

IRISH LAND LEGISLATION.

“THE REPORT OF THE FRY COMMISSION.”

BY

JUDGE O'CONNOR MORRIS.

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THE REPORT OF THE FRY COMMISSION.

EVEN at the present crisis of the affairs of the world, the Report of the Fry Commission, appointed last year to enquire into the administration of the Irish Land Acts, and the important mass of evidence attached to it, deserve the attention of thoughtful persons. It is a complete mistake to suppose that, in this matter, Irish landlords and tenants alone are concerned : the rights of property, and especially of property in land in the Three Kingdoms, are also involved ; and a review of the subject strikingly proves how far-reaching and evil may be the effects of vicious legislation hastily and badly carried out. A word must be said on the occasion which caused the enquiry, and on the circumstances which brought the Commission forth. The celebrated Land Act of 1881, supplemented by Acts in the same direction, practically placed the land of Ireland, as everyone knows, under a system of perpetual leases, at State-settled rents, renewable every fifteen years; and, in 1896, the time was at hand for revising the rents fixed from 1881 onwards, and for renewing the leases made during this interval of time. An Act, accordingly, was passed through Parliament in order fully to accomplish this end ; and, incidentally, it dealt with many other things connected with the Irish Land System, and with the legislation inaugurated in 1881. It enlarged the sphere of State-settled rent, bringing within it certain classes of tenants which, hitherto, had been excluded from it ; it placed the law for exempting tenants' improvements from rent, to a considerable extent, on a new basis ; and it introduced, for the first time, what is called the principle of " compulsory purchase " into the system of " Land Purchase," so named in Ireland, always a favourite policy of Lord Salisbury's Governments. The Act, in a word, created additional powers for making experiments on the land of Ireland after the methods which had been long established ; and it committed these to the Irish Land Commission, the tribunal which, during the last seventeen years, has administered the modern agrarian Code of Ireland, and, practically, has been supreme in this province. The Land Commission and its dependent agencies set about doing the work immediately at hand, and infinitely the most important of their many duties, the settling of " fair rents " for the second term of fifteen years, and the renewing of what are popularly known as its " judicial " leases ; and the results, it may truly be said, were astounding. Rents had been largely reduced since 1881, but a new departure apparently now took place ; the reductions suddenly made were so enormous that well-informed persons stood literally aghast. Nothing in the Act, which had been

lately passed, seemed to explain or to justify these proceedings; the landlords of Ireland, as may be supposed, denounced what they deemed confiscation without excuse, and demanded an enquiry into the subject; and, at the same time, certain doings of the Land Commission had been so sharply criticised in the Superior Courts in Ireland that the tribunal was very generally censured, and even condemned.

In these circumstances, though with obvious reluctance, the Government consented that an investigation should take place. Sir Edward Fry, a judge of the very highest eminence, and lately one of the judges of the Court of Appeal, was placed at the head of a Commission, otherwise composed of two well-known agricultural experts, and of two representatives of Irish landlords and tenants; nor can the competence and impartiality of this high tribunal be questioned by any right-minded person, especially by those who saw it at its work. The scope of the enquiry of the Commission was strictly limited; it was not to consider the policy of the Irish Land Acts, still less to revise litigation already decided; it was only to examine, and to report upon, "the Procedure and Practice" of the Land Commission, and its subordinate Courts, with respect to the "fixing of fair rents," and two other subjects, combined within the existing Irish Land Code, but which I shall not glance at, at least in this article. The Commissioners were not far from three months at their labours; they held meetings in Dublin and Belfast, in Cork and in Galway; and while they carefully confined themselves to the lines of enquiry marked out for them, they gathered together an immense mass of information on the subjects before them, having examined 183 witnesses, including members of the Land Commission, and of its dependent Courts, County Court Judges, and representatives of landlords and tenants. The Report of the Commission—a very striking fact—was unanimous on all the questions presented to it; it is a most able, elaborate, and well-informed document. As I said, however, I shall now only deal with the question of the practice of the Land Commission with respect to the settling of rent by the State, and incidentally of making fifteen-year leases; for this is, by many degrees, the first in importance. The Report and Evidence, taken together, throw a flood of light, never before as clear and full, on the proceedings and the conduct of the Land Commission and of its agencies, in that part of their province in which the most numerous and greatest interests are involved; and, narrowed as was the field of enquiry, they largely justify the incessant and loud complaints which have been made during the last seventeen years against the system of fixing rents, through the State, in Ireland. The Report, indeed, condemns in grave and measured language the course taken by the Land Commission, in nearly all this matter, and if the Government intended, as it is generally believed, to "whitewash," so to speak, that tribunal

by the institution of the Fry Commission, they must, by this time, be disagreeably undeceived.¹

Sir Edward Fry and his colleagues rightly dealt chiefly with the "fixing of fair rents" by the Land Commission within the last few years, and laid most stress on this part of the subject. It was impossible, however, not to consider the question of "fair rent" from the time of its origin, and it is in this respect that the Evidence annexed to the Report is of special value, and should be carefully studied. The general verdict of the Commission on the subject of "fair rent" is that the work of the Land Commission "gives opportunity for dissatisfaction, and leaves much room for improvement," and that "the settlement of fair rents has been effected in an unsatisfactory manner"; to understand this thoroughly, it is necessary to go back to the period when the system was first established. The principle of adjusting rents in Ireland, through the agency of the State—legislation hitherto unknown in civilised lands—was asserted by Parliament in 1881; and, apart from a concurrent jurisdiction given to the County Courts, which, however, hardly requires notice, this important duty has devolved on the Land Commission, and on the tribunals dependent on it. The due administration of such a law was necessarily difficult in the extreme, especially as it involved enquiries into the complex subject of discharging improvements made by tenants from rent; and the difficulty was enormously increased by the circumstances of the time, for the agitation of the Land League was in full swing; the temptation to cut down rents was great, and the Government notoriously had this policy at heart. We can now see, unfortunately after the event, what precautions the Land Commission ought to have taken if justice was to be done in this most grave matter. The very first thing it ought to have done was to arrange a definition of "fair rent"; this was especially necessary because Parliament—an omission of the most disastrous kind—had not attempted to solve the problem, and because Law, the Attorney-General for Ireland of the day, had proposed a definition to which I shall advert afterwards, and which was well considered and essentially correct. Furthermore, in adjudicating upon the subject of "fair rent," the Land Commission was obviously bound to act as a just and wise landlord would legitimately act when letting land to a prudent and solvent tenant. Subject to the rights secured to tenants in 1870 and 1881, its plain duty was to have taken into account what the Fry Commission has called "the technical" and "the popular evidence" in ordinary use in determining the rate of rent. It should, therefore, under the first of these heads, have availed itself of the testimony of valuers on the spot, called in on

(1) They have since endeavoured to exculpate the Land Commission in both Houses of Parliament, but I shall not comment on mere "leather and prunella."

behalf of landlords and tenants, as to the nature and quality of the land to be dealt with, with the view of ascertaining what rent they should bear, always recollecting that testimony of this kind is interested, and requires to be strictly checked. But, in addition to this, under the second head of evidence, it ought to have examined and to have laid peculiar stress on all the surrounding circumstances in the cases before it, which would probably indicate a true standard of "fair rent." What was the rate of rent in markets at hand; what the ordinary rent of adjoining lands; what prices were paid on the transfer of farms, under the usages of Ulster and kindred usages—these were elements of supreme importance entering into the question of "fair rent"; and assuredly there was a very strong presumption that when rents had been paid, without increase, for a long series of years on farms, they would be, in all human probability, "fair." Moreover, the Land Commission ought to have borne in mind that rent to be "fair" ought to be assessed on land in its normal, not in a deteriorated, state, if this was due to a tenant's default; and this was particularly incumbent on it, because rents were to be revised every fifteen years; and the Irish farmer, like the Ryot of Bengal, under the Permanent Settlement of Lord Cornwallis, had a direct interest to run out his farm in order to work the rent down. A general consideration, too, existed which the Land Commission ought steadily to have kept in mind. The Bessborough Commission, composed of very able men, had lately reported, after a prolonged enquiry, that the standard of rent in Ireland was not as a rule high, though rents were excessive in some instances; and this evidence was in the highest degree significant.

The Land Commission was to be the tribunal to fix "fair rent," but it was enabled by the law to delegate this power to bodies of Sub-Commissioners, as they have ever since been called, who were to fix "fair rent," subject to appeal to the superior body. The Land Commission was to be the Court to hear these appeals; and there was to be no further appeal to a higher Court with respect to the question of "fair rent," a sinister feature of a revolutionary law, for while in the case of property worth perhaps a few shillings an ordinary suitor could have recourse to the House of Lords, a suitor in the case of property worth perhaps thousands of pounds was, on the momentous subject of "fair rent," precluded by the decision of a special Court, appointed to carry out a policy, and without the restraint of an appeal beyond it. In these circumstances the duties of the Land Commission, as regards the procedure of the Sub-Commissions, and, above all, as regards its own conduct in appeals, were manifest, if justice was to be done in the whole province of fixing "fair rent." The members of the Sub-Commissions were appointed by the Government of the day; but the Land Commission was always

consulted, and it ought to have insisted that these gentlemen should be properly paid, should have something like a judicial status, should have the qualifications required for a judicial office. The Land Commission, moreover, ought to have laid down rules to enable the Sub-Commissioners to fix "fair rents," so that their decisions should be, to some extent, uniform, and be determined on sound principles; and members of the Land Commission ought, beyond question, to have presided at the Courts of the Sub-Commissioners for a time, in order to give them the assistance they required. In the even more important matter of appeals as to "fair rent," the Land Commission, if right was to be done, ought to have been especially circumspect and cautious. Knowing that here it was a final Court of Appeal, it ought not only, in the cases that came before it, to have heard and weighed both the kinds of evidence, "technical" and "popular," before referred to; it ought also to have taken the greatest care to establish, in well-digested judgments, the general methods by which "fair rents" should be settled, so as to make certain, useful, and trustworthy precedents. And, in conducting these enquiries, it ought, for a considerable time, to have gone into the history, during many years, of the different classes of land of which it was to determine the rent. This was absolutely essential to arrive at proper conclusions; for otherwise such circumstances as the social progress which Ireland has made in the last half-century, the improvement in agriculture and in the breeds of animals, the development of railways, and the increase of markets, all elements in deciding the rate of rent, would be left out of sight, and not taken into account.

The first members of the Land Commission were capable men; their character was above reproach or suspicion; and, apart from the other difficulties in their way, in the administration of a socialistic law, the rush of tenants to their Court was so great that they were well-nigh swept away in the current. But history will say that they did not rise to the level of the situation in which they were placed; they forgot that "well begun is half done"; and, in settling their procedure as regards "fair rent," they made great mistakes, and, what was worse, omissions. They never attempted to define "fair rent," and no definition has been made to this hour; on the contrary, in this matter they adopted a course not only erroneous, but dangerous in the extreme. The presiding judge is reported to have said that the object of the Land Act of 1881 was to make tenants in Ireland "live and thrive"; in other words, as Lord Salisbury indignantly remarked, this doctrine meant that rent was not to depend on the qualities of a given piece of land, but was to gravitate to the level that the most worthless occupier could pay. A process of sheer confiscation was thus set on foot; and, in adjudicating on the question of "fair rent," the Commission either rejected, or took little heed of, considerations they should have kept fully in view. They gave undue

weight to the "technical" evidence adduced before them, and dwelt too much on the testimony of valuers of land, of whom the great majority were tenants' witnesses; ignoring the well-known remark of Swift—unfortunately still, to a great extent, true—that "an Irish tenant never once spoke the truth to his landlord." On the other hand, if they did not disregard, they set too little store on "the popular" evidence, often, by many degrees, the most important which, in numberless instances, came before them. At an early period they decided that the price of the market was hardly to be considered in fixing "fair rent," and that the rents of adjoining lands was not to be considered at all; and they all but refused to receive as a test, that rent must be "fair," the pregnant fact that enormous sums were paid for the tenant right of the farms, to which the rents before the Court were subject. The best elements for determining what "fair rent" ought to be were thus nearly eliminated from these inquiries. This, I assert, was a transgression of the law; the wrong done to the just claims of property was immense. Again, the Land Commission gave scarcely any weight to the fact that rent had been paid, without a rise, on farms, for perhaps two or three generations of men; they all but set aside this presumption for the landlords' behoof; they seldom went into the history of the cases before them; and while they carried out, to the fullest extent, the rule that tenants' improvements must not be charged with rent, they seldom paid much attention to the repeated instances of tenants' deterioration brought before them, and seldom, in fixing "fair rent," allowed for this, or made an estimate of land in its normal state, as they were bound to do to protect the landlord. It is superfluous to add that they seem not to have bestowed a thought on the Report of the Commission before referred to, that the standard of rent in Ireland was not high, and that rack-renting was not common; and this, though it has been conclusively proved that the rental of Ireland was probably higher in 1840, than in 1881!

The methods adopted by the Land Commission for fixing "fair rent" were, therefore, faulty; they were insufficient, one-sided, and unjust; the results were fatal to the rights of the landed gentry. The procedure, too, of the Commission, whether in its Courts of first instance, or upon appeal, was open to the very gravest censure; its subordinate agencies were ill-adapted to administer the law. Sets of Sub-Commissioners were hastily put together; they were composed of one legal member for each Sub-Commission, and of two members supposed to understand farming; but all the members were so inadequately paid that anything like the best men could not be appointed; and their qualifications were little regarded, indeed could not be, under the peculiar system of patronage which prevails at Dublin Castle. From the nature of the case, therefore, these bodies of men charged with the duty of carrying out a most difficult law, and empowered to deal with property worth hundreds of millions of pounds, could not

form tribunals of a trustworthy kind. But the objections to the Sub-Commissions were even more serious. Judicial independence is the main guarantee of justice, as has been proved by the experience of ages; but even the legal members of the Sub-Commissions did not possess a judicial status; and all the members were tenants at sufferance of the Government of the day, known to favour the policy of cutting rent down. This was surely bad enough; but worse was behind. Many of the Sub-Commissioners were paid for the job by the day, so that they had a direct interest in conflict with their plain duty; their minds were not free to fix "fair rent"; they were tempted, in order to make work for themselves, to reduce rents wholesale, and, by these means, to attract tenants to their Courts. The Sub-Commissioners, therefore, could not command respect, or even properly perform their functions. It should be added that they received no direct assistance from the Land Commission, as respects the principles to be observed in fixing "fair rent"; and no member of the Land Commission has ever appeared in their Court to regulate or to control their decisions, a circumstance that has caused very grave mischief.

I pass on to the procedure of the Land Commission with regard to appeals. This tribunal, it will be recollected, was made the final Court of Appeal in all instances where "fair rent" was in question. I have already pointed out how unsound and imperfect were the rules adopted by the Land Commission, as to the determination of a standard of rent, and it would be superfluous to recur to the subject. The Commission, however, in this matter of appeals from the judgments of the Sub-Commissions, as regards "fair rent," began from an early period to carry out a practice, since carried out with the worst results, which probably, in nine cases out of ten, has made these appeals all but worthless. The Commissioners heard what was alleged by the suitors within the limits of the evidence they had wrongly restricted; but they possessed a right to appoint valuers of their own, and, in the great mass of instances, they acted on the reports of these persons, who, it will be observed, were not sworn witnesses, and fixed "fair rent" in accordance with these unchecked statements, with scarcely any regard to anything else! As far back as 1882 one of the most distinguished leaders of the Irish Bar remarked with respect to this strange procedure: "They took up the valuer's report, which was a document concealed from the parties. It was entirely for the information of the Court, and they turned round to me, as the landlord's counsel, the landlord being the appellant, and said, 'Can you go on with this appeal in the face of that document?' They would show me the document. Under the Act it is a rehearing so-called, but it was no rehearing."¹ By these means, the right of appeal was, so to speak, strangled; appeals, involving property of

(1) Evidence of the Fry Commission, p. 33.

enormous value, were practically made of hardly any avail; and when we recollect what the Courts of the Sub-Commissions were, and that the Land Commission was the Court of ultimate appeal, the proceeding was simply a public scandal.

Such were the jurisdictions, and such the agencies, to which, from 1881 to the present day, the estates of the Irish gentry have been made subject. Sixty or seventy Sub-Commissioners, to use the language of one, were "let loose" on the Irish rental; the results of their labours became quickly manifest. It has been said that these gentlemen and their successors have over and over again neglected their work, and have valued lands carelessly and with reckless haste, and instances to this effect have, no doubt, been forthcoming. But the Sub-Commissioners, as a class, have not deserved this censure; though many have not been equal to a most arduous task, many have shown themselves to be well-informed and intelligent, and this circumstance does not in the least lessen the overwhelming objections to tribunals of the kind. Nor should it be forgotten that, in this matter, they have been bound to follow the bad example originally set by the Land Commission; and if these inquiries, as a rule, have been wrongly conducted, the blame should be laid upon their superiors. One of the most striking features of their decisions, regarded as a whole, has been the want of uniformity in the conclusions they formed on questions of the very first moment; they fixed "fair rents," it has been said, "by the rule of thumb"; but as they were not directed as to what a "fair rent" might be, this is not fairly to be laid to their charge; they have been as ships on a stormy sea without compass or rudder. In the most important, however, of all particulars, they usually have been, to some extent, agreed; they have cut down rents in all parts of Ireland, and the process has continued with results ever on the increase. Rents of lands, the tenant right of which was nearly equal in value to the fee simple; rents which had not been raised perhaps for a century; rents on estates which their owners had greatly improved, without charging their tenants more than a trifle on account of an immense expenditure; rents which, under special circumstances, had been made low—all were alike grist for the Sub-Commissioners' mills; all were abated in very much the same proportion. It has been observed, indeed, that rack-renting landlords have often fared better than those whose rents were moderate; in truth, an attack was made on all rent; and the scale of reduction, it would seem, was very indifferently applied. Yet what other consequences could be looked for when no definition of "fair rent" had been made; when the most important evidence as to what "fair rent" might be was almost shut out of view by the Land Commission; when the value of tenant right, on the transfer of farms, and the market value of land was hardly considered; when waste done by tenants

was seldom taken into account; when numerous presumptions that ought to have been made in favour of property were kept out of sight; when the inquiries did not go sufficiently far back? And what else could be expected from Courts formed, beyond question, to carry out a policy, and composed of men dependent for their bread on the State, of whom many were tempted to work rent down in order to retain their places? In these circumstances, the landed gentry were despoiled; and, whatever may be said, a huge confiscation of the rental of Ireland began to take place. Nor did the Land Commission so shape its conduct as to afford redress of this widespread wrong; thousands of appeals as to "fair rent" were brought before it, but, in the great majority of instances these proved fruitless, for the reasons I have already set forth.

It may be asked why the Legislature did not interfere at once, when a system, subversive of the plain rights of property, was being established in the name of law, and when the landlords of Ireland were being evidently wronged. An enquiry into the working of the Land Commission took place in the House of Lords as early as 1882; but, on the whole, it was somewhat premature, though ample proof was given that the seeds at least of enormous mischief were being sown broadcast. Three principal causes, however, concurred to stay the hand of Parliament in this matter, and to prevent a check being placed on injustice, though ever on the increase. The Land Act of 1881 was an experiment never tried before; it was plausibly argued that time must be allowed, in order to see what its results would be; and Mr. Gladstone, in these years in office, turned a deaf ear, as was always his wont, to complaints against legislation of which he had been the author. At this period, again, the Land League ruled a part of Ireland; a Reign of Terror prevailed in whole counties; a strike against all rent, conducted by Parnell and his band, backed by a demoralised peasantry, spread far and wide; the Irish landlords were not only fiercely assailed by what was a *jacquerie* in many districts, they were weak, isolated, and unable to act in concert; some had almost ceased to entertain hope, others clung to the recent Land Act as a kind of compromise. They were without an organisation that could make their will felt; and, as a united body, they made but few signs of protest against the injury that was being done to them. The main cause, however, has yet to be noticed, for the inaction of Parliament at this conjuncture. The depression of agriculture, which had set in, in England and Scotland, since 1879, had continued, and was even on the increase; and English and Scottish landlords had, accordingly, made very considerable voluntary reductions of rent. This depression extended to Ireland also, though certainly not to the same extent. In these circumstances it seemed reasonable enough that Irish rents should be likewise cut down; and it may be admitted

that, in many instances, in which State-settled rents in Ireland were abated too much at first, these became, in the progress of events, by no means too low. This being the position of affairs, opinion in England, reflected fairly in the Lords and Commons, refused to listen to complaints against the Land Commission and its work; a fall in rent had taken place in Great Britain, why should there not be a corresponding fall in Ireland, made by regularly constituted tribunals of the State? It was forgotten that precedents had been made in Ireland which struck at the root of property in land, and that methods tending to confiscation had been established.

The first members of the Land Commission passed away; their successors are, also, able and honourable men; it is idle to charge them with wilful misconduct; and it is only just to remark that they could not depart from the precedents which had been made for them. Yet the procedure they have followed in fixing "fair rent" has been open to very grave objections, and when it has differed from that of their predecessors it has differed for the worse. The second Land Commission has confined itself more to the "technical" evidence in determining rent, and has given even less weight to the "popular" evidence, than the first Commission did, in 1881, and afterwards; and the result has led to increased injustice. In the enquiries before the present Sub-Commissions, and the Land Commission, more stress is laid on the statements of mere valuers, biased and untrustworthy as these often are, especially in the case of tenants' valuers; and the market price of land, the value of neighbouring farms, tenant right, deterioration, presumptions in favour of landlords, the history of estates and of holdings, and other incidents of the kind, are less considered than they were ten or twelve years ago, indeed, practically, are not regarded at all. The system of appeals, too, before the existing Land Commission, as to "fair rent," is an aggravation of all that was bad in the system at first established, this in itself being a denial of justice; the reports to the Court seem to be alone thought of; all other evidence is really set at nought, even more thoroughly than was the case of old. As another eminent advocate has said, "I marshalled a perfect phalanx of witnesses for the landlord, but it was no use. They listened to them, I admit; they suggested that I was wasting time, but I am not stating they did not hear them; but in the end, I heard in the morning that the judicial rent was confirmed."¹ Two special circumstances, I must add, have combined to reduce rent, under the operations of the second Land Commission. The presiding judge invented and announced the doctrine that, independently of the rights he had acquired under the Act of 1881, and other Acts of the same kind, the Irish tenant had "an occupation right" in his farm, and that this right formed a distinct element, to be borne in

(1) Evidence of the Fry Commission, p. 30.

mind as a ground for cutting rent down. The other members of the Commission, it is only right to say, did not concur in this strange view, since condemned by a Superior Court in Ireland as without foundation in sense or law ; but many of the Sub-Commissioners acted upon it, as has been conclusively proved ; and it has been an effectual means in diminishing rent in many cases of late years, as the Report of the Fry Commission has very plainly stated. The other circumstance to which I allude is that the Land Commission has, since 1885, been made the agency to carry into effect, in Ireland, what is called the policy of Land Purchase. It has, therefore, become a broker of the State, whose advantage it is to buy land cheap ; and in this position it has a direct inducement to make rent as low as it can possibly be made. As in the case of the Sub-Commissioners, before referred to, its interest and its duty is thus opposed ; and this not only must cause suspicion, but, not improbably, must produce injustice.

The reductions of rent, since the Land Act of 1896, were sudden, and, as I have said, enormous. They have been explained on the ground of the fall of prices, which has occurred in Ireland since 1881, and certainly this fact must be taken into account. But from every point of view the fall in prices does not justify these huge abatements, which, practically, are made for all time ; it does not, though this is an imperfect test, correspond, even approximately, with the diminutions made ; and these, apparently, have been almost indiscriminate, with little regard to the difference between the fall in prices of various products of husbandry—for example, wheat, oats, barley, and lean and fat cattle. No rational explanation has been made on the supposition that wrong has not been done to Irish landlords ; it would, perhaps, be invidious to remark that these reductions coincided, in time, with speeches made by men in office, that rents in Ireland must be further pulled down, and that the process of “ Land Purchase ” ought to be quickened. The simple truth is that, since 1881, and more especially since 1896, the Irish landed gentry have been despoiled by the State ; their property has been taken unjustly from them by the most odious of means—the bad administration of a bad law. This can be conclusively proved in a great variety of ways ; a very few instances will be amply sufficient. Rents have been reduced on small farms at least as much as on large ; but the small Irish farmer has suffered infinitely less than the large Irish farmer from the fall of prices, as the market value of his tenant right shows ; the cheapness, too, of the necessaries of life is, by many degrees, of more advantage to him than it can be to the man of many acres ; this equality of reduction, therefore, is not just ; it points to a plain wrong being done to the landlord. Again, Dublin, and the adjoining district, had half-a-century ago well-nigh a monopoly of agricultural produce of different kinds, because the more distant parts of

Ireland were without railways, and had inferior markets. Rents in Dublin and the neighbourhood were, therefore, often very high; and probably they were properly reduced, by the Land Commission, in not a few instances. But there has been no correlative raising of rent by the Land Commission in the Irish counties which railways and improved markets have developed since those days; in these, as everywhere else, rents have been abated; this again indicates what wrong has been done. The most convincing proof, however, of all is this: since the Land Commission set about its work, the value of tenant right in Ireland has been at least maintained, despite the depression of agriculture, while the value of the fee simple has immensely fallen; nothing more is required to satisfy a reflecting mind, that the landlords have been stripped of their property in defiance of right. It is a most significant fact that the tenants' advocates endeavoured, it is unnecessary to say in vain, to prevent the most striking evidence under this head from being considered by the Fry Commission.

It has been urged that agricultural rents in England have been reduced as largely as those in Ireland, and that this is fatal to the case preferred by the Irish landlords. But, even admitting the fact to be true, the argument is entitled to very little weight; many considerations prove that it is all but worthless. English rents rose enormously from 1840 to 1876; there was nothing like a corresponding rise in Ireland. It was reasonable, therefore, when agricultural depression came, that a fall of rents should follow in the one country, which would not naturally take place in the other. The reduction of rents, again, in England, has been voluntary. Rents may be restored to their former standard as soon as a return to good times comes. The reduction of rents in Ireland has been compulsory, effected by the tribunals of the State, and made practically, whatever may be alleged, for ever; the single circumstance that, practically, these rents cannot be raised again creates a decisive distinction between the two cases. The most complete answer to the argument, however, is this: Tenant right, where it exists, in England, has fallen; tenant right, in Ireland, has immensely risen. English farmers have given up their holdings in many instances; such surrenders in Ireland are wholly unknown. Ten, twelve, twenty, even thirty years' purchase¹ is often paid for farms in Ireland by incoming tenants; this is clear proof that the reduction of rents in England cannot justify a reduction to the same extent in Ireland; the supposed analogy, in a word, fails. It has, again, been urged that the high character of the members of the first and the second Land Commission, and their well-known attainments, form a guarantee that they cannot have gone far wrong in this matter; and that the decisions of Sub-Commissioners by scores, all tending at least in the same direction, show that the reductions of

(1) That is, purchase calculated on so many years of the rent.

rent have been, on the whole, warranted. But what is the value of this contention when it has been made manifest from the Report of the Fry Commission that the procedure and the practice of these tribunals have been gravely erroneous in most important points, and that this accounts for the confiscation which has certainly occurred? It is necessary, too, to speak out on this subject, without fear, favour, or respect of persons. The agrarian legislation for Ireland, since 1881, has been revolutionary and socialistic; it has been difficult in the extreme to carry out; nothing certainly could have prevented its doing injustice. Nor will any right-minded person impute bad motives to the Land Commission and its dependent Courts; nor should they be charged with wilful bias or moral error. But, unquestionably, they have made serious mistakes; and, what is more important, they have been tribunals, exceptional, formed to give effect to a policy, ill-constituted, and placed in this position, that their duties and their interests are often opposed. All history, and especially Irish history, shows what wrongs tribunals of this kind have done. I need only refer to the Encumbered Estates Court of fifty years ago as a striking example, and the Land Commission and its agencies are in this predicament.¹

Two facts stand out in prominent relief from the masterly Report I have been reviewing. Sir Edward Fry and his colleagues are evidently convinced that recent legislation on the Irish land has been productive of grave wrong, and that the procedure and practice of the Land Commission, and of the Sub-Commissioners, have contributed to this result. Limited as the scope of their enquiry was, this has been made manifest to every one who seeks the truth; and the Fry Commission has not failed to indicate the changes it deems essential to the ends of justice, even within the province of the existing law. It proposes to remedy what was perhaps the worst defect in the ill-starred Land Act of 1881; it has attempted to make a definition of "fair rent," left hitherto, I have said, at random. Attorney-General Law defined "fair rent," seventeen years ago, "as a competition rent minus the yearly value of the tenant's interest in his holding"; the Fry Commission has defined the gross fair rent as "the annual sum at which, after all the circumstances of the case, holding, and district have been taken into consideration, the holding in the landlord's hands might reasonably be expected to let from year to year, to a solvent and prudent tenant who desired to derive a benefit from the occupation of the tenement, and not from its sale"; and they define the net fair rent as "the gross fair rent, less a reasonable annual allowance in respect of the sum which would represent the present value of the improvements, for which, according

(1) A sceptical reader may also study Tocqueville's chapter on the exceptional tribunals of the old French monarchy.

to the Acts, a deduction is to be made from the rent.”—*Report*, pp. 20, 21. These definitions do not widely differ from that of Mr. Law; had either been adopted since 1881—and the Land Commission ought to have had these ends in view—it may be affirmed, with confidence, that a great deal of the wrong that has been done would not have been done, and that the landed gentry of Ireland would not have suffered, as grievously and unjustly, as it has been their hard fate to suffer. Furthermore, the Fry Commission has clearly perceived that the whole system of determining rent in Ireland, by litigation, through tribunals of the State, is bad, and in the highest degree mischievous; and it has suggested that rents ought to be adjusted by an automatic process, or ought to be converted all into rent charges, doubtless to be perpetual. This reform, I believe, would do away with many evils, and would effect incalculable good. I may be permitted to say, without conceit, it is a reform advocated by myself for many years, indeed, ever since the Land Act of 1881 became law. As to the procedure and practice of the Land Commission, and of its subordinate Courts, the Fry Commission has made suggestions of extreme importance. It has rightly proposed that the status of the Sub-Commissioners ought to be made very different from what it is now; that care should be taken to appoint a regular staff, essentially permanent, and not paid by the job; that the salaries of the Sub-Commissioners ought to be sufficient to secure the services of really capable men; above all, that nothing ought to be allowed to bring their duties and interests into conflict. With respect to the proceedings of the Land Commission, the remarks of the Fry Commission are very significant, and practically amount to a grave censure. They pointedly draw a marked distinction between the “technical” and the “popular” evidence to which I have before referred; and indicate, at least, in a review of the subject, exhausting every important topic, that the Land Commission has laid far too much stress on the first, and has not given due weight to the second, by these means, however unconsciously, doing injustice. The severest comments, however, have been reserved for the mode in which the Land Commission has treated appeals; these are condemnatory in no doubtful sense.

Lord Ashbourne, the present holder of the Great Seal of Ireland, said, when the Land Act of 1881 was before the House of Commons, that it would be infinitely better to take away, at once, twenty-five per cent. of their rents from Irish landlords than that Parliament should sanction so bad a measure. The Land Act of 1881 has passed, but a circumstance worse than the Act has followed: the administration of an unjust law has, in itself, been unjust, however innocently this may have happened; and this has been proved before a tribunal, the verdict of which cannot be impeached. The faction, of which the

avowed object is to drive the gentry of Ireland out of their country, and which in its present endeavour to whittle their property away has found aid in the doings of the Land Commission, has snarled at Sir Edward Fry and his colleagues; cold water has been thrown on their Report by Radical doctrinaires, who think Irish landlords nuisances to be abated; Parliament has, as yet, treated the subject in the way described by Burke: "The fashion relative to Ireland is the wish that they should hear of it, and its concerns, as little as possible." But, hostile as the Government are to a wronged order of men, they can hardly ignore a document of this kind, and allow the rights of property to be destroyed in the name of law, the most detestable confiscation that can be conceived, when it is evident that this has been the case in Ireland. It is charitable to suppose that Mr. Gerald Balfour had not bestowed a thought on this subject, when he intimated that the Report of the Fry Commission would be duly referred to the Land Commission; you do not appeal to Philip sober from Philip drunk;¹ you do not expect a person against whom a charge is made to say whether he is justly charged, or to sit in judgment on his own indictment. We can hardly imagine that the Government will refuse to do justice in this matter; will not act on the findings of the Fry Commission; will not legislate on the subject, if this is required; will not extend their enquiry, as ought to be done, into the existing state of the Irish Land Question, with a view to the settlement it imperatively demands.

WILLIAM O'CONNOR MORRIS.

(1) Mr. Gerald Balfour has stated in his place in Parliament that the procedure and the practice of the Land Commission has been sanctioned by the Court of Appeal in Ireland, in a celebrated case involving the grave questions as to the conduct of the Commission in appeals. The simple fact is, that the Land Commission is so fenced round that it is almost impossible to review its decisions; but in the case referred to, the procedure and practice of the Commission was by implication severely condemned, and in the Court below it was refused its costs—a significant circumstance. As to the general statement that it has not been *proved* before the Fry Commission that rents have been *generally* unjustly reduced, it is sufficient to remark that Sir Edward Fry and his colleagues pointedly refused to review the decisions of the Land Commission in any case, and therefore carefully avoided entering into this question.