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# THE ULSTER TENANT-RIGHT CUSTOM:

*ITS ORIGIN, CHARACTERISTICS, AND POSITION*

*UNDER THE LAND ACTS.*

A Paper read before the Statistical and Social Inquiry Society of  
Ireland,

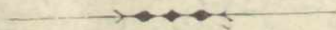
ON TUESDAY, 30th JANUARY, 1894.

BY

WILLIAM F. BAILEY,

BARRISTER-AT-LAW,

Legal Assistant Land Commissioner.



DUBLIN:

SEALY, BRYERS & WALKER, 94 MIDDLE ABBEY-STREET.

(A. T. AND CO., LTD.)

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# Houses of the Oireachtas



## THE ULSTER TENANT-RIGHT CUSTOM.

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FEW subjects connected with Irish land have been the cause of more discussion than the Tenant-right Custom of Ulster. For many years before 1870 a controversy was carried on with respect to the attributes of the custom, and whether it possessed sufficiently definite characteristics to warrant its statutory sanction. From the sitting of the Devon Commission, in 1844, to the passing of the Land Act of 1870, opponents of the legislative recognition of the Custom alleged that it was merely an indulgence on the part of the landlord, and that it would be unjust and confiscatory to legalise it, and even impolitic to discuss it. As everybody knows, Parliament, by the Land Act of 1870, ended the controversy by legalising the custom, and any discussion that has since taken place has mainly been concerned with the interpretation of the governing statutes. The passing of the Land Acts of 1881 and 1887 affected the occupiers of land in all parts of Ireland in such a manner as to render the Ulster tenant-farmers less dependent on the recognition and preservation of the peculiar custom which he previously justly regarded as essential to the security of his tenure. The Land Act of 1881 gave the rights of "free sale" and "fixity of tenure," which the Ulster Custom, to a certain extent secured, to the agricultural tenants of all Ireland, and added the right to a "fair rent" which the Custom claimed, but had hitherto no satisfactory method of enforcing. It would be a mistake, however, to think that the existing Irish Land Code has obviated the necessity for preserving the Ulster Custom. It still possesses vitality and attracts peculiar privileges, and I think that it will be useful, as well as interesting, to consider the nature and present position of that system of land tenure under which so large a section of the Irish agricultural community still holds. As a generation has almost passed by since the discussions to which I have referred have closed, it will be well to deal shortly with the origin of the Custom as well as its peculiar characteristics. In fact such an inquiry is almost essential when dealing with such a subject, even from a purely legal stand point, as the legislature studiously refrained from attempting to define the Custom when giving it a statutory sanction. Accordingly, to understand it aright and to give a proper interpretation to the statutes affecting it, we must make ourselves acquainted with its history and its attributes.



I.—*Origin of the Ulster Tenant-right Custom.*

The origin of the Ulster Tenant-right Custom is wrapped up in considerable obscurity. Inquirers, seeking to throw light on the subject, have arrived at various conclusions. It is now, however, generally conceded that the Custom arose in the early part of the 17th century—in the reign of James I.—and was the direct outcome of the plantation of Ulster. That plantation originated in the insurrections of the two great native chieftains of the north, the Earls of Tyrone and Tyrconnel. On their flight and attainder five hundred thousand acres of land, in Ulster, were forfeited to the crown. Thereupon King James, on the initiative of Lord Bacon, determined on settling the lands which had thus come into his hands on a system that would secure the crown from future difficulties with the native Irish. The Lord Deputy, Sir Arthur Chichester, described by Hallam as “a man of great capacity, judgment and prudence,”\* was entrusted with the carrying out of the new plantation scheme. It was provided that the forfeited lands should be divided among three classes of “undertakers,”—(1) English and Scottish, who were bound to plant English or Scottish tenants; (2) Servitors, or government officials, who might plant with English, Scottish, or Irish; and (3) natives of Ireland who were to be made freeholders. Stringent orders and conditions were made, in accordance with which the undertakers were to hold. They were divided as to tenure under the crown into three classes—holders of 2,000 acres, of 1,500 acres, and of 1,000 acres. Each was to settle on his lands under tenants from England or Scotland, and in some cases native Irish. But it was required that “the said undertakers shall not demise any part of their lands at will only, but shall make certain estates for years, for life, in tail, or in fee-simple.” It was also provided that *certain* rents were to be reserved, but the amount of the rents was not specified, except in the case of the superior rents to be paid to the crown by the undertakers themselves.

In addition to the undertakers proper, several English and Scotch lords applied for grants of Ulster lands, and many of them (mainly Scotch) received upwards of three thousand acres each. English, Welsh, and Scottish settlers were now brought over and planted on the land which had been laid out for their reception. The customs and systems of land tenure in vogue among these settlers at home were not very different to those existing among the native Irish. “The gaelic-speaking natives,” says Dr. Sigerson, in his *History of Irish Land Tenures*, “bought and sold among themselves; the landlord or agent was, doubtless, content to receive the rent from any comer.” The English settlers who were brought over were accustomed to a secure tenure. Most of them were from districts in which the copyhold tenure prevailed. At this period of English history, copyholders possessed a certain, and well-defined tenure,

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\* Hallam, *Constitutional History of England*, ch. 18.



and could not be ejected without cause.\* The “conditions to be observed by the undertakers” provided for the creation of manors, and the holding of courts baron. Hence it is natural to assume that the intention of the government was that the tenure which accompanied such institutions in England should also attach to them in Ulster. One of the Fermanagh undertakers, Thomas Blenerhassett, in his *Exhortation to Fayre England* explains the manner of men needed for colonization in Ireland. He warns off poor indigent fellows, without faculty or money, who would only starve, and apostrophising those whom he would have as colonists in Ulster, says:—

“Art thou an husbandman, whose worth is not past ten or twenty pounds? Go thither; *those new manor-makers will make thee a copyholder*; thou shalt whistle sweetly and feed thy whole family, if they be six, for sixpence a day.”†

It would appear evident that the settlers who were brought over by the undertakers were given, or at any rate promised, a tenure not inferior to that of English copyholders. The originators of the Plantation unquestionably intended that secure tenures should be given to the tenants created under it. Sir John Davis, Solicitor-General, and chief adviser to Chichester, had recommended that an act should be passed compelling “every great lord to make such certain durable estates to his tenants, which would be good for themselves, good for their tenants, and good for the commonwealth.”‡ Some years later (1610), Chichester issued a proclamation requiring every landlord “to covenant to make certain estates to the undertenants, with reservations of certain rents;” and he subsequently recommended that as long as the Plantation landlords “receive their rents from the natives, they should never remove them.” The result of the Lord Deputy’s action was, as we have seen, that in every grant a condition was inserted binding the landlord under pain of forfeiture to make “certain estates to their tenants at certain rents.” Here we have the principle of fixity of tenure.

But strange as it may appear, it is not improbable that the Ulster Tenant-right custom acquired its ultimate character as a result of the breach of this very condition. The undertakers could not but acknowledge that the tenants who had come over had done so under the promise to obtain security of tenure. The grants under which

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\* See William’s *Law of Real Property*, Part iii. Lord Coke estimated that in his day (reign of James I.), two-thirds of the land of England were subject to copyhold tenure. Copyhold lands were lands held by copy of court roll, that is, the *title* to such lands was evidenced by the *copy* of the *roll* or book in which an account was kept of the proceedings in the *Court* of the *Manor* to which the lands belonged. In law a copyhold was originally an estate at the will of the lord of the Manor, but this will of the lord gradually came to be absolutely controlled by the *Custom* of the *Manor*, which formed the law of the tenure; copyhold was, therefore, said to be held *according to the custom of the manor* to which they belonged, for “custom is the life of copyholds.” They resemble, in many particulars, the *feu-rights* of Scotland.

† *Sigerson’s History of Irish Land Tenures*, p. 56. Blenerhassett’s book or tract seems to have been a kind of emigration agent’s pamphlet, similar to those we now see published by American and Australian land speculators.

‡ *Calendar of State Papers (Ireland)*, 1603-1606, p. 160.



they themselves held, required that such security should be given. It was the custom of such classes of tenants at the period to hold under secure estates or tenures in their farms. Many of the proprietors undoubtedly sought to evade their obligations, but they could not prevent the customary rights and privileges with which their tenants were familiar, from being put into practice. These rights and privileges contained not merely the elements of the Ulster Custom—they really comprised the essentials of the Custom as we know it in its fullest development. A struggle which, to a certain extent, has lasted to our own day, was maintained between the supporters of the Custom and those of the proprietors who desired its extinction, and to the varying fortunes of that struggle we must attribute the particular forms which the Ulster Tenant-right Custom finally assumed.

The government of King James I. quickly discovered that the undertakers were not carrying out the conditions required of them. Accordingly, a special commissioner—Captain Nicholas Pynnar—was sent to Ulster in 1618, to examine and report, and the evidence collected by him made it evident that the conditions of the grants, that “certain estates” should be given to the tenants were not fulfilled.\* To this circumstance was attributed the failure of the attempt made by the government to pacify and settle the province. King James, on receiving the report of Pynnar, acted promptly, and proceeded to “forfeit” for breach of their covenants several of the patents which had been given, including those made to the Irish Society in Londonderry. The feeling of insecurity which had grown up owing to the failure of some of the proprietors to carry out the obligations which had been imposed on them, led to the departure of many of the English farmers who had come over under the Plantation. They were well-to-do men who had commenced to improve their land on the strength of the undertakings under which they had come to Ireland. When they found that the fixity of tenure promised was not conceded they gave up in disgust in many cases and determined to return to England. In this circumstance, according to some inquirers, we have the origin of the Ulster Custom. A large number of Scottish farmers had also come over under the Plantation. They mainly concerned themselves with tillage, while the English settlers, when they found their tenure insecure, merely used their lands for pasture. The Scottish settlers having established themselves in their farms, on which they effected large improvements, were determined to maintain their position, and there is good ground for believing that they largely purchased the interests of their English neighbours who had resolved to leave the country.† As this hap-

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\* Pynnar’s “Survey” in Harris’s *Hibernica*. See extracts given by Mr. Butt, *Irish People and the Irish Land*, p. 37, and Mr. Barry O’Brien’s *Parliamentary History*, etc., p. 153.

† Although the new Ulster proprietors objected to giving to the settlers all the privileges of the English copyholder, they would naturally hesitate at depriving them of every benefit, and would thus not dispute the right of sale. The method of alienating or assigning copyholds has a remarkable similarity to the manner in which assignment is effected under the Ulster Custom. The copyholder



pened about the time of Pynnar's report and the forfeitures which resulted from it (1617-1620), the Ulster proprietors were only too anxious to obtain as good tenants as possible in exchange for those who were throwing up their farms, and probably assented, if they did not actively encourage, the purchase of the good-will and improvements of the English farmers by the Scotchmen, who had already shown their excellence in husbandry. The Scottish farmers having, without objection, acquired by purchase the good will and improvements in the farms, were not the men to allow this property to pass from them without a struggle. Under the circumstances here set forth, we have perhaps for the first time the Ulster Custom brought into operation. For many years we have no evidence which would lead us to believe that the landowners made any attempt to check or destroy this tenant-right Custom of free sale. In more recent times, however, there is evidence that such attempts were made, and several witnesses before the Devon Commission (1844), gave evidence of efforts on the part of landlords in Down and other parts of Ulster, to put an end to the Custom. These were always vigorously resisted, and as a rule, successfully. Mr. Hancock, Lord Lurgan's agent, in his evidence before the Devon Commission, referring to Co. Armagh, said :—

“ The disallowance of tenant-right, as far as I know, is always attended with outrage. A landlord cannot even resume possession to himself without paying it. In fact, it is one of the sacred rights of the country, which cannot be touched with impunity; and if systematic efforts were made among the proprietors of Ulster to invade tenant-right, I do not believe there is force at the disposal of the horse guards sufficient to keep the peace of the province; and when we consider that all the improvements have been effected at the expense of the tenant, it is perfectly right that this tenant-right should exist: his money has been laid out on the faith of compensation in that shape.

Mr. Hancock, indeed, was of opinion that tenant-right had its origin in the fact that the settlers at the time of the Plantation, “ built their own houses and made their improvements at their own expense, contrary to the English practice.” \*

The first section of the Land Act of 1870, in legalising the Ulster custom, refers to it in the plural as “ the *usages* prevalent in the province of Ulster.” The word “ usages ” was at first in the singular

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surrendered the lands into the hands of his lord, who thereupon admitted the alienee.— *Williams' Real Property*, Part iii., ch. 2. See authorities used and collected by Mr. Barry O'Brien, in his *Parliamentary History of the Irish Land Question*.

\* Much information respecting the Ulster Custom is contained in the evidence given before the Devon Commission (1844); the Land Tenure Committee of House of Commons (1865); the Bessborough Commission (1880). See also Mr. O'Connor Morris's *Letters on the Irish Land Question*, and work on *The Land Act of 1870*. Mr. Butt's book on *The Land Act of 1870*. Messrs. Ferguson and Vance *On the Tenure and Improvement of Land in Ireland* (1851); Lord Dufferin *On Irish Land*; W. Neilson Hancock, *Impediments to Irish Industry*; Vincent Scully, Q.C., *The Irish Land Question* (1851); Dr. MacKnight's *Statement*, given in evidence before the Bessborough Commission, by Mr. McElroy.



and was changed into the plural when the bill was passing through parliament. This addition of the "s" converting the word from the singular to the plural, made a great change in the interpretation of the statute, and undoubtedly weakened the position of the Ulster farmers. Although tenant-right varied greatly in different estates, it was considered to be historically the one Custom, with a few well defined attributes—which may be practically summed up as *fixity of tenure*, at a *fair rent* with the right of *free sale*. The plural word "usages" destroyed this general definition, and reversed the method of interpretation. Instead of treating it as *one* custom which had been contracted, reduced or impaired in individual instances, the section of the statute now legalised a variety of different customs, of greater or less potency, which were classed under the general denomination of the usages prevalent in the province of Ulster. The immediate result of this amendment in the act was that the onus was now shifted on to the tenant of proving what were the privileges to which he was entitled, and it was for him to show how much of the essential characteristics of the Custom he still preserved. Had the word been left in the singular, the onus of proof would have been the other way. The general characteristics of the custom would have been assumed and the obligation would have lain on the landlord of showing the extent to which they had been curtailed in each particular case.

Lord Devon summing up the evidence given before the commission to inquire into the occupation of land in Ireland, of which he was chairman says :—"It is difficult to deny that the effect of this tenant-right system is a practical assumption by the tenant of a joint proprietorship in the land, although those landlords who acquiesce in it do not acknowledge to themselves this broad fact, and that the tendency is gradually to convert the proprietor into a mere rent-charger, having an indefinite and declining annuity, or the lord of a copyhold." \* Tenant-right as it then existed was a danger to the property of the landlord in the judgment of Lord Devon, and that conclusion he based on the opinion that "the present tenant-right of Ulster is an *embryo copyhold*." Now if the view I have stated of the origin of tenant-right is correct, the tenure of the Ulster farmer as originally planned was of a *customary* character akin to that of the English copyholder, and if the decisions of the Irish courts, in the 17th and 18th centuries, had proceeded in the same lines as those of the English in the 15th and 16th centuries, the Ulster farmer, instead of having what Lord Devon calls "an embryo copyhold" in the year 1844 would undoubtedly have had a certain tenure, similar to the English copyhold, with rights and privileges recognized, defined, and enforced by the common Law of Ireland.†

\* Kennedy's *Digest of the Evidence given before the Devon Commission*, p. 2.

† In the reign of Edward I. tenants of English manors held merely at the will of their lords; before the reign of James I. they had through the decision of the judges, acquired a secure tenure perfectly independent of their lords, so long as they performed carefully "what duties and services soever their tenure doth exact and custom both require."—(Sir Edward Coke). A copy-



## II.—Attributes of the Ulster Tenant-right Custom.

Having discussed the origin of the Ulster Tenant-right Custom, I would now consider its attributes—its rights and its qualifications. The Ulster Custom, as is well known to all who have had occasion to study it, and as I have pointed out, varies greatly on individual estates, and in different districts. But in all cases it has two essential characteristics, and may be defined as (1) the right of the tenant to security of possession as long as he pays his rent, and (2) the right to sell his good will in the holding should he desire, or find it necessary to do so. Mr. Hancock, agent to Lord Lurgan, defined tenant-right before the Devon Commission as follows:—

“Tenant-right I consider to be the claim of the tenant and his heirs to continue in undisturbed possession of the farm, so long as the rent is paid; and in case of ejectment, or in the event of a change in occupancy, whether at the wish of the landlord or tenant, it is the sum of money which the new occupier must pay to the old one, for the peaceable enjoyment of his holding.”

The “essentials” of the Ulster Custom according to the present Master of the Rolls (in the case of *M'Elroy v. Brooke*, 16 Law Report, Ireland), are

“the right to sell, to have the incoming tenant, if there be no reasonable objection to him, recognized by the landlord, and to have a sum of money paid for the interest, and the tenancy transferred. I think if any of these ingredients are absent, the essentials of the Ulster Tenant-right Custom are wanting.”

To interpret properly these rights—fixity of tenure and free sale—we must add two qualifications. The landlord should not arbi-

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holder had in fact as good if not a better title than a freeholder—*Williams' Real Property*, Part 3.

It would be a great mistake to suppose, as is often done, that the system of dual ownership of the land, which is really the essence of the Ulster Custom, is a thing peculiar to Ireland and opposed to the institution of private ownership in land as recognized by the laws of other countries. The principle of “Dual Ownership” can be traced back to an age far older than the feudal system, and we find it in what Sir Henry Maine calls “the Roman duplication of domainial rights.” In fact the form of property in land known to the Roman law as *Emphyteusis*, perhaps, originated that right to a dual ownership in the land which has been recognized by most of the modern agrarian systems of Europe that are based on the principles of Roman law. Under the system of *Emphyteusis* the proprietor originally admitted the tenant to hold by contract. A continued occupation gradually came to be recognized as giving a qualified proprietorship in the land. The *Emphyteuta* was regarded as a true proprietor, and was protected from disturbance as long as his quit-rent was punctually paid. The landlord or lessor, however, had a power of re-entry on non-payment of rent, a right of pre-emption in case of sale, and a certain control over the mode of cultivation. We have, therefore, in *Emphyteusis* a striking example of double ownership. The Ulster Tenant Right Custom, as I have described it, possesses many analogies to the Roman system. To the principles recognized by Roman Law we can trace many of the curious customary tenures of modern Europe, such as the *Metayer* system, so common on the continent of Europe at the present time.—See Sir Henry Maine's *Ancient Law*, ch. 8.



rarily raise the rent, but he was entitled to a rise should circumstances render it just. So also he was entitled to a veto on the purchaser of the holding should he have a reasonable objection to him. Where the tenant-right was recognized in full force rises of rent were very cautiously made, and the right of the landlord to object to the purchaser was rarely exercised.\*

Opponents of the Custom often alleged that the tenant merely sold the value of the improvements which he had made on the holding. This view was put forward by Lord Dufferin, before the Land Tenure Committee of the House of Commons, in 1865, but he subsequently acknowledged that the "good will" of the farm was also disposed of. "The tenant-right" said Mr. Butt "does not depend upon the fact of improvements having been made. It is not measured by the value of these improvements. The purchase of the tenant-right of an outgoing tenant is the purchase of a right of occupancy in a farm."† Mr. Butt would appear to me to go too far in this statement. I think that most people acquainted with the Custom will be of opinion that the sale of the tenant-right in a farm includes both the right of occupancy or good will, and also the improvements which have been made on the holding. Thus if a tenant builds a valuable dwelling house on a farm, which he subsequently sells under the custom, it cannot be contended that the purchaser of the "good will" does not also acquire, as part of his purchase, the ownership of the dwellinghouse.‡

In some cases a rise of rent was demanded from the purchaser before his name would be entered on the estate books. In many instances, also, the landlord required the sale to be made to an adjoining tenant, or to a tenant already located on the estate. In most cases arrears of rent due by the outgoing tenant were paid by the purchaser of the tenant-right, and usually deducted by him from the purchase-money. I have, however, known of numerous instances in which the arrears of rent were required to be paid in addition to the purchase-money agreed upon between the parties, before the name of the purchaser would be entered in the estate books.

On many estates the practice grew up of limiting the amount which could be paid for the tenant-right. Thus, on several estates in Ulster, £10 an acre was fixed as the maximum price. The purchase-money had to be paid into the estate office, and was handed over by the agent to the outgoing tenant.§ At the same time the purchaser had to sign an agreement that if the landlord required

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\* Judge Longfield, *Cobden Club Essays*, p. 44, bears witness to this fact which will be confirmed by all persons having experience of the Custom.

† Isaac Butt, *The Irish People and the Irish Land*, p. 230.

‡ Immediately before the passing of the Land Act of 1870 two sales of Tenant-right took place on Lord Powerscourt's estate, near Benburb (subsequently purchased by Mr. James Bruce) which illustrate this statement. The sales took place at the same time and the farms lay in the same locality. One farm, belonging to John Gilmore, was sold at £8 an acre, and the other, belonging to John Kidd, brought over £20 an acre. The quality of the soil was the same, but the first was comparatively in an unimproved state, while the other was in excellent condition and well improved.

§ Compare method of alienating copyholds to which I have already referred.



the land *for his own use*, he could have it on the payment of the sum of £10 per acre. It would appear, however, that the landlord was not entitled to buy up the land at this rate and sell it to another.

### III.—*The Ulster Custom under the Land Acts.*

It now remains for me to consider shortly the position under the Land Acts of 1870, and 1881, of tenants holding under the Ulster Tenant-right Custom. The Act of 1870 began by giving legislative sanction to the custom. Section 1 commenced:—

“The usages prevalent in the province of Ulster, which are known as, and in this act intended to be included under, the denomination of the Ulster Tenant-right Custom, are hereby declared to be legal, and shall in the case of any holding in the province of Ulster proved to be subject thereto, be enforced in manner provided by this act.”

The manner provided was the service of a claim for compensation for the loss sustained by any breach of the custom under section 16 of the act. The method of legalizing the custom here adopted, as I have already pointed out, led to the raising of numerous difficulties when the claims for compensation came before the law courts. I need not now go into the various questions that came up for decision. Mr. Cherry, in his valuable work on the Land Acts, summarizes the most important of them. The first section of this Act of 1870 also seemed to be framed with the intention of gradually extinguishing the custom, as it provided that where the landlord in any way acquired the tenant-right in a holding, the holding should cease to be subject to it thenceforth. The section also provided that if the tenant of an Ulster Tenant-right holding applied for and obtained compensation under any other section of the act, the holding should not again be subject to the Custom.

There is very little else in the Act of 1870 affecting the Ulster Custom. The result was that although the Custom was given a legal sanction, there was no effective method prescribed of preventing rises of rent to such an extent as to take away all benefit that was supposed to flow from the existence of the Custom. An experience of ten years showed this, and the evidence given before the Bessborough Commission was held to prove that if parliament intended to preserve the Custom effectively, some further legislation was necessary.\* We accordingly come to the provisions of the Act of 1881, which, to a large extent, were the result of the Bessborough Commission Report. That act, as everybody knows, sought to confer on all the agricultural tenants of Ireland *fixity of tenure*, *free sale*, and *fair rents*. These were the benefits that the advocates of the custom had so long struggled for, and which they maintain were the essential elements of the custom where it was preserved inviolate. Many persons are under the impression that the result of the passing of the Land Act of 1881 was to do away with all

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\* See the evidence given by Mr. M'Elroy, of Ballymoney, Mr. R. G. Hill, of Lisburn, Mr. Joseph Perry, of Downpatrick, etc., etc.



necessity for any longer preserving the custom, inasmuch as all that had been hitherto struggled for was conceded to Ulster tenants, as well as to those of the rest of Ireland. But such an opinion is entirely erroneous. Anyone acquainted with the provisions of the Act of 1881 will see that the benefits that still accrue from the preservation of the custom are very considerable.\*

The first section of the Act of 1881 gives to every tenant to whom the statute applies the right to sell his holding, but subject to the right of the landlord to purchase the tenancy at a price to be fixed ultimately by the court as the "true value" of the holding. The tenant of a holding subject to the Ulster Custom can still sell under the Custom, and is not obliged to serve the notices required by the section. Consequently, in his case, the landlord is not entitled to get the "true value" fixed by the court, but has to pay the full market value, unless the custom on the particular estate otherwise provides. So also, in ordinary cases, where a tenant applies to have a fair rent fixed, the landlord may require the court to fix a "specified value" on the holding, at which value he is entitled to pre-empt should the tenant wish to sell his tenancy during the statutory term. This provision does not apply to holdings subject to the Ulster custom, and in their case no "specified value" can be fixed. Again, a tenant obliged to quit his holding during the continuance of a statutory term in consequence of the breach of any of the statutory conditions laid down in section 5 of the act, is not entitled to compensation for disturbance (section 13, sub-section 6). On the other hand, a tenant holding under the Ulster Tenant-right Custom is entitled to the benefit of the custom notwithstanding the breach of a statutory condition, and the consequent determination of his tenancy (section 20, and sub-section 4).

The most important privilege accruing to the tenant of an Ulster Tenant-right holding as distinguished from the tenant of a holding subject to the ordinary law, is that the former tenant in having a fair rent fixed should not be subjected to the provisions and limitations imposed by the 4th section of the Act of 1870 as read into the fair rent section of the Act of 1881, under the judgment of the Court of Appeal in the case of *Adams v. Dunseath*. That decision, as is generally known, made the right to exemption from rent on a tenant's improvements synonymous with the right of the same tenant to obtain compensation for improvements on quitting his holding. The result is that all the exceptions and limitations to that right contained in the Act of 1870 (section 4) have to be considered in fixing a fair rent under the Act of 1881.

Thus, for example, a tenant is held to be compensated in law and must consequently be rented on any improvements made before 1870, except permanent buildings and reclamation of waste lands; or on any improvements made where the lease or contract excluded any claim for compensation on the tenant quitting the holding; or in respect of any improvements made by a tenant holding under a lease for thirty-one years or upwards, except permanent buildings,

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\* See *Cherry's Land Acts*, p. 226.



reclamation of waste lands, and unexhausted manures. So, also, in the case of a tenancy under the ordinary law, where the tenant has made any improvements before the Act of 1870, the court, in fixing a rent must, in reduction of the claim of the tenant, take into consideration the time during which the tenant has been in enjoyment of such improvements; also, the rent at which the farm has been held and any benefits the tenant may have received from the landlord in consideration of the improvements. The tenant of an Ulster Custom holding should not be subject to any of these provisions. To quote the judgment of Lord Chancellor Law in *Adams v. Dunseath*:

“The Ulster tenant, with his custom, had nothing to do with the fourth section of the Act of 1870, or any of its qualifications. His right was to sell his holding, improvements and all, and that for his own absolute use. It was never, as far as I know, contended with respect to such holding that the landlord could fairly ask for increased rent in respect of improvements made before 1870, and subsequently enjoyed, on the ground that if the tenant had been claiming compensation from him under section 4 of the Act of 1870 (which he never did), the landlord could have insisted on having some abatement from the real value of these improvements because of the tenant's enjoyment of them.”\*

Of course the definition of the word “improvements” adopted by the court in *Adams v. Dunseath*, will apply to the fixing of a fair rent in the case of an Ulster custom holding as well as in the case of a holding under the ordinary law. The fact that the rule limiting the right to deduction from rent on account of improvements, which arises from the application of the compensation clause of the Act of 1870 to the fair rent sections of the Act of 1881, does not apply to Ulster custom holdings, however, makes a very important distinction in favour of such holdings. It excepts them from many disabilities that apply to tenancies not subject to the custom.

I have here endeavoured to give a short, and I will venture to hope, accurate account of the peculiar system of land tenure that prevails in the north of Ireland. I have briefly traced its origin, described its characteristics, and shown the position it holds under the existing Irish land laws. To this custom much of the progress and prosperity of the north of Ireland is attributed by its supporters, and, undoubtedly, the farmers holding under it are conspicuous for self-reliance, determination, and untiring industry.†

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\* See also judgment of Chief Baron Palles.

† I have not in this paper referred to the usages similar to the Ulster Custom existing in other parts of Ireland, and which were legalized by section 2 of the Act of 1870, and an example of which is to be found on Lord Portsmouth's estate in Wexford. These customs merit separate treatment.





# Houses of the Oireachtas







