, before it is decided that the interference with private right which we advocate is too great to be contemplated. It would be a far greater interference with the existing state of things to carry out in practice the theory of the existing law. A chasm exists, between the law and the facts, which has to be filled up somehow. In order to fill it, either the realities of society as we find them, which have existed for centuries, must at last be moved from their foundations, or the law must be altered. If the law is altered as we propose, there will be in most cases no great interference with the practical power of a landlord over his property, with his way of managing it, or with the present income he derives from it, but a good deal with his nominal rights, and with his sentiment of ownership."

We pass from "Fixity of Tenure" for the present with one further remark. The "proposal" is ushered in by a statement that "the principle adopted is that partially embodied in the Land Act, of giving legal recognition to the existing state of things." We need scarcely repeat that this is not

a correct description of either the principle or the aim of the Land Act; but, when we find "Fixity of Tenure" defended on the ground that "it would be a far greater interference with the existing state of things to carry out in practice the theory of the existing law," we must ask what is the necessity for a change? Reforms, as they are called, consist in the removal of grievances. If under the present law the majority of Irish tenants have practically "Fixity of Tenure," as the Report admits, what is their grievance on that score? Of course the reply will be that they are liable to be removed, and that, in consequence, a "feeling of uncertainty" exists; but this is only a "sentiment" and no more entitled to consideration than the "sentiment of ownership," on the part of the landlords, which the Report disposes of so summarily. The Parliament of 1870 did not improve the Ulster Custom of tenant-right by "legalizing" it—let the Parliament of 1881 take care lest "Fixity of Tenure" be not similarly "legalized" out of existence.

The second "proposal for legislation" put forward by the Commissioners—or rather adopted by them from the agitators—is based upon "Fair Rents," without which "Fixity of Tenure" would, in their opinion, be an "absurdity." The term "Fair Rents" is one of those happy phrases which disarm opposition while they sophistically beg the question in dispute. No one can object to "fair rents" without putting himself outside the pale of argument. The landlord cannot decently demand

more, the tenant cannot honestly offer less—but, alas! the word "fair" forms, in this instance, what logicians call an "ambiguous middle term," and is very differently understood by each of these parties. The landlord interprets it to mean a moderate commercial rent, rather below the agricultural value, but "fair" on an average of years—the tenant puts it at a much smaller figure, and claims to hold the land at a distinctly low rent—considerably under the agricultural value. The Commissioners adopt the latter view. "It is necessary," they say (Section 54), "at once to negative the idea that it means what in England is known as a full, or fair, commercial rent, but in Ireland as a rack-rent"; and they go on to lay down rules for estimating a "fair rent," which in practice would bring it down to a very low, if not an almost nominal amount. It is essential to bear this in mind throughout in considering this part of the Report.

The Commissioners, sensible of the antagonism certain to be aroused by any attempt to interfere between landlord and tenant in so delicate a matter as fixing the amount of rent, boldly attempt to combat the notion that they recommend any interference with "freedom of contract." Their assertion—also borrowed from the agitators—is that "freedom of contract in the case of the majority of Irish tenants, large and small, does not really exist." This is certainly a simple method of getting out of the difficulty; but it will require something more

than the scrap of poetry, which they quote by way of argument, to reconcile this flippant statement with the admitted facts.

It would take up too much space to discuss this question at present; but we may be permitted to point out that the competition for land, which is supposed to destroy freedom of contract, is not caused by any act of the landlord; and, in so far as it is the result of inadequate supply, cannot be checked or removed by legislation. In the other aspect of the question, which represents competition as the result of excessive demand, owing to the absence of other modes of obtaining a livelihood than by the land, this condition is not peculiar to Ireland; and so far as it exists is a question chiefly important for the labourers and poorer class of tenants, with neither of whom does the Report even pretend to deal. Farmers, properly so called, even of the small class, do not, when deprived of their land by any cause, turn to other pursuits in England any more than in Ireland; they seek for land elsewhere, and if they cannot get it at home they look for it abroad. They do not seek to become mechanics, they do not look for employment in mills or factories where there would be but little welcome for them; they will not sink if they can help it to the "lower plane" of labourers; they emigrate. Labourers can migrate to the busy centres of industry, not only in Ireland but in England and Scotland, to which access is now so easy that they may be said to be almost at their doors. So can the poorer tenants, most of

whom are labourers in disguise. If they will not do so, if they prefer to hang on in helpless poverty to the churlish soil which refuses to support them, how can the landlords be blamed; or how will the evil be remedied if the present occupants of the land be fixed for ever upon it at a rent to be settled by an external tribunal? The ownership of land is a monopoly in every country where landlords exist; and it is to the eternal credit of the great mass of Irish Landlords that, possessing this monopoly in presence of a crowd of eager competitors ready to bid almost any rent, they do not as a rule exact even the "full or fair commercial rent," such as is demanded and cheerfully paid in every other country. But because they have been thus generous and forbearing, they are to be deprived of all effective control over their property. A strange recompense!

The Commissioners now approach the central point of the question; that which, in their opinion, as in ours, "appears to underlie every other," that of rent; and they proceed to discuss the mode of ascertaining the "fair rent" of a farm, and the principles to be observed in estimating it.

Starting from the position that the rent now paid, or agreed upon, between landlord and tenant may be assumed to be a "fair rent," if neither party seeks to have it altered, the Report proceeds to provide machinery for its alteration as quickly as possible. A new Government Valuation for the purpose of fixing the rent of every holding is mentioned only to

be rejected, "as there appear to be insuperable objections to it." These objections are stated (in Section 65) to be that, "to interfere with rent, except in case of dispute, is to raise more difficulties than are solved"—that it is objectionable to bring the authority of the Central Government into direct and necessary collision with the interests of landlords and tenants," and that "the delay that would occur before a new valuation could be completed is another serious objection." A new valuation being thus declared out of the question, the Commissioners fall back upon arbitration as the best means of settling the dispute. Of this they suggest two kinds; first, the ordinary system, according to which each party names an arbitrator, and the arbitrators, if unable to agree, choose an umpire; and as an alternative, a permanent local Committee of arbitrators, whose decision should be final. The Commissioners favour the latter scheme; and grow quite enthusiastic over the happy results likely to flow from its adoption. They have, however, a suspicion that "the state of feeling in Ireland is not such as to tolerate for the present even this form of local settlement"; and they suggest a modification of the common system of arbitration, by which an agreement by two of the three—that is, of the arbitrators and umpire—should be required. By this ingenious device, the umpire would be debarred from all independent action; he should adopt the view of either arbitrator, however repugnant to his own judgment, or the arbi-

tration would fall through—the arbitrators would in fact become a Committee of three; and how this would "strengthen confidence in resorting to arbitration" we confess ourselves unable to discover. Possibly the Commissioners are not very anxious to "strengthen confidence" in arbitration.

But whatever the local machinery may be, there must be a "strong central court" as the ultimate tribunal. After coquetting for a moment with the idea of entrusting the final jurisdiction to the County Court Judges, assisted by "assessors practically acquainted with the value of land," the Commissioners pronounce, as might have been foreseen, in favour of creating "an independent tribunal, consisting of persons above the suspicion of class feeling, to which official valuators might be assigned," which tribunal "should hear the case of both parties, and the report of the official valuator, and decide the amount of a fair rent, in accordance with the principles laid down for its guidance." The Report then proceeds to enunciate the principles for the ascertainment of a fair rent, as follows:—

"54. If it is considered desirable that some principles or general rules should be laid down by law for deciding what is a fair rent, we beg to submit the following suggestions; though persons of authority think it unadvisable that any rules should be laid down by the Legislature on the subject. It is necessary at once to negative the idea that it means what in England is known as a full, or fair, commercial rent, but in Ireland as a rack-rent. It is not contemplated that after deducting for the tenant, to use the language of political economy, the cost of cultivation, and the ordinary profits of

his trade, the whole of the surplus receipts should be the unquestioned property of the landlord. As a fact, the Irish tenant farmer has in general possessed something more; as a right, it is proposed to secure him in that possession. The difficulty is to settle what, in each case, is the existing fair rent. The computation should in general start with an estimate, first, of the gross annual produce, and secondly, of the full commercial rent, according to the rules observed by the best professional valuators. From this last should be deducted, as a rule, any portion of the annual value which is found to be due to improvements not made or acquired by the landlord. The Act of 1870 provided that with certain exceptions all improvements on a holding should, until the contrary was proved, be deemed to have been made by the tenant or his predecessors in title. Some term must, therefore, be fixed, beyond which the presumption should be that the improvements, even if not made by the landlord, were made by tenants who were not predecessors in title of the present tenant. Otherwise the rent of an ancient farm might in many cases be liable to reduction to the value of so much waste land. We suggest a term of thirty-five years. Within this term no considerations of the length of time during which the tenant may have enjoyed a return from his improvements should exclude the tenant from the benefit of them, in so far as they are found to be actually at the present time still adding to the annual value of the holding. Within this term, moreover, no technical breach of the legal tenancy should operate to deprive him of the benefit, when he can show that he substantially claims through those who have preceded him in the occupation of the farm. With regard to landlord's improvements, either on or outside the holding, the amount of the present annual value which his expenditure might be shown to have added to the holding will be included, of course, without deduction, in the computation of the full commercial rent. Subject to the above, the arbitrators or tribunal will proceed to estimate the fair rent; in which they will have regard to any sum paid by the tenant on incoming, or to sums which have ordinarily been paid by tenants in the locality on purchasing, in so far as such sums represent an existing valuable interest in the tenant, over and above any value due to improvements made by himself or his predecessors in title; to any other reasonable way in which the value of the tenants' interest in the farm can be ascer-

tained; and also to the rents which have commonly been paid by tenants in the locality whose rents are considered to be fair. With the addition of an Equities Clause, upon the model of the first part of the 18th section of the Land Act, whereby the Court may take into consideration any claim, objection, or set-off, made, urged, or pleaded by the party refusing the demand, and any default or unreasonable conduct of either party which may appear to the Court to affect the matters in dispute between them, and give judgment on the case with regard to all its circumstances, this will, we think, indicate the lines on which the law should be laid down for the guidance of arbitrators and of the tribunal in estimating a fair rent."

"55. It must not be supposed that the whole of this process will require to be gone through in all cases. It will generally be possible to start from some time when the rent was, in the opinion of both parties, considered fair, and to confine the investigation to the circumstances alleged, on the one side, as altering the conditions then existing, or, on the other, as set off against these circumstances. It will be expedient, further, to lay down that a rent which was paid at any time within the last twenty years and which continued for not less than ten years to be regularly paid, shall be, in all cases, taken to be such a starting point."

With every desire to understand clearly, and to represent fairly, the proposals of the Commissioners, we must confess that we are unable to grasp the full meaning and scope of the "principles or general rules" here laid down, and the more we study them the more difficult of comprehension do they become. On one point, indeed, they utter no uncertain sound—the rent to be paid by the Irish tenant of the future is *not* to be the letting value of the land; it is to be something distinctly below it; how much below it no one can even pretend to guess. Thanks are due to the Commissioners for stating this so explicitly; and, further, for giving the true defini-

tion of the word "*rack-rent*"—a term so much abused by the land agitators. Lord Bessborough and his co-signatories, who will scarcely be offended if we designate them as the tenants' friends, however cruel their friendship may ultimately prove to be, define "*rack-rent*" in Ireland to be "what in England is known as the full, or fair, commercial rent." This is the true legal meaning of the expression, and though the definition of the Commissioners merely enunciates a well-known fact, it is to be hoped that their authority will have sufficient weight with their clients to prevent any misrepresentation on the subject in future.

We see now more plainly how necessary it was to the proposals which the Commissioners designed to make that a "possessory right" in the tenant should be antecedently established. Its existence is again affirmed here without hesitation, as though incapable of denial; and its application is advanced a stage, so as to form a basis for the reduction of rent, as it had already served to found a claim to "Fixity of Tenure," and as it will, by-and-bye, be adduced in support of "Free Sale." Its importance to the argument of the Commissioners will be seen at once by denying its existence. If the "possessory right" falls to the ground, the whole fabric of the proposed legislation falls with it. Neither "Fixity of Tenure," "Fair Rent," as the Commissioners understand the term, nor "Free Sale" can be defended for a moment if the tenant have no "possessory right," such as the Commis-

sioners endeavour to formulate for him in the introductory portion of the Report. We don't say that they would follow from the admission of such a right, but they cannot exist apart from it.

Starting "in general" with an estimate of the gross annual produce, and of the full commercial rent, according to the rules observed by the best professional valuators, which ordinary people would regard as the fair letting value, the process of deduction begins. First is to be deducted any portion of the annual value found to be due to improvements not made or acquired by the Landlord; that is, which the Landlord cannot prove to have been made or acquired by himself or his predecessors. The Commissioners fix a term of thirty-five years as that behind which the tenant cannot claim to have his improvements taken into account in estimating the "fair rent"; but within that term, no "technical" breach of the tenancy is to bar his right; nor is the length of time he may have held the farm to be considered, no matter how low the rent may have been. This term of thirty-five years is peculiar, and we can scarcely suppose that its peculiarity escaped the observation of the Commissioners—it carries us back to the year 1846, the first year of the Irish Famine. For fully seven years from that date the condition of great part of the country can only be described as chaotic: large tracts lay deserted; over still larger tracts rents ceased to be paid; valuable farms were let for the amount of the poor's rate; for others not

even that amount could be obtained. Such was the ruin inflicted on the Landlords, that a special Act for facilitating the sale of Incumbered Estates had to be passed—an Act which survives, with but little alteration, to the present day. To fix the retrospective limit of allowance for the value of improvements at the commencement of that period of confusion is simply to leave it practically undefined, and to open a wide door to every species of fraudulent claim, which it would be next to impossible to rebut by evidence. Further, no allowance is to be made to the Landlord for rents abated or wholly lost during the Famine years—losses and abatements which compensated for the tenants' "improvements" many times over—while the tenants' interest in them is preserved intact. And here, as usual, it is the kind and indulgent landlord who will suffer most. The man who stood by his tenants, assisted them in their difficulties, abated or forgave their rents, nursed them, in fact, through the Famine, will now find himself mulcted for his generosity: whereas, if he had cleared his estate, or simply allowed the tenants to perish, as most of them would have perished but for his help, he would now have to deal with a new class of tenants who would have no claim in respect of improvements antecedent to their own occupancy of the land. One would think that, having allowed thus fully for improvements not made by the Landlord, the fair rent had been reached. Not so: it is only now that the "arbitrators, or tribunal," are to "proceed to estimate the

fair rent." And in doing so, they will "have regard to any sum paid by the tenant on incoming"; or "to sums which have ordinarily been paid by tenants in the locality on purchasing"; also "to any other reasonable way in which the value of the tenant's interest in the farm can be ascertained"; and finally, "to the rents which have commonly been paid by tenants in the locality, whose rents are considered fair." No; not finally, for there is to be an Equities Clause of the widest character, giving "the Court" unlimited power to deal with every case at its discretion.

Whether these "principles" are intended to be cumulative, or alternative, or a combination of both, does not clearly appear; but their obvious—indeed their avowed—tendency is to force down the rent to the lowest possible point, and to provide for its being kept at that point. The value of the tenant's improvements, his interest in which the Commissioners themselves limit to a period of thirty-five years, is converted into a fixed and permanent charge on the land; the money which he paid on entering, though it may have been in the shape of a fine long since extinguished by the usufruct of the land at a reduced rent, is similarly converted into a mortgage on the reversion; and both are declared to be the property of tenant for all time. These provisions involve the infliction of gross wrong upon the landlord; still, as the tenant in both cases may be supposed to have incurred some outlay, there may be a shadow of justification for them; at least

in the case of recent tenancies. But what shall we think of the "principle" on which the Commissioners propose to reduce the rent in proportion to sums paid on entering, not by the tenant or his predecessor in title, but by other persons in the locality? Under the operation of this "principle" not only might a tenant obtain allowance for a much larger sum than he himself paid, supposing him to have made a good bargain; but a tenant who had never paid a penny on entering might find his rent reduced by a substantial yearly sum, if he could show that somebody else in his neighbourhood had paid a fine to his landlord, or purchased from an outgoing tenant—it may be surreptitiously—the interest in his farm. It is tolerably plain that this "principle" is based upon the imaginary "possessory right," which the Commissioners strive so hard to establish for the Irish tenant. On no other conceivable hypothesis can we suppose that men of ordinary intelligence could seriously make such a suggestion. But, even if such a "possessory right" were established and acknowledged in the case of the older tenancies, on what earthly grounds could the benefit of it be claimed for those of more recent date? On what "principle," consistent with reason or justice, can a tenant who took a farm direct from the landlord ten, twenty, fifty years ago, at a moderate rent—as most rents in Ireland are—and who paid no fine on entering, be held to have such a "possessory right" in his farm as to entitle him to an allowance in respect of it in estimating his

rent, because, forsooth, somebody else in the locality paid a sum of money on entering? Yet there is nothing in the Report to prevent this. On the contrary, the "principle" we are considering expressly recognizes such a claim.

The Commissioners do not suggest any limit to the amount of "money paid on incoming," which should be taken into account in estimating the "fair rent"; and thus, the more insane the competition, the greater will be the reduction of the rent, and the greater the wrong done to the landlord. Here again the most generous landlord—the man who in the past has been most indulgent to his tenants—will be the most severely dealt with; while the more recklessly the tenant may have bid for the land, the more liberally will he be rewarded. And lest the rent should not be sufficiently low after all these deductions; and lest, in their anxiety to help the tenant, they should have overlooked any plea that might be urged against the landlord, the next "principle" laid down is, that the "arbitrators or the tribunal" are "to have regard to any other reasonable way in which the value of the tenant's interest in the farm can be ascertained." This "*principle*," with the comprehensive "Equities Clause" suggested, completes the code of instructions for arriving at the "fair rent" of a farm, in the interest of the tenant. Two "principles" are laid down apparently limiting the destructive action of those just quoted upon rent. The arbitrators are to "have regard to the rents which have been commonly paid by tenants

in the locality, whose rents are considered to be fair"; and, secondly, "a rent which was paid at any time within the last twenty years, and which continued for not less than ten years, to be regularly paid, shall be, in all cases, taken to be such a starting point"—that is, as a "fair rent." The former of these limitations may not be worth much, as depending altogether upon the ambiguous term "fair"; but the latter is clear and definite, and so entirely opposed to, if not inconsistent with, the "principles" laid down in the preceding section of the Report, that it can only have found insertion as the result of a compromise; and, if the secret history of the Report could be made public, we venture to believe that it would be found that this recognition of existing rents as a standard was part of the price paid to The O'Conor Don for his signature to a Report, from the main features of which he dissents, and which he criticizes so destructively in his separate Report.

It is strange that the Commissioners having peremptorily rejected the proposal of a new Government Valuation to form a basis for rent, should almost in the same breath propose to let loose a flood of irresponsible valuators, under the guise of arbitrators, upon the country. Government valuators would at least be independent and competent. Who is to guarantee the competency or independence of the "Arbitrators"?

Notwithstanding all the deductions for which provision has been made, the Commissioners can-

not close their eyes to the fact, that in some cases the "fair rent thus estimated, and however estimated, will be above the existing rent." This is hardly consistent with the recognition of the rent paid during ten years of the last twenty, as being the "fair rent," especially as this limitation will apply chiefly, if not exclusively, to the low-rented farms on the great estates. But assuming that there will be some such cases, the Commissioners do not propose to raise the rents to a "fair" standard, though why this should not be done we are entirely at a loss to conceive; their proposition is to capitalize the difference between the actual rent and the "fair" rent; and to make it a first charge on whatever interest the tenant may have in the farm. There might be some shadow of justification for such a proposal, if power were reserved to the landlord to demand payment of this charge when he might require the money; but no such power is reserved, and the landlord must perforce wait till the convenience or necessities of the tenant bring the farm into market. It is not even suggested that this charge should bear interest. There is something ludicrous in the proposition to compel the landlord to lend money without interest to his tenant on the security of the farm which he holds from him, and to leave it optional with the tenant when, if ever, he shall pay off the debt; but, when this curious transaction is gravely proposed in the interest of the landlord, the climax of absurdity is reached. Some perception of this must have crossed

the minds of the Commissioners, for the section closes with an obscure suggestion that the Government might lend money to fine down this increase of rent.

The Commissioners see but too plainly that, under their system of "Fixity of Tenure" and "Fair Rents," landlords will cease to expend money on improving their estates. "The cessation to any extent of this expenditure," they regard as "an evil," which "will be rendered still more injurious if steps are not taken to ensure in its place a more steady and general outlay of labour and capital upon the improvement of their holdings by tenants." The steps which they propose to take with this object are not very clearly stated. They reject the expedient of perpetuity rents advocated by some; and, so far as we can make out, they seem to think that, if a term of thirty-one years be fixed as the period which must elapse before the question of rent can be reopened, with a view either to its increase or reduction; and if, further, the tenant be declared entitled to a moiety of the "unearned increment"—or *decrement* as the case may be—sufficient encouragement will be afforded to farmers to expend their labour and capital on the improvement of the soil, to such an extent as will compensate for the cessation of all similar outlay by the landlords. Having "split the difference" between landlord and tenant in respect of the "unearned increment," the Commissioners are not disposed apparently to be so generous with regard to im-

provements arising from "latent capacity" or "inherent quality" of the soil to an extent "incommensurable with the effort expended." Thus the reclamation of "cut-away bog," or of land that "lends itself so kindly to the improver, that the profits of one or more crops may go far to remunerate the husbandman for the labour that was needed to adapt it for tillage" are not to be credited to the tenant, as a matter of course. He must be prepared "to put in evidence the nature of the operations which he claims to have conducted," and the "Court or Arbitrators" may, if they think fit, take into account the "resulting increase of value." We suspect that this section is another part of the purchase-money paid for The O'Conor Don's signature to the Report.

The Commissioners do not fix any period of time within which the demand for a "first valuation" must be made, though they say that it "should be specified in the Statute"; and they add that, if not made within the specified time, the rent shall be assumed to be "fair" in the estimation of both parties.

The Commissioners condemn Griffith's Valuation as a standard for rent in language as emphatic as could be desired. We quote the passage in full:—

"64. If anything has been clearly established on evidence during this inquiry, the fact that the present Government valuation is not a trustworthy standard for the settlement of rents has been most thoroughly demonstrated. Fair as it may have been for the purposes of local taxation in the years when it was made, the evidence shows that even then it was con-

sidered as below the fair letting value of the land. Those who argue to the contrary ignore the fact that while there was nowhere any motive at work to cause the officials employed to value too highly, there was a universal pressure to force down the valuation, to which it was not unnatural for the valuators to yield. No injustice was done to anybody, while everybody was satisfied, so long as the under-estimate was general and uniform."

It may be mentioned that the Royal Commission on Agricultural Distress, presided over by the Duke of Richmond and Gordon, is equally emphatic in declaring that Griffith's Valuation "was not intended to represent, and did not represent, at the date when the valuation was made, the rental value of the property," and further that it is "not a trustworthy guide to the present rental value."

As we have already stated, the proposal that a new Government Valuation of Ireland should be made, either to fix the "fair rent" of agricultural holdings, or "to ascertain the gross annual value, or the full commercial rent," as a guide to the arbitrators, does not commend itself to the approval of Lord Bessborough's Commission.

We come now to consider the portion of the Report dealing with the question of "Free Sale," which the Commissioners regard as the logical and necessary consequence of "Fixity of Tenure" and "Fair Rents." They "consider that the tenant upon whom has been conferred fixity of tenure, at a fair rent, will be in a position differing little from that of a legal owner of property in the soil; and that he ought not to be unnecessarily deprived of any of the ordinary incidents of property. There-

fore, he should be at liberty to sell his interest—that is to say, his right of continuous occupancy, the improvements made by himself, or his predecessors in title, and all the title he has in the land, in any way he wishes; subject, however, to some reasonable restrictions"; and the Commissioners are good enough to say that they "believe this proposal will be found beneficial, at least as much to the landowner as to the tenant."

Few persons will be disposed to contradict the proposition that a tenant, upon whom "Fixity of Tenure" and "Fair Rents," as the Commissioners understand the term, have been conferred, will be in a position differing little from a legal owner of property; and, at first sight, it appears to be of little importance to the landlord whether the further right of "Free Sale" be conferred upon him or not. But if we look a little forward in this matter, we shall perceive that "Free Sale" may be more destructive of the landlord's property than even "Fixity of Tenure" or "Fair Rents." If the right of sale be absolutely free, there will be no check upon the competition that will ensue; and every shilling paid for the tenant's interest beyond the legitimate value will weaken *pro tanto* the security for the landlord's rent. The incoming tenant, finding the land too dear at the price he has paid for it, will feel the periodical payment of even a "fair rent" a burden too great for his strength; and every recurring gale-day will impress upon him the idea that the rent has been fixed too high. It

may be that he will find himself unable to pay it—he will certainly be unwilling; and thus a feeling of irritation will grow up in his mind against the rent and against the landlord who receives it. This will be no isolated or unfrequent case; and, when such cases multiply, we shall have the land question over again. The Commissioners endeavour to gild the pill by representing that, the rent being a first charge on the tenant's interest which must be paid out of the purchase-money, the landlord will be secured against loss of arrears, and they point to the fact that landlords at present have such a security under the Ulster Custom. We will assume that Ulster landlords, or those of them on whose estates tenant-right exists, have this security at present against loss of arrears; but it by no means follows that because under a partial and exceptional system certain conditions exist, the same conditions will continue when the system becomes universal. If the landlord in Munster or Connaught can force the sale of the tenant's interest in order to satisfy his claim for rent, and if the tenant be turned out of his holding in consequence, we fail to see how this proceeding differs materially from eviction for non-payment of rent. At present the evicted tenant takes two or three years' rent with him, which the landlord loses—and is generally satisfied to lose under the circumstances. Under the new system, these arrears will be paid to him out of the purchase-money, and so far the tenant will be the loser. Can anyone doubt that, within a very few

years, this right of the landlord to be paid his arrears out of the property of the tenant will be fiercely assailed; or that a Royal Commission will be found to "advocate" its abrogation "in the interest of the landlords" themselves?

It may be startling to those who reason from "feelings" and "traditional sentiments," as the so-called friends of the Irish tenant are prone to do, but it is nevertheless incontrovertible that the true logical conclusion from the premises laid down by the Commissioners is that the purchase-money paid for the interest of a farm, on its first sale under the new system, should go to the landlord and not to the tenant; at least on those estates, and they form the majority, on which the right of sale has not hitherto been recognised. Under the rule of "Fair Rent," as ascertained according to the "principles" laid down by the Commissioners, the landlord has been already compelled to compensate the tenant for any interest, outside the reserved rent, which he may have had in the farm, derivable from improvements, money paid on incoming, or any other source—has, in fact, bought it up by an equivalent reduction in the rent. All claim in respect to that interest on the part of the tenant is therefore at an end—the ownership of it now vests in the landlord. True, the landlord cannot realize the value of this interest so long as the tenant chooses to retain possession of the farm under the rule of "Fixity of Tenure," but this only gives him a stronger claim to be paid when the farm changes

hands. It is only on the *first* sale, however, that the landlord could logically claim the purchase-money or the portion of it due to the reduction of the rent to the "fair" standard. At every subsequent sale the tenant who had actually bought the interest would be clearly entitled to sell it for his own benefit subject to the landlord's moiety of the "unearned increment," and the value of any improvements made or acquired by the landlord during the tenancy. It seems strange that this view of the case should apparently have escaped the attention of the Commissioners. We do not for a moment imagine that they would have recommended anything so favourable to the landlord as that he should get even a portion of the purchase-money paid by an incoming tenant, however reasonable such a payment may appear to uninterested third parties, but we should like to see how they would have dealt with the question under the aspect in which we have placed it.

Casting about for arguments in favour of "Free Sale," the Commissioners hope that it will prove a "much needed solvent" in "loosening the undue attachment of the cultivators to the soil." We are not concerned to dispute this proposition; but we don't see how so indefinite a contingency justifies the introduction of a right of "Free Sale," if, as we have shown that right, as proposed in the Report, involves the grossest injustice—we might well use a much stronger term—to the landlords of Ireland.

Lastly, the Commissioners recommend the introduction of "Free Sale," because it is practically impossible to prevent it. We believe the Commissioners are mistaken in this opinion; and, if we may presume to speak for the landlords of Ireland, we rather think they would prefer to take their chance in the matter; but, we would ask, what force is there in the argument? There are few offences against morality or against law which it is not practically impossible to prevent. Are such offences to be declared legal and moral because of this impossibility? To argue that the right of "Free Sale" should be universally conceded, because it is practically impossible to prevent some tenants from selling their holdings, is not only false logic of the worst kind, it is an acknowledgment on the part of the Commissioners that their position cannot be defended by legitimate argument.

The "reasonable restrictions" suggested on the right of "Free Sale" are of a very moderate character, and need only be enumerated—they are, first, that the "landlord shall have a veto on the purchaser as tenant upon "reasonable grounds," the reasonableness to be determined in the last resort by the Land Tribunal; and, secondly, that the "purchaser should in every case be bound to become himself the actual tenant of the farm, and to continue practically in direct occupation of it," and that "a sale of the holding to two or more should not be permitted without consent in writing." But if, as the Commissioners say, it is practically im-

possible to prevent the sale of farms, how, we may ask, are these minor limitations to be enforced?

No restriction on the amount of purchase-money is recommended; and sales by public auction are rather approved than condemned. The landlord is to have a "right of pre-emption at the highest price offered by a *bonâ fide* purchaser in the open market," though why a landlord should desire to pay the extreme price for a farm, which he could re-let only subject to the conditions of the new statutory tenure, seems difficult of comprehension.

Mortgages to landlords, in consideration of their not having had their rents *raised* to the "fair" standard, and which, when first proposed, were to be paid off out of the proceeds of the first sale of the tenants' interest, it is now suggested "might be spread over the first and future sales, under equitable regulations for their final discharge." Landlords who may have purchased up or acquired the tenant-right of a farm, and let it to a tenant without imposing a "full commercial rent," and who may not care to have the rent raised, although not receiving what would be adjudged a "fair rent" for the holding, are to have the same peculiar privilege of getting a mortgage on the tenant's interest for the value of the tenant-right, with the pleasant prospect of having it paid off out of the proceeds of the first sale of that interest or spread over subsequent sales, according to the "equities" of the case.

The Commissioners admit that the right of

"Free Sale" is a "real interference with the landlord's right of control over his property"; but they maintain that it is "not calculated to lessen its value." They say that it has been suggested that compensation for such interference is due to the landlord in cases where the right of sale has never been recognised, but they make no recommendation on the subject; all they say is, that "if this suggestion is entertained, the compensation must necessarily be estimated on a basis more or less speculative." This is rather an impotent conclusion by men who have not shrunk from laying down "principles" for ascertaining the "fair rent"; and who are willing to go back thirty-five years to hunt for improvements made by Irish tenants on their farms. It might have occurred to them to suggest that a percentage of the purchase-money, varying within certain limits according to the "equities" of the case, should be paid to the landlord as compensation for the loss which they admit will be inflicted on him by the right of "Free Sale."

The Commissioners follow pretty closely the lines of the Land Act of 1870, as to the classes of tenancy to be affected by their proposals, or to be excluded from their operations, the only material difference being that, with certain necessary exceptions, no tenant is to be allowed to contract himself out of the new Act. Their language on this point is express: "the evidence shows that the amount of rent or of annual value constitutes no satisfactory

ground for refusing the protection of the statutory tenure."

The downward progress of opinion since the passing of the Land Act of 1870 is well exemplified in this astounding proposition. When that measure was under discussion, the provision forbidding a certain class of tenants to contract themselves out of its benefits was justified solely on the grounds that, being in a comparatively helpless condition, it was necessary to afford them exceptional protection. No one proposed—no one dreamed of proposing—that all tenants should be placed under similar disability. It was admitted on all hands, that the larger tenants in Ireland were as independent and as well able to take care of themselves as those in any other country; and there were many who thought that the £50 limit was too high. Now all tenants, no matter how wealthy or intelligent, are to be placed in leading strings, and forbidden to deal for land, except on the terms, and under the conditions, laid down by the Commissioners. The exception in the Land Bill of 1870 is to be not only the precedent, but the rule, in the Land Bill of 1881; and Parliament, which carefully strained out the gnat in the former year, is expected to swallow the camel, hump and all, in the latter!

The Commissioners make short work of existing leases. At their expiration the tenants are to succeed to all the benefits of the new statutory tenure, the only limitation being that the rent paid under the lease is to be "taken as having been a

fair rent," the inquiry before the arbitrators or the Court being confined to "circumstances which may since have occurred to affect the value of the holding." This is perhaps the most unjust of the many unjust "proposals" in this Report. The rent under the lease may have been wholly inadequate; it may have been fined down to a merely nominal amount; the tenant may have held the farm at this nominal rent for a century—no account is to be taken of these contingencies. The Landlord's right of reversion is to be wholly destroyed, and the tenant is to continue to hold the land at the old rent, in spite of the covenant in his lease to give up possession at its termination! Under which of the "Equities" may this proposal be supposed to fall?

In "cases, comparatively few, where the English or commercial system has been effectively introduced," these provisions are not to apply; and "for future letting of such holdings it may be lawful to exclude the statutory tenure by contract."

Our object in this review of the Report of Lord Bessborough's Commission being primarily to examine its recommendations as affecting the relation of Landlord and Tenant in Ireland, we do not think it necessary, at present, to go into that portion of it which deals with the purchase of their holdings by tenants. The two branches of the question are sufficiently distinct to admit of separate treatment, and we think it better not to mix them up with one another.

At the end of the Report the Commissioners refer cursorily—almost parenthetically—to two of the most important factors in the Irish Land Question; but for which it is doubtful if there would be any land question pressing for legislative interference at the present moment. Those are the poor cottier tenants, especially those in the west, and the agricultural labourers. How wholly incapable the Commissioners were to grasp the real difficulties of the question submitted for their consideration will be best shown by quoting their own words, on the two important points we have specified:—

"100. The condition of the poorer tenants in numerous parts of Ireland, where it is said they are not able, if they had their land gratis, to live by cultivating it, is, by some, thought to be an almost insoluble problem. Frequently, however, among this class high rents appear to be paid; and we may hope that in this respect a full investigation, followed by reduction where necessary, will do something to improve the condition of a depressed class. The solvent of free sale will do something also. It is said, indeed, that where all are so poor there might be none to buy; but this we doubt. Money is generally forthcoming whenever there is a single farm in the market. Free sale will bring a wealthier order of tenants to the soil that needs them; fixity of tenure and fair rents will give them a chance to thrive on it."

Now, when we remember that the land agitation commenced amongst this very class of poorer tenants; that amongst them it has raged with the fiercest vehemence and most determined lawlessness; that numerically they form a very large percentage of the tenants in Ireland, and belong entirely to that helpless class for whom the exceptional "disturb-

ance" clauses of the Land Act were thought a necessary protection; surely we have a right to complain that this Royal Commission, which paraded the country with so much pomp and circumstance, should dismiss their case in those few colourless sentences. If the Commissioners had said honestly, that they regarded the problem as "insoluble," we might pity their incapacity, but we could not censure their insincerity. If they had dared to propose the remedy which every man who knows Ireland knows to be the only possible solution of the difficulty, we would gladly recognise their wisdom and their courage; but their hearts failed them. And so the poor tenants who hastened from Donegal and Mayo and Kerry, to pour out their grievances before the Royal Commissioners, are told to go home and pay their "high rents," and hope that "full investigation, followed by reduction, where necessary," "Fixity of Tenure," "Fair Rents," and the solvent of "Free Sale," will one day "do something" to improve their condition. They might as well have stayed at home.

The agricultural labourers are even worse treated. Here is their answer:—

"102. The bearing of the questions committed to us for inquiry upon the condition and welfare of the agricultural labourer, a point suggested by references in the Land Act, engaged our attention early, and we have taken a large mass of evidence respecting it. The subject appears to demand speedy consideration for the sake of the country, as well as for that of the labourers themselves. We do not think that in the proposals we have made there is anything calculated to intensify the poverty of the poor. The Irish agricultural

labourer and the Irish farmer are not two classes, but one. The labourer is a farmer who is without a farm. Wild and subversive proposals, which tend to shake confidence in the public sobriety and drive the capital of the wealthy out of the country, must injure most of all the man who lives by daily wages. It does not fall to us to make suggestions for legislation for the improvement of the dwellings of labourers, for securing them gardens, or for facilitating, except in a general way, their acquisition of farms; but we trust that the tranquillity which will follow on a well-considered measure of Land Tenure Reform will be a blessing alike to all classes, and especially to the poorest.

To these poor labourers, nearly, if not quite, as numerous as the "farmers" among whom they live, and upon whom most of them depend for their scanty means of support, not one solitary word of comfort or hope is vouchsafed; and, although admittedly within the scope of the operations of the Commissioners, they are told that it does not fall within their province to make suggestions for the improvement of their condition other than by "facilitating in a general way their acquisition of farms." They are further told that "wild and subversive proposals, which tend to shake confidence in the public sobriety and drive the capital of the wealthy out of the country, must injure most of all the man who lives by daily wages." "*Wild and subversive proposals.*" Verily, the prospect before the agricultural labourer is gloomy indeed, if the "proposals" of Lord Bessborough's Commission should ever unhappily be carried into effect.