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# THE LAND QUESTION

IN

## IRELAND :

### SUGGESTIONS FOR ITS SOLUTION

BY THE APPLICATION OF

### MERCANTILE PRINCIPLES

TO

### DEALINGS WITH LAND.

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DUBLIN :

HODGES, SMITH, AND CO., GRAFTON-STREET.

1867

*Price, One Shilling.*

R. D. WEBB AND SON, PRINTERS, DUBLIN.



## THE LAND QUESTION.

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THE Land Question is, as respects Ireland, the question of the day. The following pages are offered to my constituents and the public as a contribution to that sum of public opinion which must eventually lead to its solution.

*The Times* of the 27th of August last, after describing the condition of Ireland as one of "chronic, unremedied, " and almost untouched disaffection," says, "It is impossible to exaggerate, and it would be weakness " to disguise the extreme danger of this state of " things:" yet *The Times* points out no remedy, unless it be a remedy to "stay till the disease works " itself out, and do nothing which interferes with the " restorative force of Nature." *The Times* says that "though the nature of the tenure by which land " is held in Ireland produces great occasional injustice, it is unfortunately not such injustice as admits " of a legislative cure." This is a new view of the limits of jurisprudence. No legal remedy for injustice! There are certainly duties of imperfect obligation which cannot be enforced by legislation, but I never before heard that justice was one of these. It is a sufficient reply to such cavils, that men of the highest legal attainments think these duties of justice between landlord and tenant can and ought to be enforced by law. Until they are so enforced,



injustice will take place—injustice acknowledged but left without a remedy—and this injustice will still continue for the future, as it has done in the past, to “interfere with the restorative force of Nature.”

The solution of this question is difficult, but certainly not impracticable. The principle which should guide us appears to me to be that of giving the greatest possible facility and certainty to all dealings respecting land, both those which relate to the ownership of landed property, and those also which take place between landlord and tenant. We should seek, as respects the relation between landlord and tenant, to substitute the mercantile principle of contract for the old feudal idea of dependence and protection. All contracts should be in writing ; and where no contract exists, or where the contract is defective, the law should decide equitably as respects the rights and duties of each party. But to be able to make a fair and free contract, the parties must stand on equal terms, and the law must be impartial ; and if the contract is to be valid and sure, the contracting parties must be able legally to bind their successors, and all those whom they represent, or who are interested in the property through them.

The “Record of Titles Act” and the “Land Debentures Act,” passed in 1865, were intended to afford the requisite facilities as respects the ownership of landed property. The time which has elapsed since these Acts came into operation is but short ; yet more than one hundred estates have already been placed upon the Record ;\* and there is every reason to expect that,

\* The precise number of parliamentary titles recorded up to the 22nd of December, 1866, was 116, and the amount of purchase money paid for the estates so recorded was £295,507 os. 8d.



when these Acts become better known, the greatly increased facility and certainty which they afford to all dealings in the way of sale or mortgage will be duly appreciated, and their valuable provisions will be largely availed of by the landowners throughout Ireland. Thus land will become, to some extent, a mercantile commodity, to be bought and sold in smaller or larger lots, without the ruinous delay, uncertainty, and expense to which dealings with land have heretofore been liable. Then the farmer who has saved even a few hundred pounds will be able to invest his capital in land, if he wish to do so; and thus, becoming an owner of land, he will be bound by the strongest of all ties to promote the peace and prosperity of his country.

But it is the relation between landlord and tenant which imperatively demands an equitable settlement. There are many impediments which interfere with contracts, or render them uncertain—such as entails and settlements of every kind, mortgages and other incumbrances, &c. The mercantile principle of contract can never have a fair trial as respects land, until all *bona fide* contracts in writing, made with a tenant by any landlord, shall be binding on his successors, and on incumbrancers, and be in every way as safe for the tenant as if the landlord held in fee simple—and this without any notice, or the intervention of any third party. There should be some limitation as to the length of leases, and also as respects demesne lands, &c. and of course no lease should be granted at an undervalue or in reversion; but, within these limits, the lease, or the contract for compensation for improvements, should be good against all the world, unless set aside on account of fraud.



It is futile to talk of applying the mercantile principle of contract to the relation of landlord and tenant, unless the parties have full and unrestricted power to make a binding contract with respect to all contingencies that may arise.

I have no desire to advocate any forcible subdivision of landed property, or any legislative measures to prevent settlements. Although in the greater number of cases in which they are now effected I believe them to be useless and even injurious, yet the policy of interfering with the power of placing land under settlement is a subject on which much doubt exists, and on which the expression of any opinion is unnecessary for the purpose of the present essay. No one objects to funded or other personal property being placed under settlement by vesting it in trustees : why, then, should land be differently treated ? The trustees of personal property have full powers of sale ; the buyer is not bound to ascertain whether the stock transferred is their own property, or held in trust. The public good requires that the powers of trustees for landed property should be equally extensive : no land should be without an owner capable of dealing with it : no purchaser should be bound to look into the trust, or see what is done with the money he pays.\*

The modern principle of contract cannot be fairly

\* The question of entails or settlements of landed property is quite beside the object of the present essay. I have referred to it only because many persons have asserted that the "Land Question" cannot be settled except by the prohibition of entails. It should be remembered that there is no such thing as a law enabling a man to put his property into strict settlement. Such settlements arise from the recognised right of every man to dispose of his property as he chooses, by will or by deed of gift. This power has been limited by law, and no doubt it



carried out, unless the contracting parties stand on fair and equal terms. If one possess power over the other, the contract, when made, may no doubt be valid and binding, and, if the powerful party be just and considerate, the agreement may be a fair one; but it is deprived of the mercantile principle, if the two parties do not stand on equal terms when making their bargain. The owners of land have an inherent superiority of which they cannot be deprived, because the land of a country is limited in extent; but that is no reason for continuing to them the power of taking the law into their own hands by the levying of a distress, or the superiority over other parties which is obtained by the preferential claim for rent over the other debts of the tenant. These relics of feudal power (strengthened, as they have been, by that legislation of the last century which sought a remedy for all the evils connected with land by increasing the power of the landlord) must be wholly swept away, and rent must become recoverable only as a simple contract debt, if the mercantile principle, which so many talk of when defending what they call the rights of property, is to have that free scope which alone will insure its success.

There can be no free working of the mercantile principle in the adjustment of the rent of a farm, so long as the farmer possessed of capital is subjected to the competition of persons who, except for the inducement which is afforded by the power of distress

might be further limited, if it appeared advisable to do so; but the legislation requisite would not be the repeal of an existing law, but the enacting of a prohibitory statute. Nevertheless, no settlement of private property should be permitted to interfere with the public good, and this requires that there should always be a legal owner capable of dealing with it, and able to give validity to any contract he may enter into.



and the right of priority of payment, would never be accepted as tenants.

But the utmost freedom of contract will not satisfy the requirements of the country, unless the law be such as, in the absence of a contract, or when the contract is defective, will secure the equitable rights of both landlord and tenant. Until comparatively lately, the object aimed at by legislation seems to have been to give the landlord complete power, and to trust to his humanity and his sense of honor to obtain fair treatment for the tenant. The tenant was understood to be dependent, and it was the landlord's duty to protect and not to oppress him. On the whole, these duties were, perhaps, as fairly performed by our forefathers as could reasonably have been expected. But the times have changed: the growth of modern agriculture renders improvement imperative, and the tenantry are no longer willing to be kept in a state of dependence: therefore it is now essential for the progress and even for the peace of the country that the tenant should have legal security.

The Landlord and Tenant Bill of the late Government was intended to give this security. The principle of this Bill was to vest in the tenant the ownership for thirty-one years of any improvement effected by himself, and *which had not been effected in pursuance of, or in opposition to, an express written contract*; so that, if turned out of his farm within that period of time, he could claim compensation for the increased value given to it by means of his improvements. Could anything be fairer or more equitable? It was eminently a moderate measure. If it erred, it was not in favour of the tenant. There was no retrospective clause, as there was in the bill brought in by Mr. Napier, then



Attorney-General, and afterwards Chancellor under Lord Derby, and which passed the House of Commons in 1852. There was no power of compulsion on the landlord, as there was in the Bill introduced into the House of Lords by Lord Stanley, now Earl of Derby, in 1845. It offered no obstruction to the complete efficiency of contracts, but laid down an equitable rule of law in their absence ; in the same manner as the Statute of Distributions, while leaving to the testator absolute freedom as respects the disposal of his effects, makes a fair distribution of them in the event of intestacy.

No landlord need let his farm without a lease, unless he choose to do so. Nothing need prevent him, if possessed of the powers proposed to be conferred on limited owners by the Bill of the late Government, from making all the necessary improvements himself, and then he can readily preclude his tenant from claiming compensation ; or he may contract with the tenant on fair terms as to whatever may be necessary, and thus settle the proper compensation beforehand. In any case, the lapse of thirty-one years would extinguish all claim. No exceptional privileges are needed. There have been in times past enough of exceptional legislation in favour of landlords, and enough of attempts at exceptional legislation to protect the tenant. The true remedy is complete freedom of contract—free scope for the play of individual interests, in a free and binding contract made between parties standing on equal terms to make it, and full security to the farmers of all classes for their equitable rights, in the absence of a specific agreement.

Some persons raise an objection to special legislation for Ireland on this subject. The answer is obvious. The claim of a man to the ownership of that to which



he has given a value being founded on natural equity, is equally just at all times and in all countries, but there may not be in every place an equal necessity for enforcing it by law ; and there are many circumstances, unnecessary to enumerate, which render the need of legislation on this subject less pressing in England and Scotland than in Ireland.\* One might suppose from such an objection that there had never been any special legislation for Ireland. Is special legislation for coercion right and proper? and are we never to have special legislation when its object is to prevent the necessity for such coercion?

The foundation of the Landed Estates' Court may be referred to as at least one piece of special legislation, which no one will say ought not to exist in Ireland, because no similar court has been founded in England. The "Montgomery Act" was a piece of special legislation for Scotland, passed nearly an hundred years since, the value of which has been proved by time.

But, in truth, the English and Scotch farmers are by no means satisfied with the existing state of the law, though in some respects much more favourable to them than it is to the Irish farmer, inasmuch as, in many places, there are tenant-right customs which

\* The Earl of Derby, then Lord Stanley, when moving the second reading of his "Tenants' Compensation Bill," in the House of Lords on the 24th of June, 1845, said "Although he admitted the expediency of "legislating, as far as possible, upon the same principles for Ireland as "for England and Scotland, yet the circumstances of Ireland, as regarded the relations between landlord and tenant, were so widely "different from those which obtained here [in England], that he felt "the Government were justified in applying principles of legislation to "Ireland which they were not called upon to introduce in the other "parts of the Empire, where it was not called for by the necessity of "the case."—*Hansard*, vol. 81, p. 1138.



have the force of law.\* The evidence given in 1848, before Mr. Pusey's Committee on Agricultural Customs

\* The Report of the Select Committee on Agricultural Customs in England and Wales, which was appointed by the House of Commons in 1848, and which is usually called by the name of its Chairman, Mr. Pusey, was reprinted last year by direction of Parliament, together with the minutes of evidence. It is a highly important document as respects the present question, but the whole Report is too long to quote. I extract the following statements :—

“1. That different usages have long prevailed in different counties and districts of the country, conferring a claim to remuneration on an outgoing agricultural tenant, for various operations of husbandry, the ordinary return of which he is precluded from receiving by the termination of his tenancy.”

“2. That this claim, which is called Tenant-right, ordinarily extends to one or more of the following objects ; to the crop which the outgoing tenant has sown and leaves in the ground ; remuneration for the preparation of the soil for crops by tillage, for the straw, hay, and dung left on the farm, and for growing underwood.”

“3. That these local usages are imported into leases or agreements for the letting and occupation of land between landlord and tenant, who are presumed to contract with reference to such usages, unless the terms of the agreement, expressly or by implication, negative such a presumption.”

“4. That in some parts of the country a modern usage has sprung up, which confers a right on the outgoing tenant to be reimbursed certain expenses, incurred by him in cultivation, other than those of ordinary husbandry.”

\* \* \* \* \*

“8. That those usages have gradually grown into general acceptance in certain districts until they have ultimately become recognised there as the custom of the country.”

The first witness examined by this Committee was Mr. James Stewart, a barrister. His reply is given as follows to question number 144, “Can you state to the Committee how far these customs, as customs, are binding in law or not?”—“I conceive they are certainly binding in law ; that evidence of those customs may be given and will be received by a court of justice, and that they distinctly and expressly bind dealings in land of that description ; but that they are exceedingly conflicting, and it is also difficult, when it comes to the point, to ascertain exactly what the custom is.”



in England, shows much dissatisfaction with the state of the law as respects landlord and tenant, and calls loudly for improved legislation ;\* and as respects

The Earl of Derby, then Lord Stanley, in the speech from which I have already quoted, after referring to the employment of labour being checked in Ireland, "because there was no certainty of a return for the laying out of capital," says, "in England the right was secured not " only by law but by the custom of the country, which was equivalent " to law ; that right was capable of being pleaded in a court of law."

\* \* \* \* \* "The tenant, even the tenant at will, never asked " the opinion of his landlord whether he should drain a particular " field—he drained it. The work might last twelve, fifteen, or twenty " years ; but it was not permanent, though durable ; and yet, without " asking leave of the landlord, the tenant, being a tenant at will, and " being ejected by his landlord, would summon him for compensa- " tion, and the custom of the country would compel him to pay the " tenant. But that was neither the law nor the custom in Ireland ; " and he asked their Lordships to apply that by law in Ireland, which " by custom had the force of law in England."—*Hansard*, vol. 81, " p. 1140.

\* There is a large amount of evidence to this effect. Mr. Carpenter, a farmer in Oxfordshire, says, (number 5796) "My opinion would be, " if a tenant put up additional buildings, that he should either be " allowed to remove them or be paid for them." Mr. Kilby, a tenant farmer in Leicestershire, says, (3773) "With respect to buildings, " there is a great difficulty in that respect ; if the tenant erect any " buildings for his own convenience, I understand by the present law " that he is not at liberty to take them away at the expiration of the " tenancy ; that is a most important matter. I think that if the " tenant should choose to erect buildings he ought at least to have " the privilege of taking them away at the expiration of his occupancy, " provided the landlord would not take them at a valuation ; that " would be a great point gained." Mr. Bennett, a land agent and valuer in Bedfordshire, says, (1904) "It is a very unfair thing that a " person may erect a building detached from anything else, for the " accommodation of the farm, and not be allowed to remove it when " the tenancy is ended ; that I think a most arbitrary law." Mr. Woodward, a farmer in Worcestershire, says (6343 to 6371) that the farm buildings in Worcestershire are "very bad upon the whole ;" that "in many instances the landlords are so poor that they cannot afford,



Scotland, the evidence given in 1864 before the Commission appointed to consider the law relating to the landlord's right of hypothec, which is the Scotch equivalent for the right of distress, gives ample proof that, on that subject at least, the people of Scotland are very far from being contented.\*

"or will not put up the buildings;" that "the tenantry would do it if they could be allowed for it on leaving the farm;" that he could mention cases "in which the tenants had asked for stipulations and covenants allowing them to remove the buildings or receive compensation," and had been "refused;" and that he had "never known such arrangements entered into."

Mr. Pinches, a landed proprietor in Shropshire, in reply to question 6718, "Are you of opinion that farmers are deterred from the outlay of capital by the want of security?" says, "most decidedly," and adds (6719) his "opinion as to the absolute necessity of tenant-right in some shape or other; I see the want of it every day, although I suppose in the county of Salop we have as good landlords, I mean the large proprietors are as good landlords, as in any country. It is as safe to occupy a farm under them as under an enactment of this kind, if such an one passed; but I think, looking to the whole country generally, there are many cases where rack tenants are occupying farms where they cannot lay out money upon them; they are afraid to lay out money;" and he explains (6792) that the tenant-right which he wants is "an enactment that would secure the tenant farmer, upon the quitting of his occupation, for the outlay of any capital which he had not had time to receive the benefit of during the time of his tenure."

\* This Commission was appointed in November, 1864, and their Report was presented to Parliament in 1865. One hundred and two witnesses were examined, of whom twenty-six recommended the total abolition of the right. Only two appear to have advocated the maintenance of the present law, and the others suggested various modifications. The Commissioners in their report recommended some important alterations, the second of which was "that, in the event of the landlord failing to exercise his right of hypothec [distrain], within three months after the day or term at which the rent, or any portion thereof, is payable, such right for the rent or portion thereof then due shall cease and determine." From this report there were four dissentients, who, although signing it along with the seven other Com-



Again, it is sometimes stated that the present system has worked well in England, and that, even in Ireland, great improvements are taking place. This may, to a great extent, be true ; but it is no proof that a system which gave greater facility for contract, and which maintained the equitable rights of all parties, would not work better. A similar objection was made to the adoption of freedom of trade. It was said that the plan of restriction and protection was working well ; that the country was thriving, the farmers doing well, and the merchants and manufacturers growing rich. Happily for us, these reasons did not prevail. The principles of freedom triumphed, after a hard-fought battle, and we now enjoy the result. The principles for which we now contend will also, I have no doubt, yet triumph ; and their effects on the happiness and prosperity of Ireland will, I confidently believe, be still greater than the effect which freedom of

missioners, transmitted their dissents also. These were, firstly, the Honble. Charles Carnegie, M.P. for Forfarshire, and Mr. George Young, Solicitor-General for Scotland and M.P. for Wigton, who stated that they did “not concur in the conclusion at which the “majority of the Commissioners had arrived—not to recommend any “alteration in the general principle of the law” \* \* \* \* \* and that, in their opinion, “a larger change than any suggested in “the Report might be made with safety and advantage to the agricultural interests of the country.” Secondly, Mr. George Hope and Mr. Adam Curror, who, after giving their reasons at length, stated that they were “convinced that, due regard being had to existing leases, the “total abolition of the law is imperatively demanded both by justice “and expediency.”

The subject of this Report was considered at a general meeting of the Scottish Chamber of Agriculture, held at Edinburgh, 14th November, 1865, and, after a long discussion, a petition to Parliament for the repeal of the law of hypothec was adopted, the large majority of the meeting voting for it.



trade has had on the prosperity of England and Scotland.

Lord Lifford, in a letter to *The Times*, dated the 2nd of November last, alleges that the disloyalty, which he says last year pervaded "by far the greater part of the population in most of the counties of Ireland, was entirely beside and distinct from the land question ;" and in the same sentence he adds that it "was shared in by no man possessing property." This clearly points out the true and probably the only remedy for the discontent and disaffection which prevail, namely, such legislation as will facilitate the acquisition of property, and especially of landed property, by the people of Ireland ; and which, by encouraging improvement, and securing the tenant farmer in the enjoyment of whatever his industry or his capital may have created, will bind him to the institutions of his country by the strong tie which every man feels who possesses property in it.

The noble Earl, the head of the present Administration, thus concluded his speech in the House of Lords, when, as Lord Stanley, he moved the second reading of his "Tenants' Compensation Bill," on the 24th of June, 1845 :—"The noble Marquis had stated that Her Majesty's Government should take upon themselves the responsibility of disappointing the hopes entertained in Ireland, which would be the result of rejecting this Bill. On the part of Her Majesty's Government he (Lord Stanley) must, in the exercise of his best judgment, refuse to take upon himself that responsibility. The Government had acted upon the judgment not of enthusiasts, not of men dependent upon party ties, but upon men acting upon a full knowledge of the real state of Ireland. It



“ was upon the recommendation of such men that the  
 “ Government had introduced a measure falling far  
 “ short of what was desired by many, for they had  
 “ encountered the danger of creating disappointment  
 “ by not going beyond the recommendation of those  
 “ to whom they had entrusted the task of enquiring  
 “ into the matter. But, on the other hand, they would  
 “ now be most justly open to the charge of creating  
 “ disappointment, and of incurring the highest respon-  
 “ sibility, if, after having founded a measure upon the  
 “ recommendation of men of the highest character and  
 “ of the greatest experience—men taken from all  
 “ parties in Ireland—and whose recommendation was  
 “ sustained by witnesses from every quarter—men  
 “ separated from each other by politics and by re-  
 “ ligious opinion, but who in common were all con-  
 “ nected with the landed interest in Ireland—Her  
 “ Majesty’s Government would have incurred a serious  
 “ responsibility if, after all this, they were to consent  
 “ to abandon a Bill introduced under such circum-  
 “ stances. They would then be justly open to the  
 “ charge of creating a feeling of well-founded disap-  
 “ pointment and dissatisfaction among the people of  
 “ Ireland, and of shaking that confidence which he  
 “ trusted the people of Ireland reposed in the libe-  
 “ rality and justice of the British Parliament. That  
 “ was not a responsibility which he, on the part of  
 “ Her Majesty’s Government, was prepared to under-  
 “ take. He was certainly prepared calmly and delibe-  
 “ rately to consider in Committee all the details of the  
 “ measure; but if, without going into Committee,  
 “ their Lordships should reject the Bill, the responsi-  
 “ bility must rest not upon Her Majesty’s Government,  
 “ but upon their Lordships.”\*

\* *Hansard*, vol. 81, p. 1145, 1146.



It is now more than twenty-one years since these words were spoken, holding out expectations to the people of Ireland which have been constantly renewed by successive administrations. The anticipations of the noble Earl have been signally fulfilled. The repeated abandonment of the promised legislation has "created a feeling of well-founded disappointment and dissatisfaction among the people of Ireland," and has thoroughly shaken whatever confidence they "reposed in the liberality and justice of the British Parliament." Their hopes, so often raised and so often disappointed, seem at last to have given way, and, in the recklessness of despair, they appear to lend a too willing ear to the suggestions of those who counsel them to seek by the strong hand what they have hitherto failed to obtain by peaceful remonstrance. The attempt, if made, will no doubt bring ruin on those who make it. But is it to be ever thus? or may we not hope that the eminent Statesman, whose words I have just quoted, will yet, in his mature age, fulfil to the people of Ireland the promise which he held out to them in his youth, and by a wise and just legislation remove the Land Question from the list of Irish grievances?

As some contribution towards the settlement of this important question, a proposed Bill is appended. It is founded on the Government Bill of last session, but proposes wholly to repeal the act of 1860, the most important clauses of which were to have been repealed by the Government Bill. The clauses which were to be retained are embodied in the proposed Bill; but considerable modifications have been made, and there are also other alterations and additions, with notes explanatory of the reasons for suggesting these alterations.



In thus attempting to embody in a proposed Act of Parliament the more complete application of Commercial Principles to Dealings with Land, I have endeavoured to look at the subject on both sides. The possession of a small landed property has shown me practically some of the difficulties of the question ; and has enabled me to participate in those feelings as to the "rights of property" which are, perhaps, inseparably connected with its possession. The strict maintenance of these rights is surely consistent with giving the sanction of law to the equitable claims of the tenant, but it must remain for others to judge how far my attempt to effect this has been successful.

There is, however, besides the landlord and the tenant, a third party interested in this question—namely, the Public—the Commonwealth itself, for whose benefit the land exists. The essential idea of the feudal system of tenure was, as expressed by Blackstone, that "all lands are holden either mediately " or immediately of the crown ;" and that a "subject, " therefore, hath only the *usufruct*, and not the absolute property of the soil." Now, the Crown evidently represents the State, and the "*usufruct*" will scarcely warrant the possessor in obstructing those improvements which are essential to the proper cultivation of the soil. The ultimate property of the land is in the whole Nation, which is dependent on it for existence and support ; and the Legislature is bound to take that course as respects legislation which will be for the benefit of the Nation as a whole.



A  
B I L L

FURTHER

To Amend the Law relating to the Tenure  
and Improvement of Land in Ireland.

WHEREAS it is expedient that an Act passed Preamble.  
in the Parliament holden in the 23rd and  
24th years of the reign of Her present Majesty  
and intituled "The Landed Property (Ireland)  
Improvement Act, 1860," should be repealed, and  
that further and other Provision should be made  
for facilitating Improvements of Landed Pro-  
perty in *Ireland* : Be it therefore enacted by  
the Queen's most Excellent Majesty, by and  
with the Advice and Consent of the Lords  
Spiritual and Temporal, and Commons, in this  
present Parliament assembled, and by the Au-  
thority of the same, as follows :

PRELIMINARY.

I. This Act shall apply to Ireland only, and  
may be cited for all Purposes as "The Landed  
Property (*Ireland*) Improvement Act, 1867." Extent and short  
Title of the Act.

II. In the construction of this Act the follow-  
ing Words and Expressions shall have the force  
and meaning hereby assigned to them, except  
where there is anything in the subject or context  
repugnant thereto : Interpretation of  
Terms.



The expression "*Lord Lieutenant in Council*" shall mean the Lord Lieutenant or other Chief Governor or Governors of Ireland for the Time being, by and with the Advice of Her Majesty's Privy Council in Ireland.

The word "*Court*" shall mean the Landed Estates Court, Ireland, or any Judge thereof; and the word "*Judge*" shall mean either of the Judges of the said Court.

The word "*Chairman*" shall mean the Chairman of the Quarter Sessions of the County where the Lands, or any part of the Lands, in relation to which any Matter requiring the Cognizance of such Chairman arises, may be situate.

The expression "*Clerk of the Peace*" shall mean the Clerk of the Peace of the County where any Lands, or any part of the Lands, in relation to which any Matter as aforesaid arises, may be situate, and shall include any Deputy of any such Clerk of the Peace.

The word "*Settlement*" shall include any Instrument under which any Land or Lease shall be, at Law or in Equity, so limited as to create partial or limited Estates or Interests.

The expression "*Settled Estate*" shall include any Lands in Settlement, whether such Lands are subject to Incumbrances or not, and whether the same be held in Fee Simple, Fee Farm, or Fee Tail, or for Lives or Years renewable for ever, or for an Estate or Interest renewable for a Term of not less than Sixty Years, or for a Term of Years of which not less than Sixty are unexpired.

The expression "*Limited Owner*" shall mean any Person beneficially entitled, under any Settlement at Law or in Equity, for his own Life, or for any Term determinable with his Life, to the Possession or Receipt of the Rents and Profits of any Settled Estate.

The expression "*Lineal Successor*" shall mean



such persons, being issue of the Limited Owner, as shall be beneficially entitled under the Settlement to the Possession or the Receipt of the Rents and Profits of the Lands, in Defeasance or on Determination of the Estate of the Limited Owner; and if any such person be an Infant, or a Person of an Unsound Mind, or a Married Woman who is not entitled for her separate use, it shall include the Guardian, Committee, or Husband, of such person as the case may be.

The expression "*Collateral Successor*" shall mean such Person, not being Issue of the Limited Owner, as shall be beneficially entitled under the Settlement to the Possession or Receipt of the Rents and Profits of the Land, in Defeasance or on Determination of the Estates of the Limited Owner and his Lineal Successors.

The expression "*Corporate Owner*" shall mean any Body Corporate, any Corporation Sole, Ecclesiastical, or Lay, any Trustees for Charities, and any Commissioners or Trustees for Ecclesiastical, Collegiate, or other Public Purposes entitled, at Law or in Equity, to any Lands for an Estate in Fee-Simple or Fee-Farm, or for Lives or Years renewable for ever, or for an Estate or Interest renewable for a Term of not less than Sixty Years, or for a term of years of which not less than Sixty are unexpired.

The word "*Tenant*," as employed in the Third Part of this Act, shall mean an occupying Tenant from year to year, or at Will, holding under any Contract, or by Construction of Law; or an occupying Tenant holding under any Lease or Contract in Writing, granted after the passing of this Act, for a life or lives not renewable, or for a term of years and a life or lives, when the term of years has expired, or for any term of less than 31 years, and shall include



the Representatives and Assignees of such occupying Tenants.

This definition is nearly the same as that in the Government Bill of last session. It does not include tenants holding under leases or other written contracts now existing, or which shall have been entered into prior to the passing of this proposed Act. The uncertainty of the tenure renders it peculiarly important to include tenants for a life or lives among those who shall be entitled to the advantages of the part of this proposed Act which relates to tenants' improvements. The acceptance of a lease for thirty-one years may fairly be considered as implying that the tenant is satisfied that he can in that time recoup himself for any outlay which the farm may require ; but when his tenure depends on the continuance of a particular life he has no such security. It is very undesirable that land should ever be let for farming purposes except for some fixed period of time.

The word "*Improvements*," as used in the first and third parts of this Act, shall comprise the works therein respectively specified.

## PART I.

### LANDLORDS' IMPROVEMENTS.

This part of the Act of 1860 is of great importance. It is similar in principle to an Act passed for Scotland in 1770, and known by the name of the "*Montgomery Act*," (10 Geo. III. chap. 51) which has proved of great value to that part of the United Kingdom. The object is to hold out facilities and inducements to land owners, who are only tenants for life under a settlement, to employ their own capital in the improvement of their estates, by enabling them to charge their successors with an annuity as compensation for any money expended in *bona fide* improvements. The Act of 1860 has been inoperative, owing probably to the complicated nature of the proceedings which it requires to be taken by the "*limited owner*." The provisions of the Government Bill of last session were much more simple than those of the Act of 1860, and it has been the aim, in drawing up this proposed Bill, to simplify them as much as possible, consistently with the necessary precautions to prevent fraud. It is an important public object to hold out inducements to the limited owner to expend his capital in the improvement of his estate, by affording him the utmost facility



consistent with justice for charging his successor with a fair proportion of the amount expended.

III. The Word "*Improvements*," as used in this Part of this Act, shall comprise the following Works.

Landlords' Improvements.

- (1) The Main or Thorough Draining of Land:
- (2) The Making of Roads or Fences:
- (3) The Reclaiming and Inclosing of Bog Land, and the Reclaiming or Inclosing of Waste Land:
- (4) The Execution of Works permanently providing for the Irrigation of Land.

Irrigation is enumerated among the Tenants' Improvements in Part III. of the Act of 1860. There seems no reason that it should not be also among those Improvements with which Limited Owners are enabled to charge their successors under the provisions of Part I.

- (5) The Reclaiming of Land from tidal or other waters:
- (6) The Protection of Land by Embankment from tidal or other Waters:
- (7) The Erection of Farm Buildings, or Houses for Labourers, Stewards, or other Persons employed in cultivating or superintending the Cultivation of Land:
- (8) The Renewal or Reconstruction of any Pre-existing Works of the Character aforesaid, or such Alterations therein or Additions thereto, not being mere Repairs, as shall permanently increase their Value:
- (9) The Building of a Mansion House or Offices, or the Repairing or Enlarging of a Mansion House or Offices:

The building of a Mansion House or Offices was not in the list of improvements provided for by the Act of 1860, but was proposed to be added by the Government Bill of last year. This addition to the "Landlord's Improvements" will probably be approved by everyone. If it have any effect in inducing even the occasional residence of some of the absentee proprietors, it will be very useful. Any attempt at compulsion is out of the question; but it is very much to be wished that power might be taken, in the family settlements of the



estates of some of the large proprietors, to separate the Irish from the English property, and thus, in many cases, create two wealthy, and it may be noble, families in place of one. To say that the estates of some absentee proprietors are well managed is beside the mark. The estates of many resident proprietors are at least as well managed. There are local duties attaching to property the non-performance of which is seriously felt. The Queen's speech, when closing last session of Parliament, thus refers to this subject: "Her Majesty is aware that, in returning to your respective homes, many of you have duties to perform hardly less important than those which belong to you in your legislative capacity. Her Majesty places full reliance on the loyalty and devotion with which you will discharge those duties; and her Majesty earnestly prays that your influence and efforts may, under the blessing of Divine Providence, tend to the general welfare, prosperity, and contentment of her people." How can these duties be properly performed in Ireland? The resident gentry are in many places so few, that it is difficult to find suitable persons to fill the office of magistrate, even though the choice of the Government descends much lower in the social scale than it does in England. We are in truth attempting to work aristocratic institutions without an aristocracy, and expecting loyalty to a Sovereign of whom the great bulk of our people know nothing, except as the resident of what they consider a foreign country.

(10) The Forming of Plantations of Oak, Ash, Elm, Beech, Fir, Alder, or other Timber Trees, when such Plantations are not intended for mere Ornament.

By including the Plantation of Trees among Landlords' Improvements, as above, it is not intended to interfere with the operation of the existing Acts for the encouragement of Planting, but to afford an alternative which may be more satisfactory in some cases. Section XXV. preserves all existing rights, whether statutable or otherwise derived.

Three Months' Notice of Improvement to be given to Successor.

IV. Every Limited Owner, not being under any of the disabilities hereinafter mentioned, who intends to lay out Money on such Improvements in pursuance of this Act, shall, *Three Calendar Months* at least before he begins to execute the same, serve the first Lineal Successor who is not under the like disabilities, or if there should be no such Lineal Successor, the first Collateral Successor who is not under the like disabilities,



with a written or printed Notice in such form as the Court may from time to time prescribe, and shall lodge a Copy of such Notice in the Court; and the Court shall thereupon serve a Copy of such Notice on said Lineal or Collateral Successor.

This provision differs from that in the Bill of last session, in requiring notice to be served on the lineal successor, if of age and of sound mind, and only substituting the collateral successor when there is no lineal successor capable of giving his consent. The probability of the collateral successor succeeding is frequently so slight, that any notice served on him must be considered as being served on him as representing the successors generally, rather than for the preservation of his own interest: and it is submitted that the nearest successor who is capable of giving his consent is the proper person to receive such a notice.

V. The previous Sanction of the Court shall not be required for such Improvements as aforesaid, in any case in which such Lineal or Collateral Successor as aforesaid assents in writing to the execution of the same, or in which, if he withhold a written assent, he does not, within *One Calendar Month* after the Receipt of the Notice from the Limited Owner hereinbefore prescribed, apply to the Court for an Order by way of Injunction to restrain the Limited Owner from the execution of the same.

Where Successor assents or does not apply for Injunction Order, Application to the Court not required.

VI. If the Place of Abode of such Lineal or Collateral Successor be not known, or be beyond the Seas, or if the Lineal or Collateral Successor be an Infant, or a Person of Unsound Mind, or a Married Woman who is not entitled for her separate use, or if it be doubtful who falls within the Description of Lineal or Collateral Successor, or if for any reason it be found difficult or impracticable to serve the Notice hereinbefore prescribed, it shall be lawful for the Limited Owner to apply to the Court for liberty to substitute service, or to effect service out of the Jurisdiction, or to dispense with service altogether;

On Application, the Court may authorise Substitution of Service, or Service out of its Jurisdiction.



and the Court upon such Application may make such order as may appear just.

When Limited Owner is under Disability, Application to be made to the Court.

VII. If the Limited Owner be an Infant, or a Person of Unsound Mind, or a Married Woman who is not entitled for her separate use, it shall be lawful for the Guardian, Committee, or Husband, as the case may be, of such Limited Owner to serve the Notice hereinbefore prescribed, and after the expiration of *One Calendar Month* from the date of such service, to apply to the Court for its sanction to the Improvements therein specified.

On Application, the Court may make Improvement or Injunction Order.

VIII. On every such Application and on every Application for an Order by way of Injunction, as hereinbefore provided for, the Court shall make such Inquiries as it thinks proper as to the Circumstances of the settled Estate, and the Improvements intended to be made thereon, and shall sanction or disallow the proposed Improvements in whole or in part, and shall fix the Amount of Expenditure to be allowed for or in respect of the same, and shall make an Order specifying the Improvements so sanctioned, and the Amount so allowed to be expended thereon; and the Limited Owner, upon the making of such order, may proceed to execute the Improvements therein sanctioned, at an Expense not exceeding the Amount therein specified.

The Successor to have Liberty to inspect the Execution of Improvements.

IX. The Lineal or Collateral Successor, or the Person substituted for such Lineal or Collateral Successor by the Court shall, during the Progress of such Improvements as aforesaid, have full Power by himself or by any Person authorized by him in Writing to inspect the same, and for that purpose, at all reasonable hours, to enter upon the Lands on which such Improvements are in process of execution.

Accounts of Expenditure and Final Statement to be lodged in Court.

X. Every Limited Owner who lays out Money in making such Improvements as aforesaid shall, every *Six Months*, lodge in the



Court an Account of the Money expended by him in such Improvements during the *Six Months* preceding, subscribed by him or his known Agent; and on the completion of such Improvements shall lodge in the Court a compendious Statement, referring to such Accounts, of the whole Expenditure incurred in making such Improvements, verified in such manner as the Court may direct.

XI. The Court shall retain the Notices, Statements, Accounts, and Vouchers required by this Act, and shall keep a Book or Books of reference thereto, which may be inspected without payment of any fee by any person interested, and shall give certified Copies of or Extracts from all Notices, Statements, Accounts, and Vouchers so recorded, upon payment of the fees payable in respect of copies of documents in the Court.

The Court to keep a Record of Notices, Statements, and Accounts.

XII. Every Limited Owner having expended Money in such Improvements as aforesaid, and intending to apply for a Charging Order under the Provisions of this Act, as hereinafter provided, shall serve the Lineal or Collateral Successor, or the Person substituted for such Lineal or Collateral Successor by the Court, with a Notice of such intended application, in such form as the Court may from time to time prescribe, and after the expiration of *One Calendar Month* from the date of such Notice may apply to the Court for such Charging Order.

One Month's Notice of Intention to apply for Charging Order to be given to Successor.

XIII. On every application for a Charging order, the Court shall hear the Lineal or Collateral Successor, or the Person substituted for the Lineal or Collateral Successor, objecting that the Provisions of this Act have not been complied with, or that the Improvements have not been properly executed, or that the Money stated to have been expended has not actually been expended in such Improvements, and if no appear-

On Application the Court may make Charging Order, and charge the Lands with Annuity payable to Limited Owner or his Nominee.



ance is made on behalf of the Lineal or Collateral Successor the Court may require proof that the Provisions of the Act have been observed, and may direct Inquiries to be made as to the Execution of the Improvements and the Expenditure thereon, and may, if it think fit, disallow the whole or any portion of the Expenditure ; but if satisfied that the whole or any portion of the Expenditure ought to be allowed, the Court shall make an Order specifying the Amount or Expenditure allowed, and Charging the Lands on which the Improvements have been made, or such portion thereof as it shall think fit, with an Annuity for every One Hundred Pounds of such Expenditure, and in proportion for any lesser Sum, to commence from the Date of the Order, and to be payable on each Anniversary of such Date to the Limited Owner, or to any Person nominated by the Limited Owner,\* their Executors, Administrators, or Assigns respectively, of the amount and for the terms following ; that is to say : of the Amount of £7 16s. 2d. for the term of 21 years in respect of the Improvements numbered (1) in Section III. of this Act ; of the Amount of £6 8s. 3d. for the term of 31 years in respect of the Improvements numbered (2), (3), and (4) ; of the Amount of £5 15s. 8d. for the term of 41 years, in respect of the Improvements numbered (5), (6), (7), and (8) ; and of the Amount of £5 5s. 4d. for the term

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\* It is submitted that, under the provisions of this Part of the proposed Act, a limited owner, who may not choose to expend his own money in making the improvements which he may yet think it desirable to have made, can contract with his tenant, whether holding by a lease or from year to year, for the execution of any of the improvements enumerated, and can nominate the tenant as the person to whom the annuity under the Charging Order shall be made payable. The tenant may then deduct the annuity from his rent so long as he remains in possession.



of 61 years, in respect of the Improvements numbered (9) and (10) in the said Section.

The bill of last session fixed an annuity of £7 2s. for 25 years in all cases. It is submitted that the annuity ought to vary according to the nature of the improvements, the duration being greater when the improvements are of a permanent character. The annuities proposed above are calculated so as to repay principal and interest in the several periods stated, calculating interest at 5 per cent. per annum.

XIV. Provided always and be it enacted that the aggregate Amount of Annuities charged in respect of Improvements under this Act shall not, when taken together with any Rent-charges charged or to be charged on the Land, under the Provisions of the several Acts to facilitate Drainage or the Improvement of Landed Property in *Ireland*, exceed *One Half* Part of the annual Value at which the Lands are rated under the Laws for the Relief of the destitute Poor in *Ireland*; and it shall be the Duty of the Court, before making an Order charging an Annuity under this Act, to ascertain the Amount of Annuities, if any, theretofore charged on the Lands under this Act, and the Amount of any Rent-charges charged or to be charged on the said Lands under the said Acts, and to provide that this Limit is not exceeded, but no Order charging an Annuity under this Act shall be afterwards invalidated by reason of such Excess.

The Act of 1860 fixed the limit at one-third of the annual value as rated for Poor Law purposes. A higher limitation is here proposed, in order to give still greater facility for the outlay of money by landowners for the improvement of their estates.

XV. Provided also and be it further enacted that in cases wherein it shall appear to the Court that the Provisions of this Act have not been literally complied with, it shall be lawful for the Court, in case it shall be of opinion that those Provisions have been substantially complied with, to make any Charging Order under this Act, subject to such conditions as it may think proper to impose.

The Amount of Annuities to be charged not to exceed one-half the Annual Value of the Lands, after Deduction of Rent-charges.

Charging Order may be made when the Act has been substantially complied with.



Assignees of  
Bankrupt or In-  
solvent Owner  
may obtain  
Charging Order.

XVI. If any Limited Owner shall become a Bankrupt or Insolvent, after he has obtained an Order sanctioning any Improvements, but before he has obtained an Order charging the Lands as is hereinbefore mentioned, his Assignee may complete the Improvements at the Expense of the Estate of such Bankrupt, or Insolvent Owner, and thereupon said Assignee shall be entitled to obtain such Charging Order as such Owner would have been entitled to, if he had not become Bankrupt or Insolvent; Provided always that if such Assignee shall decline to complete the Improvements, he shall not be entitled to claim any Compensation for the monies already expended thereupon.

Successor may  
obtain Charging  
Order when  
Limited Owner  
dies during Pro-  
gress of Works.

XVII. If any Limited Owner shall die after he has obtained an Order sanctioning any Improvements, but before such Improvements have been completed, it shall be lawful for the Successor, if he shall think fit, to complete the same, having first repaid to the Personal Representatives of such Limited Owner the amount expended by such Limited Owner thereupon; and on the completion of the same the Successor shall be entitled to obtain such Annuity and Charging Order as the Limited Owner would in the like case have been entitled to obtain; but if the Successor shall not think fit to complete such Improvements, or shall decline to repay the amount expended as aforesaid, it shall be lawful for the Personal Representatives of such Limited Owner, if they shall think fit, to complete the same at the expense of the Estate of such Limited Owner, and upon the completion of the same, such Personal Representatives shall be entitled to obtain such Annuity and Charging Order as aforesaid: Provided always that if such Personal Representatives shall decline to complete such Improvements, they shall not be entitled to claim any Compensation for the monies already expended thereupon.



XVIII. Every Order made pursuant to this Act under the Seal of the Court, charging an Annuity on any Lands, shall be, both at Law and in Equity, conclusive Evidence that all Notices, Acts, and Proceedings by this Act directed with reference to the obtaining such Order or the making such Charge have been duly served, done, and taken, and that such Charge has been duly created, and is a valid Charge on the Lands declared in such order to be subject thereto.

Charging Order to be conclusive Evidence of Compliance with the Provisions of the Act.

The Government Bill of last Session contained a clause giving power to the person who might succeed to the estate on the death of the "limited owner," to object to the amount of the charge which might have been created, and require the Court to reconsider its order in this respect. It appears to me that the decision of the Court, made at the time, and after obtaining all the information which the Court considered necessary, and after hearing the objections, if any, which the lineal or collateral successor may have made, ought to be final, so that the limited owner should be able to dispose of the annuity charged in such manner as he may think best, whether for his own benefit or for that of his family.

XIX. If the Lands on which such Annuity shall be charged as aforesaid, shall be Lands recorded under the Record of Title Act (Ireland) 1865, the Recording Officer shall record such Annuity as a Charge pursuant to the last-mentioned Act, and shall upon request deliver to the Limited Owner a Certificate of Charge in manner thereby directed, and such Charge, when recorded, may be assigned, settled, dealt with, or affected as therein mentioned.

Annuity charged on Lands of Record to be Recorded.

XX. If the Lands on which such Annuity as aforesaid shall be charged shall not be Lands recorded as aforesaid, the Judge who has made a Charging Order under this Act, shall execute a Duplicate thereof under the Seal of the Court, and the Person applying for such Order may cause such Duplicate to be registered in the Office for the Registry of Deeds in the City of *Dublin*, and the Registrar of the Registry Office,

Annuity charged on Lands not of Record to be Registered.



his Assistant Deputies, and other Officers, shall be required to register the same in the same Manner as Memorials of Deeds are registered in the said Office, and to enter such Duplicate in the Books and Indexes of or relating to Memorials registered and kept in the said Office, subject to the Payment of such Fees as may be lawfully demanded.

Annuity to have  
Priority as of  
Date of Record  
or Registration.

XXI. Every Annuity created by this Act shall have Priority as of the Date of its Record or Registration, as the case may be, and before the Estate of any Successor to the Lands.

And to be recoverable as Tithe-rent Charge.

XXII. Every Annuity created in pursuance of this Act shall be recoverable in the manner in which Rentcharges in lieu of Tithes are recoverable in *Ireland*.

But no Arrears  
to be recoverable  
after the Expiration  
of One Year from the  
Date of falling  
due.

XXIII. Provided always and be it enacted that no Arrears of any Annuity charged on Land in pursuance of this Act shall be recoverable against such Land after the Expiration of One Year from the Date at which the Sum in arrear first became due; and as between Parties having successive Interests in any Land so charged, (but subject and without prejudice to the foregoing Provisions restraining the Recovery of Arrears) it shall be the Duty of the Party for the Time being in possession or in Receipt of the Rents and Profits of such Land to prevent such Arrears from arising, and if he make Default in doing so, and if the Party next entitled in possession pay any Arrears caused by such Default, the Amount so paid shall be a Debt due to the Party who has paid the same from the Party by whose Default it became necessary to make such Payment.

Improvements  
to be maintained  
by Limited  
Owner.

XXIV. All Improvements in respect of which an Annuity is payable under this Part of this Act shall, during the Continuance of the Estate of the Limited Owner, be maintained by him in a proper State of Repair, and any subsequent



Owner of the Land charged with such Annuity may, by action in the Superior Courts of Common Law, recover from the Representatives of such Limited Owner any Damages sustained by reason of the Noncompliance of the Limited Owner with the Provisions of this Section.

XXV. All Rights conferred on a Limited Owner by this Act shall be deemed to be in addition to any other Rights, whether statutable or otherwise, which any such Owner may possess, and every such Owner may exercise such other Rights in the same manner as if this Act had not been passed.

Rights conferred  
by the Act to be  
in Addition to  
Existing Rights.

## PART II.

### LEASING POWERS.

The object of this part of this proposed Bill is to afford increased freedom for contracts between landlord and tenant for the improvement of the tenant's holding, by doing away with the necessity for the notices and other proceedings which are required by the act of 1860 (23 & 24 Vict. chap. 153), and also by giving increased powers for improvement and building leases, and better security to the tenant for the perfect validity of any contract made with the ostensible owner of the property.

It is supposed that, under the arrangements here contemplated, landlords, although "limited owners," could enter into contracts with their tenants in the far greater number of the cases likely to arise, without the intervention of any third party; and, in complicated cases, or when a term of unusual length was found to be desirable, the sanction of the Court would enable them to act. It is submitted that the interests of landlord and tenant are sufficiently separate to afford all needful protection to the remainder-man. Any collusion between landlord and tenant would of course invalidate the contract. It is impossible *wholly* to guard against fraud, and the attempt to do so does more harm by fettering honest industry than the safeguard is worth.

XXVI. Any Limited or Corporate Owner shall have power to grant Agricultural Leases,

Power to Limited  
or Corporate  
Owner to grant  
Leases.



Improvement Leases, Building Leases (including under the Term "Building Leases" Repairing Leases), for any Term of Years, absolute, or determinable at fixed Periods, subject to the following Restrictions :

The Government Bill of last session required notice to be served on the successor before granting any improvement or building lease. This restriction is surely unnecessary, and it would be frequently inconvenient in practice. The "limited owner" may safely be trusted to do the best he can for his own interest and that of his successors, without having to obtain their consent to every contract with a tenant for the improvement of his farm. The Act of 1860 required the sanction of the Chairman of the Quarter Sessions, or of a Judge of the Landed Estates Court, for every improvement lease. The proposed lease was to be submitted to the Court, "with such particulars as may be required for the purpose of enabling it to decide on the propriety of giving its sanction," and the Court was then to make enquiries, to serve notices, to hear all persons who might apply; and, finally, if it approved of the proposed lease, to sanction it, and to make such order respecting the costs "of the application as shall seem to it to be just." It scarcely needed a Select Committee of the House of Commons to find out why no improvement leases were granted under the provisions of this Act.

Terms for which  
Leases may be  
granted.

- (1) No Mansion-House or Demesne Lands shall be leased under this Act for a longer Period than the Life of the Limited Owner and Six Calendar Months after his Decease, or for a longer Period than his Minority, if he be an Infant at the Time of the making of the Lease.
- (2) The Term of an Agricultural Lease shall not exceed *Thirty-one* Years, that of an Improvement Lease shall not exceed *Sixty-one* Years, that of a Building Lease shall not exceed *One Hundred and Fifty* Years.

The leasing powers proposed to be given in the Bill brought in by Mr. Napier, when Attorney-General under the Earl of Derby in 1852, and which received the assent of the House of Commons, were nearly the same as the above. Mr. Napier thus describes them, when moving for leave to bring in the Bill. "For agricultural purposes it was proposed to grant leases for thirty-one years; for the improve-



“ment of waste lands, leases for sixty-one years; for the  
 “working of mines, leases for forty-one years; for private  
 “buildings, leases for ninety-nine years; and for public edi-  
 “fices and public purposes generally, leases for nine hundred  
 “and ninety-nine years.” (*Hansard*, vol. 123, p. 324.) I  
 have proposed one hundred and fifty years for building leases,  
 because in many cases that length of lease is desirable for the  
 improvement of the property, and because I am aware that  
 it is the term for which powers have been taken in the deed  
 of settlement of some large estates.

Some will object to the term of thirty-one years as being  
 undesirably long for an agricultural lease, and it may readily  
 be granted that leases for twenty-one years are preferable,  
 when the land leased is really prepared for a farm, by  
 having a good homestead suitable to its extent, and proper  
 boundary and other fences. But where these are wanting,  
 as is too often the case in Ireland, a term of thirty-one years  
 is short enough. At any rate this clause is only enabling,  
 and the power to grant agricultural leases for thirty-one years  
 does not oblige any landlord to grant leases of this length, if  
 he think it not his interest to do so.

(3) Every Lease shall take effect in Possession, or within *One Year* after the Execution thereof, and there shall be reserved thereby the best yearly Rent, to be incidental to the immediate Reversion, that can reasonably be obtained, without taking anything in the Nature of a Fine, Premium, or Foregift: Provided always that in the case of an Improvement Lease, or of a Building Lease, the best Rent that can reasonably be obtained shall be estimated with reference to the length of the Term granted by the Lessor and the Improvements covenanted to be made by the Lessee; and that a Peppercorn Rent or any Rent smaller than the Rent to be ultimately made payable may be reserved during all or any Part of the first *Five Years* of the Term granted by such Leases.

Every Lease to take effect in Possession, and to reserve the best Rent.

(4) Every Lease shall contain or imply the following Covenants and Conditions:—

(a) A Covenant for the due Payment of

Covenants and Conditions to be contained or implied in every Lease.



the Rent reserved, and a Condition of Re-entry in case of the Non-payment of the same for a period of *Twenty-eight Days* after it becomes due.

(b) A Covenant against Subdividing or Subletting, without consent of Lessor, except when there is an express Covenant that the Lands may be Subdivided or Sublet.

(c) A Covenant against Voluntary or Permissive Waste.

Lessee's Covenants in Agricultural Leases.

(5) Every Agricultural Lease shall contain or imply the following Covenants on the part of the Lessee, his Heirs, Executors, Administrators, and Assigns :—

(a) To manage, till, and use the Lands demised in due and regular Course of good Husbandry.

(b) Not to burn or permit to be burned any Part of the Soil or Surface of the Lands demised, without the previous Consent in Writing of the Landlord.

(c) Not to Assign without the Consent of the Lessor, to be signified by his Execution of the Deed of Assignment.

When the tenant adds a value to the holding by the expenditure of capital under an improvement or a building lease, it is certainly right that he should have full liberty to sell or otherwise dispose of his interest in the lease as he may wish; but in an agricultural lease, where, in general, no increase of value takes place, except through the ordinary operations of husbandry, or from the general improvement of the country, it is only reasonable that no person should be substituted for the original tenant, except with the approval and consent of the landlord. This would not of course affect those cases in which the tenancy, on the death of the original tenant, devolves on his Personal Representative by operation of law.

Lessee's Covenants in Improvement Leases.

(6) Every Improvement Lease shall contain a Covenant on the part of the Lessee, his heirs, executors, administrators, and assigns. To expend upon Works defined to be



Improvements in the third part of this Act, which shall be specified in the Lease, and within a Time which shall also be specified therein, a Sum equal at the least to five times the Rent thereby reserved.

- (7) Every Building Lease shall contain a Covenant on the part of the Lessee, his Heirs, Executors, Administrators, and Assigns,

Lessee's Covenants in Building Leases.

To expend upon the Buildings which shall be specified in the Lease, and within a Time which shall also be specified therein, a Sum equal at the least to twenty times the Rent thereby reserved.

- (8) The Lessee shall execute a Counterpart of every Lease, but the Execution of any Lease by the Lessor shall be deemed sufficient Evidence that a Counterpart of such Lease, as required by this Act, has been executed by the Lessee.

Lessee to execute a Counterpart of Lease.

XXVII. If the Limited Owner be an Infant, or a Person of Unsound Mind, or a Married Woman who is not entitled for her separate use, it shall be lawful for the Guardian, Committee, or Husband, as the case may be, of such Limited Owner, to apply to the Landed Estates Court for authority to exercise the Powers conferred on a Limited Owner by this Act; and the Court shall have power to grant such application.

If Limited Owner under Disability, Application to be made to the Court.

XXVIII. Wherever it may be deemed desirable that any Lease to be made in pursuance of this Act should be made for a Term longer than is hereinbefore provided, it shall be lawful for the Limited or Corporate Owner to apply to the Landed Estates Court; and the Court, by its Order made on such application, and upon Notice to such Person or Persons as it shall think fit, may authorize the granting of such longer Term as it shall think proper.

Court on Application may authorise longer Terms.



Manufacturing  
Leases to be made  
on Application to  
the Court.

XXIX. Wherever any Limited or Corporate Owner shall desire to grant a Lease of any Water-power or Water-site, or any quantity of Land for the purpose of erecting or extending any Mill, Factory, Warehouse, or other Building for Manufacturing or Commercial purposes, or whenever such Owner shall desire to grant a Lease for the purpose of working Mines or Quarries, it shall be lawful for such Owner to apply to the Court, and the Court, by its Order made on such application, and upon Notice to such Person or Persons as it shall think fit, may authorize such Lease with such Covenants and Conditions as it shall think proper, and for any Term of Years, or in perpetuity.

Provisions for a similar purpose have already been enacted by the Irish and by the Imperial Parliament (see 25 Geo. III. chap. 62 (Irish) and 14 Vict. chap. 7), but they are not sufficient to meet the enlarged wants of the present time. Many instances could be adduced in which the establishment of manufactures has been impeded by the want of a sufficient term of lease to warrant the outlay of money in suitable buildings. Mr. Napier's Bill in 1852 proposed the term of "nine hundred and ninety-nine years for public edifices and "public purposes generally," and in his speech he gave instances to prove the necessity for this long tenure. The public interest requires that every facility should be afforded to manufacturing and commercial enterprise in Ireland.

Court on Appli-  
cation may au-  
thorise Leases not  
authorised by the  
exact Terms of  
any Act or Set-  
tlement.

XXX. Where a Power to make Leases by virtue of this or any other Act of Parliament, or of any Settlement, shall, in any particular case, be incapable of being exercised by reason of any Variation in the Circumstances necessary to bring the case within the exact Terms of the Act or Settlement, the Landed Estates Court may, by an Order on the application of any Person interested in the Matter, and upon Notice to such Person or Persons as the Court shall think necessary, authorize the Donee of the Power contained in such Act or Settlement to make a Lease, notwithstanding any Variation which the Court



shall consider not to involve a substantial Departure from the Intention of such Act or Settlement; and every Lease made in pursuance of any Order of the Court in that behalf shall be as valid as if the case had been within the exact Terms of the Act or Settlement.

XXXI. In the absence of Fraud every Lease granted in pursuance of this Act shall, so long as the Covenants and Conditions on the Lessee's part are performed and observed, be valid against all Persons whatsoever; but the Rent therein reserved shall be subject to the Uses, Rights, and Liabilities to which the Lands comprised therein would have been subject had no such Lease been made; Provided always that no Lease granted by an Owner who is himself a Lessee shall continue after the Expiration of the Term granted by such Owner's Lease, and that nothing herein contained shall be deemed to enable any such Owner to grant any Lease which, by virtue of any Covenant or Agreement with his Lessor, he is precluded from granting.

Leases made in pursuance of this Act to be valid against all Persons whatsoever.

The object of this clause is to give full security to the tenant for the validity of whatever lease the landlord may grant, or whatever contract he may enter into, by rendering it good not only against the limited owner, but also against mortgagees and other incumbrancers. There is no reason for requiring the consent of the mortgagee to a contract which, by promoting improvements, may increase his security, but which cannot lessen it unless it be fraudulent, in which case it is, of course, void. Few landlords will permit enquiry into their titles, so that, under present circumstances, the tenant cannot have any real security for the validity of the lease.

XXXII. Any Limited or Corporate Owner shall have power to accept the Surrender of any Lease, whether granted under this Act or not, when not more than *Five Years* of the Term created by such Lease shall be unexpired; and the power to grant Leases conferred by this Act shall extend to the granting of new Leases of

Limited or Corporate Owners to have Power to accept Surrenders.



the whole or any part of the Lands comprised in any Surrendered Lease.

It is very important that there should be no difficulty for a landlord to take a surrender of a lease two or three years before it expires, for the purpose of granting a new one; as, by so doing he may prevent the very injurious but too common practice of exhausting the land just before the termination of the tenancy.

Limited or Corporate Owners to have Power to Contract with Lessee without accepting Surrender of the Lease.

XXXIII. If there be any subsisting Lease, whether granted under this Act or not, which for any reason it is inexpedient to surrender, the Limited or Corporate Owner may enter into a Contract with the Lessee for the execution by the Lessee of such Improvements as might be contracted for under an Improvement Lease made in pursuance of this Act, and in such Contract may covenant with the Lessee for the continuance of his Tenancy after the Expiration of the subsisting Term; and such Contract, when reduced to writing and signed by the parties thereto, shall have the same validity as an Improvement Lease granted in pursuance of this Act: Provided always, that the additional Term, which shall be specified in such Contract, shall not exceed the Term of *Sixty-one Years* from the date of the Contract, and that the Rent to be reserved for such additional Term shall not be less than the full letting Value of the Lands at the same Date.

Such Contract to be Recorded or Registered.

XXXIV. Provided also and be it enacted that every such Contract shall be Recorded or Registered in the Office for the Record of Title or in the Office for the Registry of Deeds in the City of Dublin, according as the Lands thereby affected are Recorded under the Record of Title Act (Ireland), 1865, or not, and that for the purposes of such Record or Registration such Contract shall be considered as a Charge or a Conveyance as the case may be.

It is evident that the power of making contracts, as regards improvements, should not be limited to the time at which the



lease is agreed for; as it frequently happens that the necessity for an outlay of capital in improvements or alterations is not so clearly seen until after the tenant has entered into possession.

XXXV. All Powers conferred on a Limited or Corporate Owner by this Act shall be deemed to be in addition to any other Powers, whether statutable or otherwise, which any such Owner may possess, and every such Owner may exercise such other Powers in the same manner as if this Act had not been passed.

Powers conferred by the Act to be in addition to Existing Powers.

### PART III.

#### TENANTS' IMPROVEMENTS.

The Act of 1860 extended the provisions of Part III not only to "tenants from year to year, or at will," but also to "tenants holding under a lease for any term of years of which not more than twenty-five are unexpired." The definition of the word "Tenant" given in section 2 of this proposed Act will therefore appear to some persons to be a restriction upon the existing law. This restriction however is only apparent, for the Act of 1860 had but little effect beyond validating an agreement for compensation; while the object of this part of the Act now proposed is to afford compensation to the tenant for improvements effected in the absence of any specific contract.

XXXVI. This Part of this Act shall only apply to Land let for Agricultural Purposes.

Application of this Part.

XXXVII. The Expression "*Improvements*," as used in this Part of this Act, shall comprise the following Works:—

Tenants' Improvements.

- (1) The Main or Thorough Drainage of Lands:
- (2) The Making of Farm Roads or Fences:
- (3) The Reclaiming and Inclosing of Bog Land, and the Reclaiming or Inclosing of Waste Land:
- (4) The execution of Works permanently providing for the Irrigation of Land:



- (5) The Reclaiming of Land from Inland Waters or the Permanent Protection of Land against the same :
- (6) The Erection of a Farmhouse or Farm Buildings suitable to the Holding, or the enlarging or the extending of any Farmhouse or Farm Building already erected thereon, so as to render the same more suitable to the Holding :
- (7) The Renewal or Reconstruction of any pre-existing Works of the character aforesaid, or such Alterations therein or Additions thereto, not being mere Repairs, as shall permanently increase their Value.

Limited Owner to have Power to enter into Agreements with Tenant or Lessee for Execution of Improvements.

XXXVIII. Any Limited Owner may enter into an Agreement with any Tenant or Lessee for the Execution by such Tenant or Lessee of any such Improvements, and for securing to such Tenant or Lessee Compensation for the same ; and on the completion of such Improvements, the Tenant or Lessee shall lodge with the Clerk of the Peace a Declaration in manner hereinafter provided with respect to Improvements not executed in pursuance of an Agreement ; and such Declaration shall be Evidence in like manner as the Declarations hereinafter mentioned, and it shall not be necessary for any Purposes that such Agreement should be Stamped ; and the Landlord shall not be permitted to dispute such Declaration, except by Proof that the Works have not been effected in conformity with said Agreement.

This clause will enable the landlord and tenant to agree beforehand as to the work to be done and the amount of the expenditure ; and will, also, with the landlord's consent, extend the provision of this part of the proposed Act to tenants who would otherwise be excluded by the definition of the word "tenant" as given in Section II.

Tenant to have Power to execute Improvements in absence of Agreement.

XXXIX. Subject to the Provisions hereinafter contained, every Tenant as hereinbefore de-



fined may, unless restrained by Written Contract regulating the Terms of his Tenancy, execute any such Improvements ; and upon the determination of his Tenancy, shall be entitled, by way of Compensation for his Outlay, to a Sum of Money to be ascertained and limited in manner hereinafter mentioned.

Objection has been made to this, because it entitles the tenant to compensation for improvements made by him without the consent of his landlord having been previously obtained. If the claim of the tenant were to be based on the amount expended, irrespective of the value of the improvements when executed, the landlord's previous consent would certainly be necessary ; but as the tenant's claim is to rest on the actual increase in the letting value resulting from the improvements effected, as subsisting at the time of eviction, it cannot inflict any injustice on the landlord to give the tenant a legal right to compensation. Unless the improvements are suitable to the holding, they will not proportionately increase its letting value. This will check extravagant outlay ; and if the landlord think the holding too small to warrant expenditure in buildings, he has the power to prevent them from being made ; and in any case the offer of a lease for thirty-one years will bar all claims.

The Earl of Derby's Bill of 1845 would have given the tenant compensation in certain cases for improvements effected even *against* the will of his landlord. If the landlord objected, the tenant might appeal to a Commissioner, and if the Commissioner considered that the improvements were required, the tenant would have been fully authorised to make them. This clause was strongly objected to in the House of Lords ; but Lord Derby, then Lord Stanley, refused to give it up, as he said "he considered it most important for the efficiency of the measure that the clause should be retained." This Bill passed the second reading.—*Hansard*, vol. 81, p. 1146. (24th June, 1845.)

The Bill which passed the House of Commons in 1852 was similar in this respect to the Bill of last session. Lord Naas thus describes it, contrasting its provisions with those of Lord Stanley's Bill above referred to. "The machinery of Lord Stanley's Bill was of a very complicated character, and such "as it would be very difficult to work out. It proposed that "Commissioners and Assistant Commissioners should be appointed for the purpose of determining whether the improvements contemplated by the tenant should be considered "as improvements or not, and it would render the tenant "liable to ruinous litigation before he could begin any improvement. There was nothing of that kind in the pre-



"sent Bill. There were no preliminaries whatever, and it "would be perfectly competent to the tenant to commence his "improvements at once; and any litigation which arose at "all must arise when the landlord proposed to eject the "tenant at the end of his tenancy."—*Hansard*, vol. 123, p. 347.

Some persons, on the contrary, say this provision is useless, because it may be nullified by the landlord requiring the tenant to sign a specific contract, under section XL. I am not afraid of its being improperly set aside. This may be done in exceptional cases, but not so often as seriously to impair its efficiency. Nine landlords in ten wish to act honestly, but they take the law as a guide for their conduct. The law is now unjust, for it gives every improvement to the landlord. Let the law recognise the ownership of the tenant in the improvements he has created, as this clause does, and the nine honest landlords will also recognise it.

But not to be  
entitled to Com-  
pensation when  
compellable to  
improve.

XL. Provided always and be it enacted that no Tenant shall be entitled to Compensation under this Act, for any Improvements which he may be compellable to make under any Written Contract regulating the Terms of his Tenancy.

This clause fully meets the objections which have been taken to the right of compensation for improvements effected without the landlord's consent having been first obtained. Whatever is necessary for the farm ought either to be done by the landlord himself, as provided for in Part I., or he should contract with the tenant to do them, under the leasing powers given in Part II., or under the power for special agreements given in Sect. XXXVIII. There will then be no room for any claim except for the value of unexhausted manures, &c. In fact one of the great merits of the proposed legislation is, that it will make it necessary for landlords to attend to their property personally, or to employ agents who will be something more than rent-collectors. A prudent landlord will take care that his agent shall be acquainted with the condition of every farm on the estate, and shall consider what may be required for its improvement; and further, that he shall have a written contract with every tenant, specifying what is to be done or to be left undone. This will no doubt impose a labour on many agents to which they have hitherto been quite unaccustomed.

Limit of Com-  
pensation.

XLI. Provided also and be it further enacted that no Claim for Compensation under this Act shall in any case exceed a sum equivalent to Five Pounds for each Statute Acre of the Holding.

Objection has been made to the limitation of compensa-



tion to £5 per acre. There is no doubt much land in Ireland on which considerably more than £5 per acre might be advantageously expended, and there are many holdings which require an expenditure of fully £10 per acre to place them in the condition in which a good farmer would consider they ought to be; but the provision for compensation under Part III. will generally refer to improvements where the expenditure has been comparatively small. Whenever a large expenditure is contemplated, there will always, I should expect, be a regular contract entered into, under the provisions of Part II.

XLII. Provided also and be it further enacted that, at any time after the completion of such Improvements as aforesaid, if the Landlord shall grant and the Tenant shall accept a Lease for the term of *Thirty-one Years*, or any longer Term, reserving the Rent then payable in respect of the Holding, and containing the usual Covenants and Conditions between Landlord and Tenant; or if the Landlord shall give a written Notice to the Tenant of his readiness to grant such Lease, and the Tenant within *Three Calendar Months* after the serving of such Notice shall not have given a written Notice to the Landlord of his readiness to accept the same; or if the Tenant shall not have executed the same when duly tendered to him for execution by the Landlord, such Tenant shall be debarred from making any Claim for Compensation for Improvements either then made or thereafter to be made by him upon his Holding.

No Compensation to be claimed where Landlord tenders a Lease of *Thirty-one* years to Tenant.

XLIII. Every Tenant who has expended Money on Improvements for which he may be entitled to claim Compensation under this Act shall, within *Three Calendar Months* after their completion, lodge with the Clerk of the Peace a Declaration in the Form to be specified as hereinafter provided, having first paid such Fees as may be payable under the subsequent Provisions of this Act.

Tenant to lodge a Declaration with Clerk of the Peace.

This notice to the Clerk of the Peace has been added to the Bill of last session, in order that the fact of such improve-



ments being made should be recorded, and their value ascertained, at a time when evidence on both these points is available. To leave this until the termination of the tenancy would expose the parties to the risk of a lawsuit, at a time when it would be very difficult to procure evidence, in the event of any difference between the landlord and the tenant respecting the improvements executed, or respecting their value.

The Clerk of the Peace to retain and record all Declarations.

XLIV. The Clerk of the Peace shall retain all Declarations lodged with him under this Act, and shall keep a Book or Books of Reference thereto, which may be inspected without the payment of any fee by any Person claiming to be interested therein, and shall give certified Copies of or Extracts from the same, upon payment of the Fees payable in that behalf, as hereinafter provided.

And to transmit Copies to the Landlord.

XLV. The Clerk of the Peace shall, within seven days from the Lodgment of such Declaration as aforesaid, give Notice of such Lodgment, and Transmit a Copy of such Declaration, signed and certified by himself or his Deputy, to the Landlord or his Agent.

Declaration to be conclusive when Landlord shall not dispute the same.

XLVI. If within *Three Calendar Months* from the date of such Notice and Transmission as aforesaid, the Landlord shall not dispute such Declaration, or shall not submit all matters in dispute in relation to the same to Arbitration, or apply for the appointment of a Valuator, as hereinafter provided, such Declaration shall be evidence of the execution of the Improvements therein alleged to have been made, and of the amount of Money therein alleged to have been expended.

Tenant to be at Liberty to lodge Amended Declaration.

XLVII. Provided always and be it enacted, that if the Tenant shall be willing to modify his Declaration so as to meet the requisitions of the Landlord, it shall be lawful for him to lodge with the Clerk of the Peace an amended Declaration countersigned by the Landlord, and the Clerk of the Peace shall forthwith cancel the original Declaration, and retain and record the



amended Declaration in lieu thereof; and such amended Declaration shall be evidence of the facts therein stated or necessarily implied.

XLVIII. If the Landlord shall dispute the Execution or the Value of the Improvements in any Declaration alleged to have been made, it shall be lawful for him, within the period lastly hereinbefore limited, with the written Consent of the Tenant, to submit all Questions in Dispute between them in relation to such Improvements to the Arbitration of any Person or Persons whom they may select, and the Valuation of such Arbitrator or Arbitrators shall be reduced to Writing, and shall be subject to the like Regulations, and shall possess the same validity as any Valuation made by a Valuator, as hereinafter mentioned.

Power for Landlord and Tenant to submit Disputes to Arbitration.

XLIX. If the Landlord shall dispute the Execution or the Value of the Improvements in such Declaration alleged to have been made, and if either the Landlord or Tenant shall decline to submit the Question in dispute between them to Arbitration, as hereinbefore mentioned, it shall be lawful for the Landlord, within the period lastly hereinbefore limited, to apply to the Commissioners for Public Works in Ireland for the appointment of a Valuator to ascertain the Execution and Value of such Improvements; and on such application the said Commissioners shall appoint such Valuator, and such Valuator shall immediately thereupon give notice to the Tenant of the fact of such appointment.

Landlord to apply for a Valuator when Arbitration is declined.

L. Every Valuator appointed under this Act shall, before he makes any Valuation under this Act, give Notice of such intended Valuation to the Tenant, and to the Landlord or his known Agent, and upon the expiration of the time mentioned in such Notice shall hear all parties claiming to be heard before him, and shall receive such evidence as may be offered in behalf

Valuator to give Notice, hear Parties, and inspect Improvements.



of such parties, and shall personally examine the Improvements alleged to have been made, and shall thereupon set a value upon such Improvements; and in setting such value shall consider whether the Improvements (if any) are suitable to the Holding, and whether they have been executed in a workmanlike manner, and whether they could have been executed at a lower price than that alleged to have been expended thereon by the Tenant.

Valuator to make a written Valuation, and to lodge same with Clerk of the Peace.

LI. The Valuator having ascertained and set a value upon the Improvements as aforesaid shall reduce his Valuation to Writing, and shall specify therein the Dates of his Appointment and Inquiry respectively, the Amount of his Valuation, and the Lands on which the Improvements have been made, and the Barony and County in which the same are situate, and the names of the Landlord and the Tenant, and shall lodge such Written Valuation with the Clerk of the Peace, who shall annex the same to the Tenant's Declaration, and shall record the same in the Book or Books hereinbefore directed to be kept, and such Valuation shall be evidence of the facts stated or necessarily implied therein.

Tenant served with Notice to Quit to serve the Landlord with Notice of Claim for Compensation.

LII. When any Landlord shall demand from his Tenant the possession of the Lands on which such Improvements, as aforesaid, shall have been made, or shall serve the Tenant with a Notice to Quit the same, the Tenant claiming Compensation for any unexhausted Improvements under this Act shall serve the Landlord with a Notice of such Claim, referring to the Declaration or Valuation, as the case may be, on which such Claim is founded, and shall lodge a Copy of such Claim with the Clerk of the Peace, who shall retain the same and record it in the Book or Books hereinbefore directed to be kept.

Except after a Possession of Forty-one Years from the making of the Improvements.

LIII. Provided always and be it enacted that no Tenant shall be entitled to claim



Compensation for any Improvements under this Act who shall have been permitted to remain in undisturbed Possession of his holding for *Forty-one Years* after the making of such Improvements.

Section XLII. authorises the landlord to compound for any improvements previously made, and to bar all claims for future improvements, by the offer of a lease for 31 years ; but if the tenant do not receive the certainty and the security which a lease confers, it is right that the compensating period should be longer. It is therefore proposed in this section to extend it to 41 years.

LIV. If within *One Calendar Month* from the service of such notice as aforesaid, the Landlord shall not dispute such claim, or shall not submit all matters in dispute in relation to the same to Arbitration, or apply for a Valuator as hereinafter provided, such Claim shall be conclusive Evidence that the Tenant is entitled to the Amount therein demanded.

Claim to be conclusive when Landlord shall not dispute the same.

LV. Provided always and be it enacted that, if the Tenant shall be willing to modify his Claim so as to meet the Requisitions of the Landlord, it shall be lawful for him to lodge with the Clerk of the Peace an amended Claim, countersigned by the Landlord, and the Clerk of the Peace shall forthwith cancel the original Claim, and retain and record the amended Claim in lieu thereof, and such amended Claim shall be conclusive Evidence that the Tenant is entitled to the Amount therein specified.

Tenant to be at liberty to lodge an Amended Claim.

LVI. If the Landlord, served with Notice as aforesaid, shall dispute such Claim for Compensation, it shall be lawful for him, within *One Calendar Month* from the Date of such Notice, with the written Consent of the Tenant, to submit all Questions in dispute between them in relation to such Claim to the Arbitration of such Person or Persons as they may select, and the Award of such Arbitrator or Arbitrators

Landlord and Tenant may submit Disputes to Arbitration.



shall be reduced to Writing, and shall be subject to the like Regulations, and shall possess the same Validity as an Award made by a Valuator, as hereinafter mentioned.

Landlord to apply  
for Valuator  
when Arbitration  
is declined.

LVII. If the Landlord served with Notice as aforesaid shall dispute such Claim for Compensation, and if either the Landlord or the Tenant shall decline to submit the Question in dispute between them in relation to such Claim to Arbitration, it shall be lawful for the Landlord, within *One Calendar Month* from the date of such Notice, to apply to the Commissioners of Public Works in Ireland for the appointment of a Valuator to ascertain the value of the unexhausted Improvements in respect of which the Tenant claims as aforesaid, and on such Application the said Commissioners shall appoint such Valuator, and such Valuator shall immediately thereupon give Notice to the Tenant of the fact of such appointment.

Valuator to give  
Notice, hear Parties,  
examine Declarations  
and Valuations, and  
inspect Improvements.

LVIII. Every Valuator so appointed shall, before he makes any Award under this Act, give Notice of such intended Award to the Tenant, and to the Landlord or his Agent, and upon the expiration of the time mentioned in such Notice, shall hear all parties claiming to be heard before him, and receive such evidence as may be offered on behalf of such parties, and shall examine all Declarations and Valuations retained and recorded as aforesaid, and shall personally examine the existing state of the Improvements in respect of which Compensation shall be claimed, and shall compare the present with the recorded value of the same, and shall take into account any diminution of the value of the Holding caused by the Act or Default of the Tenant in reduction of the Amount (if any) to be awarded to him by way of Compensation for Improvements as aforesaid, and on such In-



quiry the Valuator shall award to the Tenant such sum for Compensation as shall be equivalent to *Fifteen Years'* purchase of the increase in the Letting Value of the Holding due to such Improvements, at the time of the making of such Award.

LIX. The Valuator shall reduce his Award to writing, and in such written Award shall specify the Amount awarded, and the Lands on which the Improvements have been made, and the Barony and County in which the same are situate, and the names of the Landlord and Tenant of the same, and shall within *Forty-Eight Hours* of the making of such Award give Notice thereof to the Landlord and the Tenant, and shall lodge the Original of such written Award with the Clerk of the Peace, who shall retain the same and record it in the Book or Books hereinbefore directed to be kept, and such Award, if unappealed from, shall be conclusive evidence of the facts stated or necessarily implied therein.

Valuator to make a written Award, and lodge same with Clerk of the Peace.

LX. In case either the Landlord or the Tenant shall be dissatisfied with such Award, it shall be lawful for the Party so dissatisfied to appeal against the same to the Chairman of the County, or if such Chairman be himself a Party interested, to the Chairman of any adjoining County; and the Party so appealing shall give to the opposite Party *Ten Days* Notice of his intention to appeal; and such Appeal shall be set down for hearing at the next Quarter Sessions to be holden by the Chairman before whom the same is to be heard, unless a shorter Period than *Twenty Days* shall intervene between the Notice of the making of the Award and the holding of such Sessions, in which case the Appeal shall be brought to the next subsequent Sessions; and such Appeal shall be heard by such Chairman without a Jury, upon such Evidence as

Landlord and Tenant to be at liberty to appeal against Award of Valuator, to the Chairman.



may be brought before him, and thereupon he shall confirm or vary such Award, and his Decision shall be final; and his Decree shall be conclusive evidence of the facts stated or necessarily implied therein.

Copy of the Decree of the Chairman to be lodged with the Clerk of the Peace.

LXI. The Chairman shall sign and certify a Copy of such Decree, and the Party in whose favour such Decree shall have been made shall, within *One Month* after the Date of such Decree, lodge such Copy with the Clerk of the Peace, who shall annex the same to the original Award, and record the same in the Book or Books hereinbefore directed to be kept.

Compensation to be set off against Rent, and Possession to be retained till Compensation paid.

LXII. The Amount of Compensation awarded to the Tenant as aforesaid shall be set off against any Claim for Rent, and the Tenant shall be entitled to retain the Possession of the Lands upon the Terms of his Tenancy, until the Amount of the Compensation so awarded, after deducting thereout any Rent due to the Landlord, shall have been paid, tendered, or secured to the satisfaction of the Tenant.

Limited owner paying Compensation, to be entitled to Annuity or Fine upon a Lease.

LXIII. Any Limited Owner, who shall pay his Tenant the Compensation so awarded, shall have a Charge upon the Lands comprised in such Tenancy of an Annuity of £6 8s. 3d. for every One Hundred Pounds so paid, and in proportion for any lesser Sum, for the term of *Thirty-one Years*, to commence from the Date of Payment, and to be payable on each Anniversary of such Date to him, his Executors, Administrators, or Assigns; or such Owner may, at his option, make a Lease of the same Lands in manner hereinbefore provided; and if he make such Lease, it shall not be invalid by reason of such Owner taking from the Tenant or succeeding Tenant, as a Fine, the Amount so paid for Compensation as aforesaid.



## PART IV.

## GENERAL PROVISIONS.

LXIV. Nothing in this Act contained shall be construed so as to prejudice any Usage or Custom existing in any Part of Ireland in relation to the Rights of Outgoing or Incoming Tenants.

Rights of Outgoing and Incoming Tenants.

LXV. Whenever any Lands, on which the Usage or Custom of Tenant Right exists, and has been recognized by the Landlord, shall be sold, either in the Landed Estates' Court or the Court of Chancery, it shall be lawful for the Court, in its discretion, to grant Agricultural Leases for a Term not exceeding *Thirty-one Years*, to all Tenants on the Lands who do not hold under a written Lease or Agreement for a Lease.

Court to be at liberty to grant Leases when Lands subject to Tenant Right are sold.

Objection may be made to this proposition, as interfering with the rights of property, but it is submitted that the owner of an estate on which the custom of tenant-right has been recognised will always have full power, if he think right to do so, to break the custom, by evicting the tenants unless they undertake to pay rack-rents; and if, whether from honourable feeling, or from an unwillingness to incur the odium of breaking through the custom of the estate, he do not choose to do it, the Court ought not to be made the medium of committing an injustice which the owner scruples or fears to commit. Judge Longfield, in his evidence before the Select Committee of the House of Commons in 1865, maintains that the Landed Estates Court ought to be empowered to give leases in such cases. He says, in reply to question No. 648, "Where a tenant showed that tenant-right, as it was called, prevailed on the estate, that the good will was frequently a matter of bargain and sale, with the knowledge of the landlord, what we mean by Ulster Tenant Right, then I think it reasonable that a stranger should not be put over him, without putting him in as good a position as he was by the custom of the country with his old landlord."

LXVI. No Tenant shall be deprived of any Right to Compensation under this Act by any Sale, or Declaration of Title, in the Landed

Right to Compensation under a Sale or Declaration of Title.



Estates' Court, unless where the Conveyance or Declaration shall expressly negative the existence of such Right.

Leases not exceeding Thirty-one Years not to be evicted for non-Registration.

LXVII. No Tenant shall be liable to be evicted from his Tenement by reason of the Non-registering or Non-Recording of any Lease made in pursuance of this Act when the Term created by such Lease does not exceed *Thirty-one Years*.

Distress for Rent abolished.

LXVIII. As respects all Tenancies created after the commencement of this Act, the Right of Distress for the Recovery of Rent shall be abolished.

The abolition of the right of distress appears to me so important, that I do not hesitate to express my conviction that no legislation respecting the land question will be effectual of which this does not form a part. The root of the difficulties which beset this question is the fierce competition for land—a competition which is almost unlimited; and the abolition of the right of distress is the surest, and perhaps the only means of moderating this competition. If rent were a simple contract debt, and the landlord on a par with other creditors, he would select his tenants as carefully as a merchant selects those to whom he gives credit; thus the competition would be limited to those who appeared worthy of trust on account of their personal character and their skill and capital.

This view is evidently making way. Judge Longfield's evidence before the Select Committee of the House of Commons in 1865 was strong and decided. The Government Bill of last session proposed to limit the right to those cases in which it should be founded on contract; but the Bill introduced into the House of Lords by Lord Clanricarde went farther, and prohibited a distress unless made in execution of the decree of a Court of law. The Report of the Commission on Hypothec in Scotland has already been quoted. A minority of that Commission would have abolished it altogether, and the majority recommended that the exercise of the right should be limited to three months after the day on which rent became due. Two of the Commissioners who dissented gave their reasons at considerable length. They asserted that it "confers an amount of preference in favour of landlords, not only opposed to the established principles of commercial law and the tendency of all recent legislation, but which is in itself also manifestly unjust." \* \* That "the certainty that landlords have of receiving, at least for a time, almost any amount of rent that may be offered by any candidate for a farm, places all offerers so much on a level, whether they are possessed of capital or skill or not, that a strong



“and prevalent inducement is held out to proprietors to select the highest offerer as tenant, without due regard to his suitability in other respects.” \* \* \* “That the law is not required for the recovery of rents on well-managed estates; and that, in those instances where it is called into operation, it is alike detrimental to the tenants and their ordinary creditors, and not less so to the best interests of the land-owners themselves.” Finally, they state their conviction that, due regard being had to existing leases, the total abolition of the law is imperatively demanded both by justice and expediency.”

Evidence to this effect might be multiplied indefinitely. The Scotch farmers [I quote from resolutions passed at a meeting of farmers and others held at Stonehaven in Kincardineshire] find it work the same evil that it has worked here,—“promoting a frequently intense and always unfair competition”—“running up the hire of land to a fictitious rate”—“quietly but gradually driving out the men of capital to England or the colonies”—and they end by stating their uncompromising hostility to a law, which they characterise as “flagrantly unjust and oppressive in its operation, and wholly unsuited to the modern and mercantile requirements of the relationship between landlord and tenant.”—See *Appendix to Report*, page 153.

An Irish tenant-farmer, writing to me on this subject, says, “It is my decided opinion that the best bill which can possibly be framed will be considerably marred in its practical results, if the power of distress and priority of claim on the part of the landlord be retained. Such a power enables him to put on nearly what rent he wishes. It is a most obnoxious and fearful engine for evil in the landlord’s hands. True, the privilege is not often used, that is, distrains are not frequent. Few respectable landlords resort to the practice: they prefer getting up their land; but *they retain the power*, and I know instances where other creditors of the tenant are constantly held at bay by the landlord’s bailiff stepping in and making a formal or *pretended* seizure. This is unfair towards the general community, degrading to the tenants, and the fruit of one of the grossest pieces of class legislation. The landlords are the only members of the community who are privileged to pronounce judgment and to issue execution in their own cause.”

If the principle of mercantile contract is to have fair play, everything should, as far as possible, be removed which gives one party any superiority over the other, and thus interferes with the fair adjustment of the value of a farm between two parties standing on equal terms to make their bargain. It is evident that the priority of the landlord’s claim over the claims of other creditors must *pro tanto* lessen the credit of the tenant, and, to this extent, interferes with his obtaining banking accommodation or credit. It may



also be remarked that the right of distress has a strong tendency to induce the sub-letting of land. Except for this power, the tenant of a farm could not so readily obtain a profit-rent sufficient to induce him to place himself between the head landlord and the occupying tenants. It enables the middleman to raise the rent by the competition it induces, and to collect that rent, whenever the produce of the farm is sufficient to pay it and leave a bare subsistence for the occupier.

Goods taken in Execution.

LXIX. In case the Goods and Chattels of any Tenant shall at any Time be seized in Execution by any Creditor of such Tenant, the Landlord shall not, in respect of any Claim for Rent, be entitled to Priority as against the Execution Creditor, but shall, to the extent of One Years Rent, on making proof that such Rent is due, be entitled to share rateably with such Execution Creditor the proceeds of the sale of the Goods and Chattels seized in Execution as aforesaid.

It would be right to amend the Bankruptcy Acts, so as to make them apply to farmers, as they do at present to market gardeners.

Arrears of Rent.

LXX. No Proceedings at Law or in Equity shall be maintained for the Recovery of any Arrears of Rent which may have accrued due more than Six Years before the Institution of such Proceedings.

Registration of Leases.

LXXI. No Proceedings at Law or in Equity shall be maintained for the Recovery of any Rent reserved under any Lease which for any purpose requires to be registered or recorded, unless and until the same shall have been registered or recorded, as the case may be.

The object of this clause is to throw the burden of registering a lease on the landlord instead of the tenant. The landlord, being the superior, may be presumed to be better acquainted with legal proceedings than the tenant. He is the stronger party, and on him, therefore, should rest the responsibility of seeing that everything requisite for giving validity to his own acts is properly done. Besides the object of enforcing the registration of the lease, is not the security of the tenant, but the security of those to whom the landlord may at any time propose to assign or to mortgage his interest.



LXXII. All Actions for Non-payment of Rent, commenced within *Six Months* after the same shall have become due and payable, and all Actions of Ejectment for Recovery of the Premises on account of Non-payment of Rent, commenced within *Six Months* after a Year's Rent has become due, may be by Writ of Summons and Plaint in a Form and with Indorsements similar to those given in the Schedule to the Summary Procedure in Bills of Exchange Act, 1855, and upon such Writ, in case the Defendant shall not have obtained leave to appear and have appeared, the Plaintiff shall be entitled at once to sign final Judgment.

Action for Non-payment of Rent after Six Months Notice.

By these clauses the proceedings for recovery of rent, or for the recovery of the tenement in the event of the rent not being paid, will be assimilated to the proceedings for enforcing payment of a Bill of Exchange.

LXXIII. In any Action commenced for the Recovery of any Lands or Tenements, the Venue may be laid in any County which the Plaintiff thinks proper, subject to the provisions which affect the laying of the Venue in any Personal Action in the Superior Courts of Common Law.

Venue in Ejectment.

This, again, is an adaptation to questions respecting land, of the course of proceeding which prevails in other cases. If the mercantile principle of contract is to be fairly carried out, the legal remedies in the case of questions respecting land ought to be similar to those in commercial cases.

LXXIV. In any Action commenced by the Lessors or Reversioners, their Heirs or Assigns, for the Recovery of any Lands or Tenements which are held *pur autre vie*, if no sufficient Proof be made of the subsistence within *Three Years* before the Institution of such Action of the Life or Lives of the Person or Persons for whose Life or Lives the Lands or Tenements in question shall have been granted, the Presumption of the Continuance of life shall not be relied upon for a longer period than the said

Estates *pur autre vie*.



*Three Years*, and the Plaintiff shall be entitled to a Verdict as if such Person or Persons were dead.

The object of this clause is to throw upon the tenant the necessity of proving the existence of the life or lives on which the continuance of his tenure may depend. The burden of proof ought certainly to rest with the tenant, who has in general the chief interest in the continuance of the lease. The persons whose names are inserted in any lease for lives are usually nominated by the tenant, and he is much more likely to be well informed respecting them than the landlord is.

Redemption of  
Evicted Lands.

LXXV. In case any Decree for Possession or Writ of *Habere Facias Possessionem* shall have been executed for Non-payment of Rent, no application on the part of any Person claiming to be restored to the Possession of the Premises recovered under such Decree or Writ, shall be entertained, unless the Rent payable in respect thereof be less by one-third than the annual Value at which the same are rated under the Laws for the Relief of the destitute Poor in *Ireland*.

The object of this clause is to limit the right of redemption to those cases in which the tenant possesses so valuable an interest, that it may be presumed the non-payment of rent has arisen from mistake or accident. Mr. McDonnell, in his "Report on the Impediments to express Contracts as to the Occupation of Land in Ireland," presented to the Statistical Society, thus refers to the injurious effects of this right:—"When, however, lands have been recovered for non-payment of rent, and are actually in the landlord's possession, a temporary impediment to his leasing it again still remains, owing to the right of redemption which this act gives the tenant, or any one interested in the premises, if he pay the arrear of rent and costs of the ejectment within six months. This right may be used at any time till the last moment of that period has expired, and it is therefore necessary for the landlord either not to let again while the right is pending, or to make the letting subject to it. Improvement of any kind is, of course, out of the question till the possibility of redemption is gone, and till then the landlord's enjoyment is practically suspended."

Buildings erected  
by Tenant shall  
belong to and  
may be disposed  
of by him.

LXXVI. Subject to the Provisions hereinafter contained, every Building and Chattel Personal, erected on, or affixed to, the Freehold by



a Tenant at his sole expence, and which shall not have been so erected or affixed in pursuance of any obligation in that behalf, shall belong to, and may be removed or otherwise disposed of by the Tenant or his Executors or Administrators during the Tenancy, or within *Six Calendar Months* after the determination thereof; and during such period the Tenant, his Executors, Administrators, or Assigns may, at all reasonable times, enter upon the Premises for the purposes aforesaid: Provided always that the Landlord shall be entitled to reasonable Compensation for any unnecessary Damage occasioned to the Freehold by such entry or removal.

The object of this clause is to repeal completely the maxim that "whatever is once attached to the freehold becomes a part of the freehold," and to substitute instead thereof the more equitable rule that the ownership of all such erections or fixtures remains with the person at whose expense they have been erected. The maxim above referred to has been in part repealed by the 17th clause of the 23 & 24 Vic. chap. 154, and the present proposition is to make the repeal general. This arrangement will not meet all the cases in which tenants make improvements without a specific agreement with their landlords; but in the large number of cases in which buildings are erected, or walls, piers, etc. are built, it will secure for the tenant some compensation, as, if the buildings, etc., are really valuable, the landlord will no doubt agree upon a fair payment to the tenant, rather than have the valuable improvement destroyed. It may also be expected that the recognition of the tenant's right of property in everything that has been created by himself, and which can afterwards be detached without absolute damage to the land, will carry with it the recognition of his equitable claim to compensation for those improvements, which, from their nature, cannot be detached from the soil, and thus the repeal of the old feudal maxim, and the recognition of a more equitable rule of law, will have a wider effect than the mere legal right which it gives.

LXXVII. Subject to the Provisions herein-after contained, all Timber Trees of Oak, Ash, Elm, Beech, Fir, Alder, or other Trees which, after the commencement of this Act may

Timber Trees  
planted by Tenant  
may be cut and  
disposed of.



be planted by any Tenant, and which shall not have been so planted in pursuance of any obligation in that behalf, shall belong to, and may be cut, sold, and disposed of by the Tenant, or his Executors or Administrators, during the Tenancy, or within *Twelve Calendar Months* after the determination thereof; and during such period, the Tenant, his Executors, Administrators, or Assigns, may, at all reasonable times, enter upon the premises for the purposes aforesaid: Provided always that the Landlord shall be entitled to reasonable Compensation for any unnecessary Damage occasioned by such entry.

It is well known that the Timber Acts have failed, in many cases, to carry out the intentions of the Legislature, and, consequently, have not afforded that encouragement to the planting of Timber Trees which was expected. By the provisions of this proposed Act the declaration of the tenant, made within twelve months after the planting, would, unless disputed at the time, be conclusive evidence of ownership, and even if disputed, the question would be then settled, so that there would not be any danger of a lawsuit arising at the termination of the tenancy.

Things affixed to the Freehold, and Trees planted, by the Tenant to be Registered with the Clerk of the Peace.

LXXVIII. Provided always and be it enacted that every Tenant claiming to be entitled to any Building or Chattel Personal erected or affixed by him to the Freehold, or to any Timber Trees planted by him as aforesaid, shall, within *One Year* after such erecting, affixing, or planting, as the case may be, lodge with the Clerk of the Peace a Declaration in the form to be specified as hereinafter provided, and the Clerk of the Peace shall retain and record the same in manner hereinbefore provided with respect to Declarations relating to Improvements, and shall in like manner transmit to the Landlord a Notice of such Lodgment and a Copy of such Declaration: Provided always that nothing hereinafter contained shall in any manner limit or affect the right of any person to remove any trade or other fixtures, or any other thing which at present he may by law remove.



LXXIX. If the Landlord, so served with Notice as aforesaid, shall not dispute such Declaration, or institute and prosecute such Proceedings as are hereinafter provided for the impugning of the same, such Declaration shall be sufficient Evidence of the Ownership of the Tenant in the Buildings, Chattels Personal, or Timber Trees specified therein.

The Landlord to be served with Notice of such Registration.

LXXX. It shall be lawful for the Landlord within *Three Calendar Months* of such Notice and Transmission, as aforesaid, to bring all matters which he may dispute in relation to such Declaration before the Chairman, and the Chairman, without a Jury, shall hear and adjudicate upon all such Matters, and the Chairman's Adjudication thereon shall be final, and his Decree shall be conclusive Evidence of the Rights of Property therein declared, and a copy of such Decree, signed and certified by the Chairman, shall be lodged with the Clerk of the Peace, who shall retain the same and record it in manner hereinbefore provided, with respect to Decrees relating to Improvements.

The Landlord, if he dispute the same, to bring such dispute before the Chairman.

This notice to the Clerk of the Peace is provided in order that the evidence of ownership may be recorded at the time, so that it shall not afterwards be liable to any doubt.

LXXXI. Every Limited Owner shall be at liberty to Contract with a Tenant entitled to remove such Buildings and Personal Chattels, or to cut, sell, and dispose of such Timber Trees, as aforesaid, for the purchase of all the Tenant's rights therein ; and every Limited Owner who shall pay such Tenant the price agreed on for the Purchase of such Rights shall, in respect of such payment, be entitled to all the privileges conferred by this Act upon a Limited Owner who has paid a Tenant Compensation for Improvements.

Limited Owner may purchase Tenant's Rights in Fixtures and Timber Trees.



## PART V.

### JURISDICTION.

Judges of Landed  
Estates Court to  
make General  
Orders.

LXXXII. The Judges of the Landed Estates Court shall, from Time to Time, as to all matters within their Jurisdiction under this Act, make General Orders as to the Forms of Notices and other Documents, and as to the Payment of Fees, and as to the Conduct of Proceedings, and as to the Costs payable in respect of such Proceedings, and as to the Taxation of such Costs : Provided always that such General Orders shall not be of any validity until they have been sanctioned by the Lord Chancellor of *Ireland*.

Costs and Expenses.

LXXXIII. In every Proceeding which may come before it under this Act, the Court shall have full power and discretion as to the giving or withholding of Costs and Expenses, and as to the Persons by whom, and the Funds out of which, the same shall in the first instance or ultimately be paid, repaid, and borne, and may apportion the same among such Parties as it shall see fit.

Equitable Jurisdiction.

LXXXIV. In relation to all matters within its Jurisdiction under this Act, the Landed Estates Court shall have all the Powers, Authority, and Jurisdiction of a Court of Equity.

Appeal.

LXXXV. Every Order or Decision of the Judge made under this Act shall be subject to direct Appeal to the Court of Appeal in Chancery in *Ireland*, and to no other, and such Appeal shall be subject to the Regulations to which other Appeals from the Orders and Decisions of the Judge are subject.

Chairman of  
Quarter Sessions  
to make General  
Rules.

LXXXVI. The Chairmen of the Quarter Sessions of the several Counties in *Ireland*, or any Fifteen of them, shall from Time to



Time, as to all Matters within their Jurisdiction under this Act, prepare Forms of Notices and other Documents, and fix a Scale of Fees to be taken by Clerks of the Peace in respect of Business done by them under this Act, and make Regulations as to the Payment of such Fees, and as to the Conduct of Proceedings under this Act before such Chairmen, and as to the Costs payable in respect of such Proceedings, and as to the Taxation of such Costs: Provided always that such Forms, Scales, and Regulations shall not be of any validity until they shall have been sanctioned by the Chief Justice of the Queen's Bench in *Ireland*, the Chief Justice of the Common Pleas in *Ireland*, the Chief Baron of the Exchequer in *Ireland*, or by Two of the said Judges.

LXXXVII. The Commissioners of Public Works in Ireland shall, from time to time, as to all matters within the powers and authorities conferred on Valuers appointed by the said Commissioners in pursuance of this Act, prepare Forms of Notices and other Documents, and fix a Scale of Fees to be taken by such Valuers, in respect of any business done by them under this Act: Provided always that such Forms and Scale of Fees shall not be of any validity until sanctioned by the Lord Lieutenant in Council.

Commissioners of Public Works to fix the Remuneration of Valuers.

LXXXVIII. In every Proceeding had by an Arbitrator or Valuator under this Act, such Arbitrator or Valuator shall have full power to deal with the Costs and Expences incident to such Arbitration and Valuation, and to award the Payment thereof by such Party, and in such manner as shall appear just; and the Award of such Costs or Expences shall form part of his Valuation or Award as the case may be, and shall be specified therein accordingly.

Valuator to have power to deal with Costs and Expenses.

LXXXIX. It shall be the duty of the Clerk of the Peace to see that all Notices, Declara-

Notices, etc., if recorded, not to be afterwards objected to.



tions, and other Documents, lodged with him under this Act, shall be in the proper form, but no Notice, Declaration, or other Document, once recorded by the Clerk of the Peace under this Act, shall afterwards be objected to on the ground of informality alone.

Service of Notices.

XC. Any Notice or other Document required by this Act to be served upon any Person may be served on such Person by leaving the same at his usual or last known Place of Abode, or if the Court or Valuator should think proper, by sending it through the Post in a prepaid registered Letter addressed to such Person at his usual or last known Place of Abode.

Notices by Post.

XCI. Any Document served by Post as aforesaid shall be posted in such Time as to admit of its being delivered in the due Course of Delivery within the Period (if any) prescribed for the Service thereof, and in proving Service of such Document it shall be sufficient to prove that such Document was properly directed, and that it was put as a prepaid registered Letter into the Post Office.

Repealing Clause.

XCII. From and after the commencement of this Act, "The Act to amend the Laws for the Encouragement of Planting Timber Trees," passed in the Parliament holden in the 23rd and 24th years of George III. and "The Landed Property (*Ireland*) Improvement Act, 1860," are hereby repealed: Provided always that no Act done or Proceeding taken under the said Acts previous to the commencement of this Act, shall be in any Manner invalidated by such Repeal, but for the Purpose of every such Act or Proceeding the said Acts shall still remain in Force.

Commencement  
of Act.

XCI. This Act shall come into operation on the 1st day of January, 1868.