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MR. MORLEY'S

LAND ACTS COMMITTEE REPORT,

AND

MR. KILBRIDE'S

LAND TENURE BILL,

WITH THE

OFFICIAL RECORD OF THE IRISH VOTES IN THE DIVISION AGAINST THE SECOND READING OF THE BILL (11TH APRIL, 1894),

AND

AN INTRODUCTION

BY

MR. SEXTON, M.P.

IRISH NATIONAL FEDERATION,
24 RUTLAND-SQUARE, DUBLIN.

PRICE SIXPENCE.

1895

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DOLLARD, PRINTINGHOUSE, DUBLIN.

January, 1895.

INTRODUCTION.

THE Select Committee on the Irish Land Acts, which sat last Session—with Mr. John Morley as its Chairman—was appointed by unanimous resolution of the House of Commons, to inquire into and report upon the principles and practice of the Land Commissioners and County Court Judges, in relation to Fair Rent, and Free Sale. The Committee was further instructed, not only to report the facts of the case, as established by the evidence, but to suggest such improvements as might be deemed desirable, either in law, or in the practice of the Courts.

This latter instruction, accepted by all parties (it certainly was contested by none), gave notice to all concerned, at the very outset, that the Committee was charged to advise the House with respect to further legislation on the Irish Land question. Hence, the Report of the Committee, regarded in its most striking aspect, is the framework of a future Statute. Its decisive importance is due to its character, as the verdict, upon evidence, of the regular Parliamentary tribunal, on the question, referred to it in explicit terms by the House, what amendments of the Irish Land laws are required?

Owing to two unquestionable facts of great significance connected with the Report, it may be regarded as an instrument of extraordinary value in the work of legislative reform.

The first of these circumstances is that the Report is founded altogether upon official evidence. The House directed the Committee to inquire into the principles and practice of certain officials—namely, the Irish Land Commissioners and the Irish County Court Judges, as applied by them in their administration of the laws of Fair Rent and Free Sale. This duty the Committee most effectually discharged by examining those functionaries themselves. No fewer than fourteen officials were heard and cross-examined by the Committee. Their evidence was taken in such exhaustive detail, and so minutely sifted in cross-examination, that it occupied twenty-seven sittings, and the record of it fills six hundred pages of a folio volume. All grades of the Administrative and Judicial system were directly represented in evidence. The witnesses included four lay Assistant-Commissioners, three legal Assistant-Commissioners, two County Court Judges, one County Court Valuer, the Judicial member of the Land Commission, another learned member of that body, a Land Commission Valuer, and a Judge of the Supreme Court of Appeal. Such pains were taken to ascertain exactly how the law is applied by the Land Commission and its subordinate courts, and how the law is interpreted

by the Land Commission, and, in the last resort, by the Supreme Court of Appeal, that five days were given to the evidence of one of the legal Sub-Commissioners, Mr. W. F. Bailey ; five days also to Mr. Justice Bewley ; and three days to Lord Justice FitzGibbon's account of the exercise of the final appellate jurisdiction by the Supreme Court. So far, therefore, from depending in any degree whatever upon the evidence of parties, whether landlords or tenants, whose personal interests are at stake, the Report of the Morley Committee is drawn, wholly as to its facts, and substantially as to its recommendations, from the testimony of experts appointed by the Crown to interpret or administer the law. A judgment delivered upon evidence of this character must exercise a far more powerful influence in Great Britain and in Parliament than if it were founded upon a mass of irreconcilable evidence, given by classes whose interests are opposed.

The other remarkable circumstance to which I would refer, as giving peculiar value to the Report, is that it embodies the unanimous verdict of the representatives of four political parties or sections, out of five at present existing in the House. The Committee was composed of seventeen members, and according to the Parliamentary rule by which Select Committees are constructed in strict proportion to the relative strength of parties in the House itself, nine of the seventeen members were taken from among those regarded as usually acting with the Government, and eight from the Opposition. The majority of nine was composed of four British Liberals, four members of the Irish Party, and one Parnellite member. The minority of eight was made up of one member put on by the Liberal Unionist section, Mr. T. W. Russell, and seven members nominated by the Tory Party, including Mr. William Kenny, Q.C., who, though usually classified, I believe, as a Liberal Unionist, accepted nomination to act in the place of Mr. Smith-Barry, one of the Tory seven originally nominated, who could not, or would not, serve. When a party question is referred to a Select Committee, the usual consequence is a party vote on the Report, and if the Land Question had been treated as a party question, and if the usual consequence had followed in the present case, there would have been eight votes for the Report, and eight against it, and it would have been carried only by the casting vote of the Chairman, who does not vote at all unless when there happens to be a tie. But the representative of the Liberal Unionist Party, Mr. T. W. Russell, acted with the majority, agreed to proceed with the Chairman's Draft Report, and supported it as amended. The consequence was that the Report, instead of being carried merely by the Chairman's vote, as would have happened in the ordinary case, was adopted by a majority of two without the Chairman's vote, and this majority included the representatives of the Liberal Party, and those of the Irish Party, the representative of the Liberal Unionists, and the representative of the Parnellites, whilst the minority against the Report included none but the nominees of the Tory section of the Unionist Party. The retreat

of the Tories in a body from the Committee-room on the 14th of August, upon the rejection of that trifling production, Mr. Brodrick's Draft Report, was an ill-considered manœuvre, for instead of diminishing in the slightest degree the force and value of the Report of the majority, it fastened attention upon the fact, of good augury for the future Bill, that whilst the majority represented a good deal more than the majority of the Government in the House, the minority represented a good deal less than the ordinary strength of the Opposition.

But whilst the Report, as a foundation upon which to construct a Bill, is strengthened, both by the character of the evidence, and by the composition of the majority, there are manifest reasons why those great bodies of tenant-farmers in Ulster, whose representatives in Parliament are members of the Tory Party, should be warned at once, and in the plainest way, of the nature of the obstacles ahead. They must be made aware of the necessity that challenges them to ascertain the position of their representatives on the great questions rendered urgent by the Morley Report, and to make it plain to the House of Commons, and equally plain to the House of Lords, that Unionist farmers in Ulster, who suffer as much by the present state of the law, from exclusion, over-renting, and loss of the value of improvements, as any other tenants in Ireland, are quite as determined as any of the rest that the substance of the Report shall acquire the force of law.

The first danger ahead is Obstruction in the House of Commons. All measures of importance promoted by the present Government are encountered by a policy of the very simplest kind. The opposition keep up what in Parliamentary fiction is called "debate"—the object being to kill the Bill by lapse of time, or, if this is prevented by an adequate use of the closure, to furnish the Lords with a pretext for rejecting it outright, as not having been "sufficiently discussed." In the event of such obstruction of the forthcoming Land Bill as to render the application of the closure indispensable, the Lords, when the Bill is sent up to them, may take the hazard of rejection, and this, of course, is the second and final danger. Some members, at least, of the Liberal Unionist Section will find, no doubt, that circumstances oblige them to support the Bill. Such a development would make rejection more difficult and more dangerous for the Lords; but the question at issue is the one of all others in which the interests of their class are most deeply concerned; and if the Tory members from Ulster, especially those elected by tenant-farmers, obstruct or oppose, or even do not support the Bill, that fact may afford the Lords encouragement enough to induce them to destroy it.

In considering how to provide against anticipated dangers, most valuable instruction may be drawn, in my opinion, from a scrutiny of the attempts which were made in the House of Commons to prevent the appointment of the Committee, and the efforts of the minority,

during the sittings of the Committee, to prevent it from submitting any report to the House.

When Mr. Morley, towards the close of the Session of 1893, agreed to move for a committee to report upon the Irish Land Acts, he did so under circumstances which entitled him to expect that the motion would meet with no opposition. Accordingly, very early in the Session of 1894, he put down a notice of his motion, to be taken as business unopposed. No sooner had he done so than a plentiful crop of amendments blossomed out. These amendments proceeded chiefly from Mr. Smith Barry, Mr. Penrose FitzGerald and Mr. Brodrick, all of them Irish landlords in possession or in reversion, but none of them occupying an Irish seat—and this latter circumstance is one of practical importance, to be noted and remembered. One amendment aimed at striking out the power to inquire into the working of the Purchase Acts; another proposed to exclude the Land Judges' Court from the scope of the investigation; and another dealt in like manner with the distribution of business by the Land Commission. These amendments were then referred to as good cause for obstruction of the motion. Again and again, for weeks, the resolution was moved; but as often as it was moved some Tory member was ready to object, and the motion, for the time, was put aside. On all these occasions I was present in the House; and I noticed that no Liberal Unionist objected; that no British Tory, unconnected with Irish land, cared to come forward as an objector; and that every Irish Tory elected by tenant-farmers took very good care that he did not appear as an objector. The work of obstruction was carried on by Irish landlords holding English seats, assisted once or twice by one or two Irish Tories representing city divisions, not agricultural constituencies. Mr. Morley, in his anxiety to save the ship, threw much of the cargo overboard. He sacrificed the inquiry into the Land Judges' Court, into the distribution of business by the Land Commission, even into the working of the Purchase Acts, hoping against hope by each new concession to conciliate the blocking party. The motion was ultimately reduced to the limit of an inquiry into Fair Rent and Free Sale, but members whose objection really was to any inquiry at all being made into any portion of the subject, continued their opposition as before, and Mr. Morley, as he declared, was about to give up his motion, thereby abandoning all hope of appointing the Committee, when, on Wednesday, the 11th of April, an event occurred which created a wholly different situation.

In the ballot for Wednesdays at the opening of the Session, the Irish Party, through Mr. Kilbride, had won first place on Wednesday, the 11th of April, and Mr. Kilbride, on their behalf, had set down for that day a Land Tenure Bill, proposing to deal with the more gross and urgent grievances inflicted upon the Irish tenant by the present condition of the law. The Bill came up for second reading on the appointed day. It contained provisions of great importance on

matters outside the narrowed scope of the inquiry which the Morley Committee has since conducted. Its main proposals on the subjects afterwards dealt with by the Committee—viz.: Fair Rent and Free Sale—may be briefly summed up as follows :—

That the statutory term should be shortened from 15 years to 8 years, and that this provision should be made applicable to existing tenancies subject to statutory conditions.

That the definition of an "improvement" in relation to a holding should be amended so as to leave out the condition of "suitablity" to the holding, and so as to include not only "any work" which adds to the letting value of the holding, but any expenditure, either of capital or of labour, which adds to the letting value.

That the general law as to improvements should apply to tenancies under the Rent Redemption Act of 1891.

That, in fixing a fair rent, all improvements on a holding should be deemed to have been made by the tenant until the contrary is proved.

That the right of a tenant in respect of his improvements should not be affected by any question of the time he had used and enjoyed them; or by any question of the forbearance of the landlord in not evicting him or increasing his rent, or by any contract or other cause whatever which would deprive him of compensation for such improvements under the Act of 1870, if he were quitting the holding.

That the whole of the increase of letting value resulting from improvements of the tenant should be his property, and be free of rent, save only that when actual outlay had been incurred by the landlord, either by abatement of rent or otherwise, in respect of any improvements made by the tenant under contract with the landlord, regard should be had to the amount of such outlay in estimating the landlord's interest in the holding.

That the provisions of the Land Acts should be applied to :—

(*a*) Town Parks.

(*b*) Pasture holdings, when valued at less than £250; or when laid down in pasture by the tenant at his own expense; or when there is no condition in a written instrument that the holding is to be used for pasture.

(*c*) Demesne land, when let and used as an ordinary farm, and not for the temporary convenience of the landlord.

(*d*) Holdings partly sublet, when the part sublet is not more than one-fourth of the area, and, in the case of a yearly tenancy, occurred before the passing of the Act of 1881, or, in the case of a lease, was not forbidden by the lease; also when dwelling-houses not erected in breach of a statutory condition or of a prohibition in a lease are sublet; or when the holding is let subject to a sub-letting; or when a previous sub-letting of the part had been sanctioned; or in any case when the landlord or agent had knowledge of the sub-letting, and did not dissent.

(*e*) Any tenancy created by a tenant for life or other limited owner, which the law now terminates when the interest of the limited owner ends.

(*f*) Any tenancy to which the Acts apply, created before the passing of the Act of 1887.

(*g*) Any tenancy created by the High Court, or the Land Judge, or Receiver Judge.

That the estate of an immediate landlord of a holding should be determined for the purpose of Section 15 of the Act of 1881, by the recovery against him, at the suit of a superior landlord, of a judgment or decree in ejectment for non-payment of rent of land including such holding; but such judgment or decree should not be executed against the tenant of the holding, and the superior landlord should become the immediate landlord of the tenant.

In regard to sale of tenancies, that any dealing with a holding by way of mortgage should not be deemed to be a sale; that a tenant should not be bound to inform his landlord of the price agreed upon for sale of his tenancy; that the landlord should have no exclusive right of purchase of a tenancy; and that the Court should no longer have power to fix a specified value for a tenancy when fixing the fair rent of the holding.

Such having been the proposals of the Bill, it is a notable proof of the firm and rapid progress made by the Irish Land question in these recent years, that the Tory Party did not venture to offer it a straightforward opposition. Colonel Waring was put up to move an evasive amendment, one not touching the merits of the Bill before the House, but merely pleading that it would be unfair to pass any law whatever on Irish Land Tenure "pending the inquiry proposed by the Chief Secretary into the working of the Irish Land Acts," that is, pending the inquiry which Colonel Waring's political friends were openly doing their utmost to prevent! Neither Colonel Waring, nor his seconder, Mr. William Kenny, had anything more to say against the Bill than that it ought to wait until the inquiry had first been held. Another sign of the times was a speech in support of the Bill from Mr. T. W. Russell, who declared he spoke also for his absent friend, Sir Thomas Lea (South Derry). The attempts of certain Tory members to prevent the appointment of the Committee he condemned as deliberate obstruction.

In this disagreeable condition of affairs, the British Tories sat quite mute, very likely not knowing what to say. The only speeches against the Bill were those of Mr. Brodrick and Mr. Smith Barry—Irish landlords, but holding English seats—and Mr. David Plunket, the member for Trinity College, which, I suppose, is in the main a constituency of landlords, and which certainly is, in its corporate capacity, one of the most considerable landlords in Ireland. When the House divided on Colonel Waring's amendment, a further important development took place. It was seen that while the British Tories voted solid for the amendment, the Liberal Unionist section of the opposition were conspicuous by their absence. One Irish Tory, Dr. Rentoul (East Down); two Irish Liberal Unionists, Mr. T. W. Russell (South Tyrone), and Mr. Arnold-Forster (West Belfast); and two British Liberal Unionists, Mr. Leonard Courtney and Mr. Cochrane, voted against the amendment. Only very few British Liberal Unionists voted in its favour; but the most remarkable circumstance in connection with the division was that while the amendment was supported by Mr. Carson (Trinity College), Mr. Plunket (Trinity College), Sir Edward Harland (Belfast), Mr. Johnston (Belfast), Mr. William

Kenny (Stephen's-green), and Mr. Ross (Derry City),—that is, by every Irish Unionist who represents a non-rural constituency, except Mr. Arnold-Forster, named above, and Mr. Wolff, who was absent,—on the other hand, none of the main body of Irish Unionists, the members for rural divisions in Ulster, were present to support the amendment, except the Tory Whip, Lord Arthur Hill (West Down), the Hon. Robert O'Neill (Mid Antrim), and Colonel Waring (North Down), who was himself the mover. The defeat of the amendment by a majority of 89 in a House of over 400, so dispirited the Opposition that they allowed the second reading of the Bill to pass without a challenge. The exceptional strength of the majority was chiefly due to the absence, no doubt deliberate, of the Liberal Unionists and the Irish Tory members for rural divisions, and apparently the inference to be drawn from this significant abstention is that the Liberal Unionists feel they cannot oppose a reform of the Irish Land laws, but must probably support it, as a necessity of their political position; and that the Ulster rural Tories are fully alive to the delicacy of their position, and are more likely to assist the forthcoming Bill than they are to resist it, if their constituents speak out, and speak in time.

The instant effect of the debate and division on Mr. Kilbride's Bill was to secure the appointment of the Committee on the Land Acts, which had been virtually abandoned. The Tory Party having voted against the Bill, on the sole and express ground that the pending inquiry (by the Committee) should precede legislation, the leaders of the Party, at least, were able to discern that if they allowed the inquiry to be prevented by their followers, their position would be incapable of defence; also, the Government might be driven to pass Mr. Kilbride's Bill through the House, thereby creating a situation embarrassing to the House of Lords. So Mr. Balfour himself came on the scene, and sounded a retreat; Mr. Brodrick and his confederates, with no good grace, obeyed; and, thanks to the prevision of the Irish Party in setting down their Land Bill for the first day at their disposal, the authority of the House was given to prosecute an investigation, the results of which will be memorable in their practical effect on the agrarian situation, and on the future welfare of Ireland.

Defeated in the House, Mr. Brodrick and his friends fell back on their seven seats in the Committee. Their situation was far from being hopeless. So much time had been wasted by obstructing the appointment of the Committee, that May—or the middle of the Session—had arrived, before the taking of evidence began. On the 8th of June, by which time, after ten sittings for hearing evidence, three witnesses only had been heard, a question was put with the view of ascertaining whether the existence of arrears was found to operate as an obstacle to the fixing of fair rents. The Tory members objected that the question was outside the order of reference to the Committee, though why a Committee instructed to

suggest improvements in the law relating to the fixing of fair rents should be disabled from finding out what obstacles prevent tenants entitled by law to have fair rents fixed from going into Court for the purpose, is more than I am able to imagine. The point of order appears to be one which the chairman had power to rule; but what actually happened was that a motion was made by Mr. T. W. Russell declaring "the question of arrears" to be within the reference. The Tories challenged a division. There were only twelve members present, of whom six were Tory nominees, and as the chairman could not vote, unless upon a tie, Mr. Russell's motion was defeated by one vote, the majority consisting of two English members, Mr. Brodrick and Mr. Hayes Fisher; two Irish members for non-rural constituencies, Mr. Carson (Trinity College), and Mr. William Kenny (Stephen's-green); and two Irish members returned by tenant-farmers, Mr. Macartney (South Antrim), and Colonel Waring (North Down). By this division—the first and the last of any importance in which the Tory section had their way—a gap was left in the evidence, and the consequence was a defect in the Report which will have to be remedied in the forthcoming Bill, unless the benefits of Judicial rent and protected tenure are to be withheld from the class of Irish tenants most in danger of eviction, and least able to guard themselves against it.

Before the end of June it had become quite evident, from the system pursued of examining each witness again and again upon the same particulars of the subject, that unless vigorous measures were at once adopted, the inquiry would be rendered ineffectual. On the 3rd of July it was moved that the Committee thenceforward should sit from day to day. Mr. Brodrick's counter-proposal again made manifest the aim of the minority. He would not agree to have more than two sittings a week, but would extend each sitting by an hour—an excellent plan for increasing labour without allowing a better rate of progress. On a division, the defeat of Mr. Brodrick's scheme demoralized his party. After two further trials of strength the Opposition collapsed. A motion to sit three days a week was unanimously adopted, and was acted upon till the 24th of July, when, the evidence of Mr. Justice Bewley being closed, and the end of the Session having come within measurable distance, Mr. T. W. Russell moved that the Committee was in a position to proceed to consider its report. To this an amendment was moved by Mr. William Kenny, that the Committee should not report until it had heard "the evidence of non-official witnesses, and also of those witnesses whose evidence had not been concluded." There were no witnesses whose evidence "had not been concluded," but it was stated that the reference was meant to indicate Mr. Commissioner FitzGerald and Lord Justice FitzGibbon, the former of whom, having been examined for one entire day, and the latter for no less than three days, had undertaken on leaving to return if the Committee found cause to send for them, and no cause having being found, they were not summoned a second time.

As to non-official witnesses, the order of the House was that the Committee should report on "the principles and practice of the Land Commissioners and County Court Judges," in relation to Fair Rent and Free Sale, and no intelligible reason was assigned for the suggestion that non-official witnesses could teach us anything more about the principles and practice of the Commissioners and Judges than we had learned from the lips of the Commissioners and Judges themselves. However, in order to put an end to even this fabricated grievance, it was moved to allow three further sittings in which the objectors might offer any evidence they pleased. The six members already named, Mr. Brodrick and Mr. Hayes Fisher, Mr. Carson and Mr. William Kenny, Mr. Macartney and Colonel Waring, refused to be bound by any limit of time; but, as the result of three divisions, in each of which the voting was 6 to 6, the motion was adopted by the casting vote of the chairman. This was made a cause of attack upon Mr. Morley, both on the spot, and afterwards in Mr. Brodrick's draft report;—the claim absurdly made being that Mr. Morley, who, as chairman, had no original vote, should have disfranchised himself when the tie occurred; should have left the Committee in a deadlock, and rendered it unable to discharge its duty under the order of the House, by abstaining, for the satisfaction of his opponents, from using his casting vote to bring the question at issue to a decision. The sequel was rather amusing: the objectors, having cried out for "unofficial witnesses," gave up the first of their three days to the Recorder of Cork; having clamoured for the recall of Mr. Commissioner FitzGerald and Lord Justice FitzGibbon, did not use their power to recall either one or the other; and having insisted upon the necessity of examining suitors or solicitors, called neither a suitor nor a solicitor; but contented themselves with a land agent and a valuer, whose evidence, so far as it had any direct bearing upon the order of reference, went to confirm the testimony of "the Commissioners and Judges" concerning their "principles and practice."

The third of the supplementary sittings having closed on the 31st of July, the Committee determined—the same six members still resisting—to meet a fortnight later to consider the Report. The six dissentients offered no alternative date. They voted directly against the motion, thereby conveying that the notion of considering any Report upon any date whatever was intolerable to their minds—which, no doubt, was the real truth of the matter. However, they returned in due course, on the 14th of August, bearing with them a curiosity in the shape of a Draft Report by Mr. Brodrick. This document is worthy of preservation. It solemnly charges Mr. Morley with having used his vote to fix a day for concluding the evidence, instead of allowing the minority to go on with it till the end of the Session, and so obliging the Committee to dissolve without delivering any judgment on the questions referred to them for consideration. The idea seems not to have been grasped that Mr. Morley and the majority, having vested in them

control of the procedure, were really entitled to thanks for the grant of three further sittings, at a time when they felt satisfied that full and ample evidence had been already taken. No suspicion appears to have dawned upon Mr. Brodrick's mind of the absurdity of again complaining that the Lord Justice and Mr. Commissioner FitzGerald had not been recalled, and that unofficial witnesses—suitors in the courts, and legal practitioners—had not been summoned; whilst the fact was staring him in the face that three days had been granted to him and his friends to use at their discretion, and they had neither recalled the Lord Justice or the Commissioner, nor had they called any barrister, or solicitor, or any representative of the landlord class. Mr. Brodrick caps the climax in his remark that the Registrar-General should have been summoned. The Registrar-General has a store of information on many subjects, but he has nothing to do with the Land Courts, and he would certainly not venture upon an enterprise so rash as to supplement the evidence relating to those Courts which had been given by the Lord Justice, the Judicial Commissioner, three legal and four lay Assistant-Commissioners, and two of the County Court Judges. This was too much to expect of any Registrar-General, as Dr. Grimshaw, no doubt, would readily admit. In the ardent desire for non-existent evidence, Mr. Brodrick must have forgotten the evidence in his hands. Out of the labours of three months, he could only evolve the solitary suggestion—which a less gifted man might have hit upon in three minutes—that after a statutory term has expired, the Judicial rent should continue to be the rent until a new rent was fixed!

Such was the valuable measure of reform offered to save the Irish tenant by Mr. Brodrick and his friends, the chosen representatives of the Tory Party. The six hundred pages of expert testimony, Judicial and Administrative, was treated as if it had no existence. Upon the egregious pretext of insufficient evidence, the six gentlemen so often mentioned gave their votes for a Report which amounts to a denial of the existence of any Irish Land question; and, being defeated, they retired from the scene, and returned to it no more. The representatives of the four other Parties in the House then proceeded on the basis of Mr. Morley's Draft Report, which, after debate and amendment during five continuous sittings, was unanimously adopted, and presented to the house at the beginning of the week in which the Session closed.

It has been shown already that the Tory policy on Mr. Kilbride's Land Bill was to try to get rid of it by arguing that the Committee was about to be appointed, and that the Report of the Committee should be presented before any further progress was made with the Bill. This plea of evasion was such a failure that neither the Liberal Unionists, nor the Tory members for Ulster counties, attended to support it; and when it was rejected by a majority of 89, even the British Tory Party, which had voted for the amendment, did not venture to divide against the

Bill. Their own argument barred them out from further opposition to the inquiry, for if, after taking up the position that the inquiry should precede the Bill, they still opposed the Committee, the result, as no doubt they apprehended, might be—what they dreaded most of all—that the Bill itself would be passed through at least the House of Commons. So the effect of the proceedings on the legislative proposal was to compel the Tory party, as a matter of necessity, to allow the Committee to be appointed. But, when the Committee set to work, the same policy of postponing the issue was obstinately pursued. Examinations were spun out to extravagant length by tedious repetitions. When additional sittings were ordered, the landlord party endeavoured to counteract the arrangement. They demanded the recall of certain witnesses, but did not themselves recall them when the opportunity was allowed. They asked for evidence of a class outside the order of reference—evidence which, if once entered upon, would have frustrated the inquiry, and put off indefinitely all practical action without affecting the conclusive testimony on all material points, given over and over again, by those who, beyond comparison, were the most appropriate witnesses in the case—the officials engaged in expounding and administering the Acts, and whose functions covered every inch of the ground of the inquiry. The spirit and purpose of the minority were plainly shown in their refusal to fix a day for considering a Report—their own Report, or any other. The day had to be fixed on despite of their resistance, and when it arrived, they only attended to put in, and affirm by their votes, an express denial that any grievance had been shown to exist. Their policy being, as they judged, defeated, when the Committee resolved to take up Mr. Morley's draft, they retired in the manner of men no longer interested in the proceedings; but as the Committee had then to sit on from day to day, and still were only able to present their Report in the final week of the Session, it appears to be not improbable that if the minority had remained, there would have been no Report presented or agreed upon, and so the hard work of half a Session would have gone for nothing.

The determination of the majority, and particularly the firmness of the chairman, having secured that the direct issue, in the shape of a Land Bill, will forthwith be presented to those who have shown themselves so desperately anxious to avoid it, what remains to be seen is whether the chance so long desired will be turned to the best account, or wasted. Another opportunity may be waited for as long as this has been, unless the tenants of Ulster now help to secure their own emancipation by instructing their Unionist representatives to support the Bill, instead of abetting obstruction in the Commons, or encouraging rejection by the Lords.

Whoever wishes to grasp the case for reform as developed before the Committee, will have to go to the published volume of evidence. Advocates of amendment of the land laws, and associa-

tions of tenants, whatever their politics may be, will do well to possess themselves of that volume, for it is the foundation of the claim of the tenants of all Ireland, irrespective of party, to be secured by further legislation in what past legislation has failed to give —the right to enjoy what is their own, and to pursue under fair conditions the industry by which they have to live, and on which this country must depend. The main grounds of the Judgment of the Committee, and the terms of their recommendations, will be found in their Report appended, but for general convenience I give here, without comment, under each principal head of the subject, a condensed summary, firstly, of the substance of the finding of the Committee on the matters of fact, and secondly, of the effect of their recommendation for improvement of the law.

1.—FAIR RENT.

The Courts are directed by law to fix a "fair rent," but as no principle, rule or method has been laid down to guide the Courts, each administrator of the law acts absolutely according to his own opinion of what may have been intended, and there is neither a common understanding of the law, nor anything approaching to uniformity in practice.

Effectual measures must be adopted without delay to secure both the observance of the law, and intelligent uniformity of practice.

2.—"THE INTEREST OF THE TENANT."

The Courts are directed, in fixing a fair rent, to have regard to the interest of the tenant, but the interest of the tenant has never been defined, legislatively or judicially, and the practice is to fix the rent at what might be paid by a person having no interest in the holding, and to take no account of the present tenant's statutory interest.

The intervention of Parliament is urgently required to defend and protect the interest of the tenant.

3.—INCREASE OF LETTING VALUE BY IMPROVEMENTS.

The intention of Parliament, as evidenced by votes and proceedings on the Land Act of 1881, and by the direction in the Act that no rent should be allowed in respect of improvements made by the

tenant, has not been carried into effect by the judgment of the Court of Appeal in Adams *v.* Dunseath, which rendered the tenant liable to rent in respect of a portion of the value resulting from his improvements; and the intention of Parliament in this regard has been defeated by the practice of the Sub-Commission Courts, which is—as the Committee declare they learned with extreme surprise—to give to the landlord, after allowing the tenant a percentage on his outlay, any remainder of letting value due to the tenant's improvements—that is to say, they deny to the tenant even that limited share in the value of his improvements—(beyond a percentage in his outlay)—to which the Court of Appeal, in Adams *v.* Dunseath, declared him to be entitled.

> Agricultural improvements being of vital consequence to the welfare of Ireland, it is of great and urgent importance that the law on the subject should be made unquestionably clear. . . The tenant alone is willing to make improvements. The public interest, therefore, demands that he should be encouraged, by being secured in the enjoyment of the value resulting from his expenditure and labour. . . There appears to be no reasonable and no intelligible cause for denying to the tenant the full enjoyment of any improvement in his holding, produced by the expenditure of his capital or the application of his labour. The interference of Parliament is required in order to ascertain and secure to the tenant his right to the improved letting value which has been elicited by his improvements.

4.—PARTICULARS OF FAIR RENT.

The forms of Report in use by Sub-Commissioners, Appeal Valuers, and Valuers to the County Courts, whilst they furnish many particulars of more or less interest, do not afford sufficient information directly bearing on the essential matter—that is, the fairness of the Rent.

All valuations should be so made and recorded as to show:—

The estimated value of the gross produce of the holding.

The fair rent, to a solvent person desiring to become a tenant,—the holding, including buildings, being valued as it stands, as a going concern.

Any deductions from such rent, in respect of:—

(*a.*) The occupancy right.

(*b.*) Improvements, distinguishing between deductions of the letting value of tenants' buildings, and of other improvements not affecting the capacity of the soil. In case of improvements affecting the capacity of the soil, the valuation should set out the allowance made for each class of them, and show how much of it is interest on outlay, and how much is the tenant's share of the remainder of increased letting value.*

5.—IMPROVEMENTS AS AFFECTED BY THE ACT OF 1870.

The Act of 1870 provided that the claim of the tenant to compensation for certain improvements on quitting his holding, should be reduced in consideration of the time he had enjoyed his improvements, the rent paid, or any benefit received from the landlord. It also provided that the tenant could not claim any compensation for various classes of improvements, such as those held to be not suitable to the holding; many of those made before the passing of the Act, and 20 years before

* This recommendation can be executed without any legislative enactment, but I am not aware that the Land Commission has yet carried it into effect.

the claim; those made under a covenant in a lease; or declared by a covenant in a lease not to be the subject of a claim for compensation; any of those made by a tenant of a certain valuation who had contracted not to claim; those made by a tenant holding under a fee-farm grant or lease for ever; and some of those made during the currency of a lease for 31 years or upwards. Although the Act of 1881 related, not to compensation to be paid by the landlord to the tenant when the tenant is quitting his holding, but to the right of the tenant to be exempt from paying rent to the landlord on improvements made by himself, and although the House of Commons, in passing the Act of 1881, successfully resisted all attempts to apply to its purposes the limitations of the Act of 1870, yet the Court of Appeal, over-ruling the Land Commission, declared these very limitations to apply, so as to reduce the allowance made to the tenant for some improvements, and to credit the value of other improvements entirely to the landlord in fixing the amount of the rent.

It cannot equitably be argued that because certain improvements do not fulfil the technical legal conditions to entitle a tenant on quitting his holding to be compensated for them under the Act of 1870, the landlord is entitled to charge rent on them to the sitting tenant, under the Act of 1881, as if the landlord had made them, or had paid for them out of his own pocket. Yet the law has been administered on this principle for about 13 years, and about 300,000 rents have been fixed subsequent to the decision in Adams *v.* Dunseath, which was delivered on 28th February, 1882, six months after the passing of the Act . . . After a careful review of the whole evidence, your Committee recommend that improvements of whatever character, made by the tenant, should be exempted from rent, and that the definitions and limitations imported from the Act of 1870 should not apply in the administration of the fair rent provisions of the Act of 1881.

6.—PRESUMPTION AS TO MAKING OF IMPROVEMENTS.

The limited presumption in favour of the tenant created by the Act of 1870 is subject to so many exceptions, that the provision is of little value, as it operates only in a small number of cases. So the tenant is generally liable to be placed at a disadvantage by having to prove the making of his improvements by the evidence of some one actually present when they were effected—a condition in many cases impossible, or, at least, very difficult, for him to satisfy. Owing to such difficulties of proof, valuable improvements are often lost to tenants, and rent imposed on them, as if they were the landlord's property. In the limited number of cases in which improvements are executed by the landlord, the record of the fact in the estate books would prevent any difficulty of proof arising. . . . In the Act of 1870 provision was made to enable a tenant to register his improvements in the County Court, but the procedure was cumbrous and expensive, and especially since the passing of the Act of 1881 has not been resorted to.

> The exceptions should be repealed, and until the contrary is proved, all improvements should be deemed to have been made by the tenant or his predecessors in title. . . When, on the hearing of a fair rent application, it has been determined that improvements belong to a tenant, the record of this fact by the Court should be made evidence in subsequent proceedings, in the same manner as if the procedure under the Act of 1870 had been adopted.

7.—PRESUMPTION AS TO EXISTENCE OF ULSTER CUSTOM.

The Ulster tenant is placed at a disadvantage by being called upon to prove the existence of the custom in relation to the particular holding.

> Holdings in Ulster should be deemed subject to the Ulster custom until the contrary is established.

8.—EXCLUDED HOLDINGS.

Large classes of holdings—including holdings deemed to be not agricultural or pastoral in character, town parks, demesne lands, certain pasture holdings, and cases in which the tenant, by reason of sub-letting, is deemed to be not in occupation of his holding, are excluded by Section 58 of the Act of 1881, and fair rents cannot be fixed upon them. These exclusions are taken (with the unimportant addition of Glebe lands) from the Act of 1870, but several of the decisions on that Act have not been followed since 1881, with the result that many tenancies are now excluded which, if the interpretation of the law had remained as it stood when the Act of 1881 was passed, would be entitled to the benefit of that measure.

Having considered the important evidence taken on the subject of exclusions as a whole, the Committee recommended as follows:—

1. No holding should be excluded on the ground that a part of it is not agricultural or pastoral in character, unless such part is, in the opinion of the Court, the substantial part of the holding.

2. No place should be considered a city or town within the meaning of the subsection excluding town parks, unless it has a population exceeding 2,000.

3. The limit of valuation excluding pasture holdings should be raised from £50 to £200; no holding should be excluded unless a written instrument of letting had prohibited tillage or meadowing for sale, and the Court had come to the conclusion that this prohibition was inserted *bona fide*, and not merely to effect an exclusion from the Land Acts; and no dairy farm should be excluded, whatever might be the valuation.

4. When sub-letting does not impair the security for the rent, it should not be a bar to the application of the fair-rent provisions.

5. The test in the case of demesne land should be whether or not the letting was made for temporary convenience.

9.—THE POSITION OF "FUTURE" TENANTS.

"Future" tenancies, which may be held either by those who in 1881 held "present" tenancies which have since been broken after Judgment in ejectment, or may represent lettings made since the Act of 1881 was passed, are excluded from the fair rent provisions of that Act. Where the rent has not been raised since the "future" tenancy began, the tenant is a tenant-at-will; where the rent has been raised, he becomes a statutory tenant for 15 years, and then falls back again into the condition of a tenant-at-will.

The legal position of the "future" tenant demands consideration by Parliament.

10.—LETTINGS BY "LIMITED OWNERS."

A tenant may be debarred from having a fair rent fixed, and be liable to eviction, or still more extraordinary, may have his statutory lease destroyed, and his fair rent order nullified, because the letting has been made to him by a "limited owner," that is, by a landlord whose status is affected by limitations in deeds of which the tenant can have no knowledge.

This state of the law creates a gross anomaly, and is manifestly unjust to the tenant.

11.—TENANTS HOLDING UNDER A MIDDLEMAN.

If a middleman's interest comes to an end by lapse of time, his tenants, protected by Sec. 15 of the Act of 1881, become tenants of the head landlord, enjoying the same tenure as under the middleman; but if the middleman is ejected for non-payment, and his interest thereby comes to an end, the interest of his tenants likewise expires, and if re-admitted by the head landlord they are merely "future" tenants.

This is a serious defect in the law.

12.—EXCLUSION OF CERTAIN LEASEHOLDERS AND FEE-FARM GRANTEES.

Certain leaseholders are excluded from the Act of 1887 by reason of the term for which they hold, and certain leaseholders and fee-farm grantees are excluded from the Act of '91 by reason either of the term for which they hold, or of the nature of the grant, or of the time at which it was made.

There is no principle in such exclusions, and these persons also should have the right of resorting to the court.

13.—PERIOD OF STATUTORY TERM.

The rents fixed by the Courts between 1881 and 1885 have been since 1886, and are at the present time, materially excessive. The observation is applicable in a still stronger degree to the agreements made before 1886, because the reductions secured were more limited in amount than those obtained within the same period from the Courts.

There was a general concensus of opinion among the witnesses that the statutory term is too long, for the reason that it is impossible to foresee so far the fluctuation in prices which largely affects the fairness of a rent,

The statutory term should not exceed ten years.

14.—RE-HEARINGS ON QUESTIONS OF VALUE.

The system of re-hearing on all questions of value is one of the causes which deter tenants from making application to have fair rents fixed. It entails grievous details; it protracts uncertainty; it imposes heavy costs, oppressive to a humble class of suitors, and necessitates expenditure out of all proportion to the practical result. . . The decision of a court, two of the three members of which are agricultural experts, who themselves inspect the holding, is revised by a court, no member of which inspects the holding, and no member of which need be an agricultural expert, although the question to be determined is one of the value of land.

In any case in which the parties so desire, the holding should be inspected by one or two valuers, whose valuation, if accepted by the parties, should be fixed as

the fair rent. If either party declines to accept the valuation, the case would then be heard by a Sub-Commission in the ordinary course. Where the valuation of a holding does not exceed £20, and the Judgment of the Sub-Commission on questions of value is unanimous, there should be no re-hearing by the Land Commission on any question of value.

15.—TURBARY AND OTHER EASEMENTS.

In many parts turf is a necessity of life, and oppressive rent is sometimes charged for the privilege of cutting turf. Evidence was given that if the tenant had enjoyed a right of turbary appurtenant to the holding, the Commissioners have no power to secure the turbary to the tenant, so that he is sometimes obliged to pay back for turf as much as he has gained by reduction of rent.

When the turbary is outside the ambit of the holding, the Commissioners should have power, in cases where the tenant has hitherto been allowed to cut turf, to secure the right to the tenant on such terms as they may think fit. The same power might be granted with respect to all easements enjoyed with the holding.

16.—NATURE OF A TENANCY SUBJECT TO STATUTORY CONDITIONS.

Lord Justice FitzGibbon, giving evidence on the nature of the tenancy arising upon the creation of a statutory term under the Act, said—"The rent is fixed for 15 years, and it goes on until it is altered." The tenancy "is not a 15 years' lease; it is a lease for ever; an undeterminable tenancy from year to year, with power to fix or to vary the rent every 15 years." On the other hand, Mr. Justice Bewley, quoting some utterances of Irish judges in support of his opinion, expressed the view that when a statutory term comes to an end, "if the tenant wants to retain security of tenure, there is nothing in the Act to give it him unless he acquires a new statutory term." The

learned judge added that he considered it a "moot point whether, at the expiry of a statutory term, the fair rent goes on or the old rent revives."

> Lord Justice FitzGibbon, in the opinion . . of the Committee, correctly interprets the intention of Parliament; and it should be made clear by legislative enactment that at the end of the statutory term the rent payable should continue to be the judicial rent previously fixed, and that the holding should continue to be subject to the statutory conditions, until a new rent shall have been fixed in accordance with the law, and the statutory conditions thereby revived.

17.—PROTECTION OF LEGAL STATUS OF JUDICIAL TENANT.

Doubts have been expressed whether the legal status of a Judicial tenant, accepted on the first occasion of fixing a fair rent, can be questioned on the application for a second statutory term.

> The attention of Parliament is called to this subject, with a view to the prevention of needless litigation.

18.—FREE SALE OF TENANCIES.

Except in the case of a holding subject to the Ulster custom, the landlord may apply to the Court when a fair rent is being fixed, to fix also a "specified value" at which he may purchase the tenancy whenever the tenant wishes to sell it; and, whether or not the holding is one in respect of which a fair rent can be fixed, the landlord, on receiving notice from the tenant of his intention to sell the tenancy, may buy it, if no "specified value" had previously been fixed, at what may be ascertained by the Court to be the "true value" thereof. . . . The result appears to be that when the value is fixed, it is fixed without any regard to the general direction of the Act, that the tenant is entitled to sell his tenancy for the best price that can be got for the same. . . . The price fixed is substantially less than the real market value of what the tenant has to sell. When the landlord acquires the tenancy at the price so fixed, there is nothing to prevent him, in the case of a "present" tenancy, from immediately re-selling it

at the full market value, subject to the fair rent payable by the former tenant, and even in the case where a "present" tenancy existed in the holding, the landlord, as the law now stands, will have it in his power, after the 22nd of August, 1896, that is, after the lapse of 15 years from the passing of the Act of 1881, to re-sell the tenancy at its full market value, and likewise to fix the amount of the future rent. . . . The market value of tenancies, where no right of pre-emption exists, is far higher than "true value" or "specified value," as fixed by the courts; and where the right of pre-emption does exist, throughout Leinster, Munster and Connaught, the market value of the tenancy is thereby greatly depressed, because the person who buys a tenancy is liable to have "specified value" or "true value" afterwards fixed by the court at the instance of the landlord. As improvements are stimulated in Ulster by the security of the right of free sale, so they must be checked in all other parts of Ireland by the right of pre-emption, for the tenant is not so likely to make improvements when he may be compelled to sell them, with his tenancy, for a price fixed arbitrarily by a court acting on no definite principle, as when he knows he can sell the tenancy, including the improvements, for the best price offered in the market.

> Such consequences, repugnant to equity, and opposed to good policy, do not, in the opinion of the Committee, accord with the object which Parliament had in view in enacting the free sale provisions of the Act of 1881; and the Committee recommend that by the repeal of the provisions relating to "true value" and "specified value," the Courts, be relieved of a function which they are unable to discharge; and that the declaration of the Act of '81, that every tenant "may sell his tenancy for the best price that can be got for the same," should thus be rendered effectual.

For the recommendations as to procedure in the County Courts; transfer of originating notices from these courts; limited administration; costs of hearings and appeals; notice of questions by the landlord in fair rent proceedings; reporting of cases; and codification of the Land Acts, the reader is referred to the text of the Report. It will, I think, be found that in the preceding pages I have fairly represented the substance of the findings of the Committee upon

the evidence laid before them in relation to tenure, and to the property of the tenant, and that I have set forth accurately the terms of their proposals for amendment of the law.

These proposals, it is quite evident, are in no way concerned with either the religious convictions or the political views of Irish tenants, Irish landlords, or Irishmen of any condition soever. They are concerned with nothing but the fair rent to be paid by the Irish tenant, and his safe and full enjoyment of that property in the soil created by the capital and labour of his predecessors and himself. The recommendations simply aim at securing to every Irish tenant, without regard to creed or party, that he will only have to pay a fair rent upon what justly belongs to the landlord, and that in law and fact he must have the full advantage of what belongs in equity to himself. I anticipate, therefore, that those who unjustly profit by the present state of the land laws will find it useless to endeavour, by irrelevant talk about Home Rule and the Reformation (which have "nothing to do with the case"), to induce those who are losing every day by the present state of the land laws to withhold their help from the advocates of a measure of reform which clears the way for the true solution of the Irish agrarian problem.

THOMAS SEXTON.

7th January, 1895.

REPORT

FROM THE

SELECT COMMITTEE

ON

LAND ACTS (IRELAND);

WITH THE

PROCEEDINGS OF THE COMMITTEE.

Ordered, by The House of Commons, to be Printed, 20th August, 1894.

Ordered,—[*Monday*, 16*th April*, 1894]:—THAT a Select Committee be appointed to inquire into and report upon the principles and practice of the Irish Land Commissioners and County Court Judges in carrying out the Fair Rent and Free Sale provisions of the Land Acts of 1870, 1881 and 1887, and of the Redemption of Rent Act of 1891, and to suggest such improvements in Law or Practice as they may deem to be desirable.

Ordered,—[*Tuesday*, 24*th April*, 1894]:—THAT the Committee on Land Acts (Ireland) consist of Seventeen Members.

Committee nominated of—

Mr. Brodrick.
Mr. Carson.
Mr. Clancy.
Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. T. M. Healy.
Mr. W. Kenny.
Mr. Leese.
Mr. Macartney.
Mr. M'Cartan.
Mr. John Morley.
Mr. Robert Reid.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.
Mr. Wharton.

THAT the Committee have power to send for Persons, Papers and Records.

THAT Five be the Quorum of the Committee.

[*Thursday*, 3*rd May*, 1894]:—New Writ for Dumfries District of Burghs, in the room of Robert Threshie Reid, Esq., Q.C., Her Majesty's Solicitor General.

Ordered,—[*Wednesday*, 23*rd May*, 1894]:—THAT the Select Committee on Land Acts (Ireland) do consist of Seventeen Members.

THAT Mr. Solicitor General be added to the Committee.

REPORT.

THE SELECT COMMITTEE appointed to inquire into and report upon the Principles and Practice of the IRISH LAND COMMISSIONERS and COUNTY COURT JUDGES in carrying out the Fair Rent and Free Sale Provisions of the Land Acts of 1870, 1881 and 1887, and of the Redemption of Rent Act of 1891, and to suggest such Improvements in Law or Practice as they may deem to be desirable; ——HAVE agreed to the following REPORT:—

No Select Committee of this House has previously inquired into the working of the Irish Land Acts. A Committee of the House of Lords in 1882-83 met to consider the working of the Land Act of 1881, and a Royal Commission was appointed in 1887 to examine into the Irish Land system, and much evidence was taken by both bodies. Your Committee, however, sat under more narrow terms of reference, and accordingly devoted its entire time, except the last three sittings, to hearing purely official witnesses. At the last three sittings certain evidence was received on behalf of the Irish landlords, but, with this exception, no other than official evidence has been taken. No witness on behalf of the tenants was therefore heard, as your Committee considered it expedient, instead of investigating allegations of individual grievance, whether on the part of tenants or owners, to obtain a general view of the principles and practice, decisions and procedure, from the examination of the Judges and officials who administer the Irish Land Acts. A small group of witnesses on either side could not have materially widened the basis for trustworthy conclusions. To have gone beyond a small group, would have been to involve your Committee in an inquiry hardly less in scope and magnitude than the Devon, the Cowper, or the Bessborough Commissions, and could have added little new light to the testimony of those who are concerned in giving to the administration of the Land Acts the operative form upon which the Committee was appointed to report.

Character of Evidence.

Land Tenure in Ireland rests upon four principal Acts, those of 1860, 1870, 1881, and 1887. With the Act of 1860 your Committee was not concerned. It regulates the relation of landlord and tenant on the basis of contract, and cannot be said to invest the status of the tenant with any legal privileges.

The Act of 1870.

The Act of 1870, broadly speaking, seeks to protect the tenant's interest in Ulster by legalising the Ulster custom, and elsewhere in Ireland by enabling the tenant (except in certain excluded cases), if evicted capriciously, to sue his landlord for compensation for disturbance according to a certain statutory scale limited in amount, and, on quitting his holding, whether voluntarily or as the result of eviction, to sue for the unexhausted value of certain limited classes of improvements. This Act is no longer much resorted to since the passing of the Land Act of 1881, which gave durability of tenure to the tenant so long as his rent is paid, and enabled him to apply to the Court to fix his rent every 15 years. The Act of 1870, however, by its terms, powerfully affects the Act of 1881, because its definitions are incorporated therein, and the far-reaching decision of Adams *v.* Dunseath turned on this incorporation of definitions. The Act of 1870 included in its general scope all holdings of an agricultural or pastoral character, but the clause in it which did most to protect the tenant's tenure, namely, that granting compensation for disturbance in the case of capricious eviction, was much more limited, there being a series of exclusions from it whereby certain classes of holdings, such as town parks, demesne lands, grazing lettings, and others which will be afterwards more fully referred to, were excepted from its provisions. These exclusions were re-enacted as regards the tenure clauses of the Act of 1881, and the time of your Committee was largely occupied in considering the effect of the decisions of the Courts on these exclusions, as well as on the question of tenants' improvements. Before discussing, however, these important subjects, it will be convenient to survey the course of administration and procedure.

Effects upon Act of 1881.

10 *L.R.I.* 109.

Fair Rent Provisions: Extent of Operations

Number of agricultural holdings.

No. 260 of 1891.

The number of agricultural holdings in Ireland was stated in the census of 1891 to be 486,865. The total number of holdings in Ireland, extracted from the agricultural statistics, was set down in a recent Parliamentary paper at 552,349. Either of these totals would, no doubt, include some 30,000 holdings purchased by the occupying tenants

under the provisions of the several statutes passed from 1869 to 1891.

Applications.

The total number of fair-rent applications disposed of, by the Land Commission, by the County Courts and by agreement, from the passing of the Act of 1881 to the 31st of March last, was 354,890. The number of these cases "struck out," "withdrawn," or "dismissed," was 60,236, of which about 8,000 were dismissed for various causes, but usually because the applicant was held to be without the requisite legal status, or the holding was declared to be excluded from the operation of the provisions relating to fair rent. The remainder of these 60,236 cases were either struck out or withdrawn. In the former class of cases the applicant did not appear when the case was called; in the latter, he intimated that he would not proceed.

See last Report of the Land Commission. 10144 *et seq.*

Struck out, withdrawn, or dismissed.

Deducting the 60,236 cases "struck out," "withdrawn," or "dismissed," from the gross total of applications, 354,890, we find the total number of fair rents fixed to be 294,654. Of these, 157,178 were fixed by the Land Commission Courts, 15,537 by the County Courts, 121,902 by agreements between the landlord and the tenant lodged with Land Commission or the County Courts, and only 37 by arbitration under Section 40 of the Act of 1881.

Total number of fair rents fixed.

It is worthy of notice that in these 37 cases in which rents have been fixed by arbitration, the average reduction was 30·7 per cent., or one-half higher than the average reduction on the total rental dealt with by the Courts and by agreements, which was 20·8 per cent. But the fact that arbitration has been resorted to in only 37 cases, not one of which occurred within the last four years, proves that Section 40 of the Act has been practically inoperative.

Section 40

In this connection it may also be observed that, under Section 10 of the Act, only 133 judicial leases have been executed, and, under Sections 11 and 12, no more than 36 fixed tenancies have been created.

Sections 10, 11, and 12.

Of the cases, 157,178 in number, in which fair rents have been fixed by the Land Commission, 4,129 were fixed on consent directly by the Chief Commission, and of these 363 were yearly tenancies, 2,367 leasehold tenancies, 8 under the Redemption of Rent Act, 1891, and 1,391 in which rents were fixed on the reports of valuers appointed on the application of the parties. The number of rents fixed by Sub-Commissioners was 153,049, of which 132,111 were yearly tenancies, 20,639 leasehold tenancies, and 299 Redemption of Rent Act cases.

Rents fixed by the Land Commission.

Average reduction.

The average reductions granted were as follows:

On reports of valuers, 19·9 per cent.

By Chief Commission and Sub-Commission taken together: for yearly tenancies, 21·2 per cent.; for leasehold tenancies, 24·7 per cent., and in cases under the Redemption of Rent Act, 1891, 25 per cent.

County Courts.

The number of originating notices lodged with the County Courts was 34,453; but, under the power given by Section 37, Sub-Section 4, of the Act of 1881, authorising the Land Commission, on the application of any party to proceedings in the County Courts, to transfer such proceedings from the County Court to the Land Commission, no fewer than 10,374 of the 34,453 cases initiated in the County Courts were transferred to the Sub-Commissions. The originating notice was usually lodged by the tenant; the application to transfer the proceedings was usually made by the landlord.

The transfer to the Sub-Commission of 10,374, out of the 34,453 originating notices lodged with the County Courts, left 24,079 cases to be disposed of by those tribunals. Of this total, rents were fixed in 15,537 cases; 13,585 being yearly tenancies, and 1,952 leasehold tenancies. The average reduction of rent for the yearly tenancies was 23·4, or 2·2 more than the corresponding reduction (21·2) given by the Land Commission Courts. The average reduction for leasehold tenancies was 30, being 3 per cent. more than the corresponding reduction (24·7) in the Courts of the Land Commission. Appeals to the Land Commission against the decisions of the County Courts were lodged in 4,097 of the 15,537 cases; and of these, 1,515 were withdrawn, and 2,192 have been heard. The result of these appeals was an average increase of 3·1 per cent. in the rents as fixed by the judgments of the County Courts.

Average reduction.

Deducting from 24,079 cases left to be disposed of by the County Courts, 15,537 in which rents were fixed by those tribunals, there remain to be accounted for 8,542 cases.

Cases undisposed of.

Of these, 3,413 are said to have been "dismissed, struck out, or withdrawn," leaving undisposed of 5,129. It appears, however, from a return furnished by the Lord Chancellor to the Land Commission, that the real number undisposed of is only 214, and the difference is due to the

failure of the Clerks of the Peace to discharge the duty laid upon them to furnish the Land Commission with certified copies of all orders made in fair-rent cases by the County Court Judges. Your Committee trust that these orders will be furnished, and that in future this duty will be properly discharged.

Rents fixed by agreement.

Of the cases, 121,902 in number, in which rents were fixed by agreements between landlords and tenants, 114,724 were fixed by agreements lodged with the Land Commission, and 7,178 by agreements lodged with the County Courts. The particulars of these agreements supplied in the annual reports of the Land Commission do not distinguish, as in the case of rents fixed by the Courts, between yearly and other tenancies.

Average reduction.

It is shown, however, that the average reduction in the former rents made by agreements lodged with the Land Commission has been 17·7, as against 21·2 for yearly tenancies, 24·7 for leasehold tenancies, and 25·0 under the Redemption of Rent Act, in cases decided by the Chief Commission and Sub-Commissions; and 19·9 in cases in which rents were fixed on the reports of valuers appointed upon the applications of the parties. The average reduction made by agreements lodged with the County Courts was 17·2, as compared with 23·4 for yearly tenancies, and 27·7 for leasehold tenancies in cases heard and determined by the County Courts.

Rents by Arbitration.

There is to be observed a still more remarkable difference between the reductions made in rents fixed by agreement and those settled by arbitration. As we have noted, the average reduction made by agreements lodged with the Land Commission was 17·7, and with the County Courts 17·2, but the average reduction was no less than 27·7 in cases of rents determined by arbitration. By far the greater number of the 121,902 agreements were made between 1881 and 1885, when the reductions in the Courts were much smaller than in subsequent years and down to the present time. The agreements lodged—

In the year to August, 1882, were 12,485;
In the year to August, 1883, were 36,005;
In the year to August, 1884, were 24,094;
In the year to August, 1885, were 11,656;

making for the first four years a total of 84,402 or more, than two-thirds of the whole number of agreements.

Rents from 1881 to 1885.

The evidence given before your Committee as to the course of prices and the cost of production, proves that the rents fixed by the Courts between 1881 and 1885 have been since 1886, and are at the present time, materially excessive. This observation is applicable in a still stronger degree to the agreements made before 1886, because the reductions secured were more limited in amount, as we have already shown, than those obtained within the same period from the Courts.

Appendix, No. 7, Table V. Agreements, 1882-78.

Your Committee beg to direct attention to a Paper handed in by Mr. W. F. Bailey, Legal Assistant Land Commissioner. It furnishes examples of 50 cases in his district in which agreements had been made between landlords and tenants, within the period from 1882 to 1887, but the agreements not having been filed, as required by rule, were not binding between the parties, and the tenants came into Court to have fair rents fixed in 1893 and 1894. The result demands particular attention. The old rents in the 50 cases had amounted to £790. The reductions made by agreement amounted to £142, leaving the rents as agreed upon £648. When the tenants came into Court the £648 was further reduced by £168, bringing down the judicial rents to £480. Thus, after an average reduction of 18 per cent. had been made by the agreements, a further reduction of 20 per cent. was ordered by the Court. A similar Paper handed in by Mr. Lawrence Doyle, another of the Legal Assistant Commissioners, and printed in the same Appendix, shows a similar result. It was only owing to the omission to file these agreements, that the Court was able to intervene.

Re-hearings and Appeals.

The decisions of Sub-Commissions in fair rent cases are subject to re-hearing by the Land Commission upon the application of either of the parties; and in like manner an appeal may be taken to the Land Commission from a fair rent decision of a County Court. The rents fixed by the Sub-Commissions to the 31st of March last were 153,049; the applications for re-hearing numbered 38,524, of which 17,784 were withdrawn, and 19,655 have been heard by the Land Commission. As already noted, the decisions of the County Courts were 15,537; the appeals, 4,097; the appeals withdrawn, 1,515; and the appeals heard, 2,192.

Thus it will be seen that 168,586 cases were decided by the subordinate courts; the appeals and applications for re-hearings were 42,621; and of these 19,299, or nearly one-half, were withdrawn, and 21,847 went to judgment.

Net Result.

The rents fixed by the Sub-Commissions in the 19,655 cases subjected to re-hearing amounted to £431,398; the net result of the re-hearings was to increase this amount by £1,282, or only 0·2 per cent. In the 2,192 cases brought up from the County Courts, the rents fixed by those Courts amounted to £35,473; this amount was increased on appeal by £1,101 or 3·1 per cent. The gross amount of rental dealt with by re-hearing or appeal was not affected, it will be observed, to any material extent. In a number of cases, relatively minute, substantial increases or reductions were made, but the general result has been to confirm the rent as fixed by the Court below, to add a small percentage to that rent, or to subtract a small percentage from it.

Re-hearing on Value.

1840, 3635, 4176, 4582, 4893, 8629, 4187, 4353; Cherry 585.

The system of re-hearing on all questions of value is one of the causes which, in our opinion, deter tenants from making application to have fair rents fixed. It entails grievous delays, it protracts uncertainty, it imposes heavy costs, oppressive to a humble class of suitors; it necessitates expenditure out of all proportion to the practical result. The 21,847 re-hearings and appeals, the effect of which was to add but £2,383 to £466,871 of rental, as fixed by the Courts below, must have cost the parties at least £250,000, and this vast expenditure was incurred, in the case of nine-tenths of the cases (those from the Sub-Commissions), in order to subject the decision of a Court, two of the three members of which are agricultural experts, who themselves inspect the holding, to be reviewed by another Court, no member of which inspects the holding, and no member of which need be an agricultural expert, although the question to be determined is one of the value of land.

10113.

Recommendation as to re-hearing.

Your Committee would recommend that, in any case in which the parties so desire, a holding should be inspected by one or two valuers, in advance of the hearing of the case by the Sub-Commission. If this valuation be accepted by the parties, it should be fixed as the fair rent for the statutory term. If either party declines to accept the valuation, the case would then be heard by the Sub-Commission in the ordinary course, and in this event such hearing would serve as an appeal. But your Committee are of opinion, upon the facts before them, that where the valuation of a holding does not exceed £20, and where the judgment of the Sub-Commission on questions of value is unanimous, there should be no re-hearing by the Land Commission on any question of value.

Fair Rents: How Fixed.

Reductions under Acts.

The gross amount of rental dealt with under all the fair-rent provisions of the several Acts since the passing of the Act of 1881, is £6,140,602, and the Land Commission report that this total has been reduced under these provisions by £1,279,475, or 20·8 per cent.

Voluntary reductions in England.

It is believed that agricultural rents in England, where the tenant generally makes no improvements, and possesses no legal property in the holding, have undergone much heavier reductions within the same period, by voluntary action of the landlords.

Fair rent undefined.

The Act of 1881, in directing that the Court, on the application of a tenant of a holding, or of the landlord, or both, might determine "the fair-rent to be paid by such "tenant to the landlord for the holding," laid down no principle, or rule, or method of valuation, to guide the Court in fixing the amount of the rent. The only instructions bearing upon this fundamental matter in any definite sense, are set forth in Section 8 of the Act, and they direct the Court (1) to "have regard to the interest of the land-"lord and tenant respectively," and, (2) that "no rent is to "be allowed or made payable" in respect of improvements made by the tenant, and for which he had not been paid or otherwise compensated by the landlord.

Section 8, Sub-section 8, Sub-section 9.

No fixed principle or settled mode of valuation.

10220.

No subsequent statute has touched the subject of the principle of a fair rent. No mode of valuation has been prescribed either by Parliament or otherwise, and it appears that the interest of the tenant, to which the Court is to have regard in fixing the amount of the rent, has never been made the subject of a direct judicial pronouncement, either by the Court of Appeal or by the Land Commission, or even by any County or Sub-Commission Court. Consequently, of necessity, each individual administrator acts absolutely according to his own opinion of what may have been intended, and there is neither a common understanding of the law, nor anything approaching to uniformity in practice.

Interest of the tenant not defined. FitzGibbon, L.J., 3315-427. 10423-774.

Whilst "the interest of the tenant" still continues undefined, the direction that "no rent is to be allowed or "made payable in respect of the tenant's improvements," was subjected to judicial interpretation soon after the passing of the Act. The Land Commission interpreted the direction to mean, that all letting value resulting from the

tenant's improvements was to be excluded from consideration in fixing the fair rent, but the Court of Appeal (in Adams *v.* Dunseath, referred to more particularly in another part of this Report) held, by a majority of the judges, that the direction of the Act not to allow any rent in respect of the tenant's improvements must be taken to mean, not what the language of the Act conveys to the ordinary mind, but something different and much more complex—namely, that the tenant is entitled to an annual percentage of indefinite amount on his outlay in making the improvement; but that any remainder of letting value due to his improvement, after the percentage on outlay has been allowed to him, is to be divided between him and the landlord, according to the judicial discretion of the Land Commission, having regard to the interest of the landlord and the tenant respectively.

782-89. 785-828. 4036. 10206. Adams *v.* Dunseath.

This remarkable judgment, reversing the law as laid down by the Land Commission in the same case, and formulating a complicated rule of law on apportionment of the value of the tenant's improvements—which, according to the apparent meaning of the words of the Act, was not to be apportioned—at the same time presented two conclusions so clearly, as to render it difficult to realise that their meaning could be mistaken. The tenant was to have the allowance upon his outlay, but so far from being limited by the judgment to this allowance, he was declared entitled to a share of any remainder of letting value resulting from his outlay. And his right to the additional share was declared to be attributable to the legal interest of the tenant in the holding, apart from his improvements.

Rulings in Adams *v.* Dunseath. *See* Appendix. 10209.

This judgment, delivered in 1882, has been the law since then, and is now the law, and during the interim of 12 years has been binding upon all administrators of the Land Acts. But your Committee have learned with extreme surprise, from a majority of the official witnesses, including the three legal Assistant Commissioners who were examined, Mr. Bailey, B.L., Mr. Doyle, B.L., and Mr. Greer, also two lay Assistant Commissioners, as well as the County Court Judge of Kerry, and Mr. Heard, a County Court valuer, that the practice is to give to the landlord, after allowing the tenant a percentage on his outlay, any remainder of letting value due to the tenant's improvements in the soil. As to the interest of the tenant, which, according to the Court of Appeal, entitles him to a further share in the value of his improvements beyond the mere interest on his outlay, the evidence of these wit-

Not followed by Sub-Commissions. 1484. 2884. 7463. 8605. 6209-13. 7377. 9845. 8150. 12868. 10562. 5038. 5474. 1526. 1982.

nesses is plainly to the effect, that what they understand by the interest of the tenant is simply a right to the percentage on his outlay upon improvements. This conclusion is confirmed by their testimony that they fix a fair rent to be paid by the present tenant, at what a solvent tenant desiring to become a tenant of the holding could fairly pay from year to year. That is to say, they fix the rent at what might be paid by a person having no interest in the holding, and take no account in measuring the fair rent of the present tenant's statutory interest.

11470. 9977. 9016. Contradictions

The County Court Judge of Cork, examined at the close of the inquiry, gave evidence on this question, which shows a practice on his part different from that which had been given by his own Court Valuer, and by the County Court Judge of Kerry. Two or three lay Assistant Commissioners gave evidence that they allowed the tenant a share in the value of improvements in the soil beyond the interest on his outlay, and also that they allow for the occupation interest in fixing the amount of the fair rent. But these are questions of law as well as of value. The legal Assistant Commissioners, according to the evidence, lay down the law in their several courts. Your Committee examined three of the four legal Assistant Commissioners, and they agreed that the practice is to give the tenant, in respect of his improvements in the soil, a percentage on his outlay, and nothing more, and to fix the fair rent, without taking into account his occupation interest. Your Committee are quite unable to understand, and no witness has attempted to explain, how it was possible for some Assistant Commissioners to give only the percentage on outlay, and not to allow for the occupation interest in the rent; whilst others, in the same courts, gave a share beyond the percentage, and allowed for the occupation interest; and how this contrariety of practice could continue for twelve years, without any dissent between the legal Assistant Commissioners valuing in such different modes, without any ruling of the law by the Assistant Commissioners, without any evidence or argument in the Courts or any of them, and without a solitary appeal on the subject out of over 40,000 appeals lodged with the Land Commission.

(Qy.)

Conclusion.

Your Committee can come to no other conclusion than that the general practice of the Sub-Commission Courts has been, and is, to deny to the tenant that share in the value of his improvements, to which the Court of Appeal, in Adams *v.* Dunseath, declared him to be entitled, and to

leave out of account, in fixing the fair rent, that interest of the tenant to which the statute expressly directed the courts to have regard, and the operative force of which the Court of Appeal explicitly affirmed.

Evidence of Mr. Justice Bewley.

The Judicial Commissioner, Mr. Justice Bewley, on being examined, towards the conclusion of the inquiry, when the contradictions in the evidence of the Assistant Commissioners had challenged explanation, informed your Committee that the Land Commission do not instruct the Assistant Commissioners, and do not consider that it is their function, or that they have any right, to instruct the Assistant Commissioners in the discharge of their duty. It is evident, however, in the state of facts disclosed, that effectual measures must be adopted without delay to secure both the observance of the law, and intelligent uniformity of practice. The learned Judge explained that the practice in his Court is to allow the tenant only the percentage on outlay in respect of his improvements; but that his occupation right is taken into account in fixing the fair rent, and that by this means the tenant receives his due share of the remainder of the value of his improvements, as part of his general interest in the holding.

10231, 10235.

10198. 10205. 10208.

Mr. Justice Bewley held that this is in accord with the judgment in Adams *v.* Dunseath, and he produced a correspondence between himself and Lord Justice FitzGibbon, in which the Lord Justice appeared to convey a general assent to Mr. Justice Bewley's proposition. Your Committee have learned that the Court Valuers of the Land Commission are not instructed to act in the particular mode described by Mr. Justice Bewley. His colleague, Mr. Commissioner FitzGerald, Q.C., examined at the opening of the sittings of your Committee, gave an account of the method of fixing fair rents, but made no reference to the occupation right. Assuming that the Land Commission Court takes this right into account in reduction of the rent, and that the Sub-Commission Courts, as testified by their legal chairmen, fixed the rents without deduction in respect of the occupation right, your Committee confess their inability to understand how the rents brought up on appeal from the Sub-Commission Courts, amounting to £431,398, should not have been reduced, but were increased to £432,680 by the Court of the Land Commission. The intervention of Parliament is urgently required to define and protect "the interest of the tenant," and to secure coherent administration of the law.

Legislation required.

Further particulars in fair rent cases.

Your Committee have further to observe that the elaborate forms of report in use by Sub-Commissions and appeal valuers, and the less complicated forms used by the valuers to the County Courts, whilst they furnish many particulars of more or less interest to the parties, do not afford sufficient information directly bearing on the essential matter—that is, the fairness of the rent.

Recommendation.

In order to secure that such information may be given, your Committee recommend that in future all valuations be so made and recorded, as to show the estimated value of the gross produce of the holding; also the fair rent to a solvent person desiring to become a tenant—the holding, including buildings, being valued as it stands, as a going concern. The valuation should also show any deductions from such rent in respect of the occupancy right and the improvements of the present tenant, distinguishing between deductions of the letting value of tenant's buildings, and of other improvements not affecting the capacity of the soil. It should further set out the allowances for drainage and reclamation respectively, in the latter cases, showing the interest allowed on outlay, and the apportionment of any remainder of the letting value due to the improvement.

Improvements.

Difficult issues presented.

1213, 8956, 5501, 4531, 3669, 12283.

In Ireland farm buildings and other improvements, which would in England be regarded as a necessary portion of the equipment of a farm, are almost invariably the work of the tenant, and hence the fixing of a "fair rent" depends largely on the value and legal ownership of these improvements. The additional value to the holding arising from improvements, the legal interest of landlord and tenant therein, and the apportionment thereof between both, which the existing state of the law requires, present issues of much difficulty.

Section 8, Sub-section 9.

Section 8, Sub-section 9, of the Act of 1881 provides:—

> "No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title."

The administration of this important provision is seriously affected by the fact that it was held in the case of Adams *v.* Dunseath that these "improvements" are only such as a tenant could, under the Act of 1870, claim compensation for on "quitting his holding," and that the "enjoyment" of improvements made before 1870 is to be taken into account in the landlord's favour. Where the Ulster custom prevails, this doctrine does not apply.

Importation of Act of 1870.

The point of view from which improvements are regarded in the two Acts is entirely different. The Act of 1870 prescribes the measure of compensation to be paid by the landlord to the tenant on quitting his holding, whether by eviction or otherwise; that of 1881 is concerned with the fair rent to be paid by the tenant to the landlord during occupation.

Different points of view.

The majority of the judges, however, in Adams *v.* Dunseath, held that the enactment in Section 8, Sub-section 9, of the Act of 1881, already cited, relates only to such improvements as the tenant could claim compensation for under the Act of 1870; and that as the "enjoyment" of such improvements must, by Section 4 of the latter Act, be taken into account against a tenant on "quitting his holding," in reducing an award of compensation, such "enjoyment" should also reduce the allowance made in the fair rent of the sitting tenant for his improvements. Moreover, the Court held that as the Act of 1870 debarred the out-going tenant from claiming compensation for a number of improvements in specified cases, so these excluded improvements were to be credited to the landlord in fixing the fair rent. Again, as improvements of a kind not "suitable to the holding" are not to be paid for by the landlord, under the Act of 1870, so a superior house on a small farm may have rent imposed on it under the Act of 1881.

Application of the provisions of 1870.

Furthermore, tenants of over £50 valuation (since 1881, £150) could contract themselves out of any right to compensation under the Act of 1870. Under the Act of 1881 a leaseholder is not exempted from rent on improvements, if his lease contains a covenant that he is not to claim for them on quitting his holding. Such was the decision in the leading case affecting leaseholder's improvements, of O'Neill *v.* Cooper (unreported). There the lease contained a covenant that the tenant was not to claim compensation for improvements at its expiration. Subsequently the Land Act of 1881 gave tenants at the end of their leases practical perpetuities, and the Act of

Tenants over 50*l.*, and leaseholders.

For case stated, *see* Appendix.

1887 conferred upon lessees the right of applying to fix a fair rent. But because of the "contracting-out" covenant, not to claim compensation for improvements when the lease came to an end, the landlord was held entitled to rent on them while the tenancy continued in existence. The file in this case produced before your Committee shows that improvements to the amount of £1,613 had been effected by the tenant and his predecessors in title, but in consequence of the decision in Adams *v.* Dunseath no allowance was made therefor, and the landlord got credit for them in the rent to the extent of £25 a-year. This case ruled all others where a lease contained similar provisions.

Classes of improvements liable to rent.

The following is a summary of the more important classes of improvements in respect of which a tenant cannot claim compensation under the Act of 1870, and on which, therefore, owing to the decision in Adams *v.* Dunseath, he may now be rented when a fair rent is being fixed:—

(i.) Not suitable.

(i.) Works not "suitable to the holding" (Act of 1870, section 70). Thus, if a tenant builds a dwelling-house of a character superior to the necessities of the farm; or if, having several holdings, he erects on one of them farm-buildings for the whole, and which are therefore in excess of the requirements of the particular holding—in these and analogous cases the improvements are "not suitable to the holding," and the tenant may be rented on the buildings he has himself erected.

(ii.) Excluded by contract.

(ii.) Improvements in respect of which a tenant, whose aggregate poor law valuation is £50 or upwards has contracted in writing not to claim compensation on quitting his holding. The Act of 1870 permitted such tenants to contract out of the Act (s. 12), and, as we have seen in leases made after the Act of 1870, such contracts were frequently inserted. Yet, although the contract was only made with a view to the provisions of the Act of 1870, the landlord is nevertheless entitled to rent on such improvements under the Act of 1881.

(iii.) Made for valuable consideration.

(iii.) Improvements made in pursuance of a contract entered into for valuable consideration therefor (Act of 1870, c. 46, Sec. 4, Sub-sec. c). This exemption was presumably intended to protect the landlord who had actually paid the tenant for making the improvements; but the words "valuable consideration" legally cover a number of cases where in reason and equity the tenant is

entitled to the benefit of his improvements. Thus, where a lease is made at a rack-rent, and a clause is inserted binding the tenant to erect buildings or execute some other improvements at his own expense, the mere granting of the lease, no matter how high the rent may be, is in law a "valuable consideration" for the tenant's contract. He is therefore disentitled to claim compensation on quitting his holding for any improvement so executed, and the landlord, when a fair rent is fixed, is entitled to rent on such improvement, exactly as if the tenant found it there when he became tenant.

Acceptance of a lease.

The question whether by reason of the acceptance of a lease the improvements made by the tenant or his predecessors in title, pass to the landlord, is not in a satisfactory position. Though the majority of the Court of Appeal held in Adams *v.* Dunseath that the landlord was entitled to rent on the house erected by the tenant's predecessor prior to the lease, the Land Commission in Walsh *v.* Limerick (23 I. L. T. R. 17) held under similar circumstances that the buildings remained the tenant's. Both decisions, however, were arrived at on the special facts of the case, but Mr. Justice Bewley appeared inclined to think that the Land Commission might still be governed on this point by the view taken in Adams *v.* Dunseath. In the opinion of your Committee, the law should be put beyond doubt that the acceptance of a lease does not vest the tenant's improvements in the landlord.

11264-8.

(iv.) Excluded by Time Limit.

(iv.) Improvements made before the passing of the Act of 1870, and twenty years before the claim for compensation (or fair rent application) is made (Act of 1870, Section 4, Sub-section 1*a*), *except* permanent buildings and reclamation of waste land. The most important improvement so excluded is drainage executed on land not absolutely "waste." Land, no matter how bad, which has previously been cultivated, or which is even fit for coarse grazing, however inferior, is not technically "waste." The drainage of such land must naturally be more common than the drainage of land absolutely "waste," and requires a costly class of improvement. Fences, farm roads, tree planting, are thus also excluded.

(v.) Exclusions under certain leases.

(v.) Improvements made during the continuance of a lease for a term of 31 years or upwards, *except* permanent buildings and reclamation of waste lands and unexhausted tillages and manures, unless it expressly provided in the

Act of 1870, Sec. 4, Sub-section 3.

lease that the lessee is entitled to compensation. The remark just made as regards drainage, fences, farm roads, tree planting, also applies here.

(vi.) Under fee farm grants and perpetual leases, 802-7. 8074-84. 1686. 4035. 10318. Ratty *v.* Kelly; Mollan and Keiran.

(vi.) Improvements made by a tenant holding under a fee-farm grant or lease for ever. This only applies where a tenant is having a fair rent fixed under the provisions of the Redemption of Rent (Ireland) Act, 1891. The definition of "tenant" under the Act of 1870 (Section 70) does not include a tenant under a fee-farm grant, and such a grantee can therefore make no claim for compensation under that Act. Accordingly, where such a grantee is now entitled to fix a fair rent, the landlord is entitled to claim rent on the whole value of all his improvements.

Definition of "Improvements."

The branch of the decision in Adams *v.* Dunseath, dealing with the word "improvement," is also highly important. The definition of this word was contained in the Act of 1870, and was declared to extend to the Act of 1881. The more material part of this definition declares "improvement" to be "any work which, being executed, adds 'to the letting value of the holding.'" In consequence of the use of the word "work," the Court of Appeal drew a distinction between the increased letting value arising from the improvement, and the improvement or improvement work itself, and the practice of the Sub-Commission Courts has been to give the tenant no share in the increased letting value which his improvement created, beyond interest on the actual cost of the improvement work.

Effect on Rent.

Act of 1870, Section 4.

The Act of 1870 also provides (Section 4):—

"Where a tenant has made any improvements before "the passing of this Act on a holding held by him under "a tenancy existing at the time of the passing thereof, "the Court in awarding compensation to such tenant "in respect of such improvements shall, in reduction "of the claim of the tenant, take into consideration "the time during which such tenant may have enjoyed "the advantages of such improvement; also the rent "at which such holding has been held, and any bene-"fits which such tenant may have received from his "landlord in consideration, expressly or impliedly, of "the improvements so made."

Applied to Exemption from Rent.

The Court of Appeal, in Adams *v.* Dunseath, held that this limitation also applied where the fair rent of a holding was being fixed under the Act of 1881, and that the right of a tenant to be exempted from rent on his own improvements was consequently qualified accordingly.

Mr. Justice Bewley, however, stated that in the practice of the Court of the Land Commission, while the tenant did not receive specifically any share in the increased letting value, beyond interest on the actual cost of the improvement work, he received a further share by virtue of his occupation-right. The question of occupation-right is treated elsewhere in this report. From the evidence of Lord Justice FitzGibbon, what the Court of Appeal apparently decided in Adams *v.* Dunseath was that the residue of the increased letting value due to such improvements, after deducting interest on cost, did not necessarily in all cases go to the landlord, but was to be allocated as between landlord and tenant, according to their several interests in the holding, having regard to all the facts of the case.

Bewley, J., on Occupation Right. 10209. FitzGibbon, L.J. 3353-68.

On the two cardinal issues affecting improvements—the apportionment of increased letting value consequent thereon, and the application of the exclusions and limitations of the Act of 1870 to the fixing of fair rents—decided by the majority of the judges in Adams *v.* Dunseath, Parliament strove, only six months previously, to prevent the possibility of such a construction being given to Sub-section 9, Section 8, as the Court of Appeal declared to be the law.

For cases stated *see* Appendix.

Intention of Parliament.

In the first draft of the Land Bill of 1881, as introduced into the House of Commons, the following limitation on the measure of the tenant's interest, was contained in the fair rent section.

Proceedings in Parliament.

> "The Court, in fixing such rent, shall have regard to the tenant's interest in the holding, and the tenant's interest shall be estimated with reference to the following considerations, that is to say :—
>
> "(*a*) In the case of any holding subject to the Ulster Tenant Right Custom, or to any usage corresponding therewith, with reference to the said custom or usage.
>
> "(*b*) In cases where there is no evidence of any such custom or usage, with reference to the scale of compensation for disturbance . . . . . and to the right (if any) to compensation for improvements effected by the tenant or his predecessors in title."

First Draft.

This provision the House rejected, and subsequently inserted in the fair-rent section, Sub-section 9, which, as it passed the House of Commons, simply ran : "No rent

Sub-section 9 of Section 8.

In the House of Lords. Lords Bill, No. 167, 1881.

shall be made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title." This Sub-section was struck out by the House of Lords.

Hansard, Vol. 264, pages 1475-7.

Upon the Bill being returned to the Commons the Sub-section was reinserted, but the Irish Attorney-General, Mr. Law, proposed the following limitation:

Limitation proposed.

> "And for which the tenant would be entitled to compensation under the provisions of 'The Landlord and Tenant (Ireland) Act, 1870, as amended by this Act.'"

Limitation rejected.

This exactly corresponded to what, in Adams *v.* Dunseath, was afterwards declared to be the law, but the House refused to accept the words, which were rejected by a majority of 134.

Words added.

The Irish Attorney-General then proposed the addition of the following words:—

> "And for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or compensated by the landlord or his predecessors in title."

Hansard, Vol. 264, p. 1480.

This addition was unanimously agreed to.

Thereupon Sir Stafford Northcote, the Leader of the Opposition, proposed the addition of the words as to "enjoyment" from Section 4 of the Act of 1870:

Sir S. Northcote, 10th August, 1881.

> "The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of those improvements, and also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made."

These words, which the Court of Appeal in Adams *v.* Dunseath declared must be read into Sub-section 9, Section 8, the House of Commons rejected by a majority of 130.

The Prime Minister, in refusing to accept them, used the following language:—

Mr. Gladstone, Hansard, Vol. 264, p. 1489.

"The doctrine accepted at the time of the Land Act of 1870, and which he certainly declined to accept the night before, was the doctrine that the enjoyment by the tenant for a certain time of his own improvements, might have

reimbursed him for the cost of those improvements, and by a natural process they passed over to the landlord. But that was not the basis upon which they proceeded now, and there was no occasion for it. The tenant's improvements were the tenant's own property, and he would not admit the principle that the time during which he had enjoyed those improvements was any reason for their passing away from him."

On the previous day Mr. Gladstone had made this declaration: "In the Act of 1870 we did, in respect to the tenant, recognise the principle that he might be compensated by a reasonable lapse of time in respect of improvements he had made, and that the use and profit of those improvements for a certain time might be considered as compensation, but we do not recognise that principle in the present Act. None of the enactments of the present Bill are founded on that principle. . . . . It is much better, I think, that those who make improvements should have the whole benefit of the improvements."

Mr. Gladstone, 9th August, 1881. Hansard, Vol. 264, p. 1393.

When the Bill was again sent back to the Upper House, the Lords inserted the words as to enjoyment proposed by Sir Stafford Northcote, which had been rejected by the Commons, and the clause, therefore, on its return from the House of Lords, had the following limitation attached to it:—

Fresh limitation by the Lords.

> "The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made."

Hansard, Vol. 264, p. 1969.

The House of Commons again rejected these words, this time by a majority of 128.

Rejected by the Commons.

The word "otherwise" was then inserted before "compensated," and the Lords subsequently agreed to the clause in the shape in which it now stands.

Sub-section 9. Section 8.

> "No rent shall be allowed or made payable in any "proceedings under this Act in respect of improve- "ments made by the tenant or his predecessors in "title, and for which, in the opinion of the Court, the "tenant, or his predecessors in title, shall not have "been paid or otherwise compensated by the landlord "or his predecessors in title."

Final Shape.

It cannot, therefore, be matter for surprise, that the Irish

tenantry should seek to secure that property in their improvements, which Parliament unquestionably intended to declare to be their right.

Equitable consideration.

Even if the records of the two Houses did not so unmistakably show the intentions of the Legislature, it is plain that it cannot equitably be argued, that because certain improvements do not fulfil the technical legal conditions, to entitle a tenant on quitting his holding to be compensated for them under the Act of 1870, the landlord is entitled to charge rent on them to the sitting tenant, under the Act of 1881, as if the landlord had made them, or had paid for them out of his own pocket. Yet the law has been administered on this principle for 13 years, and about 300,000 rents have been fixed, subsequent to the decision in Adams *v* Dunseath, which was delivered on 28th February, 1882, six months after the passing of the Act.

Earl Cowper's view.

The evidence taken by your Committee confirms the view expressed in the House of Lords on the Second Reading of the Land Act of 1887, on the question of improvement, by Earl Cowper, at the conclusion of the inquiry by the Royal Commission, of which he was President.

Hansard, 22nd April, 1887.

> "With one or two exceptions, he distinctly stated that until very recently landlords did not make improvements on the land, and when the tenants made them, the rents were immediately raised. He attributed the present condition of Ireland to the fact that the landlord-class in Ireland, who in other respects were a most admirable race of men, had in many instances been undoubtedly bad landlords. The future hope of the country lay in protecting the tenants in the possession of their improvements."

When subsequently challenged in the House of Lords on this expression of opinion, Lord Cowper said:—

Lord Cowper, 2nd May, 1887.

> "He did not believe that improvements as a rule were made by the landlords; that they were, in fact, usually made by the tenants, and the only plan was to encourage tenants to make improvements and to protect such improvements when made. He qualified his remarks by saying 'until recently' one could count on one's fingers the Irish estates on which improvements were made by the landlords. . . He thought he was justified in saying that, as a rule, improvements had been made in Ireland by the tenant, and in many cases the rent had been raised upon such improvements."

Your Committee have carefully considered the direction of the Act of 1881, that no rent should be allowed in respect of the tenant's improvements; also the decision in Adams *v.* Dunseath, rendering the tenant liable to rent in respect of a portion of the value resulting from his improvements; and finally the practice of the Sub-Commission Courts, which, according to the weight of evidence before us, allows the landlord rent in respect of the whole of the improved value, except so much as is given to the tenant for interest on his outlay. The intention of the Legislature has not, in the opinion of your Committee, been carried into effect by the Judgment in Adams *v.* Dunseath, and it seems to have been defeated in the practice of the Courts in fixing rents. General conclusion.

It is of great and urgent importance that the law on this subject should be made unquestionably clear. Agricultural improvements are of vital consequence to the welfare of Ireland, and it is certain, from experience, as well as from the effects of the Act of 1881 upon the interests of landlord and tenant, that the tenant alone is willing to make improvements, or will in future make them. The public interest, therefore, demands that he should be encouraged by being secured in the enjoyment of the value resulting from his expenditure and labour. In making improvements, he incurs a certain risk of loss. It often happens that the cost is not nearly repaid by the result. The usual case appears to be that the increased value is only sufficient to yield a bare return for the outlay. When, by exceptional success, a more considerable value results, which never would be created except by the tenant's exertions, he is liable to be charged an increased rent in consequence, and this is not encouraging, but the reverse. The effect of the creation of a statutory term being to let the land, including its capacity, to the tenant in perpetuity, there appears to be no reasonable and no intelligible cause for denying to the tenant the full enjoyment of any improvement in his holding, produced by the expenditure of his capital or the application of his labour. The interference of Parliament is required in order to ascertain, and secure to the tenant, his right to the improved letting-value which has been elicited by his improvements. Importance of protecting improvements.

After a careful review of the whole evidence, your Committee recommend that improvements of whatever character, made by the tenant, should be exempted from rent; and that the definitions and limitations imported from the Act of 1870 should not apply in the administration of the fair-rent provisions of the Act of 1881. Interference of Parliament required.

Procedure in respect of improvements.

On the question of procedure of the Land Commission in considering improvements, your Committee desire to express their entire concurrence in the recommendation made by the Select Committee of the House of Lords in 1882, presided over by Earl Cairns, as to the practice of the Land Commission in valuing improvements, viz. (par. 6):—

Recommendation of Select Committee in 1882.

"The Committee are of opinion that it is very important in the interest of the tenant, as well as the landlord, that the Sub-Commissioners, in fixing a judicial rent, should determine and record both the fair rent of the holding absolutely and also the sum which they find should be deducted from this rent in respect of the tenant's improvements. The knowledge of the rent assigned to the holding irrespective of improvements is necessary with a view to the settlement out of Court of disputes as to adjacent or similar holdings, and may be of much importance in questions as to the rental of the whole country, and the separate findings as to rental and improvements will greatly simplify appeals, inasmuch as both landlord and tenant may frequently be satisfied with the finding as to rental, and desire to appeal as to improvements only, or *vice versâ*.

"The Committee find that for some time after the formation of the Sub-Commissions the books issued to them for entering minutes of their orders contained two columns, headed 'Estimated value of Tenants' Improvements,' and 'Annual Sum deducted in respect of Tenants' Improvements from present 'Rent in fixing Judicial Rent." These columns were not, however, filled up by the Sub-Commissioners, and have been latterly omitted from the order minute books. The Committee do not think that any sufficient cause has been shown why this information should not be required, at least as to holdings not subject to the Ulster Customs, and they understand the Commissioners (although opposed to the information appearing) to be of opinion that the information should be given, and that it would be valuable."

Further Report.

This Report is dated the 18th April, 1882, and their Lordships in a further Report, dated the 9th July, 1883, having heard further evidence, reiterate their opinion, as follows:—

"Complaint is also made that there is no sufficient record showing what improvements have been proved

to have been made by the tenant and have been allowed for as affecting the rent. . . The Committee regret to find . . . that the form adopted by the Commissioners in order to meet this complaint has proved useless, and they must express again their strong opinion that the respective interests of landlord and tenant cannot be properly dealt with, and the settlement of judicial rents cannot be placed upon a satisfactory basis, unless there is made and preserved a distinct specification of the improvements established by the evidence of the value assigned to them in the settlement of rent."

Objection by O'Hagan, J.

In his evidence before the Lords' Committee, on the 25th April, 1882, Mr. Justice O'Hagan objected to this information being given, as appears from Questions 3713 to 3715, stating in reply to Lord Cairns that it would create more discontent than it would allay, and in reply to the Marquis of Salisbury that there were reasons of policy against it. Nevertheless, the recommendation referred to was made, and Mr. Justice Bewley, who has succeeded Mr. Justice O'Hagan as Judicial Commissioner, informed your Committee that if they reported to a like effect, the Land Commission would now undertake to carry out the recommendation.

Not shared by Bewley, J.

Q. 11345.

Presumption as to improvements.

On the question of presumption as to the making of improvements, the 5th Section of the Act of 1870 enacts that they shall be deemed to have been effected by the tenant. But the exceptions are so numerous, that the provision is of little value, and your Committee recommend that the exceptions be repealed, and that until the contrary is proved, all improvements be deemed to have been made by the tenant or his predecessors in title.

Disadvantage of the tenant.

At present, except in the small number of cases in which the limited presumption created by the Act of 1870 operates, the tenant is always liable to be placed at a disadvantage, by having to prove the making of his improvements by the evidence of some one actually present when they were effected—a condition in many cases impossible, or at least very difficult, for him to satisfy, especially in cases where the improvements are of old date, or where the holding has come into his possession by purchase. Owing to such difficulties of proof, valuable improvements are often lost to tenants, and rent imposed on them as if they were the landlord's property. Section 8, Sub-section 4, of the Act, 1881, enables the Court to disallow a fair-rent application, if satisfied that the permanent improve-

858, *seq.* 1208. 1211. 1224. 1463. 1543. 1548. 5181. 7420, *seq.* 8996.

ments have been made and substantially maintained by the landlord, and this provision amply safeguards an improving owner. But it is abundantly clear that it is the practice in Ireland for the tenant to make the improvements, and, therefore, the presumption of law should lie accordingly.

Holdings in Ulster.

Similarly, holdings in Ulster should be deemed subject to the Ulster custom until the contrary is established.

Registration of Improvements.

Recommendation.

In the limited number of cases in which improvements are executed by the landlord, the record of the fact in the estate books would prevent any difficulty of proof arising, In the Act of 1870, provision was made to enable a tenant to register his improvements in the County Court, but the procedure was cumbrous and expensive, and especially since the passing of the Act of 1881 has not been resorted to. Your Committee recommend that when, on the hearing of a fair-rent application, it has been determined that improvements belong to a tenant, the record of this fact by the Court should be made evidence in subsequent proceedings, in the same manner as if the procedure under the Ac tof 1870 had been adopted.

Landlord to state grounds of objection.

While, according to the existing rules of the Land Commission, the tenant of any holding, the valuation of which is over £10, must make out a schedule of the improvements for which he intends to claim credit on the hearing of a fair-rent application, the landlord is under no corresponding obligation to give notice of any point of law which he intends to raise at such hearing. Your Committee see no reason why the landlord should not be obliged, within a certain time after the service of the originating notice to fix a fair-rent, to state all the grounds of his objection to such application, and they recommend that a rule to that effect be made by the Land Commission, and that a similar rule should apply to hearings in the Appeal Court.

True Value, Specified Value, and Free Sale.

True value. Section 1. 2752.

By the Land Act of 1881 it is enacted that the tenant for the time being of every holding, not specially excepted from the provisions of the Act, "may sell his tenancy for "the best price that can be got for the same," subject to regulations set forth in the section.

Sub-section 2.

One of these regulations requires the tenant to "give "the prescribed notice to his landlord of his intention to

Sub-section 3.

"sell his tenancy;" and another directs that "on receiving

"such notice the landlord may purchase the tenancy for "such sum as may be agreed upon," or, in the event of disagreement, may "be ascertained by the Court to be the "true value thereof."

Specified value.

Section 8. Sub-section 5.

It is also provided that on the occasion of any application to the Court to fix a judicial rent, the landlord and tenant may agree to fix, or in case of dispute the Court may fix, "a specified value for the tenancy;" and where such value has been fixed, then if the tenant during the statutory term gives notice of his intention to sell the tenancy, the landlord is entitled to purchase it for the amount so fixed, subject to addition of the value of improvements afterwards made by the tenant, and subject to deduction in respect of subsequent dilapidation of buildings and deterioration of soil. Holdings subject to the Ulster custom, or to any usage corresponding to the Ulster custom, are exempted from the provision as to "specified value," and with regard to "true value," the tenants of such holdings are allowed by law the option of selling their tenancies, either under the custom or usage, or under Section 1 of the Act. In case of sale under Section 1, the landlord would be entitled to buy the tenancy at the "true value" agreed upon, or, in the event of disagreement, ascertained by the Court. But it appears that the Ulster custom tenant does not avail himself of this option, preferring to sell his tenancy in pursuance of the custom, and thus to avoid the exercise of a right of pre-emption by the landlord. It follows that, except in the case of a holding subject to the Ulster custom, the landlord may apply to the Court, when a fair rent is being fixed, to fix also a specified value at which he may purchase the tenancy whenever the tenant wishes to sell it; and whether or not the holding is one in respect of which a fair rent can be fixed, the landlord, on receiving notice from the tenant of his intention to sell the tenancy, may buy it, if no "specified value" has previously been fixed, "at what may be ascer-"tained by the Court to be the true value thereof."

Specified value excluded by Ulster custom.

Section 1. Sub-section 12

Custom tenant may sell under custom.

Effect of provisions as to true and specified value

The Act provides, as has been pointed out, that either the specified value, or the true value, of a tenancy may be fixed by agreement between the tenant and the landlord. It has not been shown, however, in the course of this inquiry that any such agreement is ever made, neither does the question ever arise at the instance of the tenant.

Agreements not made.

According to Mr. Doyle, a legal Assistant Commissioner, who has filled that office almost from the passing

No principle recognised.

2097, 2098.

Difficulty in fixing value.

Refusal to fix specified value.

True value fixed.

2742. 6107. 7161. 7591. 7834. 10287. 10941. 5587. 6073-4.

Value fixed lower than market price.

Landlord may re-sell at market value.

Section 20. Sub-section 3.

Illustrations of "true value."

App. 8.

of the Act of 1881, the value of a tenancy is settled by "rule of thumb," and no principle is recognised. Indeed, Mr. Doyle declares that he does not know of any principle upon which any value can be put upon a tenancy other than the value of improvements belonging to the tenant. Other Assistant Commissioners examined before us have not gone quite so far as Mr. Doyle. But they agree in regarding as their most difficult function the fixing of the value of a tenancy. Apparently they discharge the duty as a rule with great reluctance. They even refuse to fix the "specified value," justifying their refusal on the ground that no adequate evidence was submitted. But under the statute it appears that they cannot refuse to fix the "true value" when the tenant is about to quit the holding, although we should suppose that the evidence in a case of application to fix "true value," there being no other question before the Court, would be probably more meagre, and, therefore, more unsatisfactory, than the evidence available in a case of "specified value," where, as the fixing of a fair rent is a portion of the case, there is testimony forthcoming at least as to the value of the holding. Whatever may be the evidence taken, the result appears to be that when the value is fixed, it is fixed without any regard to the general direction of the Act, that the tenant is entitled to sell his tenancy for the best price that can be got for the same. Whether, by the fixing of "specified value," the landlord is enabled to buy the tenancy at a future time, or by the ascertainment of "true value" he is empowered to purchase it at once, in either case the price to be paid is substantially less than the real market value of what the tenant has to sell. When the landlord acquires the tenancy at the price so fixed, there is nothing to prevent him, in the case of a present tenancy, from immediately re-selling at the full market value, subject to the fair rent payable by the former tenant, and even in the case where a present tenancy existed in the holding, the landlord, as the law now stands, will have it in his power, after the 22nd of August, 1896, that is, after the lapse of fifteen years from the passing of the Act of 1881, to re-sell the tenancy at the full market value, and likewise to fix the amount of the future rent.

From a Paper handed in by Mr. Justice Bewley, showing seven cases in which the "true value" fixed by Assistant Commissioners or County Courts was substantially increased on appeal, it appears that the average "true value" fixed by the subordinate courts was less than five years' purchase of the rent, and that it was increased on

appeal by the Land Commission to 6½ years' purchase. A further Paper, also handed in by Mr. Justice Bewley, gives a return of all cases from the passing of the Act of 1881 to the 31st March last, in which the Sub-Commission or County Court made an Order on an application to fix the true value of a tenancy, and the Land Commission re-heard the application on appeal. Omitting the cases in which the decisions of the Court of first instance and of the Land Commission afford no basis for comparison as to value, we find that in 12 cases which arose in Ulster, the value fixed in the subordinate courts was, on the average, 10 years' purchase of the rent, and by the Land Commission, about 9 years' purchase; and in 12 cases out of Ulster, the lower courts awarded on the average 6½ years' purchase of the rent, which was reduced to an average of about six years' purchase on appeal to the Land Commission. App. 16. Sales of tenancies. App. 12.

Another Paper, which has been handed in by Mr. Toler Garvey, land agent, shows the results as stated by land agents, in reply to a circular issued by the Irish Landlords' Convention, of the sales of over 3,000 tenancies throughout the country, from 1882 to the present time. This return discloses the significant fact that in Ulster, where free sale prevails to the general exclusion of the right of pre-emption, the average price of tenancies was 16·8 years' purchase of judicial and non-judicial rents combined, whilst in Leinster it was only 6·1 years' purchase, in Connaught 10·2 years' purchase, and in Munster 10 years' purchase. From these results we think it must be inferred that the market value of tenancies, where no right of pre-emption exists, is far higher than "true value" or "specified value," fixed by the Courts; and that where the right of pre-emption does exist throughout Leinster, Munster, and Connaught, the market value of the tenancy is thereby greatly depressed, because the person who buys a tenancy is liable to have "specified value" or "true value" afterwards fixed by the Court at the instance of the landlord. As improvements are stimulated in Ulster by the security of the right of free sale, so they must be checked in all other parts of Ireland by the right of pre-emption, for the tenant is not so likely to make improvements, when he may be compelled to sell them with his tenancy, for a price fixed arbitrarily by a Court, acting on no definite principle, as when he knows he can sell the tenancy, including the improvements, for the best price offered in the market. Effect of pre-emption on free sale. Improvements checked by existence of right of pre-emption.

Such consequences, repugnant to equity and opposed to good policy, do not in the opinion of your Committee

accord with the object which Parliament had in view in enacting the free provisions of sale the Act of 1881.

Repeal of pre-emption provisions recommended.

Your Committee recommend that by the repeal of the provisions of the Act relating to "true value" and "specified value," the Courts be relieved of a function which they are unable to discharge, and that the declaration of the Act of 1881, that every tenant may sell his tenancy for the best price that can be got for the same, be thus rendered effectual.

Exclusions.

Exclusions.

Important evidence was taken on the number of the exclusions from the benefits of the Land Act; that is to say, of the large classes of holdings upon which a fair rent cannot be fixed. Some of these exclusions are due to direct statutory provision; others are deduced by judicial interpretation and decision.

Appendix, No. 3, Table I.

A table was handed in by Mr. W. F. Bailey giving a list of these exclusions, and the reference to the section of the Statute, or to the legal decision, under which each class of cases is shut out from the benefit of the Act.

"Future" tenancies.

"Future" tenancies, which may be held either by those who in 1881 held "present" tenancies, which have since been broken after judgment in ejectment, or may represent lettings made since the Land Act of 1881 was passed, are excluded from the fair-rent provisions of that Act.

Their numbers

When it is remembered that, since the passing of the Land Act of 1881, there have been over 33,000 evictions or notices terminating the tenancy, it will be seen how large is the number of "future" tenancies now called into existence.

Position of future tenants.

Where the rent of the future tenant has not been increased since his tenancy began, he is a tenant-at-will, and consequently liable to eviction at the pleasure of the landlord. Where his rent has been increased, the acceptance of the increase by him has created a statutory term during the continuance of which he holds under the protection of the ordinary statutory conditions. But as soon as the term expires, at the end of 15 years, he falls back into the condition of a tenant-at-will, with no security whatever against eviction. He cannot apply to have a fair rent fixed, and he cannot acquire another statutory term unless the landlord imposes, and he accepts, another increase of rent.

The legal position of the future tenant demands consideration.

The exclusions in Section 58 of the Act, 1881, are taken (with the unimportant addition of glebe lands) from the Act of 1870, but several of the decisions on that Act have not been followed since 1881, with the result that many tenancies are now excluded, which, if the interpretation of the law had remained as it stood when the Act of 1881 was passed, would be entitled to the benefit of that measure Indeed, the latest text writers on the Irish Land Acts, speaking of the decisions on the definitions in the Act of 1870, say, "Many are of little value, as they have "been practically over-ruled by the decisions of Courts of "superior authority under the Act of 1881." Yet the definitions in the Act of 1870 agree substantially with those in the Act of 1881. Definitions. Cherry and Wakely, pages 169, 170

The definition of town parks in Section 15 of the Act of 1870, and Section 58 of the Act of 1881, excludes "any "holding ordinarily termed town parks, adjoining or near "to any city or town, which bears an increased value as "accommodation land over and above the ordinary letting "value of land occupied as a farm, and is ('shall be' in "the Act of 1870) in the occupation of a person living in "such city or town, or the suburbs thereof." So microscopic is the nicety of judicial interpretation, that on the difference between "*shall be* in the occupation of a person "living in such city or town," in the Act of 1870, and "*is* in "the occupation," in the Act of 1881, it was held under the former Act where the tenant ceased to reside in the town, that the land ceased to be a town park, whereas the contrary decision was arrived at under the Act of 1881. The Act of 1887 has now declared the law in accordance with the latter decision, and the condition as to residence is determined by the question whether the applicant or his predecessor in title resided in the city or town at the date of the passing of the Land Act of 1881. Town parks. 1006. 1012. 1560 *sqq.*, 2297. 2308. 3168. 10272. 10412. 11477. Judicial interpretation Talbot *v.* Drapes, 5 I.L.T.R., 143 Nelson *v.* Headfort, 18 L.R.I., 407.

It is on the question of the size of "city or town" that the fluctuation of decision has been most embarrassing. For instance, it was held under the Act of 1870 that Portglenone, with a population of 800, and Newmarket, with a population of 765, were not large enough to be "towns," and, therefore, could not have town parks. Following these decisions, the Land Commission in the earlier administration of the Act of 1881 held that Borrisokane and Kirkcubbin, with populations of 700 and 600 respectively, were too small to have town parks, but later Size of town.

1013. 1014. 1009-11. on Hacketstown, a place of over 600 inhabitants, Newport, with a population of 683, Fivemiletown, with 500 inhabitants, and Timoleague, with 360, were held to have town parks, and in the present year Caledon, with a population of 700, has been held to be a town.

Recommendation of Cowper Commission. The uncertainty of the law on town parks led the Cowper Commission to recommend that a town to exclude under Section 58, should have 5,000 inhabitants, where the holding was more than five acres in extent. In the Land Bill of 1887, introduced by the Government, 2,000 was inserted as the population-limit in the House of Commons, but the House of Lords rejected the proposal.

Proceedings in Parliament. The Act of 1887, however, attempted to apply a remedy in another way, by enacting that a holding shall not constitute a town park, "if it is let and used as an ordinary "agricultural farm," provided its inclusion, under the operation of the Act of 1881, does not "substantially "interefere with the improvement of the city or town to "which it belongs, or the accommodation of the inhabit-"ants thereof." A variety of decisions followed as to the meaning of this definition, and authorities have also accumulated as to the meaning of "suburbs," "accommodation land," "increased value," "ordinarily termed town parks," which your Committee have spent some time in trying to understand and reconcile.

Sec. 9.

Demesne. As to Demesne Lands, the law on that term in the Act of 1870, was that laid down by Lord FitzGerald in Hill *v.* Antrim, and this was the leading case when the Act of 1881 was passed. It defined "demesne land" to be "land within the ambit of the demesne reserved with the "mansion house, and used for purposes of pleasure or for "pasture, and sometimes let to dairymen, or during the "minority of an owner." This was disapproved of by the Court of Appeal, when the words came to be considered under the Act of 1881. In that case, land within the walls of a demesne, let to a tenant for a very long time, part of it for 50 years, and treated as an ordinary agricultural farm, was held still to be demesne land. In other cases demesne land let with the mansion house for 62 years was held not to be undemesned. Similarly demesne let on lease since 1828 was excluded. In Spencer *v.* Tedcastle, the Court of Appeal went still further and decided (reversing the Land Commission) that demesne let on a lease *for ever* was not undemesned, and that a fair rent could not be fixed. Again, it has been decided that the acts of a life owner cannot deprive demesne lands of their

5 I. L. T. R. 70.

986-8.

Griffin *v.* Taylor, 16 L. R. I. 197.

989. 3102-3108.

Various decisions.

Moore *v.* Batt.

Weldon *v.* Coote.

Appendix 14. 10093.

character, and also, that if the estate be mortgaged, the mortgagee in possession cannot do so. In Magner *v.* Hawkes it was held that demesne may be created by a middleman against a sub-tenant, although let to the former as an ordinary agricultural holding by the head landlord—an owner whose demesne it never had been—and that a lease for 35 years did not undemesne. In Leonard *v.* St. Leger Barry, a tenant was excluded, because a portion of land, originally demesne, was included with ordinary agricultural lands in the same tenancy. In Pratt *v.* Gormanstown, where an ordinary farm, with a ruinous cottage thereon, was taken by a tenant and dovetailed into other lands which he held on lease for ever as demesne, it was excluded on the ground that it had become demesne. In Borrowes *v.* Colles, an analogous decision was come to. Your Committee are of opinion that the test whether land has been undemesned should be whether or not the letting was made for temporary convenience,

Moloney *v.* Hamilton. 933-4, 10973-4. 3109-3114. Grehan *v.* Pim, 32 L. R. I. 285 983. 28 I. L. T. R. 69. 3115-3120. 28 I. L. T. R. 41.

True Test.

The case of pasture holdings also presents unexpected features. If let to be used wholly or mainly for pasture, exclusion takes place unless the tenant resides on the holding, or uses it with the holding on which he resides, but all pasture lettings are excluded, irrespective of residence, if the land is valued at or over £50.

Pasture Holdings. 1023-1033. 2286. 3240. *sqq.* 5841, 6244, 10414.

Cases. 3249. 1030-1041. O'Brien *v.* White, 16 L. R. I. 15.

Varying decisions have been given as to the meaning of the words, "let to be used," "wholly or mainly," and "for the purpose of pasture." On the crag lands of County Clare, a farm of 200 acres, of which only 20 could be ploughed, and 15 tilled by spade labour, was excluded although no written instrument of letting existed. Mountain grazing would follow the same rule.

Covenant against tillage or meadowing.

Appendix 6. Cherry, p. 336.

Battersby *v.* Nicholson, 22 L. R. I. 38.

30 L. R. I. 603. 3252-3.

At first, where a lease contained no covenant against tillage or meadowing a fair rent was fixed, but gradually the law underwent change. The Court of Appeal held parole evidence admissible to prove that land was taken for grazing; and in the case of Fulham *v.* Garry, where the lease expressly demised the lands for "grazing and meadowing only," it was held that parole evidence was admissible to show that the purpose of the letting was for "grazing only." In the absence of any prohibition against meadowing, tenants under the earlier decisions were not excluded, but the Court of Appeal in Byrne *v.* Hill reversed the Land Commission, who had held that a fair rent might be fixed where the hay could be sold off the farm.

Ancient pasture. Eivers *v.* Hamilton, 28 L. R. I. 464. 3253. Cherry, p. 48. Murphy *v.* Daly, 13 I. C. L. R. 239. 3253. 28 I.L.T.R. 37.

Again, it was decided that where the land could not profitably be meadowed, and had been always used for grazing, though no restrictive covenant existed either as to tillage or meadowing, the holding was excluded. Pasture land becomes "ancient pasture" in Ireland after 20 years, which it is illegal to break up without permission. Consequently in McCormick *v.* Loftus, although the lease contained no restrictions on tillage or meadowing, it was held that as pasture would be the most profitable user of the holding, which was mainly under ancient pasture, the holding was excluded.

Suggested limit in particular holdings of exclusion.

Tillage being now less profitable under the changed condition of agriculture, it is natural and conformable to the policy of these Acts that the limit of exclusion in pasture holdings should be raised. Mr. Justice Bewley suggested that this limit should be altered from £50 to £100. Your Committee, upon consideration, recommend that a limit of £200 should be fixed, in substitution for that contained in Sub-section 3 of Section 58 of the Act of 1881. The provision of Sub-section 4 requiring residence should, of course, be retained. No holdings should be excluded, unless a written instrument of letting had prohibited tillage or meadowing for sale, and the Court had come to the conclusion that this prohibition was inserted *bona fide*, and not merely to effect an exclusion from the Land Acts. Dairy farms should not be excluded, whatever might be the valuation.

10758.

Residence.

Dairy farms

Sub-letting.

A tenant is excluded who by sub-letting is not technically in occupation, at the date of the serving of the originating notice to fix a fair rent. This exclusion does not apply (i.) if the tenant has sub-let with the consent of his landlord; or (ii.) if before the Act of 1887 he has sub-let to labourers employed on the holding, when the land comprised in each sub-letting does not exceed half an acre; or if the sub-letting made before the passing of the said Act is of a "trivial" character.

Operation in Ulster.

Sub-letting is a great cause of exclusion, especially in Ulster; and the construction of the exceptions raising a number of intricate questions, as to whether assent or acquiescence is consent, what constitutes triviality, and so forth, has, in the opinion of your Committee, operated harshly, and excluded large numbers of tenants from the benefits of fair rent and security of tenure.

2846.

Difficulties of the question.

The general question is undoubtedly one of difficulty. On the one hand, excessive sub-letting is obviously hurtful, while to prohibit or punish sub-letting would be likely

5834.

to hinder industry, and would tend to drive labourers from the country into the towns. Mr. Neligan, Recorder of Cork, thinks that lettings for labourers should not be deemed sub-letting, but a mere extension of farm buildings. Mr. Justice Bewley suggests that a sub-tenant to any substantial extent should be made an immediate tenant to the head landlord, and that a fair rent should then be fixed on the portion of the holding remaining in the occupation of the tenant.

11490. Mr. Neligan. Bewley, J. 10267. 5832. 6001. 6934. 7278. 8690. 11490.

Having considered the evidence taken on the subject of exclusions as a whole, your Committee submit the following recommendations:—

FitzGibbon, pp. 144-5, 926. 5827. 9116.

(i.) No holding to be excluded from the Land Acts on the ground that a part of it is not agricultural or pastoral in character, unless such part is, in the opinion of the Court, the substantial part of the holding.

Recommendations on exclusions.

(ii.) No place to be considered a city or town within the meaning of the sub-section excluding town parks, unless it has a population exceeding 2,000.

(iii.) To admit to the benefit of the Acts tenants of pasture holdings under £200 valuation.

(iv.) Sub-letting not to be a bar to the fixing of a fair rent, and the tenant to be deemed in occupation of his holding, provided that the sub-letting does not impair the security for the rent.

With regard to lettings by limited owners, the present state of the law is manifestly unjust to the tenant. That a tenant should be debarred from fixing a fair rent and be liable to eviction, or, still more extraordinary, should have his statutory term destroyed, and his fair-rent order nullified, not by reason of any act or default personal to himself, or by reason of the character of the holding, but because of limitations affecting his landlord's status in deeds which the tenant can have no knowledge of, is manifestly a gross anomaly. The House of Lords, indeed, on the motion of Lord Cairns, provided expressly in Section 15 for the case of the limited owner, but the House of Commons adhered to its original words, which are wider, and were supposed to meet not only the case put by Lord Cairns, but to cover others not provided for by his amendment.

Lettings by limited owners 891. 897-925. 2215.

Hansard, Vol. 264, page 950, and Lords Bills for 1881, Nos. 204 and 207.

Tenants holding under a middleman.

5827. 9116. 10266-7. 10749. *sqq.*

Moreover, where tenants hold under a middleman, whose interest is determined by ejectment for non-payment of rent in consequence of his failure to pay the head-rent, this has been held to determine the tenure of all the occupying tenants, though the ejectment arises through no fault of theirs; and under a re-letting to them by the head landlord they would all become "future" tenants. This is a serious defect in the law, and is the more striking in view of the fact, that if the middleman's interest determines in the natural way by efflux of time, the occupying tenants are protected by the express terms of Section 15, and all are in such case made tenants of the head landlord, enjoying the same tenure as under the middleman.

Exclusion of certain leaseholders and fee-farm grantees.

Burton *v.* King-Harman. 28 I.L.T.R. 23

Kelly *v.* Ratley

3451. 10313. 802. 874. 8069, 4035 *sqq.* 5898.

Certain leaseholders are excluded from the Act of 1887, by reason of the term for which they hold, and certain leaseholders and fee-farm grantees from the Redemption Act of 1891, by reason either of the term for which they hold, or of the nature of the grant, or of the time at which it was made. There is no principle in such exclusions, and these persons should also have the right of resorting to the Court.

County Court Procedure.

Practice in County Courts.

Judge Shaw, 9030 to 9032.

The number of cases heard in County Courts is comparatively small, and the practice is not always uniform. In the County Court system only one valuer goes upon the land, and he is not, moreover, as the lay Assistant Commissioner is, a member of the Court, with a voice in its decision; he has merely a consultative position; he is paid by the day and not by salary. One County Court Judge informed the Committee that as the Judge knows nothing of the facts himself, and has no other mode of arriving at a conclusion as to the value of the land than by adopting the Court valuer's opinion, he, for his part, always felt himself morally bound to accept the valuation of the Court valuer.

Judge Neligan. 11440.

Another County Court Judge, however, assured the Committee that he always applied his own mind to the facts before him, and gave his decision as an act of his own independent judgment. It is difficult to see why a Judge of a County Court should not be as capable of conducting these inquiries efficiently as a legal Assistant Commissioner.

Recommendation.

Your Committee think it expedient that in order to conduce to conformity, the County Court valuer, having

first attended the hearing of the case, should then inspect the holding and report thereon, and that judgment should be given in the case at the ensuing sessions.

Your Committee observe with regret the delay and inconvenience caused by the transfers *ex parte*, on the application of the landlord, of fair-rent applications from the County Courts to the Sub-Commissions. Your Committee recommend that such transfers should not be allowed except for substantial cause assigned, and with restrictions on proceeding for the old rent in the interval before judgment. *Ex parte* transfers. Recommendation.

Costs.

Costs are undoubtedly heavy in proportion to the matter in question. It was stated that where there is no appeal the costs are often between £3 and £4. On the 294,000 cases the reductions amount to £1,270,000. Taking the average reduction as £4 to each tenant, a year of the benefit gained is swallowed up by the cost of the action. Heavy Costs. 362, 368, 1405. 362-3.

Figures were put in showing that, where there is an appeal from the Sub-Commissions to the Chief Court, in cases where the rent does not exceed £5, the costs could hardly be less than £2, and might be more than twice that amount; and Mr. Commissioner FitzGerald stated that costs undoubtedly bear "extremely heavily" in small cases. 588 to 593.

Miscellaneous.

Your Committee now pass on to various other questions and suggestions that seem to call for the attention of Parliament.

The Committee have had the advantage of hearing explanations from Lord Justice FitzGibbon and Mr. Justice Bewley, on the nature of the statutory term created by the Act of 1881. Nature of Statutory term.

The Lord Justice set forth his views in the following words: "The rent is fixed for 15 years, and it goes on "until it is altered; it cannot be altered during 15 years, "and the tenancy remains all through a thing that cannot "be determined. After 15 years the rent is capable of re-"vision; but if it is not revised I suppose it goes on as "before. It is not a 15 years' lease; it is a lease for "ever, an undeterminable tenancy from year to year, with "power to fix or to vary the rent every 15 years." Difference of opinion. FitzGibbon, L.J. 3427. 3428.

Bewley, J., 10173. The view, however, advanced by Mr. Justice Bewley does not seem entirely to coincide with that of the Lord Justice. He quotes from the Judgment of the Irish Master of the Rolls, these words: "All that the Land "Act does is by negative words to impose on the landlord "a disability to raise the rent or put out the tenant dur-"ing the term.". And then Mr. Justice Bewley adds, "I have no doubt whatever that that is the true legal 10184. "position." And again he says, "If the tenant wants " . . . to retain security of tenure, there is nothing "in the Act to give it him unless he acquires a new 10177. "statutory term." He also considers it a "moot point" whether, at the expiry of the statutory term, the fair rent goes on, or the old rent revives. It is obviously most undesirable that a doubt once disclosed on so important a matter should continue. Your Committee consider that Recommendation. Lord Justice FitzGibbon correctly interprets the intention of Parliament, and it should be made clear by legislative enactment that, at the end of the statutory term, the rent payable should continue to be the judicial rent previously fixed, and that the holding should continue to be subject to the statutory conditions, until a new rent shall have been fixed in accordance with the law, and the statutory conditions thereby revived.

Legal status of judicial tenant. Doubts having been expressed whether the legal status of a judicial tenant can be questioned on the application for a second statutory term, the attention of Parliament is called to this question, with a view to the prevention of needless litigation.

Length of statutory term. The statutory or judicial term is at present 15 years. There was a general concensus of opinion among the witnesses that the term is too long, for the reason that it is impossible to foresee so far the fluctuation in prices which Garvey, 11944. largely affects the fairness of a rent. The periods Heard, 9567. suggested range from 5 years upwards. Two witnesses Doyle, 6921. only opposed any change, on the ground that a short term tends to unsettle the tenant's mind. It should be noticed, however, that of those who propose to shorten Neligan, 11527 to 11536. the term, Mr. Neligan, who, as a member of the Cowper Commission, recommended a term of 5 years, did so, on the assumption that it would be possible to arrange an automatic process for fixing rents, which, on the evidence before them, your Committee do not regard as practicable. Mr. Neligan now suggests 10 years as the statutory term.

Recommendation. Your Committee are of opinion that the statutory term should not exceed 10 years.

Limited administration.

963-971.

On one question which judicial decision might any day raise to importance, the law was stated to be in a doubtful and unsatisfactory state. If a tenant dies intestate, and legal representation has not been taken out, it is described as being the common practice of landlords and agents to give receipts for rent to the person in occupation, describing the money as paid by "the representatives of A. B.," the deceased tenant. It has been the practice, both of the Land Commission and of Sub-Commissions, under the Statute of 1881, to make an order appointing the widow or child who shall have served an originating notice a limited administrator of the deceased tenant for the purpose of the proceedings. A judgment of the Court of Exchequer has thrown doubt on the power of the Land Commission to exercise this jurisdiction, on the hearing of a fair-rent application. So long as this doubt has not been set at rest by legislation, the Courts may possibly require, in all cases of this kind, that the applicant shall obtain letters of administration from the Probate Division before the originating notice to fix a fair rent could be served, and this necessity would obviously cause both delay and expense.

Turbary

Bailey, 711, 1255-1262, 2113, 2681.
Cunningham, 5084.
Cunningham, 4512-4518, 4748.
Cunningham, 4831.
MacAfee, 5814.
O'Keeffe, 6194.

Having regard to the evidence adduced on the subject of turbary, to the effect that if the tenant has enjoyed a rise of turbary appurtenant to the holding, the Commissioners have no power to secure the turbary to the tenant, so that the tenant is sometimes compelled to pay back for turf as much as he has gained by reduction of rent; and taking into consideration that in many parts turf is a necessity of life, and that oppressive rent is sometimes charged for the privilege of cutting turf, your Committee are of opinion that, when the turbary is outside the ambit of the holding, the Commissioners should have power, in cases where the tenant has hitherto been allowed to cut turf, to secure the right to the tenant on such terms as they may think fit. The same power might be granted with respect to all easements enjoyed with the holding.

Reporting.

1775.
8430 to 8445.

The arrangements for reporting the judgment of the Land Commission have been extremely inadequate, so that even in cases of the first importance, both to landlord and tenant, they are not accessible.

Greer, 8429-45.

One legal Assistant Commissioner stated that sometimes six months elapsed before the judgments of the higher courts are available for the guidance of the Assistant Commissioners, and that generally in this respect, though no other branch of law can be practically

Bewley, J. 10096 to 10105

so important to the people of the country, the absence of regular provision for authorised reports of land cases places the Assistant Commissioners and all concerned at great disadvantage.

Consolidation.

One legal witness expressed an opinion that it would be very desirable to consolidate all the Land Statutes from 1860 down to the present time in one code, simplifying, so far as possible, the cross references and artificial definitions of the present Acts. In view of Lord Justice FitzGibbon's description of the existing difficulty arising from the incorporation of several complex and intricate Statutes, and from the mass of undigested legal decisions, your Committee are of opinion that opportunity should be taken as soon as feasible of consolidating the Irish Land Laws in one consistent and intelligible Act, which besides being complete in itself should, in the words of the late learned Professor Richey, "be drawn up in such "language, form, and manner, that the landlords and "tenants in Ireland (or at least such of them as are "reasonably educated) should, like the inhabitants of "Continental Europe and America, be able, without pro-"fessional assistance, to discover their respective rights "and duties."

Richey's Irish Land Laws, 1880, p. 113.

In submitting this Report, with the Minutes of Proceedings and Evidence taken before them, your Committee beg to express their opinion that it is highly desirable that they should be re-appointed in the next Session of Parliament, for the purpose of inquiring into the working and administration of the Purchase Acts, the working of the Land Judges' Court, and the distribution of business amongst the various departments of the Land Commission.

20*th August*, 1894.

PROCEEDINGS OF THE COMMITTEE.

Thursday, 26th April, 1894.

MEMBERS PRESENT:

Mr. Morley.
Mr. Brodrick.
Mr. M'Cartan.
Mr. Robert Reid.
Mr. Leese.
Mr. Dillon.
Mr. Sexton.
Mr. T. W. Russell.
Colonel Waring.
Mr. Hayes Fisher.
Mr. Macartney.
Mr. Carson.
Mr. Wharton.
Mr. Fuller.

Mr. JOHN MORLEY was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 1st May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Dillon.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. T. M. Healy.
Mr. Leese.
Mr. Macartney.
Mr. Robert Reid.
Mr. T. W. Russell.
Mr. Sexton.
Colonel Waring.
Mr. Wharton.
Mr. Brodrick.
Mr. W. Kenny.

Mr. *Gerald FitzGerald*, Q.C., examined.

[Adjourned till Friday next, at Eleven o'clock.

Friday, 4th May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. M. Healy.
Mr. Leese.
Mr. M'Cartan.
Mr. Dillon.
Mr. Sexton.
Mr. T. W. Russell.
Mr. Brodrick.
Mr. Macartney.
Mr. W. Kenny.
Mr. Wharton.
Mr. Carson.
Mr. Clancy.
Mr. Hayes Fisher.
Mr. Fuller.
Mr. Robert Reid.

Mr. *W. F. Bailey* examined.

During the absence of the Chairman, Mr. LEESE took the Chair.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 8th May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Mr. T. W. Russell.
Mr. Clancy.	Mr. Sexton.
Mr. Brodrick.	Mr. M'Cartan.
Mr. Hayes Fisher.	Mr. Fuller.
Mr. W. Kenny.	Mr. T. M. Healy.
Mr. Macartney.	Mr. Dillon.
Colonel Waring.	

During the absence of the Chairman, Mr. LEESE took the Chair.

Mr. *W. F. Bailey* further examined.

[Adjourned till To-morrow, at Twelve o'clock.

Wednesday, 9th May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Clancy.	Mr. Dillon.
Mr. Brodrick.	Mr. Sexton.
Mr. W. Kenny.	Mr. Leese.
Colonel Waring.	Mr. Fuller.
Mr. Macartney.	Mr. T. M. Healy.
Mr. T. W. Russell.	Mr. M'Cartan.

Mr. *W. F. Bailey* further examined.

[Adjourned till Tuesday, 22nd May, at Twelve o'clock.

Tuesday, 22nd May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. W. Kenny.	Mr. Macartney.
Mr. Brodrick.	Mr. Fuller.
Mr. T. W. Russell.	Colonel Waring.

Mr. *W. F. Bailey* further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 25th May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. W. Kenny.	Mr. Sexton.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. M'Cartan.
Colonel Waring.	Mr. Leese.
Mr. Macartney.	Mr. T. M. Healy.
Mr. T. W. Russell.	Mr. Brodrick

Mr. *W. F. Bailey* further examined.

Mr. *Laurence Doyle* examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 29th May, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Wharton.	Mr. Sexton.
Mr. Hayes Fisher.	Mr. Dillon.
Mr. W. Kenny.	Mr. M'Cartan.
Colonel Waring.	Mr. Leese.
Mr. Macartney.	Mr. Fuller.
Mr. Solicitor General.	Mr. T. M. Healy.
Mr. Brodrick.	Mr. Clancy.
Mr. T. W. Russell.	

Lord Justice *FitzGibbon* examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 1st June, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Hayes Fisher.	Mr. Sexton.
Mr. Brodrick.	Mr. M'Cartan.
Mr. W. Kenny.	Mr. Leese.
Colonel Waring.	Mr. Fuller.
Mr. Macartney.	Mr. T. M. Healy.
Mr. Solicitor General.	Mr. Clancy.
Mr. T. W. Russell.	Mr. Wharton.
Mr. Dillon.	

Lord Justice *FitzGibbon* further examined.

Mr. *W. F. Bailey* further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 5th June, 1894.

MEMBERS PRESENT :

Mr. JOHN MORLEY in the Chair.

Mr. W. Kenny.	Mr. M'Cartan.
Mr. Macartney.	Colonel Waring.
Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Brodrick.
Mr. Sexton.	Mr. Fuller.

Lord Justice *FitzGibbon* further examined.

[Adjourned till Friday next, at 12 o'clock.

Friday, 8th June, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Colonel Waring.	Mr. W. Kenny.
Mr. T. W. Russell.	Mr. M'Cartan.
Mr. Fuller.	Mr. Carson.
Mr. Macartney.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Brodrick.
Mr. Sexton.	

Colonel *E. R. Bayly* examined.

Room cleared.

The Committee deliberated.

Motion made and Question put, That the Question of Arrears is within the reference, under which the Committee sits.—(Mr. *T. W. Russell.*)—The Committee divided:

Ayes, 5.	Noes, 6.
Mr. Dillon.	Mr. Brodrick.
Mr. Fuller.	Mr Carson.
Mr. M'Cartan	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. W. Kenny.
Mr. Sexton.	Mr. Macartney.
	Colonel Waring.

Colonel *E. R. Bayly* further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 12*th June*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Brodrick.	Mr. M'Cartan.
Mr. Macartney.	Mr. Leese.
Colonel Waring.	Mr. Fuller.
Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Wharton.
Mr. Sexton.	

Colonel *E. R. Bayly* further examined.

Mr. *John Cunningham* examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 15*th June*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Brodrick.	Mr. Sexton.
Mr. Dillon.	Colonel Waring.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. Leese.	Mr. Clancy.
Mr. Macartney.	Mr. Wharton.
Mr. M'Cartan.	Mr. Carson.
Mr. Russell.	

Mr. *John Cunningham* further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 19*th June*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Sexton.
Colonel Waring.	Mr. Leese.
Mr. Brodrick.	Mr. Fuller.
Mr. Macartney.	Mr. Dillon.
Mr. M'Cartan.	Mr. Hayes Fisher.

Mr. *John Cunningham* further examined.

Mr. *Thomas MacAfee* examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 22nd June, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Brodrick.
Mr. Dillon.	Mr. Hayes Fisher.
Mr. Sexton.	Mr. Macartney.
Mr. M'Cartan.	Colonel Waring.

Mr. *Thomas MacAfee* further examined.

Mr. *Cornelius O'Keeffe* examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 26th June, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Colonel Waring.
Mr. Fuller.	Mr. Kenny.
Mr. M'Cartan.	Mr. Brodrick.
Mr. Sexton.	Mr. Macartney.
Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Dillon.	

During the absence of the Chairman, Mr. LEESE took the Chair.

Mr. *Cornelius O'Keeffe* further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 29th June, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY, in the Chair.

Mr. Leese.	Mr. Sexton.
Mr. Fuller.	Mr. M'Cartan.
Mr. Macartney.	Mr. Dillon.
Colonel Waring.	Mr. Brodrick.
Mr. T. W. Russell.	

During the absence of the Chairman, Mr. LEESE took the Chair.

Mr. *Cornelius O'Keeffe* further examined.

Room cleared.

The Committee deliberated.

Motion made, and Question put, That the Room be cleared.—(Mr. *Brodrick.*)—The Committee divided:

Ayes, 4.	Noes, 4.
Mr. Brodrick.	Mr. Dillon.
Mr. Fuller.	Mr. M'Cartan.
Mr. Macartney.	Mr. T. W. Russell.
Colonel Waring,	Mr. Sexton.

Whereupon the Chairman (Mr. *Leese*) declared himself with the Ayes.

Mr. *Laurence Doyle* further examined.

[Adjourned till Tuesday next, at Twelve o'clock.

Tuesday, 3rd July, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Solicitor General.	Mr. Sexton.
Mr. T. W. Russell.	Mr. M'Cartan.
Mr. Macartney.	Mr. Leese.
Colonel Waring.	Mr. Clancy.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. Brodrick.
Mr. Fuller.	

Mr. *Laurence Doyle* further examined.

Mr. *Thomas Roberts* examined.

Room cleared.

The Committee deliberated.

Motion made, and Question, That the division taken on Friday last on the Motion that the room be cleared was unnecessary, inasmuch as any Member has a right to claim that the room be cleared,—put, and *agreed to.*—(The *Chairman.*)

Motion made, and Question proposed, That the Committee do meet *de die in diem*, unless the Committee otherwise order.—(Mr. *Sexton.*)

Motion, by leave, *withdrawn.*

Motion made, and Question proposed, That the Committee do meet from Eleven to Four on Tuesdays and Fridays.—(Mr. *Brodrick.*)

Question put.—The Committee divided:

Ayes, 5.	Noes, 8.
Mr. Brodrick.	Mr. Clancy.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. Fuller.
Mr. Macartney.	Mr. Leese.
Colonel Waring.	Mr. M'Cartan.
	Mr. Solicitor General.
	Mr. T. W. Russell.
	Mr. Sexton.

Motion made, and Question proposed, That the Committee do sit on Three days of the week.—(Mr. *Leese.*)

Question put.—The Committee divided:

Ayes, 10.	Noes, 3.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. Hayes Fisher.	Mr. Macartney.
Mr. Fuller.	
Mr. Leese.	
Mr. M'Cartan.	
Mr. Solicitor General.	
Mr. T. W. Russell.	
Mr. Sexton.	
Colonel Waring.	

Motion made, and Question proposed, That the Committee do sit on Mondays, Tuesdays, and Fridays.—(Mr. *Leese.*)

Amendment proposed, To leave out the word "Tuesdays," in order to insert the word "Wednesdays."—(Mr. *Carson.*)

Question put, That the word "Tuesdays" stand part of the Question.—The Committee divided:

Ayes, 9.	Noes, 4.
Mr. Brodrick.	Mr. Carson.
Mr. Clancy.	Mr. Hayes Fisher.
Mr. Dillon.	Mr. Macartney.
Mr. Fuller.	Colonel Waring.
Mr. Leese.	
Mr. M'Cartan.	
Mr. Solicitor General	
Mr. T. W. Russell.	
Mr. Sexton.	

Main Question,—put, and *agreed to.*

Resolved, That the Committee do sit on Mondays, Tuesdays and Fridays.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 6th July, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. M'Cartan.
Colonel Waring.	Mr. Clancy.
Mr. Macartney.	Mr. Hayes Fisher.
Mr. Leese.	Mr. Brodrick.
Mr. Sexton.	Mr. Dillon.

Mr. *Thomas Roberts* further examined.

Mr. *Edward Greer* further examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 9th July, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Sexton.	Mr. T. W. Russell.
Mr. Macartney.	Mr. Brodrick.
Mr. Hayes Fisher.	Mr. M'Cartan.

Mr. *Edward Greer* further examined.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 10th July, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Sexton.	Mr. M'Cartan.
Mr. Solicitor General.	Mr. Hayes Fisher.
Mr. Macartney.	Mr. Brodrick.
Mr. T. W. Russell.	

During the absence of the Chairman, Mr. SEXTON took the Chair.

His Honour Judge *James Johnson Shaw* examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 13*th July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Fuller.	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. Carson.
Mr. Sexton.	Mr. Brodrick.
Mr. M'Cartan.	Mr. Macartney.
Mr. Dillon.	

Mr. *Edward Heard* examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 16*th July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Carson.
Mr. T. M. Healy.	Mr. Macartney.
Mr. M'Cartan.	Mr. Brodrick.
Mr. Sexton.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. W. Kenny.

The Hon. Mr. Justice *Edmund T. Bewley* examined.

The Committee deliberated.

Motion made, and Question proposed, "That the Witness, having read his letter to Lord Justice FitzGibbon, be requested to read the Lord Justice's reply in full"—(Mr. *T. W. Russell*).—Question put.—The Committee divided:

Ayes, 5.	Noes, 3.
Mr. Dillon.	Mr. Brodrick.
Mr. T. M. Healy.	Mr. Hayes Fisher.
Mr. M'Cartan.	Mr. Macartney.
Mr. T. W. Russell.	
Mr. Sexton.	

The Hon. Mr. Justice *E. T. Bewley* further examined.

Letter read accordingly.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday 17*th July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Solicitor General.	Mr. Brodrick.
Mr. T. W. Russell.	Mr. Clancy.
Mr. T. M. Healy.	Mr. Dillon.
Mr. Sexton.	Mr. Fuller.
Mr. M'Cartan.	Mr. Hayes Fisher.
Mr. Kenny.	Mr. Carson.
Mr. Macartney.	

The Committee deliberated.

The Hon. Mr. Justice *Bewley* further examined.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 20*th July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Leese.	Mr. M'Cartan.
Mr. T. W. Russell.	Mr. T. M. Healy.
Mr. Kenny.	Colonel Waring.
Mr. Macartney.	Mr. Fuller.
Mr. Clancy.	Mr. Hayes Fisher.
Mr. Sexton.	Mr. Solicitor General.
Mr. Dillon.	

During the absence of the Chairman, Mr. SOLICITOR GENERAL took the Chair.

The Hon. Mr. Justice *Bewley* further examined.

The Committee deliberated.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 23*rd July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Hayes Fisher.
Mr. Carson.	Mr. Fuller.
Mr. W. Kenny.	Mr. Brodrick.
Mr. Clancy.	Mr. Leese.
Mr. M'Cartan.	Colonel Waring.
Mr. Dillon.	Mr. Macartney.
Mr. Sexton.	Mr. Solicitor General.
Mr. T. M. Healy.	

During the absence of the Chairman, Mr. LEESE took the Chair.

The Hon. Mr. Justice *Bewley* further examined.

The Committee deliberated.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 24th July, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. M'Cartan.
Mr. Macartney.	Mr. T. M. Healy.
Mr. W. Kenny.	Mr. Sexton.
Mr. Brodrick.	Mr. Dillon.
Colonel Waring.	Mr. Carson.
Mr. Clancy.	Mr. Hayes Fisher.

The Hon. Mr. Justice *Bewley* further examined.

The Committee deliberated.

Motion made, and Question, "That the Notes of Proceedings in Court of any case with reference to which any Witness has been examined may, on the application of any Member, be inserted in the Appendix"—(Mr. *Carson*),—put, and *agreed to.*

Motion made, and Question proposed, "That the Committee is now in a position to proceed with the consideration of their Report upon the Principles and Practice of the Irish Land Commissioners and County Court Judges in carrying out the Fair Rent and Free Sale provisions of the several Land Acts referred to in the reference, and to suggest improvements as to Law and Practice"—(Mr. *T. W. Russell*).

Amendment proposed, to leave out from the word "That" to the end of the Question, and add the following words, "Having regard to the terms of reference, it would be unfair and unsatisfactory that the Committee should report until it hears the evidence of non-official witnesses, and also of those witnesses whose evidence has not been concluded"—(Mr. *W. Kenny*).—Question, That the words proposed to be left out stand part of the Question,—put, and *negatived.*

Question put, That the proposed words be there added.—The Committee divided:

Ayes, 6.	Noes, 6.
Mr. Brodrick.	Mr. Clancy.
Mr. Carson.	Mr. Dillon.
Mr. Hayes Fisher.	Mr. T. M. Healy.
Mr. W. Kenny.	Mr. M'Cartan.
Mr. Macartney.	Mr. T. W. Russell.
Colonel Waring.	Mr. Sexton.

Whereupon the Chairman declared himself with the Noes.

Another Amendment proposed, after the word "That," to add the following words :—"After taking such evidence as may be tendered in further sittings of the Committee, not exceeding three in number, the Committee will proceed to consider their Report"—(Mr. *Sexton*).—Question put, That those words be there added.—The Committee divided :

Ayes, 6.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. T. M. Healy.	Mr. Hayes Fisher.
Mr. M'Cartan.	Mr. W. Kenny.
Mr. T. W. Russell.	Mr. Macartney.
Mr. Sexton.	Colonel Waring.

Whereupon the Chairman declared himself with the Ayes.

Main Question put, "That after taking such evidence as may be tendered in further sittings of the Committee, not exceeding three in number, the Committee will proceed to consider their Report."—The Committee divided :

Ayes, 6.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. T. M. Healy.	Mr. Hayes Fisher.
Mr. M'Cartan.	Mr. W. Kenny.
Mr. T. W. Russell.	Mr. Macartney.
Mr. Sexton.	Colonel Waring.

Whereupon the Chairman declared himself with the Ayes.

[Adjourned till Friday next, at Twelve o'clock.

Friday, 27th July, 1894.

MEMBERS PRESENT :

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Colonel Waring.
Mr. Sexton.	Mr. Macartney
Mr. T. M. Healy.	Mr. W. Kenny.
Mr. M'Cartan.	Mr. Clancy.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. Leese.	Mr. Dillon.
Mr. Brodrick.	Mr. Solicitor General.

During the absence of the Chairman, Mr. LEESE took the Chair.

The Committee deliberated.

Correspondence between Mr. *W. F. Bailey* and Lord Justice *FitzGibbon*, put in by the Chairman, and read.

Motion made, and Question put, "That a letter from His Honour Judge *Shaw*, supplementing his evidence given to the Committee, should be put on the Notes"—Mr. *T. M. Healy*).—The Committee divided:

Ayes, 5.	Noes, 6.
Mr. Brodrick.	Mr. Clancy.
Mr. T. M. Healy.	Mr. Fuller.
Mr. W. Kenny.	Mr. Leese.
Mr. Macartney.	Mr. M'Cartan.
Colonel Waring.	Mr. T. W. Russell
	Mr. Sexton.

His Honour Judge *John Neligan* examined.

[Adjourned till Monday next, at Twelve o'clock.

Monday, 30*th July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Sexton.	Mr. Leese.
Mr. Brodrick.	Mr. Hayes Fisher.
Mr. T. W. Russell.	Mr. T. M. Healy.
Mr. W. Kenny.	Colonel Waring.
Mr. Dillon.	Mr. Fuller.
Mr. Macartney.	

During the absence of the Chairman, Mr. LEESE took the Chair.

The Committee deliberated.

A further letter from Mr. *W. F. Bailey* put in by the Chairman.

Mr. *Toler R. Garvey* examined.

[Adjourned till To-morrow, at Twelve o'clock.

Tuesday, 31*st July*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Carson.	Mr. Clancy.
Mr. Brodrick.	Mr. Sexton.
Mr. Hayes Fisher.	Mr. Dillon.
Mr. Macartney.	Mr. Fuller.
Mr. W. Kenny.	Mr. Leese.
Colonel Waring.	Mr. T. M. Healy.
Mr. T. W. Russell.	

During the absence of the Chairman, Mr. T. W. RUSSELL took the Chair.

Mr. *Toler R. Garvey* further examined.

Mr. *William A. Barnes* examined.

Mr. *E. de L. Willis* examined.

Mr. *William Rochfort* was examined.

The Committee deliberated.

Motion made, and Question put, "That the Committee do meet on Tuesday, 14th August, to consider their Report."—(Mr. *Sexton.*)

The Committee divided:

Ayes, 7.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Sexton.	Mr. Carson.
Mr. Dillon.	Mr. Hayes Fisher.
Mr. Fuller.	Mr. W. Kenny.
Mr. Healy.	Mr. Macartney.
Mr. Leese.	Colonel Waring.
Mr. Russell	

[Adjourned till Tuesday, 14th August, at Twelve o'clock.

Tuesday, 14th August, 1894.

MEMBERS PRESENT.

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. Sexton.	Colonel Waring.
Mr. Solicitor General.	Mr. Macartney.
Mr. Leese.	Mr. Kenny.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. T. M. Healy.	Mr. Clancy.

DRAFT REPORT, proposed by the Chairman, read the first time, as follows:

"1. No Select Committee of this House has previously inquired into the working of the Irish Land Acts. A Committee of the House of Lords in 1883 met to consider the working of the Land Act of 1881, and a Royal Commission was appointed in 1887 to examine into the Irish Land system, and much evidence was taken by both bodies. Your Committee, however, sat under more narrow terms of

reference, and accordingly devoted its entire time, except the last three sittings, to hearing purely official witnesses. At the last three sittings certain evidence was received on behalf of the Irish landlords, but, with this exception, no other than official evidence has been taken. No witness on behalf of the tenants was therefore heard, as your Committee considered it expedient, instead of investigating allegations of individual grievance, whether on the part of tenants or owners, to obtain a general view of the decisions and procedure from the examination of the Judges and officials who administer the Irish Land Code. A small group of witnesses on either side could not have materially widened the basis for trustworthy conclusions. To have gone beyond a small group would have been to involve your Committee in an inquiry hardly less in scope and magnitude than the Devon, the Cowper, or the Bessborough Commissions, and could have added little new light to the testimony of those who are concerned in giving to the administration of the Land Code the operative form upon which the Committee was appointed to report.

"2. Land tenure in Ireland rests upon four principal Acts, those of 1860, 1870, 1881, and 1887. With the Act of 1860 your Committee was not concerned. It regulates the relation of landlord and tenant on the basis of contract, and cannot be said to invest the status of the tenant with any legal privileges.

"3. The Act of 1870, broadly speaking, seeks to protect the tenant's interest in Ulster by legalising the Ulster customs, and elsewhere in Ireland by enabling the tenant (except in certain excluded cases), if evicted capriciously, to sue his landlord for compensation for disturbance according to a certain statutory scale limited in amount, and, on quitting his holding, whether voluntarily or as the result of eviction, to sue for the unexhausted value of certain limited classes of improvements. This Act is no longer much resorted to since the passing of the Land Act of 1881, which gave durability of tenure to the tenant so long as his rent is paid, and enabled him to apply to the Court to fix his rent every 15 years. The Act of 1870, by its terms, powerfully affects the Act of 1881, because its definitions are incorporated therein, and the far-reaching decision of Adams *v.* Dunseath turned on this incorporation of definition. The Act of 1870 included in its general scope all holdings of an agricultural or pastoral character, but the clause in it which did most to protect the tenant's tenure, namely, that granting compensation for disturbance

in the case of capricious eviction, was much more limited in its scope, there being a series of exclusions from it whereby certain classes of holdings, such as town parks, demesne lands, grazing lettings, and others which will be afterwards more fully referred to, were excepted from its provisions. These exclusions were re-enacted as regards the tenure clauses of the Act of 1881, and the time of your Committee was largely occupied in considering the effect of the decisions of the Courts on these exclusions as well as on the question of tenants' improvements. Before discussing, however, these important subjects, it will be convenient to survey the course of administration and procedure.

"FAIR RENT PROVISIONS: EXTENT OF OPERATIONS.

"4. The number of agricultural holdings in Ireland was stated in the census of 1891 to be 486,865. The total number of holdings in Ireland, extracted from the agricultural statistics, was set down in a recent Parliamentary Paper (No. 260 of 1891) at 552,349. Either of these totals would, no doubt, include some 30,000 holdings purchased by the occupying tenants under the provisions of the several statutes passed from 1869 to 1891.

"5. The total number of fair-rent applications disposed of by the Land Commission from the passing of the Act of 1881 to the 31st of March last was 354,890. The number of these cases 'struck out,' 'withdrawn,' or 'dismissed,' was 60,236, of which were dismissed for various causes, but usually because the applicant was held to be without the requisite legal status, or the holding was declared to be excluded from the operation of the provisions relating to fair rent. The remainder of the 60,236 cases 'struck out,' 'withdrawn,' or 'dismissed,' were either struck out or withdrawn. In the former class of cases the applicant did not appear when the case was called; in the latter he intimated that he would not proceed.

"6. Deducting the 60,236 cases 'struck out,' 'withdrawn,' or 'dismissed' from the gross total of applications, 354,890, we find the total number of fair rents fixed to be 294,654. Of these, 157,178 were fixed by the Land Commission Courts, 15,537, by the County Courts, 121,902 by agreements between the landlord and the tenant lodged with the Land Commission or the County Courts, and only 37 by arbitration under Section 40 of the Act of 1881.

"7. It is worthy of notice that in these 37 cases in which rents have been fixed by arbitration, the average reduction was 27·7 per cent., or one-third higher than the average reduction on the total rental dealt with by the Courts, and by agreements, which was 20·8 per cent. But the fact that arbitration has been resorted to in only 37 cases, not one of which occurred within the last five years, proves that Section 40 of the Act has been practically inoperative.

"8. In this connection it may also be observed that, under Section 10 of the Act, only 133 judicial leases have been executed; and under Sections 11 and 12, no more than 36 fixed tenancies have been created.

"9. It is suggested that many of the 53,000 cases 'struck out,' or 'withdrawn' may have been dealt with subsequently on fresh originating notices or by agreements out of Court, This seems to be scarcely more than a speculative opinion.

"10. Of the cases, 157,178 in number, in which fair rents have been fixed by the Land Commission, 4,129 were fixed on consent directly by the Chief Commission, and of these 363 were yearly tenancies, 2,367 leasehold tenancies, 8 under the Redemption of Rent Act, 1891, and 1,391 in which rents were fixed on the reports of valuers appointed on the application of the parties. The number of rents fixed by Assistant Commissioners was 153,049, of which 132,111 were yearly tenancies, 20,639 leasehold tenancies, and 299 Redemption of Rent Act cases.

"11. The average reductions granted were as follows: On reports of valuers, 19·9 per cent. by Chief Commission and Sub-Commission taken together; for yearly tenancies, 21·2 per cent. ; for leasehold tenancies, 24·7 per cent., and in cases under the Redemption of Rent Act, 1891, 25 per cent.

"12. The number of originating notices lodged with the County Courts was 34,453 ; but, under the power given by Section 37, Sub-section 4, of the Act of 1881, authorising the Land Commission, on the application of any party to proceedings in the County Courts, to the transfer of such proceedings from the County Court to the Land Commission, no fewer than 10,374 of the 34,453 cases initiated in the County Courts were transferred to the Sub-Commissions, the originating notice being usually lodged by the tenant. The application to transfer the proceedings was usually made by the landlord.

"13. The transfer to the Sub-Commission of 10,374 out of the 34,453 originating notices lodged with the County Courts, left 24,079 cases to be disposed of by those tribunals. Of the total, rents were fixed in 15,537 cases; 13,585 being yearly tenancies and 1,952 leasehold tenancies. The average reduction of rent for the yearly tenancies, was 23·4, or 2·2 more than the corresponding reduction (21·2) given by the Land Commission Courts. The average reduction for leasehold tenancies was 27·7, being 3 per cent. more than the corresponding reduction (24·7) in the Courts of the Land Commission. Appeals to the Land Commission against the decisions of the County Courts were lodged in 4,097 of the 15,537 cases; and of these 1,515 were withdrawn, and 2,192 have been heard. The result was an average increase by 3·1 per cent. of the rents as fixed by the judgments of the County Courts.

"14. Deducting from 24,079 cases left to be disposed of by the County Courts, 15,537 in which rents were fixed by these tribunals, there remains to be accounted for 8,542 cases.

"15. Of these, 3,413 are said to have been 'dismissed,' 'struck out,' or 'withdrawn,' leaving undisposed of 5,129.

"16. Of the cases, 121,902 in number, in which rents were fixed by agreements between landlords and tenants, 114,724 were fixed by agreements lodged with the Land Commission, and 7,178 by agreements lodged with the County Courts. The particulars of these agreements supplied in the annual reports of the Land Commission do not distinguish, as in the case of rents fixed by the Courts, between yearly and other tenancies.

"17. It is shown, however, that the average reduction in the former rents made by agreements lodged with the Land Commission has been 17·7, as against 21·2 for yearly tenancies, 24·7 for leasehold tenancies, and 25·0 under the Redemption of Rent Act, in cases decided by the Chief Commission and Sub-Commissions, and 19·9 in cases in which rents were fixed on the reports of valuers appointed upon the application of the parties. The average reduction made by agreements lodged with the County Courts was 17·2, as compared with 23·4 for yearly tenancies, and 27·7 for leasehold tenancies in cases heard and determined by the County Courts.

"18. There is to be observed a still more remarkable difference between the reductions made in rents fixed by

agreement and those settled by arbitration. As we have noted, the average reduction made by agreements lodged with the Land Commission was 17·7, and with the County Courts 17·2, but the average reduction was no less than 27·7 in cases of rents determined by arbitration. By far the greater number of the 121,902 agreements were made between 1881 and 1885, when the reductions in the Courts were made smaller than in subsequent years and down to the present time. The agreements lodged in the year to August, 1882 were 12,475; to August, 1883, 36,005; to August, 1884, 24,094; and to August, 1885, 11,656; making for the first four years a total of 84,230, or more than two-thirds of the whole number of agreements.

"19. The general effect of the evidence given before your Committee as to the course of prices and the cost of production sustains the conclusion that the rents fixed by the Courts between 1881 and 1885 have been since 1886, and are at the present time, materially excessive. This observation is applicable in a more extreme degree to the agreements made before 1886, because the reductions secured by them were much more limited in amount, as we have already shown, than those obtained within the same period from the Courts.

"20. Your Committee beg to direct attention to a Paper (Appendix No. 7, Table V.) handed in by Mr. W. F. Bailey, Legal Assistant Land Commissioner. It furnishes examples of 50 cases in his district in which agreements had been made between landlords and tenants, within the period from 1882 to 1887, but the agreements not having been filed, as required by rule, were not binding between the parties, and the tenants came into Court to have fair rents fixed in 1893 and 1894. The result demands particular attention. The old rents in the 50 cases had amounted to £790. The reductions made by agreement amounted to £142, leaving the rents as agreed upon £648. When the tenants came into Court the £648 was further reduced by £168, bringing down the judicial rents to £480. Thus, after an average reduction of 19 per cent. had been made by the agreements, a further reduction of 20 per cent. was ordered by the Court. It was only owing to the omission to file these agreements that the Court was able to intervene.

"21. The decisions of Sub-Commissions in fair rent cases are subject to re-hearing by the Land Commission upon the application of either of the parties; and in like manner an appeal may be taken to the Land Commission

from a fair rent decision of a County Court. The rents fixed by the Sub-Commissions to the 31st of March last were 153,049; the applications for re-hearing numbered 38,524, of which 17,784 were withdrawn, and 19,655 have been heard by the Land Commission. As already noted, the decisions of the County Courts were 15,537; the appeals, 4,097; the appeals withdrawn, 1,515; and the appeals heard, 2,192.

"22. Thus it will be seen that 168,586 cases were decided by the subordinate Courts; the appeals and applications for re-hearings were 42,621; and of these 19,299, or nearly one-half, were withdrawn, and 21,847 went to judgment.

"23. The rents fixed by the Sub-Commissions in the 19,655 cases subjected to re-hearing amounted to £431,398; the net result of the re-hearings was to increase this amount by £1,282, or only 0·2 per cent. In the 2,192 cases brought up from the County Courts, the rents fixed by those Courts amounted to £35,473; this amount was increased on appeal by £1,101, or 3·1 per cent. The gross amount of rental dealt with by re-hearing or appeal was not affected, it will be observed, to any material extent. In a number of cases, relatively minute, substantial increases or reductions were made, but the general result has been to confirm the rent as fixed by the Court below, to add a small percentage to that rent, or to substract a small percentage from it.

"24. The system of re-hearing on all questions of value deters many tenants, in our opinion, from making application to have fair rents fixed at all; it entails grievous delays; it protracts uncertainty; it imposes heavy costs, oppressive to a humble class of suitors; it necessitates expenditure out of all proportion to the practical result. The 21,847 re-hearings and appeals, the effect of which was to add but £2,383 to £467,141 of rental, as fixed by the Courts below, must have cost the parties at least a quarter of a million sterling, and this vast expenditure was incurred, in the case of nine-tenths of the appeals (those from the Sub-Commissions), in order to subject the decision of a Court, two of the three members of which are agricultural experts, who themselves inspect the holding, to be reviewed by another Court, no member of which inspects the holding, and no member of which need be an agricultural expert, although the question to be determined is one of the value of land.

"25. Your Committee would recommend that, in any case in which the parties so desire, a holding might be inspected by one or two valuers in advance of the hearing of the case by the Sub-Commission. If this valuation be accepted by the parties, it should be fixed as the fair rent for the Statutory term. If either party declines to accept the valuation, the case would then be heard by the Sub-Commission in the ordinary course, and in this event such hearing would serve as an appeal. But your Committee are of opinion, upon the facts before them, that where the Judgment of a Sub-Commission on a question of value is unanimous, there should be no re-hearing; nor in case of dissent, unless it affects the question of value to the extent of at least 15 per cent. of the rent as fixed by the Court.

"EXCLUSIONS.

Exclusions.

"26. Important evidence was taken on the number of the exclusions from the benefits of the Land Act; that is to say, of the large classes of holdings upon which a fair rent cannot be fixed. Some of these exclusions are due to direct statutory provision; others are deduced by judicial interpretation and decision.

Appendix, No. 3, Table I

"27. A table was handed in by Mr. W. F. Bailey, giving a list of these exclusions, and the reference to the section of the Statute, or to the legal decision, under which each class of cases is shut out from the benefit of the Act.

"28. The subject of the exclusions from the Acts falls under four main heads:—Holdings expressly excluded, as town parks, demesne lands, pasture lettings, &c., &c.; those which are excluded by reason of sub-letting, a bar which is sometimes got rid of where the sub-tenant agrees to surrender; holdings excluded because they are held under lettings made by limited owners; and lastly, 'future' tenancies, which may be held either by men who in 1881 were 'present' tenants, which have since been broken by judgments in ejectment, or may represent lettings made since the Land Act of 1881 was passed. All lettings after that date are 'future' tenancies, except lettings made before 1st January, 1883, to persons who were tenants when the Act of 1881 came into operation.

"29. When it is remembered that since the passing of the Land Act of 1881 there have been over 33,000 evictions or notices terminating the tenancy, it will be seen how large is the number of 'future' tenancies now called into existence. Moreover, where tenants hold under a middleman whose

interest is determined by ejectment for non-payment of rent in consequence of his failure to pay the head-rent, this has been held to determine the tenure of all the occupying tenants, though the ejectment arises through no fault of theirs, and under a reletting to them by the head landlord they would all become 'future' tenants. This is a serious defect in the law, and is the more striking in view of the fact that if the middleman's interest determines in the natural way by efflux of time, the occupying tenants are protected by the express terms of the Act of 1881, and all are in such case made tenants of the head landlord, enjoying the same tenure as under the middleman.

"30. The exclusions in Section 58 of the Act, 1881, are taken (with the unimportant addition of glebe lands) from the Act of 1870, but several of the decisions on that Act have not been followed since 1881, with the result that many holdings are now excluded, which, if the law had remained as it stood when the Act of 1881 was passed, would be entitled to the benefit of that measure. Indeed, the latest text writers on the Irish Land Code (Cherry and Wakely, pages 169, 170), speaking of the decisions on the definitions in the Act of 1870, say, 'Many are of little 'value, as they have been practically over-ruled by the de-'cisions of Courts of superior authority under the Act of '1881.' Yet the definitions in the Act of 1870 tally substantially with those in the Act of 1881. Definitions.

"31. The definition of town parks in Section 15 of the Act of 1870, and Section 58 of the Act of 1881, excludes 'any holding ordinarily termed town parks, adjoining or 'near to any city or town, which bears an increased value 'as accommodation land over and above the ordinary letting 'value of land occupied as a farm, and is ("shall be" in the 'Act of 1870) in the occupation of a person living in such 'city or town, or the suburbs thereof, and pursuing therein 'a trade or business other than that of a farmer.' So microscopic is the nicety of judicial interpretation, that on the difference between '*shall be* in the occupation of a person living in such city or town,' in the Act of 1870, and '*is* in the occupation,' in the Act of 1881, it was held under the former Act where the tenant ceased to reside in the town that the land ceased to be town parks (Talbot *v.* Drapes, (5 I. L. T. R., 143), whereas the contrary decision was arrived at under the Act of 1881 (Nelson *v.* Headfort, 18 L. R. I., 407). The Act of 1887 has now declared the law in accordance with the latter decision. Town Parks.

"32. But it is on the question of the size of 'city or town' that the fluctuation of decision has been most

embarrassing. For instance, it was held under the Act of 1870 that Portglenone, with a population of 800, and Newmarket, with a population of 765, were not large enough to be 'towns,' and, therefore, could not have town parks. Following these decisions, the Land Commission in the earlier administration of the Act of 1881, held that Borrisokane and Kirkcubbin, with populations of 700 and 600, were too small to have town parks, but later on Hacketstown, a place of 'over 600 inhabitants,' and Newport, with a population of 683, were held to have 'town parks,' and in the present year Caledon, with a population of 700, has been held to be a town.

"33. The uncertainty of the law on town parks led the Cowper Commission to recommend that a town to exclude, under Section 58, should have 5,000 inhabitants, where the holding was more than five acres in extent. In the Land Bill of 1887, introduced by the Government, 2,000 was inserted as the population limit in the House of Commons, but the House of Lords rejected the proposal. The Act of 1887, however, attempted to apply a remedy in another way, by enacting that a holding shall not constitute a town park 'if it is let and used as an ordinary agricultural farm,' provided its inclusion, under the operation of the Act of 1881, does not 'substantially interfere with the improve-'ment of the city or town to which it belongs or the ac-'commodation of the inhabitants thereof.' A variety of decisions followed as to the meaning of this definition, and authorities have also accumulated as to the meaning of 'suburbs,' 'accommodation land,' 'increased value,' 'ordinarily termed town parks,' which your Committee have spent some time in trying to understand and reconcile.

Demesne.

"34. As to Demesne Land, the law on that term in the Act of 1870, was that laid down by Lord FitzGerald in Hill *v.* Antrim (5 I. L. T. R. 70), and this was the leading case when the Act of 1881 was passed. It defined 'demesne land' to be 'land within the ambit of the demesne reserved 'with the mansion house and used for purposes of pleasure 'or for pasture, and sometimes let to dairymen or during 'the minority of an owner.' This was disapproved of by the Court of Appeal, when the words came to be considered under the Act of 1881, (Griffin *v.* Taylor, 16 L. R. I. 196). In that case, land within the walls of a demesne, let to a tenant for a very long time, part of it for 50 years, and treated as an ordinary agricultural farm, was held still to be demesne land. In other cases demesne land let with the mansion house for 62 years was held not to be un-

demesned (Moore *v.* Batt). Similarly, demesne let on lease since 1828 was excluded (Weldon *v.* Coote). In Spencer *v.* Tedcastle, the Court of Appeal went still further and decided (reversing the Land Commission) that demesne let on a lease *for ever* was not undemesned, and that a fair rent could not be fixed. Again, it has been decided (Molony *v.* Hamilton) that the acts of a life owner cannot deprive demesne lands of their character, and also, that if the estate be mortgaged the mortgagee in possession cannot do so (Grehan *v.* Pim). In Magner *v.* Hawkes (32 L. R. I. 285) it was held that demesne may be created by a middleman against a sub-tenant, although let to the former as an ordinary agricultural holding by the head landlord —an owner whose demesne it never had been—and that a lease for 35 years did not undemesne. In Leonard *v.* Barry, a tenant was excluded because a portion of land originally demesne was included with ordinary agricultural lands in the same tenancy. In Pratt *v.* Gormanstowne (28 I. L. T. R. 69), where an ordinary farm, with a ruinous cottage thereon, was taken by a tenant and dovetailed into other lands which he held on lease for ever as demesne, it was excluded, on the ground that it had become demesne. In Borrowes *v.* Colles, 28 I. L. T R. 41, an analogous decision was come to.

"35. Your Committee are of opinion that the law should be restored to its condition when the Act of 1881 was passed, and that the test whether land has been undemesned is whether the letting was made for the temporary convenience of the owner, so that if he has demised it on lease for ever or for any term over 21 years, the holding should not be excluded.

"36. The case of pasture holdings also presents unexpected features. If let to be used wholly or mainly for pasture, exclusion takes place unless the tenant resides thereon, or uses the pasture holding with the holding on which he resides, but all pasture lettings are excluded, irrespective of residence, if the land is valued at or over £50. Pasture holdings.

"37. Varying decisions have been given as to the meaning of the words 'let to be used' 'wholly or mainly' and 'for the purposes of pasture.' On the crag lands of County Clare, a farm of 200 acres, of which only 20 could be ploughed, and 15 tilled by spade labour, was excluded, although no written instrument of letting existed (O'Brien *v.* White, 16 L. R. I. 15). Mountain grazing would follow the same rule.

"38. At first, where a lease contained no covenant against tillage or meadowing, a fair rent was fixed, but gradually the law underwent change. The Court of Appeal held parol evidence admissible to prove that land was taken for grazing (Battersby *v.* Nicholson, 22 L. R. I. 38); and in the case of Fulham *v.* Garry, where the lease expressly demised the lands for 'grazing and meadowing only,' it was held that parol evidence was admissible to show that the purpose of the letting was for 'grazing only.' In the absence of any prohibition against meadowing, tenants under the earlier decisions were not excluded, but the Court of Appeal in Byrne *v.* Hill (30 L. R. I. 603) reversed the Land Commission, who had held that a fair rent might be fixed where the hay could be sold off the farm.

"39. Again it was decided that where the land could not profitably be meadowed, and had been always used for grazing, though no restrictive covenant existed either as to tillage, or meadowing, the holding was excluded (Rivers *v.* Hamilton, 28 L. R. I. 464). Pasture land becomes 'ancient pasture' in Ireland after 20 years (Murphy *v.* Daly, 13 I. C. L. R., 239), which it is illegal to break up without permission. Consequently in McCormick *v.* Loftus (28 I. L. T. R. 37), although the lease contained no restrictions on tillage or meadowing, it was held that as pasture would be the most profitable user of the holding, which was mainly under ancient pasture, the holding was excluded.

"40. Mr. Justice Bewley recommended that, tillage being now less profitable under the changed conditions of agriculture, the limit of exclusion in pasture holdings should be raised from £50 to £100. In this recommendation your Committee concur in substitution for Sub-sections 3 and 4, Section 58 of the Act of 1881. They are of opinion, however, that dairy farms should not be excluded, irrespective of valuation; and that no holdings should be excluded, unless a written instrument of letting prohibited tillage or meadowing for sale, and the Court came to the conclusion that this prohibition was inserted *bona fide*, and not merely to effect an exclusion from the Land Acts.

"41. A tenant is excluded who by sub-letting is not technically in occupation at the date of the serving of the originating notice to fix a fair rent. This exclusion does not apply (i.) if the tenant has sub-let with the consent of his landlord; or (ii.) to labourers employed on the holding and not exceeding half an acre; (iii.) if the subletting is of a 'trivial' character.

"42. Sub-letting is a great cause of exclusion, especially in Ulster, and the construction of the exceptions raising a number of intricate questions as to whether assent or acquiescence is consent, what constitutes triviality, and so forth, is stated to have operated harshly. 2846.

"43. The general question is undoubtedly one of difficulty; on the one hand, excessive sub-letting is obviously hurtful, while to prohibit or punish sub-letting would be likely to injure industry, *e.g.*, in the neighbourhood of scutch mills, and tends to drive young labourers from the country into the towns. Mr. McAfee suggests that half an acre should be the limit for sub-letting. Mr. Neligan thinks that lettings on a holding for labourers should not be called sub-letting, but a mere extension of farm buildings. Mr. Justice Bewley suggests that a sub-tenant to any substantial extent should be made an immediate tenant to the head landlord. This plan, if it were feasible, would operate in those cases where, owing to the determination of the intermediate tenancy, the sub-tenants also are determined. 5834. 11490. 10267. FitzGibbon, pp. 144-5. 926. 5827. 9116.

"44. To summarise the effect of the evidence taken on the subject of exclusions, your Committee submit the following recommendations:—

"(i.) No holding to be excluded from the Land Acts on the ground that a part of it is not agricultural or pastoral in character unless such part is in the opinion of the Court substantial in amount or character, having regard to the remainder of the holding. Recommendations on exclusions.

"(ii.) Town park to be defined as a parcel of land near a city or town let for the accommodation of the tenant as a resident in such city or town, or in the suburbs thereof, and which is used by him as accommodation land, and not to make a profit by farming.

"No place shall be considered a city or town unless it has a population exceeding 2,000 at last census.

"(iii.) To admit to the benefit of the Acts tenants of pasture holdings under £100 of valuation.

"(iv.) Where a mill exists on a holding, the Court to have power to fix a fair rent, unless of opinion that the mill is the substantial part of the building.

"(v.) Sub-letting not to be a bar to an application for a fair rent where landlord has 'assented' or raised no objection, subject to the discretion of the Court, if necessary, and provided that it does not impair the security for the rent.

"45. A tenant to be deemed in occupation of his holding, notwithstanding that he has sub-let houses erected on the holding, and which are his own property, to labourers employed in the district, provided that the Court is of opinion that such sub-lettings do not impair the security of the landlord for the rent.

"46. With regard to lettings by limited owners, the present state of the law is manifestly unjust to the tenant. That a tenant should be debarred from fixing a fair rent and be liable to eviction, not by reason of any default or defect personal to himself, or by reason of the character of the land, but because of limitations affecting his landlord's status in deeds which the tenant can have no knowledge of, is manifestly a gross anomaly. The House of Lords, indeed, on the motion of Lord Cairns (Hansard, Vol. 264, page 950, and Lords' Bills for 1881, Nos. 204 and 207), provided expressly in Section 15 for the case of the limited owner, but the House of Commons adhered to its original words, which are wider, and were supposed to meet not only the case put by Lord Cairns, but to cover others not provided for by his amendments. The Irish Courts, however, held that Section 15, as passed, did not include the case of a limited owner, and your Committee recommend that the law should be altered to cover it.

"46*. Certain leaseholders are excluded both from the Act of 1887 and the Redemption Act of 1881 by reason of the term for which they hold (Burton *v.* King-Harman, 28 I.L.T.R. 23). There is no principle in such exclusions, and they should also have the right of resorting to the Court.

"47. Very many Irish estates are in the hands of receivers, and all lettings made by the Land Judges' Court are excluded from the Land Acts, on the theory that they are lettings for 'temporary convenience.' Tenants holding under such circumstances should be placed on the same footing as other tenants to whom the Acts apply.

"IMPROVEMENTS.

"48. The recognition by Parliament of the interest which the Irish tenant possesses in his holding is principally due to the fact that in Ireland farm buildings, drainage, reclamation, and other improvements, which would in England be regarded as a necessary portion of the equipment of a farm, are almost invariably the work of the tenant,

and hence in estimating a 'fair rent,' contention centres on the value and legal ownership of these improvements. The other ingredients of the fair-rent problem, such as the questions of price and yield, are comparatively easily dealt with. The natural quality of the soil is also, relatively speaking, a simple question; but the additional fertility it has received by improvements, the legal interest of landlord and tenant therein, and the apportionment of the value thereof between both, present, in the existing state of the law, much difficulty.

"49. Section 8, Sub-section 9, of the Act of 1881 provides:

> "'No rent shall be allowed or made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title, and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or otherwise compensated by the landlord or his predecessors in title.'

"50. The administration of this important provision is seriously affected by the fact that it was held in the case of Adams *v.* Dunseath that outside Ulster these 'improvements' are only such as a tenant could, under the Act of 1870, claim compensation for on quitting, and that the 'enjoyment' of improvements made before 1870 is to be taken into account in the landlord's favour. Where the Ulster custom prevails this doctrine does not apply.

"51. The aspect in which improvements are regarded in the two Acts was entirely different. The Act of 1870 prescribed the measure of compensation to be paid by the landlord to the tenant after eviction; that of 1881 prescribed the fair rent to be paid by the tenant to the landlord during occupation.

"52. The majority of the judges, however, in Adams *v.* Dunseath held that the enactment in Section 8, Sub-section 9, of the Act of 1881, already cited, relates only to such improvements as the tenant could claim compensation for under the Act of 1870; and that as the 'enjoyment' of such improvements must, by Section 4 of the latter Act, be taken into account against an evicted tenant, in reducing an award of compensation, such 'enjoyment' should also reduce the allowance made in the fair rent of the sitting tenant for his improvements. Moreover, the Court held that as the Act of 1870 debarred an evicted tenant from claiming compensation for a number of improvements in specified cases, so these excluded

improvements were also to be credited to the landlord in fixing the fair rent. Again, as improvements of a kind not suitable to the holding are not upon eviction (for obvious reasons) to be paid for by the landlord, under the Act of 1870, so a superior house on a small farm may have rent imposed on it under the Act of 1881. Furthermore, as tenants of over £50 valuation can contract themselves out of any right to compensation under the Act of 1870, so under the Act of 1881 a leaseholder is not exempted from rent on any improvements he has made if his lease contains a covenant that he is not to claim for them on quitting his holding. Such was the decision in the leading case affecting leaseholders' improvements, of O'Neill *v.* Cooper (unreported). There the lease contained a covenant that the tenant was not to claim compensation for improvements at its expiration. Subsequently the Land Act of 1881 gave tenants at the end of their leases practical perpetuities, and the Act of 1887 conferred upon lessees the right of applying to fix a fair rent. But because of the 'contracting-out' covenant, not to claim compensation for improvements when the lease came to an end, the landlord was held entitled to rent on them while the tenancy continued in existence. This case ruled all others where a lease contained similar provisions.

"53. On the two cardinal issues affecting improvements decided by the majority of the judges in Adams *v.* Dunseath, Parliament strove, only six months previously, to prevent the possibility of such a construction being given to Sub-section 9, Section 8, as the Court of Appeal declared to be the law.

"54. In the first draft of the Land Bill of 1881, as introduced into the House of Commons, the following limitation on the measure of the tenant's interest was contained in the Fair Rent Section. 'The Court, in fixing such rent, shall have regard to the tenant's interest in the holding, and the tenant's interest shall be estimated with reference to the following considerations, that is to say :—

"(*a.*) In the case of any holding subject to the Ulster Tenant Right Custom, or to any usage corresponding therewith, with reference to the said custom or usage.

"(*b.*) In cases where there is no evidence of any such custom or usage, with reference to the scale of compensation for disturbance . . . . and to the right (if any) to compensation for improvements effected by the tenant or his predecessors in title."'

"55. This provision the House rejected, and subsequently Sub-section 9 was inserted, which, as it passed the House of Commons, simply ran: 'No rent shall be made payable in any proceedings under this Act in respect of improvements made by the tenant or his predecessors in title' (Lords' Bill, No. 107 of 1881). In this shape the clause was struck out by the House of Lords.

"56. Upon the Bill being returned to the Commons the words were reinstated, but the Irish Attorney-General, Mr. Law, proposed the following limitation: 'And for which the tenant would be entitled to compensation under the provisions of "The Landlord and Tenant (Ireland) Act, 1870," as amended by this Act.' This exactly corresponded to what, in Adams *v.* Dunseath, was afterwards declared to be the law, but the House refused to accept the words, and the Government actually were obliged to vote against their own amendment, which was rejected by a majority of 134. Hansard, Vol. 264, pages 1475-7.

"57. The Irish Attorney-General then proposed the addition of the following words: 'and for which, in the opinion of the Court, the tenant or his predecessors in title shall not have been paid or compensated by the landlord or his predecessors in title.' This addition was unanimously agreed to. Thereupon Sir Stafford Northcote, the Leader of the Opposition, proposed (Hansard, Vol. 264, p. 1488) the addition of the words as to 'enjoyment' from Section 4 of the Act of 1870:

"58. 'The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.' These words, which the Court of Appeal in Adams *v.* Dunseath declared must be read into Sub-section 9, Section 8, the House of Commons rejected by a majority of 130. The Prime Minister, in refusing to accept them, used the following language:— Sir S. Northcote, 10th August, 1881.

"59. 'The doctrine accepted at the time of the Land Act of 1870, and which he certainly declined to accept the night before, was the doctrine that the enjoyment by the tenant for a certain time of his own improvements might have reimbursed him for the cost of these improvements, and by a natural process they passed over to the landlord. But that was not the basis on which they proceeded now, Mr. Gladstone.

and there was no occasion for it. The tenant's improvements were the tenant's own property, and he would not admit the principle that the time during which he had enjoyed those improvements was any reason for their passing away from him.'

Mr. Gladstone, 9th August, 1881.

"60. On the previous day Mr. Gladstone had made this declaration: 'In the Act of 1870 we did, in respect to the tenant, recognise the principle that he might be compensated by a reasonable lapse of time in respect of improvements he had made, and that the use and profit of these improvements for a certain time might be considered as compensation, but we do not recognise that principle in the present Act. None of the enactments of the present Bill are founded on that principle. . . . It is much better, I think, that those who make improvements should have the whole benefit of the improvements.'

"61. When the Bill was sent back to the Upper House the Lords inserted the words proposed by Sir Stafford Northcote as to enjoyment, which had been rejected by the Commons, and the clause therefore had the following limitation attached to it, viz.:—

"62. 'The Court shall take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, also the rent at which such holding has been held, and any benefits which such tenant may have received from his landlord in consideration, expressly or impliedly, of the improvements so made.'

Hansard, Vol. 264, p. 1969.

"63. Once more the House of Commons rejected these words, this time by a majority of 128.

"64. The word 'otherwise' was then inserted before 'compensated,' and the Lords subsequently agreed to the clause in the shape in which it now stands. It cannot, therefore, be matter for surprise that the Irish tenantry should seek for a restoration of that property in their improvements which Parliament unquestionably intended to declare to be their right.

"65. Even if the records of the House did not so unmistakably show the intention of the Legislature, it is plain that it cannot equitably be argued that because certain improvements do not fulfil the technical-legal conditions to entitle an evicted tenant to be compensated for them under the Act of 1870, the landlord is entitled to charge rent on them to the sitting tenant under the Act of

1881 as if the landlerd had paid for them out of his own pocket. Yet the law has been administered on this principle for 13 years, and over 300,000 rents have been fixed, subsequent to the decision referred to.

"66. The following is a summary of the more important classes of improvements in respect of which a tenant cannot claim compensation under the Act of 1870, and on which, therefore, owing to the decision in Adams v. Dunseath, he may now be rented when a fair rent is being fixed:—

"67. First. Improvements not 'suitable to the holding' (Act of 1870, Section 70). Thus, if a tenant builds a dwelling-house of superior character to the necessities of the farm, or, if having several holdings, he erects on one of them farm-buildings for the whole, and which are therefore in excess of the requirements of the particular holding, in these and similar cases the improvements are 'not suitable to the holding,' and the tenant may be rented on the buildings he has himself erected.

"68. Second. Improvements in respect of which a tenant, whose aggregate poor law valuation is £50 or upwards, has contracted in writing not to claim compensation on quitting his holding. The Act of 1870 permitted such tenants to contract out of the Act (Section 12), and, as we have seen in leases made after the Act of 1870, such contracts were inserted. Yet, although the contract was only made with a view to the provisions of the Act of 1870, the improvements not being subject to compensation under that Act, the landlord is entitled to rent on them under the Act of 1881.

"69. Third. Improvements made in pursuance of a contract entered into for valuable consideration therefor (Act of 1870, Sections 45 and 100). This exemption was presumably intended to protect the landlord who had actually paid the tenant for making the improvements; but the words 'valuable consideration' legally cover a number of cases where in reason and equity the tenant is entitled to the benefit of his improvements. Thus, where a lease is made at a rack-rent, and a clause is inserted binding the tenant to erect buildings, or execute some other improvements at his own expense, the mere granting of the lease, no matter how high the rent may be, is in law a 'valuable consideration' for the tenant's contract. He is therefore disentitled to claim compensation on quitting his holding for any improvement so executed, and the landlord, when

a fair rent is fixed, is entitled to rent on such improvement, exactly as if the tenant found it there when he became tenant.

"70. Fourth. Improvements made before the passing of the Act of 1870, and 20 years before the claim for compensation (or fair rent application) is made (Act of 1870, Section 4, Sub-section 1a), *except* permanent buildings and reclamation of waste land. The most important improvement excluded by this exemption is drainage executed on land not absolutely 'waste.' Land, no matter how bad, which has previously been cultivated, or which is even fit for coarse grazing, however inferior, is not technically 'waste.' The drainage of such land must naturally be more common than the drainage of land absolutely 'waste,' and requires a costly class of improvement. Fences, farm roads, tree planting, are also excluded by this exemption.

"71. Fifth. Improvements made during the continuance of a lease for a term of 31 years or upwards, *except* permanent buildings and reclamation of waste land and unexhausted tillages and manures (Act of 1870, Section 4, Sub-section 3). The remark just made as regards drainage, fences, farm roads, tree planting, also applies to this exemption.

802-7. 8074-84. 1686. 4035. 10318. "72. Sixth. Improvements made by a tenant holding under a fee farm grant or lease for ever. This exemption only has application where a tenant is having a fair rent fixed under the provisions of the Redemption of Rent (Ireland) Act, 1891, passed in the interest of long leaseholders. The definition of 'tenant' under the Act of 1870 (Section 70) does not include a tenant under a fee farm grant or a lease for ever, and such a tenant can therefore make no claim for compensation under that Act. Accordingly, where such a tenant is now entitled to fix a fair rent, the landlord is entitled to claim rent on his improvements. A Bill to remedy this passed the House of Commons last year, but the Lords did not agree to it.

"73. The branch of the decision in Adams v. Dunseath, dealing with the word 'improvement,' is also highly important. The definition of this word was contained in the Act of 1870, and was declared to extend to the Act of 1881. The material part of this definition declares 'improvement' to be 'any work which, being executed, adds to the letting value of the holding.' In consequence of the use of the word 'work,' the Court of Appeal drew a distinction between the increased letting value arising from the improvement, and the improvement or improvement work

itself, and some of the Land Commission Courts seem to have held that the Act gave the tenant no share in the increased letting value which his improvements had created, but merely a right to a reasonable dividend in the shape of interest on the actual money value of the improvement.

"74. From some evidence before us, the Committee at one time supposed that the Land Commissioners considered the Court of Appeal to have decided that the landlord was entitled to the whole of the increased letting value of a holding resulting from a tenant's improvement, after deducting a reasonable interest on the actual cost of the improvement work. Mr. Justice Bewley denied this, and from the evidence of Lord Justice Fitzgibbon, what the Court apparently decided was that this surplus did not necessarily in all cases go to the tenant, but was to be allocated as between landlord and tenant, according to their several interests in the holding, having regard to all the facts of the case.

"75. The interference of Parliament is required in order to ascertain and secure to the tenant his share as a recognition of his occupation right in the improved letting value which has been elicited from the soil by his improvements.

"76. In addition to formal exemptions of the improvements, the Act of 1870 also provides (Section 4) that even in cases where the tenant is not excluded from claiming compensation, the Court, in awarding compensation for improvements made before the passing of the Act, and under a tenancy existing at its passing, shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantages of such improvements, and the rent at which such holding has been held. The Court of Appeal, in Adams v. Dunseath, held that this limitation also applied where the fair rent of a holding was being fixed under the Act of 1881, and that the right of a tenant to be exempted from rent on his own improvements was consequently qualified accordingly.

"77. Upon the whole, having given the matter careful consideration, your Committee see no other course open to them than to recommend that improvements of whatever character made by the tenant should be exempted from rent, and that the limitation as to enjoyment in the Act of 1870 be repealed. Unless this course be taken, your Committee believe that the deep-seated and well-grounded

dissatisfaction with the existing state of the law in Ireland will be intensified, and in the interests of the rights of property created by the occupiers, they believe that legislative remedy is urgently called for.

"78. Under the Scotch Crofters' Act, 1886 (49 & 50 Vict. c. 29), which gives to Highland tenants the right to have their rents fixed by a statutory tribunal, *all improvements may be taken into account* 'which, in the judgment of the Commission, shall add to the value of the holding to an incoming tenant.'

"79. On the question of procedure of the Land Commission in considering improvements, your Committee desire to express their entire concurrence in the recommendation made by the Select Committee of the House of Lords in 1882, presided over by Earl Cairns, as to the practice of the Land Commission in valuing improvements, viz. (par. 6.):—

"80. 'The Committee are of opinion that it is very important in the interest of the tenant, as well as the landlord, that the Assistant Commissioners, in fixing a judicial rent, should determine and record both the fair rent of the holding absolutely and also the sum which they find should be deducted from the rent in respect of the tenant's improvements. The knowledge of the rent assigned to the holding irrespective of improvements is necessary, with a view to the settlement out of Court of disputes as to adjacent or similar holdings, and may be of much importance in questions as to the rental of the whole country, and the separate findings as to rental and improvements will greatly simplify appeals, inasmuch as both landlord and tenant may frequently be satisfied with the finding as to rental, and desire to appeal as to improvements only, or *vice versa*.

"81. 'The Committee find that for some time after the formation of the Sub Commissions the books issued to them for entering minutes of their orders contained two columns, headed 'Estimated value of Tenants' Improvements,' and 'Annual Sum deducted in respect of Tenants' Improvements from Present Rent in fixing Judicial Rent.' These columns were not, however, filled up by the Assistant Commissioners, and have been latterly omitted from the order minute books. The Committee do not think that any sufficient cause has been shown why this information should not be required, at least as to holdings not subject to the Ulster custom, and they understand the Commissioners

(although opposed to the information appearing) to be of opinion that the information should be given, and that it would be valuable.'

"82. This Report is dated the 18th April, 1882, and their Lordships, in a further Report, dated the 9th July, 1883, having heard further evidence, reiterate their opinion, as follows:—

"83. 'Complaint is also made that there is no sufficient record showing what improvements have been proved to have been made by the tenant, and have been allowed for as affecting the rent. . . . The Committee regret to find . . . that the form adopted by the Commissioners in order to meet this complaint has proved useless, and they must express again their strong opinion that the respective interests of landlord and tenant cannot be properly dealt with, and the settlement of judicial rents cannot be placed upon a satisfactory basis, unless there is made and preserved a distinct specification of the improvements established by the evidence of the value assigned to them in the settlement of rent.

"84. In his evidence before the Lords' Committee, on the 25th April, 1892, Mr. Justice O'Hagan objected to this information being given, as appears from Questions 3713 to 3715, stating, in reply to Lord Cairns, that it would create more discontent than it would allay, and in reply to the Marquis of Salisbury, that there were reasons of policy against it. Nevertheless the recommendation referred to was made, and Mr. Justice Bewley, who has succeeded Mr. Justice O'Hagan as Judicial Commissioner, informed your Committee that if they reported to a like effect the Land Commission would now undertake to carry out the recommendation.

"85. Your Committee, therefore, recommend that the forms in use by the Land Commissioners should be so framed as to show the total value of the improvements made by the tenant, or his predecessor in title, the deduction made therefrom for enjoyment, compensation, contribution, deterioration, or any other cause, and the net allowance made to the tenant for improvements under Section 8, Sub-section 9, of the Act of 1881.

"86. Lord Cowper's language on this head is confirmed by the evidence taken by your Committee:—

"87. 'With one or two exceptions, he distinctly stated that until very recently landlords did not make improve- Hansard, 22nd April, 1887.

ments on the land, and when the tenants made them the rents were immediately raised. He attributed the present condition of Ireland to the fact that the landlord class in Ireland, who in other respects were a most admirable race of men, had in many instances been undoubtedly bad landlords. The future hope of the country lay in protecting the tenants in the possession of their improvements.'

"88. When subsequently challenged in the House of Lords on this expression of opinion, Lord Cowper said:—

Lord Cowper, 2nd May, 1887

"89. 'He did not believe that improvements, as a rule, were made by the landlords; that they were, in fact, usually made by the tenants, and the only plan was to encourage tenants to make improvements and to protect such improvements when made. He qualified his remarks by saying "until recently" one could count on one's fingers the Irish estates on which improvements were made by the landlords. . . He thought he was justified in saying that, as a rule, improvements had been made in Ireland by the tenant, and in many cases the rent had been raised upon such improvements.'

"90. It may be added that the conversion of the landlord into a position analogous to that of a rent charger makes it less and less likely that he will expend money in improvements; and makes it more important than ever that in a country mainly dependent on farming, and where, therefore, the improvement of the land is of the very highest moment to the community, the improving farmer should receive all the protection and encouragement that the law is able to bestow.

"91. On the question of presumption as to the making of improvements, the fifth section of the Act of 1870 enacts that they shall be deemed to have been effected by the tenant, but the exceptions are so numerous that the provision is of little value, and your Committee recommend that the exceptions should be repealed, and that, until the contrary is proved, all improvements be deemed to have been made by the tenant or his predecessors in title. Similarly, holdings in Ulster should be deemed subject to the Ulster custom, until the contrary is established. At present, except in the small number of cases in which the limited presumption created by the Act of 1870 operates, the tenant is always liable to be placed at a disadvantage by having to prove his improvements by the evidence of someone actually present when they were effected, a thing in many cases impossible, or at least very difficult, for

him to do, especially in cases where the improvements are of old date, or where the holding has come into his possession by purchase. Owing to such difficulties of proof valuable improvements are liable to be lost to tenants, and rent imposed on them as if they were the landlord's property. Section 8, Sub-section 4, of the Act of 1881 enables the Court to disallow a fair-rent application if satisfied that the permanent improvements have been made and substantially maintained by the landlord, and this provision amply safeguards an improving owner, but it is abundantly clear that it is the practice in Ireland for the tenant to make the improvements, and, therefore, the presumption of law should lie accordingly.

"92. In the limited number of cases in which improvements are either executed by the landlord or allowed for by him in the rent, a record of the fact is almost invariably kept in the estate books, so that no difficulty of proof arises. In the Act of 1870 provision was made to enable a tenant to register his improvements in the County Court, but the procedure was a somewhat cumbrous and expensive one, and especially since the passing of the Act of 1881 has been almost never availed of. Your Committee recommend that when, on the hearing of a fair-rent application, improvements are proved to have been made by a tenant, the record of this fact by the Court should be made evident in subsequent proceedings, in the same manner as if the procedure under the Act of 1870 had been adopted.

"County Court Procedure.

"93. The number of cases heard in County Courts is comparatively small, and the practice is not always uniform. In the County Court system only one valuer goes upon the land, and he is not, moreover, as the lay Assistant Commissioner is, a member of the Court, with a voice in its decision; he has merely a consultative position; he is paid by the day and not by salary. One County Court Judge informed the Committee that as the Judge knows nothing of the facts himself, and has no other mode of arriving at a conclusion as to the value of the land than by adopting the Court valuer's opinion, he, for his part, always felt himself morally bound to accept the valuation of the Court valuer. County Court Judges. 9030 to 9032.

"94. Another County Court Judge, however, assured the Committee that he always applied his own mind to the facts before him, and gave his decision as an act of his own independent judgment. It is difficult to see why a 11440.

Judge of a County Court should not be as capable of conducting these inquiries efficiently as a legal Assistant Commissioner.

"95. Your Committee observe with regret the delay and inconvenience caused by the transfers *ex parte*, on the application of the landlord, of fair-rent applications from the County Courts to the Sub-Commissions. Your Committee recommend that such transfers should not be allowed, except for cause assigned, and with restrictions on proceeding for the old rent in the interval, because, if the landlord is dissatisfied with the adjudication of the County Court Judge, an appeal lies to the Land Commission, the costs of which, if the landlord is successful, the tenant will have to pay.

"COSTS.

Costs.

362, 368, 1400, 3633.

"96. Costs are undoubtedly heavy in proportion to the matter in question. It was stated that where there is no appeal the costs are often between £3 and £4. On the 294,000 cases the reductions amount to £1,250,000. Taking the average reduction as £4 to each tenant, a year of the benefit gained was swallowed up by the cost of the action.

588 to 593.

"97. Figures were put in showing that, where there is an appeal from the Assistant Commissioners to the Chief Court, in cases where the rent does not exceed £5 the cost could hardly be less than £2, and might be more than twice that amount, and Mr. Commissioner FitzGerald stated that costs undoubtedly bear 'extremely heavily' in small cases. Your Committee are of opinion that, as in cases of appeal, costs should follow the event.

"TRUE VALUE, SPECIFIED VALUE, AND FREE SALE.

Section 1.

True value.

"98. By the Land Act of 1881 it is enacted that the tenant for the time being of every holding not specially excepted from the provisions of the Act, 'may sell his 'tenancy for the best price that can be got for the same,' subject to regulations set forth in the section.

Sub-section 2.

Sub-section 3.

"99. One of these regulations requires the tenant to 'give the prescribed notice to his landlord of his intention 'to sell his tenancy,' and another directs that 'on receiving 'such notice the landlord may purchase the tenancy for 'such sum as may be agreed upon,' or in the event of disagreement, may 'be ascertained by the Court to be the true 'value thereof.'

"100. It is also provided that on the occasion of any application to the Court to fix a judicial rent the landlord and tenant may agree to fix, or in case of dispute the Court may fix, 'a specified value for the tenancy,' and where such value has been fixed, then, if the tenant during the statutory term gives notice of his intention to sell the tenancy, the landlord is entitled to purchase it for the amount so fixed, subject to addition of the value of improvements afterwards made by the tenant, and to deduction in respect of subsequent dilapidation of buildings and deterioration of soil. Holdings subject to the Ulster custom are exempted from the provision as to 'specified value,' and with regard to 'true value,' the tenants of such holdings are allowed by law the option of selling their tenancies either under the custom or usage or under Section 1 of the Act. In case of sale under Section 1 the landlord would be entitled to buy the tenancy at the 'true value' agreed upon, or, in the event of disagreement, ascertained by the Court. But it appears that the Ulster custom tenant does not avail himself of this option, preferring to sell his tenancy in pursuance of the custom, and thus to avoid the exercise of a right of pre-emption by the landlord. It follows that, except in the case of a holding subject to the Ulster custom, the landlord may apply to the Court, when a fair rent is being fixed, to fix also a specified value at which he may purchase the tenancy whenever the tenant wants to sell it; and, whether or not the holding is one in respect of which a fair rent can be fixed, the landlord, on receiving notice from the tenant of his intention to sell the tenancy, may buy it, if no 'specified value' has previously been fixed, 'at what may be ascertained by the Court to be the true 'value thereof.'

Section 8. Sub-section 5. Specified value

Specified value excluded by Ulster custom.

Section 1. Sub-section 89

Custom tenant may sell under custom.

Effect of provisions as to true and specified value.

"101. The Act provides, as has been pointed out, that either the specified value or the true value of a tenancy may be fixed by agreement between the tenant and the landlord.

"102. It has not been shown, however, in the course of this inquiry that any such agreement is ever made, neither does the question ever arise at the instance of the tenant.

Agreements not made.

"103. According to Mr. Doyle, a legal Assistant Commissioner, who has filled that office almost from the passing of the Act of 1881, the value of a tenancy is settled by 'rule of thumb,' no principle is recognised. Indeed, Mr. Doyle declares that he does not know of any principle upon which any value can be put upon a tenancy other than the value of improvements belonging to the tenant. Other

No principle recognised.

Assistant Commissioners examined before us have not gone quite so far as Mr. Doyle. But they agree in regarding as their most difficult function the fixing of the value of a tenancy. Apparently they discharge the duty, as a rule, with great reluctance. They even refuse to fix the 'specified value,' justifying their refusal on the ground that no adequate evidence was submitted. But under the statute it appears that they cannot refuse to fix the 'true value' when the tenant is about to quit the holding, although we should suppose that the evidence in a case of application to fix 'true value,' there being no other question before the Court, would be probably more meagre, and, therefore, more unsatisfactory than the evidence available in a case of 'specified value,' where, as the fixing of a fair rent is a portion of the case, there is testimony forthcoming at least as to the value of the holding. Whatever may be the evidence taken, the result appears to be that when the value is fixed, it is fixed without any regard to the general direction of the Act, that the tenant is entitled to sell his tenancy for the best price that can be got for the same. Whether, by the fixing of 'specified value,' the landlord is enabled to buy the tenancy at a future time, or by the ascertainment of 'true value,' he is empowered to purchase it at once, in either case the price to be paid is substantially less than the real market value of what the tenant has to sell. When the landlord acquires the tenancy at the price so fixed there is nothing to prevent him, in the case of a present tenancy, from immediately re-selling at the full market value, subject to the fair rent payable by the former tenant, and even in the case where a present tenancy existed in the holding, the landlord, as the law now stands, will have it in his power, after the 22nd of August, 1896, that is, after the lapse of fifteen years from the passing of the Act of 1881, to re-sell the tenancy at the full market value, and likewise to fix the amount of the future rent.

Difficulty in fixing value.

Refusal to fix specified value

True value fixed.

Value fixed lower than market price.

Landlord may re-sell at market value.

Section 20. Sub-section 3.

"104. From a Paper handed in by Mr. Justice Bewley, showing seven cases in which the 'true value' fixed by Sub-Commission or County Courts was substantially increased on appeal, it appears that the average 'true value' fixed by the subordinate courts was less than five years' purchase of the rent, and that it was increased on appeal by the Land Commission to six and a-half years' purchase. A further Paper, also handed in by Mr. Justice Bewley, gives a return of all cases from the passing of the Act of 1881 to the 31st March last in which the Sub-Commission Court or County Court made an Order on an application to fix the true value of a tenancy, and the Land Commission re-heard

Illustrations of "true value."

App. 81.

App. 16.

the application on appeal. Omitting the cases in which the decisions of the Court of first instance and of the Land Commission afford no basis for comparison as to value, we find that in 12 cases which arose in Ulster, the value fixed in the subordinate Courts was, on the average, 10 years' purchase of the rent, and by the Land Commission, about nine years' purchase; and in 12 cases out of Ulster, the lower courts awarded on the average six and a-half years' purchase of the rent, which was reduced to an average of about six years' purchase on appeal to the Land Commission. App. 12. Sales of tenancies.

"105. Another Paper, which has been handed in by Mr. Toler Garvey, land agent, shows the results as stated by land agents in reply to a circular issued by the Irish Landlords' Convention of the sales of over 3,000 tenancies throughout the country from 1882 to the present time. This return discloses the significant fact that in Ulster, where free sale prevails to the general exclusion of the right of pre-emption, the average price of tenancies was 16·8 years' purchase of judicial and non-judicial rents combined, whilst in Leinster it was only 6·1 years' purchase, in Connaught 10·2 years' purchase, and in Munster 10 years' purchase. From these results we think it must be inferred that the market value of tenancies where no right of pre-emption exists is far higher than 'true value' or 'specified value,' fixed by the Courts; and that where the right of pre-emption does exist throughout Leinster, Munster, and Connaught, the market value of the tenancy is thereby greatly depressed, because the person who buys a tenancy is liable to have 'specified value' or 'true value' afterwards fixed by the Court at the instance of the landlord. As improvements are stimulated in Ulster by the security of the right of free sale, so they must be checked in all other parts of Ireland by the right of pre-emption, for the tenant is not so likely to make improvements when he may be compelled to sell them with his tenancy for a price fixed arbitrarily by a Court, acting on no definite principle, as when he knows he can sell the tenancy, including the improvements, for the best price offered in the market. Effect of pre-emption on free sale. Improvements checked by existence of right of pre-emption.

"106. Such consequences, repugnant to equity and opposed to good policy, do not, in the opinion of your Committee, accord with the object which Parliament had in view in enacting the free sale provisions of the Act of 1881.

"107. Your Committee recommend that by the repeal of the provisions of the Act relating to 'true value' and 'specified value,' the Courts be relieved of a function which Repeal of pre-emption provisions recommended.

in the latter case they are unable as well as unwilling to discharge (having no principle whatever laid down to guide them), and that the declaration of the Act of 1881, that every tenant may sell his tenancy for the best price that can be got for the same be thus rendered effectual.

"PROCEDURE.

"108. Your Committee now pass on to various other questions and suggestions that seem to call for the attention of Parliament.

Nature of statutory term.

"109. The Committee have had the advantage of hearing explanations from Lord Justice FitzGibbon and Mr. Justice Bewley on the nature of the statutory term created by the Act of 1881.

FitzGibbon, 3427.

"110. The Lord Justice set forth his views in the following words: 'The rent is fixed for 15 years, and it 'goes on until it is altered; it cannot be altered during '15 years, but the tenancy continues and cannot be de- 'termined. After 15 years the rent is capable of revision; 'but if it is not revised I suppose it goes on as before. It 3428. 'is not a 15 years' lease; it is a lease for ever, an unde- 'terminable tenancy from year to year, with power to fix 'or to vary the rent every 15 years.'

Bewley, 10173

"111. The view, however, advanced by Mr. Justice Bewley does not seem entirely to coincide. He quotes from the Judgment of the Irish Master of the Rolls, these words: 'All that the Land Act does is by negative words to impose 'on the landlord a disability to raise the rent or put out the 10184. 'tenant during the term;' and then adds, 'I have no doubt 'whatever that that is the true legal position.' And again he says, 'If the tenant wants . . . to retain security 'of tenure, there is nothing in the Act to give it him unless 'he acquires a new statutory term.' He also considers it a 10177. 'moot point' whether, at the expiry of the statutory term, the fair rent goes on or the old rent revives. It is obviously most undesirable that doubt once disclosed on so important a matter should continue. Your Committee consider that Lord Justice FitzGibbon correctly interprets the intention of Parliament, and it should be made clear by legislative enactment that at the end of the statutory term the rent payable should continue to be the judicial rent previously fixed, and that the holding should continue to be subject to the statutory conditions, until the former judicial rent shall have been revised.

"112. The statutory or judicial term is at present 15 years. There was a pretty general concensus of opinion among the witnesses that the term is too long, for the reason that it is impossible to foresee so far the fluctuation in prices which largely affects the fairness of a rent. The periods suggested range from five years upwards. Two witnesses only opposed any change, on the ground that a short term tends to unsettle the tenant's mind. It should be noticed, however, that of those who propose to shorten the term, Mr. Neligan, who, as a member of the Cowper Commission, recommended a term of five years, did so, on the assumption that it would be possible to arrange an automatic process for fixing rents. Mr. Neligan now suggests 10 years.

Length of statutory term. Heard, 9567. Doyle, 6921. Neligan, 11527. Garvin, 11944. Neligan, 11535.

"113. The Committee are of opinion that a term of 10 years would be reasonable and convenient.

"114. On one question, which judicial decision might any day raise to importance, the law was stated to be in a doubtful and unsatisfactory state. If a tenant dies intestate, and legal representation has not been taken out, it is described as being the common practice of landlords and agents to give receipts for rent to the person in occupation, describing the money as paid by 'the representatives of A.B.,' the deceased tenant. It has been the practice, both of the Land Commission and of Sub-Commissions, under the Statute of 1881, to make an order appointing the widow or child who shall have served an originating notice a limited administrator of the deceased tenant, for the purpose of the proceedings. A judgment of the Court of Exchequer has thrown doubt on the power of the Land Commission to exercise this jurisdiction, on the hearing of a fair rent application. So long as this doubt has not been set at rest by legislation, the Courts may possibly require, in all cases of this kind, that the applicant shall obtain letters of administration from the Probate Division before the originating notice to fix a fair rent could be served, and this necessity would obviously cause both delay and expense.

Limited administration, 964.

"115. Having regard to the evidence adduced on the subject of turbary, to the effect that if the landlord tries to sever the turbary from the holding, the Commissioners have no power to give the turbary to the tenant, so that the tenant is sometimes compelled to pay back for turf as much as he has gained by reduction of rent (2113), and taking into consideration that in many parts turf is a necessity of life, and that oppressive rent is sometimes charged for the privilege of cutting turf, your Committee are of opinion

Turbary. Bailey, 711. 1255-1262. 2113, 2681. Cunningham, 5084. 4515 4512-4518. 4748. 4831. MacAfee, 5814 O'Keeffe, 6194

that when the turbary is outside the ambit of the holding, the Commissioners should have power, in cases where the tenant has hitherto been allowed to cut turf, to secure the right to the tenant on such terms as they may think fit. The same power might be granted with respect to all easements enjoyed with the holding.

Reporting.

1775. 8430 to 8445.

"116. The arrangements for reporting or recording the decision of the Land Commission have been extremely inadequate, so that many cases of enormous importance, both to landlord and tenant, are entirely without judgment being accessible.

"117. One legal Assistant Commissioner stated that sometimes six months elapsed before the judgments of the higher courts are available for the guidance of the Assistant Commissioners, and that generally in this respect, though no other branch of law can be practically so important to the people of the country, the absence of regular provision for the supply of authorised reports of land cases places the Assistant Commissioners at great disadvantage.

10096 to 10105.

"118. Mr. Justice Bewley expressed himself as quite satisfied with the present system of reporting judgments, but he agreed that it would be very useful to have a barrister's authenticated reports, at all events of leading cases, and to supply them to the Assistant Commissioners.

Consolidation.

"119. One legal witness expressed an opinion that it would be very desirable to consolidate all the Land Statutes from 1860 down to the present time in one code, simplifying, so far as possible, the cross references and artificial definitions of the present Acts.

"120. In view of Lord Justice FitzGibbon's description of the existing difficulty arising from the incorporation of several complex and intricate Statutes, if you read a clause in any Act, as he said, you must keep every clause in every other Act in your mind at the same time; and of the mass of undigested legal decisions, your Committee are of opinion that opportunity should be taken as soon as feasible of including all the legal rules as to the hiring of land in one consistent and intelligible Act, which besides being complete in itself should, in the language of the late learned Professor Richey, 'be drawn up in such language, form, and manner, 'that the landlords and tenants in Ireland (or at least such 'of them as are reasonably educated) should, like the inhabi-'tants of Continental Europe and America, be able, without 'professional assistance, to discover their respective rights 'and duties.'

Richey's Irish Land Laws, 1880, p. 113.

"121. In submitting this Report, with the Minutes of Proceedings and Evidence taken before them, your Committee beg to express their opinion that it is highly desirable that they should be re-appointed in the next Session of Parliament, for further consideration of subjects connected with some of the above matters, as well as for the purpose of inquiring into the distribution of business among the departments of the Land Commission, and also into the working and administration of the Purchase Acts, neither of which subjects is comprised in their present Order of Reference."

DRAFT REPORT, proposed by Mr. Broderick, read the first time, as follows:—

"1. Your Committee were appointed to inquire into and report upon the principles and practice of the Irish Land Commissioners and County Court Judges in carrying out the fair rent and free sale provisions of the Land Acts of 1870, 1881,, and 1887, and of the Redemption of Rent Act, 1891, and to suggest such improvements in law and practice as they might deem to be desirable.

"2. Your Committee have examined 16 witnesses, of whom two were members of the Chief Commission, three legal Assistant Commissioners, four lay Assistant Commissioners, two County Court Judges, and one assistant Lay Commissioner.

"3. Lord Justice FitzGibbon also attended, as representing the Court of Appeal in Ireland, and gave evidence before your Committee. Mr. Toler Garvey and Mr. Barnes, whose evidence was only partially taken, were the only unofficial witnesses examined. Mr. Rochfort and Mr. Willis appeared to hand in certain returns.

"4. Your Committee desire to express their strong disapproval of the manner in which their sittings were brought to a close before certain important witnesses unconnected with the Land Commission, and whose evidence was tendered, could be examined. By this course your Committee were debarred from obtaining any adequate expression of opinion or suggestions from those who are suitors in the Land Commission Courts, or who practise before the Courts. They especially regret that the Chairman should have thought fit, by his deciding vote, to exclude this important branch of evidence, without the assistance of which it is impossible, in their opinion, to prepare and present a

complete report within the terms of the Reference. It is further to be regretted that the inquiry was closed before certain essential returns which had been called for could be furnished.

"5. Despite the incompleteness of the information now before them, your Committee are satisfied that Parliament should be placed at once in possession of their views on two points:—

"(1). On the question of the status of the tenant on the expiration of a statutory term, your Committee have had the evidence of two Judges of the Supreme Court (one of them the chief of the Land Commission) that, whilst they are of opinion that upon the expiration of the statutory term the rent fixed by the Land Commission will be the rent payable by the tenant pending any application to the Court, the question is a moot one, and your Committee are of opinion that all doubts upon this point should be set at rest by a short Act, in accordance with the opinion expressed by such Judges.

3427.
10,177.

"(2). With regard to the equally pressing matter of the method by which a revision of judicial rent at the expiration of a statutory term should, when desired, be carried out, your Committee regret that, as the evidence, with the two exceptions, has come entirely from officials, they have to rely on opinions which are naturally influenced in favour of the existing system.

"6. Several modifications of the latter have been suggested, but none of them have been supported with such a concensus of opinion as would lead your Committee to believe that their adoption would either give general satisfaction, materially diminish litigation, or be preferable to the present system, with the existing right of appeal to either party on questions of value as well as of law.

10,247-57.
1295.
3633-5.
4176-7.
4582. 8039.
6836-45.
8043.

"7. Your Committee hold that the procedure provided by Form No. 74 of the Land Commission Rules, by which the parties have an opportunity of agreeing to come to terms on the valuation of an official or independent valuer, may, if generally known, be largely availed of in any revision of rent on holdings where a judicial rent has once been fixed.

"8. As to the automatic revision of rents adopted by the Act of 1887, although it is true that the official witnesses were mainly unfavourable to this system, the two non-

11,944-60.
12,368-70.
12,382-5.

official witnesses examined gave evidence that caused your Committee to regret that the subject could not, by reason of the course adopted, be further investigated. Having regard to the fact that the system has been practically tested, the Committee think that a plan which would relieve the parties from the present expensive litigation is worthy of further consideration. 12,663-704. 12,819-27. 12,986-8.

"9. A considerable amount of evidence was given as to the practice of the Commissioners in fixing a judicial rent. From this it appears that no instructions were at any time issued by the Chief Commission as to the principles upon which it should be determined. It is clear that there is no absolute uniformity in the practice of the Assistant Commissioners, though of late years there has been less divergency of method, partly owing to the more settled practice of the Chief Commission, and partly owing to the fuller acquaintance of the Assistant Commissioners with the principles upon which they individually act. The evidence goes to show that the judicial rent is not a competition rent, meaning by that expression the rent which the landlord might naturally expect to get in the open market, if he was letting the land in his own hands to a solvent tenant. The fair rent, as fixed by the Commissioners, was proved to be, speaking generally, 30 per cent. lower than the competition rent so defined. 2898. 3819. 5799. 6216-8. 6334. 7510. 7716-8. 7140-7. 11,084-8. 7513-14. 1477. 3818-24. 5790. 7930-3. 9231-3. 11,585. 11,591-5. 2756-8. 3811-14.

"10. From this it is apparent that the Act has been construed in favour of the tenant in a manner entirely different from the intentions of the framers of the Act, as stated to the House by Mr. Attorney-General Law:—'He now came to the question, How a fair rent was to be ascertained? What the clause meant was this: it meant to lay down that a fair rent was a competition rent minus the yearly value of the tenants' interest in the holding. That was what was intended, and anything else would be monstrously unjust. If his proposition was disputed he was quite ready to defend it.'—Law, Attorney General for Ireland. Hansard, Vol. 260, p. 1399.

"11. In arriving at their conclusion the Assistant Commissioners have told us that they take into consideration the fact that the tenant is in occupation of his holding, its situation and convenience, its proximity to a town, market, or railway, the incidence of local taxation, the carrying powers of the land, and, in a general way, the question of prices. But your Committee are unable to say what proportion these elements bear in the practice of the several Assistant Commissioners. 3818-24. 5790. 7093-3. 4753. 7721.

12,155-8. 12,909-13. "12. Instances were brought before your Committee in which, outside Ulster, after heavy reductions of rent had been made in certain holdings by the Commissioners, very large sums had been realised for the tenant-right. Your Committee would have been glad to hear further evidence on this point.

"13. Your Committee have had to consider the methods in which the tenant's improvements have been treated by the Land Commission Courts in administering the Acts of 1881 and 1887.

"14. The legal interpretation of the Act of 1881 upon this important point has been stated by Lord Chancellor Law, in the leading case of 'Adams and Dunseath,' as follows:

> "'Improvements must be suitable and ameliorative to the holding, increasing thereby its letting value.
>
> "'The improvement works are one thing, the increased letting value resulting therefrom another. The former, when executed by the tenant, are wholly his, and are to be completely protected and secured against confiscation, by rent or otherwise. The latter, namely, the increased letting value, or in other words, the development by the improvement works of the latent powers and capacities of the land, does not necessarily belong to the tenant. There are many cases in which it would be no more than a fair return for the tenant's outlay in effecting the improvement works; there are, on the other hand, cases in which, in the ascertainment of a fair rent, the landlord is justly entitled to have some share of the increased yearly value. The increased letting value is, therefore, to be dealt with as may, under all the circumstances of the case, be just and fair between the parties.'

"15. When improvements are decided by the Court to have been made by the tenant and to have resulted in an increased letting value, the practice is in all cases in the first place to make such allowance in the rent as will give to the tenant a fair return for his outlay. In the few cases where this increased letting value is not wholly absorbed by such allowance the residue is distributed between the landlord and tenant by the Commissioners, as may appear to them to be just and fair, having regard to their respective interests. Evidence was given that the rate of interest

usually allowed to the tenant was 5 per cent., but on some classes of improvements amounted to as much as 8, 10, and 12 per cent. 4499-502. 5474-6.

"16. Mr. Justice Bewley, and nearly all of the Assistant Commissioners, gave evidence to the effect that, in the majority of cases, after allowing the tenant full interest upon the improvement works, nothing in the shape of increased letting value remained to be allocated to either party; and that the question of such allocation was a mere academic one. 10214. 4773-8. 5136. 5487. 6336. 6944. 7751. 8139.

"17. The above evidence would appear to show that there is no ground for the assumption that the tenants' improvements have been confiscated by the administration of the Acts of 1881 and 1887, or that they have not been sufficiently protected from the imposition of rent.

"18. As regards 'fair rents' fixed under the Redemption of Rent (Ireland) Act, 1891, it is necessary to observe that while the principle of exempting tenants' improvements under the Act of 1881 has been held to apply to the case of long leaseholds, it has been decided upon the construction of the Redemption of Rent Act, 1891, that in the case of Fee Farm Grants tenants are not entitled to claim this exemption.

"19. It is, however, to be remembered that the right to have a fair rent fixed under this Act is given as a penalty upon the landlord, in consequence of his refusing to sell the holding to the tenant, and does not arise until after such refusal.

"20. As regards the evidence given on the questions of presumption as to improvements, town parks, pasture holdings, demesne lands, sub-lettings and sub-division, tenancies under limited owners, eviction by title paramount, the landlord's right of pre-emption, the status of future tenants, the length of the statutory term, and the position and action of mortgagees of the landlord's estate, the exclusion of evidence has left your Committee unable to complete their Report or make any recommendations.

"21. The same observations apply to the various questions of procedure, both before the County Courts and the Land Commission, which were brought before your Committee.

"22. Your Committee desire to place on record their dissatisfaction that the evidence of Lord Justice FitzGibbon

and Mr. Commissioner FitzGerald was not completed, and that the Registrar General, though repeatedly asked for, was not summoned."

Motion made, and Question proposed, That the Draft Report proposed by the Chairman be read a second time, paragraph by paragraph—(The *Chairman*).

Amendment proposed, to leave out the words "the Chairman," in order to insert the words "Mr. Brodrick."—(Mr. *Brodrick*).

Question put, That the words "the Chairman" stand part of the Question.—The Committee divided:

Ayes, 8.	Noes, 6.
Mr. Clancy.	Mr. Brodrick.
Mr. Dillon.	Mr. Carson.
Mr. Fuller.	Mr. Hayes Fisher.
Mr. T. M. Healy.	Mr. W. Kenny.
Mr. Leese.	Mr. Macartney.
Mr. Solicitor General.	Colonel Waring.
Mr. T. W. Russell.	
Mr. Sexton.	

Main question put, and *agreed to.*

Draft Report proposed by the *Chairman,* read a second time, paragraph by paragraph.

Paragraph 1, amended, and *agreed to.*

Paragraph 2, *agreed to.*

Paragraph 3, amended, and *agreed to.*

Paragraph 4, *agreed to.*

Paragraph 5, *postponed.*

Paragraphs 6—8, *agreed to.*

Paragraph 9, *postponed.*

Paragraph 10, *agreed to.*

Paragraphs 11—13, amended, and *agreed to.*

Paragraphs 14—15, *postponed.*

Paragraphs 16—18, *agreed to.*

Paragraph 19, amended, and *agreed to.*

Paragraph 20, *postponed.*

Paragraphs 21—23, *agreed to.*

Paragraphs 24—25, *postponed.*

Paragraphs 26—27, *agreed to.*

Paragraph 28, *postponed.*

Paragraph 29, amended, and *agreed to.*

Paragraphs 30—31, amended, and *agreed to.*

[Adjourned till To-morrow, at Twelve o'clock.

Wednesday, 15th August, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. T. M. Healy.
Mr. Dillon.	Mr. Fuller.
Mr. Sexton.	Mr. Clancy.
Mr. Leese.	

Letter from Mr. MacAfee read by the Chairman.

Paragraph 32, amended, and *agreed to.*

Paragraphs 33—34, *agreed to.*

Paragraphs 35—36, amended, and *agreed to.*

Paragraphs 37—39, *agreed to.*

Paragraph 40, postponed.

Paragraphs 41—44, amended, and *agreed to.*

Paragraphs 45—46, postponed.

Paragraph 46*, amended, and *agreed to.*

Paragraph 47, *disagreed to.*

[Adjourned till To-morrow, at Twelve o'clock.

Thursday, 16th August, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Dillon.
Mr. Sexton.	Mr. Leese.
Mr. Clancy.	Mr. Fuller.
Mr. T. M. Healy.	

Paragraph 48, amended, and *agreed to.*

Paragraph 49, *agreed to.*

Paragraphs 50—53, amended, and *agreed to.*

Paragraph 54 *agreed to.*

Paragraphs 55—56, amended, and *agreed to.*

Paragraphs 57—60, *agreed to.*

Paragraph 61, amended, and *agreed to.*

Paragraph 62, *agreed to.*

Paragraphs 63—65, amended, and *agreed to.*

Paragraph 66, *agreed to.*

Paragraphs 67—68, amended, and *agreed to.*

Paragraph 69, postponed.

Paragraphs 70—71, amended, and *agreed to.*

Paragraph 72, amended, and *agreed to.*

[Adjourned till To-morrow, at Eleven o'clock.

Friday, 17th August, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. Solicitor General.	Mr. Fuller.
Mr. T. W. Russell.	Mr. Clancy.
Mr. Sexton.	Mr. Dillon.
Mr. Healy.	

Paragraphs 73—74, amended, and *agreed to.*

Paragraph 75, *disagreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"Your Committee have carefully considered the direction of the Act of 1881, that no rent should be allowed in respect of the tenant's improvements; also the decision in Adams *v.* Dunseath, rendering the tenant liable to rent in respect of a portion of the value resulting from his improvements; and the practice of the Sub-Commission Courts, which, according to the weight of evidence before us, allows the landlord rent in respect of the whole of the improved value, except so much as is given to the tenant for interest on his outlay The intention of the Legislature has not, in the opinion of your Committee, been carried into effect by the Judgment in Adams *v.* Dunseath, and it seems to have been defeated in the practice of the Courts in fixing rents. It is of great and urgent importance that the law on this subject should be made unquestionably clear. Agricultural improvements are of vital consequence

to the welfare of Ireland, and it is certain, from experience, as well as from the effects of the Act of 1881 upon the interests of landlord and tenant, that the tenant alone is willing to make improvements, or will in future make them. The public interest, therefore, demands that he should be encouraged by being secured in the enjoyment of the value resulting from his expenditure and labour. In making improvements, he incurs a certain risk of loss. It often happens that the cost is not nearly repaid by the result. The usual case appears to be that the increased value is only sufficient to yield a bare return for the outlay. When, by exceptional success, a more considerable value results, which never would be created except by the tenant's exertions, he is liable to be charged an increased rent in consequence, and this is not encouraging, but the reverse. The effect of the creation of a Statutory term being to let the land, including its capacity, to the tenant, in perpetuity, there appears to be no reasonable and no intelligible cause for denying to the tenant the full enjoyment of any improvement in his holding produced by the expenditure of his capital or the application of his labour. The interference of Parliament is required in order to ascertain and secure to the tenant his right to the improved letting value which has been elicited by his improvements."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Paragraph 76, amended, and *agreed to.*

Paragraph 77, amended, and *agreed to.*

Paragraph 78, *disagreed to.*

Paragraphs 79—84, *agreed to.*

Paragraph 85, *postponed.*

Paragraph 86, amended, and *agreed to.*

Paragraphs 87—89, *agreed to.*

Paragraph 90, *disagreed to.*

Paragraphs 91—92, amended, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"The gross amount of rental dealt with under all the fair-rent provisions of the several Acts, since the passing of the Act of 1881, is £6,140,602, and the Land Commission report that this total has been reduced under these provisions by £1,279,475, or 20·8 per cent."—(Mr. *Sexton.*) Reductions under Acts.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Voluntary reductions in England.

"It is believed that agricultural rents in England, where the tenant generally makes no improvements, and possesses no legal property in the holding, have undergone much heavier reductions within the same period, by voluntary action of the landlords."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Fair rent undefined.

"The Act of 1881, in directing that the Court, on the application of the tenant of a holding, or of the landlord, or both, might determine 'the fair rent to be paid by such tenant to the landlord for the holding,' laid down no principle, or rule, or method of valuation, to guide the Court in fixing the amount of the rent. The only instructions bearing upon this fundamental matter in any definite sense are set forth in Section 8 of the Act, and they direct the Court (1) to 'have regard to the interest of the landlord and tenant respectively,' and, (2) that 'no rent is to be allowed or made payable,' in respect of improvements made by the tenant, and for which he had not been paid or otherwise compensated by the landlord."—(Mr. *Sexton.*)

Section 8. Sub-section 1, Sub-section 9.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

No fixed principle or settled mode of valuation.

"No subsequent Statute has touched the subject of the principle of a fair rent. No mode of valuation has been prescribed either by Parliament or otherwise, and it appears that the interest of the tenant, to which the Court is to have regard in fixing the amount of the rent, has never been made the subject of a direct judicial pronouncement, either by the Court of Appeal or by the Land Commission, or even by any County or Sub-Commission Court. Consequently, of necessity, each individual administrator acts absolutely according to his own opinion of what may have been intended, and there is neither a common understanding of the law, nor anything approaching to uniformity in practice."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"Whilst the interest of the tenant still continues undefined, the direction that 'no rent is to be allowed or made payable in respect of the tenant's improvements' was subjected to judicial interpretation soon after the passing of the Act. The Land Commission interpreted the direction to mean that all letting value resulting from the tenant's improvements was to be excluded from consideration in fixing the fair rent, but the Court of Appeal (in Adams v. Dunseath, referred to more particularly in another part of this Report), held, by a majority of the judges, that the direction of the Act not to allow any rent in respect of the tenant's improvements must be taken to mean, not what the language of the Act conveys to the ordinary mind, but something different and much more complex—namely, that the tenant is entitled to an annual percentage of indefinite amount in his outlay in making the improvement; but that any remainder of letting value due to his improvement, after the percentage on outlay has been allowed to him, is to be divided between him and the landlord, according to the judicial discretion of the Land Commission, having regard to the interest of the landlord and the tenant respectively."—(Mr. *Sexton.*)

Interest of the tenant not defined.

Adams *v.* Dunseath.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"This remarkable judgment, reversing the law as laid down by the Land Commission in the same case, and formulating a complicated rule of law on apportionment of the value of the tenant's improvements, which, according to the apparent meaning of the words of the Act, was not to be apportioned, at the same time presented two conclusions so clearly as to render it difficult to realise that their meaning could be mistaken. The tenant was to have allowance upon his outlay, but so far from being limited by the judgment to this allowance, he was declared entitled to a share of any remainder of letting value resulting from his outlay. And his right to the additional share was declared to be attributable to the legal interest of the tenant in the holding apart from his improvements."—(Mr. *Sexton.*)

Rulings in Adams *v.* Dunseath.

Q. 10209

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

[Adjourned till To-morrow, at Eleven o'clock.

Saturday, 18*th August*, 1894.

MEMBERS PRESENT:

Mr. JOHN MORLEY in the Chair.

Mr. T. W. Russell.	Mr. Fuller.
Mr. Solicitor General.	Mr. Clancy.
Mr. Sexton.	Mr. T. M. Healy.
Mr. Dillon.	

Amendment proposed, That the following new paragraph be inserted in the Report:

Not followed by Sub-Commission.

"This judgment, delivered in 1882, has been the law since then, and is now the law, and during the interim of 12 years has been binding upon all administrators of the Land Acts. But your Committee have learned with extreme surprise, from a majority of the official witnesses, including the three legal Assistant Commissioners who were examined, Mr. Bailey, B.L., Mr. Doyle, B.L., and Mr. Greer; also two lay Assistant Commissioners, as well as the County Court Judge of Kerry, and Mr. Heard, a County Court valuer, that the practice is to give to the landlord, after allowing the tenant a percentage on his outlay, any remainder of letting value due to the tenant's improvements in the soil. As to the interest of the tenant, which, according to the Court of Appeal, entitles him to a further share in the value of his improvements beyond the mere interest on his outlay, the evidence of these witnesses is plainly to the effect that what they understand by the interest of the tenant is simply a right to the percentage on his outlay upon improvements. This conclusion is confirmed by their testimony that they fix a fair rent to be paid by the present tenant at what a solvent tenant desiring to become a tenant of the holding could fairly pay from year to year. That is to say, they fix the rent at what might be paid by a person having no interest in the holding, and take no account in measuring the fair rent of the present tenant's statutory interest."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Qy. Occupancy right. Contradiction.

"The County Court Judge of Cork, examined at the close of the inquiry, gave evidence on this question which shows a practice on his part different from that pursued by his own Court valuer and by the County Court Judge of

Kerry. Two or three lay Assistant Commissioners gave evidence that they allow the tenant a share in the value of improvements in the soil beyond the interest in his outlay, and also that they allow for the occupation right in (Qy.) fixing the amount of the fair rent; but these are questions of law as well as of value. The legal Assistant Commissioners, according to the evidence, lay down the law in their several courts; your Committee examined three of the four legal Assistant Commissioners, and they agreed that the practice is to give the tenant, in respect of his improvements in the soil, a percentage on his outlay, and nothing more, and to fix the fair rent, without taking into account his occupation interest. Your Committee are quite unable to understand, and no witness has attempted to explain, how it was possible for some Assistant Commissioners to give only the percentage on outlay, and not to allow for the occupation interest in the rent, whilst others, in the same courts, gave a share beyond the percentage and allowed for the occupation right; and how this contrariety of practice could continue for twelve years, without any dissent between the Assistant Commissioners valuing in such different modes, without any ruling of the law by the legal Assistant Commissioners, without any evidence or argument in the Court or any of them, and without a solitary appeal on the subject out of over forty thousand appeals lodged with the Land Commission."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"Your Committee can come to no other conclusion than Conclusion. that the general practice of the Sub-Commission Courts has been, and is, to deny to the tenant that share in the value of his improvements to which the Court of Appeal, in Adams v. Dunseath, declared him to be entitled, and to leave out of account, in fixing the fair rent, that interest of the tenant to which the Statute expressly directed the Courts to have regard, and the operative force of which the Court of Appeal explicitly affirmed."—(Mr. *Sexton.*)

Amendment proposed, That the following new paragraph be inserted in the Report:

"The Judicial Commissioner, Mr. Justice Bewley, on Evidence of being examined, towards the conclusion of the inquiry, Mr. Justice when the contradictions in the evidence of the Assistant Bewley. Commissioners had challenged explanation, informed your

Committee that the Land Commission do not instruct the Assistant-Commissioners, and do not consider that it is their function, or that they have any right to instruct the Assistant-Commissioners in the discharge of their duty. It is evident, however, in the state of facts disclosed, that effectual measures must be adopted without delay to secure both the observance of the law and intelligent uniformity of practice. The learned Judge explained that the practice in his Court is to allow the tenant only the percentage on outlay in respect of his improvements; but that his occupation right is taken into account in fixing the fair rent, and that by this means the tenant receives his due share of the remainder of the value of his improvements, as part of his general interest in the holding. Mr. Justice Bewley held that this is in accord with the judgment in Adams *v.* Dunseath, and he produced a correspondence between himself and Lord Justice FitzGibbon, in which the Lord Justice appeared to convey a general assent to Mr. Justice Bewley's proposition. Your Committee have learned that the Court valuers of the Land Commission are not instructed to act in the particular mode described by Mr. Justice Bewley. His colleague, Mr. Commissioner Fitzgerald, Q.C., examined at the opening of the sittings of your Committee, gave an account of the method of fixing fair rents, but made no reference to the occupation right. Assuming that the Land Commission Court takes this right into account in reduction of the rent, and that the Sub-Commission Courts, as testified by their legal chairmen, fixed the rents without deduction in respect of the occupation right, your Committee confess their inability to understand how the rents brought up on appeal from the Sub-Commission Courts, amounting to £431,398, should not have been reduced, but increased to £432,680 by the Court of the Land Commission. The intervention of Parliament is urgently required to define and protect 'the interest of the tenant,' and to secure coherent administration of the law."—(Mr. *Sexton.*)

Legislation required.

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

Further particulars in fair rent cases.

"Your Committee have further to observe that the elaborate forms of report in use by Sub-Commissions and appeal valuers, and the less complicated forms used by the valuers to the County Courts, whilst they furnish many particulars of more or less interest to the parties, do not

afford sufficient information directly bearing on the essential matter, which is, the fairness of the rent."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Paragraph 93, *agreed to.*

Paragraphs 94—95, amended, and *agreed to.*

Paragraph 96, *agreed to.*

Paragraph 97, amended, and *agreed to.*

Paragraphs 98—106, *agreed to.*

Paragraph 107, amended, and *agreed to.*

Paragraphs 108—110, *agreed to.*

Paragraphs 111—112, amended, and *agreed to.*

Paragraph 113, *amended.*

Another amendment proposed, at the end of the paragraph to add the following words: "and having regard to "the conclusions stated in Paragraph 19 of the Chairman's "Draft Report, they consider that it would be equitable to "apply this abridgment of the period to existing statutory "terms."—(Mr. *Sexton.*)

Question, That those words be added to the paragraph.—The Committee divided:

Ayes, 3.	Noes 3.
Mr. Clancy.	Mr. Fuller.
Mr. Dillon.	Mr. T. W. Russell.
Mr. Sexton.	Mr. Solicitor General.

Whereupon the Chairman declared himself with the Noes.

Paragraph, as amended, *agreed to.*

Paragraph 114, *agreed to.*

Paragraphs 115—117, amended and *agreed to.*

Paragraph 118, *disagreed to.*

Paragraph 119, *agreed to.*

Paragraph 120, amended, and *agreed to.*

Paragraph 121.—Amendment proposed to leave out in line 3 all the words from the word "further" to the end of the paragraph, in order to add the following words:—"For the purpose of inquiring into the working and ad-

"ministration of the Purchase Acts, the working of the "Land Judge's Court, and the distribution of business "among the various departments of the Land Commis- "sion."—(Mr. *T. W. Russell.*)

Question, That the words proposed to be left out stand part of the paragraph,—put and *negatived.*

Question, That the proposed words be there added, put.—The Committee divided:

Ayes, 4.	Noes, 2.
Mr. Dillon.	Mr. Clancy.
Mr. Solicitor General.	Mr. T. M. Healy.
Mr. T. W. Russell.	
Mr. Sexton.	

Question, That the paragraph, as amended, stand part of the Report, put.—The Committee divided:

Ayes, 4.	Noes, 2.
Mr. Dillon.	Mr. Clancy.
Mr. Solicitor General.	Mr. T. M. Healy.
Mr. T. W. Russell.	
Mr. Sexton.	

Postponed paragraph 5, amended, and *agreed to.*

Postponed paragraph 9, *disagreed to.*

Postponed paragraph 14, *agreed to.*

Postponed paragraph 15, amended, and *agreed to*

Postponed paragraph 20, amended, and *agreed to.*

Postponed paragraph 24, amended, and *agreed to.*

Postponed paragraph 25, *amended.*

Question put, That the paragraph, as amended, stand part of the Report.—The Committee divided:

Ayes, 5.	Noes, 1.
Mr. Clancy.	Mr. T. W. Russell.
Mr. Dillon.	
Mr. T. M. Healy.	
Mr. Solicitor General.	
Mr. Sexton.	

Postponed paragraph 28, *amended.*

Another Amendment proposed, at the end of the paragraph, to add the following words:—

"Where the rent of the future tenant has not been increased since his tenancy began he is a tenant-at-will, and consequently liable to eviction at the pleasure of the landlord. Where his rent has been increased, the acceptance

of the increase by him has created a statutory term, during the continuance of which he holds under the protection of the ordinary statutory conditions; but, as soon as the term expires at the end of 15 years, he falls back into the condition of a tenant-at-will, with no security whatever against eviction. He cannot apply to have a fair-rent fixed, and he cannot acquire another statutory term, unless the landlord imposes and he accepts another increase of rent. The legal position of the tenant demands consideration."—(Mr *Sexton*.)

Question, That those words be there added,—put, and *agreed to*.

Postponed paragraph 28, as amended, *agreed to*

Postponed paragraph 40, *disagreed to*.

Amendment proposed, That the following new paragraph be inserted in the Report:

"Tillage being now less profitable under the changed condition of agriculture, it is natural and conformable to the policy of these Acts that the limit of exclusion in pasture holdings should be raised. Mr. Justice Bewley suggested that this limit should be altered from £50 to £100. Your Committee, upon consideration, recommend that a limit of £200 should be fixed, in substitution for that contained in Sub-section 3 of Section 58 of the Act of 1881. The provision of Sub-section 4 requiring residence should, of course, be retained. No holdings should be excluded unless a written instrument of letting had prohibited tillage or meadowing for sale, and the Court came to the conclusion that this prohibition was inserted *bona fide*, and not merely to effect an exclusion from the Land Acts. Dairy farms should not be excluded, whatever might be the valuation."—(The *Chairman*.)

Suggested limit of exclusion.

Question, That this paragraph be inserted in the Report,—put, and *agreed to*.

Postponed paragraph 45, amended, and *agreed to*.

Postponed paragraph 69.

Amendment proposed, at the end of the paragraph, to add the following words:

"The question whether, by reason of the acceptance of a lease, improvements made by the tenant or his predecessors in title pass to the landlord, is not in a satisfactory

position. Though the majority of the Court of Appeal held in Adams v. Dunseath that the landlord was entitled to rent on the house erected by the tenant's predecessor prior to the lease, the Land Commission in Walsh v Limerick (23 I. L. T. R. 17) held under similar circumstances that the buildings remained the tenant's. Both decisions, however, were arrived at on the special facts of the case, but Mr. Justice Bewley, in answer to Questions 11,264 to 11,268, appeared inclined to think that the Land Commission might still be governed on this point by the view taken in Adams v. Dunseath. In the opinion of your Committee the law should be put beyond doubt that the acceptance of a lease does not vest the tenant's improvements in the landlord."—(Mr. *Healy.*)

Question, "That those words be there added,"—put, and *agreed to.*

Postponed paragraph, as amended, *agreed to.*

Postponed paragraph, 72, amended, and *agreed to.*

Postponed paragraph 85, *disagreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"In order to secure that such information may be given, your Committee recommend that in future all valuations be so made and recorded as to show the estimated value of the gross produce of the holding; also the fair rent to a solvent person desiring to become a tenant; the holding, including buildings, being valued as it stands as a going concern; the valuation also to show any deductions from such rent in respect of the occupancy right and the improvements of the present tenant, distinguishing between deductions of the letting value of tenants' buildings and of other improvements not affecting the capacity of the soil, and allowances for drainage and reclamation respectively; and in the latter cases showing the interest allowed on outlay and the apportionment of any remainder of the letting value due to the improvement."—(Mr. *Sexton.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:

"While, according to the existing rules of the Land Commission, the tenant of any holding the valuation of

which is over £10, must make out a schedule of the improvements for which he intends to claim credit on the hearing of a fair rent application, the landlord is under no corresponding obligation to give notice of any point of law which he intends to raise at such hearing. Your Committee see no reason why the landlord should not be obliged within a certain time after the service of the originating notice to fix a fair rent, to state all the grounds of his objection to such application, and they recommend that a rule to that effect be made by the Land Commission, and that a similar rule should apply to hearings in the Appeal Court."—(Mr. *Clancy.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Amendment proposed, That the following new paragraph be inserted in the Report:—

"Doubts having been expressed whether the legal status of a judicial tenant can be questioned on the application for a second statutory term, the attention of Parliament is called to this question, with the view to the prevention of needless litigation."—(Mr. *Healy.*)

Question, That this paragraph be inserted in the Report,—put, and *agreed to.*

Question, That this Report, as amended, be the Report of the Committee to the House,—put, and *agreed to.*

Ordered, To Report, together with the Minutes of Evidence and an Appendix.

A BILL

TO

A.D. 1894.

Amend the Law relating to the Fixing of Fair Rents and the Tenure and Purchase of Land in Ireland.

BE it 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 authority of the same, as follows :—

PART I.

AMENDMENT OF LAND LAW (IRELAND) ACTS.

Definitions.

1.—(1.) In this Part of this Act the expression "the Land Law (Ireland) Acts" includes the Land Law (Ireland) Act, 1881, the Land Law (Ireland) Act, 1887, and any Act amending the same. The expression "landlord" and "tenant" includes the predecessors in title of a landlord or tenant.

(2.) The term "improvement" as used in the Land Law (Ireland) Acts and in this Act shall be construed to mean any work or agricultural operation executed on a holding, which being executed adds to the letting value of the holding or any expenditure of labour or capital on a holding which adds to the letting value thereof.

(3.) Except in so far as the Land Law (Ireland) Acts are expressly altered or amended by this Act or are inconsistent therewith, this Part of this Act and the said Acts shall be construed together as one Act. Any words or expressions which are not hereby defined and are defined in the said Act, shall, unless there is something in the context of this Act repugnant thereto, have the same meaning as in the said Acts.

Short title.

2. This Act may be cited for all purposes as the Land Tenure (Ireland) Act, 1894.

Application of Act.

3. This Act shall not apply to England or Scotland.

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Shortening of the statutory term.

4. The statutory term within the meaning of the Land Law (Ireland) Acts shall be a term of eight years instead of the fifteen years mentioned in section eight of the Land Law (Ireland) Act, 1881; and an application to the court to determine a judicial rent may be made, after the expiration of *seven* years, of any existing statutory term, and the rent so fixed shall begin to be payable on the expiration of *eight* years of such term.

Tenant's improvements.

5.—(1.) On any application to fix the fair rent of a holding, the court shall ascertain whether any improvements have been made thereon by the tenant for which he or they have not been paid or otherwise compensated by the landlord, and shall estimate the extent of any increase in the letting value of such holding resulting from such improvements. Such increase of letting value shall, for the purposes of any such application, be deemed to be the property of the tenant, and no rent shall, in any proceedings under the said Acts or this Act, be allowed or made payable in respect thereof.

(2.) The provisions of this section shall have effect notwithstanding that the tenant may have entered into a contract with the landlord not to claim compensation for any such improvements on quitting the holding, or that from the nature of the improvement or of the term under which the tenant holds, or for any other reason, the tenant would not on quitting his holding be entitled to claim compensation for such improvements under the provisions of the Landlord and Tenant (Ireland) Act, 1870.

(3.) Where it shall appear that improvements on any holding have been made by the tenant in pursuance of any contract entered into between him or them and the landlord of such holding, the court shall ascertain the amount of the landlord's actual outlay in respect of such improvements, whether by way of abatement of rent or otherwise, and shall have regard to the amount so ascertained in estimating the landlord's interest in the holding; but save as regards the said amount, such improvements shall be deemed to be the property of the tenant, and save as aforesaid no rent shall in any proceedings under the said Acts or this Act be allowed or made payable in respect thereof.

(4.) The use and enjoyment by the tenant of any improvements executed wholly or partially by him or them, or the forbearance of the landlord to charge an increased rent in respect thereof, or to evict the tenant from the holding, shall not be deemed a compensation for such improvements within the meaning of the said Acts or of this Act.

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((5.) So much of the fourth section of the Landlord and Tenant (Ireland) Act, 1870, as enacts that in awarding compensation to a tenant in respect of such improvements as are therein mentioned the court therein mentioned shall, in reduction of the claim of the tenant, take into consideration the time during which such tenant may have enjoyed the advantage of such improvements, shall be and the same is hereby repealed.

Presumption as to improvements.

6. On any application to fix the fair rent of a holding and for the purpose of all proceedings under the Land Law (Ireland) Acts, the Landlord and Tenant (Ireland) Act, 1870, and this Act, all improvements on such holding shall until the contrary is proved be deemed to have been made by the tenant.

Town parks.

7. So much of the fifteenth section of the Landlord and Tenant (Ireland) Act, 1870, and the fifty-eighth section of the Land Law (Ireland) Act 1881, as enacts that the said Acts (save as therein excepted) shall not apply to tenancies in any holding ordinarily termed "town parks" adjoining or near to any city or town which bears an increased value as accommodation land over and above the ordinary letting value of land occupied as a farm, and is in the occupation of a person living in such city or town, or the suburbs thereof, shall be and the same is hereby repealed. The ninth section of the Land Law (Ireland) Act, 1887, is hereby repealed.

Pasture holdings.

8.—(1.) A holding shall not be deemed to have been let to be used wholly or mainly for the purpose of pasture within the meaning of the Land Law (Ireland) Acts or of the Landlord and Tenant (Ireland) Act, 1870, unless such holding is held under a lease or other written instrument expressly providing that the holding is to be so used.

(2.) The fifteenth section of the Landlord and Tenant (Ireland) Act, 1870, and the fifty-eighth section of the Land Law (Ireland) Act, 1881, shall be read and construed as if the words *two hundred and fifty pounds* were substituted for the word fifty pounds therein contained.

(3.) Notwithstanding anything contained in the fifteenth section of the Landlord and Tenant (Ireland) Act, 1870, or the fifty-eighth section of Land Law (Ireland) Act, 1881, the said Acts and this Act shall be deemed to apply to any holding let to be used wholly or mainly for the purpose of pasture, if it shall appear that such holding was originally laid down in pasture by the tenant thereof at his or their own expense.

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Demesne lands

9. A holding shall not be deemed to be demesne lands within the meaning of the fifteenth section of the Landlord and Tenant (Ireland) Act, 1870, and the fifty-eighth section of the Land Law (Ireland) Act, 1881, where such holding has been let and used as an ordinary farm unless it shall be proved that the letting was made for the temporary convenience of the landlord.

Lettings made by Judge or Master.

10. In the case of any holding to which the Land Law (Ireland) Acts apply, the provisions of the said Acts shall have effect notwithstanding that the tenant holds under a lease made or other tenancy created by a Judge or Master of the High Court of Justice in Ireland, or by the Land or Receiver Judge, unless the lease or other contract of tenancy expressly provides that the said Acts shall not apply.

Tenancy under limited owner.

11. In the case of any holding to which the Land Law (Ireland) Acts apply, the provisions of the said Acts shall have effect notwithstanding that the tenancy under which the tenant holds was created by a tenant for life or other limited owner, and on the determination of the estate of such tenant for life or other limited owner, such tenancy shall not be deemed to be thereby determined, and the person or persons entitled in remainder or in reversion or next succeeding in estate shall for the purposes of the said Acts stand in the relation of landlord to the tenant of the tenancy and have the rights and be subject to the obligations of landlord accordingly.

Sub-letting of holding

12.—(1.) The tenant of a holding shall be deemed to be in occupation thereof within the meaning of the twenty-first and fifty-seventh sections of the Land Law (Ireland) Act, 1881, notwithstanding that a portion of said holding, not exceeding one-fourth in area, is sublet; provided as follows:—

(A) that in the case of a holding held under a tenancy from year to year at the date when such sub-letting was made, the sub-letting was made prior to the passing of the said Land Law (Ireland) Act, 1881;

(B) that when the case of a holding, which, at the date in the sub-letting was made, was held under a lease, the tenant was not prohibited by the provisions of such lease from sub-letting his holding.

(2:) Where there is on a holding a dwelling-house or dwelling-houses other than the dwelling-house of the tenant, and such dwelling-house or dwelling-houses have not been erected by the tenant in breach of any statutory condition

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or prohibition contained in a lease the tenant shall, notwithstanding that such dwelling-house or dwelling-houses with any outhouses, curtilage, or gardens appurtenant thereto are sublet, be deemed within the meaning of the enactments herein-before mentiond to be in occupation of the holding.

(3.) A landlord shall, within the meaning of the enactments herein-before mentioned, be deemed to have consented to a sub-letting if it shall be proved that he or his agent had knowledge of same and did not dissent therefrom.

(4.) Where a holding has been let by the landlord to the tenant thereof subject to the tenancy of some other person in portion of the holding, the tenant shall, within the meaning of the enactments herein-before mentioned, notwithstanding the occupation of such portion by such other person or his successors in title be deemed to be in occupation of the holding.

(5.) A sub-letting of portion of a holding to a previous sub-letting or sub-division of which the landlord had consented shall within the meaning of the enactments herein-before mentioned be deemed to have been made with the consent of the landlord.

(6.) Nothing in this section shall be deemed to affect the rights under the said Act, or otherwise of any person holding under any sub-letting.

Determination of estate of immediate landlord.

13.—(1.) For the purpose of the fifteenth section of the Land Law (Ireland) Act, 1881, the estate of the immediate landlord of a holding shall be deemed to be determined by the recovery, as against such immediate landlord at the suit of any superior landlord, of a judgment or decree in ejectment for nonpayment of rent including such holding.

(2.) A judgment or decree in ejectment for nonpayment of rent recovered as against the immediate landlord of any holding, at the suit of any superior landlord, shall not be executed as against the tenant of such holding; but from and after the recovery of any such judgment or decree, such superior landlord shall stand in the relation of immediate landlord to the tenant of such holding, as in the fifteenth section of the said Act is provided, and may proceed accordingly for the recovery of all rent then due by such tenant to his immediate landlord. If the amount so recovered shall equal or exceed the amount due by the immediate landlord to the superior landlord, such recovery

of rent shall not be deemed to have redeemed the interest of the immediate landlord, but the superior landlord shall pay to the immediate landlord any sum so recovered in excess of the amount due to him by the immediate landlord for rent and costs.

(3.) Nothing in this section contained shall be deemed to preclude any such immediate landlord as aforesaid from redeeming his tenancy in the premises recovered as against him by any such superior landlord in any such ejectment as aforesaid within the space of *six* calendar months from the date of the judgment or decree in such ejectment.

Mortgage of holding.

14.—(1.) The first section of the Land Law (Ireland) Act, 1881, shall not be deemed to apply to any dealing with a holding by way of mortgage only.

(2.) The third sub-section of the first section of the said Act, and so much of said section as requires a tenant who shall agree to sell his holding, to inform the landlord of the consideration agreed to be given for the tenancy, and empowers the court to declare any such sale to be void if the tenant fails to give the landlord such information, shall be and the same are hereby repealed.

(3.) The fifth sub-section of the eighth section of the said Act is hereby repealed.

Certain tenancies to be present tenancies.

15.—(1.) Notwithstanding anything contained in the fifty-seventh section of the said Act, any tenancy created before the passing of the Land Law (Ireland) Act, 1887, shall be deemed to be a present tenancy within the meaning of the said Act, and "future tenancy" shall be construed to mean a tenancy beginning after that date.

(2.) Where in the case of any holding of which the landlord has resumed possession since the day of one thousand eight hundred and seventy-nine, the tenant of such holding has been or shall be reinstated in such holding, the tenant shall be deemed to have been reinstated as a present tenant. This provision shall have effect notwithstanding any contract, providing that the tenant shall not be a present tenant.

Repeal of 50 & 51 Vic., c. 33, s. 7.

16. The seventh section of the Land Law (Ireland) Act, 1887, is hereby repealed.

Amendment of Redemption of Rent (Ireland) Act, 1891.

17. Where the fair rent of a holding to which the Redemption of Rent (Ireland) Act, 1891, applies is fixed in pursuance of the provisions of that Act, this Act shall be held to apply to such holding, and shall have effect in like

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manner as in the case of any other holding to which the Land Law (Ireland) Acts apply, and the enactments in the said Acts and in this Act contained with reference to improvements on such holding made or executed by the tenant or grantee, or his predecessors in title, shall be held to apply notwithstanding that the tenant or grantee from the nature of the term under which he holds would not on getting his holding be entitled to claim compensation for improvements under the provisions of the Landlord and Tenant (Ireland) Act, 1870.

PART II.

PURCHASE OF LAND.

Amendment of the provisions relating to the purchaser's insurances.

18. Section eight, sub-sections (1), (2), (3), (4), (5), and (6), of the Purchase of Land (Ireland) Act, 1891, and the other provisions in that Act relating to the Purchasers' Insurance Fund shall not apply to any purchaser who, at any time before the sanctioning of the advance, gives notice to the Land Commission of his wish not to provide such an insurance fund, and the annual instalments payable by such purchaser shall not exceed *four pounds* per centum per annum on the amount of the advance.

Application on part of the Exchequer contribution to the provision of labourers' cottages.

19. Section five, sub-section 2 (B), of the Purchase of Land (Ireland) Act, 1891, shall be amended and shall be construed as if the words "*one-fourth* of" were inserted before the words "the Exchequer contribution," and the remaining *three-fourths* of the Exchequer contribution shall in each year, be paid to the Local Taxation (Ireland) account, and applied as is directed in that sub-section in respect of other sums out of the Exchequer contribution not required for the purpose of the Reserve Fund, and paid to that account.

Proof of title in sales.

19.—(1.) The Land Commission in carrying out sales under the Purchase of Land (Ireland) Acts, 1870 to 1892, shall not be entitled to require any better proof of title than would a purchaser under the Vendor and Purchaser Act, 1874, and the Conveyancing and Law of Property Act, 1881, and any Act amending the same.

(2.) No costs incurred in proving any title which shall not have been certified by the Land Commission to have been necessarily incurred under this section shall be allowed on taxation.

A.D. 1894.

Provision for abatement of charges pending completion of sale.

20. Where an order has been made under the Land Purchase (Ireland) Acts, 1870 to 1891, for expediting the proceedings on the sale of holdings, and stock has been issued to the account of the matter, the Land Commission may, in manner directed by rules made by them, provisionally allocate the said stock between the encumbrancers and others entitled thereto, if their encumbrances and charges are intended to be redeemed out of such stock or the proceeds of sale thereof, and, pending the final allocation, no greater sum shall be payable to any encumbrancer or other person than the amount of the interest during the same period of the stock so provisionally allocated to him; provided that if it be found on the final allocation that any error has been made on the provisional allocation, the Land Commission may order such additional sum to be paid or such sum to be repaid as may seem to them just.

Mortgagees to be enabled to sell to tenants.

21. In the Purchase of Land (Ireland) Acts, 1870 to 1892, the term "landlord" shall be deemed to include a mortgagee with power of sale.

22. The Second Part of this Act shall be construed as one with the Purchase of Land (Ireland) Acts, 1870 to 1891.

DIVISION ON MR. KILBRIDE'S BILL.

Wednesday, 11*th April*, 1894.

Land Tenure (Ireland) Bill,—Order for Second Reading read;

Motion made, and Question proposed, "That the Bill be now read a second time:"—

Amendment proposed to eave out from the word "That," to the end of the Question, in order to add the words "in the opinion of this House, legislation affecting the Law of Land Tenure in Ireland is inexpedient and unfair to the interests of all persons concerned pending the inquiry proposed by the Chief Secretary into the working of the Irish Land Acts:"—(*Colonel Waring*:)—

Question put, "That the words proposed to be left out stand part of the Question:"—The House *divided*; Ayes 254, Noes 165.

AYES (Irish Members only).

Abraham, William (Cork, N.E.)
Ambrose, Dr. Daniel (Louth, S.)
Ambrose, Dr. Robert (Mayo, W.)
Arnold-Forster, H. O. (Belfast, W.)
Austin, M. (Limerick, W.)
Barry, E. (Cork, S.)
Blake, Edward (Longford, S.)
Bodkin, Matthias M. (Roscommon, S.)
Carvill, Patrick Geo. Hamilton (Newry)
Chance, Patrick Alexander (Kilkenny, S.)
Clancy, J. J. (Dublin, N.)
Cummins, Andrew (Cork, S.E.)
Condon, Thomas Joseph (Tipperary, E.)
Crean, Eugene (Ossory, Queen's).
Crilly, Daniel (Mayo, N.)
Curran, Thomas (Sligo, S.)
Diamond, Charles (Monaghan, N.)
Dillon, John (Mayo, E.)

Donelan, Captain A. (Cork, E.)
Ffrench, Peter (Wexford, S.)
Field, William (Dublin—St. Patrick's).
Flynn, James Christopher (Cork, N.)
Foley, Patrick James (Connemara, Galway).
Fox, Dr. Joseph Francis (Tullamore).
Gilhooly, James (Cork, W.)
Hammond, John (Carlow.)
Hayden, Luke Patrick (Roscommon, S.)
Healy, Maurice (Cork City).
Healy, Thomas J. (Wexford, N.)
Healy, Timothy M. (Louth, N.)
Hogan, James Francis (Tipperary, Mid.)
Kennedy, Patrick James (Kildare, N.)
Kilbride, Denis (Kerry, S.)
Knox, Edmund Francis Vesey (Cavan, W.)
MacNeill, John Gordon Swifte (Donegal, S.)
McCartan, Michael (Down, S.)
M'Carthy, Justin (Longford, N.)
M'Dermott, Patrick (Kilkenny, N.)
McDonnell, Dr. M. A. (Queen's Co., Leix).
M'Gilligan, Patrick (Fermanagh, S.)
M'Hugh, E. (Armagh, S.)
M'Hugh, Patrick A. (Leitrim, N.)
Maguire, R. (Clare, W.)
Mains, John (Donegal, N.)
Mandeville, Francis (Tipperary, S.)
Minch, Matthew (Kildare, S.)
Molloy, Bernard Charles (King's Co., Birr).
Nolan, Colonel (Galway, N.)
O'Brien, James F. X. (Mayo, S.)
O'Brien, P. J. (Tipperary, N.)
O'Brien, William (Cork City).
O'Connor, Arthur (Donegal, E.)
O'Connor, James (Wicklow, W.)
O'Connor, T. P. (Liverpool, Scotland).

O'Driscoll, Florence (Monaghan, S.)
O'Keeffe, Francis Arthur (Limerick City).
Pinkerton, John (Galway City).
Power, Patrick Joseph (Waterford, E.)
Redmond, John E. (Waterford City).
Redmond, W. H. K. (Clare, E.)
Rentoul, James Alexander (Down, E.)
Roche, John (Galway, E.)
Russell, T. W. (Tyrone, S.)
Sexton, Thomas (Kerry, N.)
Sheehan, Jeremiah Daniel (Kerry, E.)
Sheehy, David (Galway, S.)
Sullivan, Donal (Westmeath, S.)
Sullivan, T. D. (Donegal, W.)
Sweetman, John (Wicklow, E.)
Tuite, James (Westmeath, N.)
Tully, Jasper (Leitrim, S.)
Webb, Alfred (Waterford, W.)
Young, Samuel (Cavan, E.)

Tellers for the Ayes, Sir Thomas Esmonde (Kerry, W.) and Dr. Tanner (Cork, Mid.)

NOES—(Irish Members only).

Carson, Edward (Dublin University).
Harland, Sir Edward James (Belfast, N.)
Hill, Rt. Hon. Lord Arthur (Down, W.)
Johnston, William (Belfast, S.)
Kenny, William (Dublin—St. Stephen's-green).
O'Neill, Hon. Robert Torrens (Antrim, Mid.)
Plunkett; Rt. Hon. D. R. (Dublin University).
Ross, John (Derry City).

Tellers for the Noes, Colonel Waring (Down, N.), and Mr Smith-Barry (Huntingdonshire, S.)

ABSENT—(Irish Members only).

Barton, Dunbar P. (Armagh, Mid.)
Collery, Bernard (Sligo, N.)
Connor, C. C. (Antrim, N.)
Curran, T. B. (Kilkenny City).
Dane, R. M. (Fermanagh, N.)
Finucane, J. (Limerick, E.)
Gibney, James (Meath, N.)
Hamilton, Lord E. (Tyrone, N.)
Harrington, Timothy (Dublin—Harbour).
Jordan, Jeremiah (Meath, S.)
Kenny, Dr. J. E. (Dublin—College-green).
Kenny, M. J. (Tyrone, Mid.)
Lea, Sir Thomas (Derry, S.)
Macartney, W. G. E. (Antrim, S.)
M'Calmont, Capt. J. (Antrim, E.)
Mulholland, Hon. H. L. (Derry, N.)
Plunkett, Hon. Horace (Dublin, S.)
Reynolds, W. J. (Tyrone, E.)
Saunderson, Col. (Armagh, N.)
Wolff, G. W. (Belfast, E.)

SUMMARY OF IRISH VOTES.

For the Bill	...	...	...	75
Against	...	...	...	9
Absent	...	...	...	20
				104

In this Summary, the vote of the member for the Scotland Division of Liverpool is included.