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NOTES

ON THE

FAILURE OF BRIGHT CLAUSES

OF THE

IRISH LAND ACT OF 1870;

WITH SUGGESTIONS OF

FURTHER FACILITIES TO BE GIVEN FOR THE PURCHASE BY TENANTS OF THEIR HOLDINGS.

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ON THE FAILURE OF THE BRIGHT CLAUSES OF THE IRISH LAND ACT.

I.—Contrast of Sales under Church and Land Acts.

Have you considered the difference between the extent to which tenants have availed themselves of the assistance to purchase from the Church Commissioners in Ireland, and the assistance to purchase under the Bright Clauses of the Irish Land Act of 1870?

The Church Commissioners return a sale of yearly and other tenancies to the extent of £694,000, and the creation of 4,536 peasant proprietors. In the Landed Estates Court £6,535,253 worth of property was sold in the five years from beginning of 1871 to the end of 1875, and yet the number of tenants assisted to purchase at Landed Estates Court sales was only 412, from August, 1870, up to 31st March, 1876.

These figures present a great contrast, when the Church Commissioners, for one-tenth the value sold, had ten times the number of assisted sales to tenants.

Are any of the causes to which this difference is to be ascribed, capable of removal by affording further facilities?

The first and principal cause to which the Church Commissioners ascribe their success is the advantageous terms on which the purchase money of the holdings is payable.

> "The privilege to pay only one-fourth of the price in cash, while three-fourths may remain on mortgage, is a most valuable boon."

Now under the Land Act one-third has to be paid in cash. When the Bill was introduced, it was one-fourth. It would be a facility to apply to the sales under the Land Act the proportion which has worked satisfactorily in sales under the Church Act.

Are the terms of mortgage the same under the Church and under the Land Act?

In one case only, where, under section 47, a purchase of a residue left unbought by tenants out of land desired to be sold in block takes place, and one-half is lent to complete the transaction, the terms are (except as to rate of interest) similar. In all other cases, however, under the original Act, the tenant in purchasing is liable to forfeiture if land be alienated, assigned, sub-divided, or sub-let, without consent of the Commissioners of Public Works.

As one of the objects of purchasing is to obtain dominion over the property, and freedom from the risk of forfeitures (which, though to a very large extent, were not entirely abolished by the Land Act), this

difference must operate as an impediment to tenants borrowing, and the assimilation of the mortgages under the Land Act to those under the Church Act would facilitate purchases by tenants.

By the Landlord and Tenant (Ireland) Act, 1872, in the case of advances under it, notwithstanding forfeiture, the Board may sell, and after paying what was due and costs of sale, are to pay the balance "to the person entitled by law to receive the same," which creates some difficulty, as the forfeiture is apparently not done away with.

The retention of this forfeiture as long as any portion of the money, however small, is due, is inconsistent with the absence of all restriction under the 47th section, where only half the purchase-money is advanced.

If the restriction on alienation was not entirely removed, it would seem reasonable to retain it only so long as more than a half was due. After that, the charge becomes equivalent to trustee security, and it is unusual, when lending only so much, to stipulate as to the management of the property.

It is right to notice that the principle of throwing the onus of checking the growth of population on proprietors, which lies at the root of electoral division rating, and which, no doubt, led to the restrictions on subletting and subdivision, has been greatly modified by the large measure (39 & 40 Vic. c. 50) for promoting union rating, passed in 1876.

What is the second cause to which the Church Commissioners ascribe the success of their operations?

> "That the farmer has not been obliged to take the initiative in opening negotiations for the purchase of his farm, nor afterwards in conducting any correspondence on the subject. Everything has been made easy to him. He has not been obliged to encounter the real calamity for an illiterate man—writing a letter; a fair price has been put upon his farm; full printed explanations and instructions accompanied the offer which was sent to him. He had only to write or get written for him from one to six words on a printed form supplied to him, to sign his name or affix his mark, and provide within three months one-fourth of the purchase money, and the thing was done. He was transformed without trouble to himself from a rent-paying tenant to a landed proprietor."

What further facility does this precedent suggest in the case of tenants purchasing under the Land Act?

As the Land Act of 1870, section 46, recognizes that the Commissioners of Public Works may make an application to the Landed Estates Court, there is nothing to prevent the Commissioners, as trustees of the £700,000 unapplied balance of the £1,000,000 allowed, from doing in the case of each sale of agricultural land exactly what the Church Commissioners did in the case of the Church lands.

At the low rate of interest allowed by the Commissioners, 3½ per cent., if the same proportion was lent, a tenant could pay twenty-five years' purchase, at the same cost to himself as the twenty-three years' generally paid to the Church Commissioners.

If a number of tenants, say one-half, bought at this rate, the residue unbought by tenants might be sold for twenty-one years' purchase, and yet the whole would bring twenty-three years' purchase.

If the Public Works Commissioners sent full instructions and particulars to every tenant on an estate ordered to be sold in the Landed Estates Court, to explain how he would have a fair chance of purchasing if he would offer twenty-five years' purchase, and pay one-quarter of the purchase money—whenall willing to offer had written to that effect, an officer might be sent down to ascertain the best lots in which to divide the residue, and to advertise for offers for them—the Public Works Commissioners might then, under the statute, apply to the Landed Estates Court to accept the tenants as purchasers. The Court would then be put in a favourable position for acceding to such an arrangement, as in exercising their discretion they would not be deciding on the acts of their own officers, or on any arrangement initiated by themselves.

Do you think sales organized on the plan you have suggested would be usually adopted by the Court?

I think they would; fee-simple land sold in the Landed Estates Court in 1874 reached only twenty-two four-fifths years' purchase. I believe the tenants borrowing at 3½ per cent. could pay twenty-five years'; and if the residue sold for twenty-one years', twenty-three years', or more than the highest average, would be reached. If only a few tenants were ready to buy, they might have to advance beyond twenty-five years', to bring the whole up to the average.

II.—How to give Tenants an absolute right of bidding for their lots in Sales at the Landed Estates Court.

Suppose the Landed Estates Court were to refuse assent to sales in lots for tenants, on the ground that such allotting would be inconsistent with the interests of the persons interested in the estates or the purchase-money, while the tenants seeking to puchase alleged it would not be injurious to those interested in the purchase-money, can you suggest any way in which the matter might be determined, other than as at present by the discretion of the Court?

Yes, by a double auction.

Let the premises be put up in the Court in large lots (say townlands), as desired by the vendors. At the same time let it be put up at the nearest telegraph station to the lands by an auctioneer appointed by the Court, in the lots desired by the tenants, with one or more residue lots as they or the Board of Works might suggest. The auctioneer would telegraph to the Court the aggregate of the biddings before him, and the Court would telegraph the highest bidding above.

The highest bidder before the Court might advance on his bid if it did not exceed the aggregate before the auctioneer. Every tenant or residue bidder might advance before the auctioneer, and as soon as the aggregate exceeded the highest bid above, he would telegraph. In this way, at the cost of a couple of hours, a perfect double auction might be carried out, and the question whether large or small owners would bid most, brought to a definite test, and not be left to rest, as at present, on a matter of opinion beforehand.

Would there not be some expense in the double lotting?

No doubt; but where parties get the benefit of a sale in court, they should take the benefit, subject to the burden of allowing the policy of the Legislature to be fairly tried.

Can you suggest any way in which this cost could be diminished?

In the Second Part of the Land Act of 1870, even for voluntary sales between landlord and tenant careful provision is made by section 36 to avoid the expense of determining easements; but this salutary provision is limited to the Second Part of the Act relating to sale of land to tenants, while the 40th section, directing the Landed Estates Court to afford facilities for purchases by occupying tenants, instead of being in the Second Part of the Act, where according to subject matter it ought to be, is in the Third Part, relating to advances by the powers of the Board. By this accident in the insertion of the clause while the Bill was passing, the court is deprived of the benefit of the 36th section in the most important class of cases.

The principle of not making the determination of easements compulsory is one of the principles of the Land Transfer Act of 1875 for England, specially provided for in section 18, the marginal note of which is "Liability of registered land to easements and other rights."

Under these circumstances, I would suggest that section 36 of the Irish Land Act, 1870, should apply to Part III. a well as Part II. of that Act.

III.—Facilitating the Transfer of Land.

Besides what you have mentioned, the Church Commissioners referred to another circumstance to which they ascribe no small part of the success of their proceedings?

Yes, they say,

> "Short and simple forms of conveyance and mortgage were settled and printed by our authority, and thus the cost of the transaction was reduced to a minimum."

What suggestions for facilitating the proceedings under the Bright Clauses can you deduce from that statement?

The policy of cheapening proceedings connected with land was present to the minds of the statesmen who introduced the Irish Land Act. Mr. Gladstone, in his speech introducing the Land Bill, before coming to the Bright Clauses, said:—

> "The measures which we propose with respect to the ownership of land for the consideration of Parliament during the present session, should Parliament adopt our views, are not exclusively those comprehended within the present Bill; other features will be included in other Bills, and I will presently notice them, for they do not *apply to Ireland alone*, but to some other parts of the United Kingdom. Among them will be a measure which I hope will be of immense benefit to the possessors of land in this country —a Bill to facilitate the transfer of land."

A Bill of the character thus referred to in 1870 was introduced by

Lord Selborne, in 1873 was taken up and amended, and passed by Lord Cairns in 1875.

Mr. Gladstone further said :—

> "It is possible there may be some other provisions analogous to these, which we may deal with during the present session, and which will be applicable not to Ireland alone, but beyond its limits also; because, in reference to them, we consider the circumstances of other portions of the United Kingdom to be so analogous as to warrant our dealing with them together."

This, no doubt, refers to the stamps on leases, a very remarkable and successful reform of which was carried for the United Kingdom by Mr. Lowe in 1870. But it is right to notice that while the policy thus indicated in 1870, of dealing with Ireland and England alike, when the circumstances rendered it politic, in the matter of transfer of land—though our Irish systems are all copies of English systems—our memorials of 1707, copies of the Yorkshire memorials—our Record of Title of 1865, of Lord Westbury's Act of 1862—and although Ireland was represented on the Commission of 1859, on which the registration reforms mainly rest, yet Ireland was omitted from Lord Selborne's Land Transfer Bill of 1873, and from Lord Cairns's Act of 1875.

Under these circumstances, I would suggest that the working of the Bright clauses would be greatly facilitated if the Land Transfer Act of 1875 were extended to Ireland.

When Mr. Gladstone pronounced that he expected it to be of "immense benefit to the possessors of land," "not in Ireland alone," and when there is so little controversy as to the matter, that Lord Cairns, who had done so much on the question in 1859, at once took up Lord Selborne's Bill, and passed a closely analogous measure, we may fairly ask to have the Land Transfer Act of 1875 extended to Ireland.

Those who have studied the question know that when it is said to be "of immense benefit to the possessors of land," it is the small proprietors who will gain most by the adoption of the system.

Have you advocated the extension of Lord Cairns's Land Transfer Act of 1875 *to Ireland?*

Yes, I did so in a paper read at the Dublin Statistical Society las December.

IV.—Causes of the small amount of Purchases by Agreement under the Agreement Part of the Bright Clauses.

What has been the extent of the operation of the purchase clauses of the Land Act, other than on the occasion of the sales in the Landed Estates Court?

While the tenants assisted at sales in the Court have been 412 in number, to the extent of £249,961; those by agreement, worked in court under the 44th section, have been only 9, assisted to the extent of £13,067; and those by agreement out of court only 35, making 44* in all, and assisted only to the extent of £18,724.

See Note on p. 18.

To what cause do you ascribe those very small figures in the case of sales by agreement?

This I think arises from the same causes being still in operation in Ireland that were pointed out so far back as 1846 by the celebrated Report of the Select Committee of the House of Lords on the Burdens on Land. Whilst that influential committee differed in many points, they are unanimous in one. They complained

> "That the transfer of real property is subjected by law to difficulties, expenses, and irregularities; that the committee are convinced that the marketable value of real property is seriously diminished by the tedious and expensive process attending its transfer.
>
> "It is a work of time to raise money on landed security, and the law expenses incident to the transactions are a considerable addition to the sum borrowed."

The committee stated further :—

> "They are anxious to impress on the House the necessity of a thorough revision of the whole subject of conveyancing, and the disuse of the present prolix, vexatious, and expensive system."

Notwithstanding several reforms applied to the subject in England before 1874, the unsatisfactory state of the law is thus referred to in the Queen's Speech in 1874 :—

> "The delay and expense attending the transfer of land in England have long been a reproach to our system of law, and a serious obstacle to dealings in real property. This subject has in former sessions occupied the attention of Parliament, and I trust that the measures which will now be submitted to you will be calculated to remove much of the evil of which complaint has been made."

What was wanted for the large proprietors in England in 1846, is still more urgently wanted for small proprietors in Ireland in 1877. We are denied the prompt application of the reforms that since 1846 have been applied to those difficulties in England.

These defects come out most in the case of sales by agreement. If the tenants take short title, or any title not perfect, they have to consider the risk and difficulty of selling again with short title.

V.—Effect of Want of Local Jurisdiction on Sales to Tenants.

What other reforms have been applied in England and not in Ireland since 1846, *besides the Land Transfer Act of* 1875?

Mr. Senior in his evidence before the Burdens on Land Committee pointed to one of the greatest hardships of the system :—

> "A man who has agreed to sell a field for £200 does not know that he has not contracted to spend £500 in showing his title, and a person who has agreed to pay does not know that he has not contracted to spend £500 in getting the title approved."

What he referred to was the cost of Chancery proceedings, which Court alone had then jurisdiction as to interpreting and enforcing contracts as to the sale of land. The evil pointed out by Mr. Senior was remedied in England in 1865 by statute 28 & 29 Vic. c. 99—"An Act to confer on the County Courts a limited jurisdiction in equity."

By sub-section 8 of section I. the county courts in England, 60

in number, are enabled to exercise all the power and authority of the High Court of Chancery, amongst others

> "In all suits for specific performance, or for the delivering up and cancelling any agreement for the sale or purchase of any property, when the purchase-money shall not exceed £500."

The importance of a similar local jurisdiction in Ireland is conceded by the Bills which were brought in by the Chief-Secretary and Solicitor-General in 1876 and 1877. In 1876 the English limit of £500 was proposed; but in the Bill of 1877 it is reduced to £300. As the average price paid by the thirty-five tenants who purchased by agreement was £535 each, if the limit was fixed on facts it would be £600 at least. Reducing it to £300 is practically to exclude the tenants who have purchased from all benefit of the proposed change. So, while we were standing still from 1865 to 1876, in 1877 we are going back.

The neglect of Ireland in all matters of local jurisdiction is very remarkable, for in the later legislation in the superior courts on the same subject Ireland is included. Thus in the Real Property Vendors' and Purchasers' Act of 1874 (37 & 38 Vic. c. 28), the provisions that a vendor or purchaser may obtain decision of a Chancery judge in chambers, as to requisitions, or objections, or compensations, etc., is the same in both countries.

Can you mention any other want of local jurisdiction?

Yes, there is a similar defect in the law as to enforcing mortgages.

The Bright Clauses of the Land Act are framed on the theory that to encourage purchases by tenants, it is important for the state to lend £1,000,000 on easy terms. If so, it would appear to be equally right to afford people the same facilities as exist in England for giving their friends and relatives security in case they borrow money from them.

Now in England since 1865—

> "In all suits for foreclosure or redemption, or for enforcing any charge or lien where the mortgage charge or lien shall not exceed in amount the sum of £500,"

sixty County Courts have all the power and authority of the Court of Chancery.

This, again, is twelve years after the English Act, only proposed to be remedied in Ireland, and only to the extent of £300.

Is Irish law behind English law in local jurisdiction on matters arising upon the holding and devolution of property, apart from the sale or mortgage?

In the case of small proprietors, the want of local administrative jurisdiction in the case of trustees remains, and administration involving ruinous cost is an element of depreciation which a tenant has to take into account when considering whether or not he will purchase. This being a greater proportionate burden on the small than the large holder, is a disadvantage to the small holder in purchasing. Irish law is behind English law in these matters.

The English Act of 1865 (28 & 29 Vic. c. 99) for conferring on the County Courts a limited jurisdiction in equity, conferred on sixty courts all the power and authority of the High Court of Chancery:

> "In all suits by creditors' legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, next of kin, in which the personal, or real or personal and real estate against or for account or administration of which the demand may be made shall not exceed in amount the value or sum of £500;
>
> "In all suits for the execution of trusts, in which the trust estate or fund shall not exceed in amount or value £500;
>
> "In all proceedings under the Trustees Relief Acts, or under the Trustee Acts; or under any of such Acts, in which the trust estate, or fund, to which the proceeding relates, shall not exceed the amount or value of £500;
>
> "In all proceedings relating to the maintenance and advancement of infants in which the property of the infant shall not exceed in amount of value £500."

VI.—Defective state of Irish as compared with English Law.

Has Irish law been allowed to fall behind English law in the structure of the law itself?

Yes; it is commonly overlooked that besides the union of the several courts in the High Court of Justice, the Legislature took occasion, on the Judicature Act of 1873 passing, by section 25 to amend and declare the law to be hereafter administered in England upon no less than eleven important branches of law, viz.: (1) Administration of assets of insolvent estates: (2) Statutes of limitation inapplicable to express trusts: (3) Equitable waste: (4) Merger: (5) Suits of possession of land by mortgagors: (6) Assignment of debts and dues in action: (7) Stipulations not of essence of contracts: (8) Injunctions and receivers: (9) Damage in certain cases: (10) Infants: and (11) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of common law, with reference to the same matter the rules of equity shall prevail.

In all these important particulars the law as administered in England became modified on the 1st of November, 1875. Now whatever difficulty there may be in settling jurisdiction of courts or duties of officers, why this section, embodying these large and beneficial amendments in the structure of the law itself, should not be at once extended to Ireland, I cannot conceive. So far back as 1874, in the Queen's Speech, Her Majesty said:—

> "You will probably be of opinion that the rearrangement of the judicature, and the blending of the administration of law and equity, which were effected for England by an enactment of last session, ought on the same principles to be extended to Ireland, and you will be asked to devote some portion of your time to the accomplishment of that object."

I have dwelt on the whole subject of this section but as to its special bearing upon what is before the Committee. I would mention that the great cause of length of deeds, and complicated and subtle conveyancing, is guarding against defects and hardships of the law, and nearly every improvement in the structure of the law itself has

a direct effect on the shortening and simplifying of conveyances, and in this small proprietors are specially interested.

Can you give any other illustration of Irish Law being behind English Law?

The English ante-union statutes are all revised, and the Imperial statutes to 1867. The revision of the Irish statutes does not come down later than 1494, with 40 statutes admittedly requiring revision prior to that date.

VII.—Want of extension of Land Transfer Act of 1875 to Ireland.

Are not titles in Ireland freer from legal difficulties than titles in England?

They are to some extent, but there is, I think, a great misapprehension as to the extent to which they are freer, and consequently as to the urgency of applying English reforms on this subject to Ireland.

Owing to Lord Romilly's Act of 1850 (13 & 14 Vic. c. 72) never having been brought into operation, and owing to the placing of estates sold in the Landed Estates Court upon the record of title having been made optional, the only cases in which the parliamentary title created by the Landed Estates Court has been preserved, is the very small amount of property upon the record of title, only £2,073,000 since the passing of the Act in 1865.

In all other cases the Landed Estates Court conveyance is only a root of title, and the subsequent title is, under the old law, just like property in a county in England with a local registry.

Even the conveyances from the Church Commissioners do not confer an absolute title, and so cannot be placed on the record of title.

The great mass of property in Ireland is really in the condition described by Mr. Senior, in his evidence before the select committee of the House of Lords on the burdens on land. He says :—

> (Q. 5,409.) "He is aware that the system of conveyancing imposes great difficulties, great expense, great delay, and great uncertainty upon the transfer of land."

Then using the word "marketable" in the legal sense of that term, meaning a title without a flaw, he says :—

> "There is scarcely a title that is marketable, there is scarcely a title that is not subject to some legal doubt."

What effect has this state of facts upon sales by landlords to tenants?

Such sales are just the cases where the landlord would refuse to incur the expense for converting good into absolute title, while the tenant buying to hold on, and not to soon sell again, and knowing the family history and character of the landlord, would be practically safe in accepting good title, though not absolute.

All such purchasers are excluded, however, from the benefit of the Record of Title, and forced back on registry by memorial.

One of the fatal defects of the Irish Record of Title is that if the owner be once persuaded to reject the recording within seven days after conveyance, he could not put it on ever afterwards, without having the intervening title made absolute, and incurring a heavy stamp duty for doing so.

This has arisen from the very narrow scope of the Record of Title Act, which recites only that "it was expedient that titles conferred by the Landed Estates Court should be kept from complication."

The sales I am referring to are just the cases that would gain most by the extension to Ireland of the part of the Land Transfer Act of 1875 which allows qualified and possessory titles to be registered.

VIII.—Burdensome Costs of Transfer of Land capable of easy removal.

Can you give any illustration of the uncertainty of costs of voluntary sales?

Yes. I am managing a sale to a tenant, where the landlady is married and resides in Scotland. The cost of getting her execution in Scotland had to be provided for. To a similar deed last year this single act came to £7 4s. 10d.; of this cost no less than £2 6s. 0d. was stamps and fees; £2 12s. 10d. was for the remuneration of two special commissioners in Scotland, to get her signature, and £2 3s. 8d. was the costs of the lady's solicitor, putting all the machinery in motion to appoint special commissioners and register her acknowledgment.

This fixed charge, independent of value, for every deed executed by a married woman in England or Scotland, is wholly inconsistent with the policy of the stamps on conveyances, they are in some cases, 6d.

It is a serious impediment to selling to other tenants when the signature of a lady to each deed costs £7 4s. 10d. It is too inconsistent with the transfer of stocks and shares, which can now be made by married women without any cost or charge.

If the examination of married women be retained, it should be before the permanent public local court officials in each county, paid by salary, and not before temporary special commissioners selected by the parties interested, at great expense. The duty to be discharged in consideration of the stamp already charged by the state on deeds free of cost, or if not, by a small additional stamp, on the same principles of bearing some proportion to the value at stake.

Are there any other exceptional costs that interfere with the sale of land to tenants by agreement?

The cost of searches for judgments and charges registered in the Judgment Office, is a serious burden.

In a recent case of sale to a tenant, when examining the costs I came to registration :—

	£	s.	d.
For judgment search against Mrs. —— ...	0	3	4
Fee on same, ...	0	13	4
Law fund, ...	0	15	0
	1	11	8
Like against Mrs. ——	1	11	8
	£3	3	4

I called attention to this burden so far back as 1849, in evidence before the Irish Poor-law Committee of that year, and a great step was taken by the Judgment Mortgage Act of 1850 to put an end to judgments as charges on lands. The inadequacy of the remedy is, however, indicated by the prevalence of judgment searches, such as I have indicated—2,454 negative searches in the year, 1,532 requisitions for liberty to search, and 7,920 stamped certificates issued.

The proceedings which still render searches necessary are the following, with the number of proceedings registered in 1875:—

	Number Registered.
1. Acceptances of office, ...	none
2. Inquisitions, ...	none
3. Statutes, ...	none
4. Judgments at suit of the crown, ...	none
5. Civil bill decrees for poor rates, ...	none
6. Rules and orders, ...	none
7. Decrees, ...	10
8. Crown bonds, ...	17
9. Recognizances, ...	185
10. Lis pendens, ...	572
11. Judgments before 15th June... ...	1,216

Of the judgments before 15th June, 1875, 1,198 were re-registries —and the people who have registered every five years since 1850, must know the lands they want to charge, and if so it would be a slight inconvenience to require them to record their claim as permanent caveat, at either the Registry of Deeds' Office, or the Record of Title Office, and to relieve them from the burden of re-registry.

In the case of *lis pendens*, people must know the lands about which the *lis pendens* exists, and they ought to be required to register at once in the Deeds, or Record of Title Office, being relieved in like manner from the obligation to re-registration.

The recognizances are few in number, only 185 in the year, and nearly all for the Court of Chancery, and as the security has to be approved of, there could not be the slightest difficulty in recognising the property offered as security, and to have the recognizance registered in the Deeds or Record of Title Office.

For crown bonds, in like manner, as the security ought to be investigated, there can be no difficulty in similar registrations. The other proceedings are so rare that it is most unreasonable to keep up the burden of searching, when it could be all obviated by registering caveats in the Deeds or Record of Title, instead of Judgment office.

Does the Law of Judgments in Ireland differ from the Law of Judgments in England?

The English and Irish Law and Chancery Commissioners, in their Second Report, in 1866, state that

> "They found the Law of Judgments of the Superior Courts of Common Law in Ireland, and the practice, process, and procedure therein, to be in a very complicated and unsatisfactory state, and to differ in some material respects from the law of England on that subject."

They trace this difference in the law back to the reign of Queen Anne, from the operation of the Penal Act of stat. 2 Anne, c. 6 (Irish), passed in 1703, and the Act for the Registration of Deeds, 6 Anne (Irish), c. 2 (1707). They state as the result of their inquiries,

> "That it appears that while in England the tendency of the whole course of legislation, down to and inclusive of the Act of 1864 (27 and 28 Vict. c. 112) has been to reduce a judgment to a step in the course of procedure for the recovery of a debt, in Ireland, on the other hand, the legislation down to and inclusive of the Record of Title Act, 1865, has been in the opposite direction, and judgments affect land in Ireland prior to and entirely independent of execution."

Now I think when a defect in the law is pointed out by an influential Royal Commission in terms like this, and above all when the cause of the defect is in part traced back to the penal laws of the last century, instead of a delay of eleven years there ought to be the utmost promptness in giving Ireland the benefit of the latest English legislation on the subject.

IX.—Price Tenants can Offer depreciated by unsatisfactory state of Law as to Devolution of Landed Property at Death.

Is the sale of land interfered with by the complications arising out of the state of the law as to the devolution of landed property at death?

The law is in a very anomalous state, which drives farmers purchasing the fee into complicated wills and settlements, and so depreciates what they buy, and what other farmers can afford to offer for other land. Suppose a man to be possessed of agricultural land under £300 annual value, and to be living by it as a farmer, the devolution of this property on his death, so as to have his business carried on and his family provided and cared for, ought to be, but is not, independent of the tenure the property happens to be held by. Suppose he has one-third as fee-simple; one-third for a life or lives, whether renewable or not, that is freehold; and one-third leasehold from year to year; or if he die intestate, the fee-simple will go between his eldest son and his widow, she getting one-third for her life; the freehold to his eldest son alone, the widow getting nothing; the leasehold and the yearly tenancy, between the widow and all the children, the widow getting one-third, not for her life, but absolutely, and all the children sharing equally, and in that share the heir is allowed to come

in without bringing any part of the £200 a year he gets as heir into "hotch pot" or fund for division amongst all the children.

The estate rules for regulating the succession to tenant-right farms arose in part from this anomaly. The usual lease in tenant-right districts was three lives or 31 years; if the lives dropped first, the widow and all the children came in; if the years ran out first, the eldest son alone. There being thus no fixed legal rule for the succession to farms, some provision for the widow and younger children, on the one hand, and preventing actual equal division of the land itself on the other, was endeavoured to be secured by estate rules. On some estates the widow was favoured; on some, the eldest son; on some, the son apparently selected by the father by being associated with him in business.

A similar anomaly occurs in many Irish towns. The old parts are built on leases for lives renewable for ever, the new part on leases for long terms of years—a man's shop goes according to one law of succession, his dwelling-house if in the new part of the town according to another.

A great controversy has gone on for years as to what the law of succession should be. Now, the solution is, I think, to be found in the following principles sketched out by Mr. Gladstone as those on which the Land Act of 1870 was framed :—

> "We do not intend to approach legislation on the land tenure of Ireland, to give effect to this or that doctrine as to the mode in which the land is to be managed or cultivated" * * "We wish to be guided as far as we can be by experience; we wish to take the facts and circumstances of Ireland as we find them."

On this basis, I think, the law of successions for land used for farming purposes, can be best framed by taking the ordinary farmer's will (when no subdivision of the land itself is intended) as a guide. It never deprives the younger children of all provision; neither does it deprive the widow of provision, or leave it to accident. On the other hand, it rarely leaves the farm to be sold and the money to be divided. It endeavours to secure a provision for the widow for life only, and forfeitable, like Saxon free bench, on second marriage, and if no son has been associated with the management of the farm by the father, then it provides for the widow managing till some son comes of age, or if there be no son, till some daughter marries with her consent; the younger children to be maintained till of age, or married and then apportioned.

The way to carry this out is by something intermediate between the law of inheritance, the statute of distributions, and the ordinary usage of settlements of personal property. This would involve an administrator for realty, as in the case of personal property. The property to go amongst sons according to the law of inheritance, but charged with portions measured on the total value for younger children, according to statute of distributions, with power to widow of appointment of shares. Widow to have a third of income until remarriage or death, and if entitled till death, power of appointment of her third of capital value amongst descendants. Widow to have power of selection which daughter is to succeed in case of co-heiresses;

others to have portions instead of succession. If sons of same widow, all minors at father's death, widow (not marrying again) to have power of selection amongst them which to succeed to the possession, subject to portions for the others—power to be exercised before youngest attains twenty-one.

Why do you limit your suggestions to agricultural and pastoral holdings, and £300 a year?

The Land Act, which the committee are considering, draws a distinction between agricultural and pastoral holdings, and other holdings, and upon investigating the matter, I have come to the conclusion that distinction is not accidental and depending on this statute, but a deep distinction in human affairs, and especially as connected with succession at death.. The usual succession to farms is different from that of houses and manufactories in towns, on the one hand, and from the estates of the landed gentry on the other.

The succession to manufactories and houses more clearly corresponds to the statute of distributions. Business can be carried on in partnership, and sale at death is far more frequent in the case of houses and manufactories than in the case of farms.

Far greater, if not absolute equality in portioning children, takes place in both manufactories and farms, than amongst the landed gentry. In farms, from the difficulty of partnership or shares, and from the strong family attachment to the single residence, there is a strong effort against sale at death, and an equally strong effort against actual division. The desire is to keep the family together till reared, and then place them out; the mother succeeding if the children are minors, and some son, if of age and capable of carrying on the business, on the terms of providing for mother and other children.

The statute of distributions does not suit farmers as well as manufacturers; it is creating difficulties in tenant-right districts.

The usual succession amongst landed gentry, with the jointure and portions for younger children, to modify the defects of primogeniture and dowers, is suited to estates of people living entirely on rents, with family mansions and hereditary titles to keep up.

Now as we have three laws of succession depending upon the accidents of tenure, I think we might have three laws of succession resting on real facts: (1) for farmers (whether tenants or owners), taking £300 value as limit, to secure against entrenching upon landed gentry: (2) for land used for houses in towns, or villas, or for manufactories: (3) for landed gentry, including income of £300 a year and upwards from the rent of land.

As English law rests on freedom of bequest, it follows as a logical consequence, that the law of succession should differ when amongst large classes of people there are marked differences in the usual dispositions by will, founded upon large and well ascertained facts in human nature.

The struggle that has gone on for forty years as to the law of succession, has arisen from not appreciating these circumstances. The only idea thought of as a substitute for primogeniture, is the statute of distributions. The difficulty of reducing all affairs to a single rule

seems to be overlooked; the statute of distributions which it is sought to make universal, has never yet superseded the custom of London and of the province of York.

I find that the statute of distributions entirely fails to meet the usage of succession under the Ulster tenant right custom. It occurs to me, therefore, that it would be wiser not to attempt or insist on uniformity, but to tolerate diversity of usage and custom.

The attempt in France to enforce uniformity, by compulsory equal division, has not led to a stable state of political affairs. Would it not be better for the landed gentry, on the one hand, not to force primogeniture and dower, with settlements and entails on farmer proprietors, when such complications are a grievous and oppressive burden to them? Would it not be better for the manufacturers and owners of houses and villas to be satisfied with the statute of distributions being applied to their properties, without insisting on its being, against the will of the great body of the landed gentry, applied to all landed property?

Why, again, should not the farmers, whether tenants or proprietors, have a uniform law of successsion suited to farmers' habits and views —founded on the model of the best usage and arrangement that is usually adopted? Why should they be driven into entails, on the one hand, or forced sales at death by the executor, on the other?

I throw out these views in all diffidence, as the result of seven years' watching of the working of the Irish Land Act, and of the questions it has given rise to. I may mention that I am much influenced in this view by the history of the Irish land legislation itself.

From the first Bill on the subject by Mr. Sharman Crawford, in 1835, till 1870, a vast number of attempts at legislation were made. Of these, all the simple remedies broke down, and as the discussion went on, the true complication of the question came out, and it was solved by taking the usage and actual arrangements as the basis of legislation. What is wanted to complete the measure is to have the succession to a farmer's land, whether he be a tenant or a proprietor, dealt with in the same spirit and the same manner as the tenant-right usages; and the compensation for improvements, and compensation for disturbance involved in them, have been so successfully dealt with in the Land Act of 1870.

What advantages would the reforms you suggest have on yearly tenancies under the Land Act?

The statute of distributions providing for an immediate sale does not carry out the usual mode of succession under the tenant-right custom; on the other hand, it is impossible to revive the landlord's or agent's jurisdiction, by which the usual succession was practically though roughly worked out.

At the time the Land Act was pending, measures for settling the law of succession were also pending, and hence this part of the Irish land question was not completely dealt with.

What I have sketched out would suit succession to farmers, whatever the tenure.

If a satisfactory law of this kind were established, not following the compulsory equal division as in France, but based on a combination of analogies in our own law, and confined to the holdings below £300 a year, I think a great deal of the fears and prejudices against altering the law so as to facilitate the creation of small freehold properties would be removed.

NOTE.

With respect to the small purchases by agreement, only 44 (see p. 7), the economic problem why so little of the £34,000,000 deposits and cash balances lying at 1 per cent. in the Irish Joint Stock Banks, has been lent to farmers, is a more remarkable one than why so little of the £700,000, at 3½ per cent. has been lent. See *Complaints against Bankers in Ireland, as to Saved Capital of Ireland not being lent to a sufficient extent to the Farmers and Small Owners of Land*, a paper which I read before the Statistical and Social Inquiry Society of Ireland, 21st December, 1875.—*Journal*, vol. vi., Part xlix., p. 523.