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RAILWAY
COMPENSATION
ESTATES
ASSESSMENT
MORRIS

Cw. U.K.

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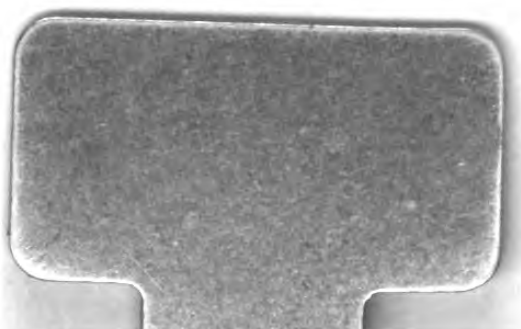
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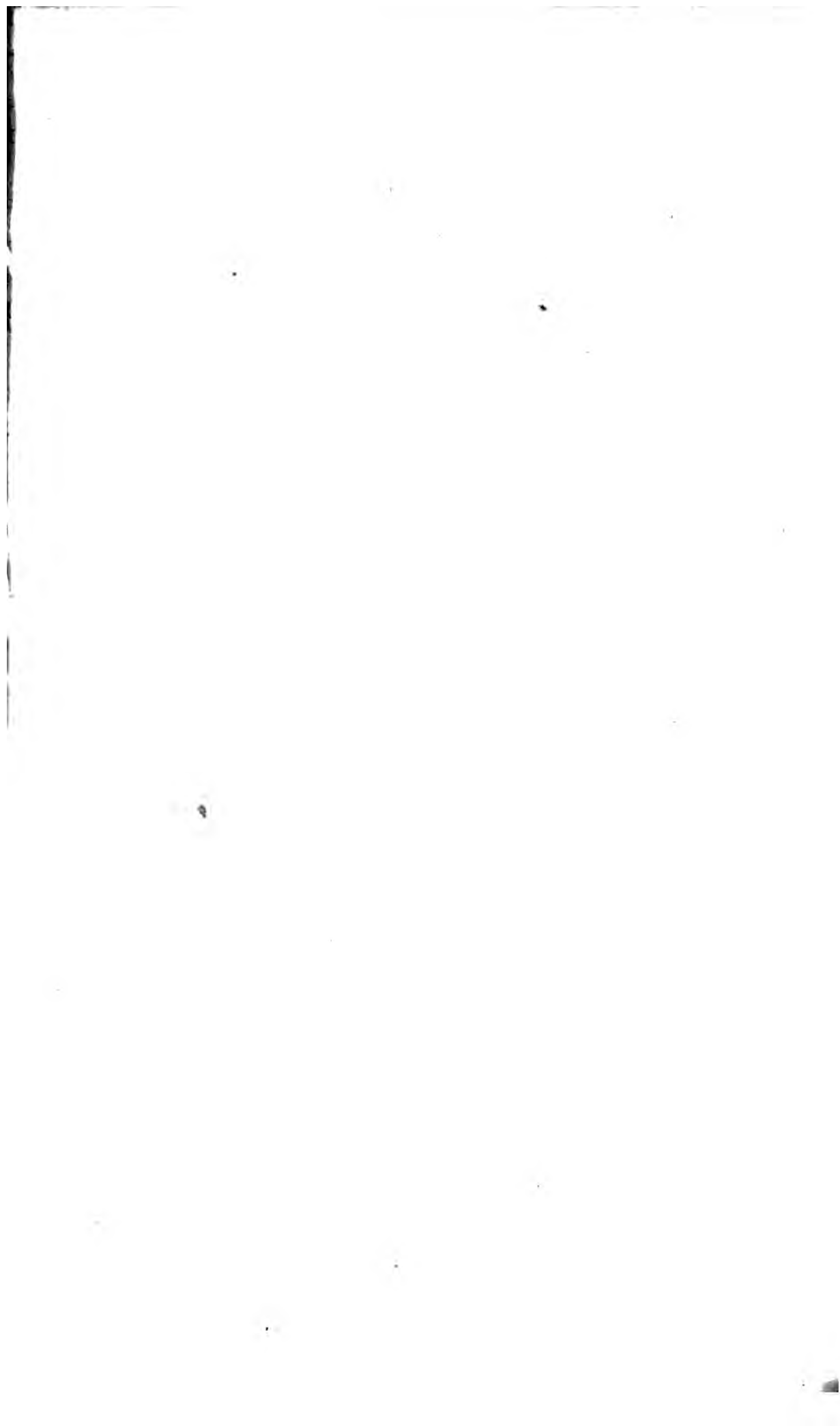
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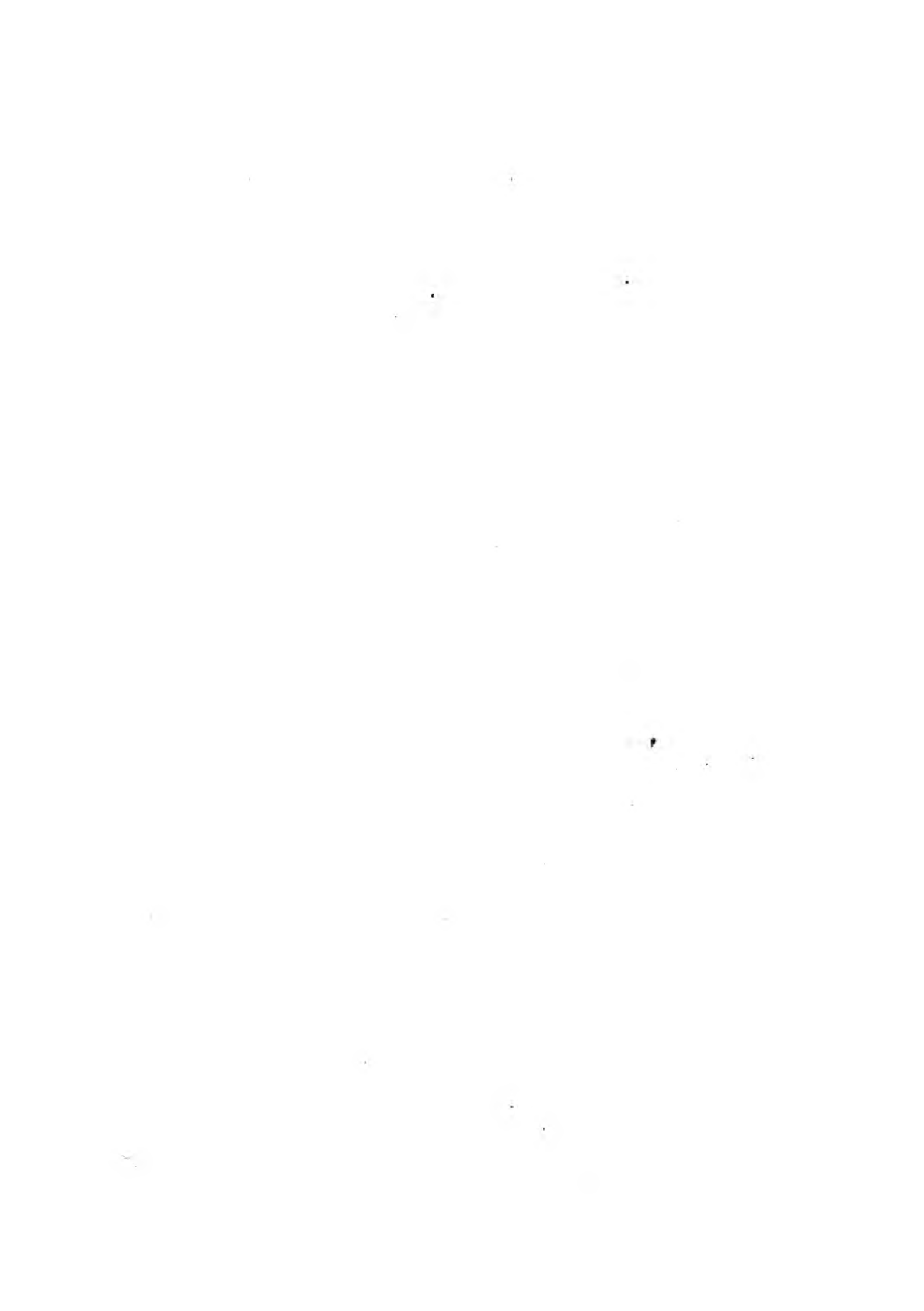
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A CLUE
TO
RAILWAY COMPENSATION.



E
PENSATION,
ESTATES,
ASSESSMENT.

MORRIS.



ILLUSTRATED
BY
TABLES
AND
EXAMPLES.

LONDON:

N, MARSHALL, AND CO.,
MERCHANTS' HALL COURT, E.C.

1863.

1863

MERCHANTS' HALL

MERCHANTS' HALL

1863

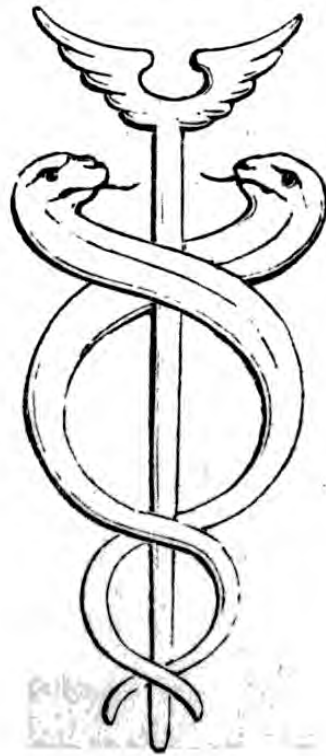
“Let me be umpire in this doubtful strife.”

KING HENRY VI.

A CLUE
TO
RAILWAY COMPENSATION,
THE VALUE OF ESTATES,
AND
PAROCHIAL ASSESSMENT.

BY
THOMAS MORRIS.

A
POPULAR
DISCUSSION
OF THE
SUBJECT.



ILLUSTRATED
BY
TABLES
AND
EXAMPLES.

LONDON:
SIMPKIN, MARSHALL, AND CO.,
STATIONERS' HALL COURT, E.C.

1863.

HARRILD,  PRINTER, LONDON.

P R E F A C E.



It has often occurred to me that certain information on the subject now treated of might be so conveyed as to find, without professing or attempting to supersede any existing works, a welcome on grounds to which those works lay no claim. Expositions, afforded by the exclusive employment of tables, are too abstruse, and volumes embracing all the incidents of property are too copious, for persons intent upon sales and valuations.

The compass of the present essay confines it chiefly to the results of practical

observation, and though most inferior where most my own, the introduction of much collective matter must have impaired its originality.

Some points of practice, to which I have felt bound to take objection, have not failed to provoke condemnation elsewhere.

The tables given may be regarded as a condensed, and very brief epitome, of the class used in valuations. To owners and students they may serve for approximate solutions, and the able practitioner, less dependent upon external aids, may find the book a convenient pocket companion.

The small group of authorities to which I am indebted, includes among architects the names of Elmes¹ and Inwood;² of

¹ "A Practical Treatise on Ecclesiastical and Civil Dilapidations." By James Elmes.

² "Tables for the Purchasing of Estates." By William Inwood.

mathematicians, De Morgan¹ and Willich;² of lawyers, Gibbons,³ Woolrych,⁴ Wordsworth,⁵ and Lord St. Leonards.⁶

It is hardly necessary to say that although dealings with companies have been more especially kept in view, the contents are, with a few obvious modifications, perfectly applicable to ordinary transactions.

Having, in 1861, expressed an opinion that railways would prove instrumental in driving prisons, union houses, and lunatic

¹ "An Essay on Probabilities." By Augustus De Morgan.

² "Popular Tables." By Charles M. Willich.

³ "A Treatise on the Law of Dilapidations and Nuisances." By David Gibbons. "The Law of Fixtures." By the same Author.

⁴ "A Practical Treatise on the Law of Window Lights." By Humphry W. Woolrych.

⁵ "The Law of Compensations by Arbitration and by Jury." By Charles Wordsworth, Q.C.

⁶ "A Handy Book on Property Law." By Lord St. Leonards.

asylums, to districts more appropriate than the centre of a great commercial capital; and that the generalization of poor-rates would prove a desirable aid to social advancement, I cannot but regard as a consistent step the "Union Assessment Committee Act" of last year, in relation to which a few remarks are offered at the close of the volume.

THOMAS MORRIS.

12, REGENT STREET, ST. JAMES'S,
October, 1863.

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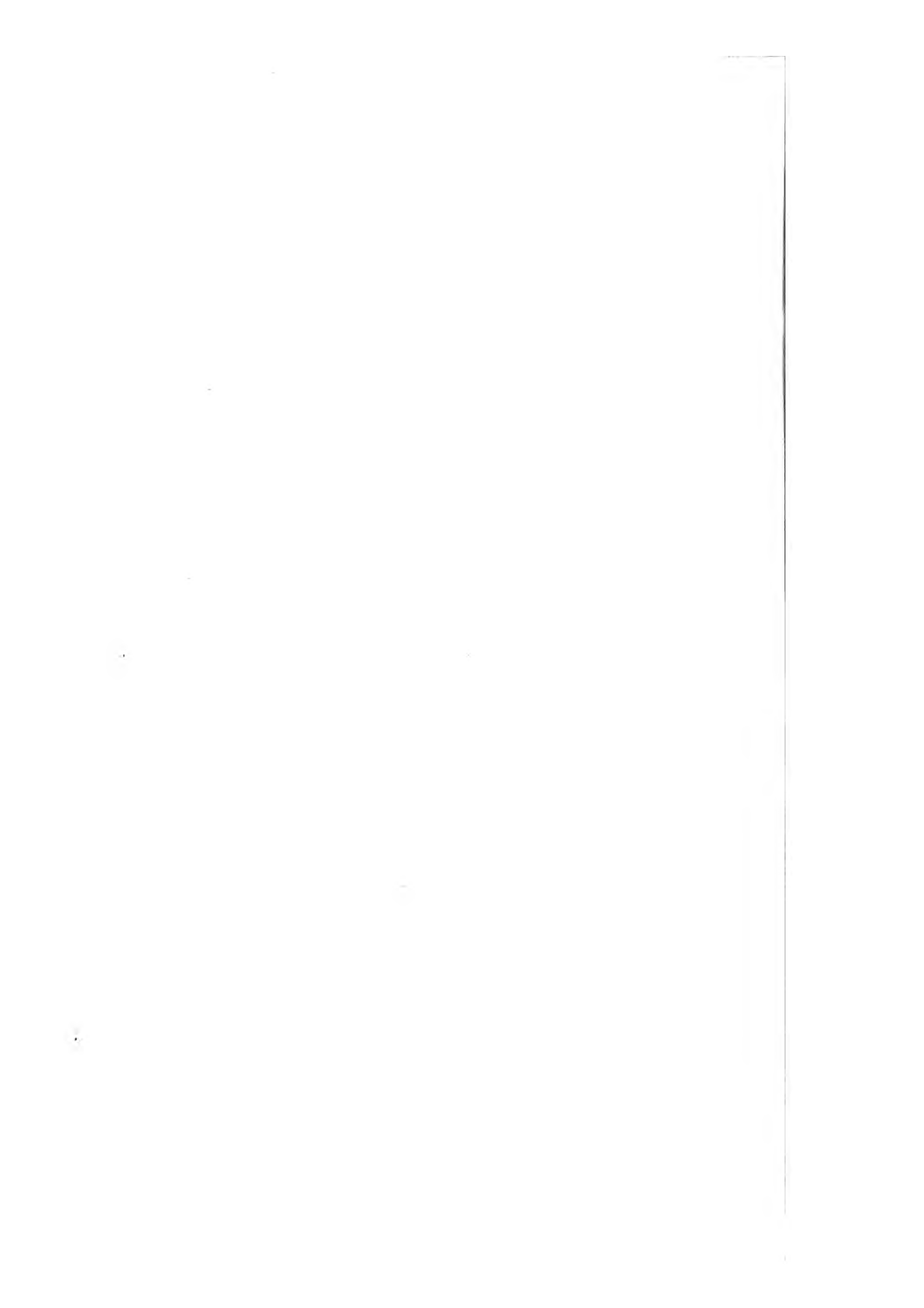
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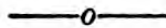
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A CLUE TO
RAILWAY COMPENSATION.



RESULTS OF SCIENCE.

COMMERCIAL enterprise assumes so wide a scope in this country, that whatever pertains to public convenience, and affords a reasonable prospect of gain, is sure to find ready support. Is the earth to be encircled by a metallic thread, conveying, with timeless agency, the intangible elements of thought; or, is the more prosaic, but not less arduous, task to be performed, of winning back to usefulness and safety "The Goodwins," that "very dangerous flat, and fatal," it is by skill, capital, and enterprise, compacted into a joint-stock company, that we must look for the accomplishment.

Harbours, docks, canals, turnpike-roads, toll-bridges, are thus, like the supply of gas and water, for the most part under private management; and although the face of the country has been largely and suddenly modified by the railway system, not a mile of such constructions belongs, in strictness, to the public. Where a people indeed are so prompt to supply their own requirements, countenance and control are more beneficial and desirable than active interference on the part of the Government.

It must be obvious that were the achievement of these gigantic works dependent upon the spontaneous accordance of innumerable interests, their execution would be impossible, and their undoubted influence on the national welfare be precluded. For this reason it is politic that promoters of works of a generally beneficial character should be fortified by Parliamentary authority for the acquisition of such land as may be actually necessary for their purpose, when the general process of negotiation and agreement fails; but the power of dealing compulsorily with the property of unwilling sellers is nevertheless so extreme and exceptional, that where individuals are forced into dealings with parties of, in most

cases, very superior power and experience, the strongest safeguards for the rights of ownership are demanded. Companies have not the credit of a higher moral standard than people in general, and it is impossible to withdraw a vigilant and jealous attention from projects that, however desirable in ultimate effects, are known to be based upon the simple and sordid principle of self-interest.

But without some strong incentive to action, the energies of mankind would lie unawakened, the treasures of the earth unexplored; and the aids to an elevated civilization, contributed by the inventive minds and toil-strained sinews of the present, be denied, as a rich bequest, to future generations.

LAW.

THE spirit of the law conceives "ample room and verge enough" for every man to enjoy his own, without prejudice to or from his neighbour; but experience shows this to be a merely Utopian hypothesis, and constant watchfulness is practically necessary to repel the subtle and insidious workings of usurpation. Your adjoining owner, on one side, builds close up to your land, so that you cannot dig without danger to his building; another makes windows, which would be rendered useless were you to build as closely as he has done to your boundary. Such acts, although not originally lawful, acquire substantive legality by lapse of time, and under the designation of "easements," are recognized by statute. Another destroys your quiet by ceaseless noises, and there are those who, by the creation of pernicious effluvia, render your fields unfruitful, and impregnate the atmosphere with poisonous gases—these

are to be dealt with by the law of nuisances. Then, if you have been so fortunate as to avoid such perils, a joint-stock company may come, with power to "take" your land, and a readiness to pay as much short of the value as you can be induced to accept.

Legal rules, being based upon the presumed existence of facts, are dependent for their application on the evidence of circumstances. Hence, in questions of property, the experience of the surveyor is commonly appealed to, and that surveyor will work with increased usefulness, power, and effect, whose labours are guided by some attention to the principles of law. Elmes not only studied, but wrote upon, architectural jurisprudence and dilapidations; and a very able essay by Mr. Joseph Woods, "cleared the way," says Elmes, "from many of its difficulties; and fixed, in a great degree, the practice of valuing and assessing them (dilapidations). I took it constantly for my guide, and in several litigated cases was borne through against men of larger practice, and more established name than myself." But it is not intended here to advocate the infraction of a professional province, and Elmes explains that when he wrote, comparatively few decided cases had

been recorded, partly as it seemed from the indifference of legal reporters, and more so, from many disputes having been made subjects of reference out of court.

It was recently mentioned by Sir Fitzroy Kelly that the law of real property has to be gleaned from six hundred, or possibly eight hundred enactments, and the ablest surveyor might soon find himself in an inextricable labyrinth, were he to assume the character of a legal expositor. His true position is that of a reader, not an author—of a disciple, not a teacher, but “it is unquestionably a matter of profound regret that so large a proportion of contracts respecting estates should lead to litigation;” and all, directly or indirectly, engaged in the transfer of property should, without presuming on the dangerous acquisition of “a little knowledge,” be skilled to avoid the controversies and embarrassments that little knowledge would be sufficient to prevent.

Particular statutes become rapidly obsolete by changes springing almost daily into existence, and the wonderful innovations in locomotive and viatorial science have given rise to a multitude of

private acts, and to a branch of legislation so novel, original, and distinct, as to call for analysis and investigation upon grounds of its own.

The Parliamentary power of taking land is conveyed by special acts, each declaring the peculiar object for which it is obtained, and to the "special" act are annexed certain general statutes relating to such proceedings, viz. :—

- 1 The Lands Clauses Consolidation Act, 1845.
By which the provisions usually inserted in statutes, authorizing the taking of lands for objects of a public nature, were embodied in a single act.
2. The Railway Clauses Act, 1845. By which the powers and provisions of Railway Acts are rendered uniform.
3. The Lands Clauses Amendment Act, 1860.

These have been collected, and annexed to a serviceable practical commentary, by Mr. Wordsworth, Q.C., Member and Counsel of the Institution of Civil Engineers, who brings to the subject, in addition to great forensic learning, an experience gained by acting as Sheriff's Assessor, and practically exercising in that capacity the duties of a judge in civil cases.

KINDS OF
PROPERTY AFFECTED
BY
RAILWAYS.

THE estates chiefly affected by structural works are land, buildings, easements, fines, profits, good-wills, fixtures, and special interests. The tenures are freehold, copyhold, leasehold, life, yearly, and at will. Land alone constitutes real property, and imparts an influence above all other forms of wealth, connects its possessor directly with the soil, and brings him into a natural affinity with the fixed, hereditary magnates of the state.

The freehold is termed the fee, or fee simple ; but into the question of heirship, or line of descent, it is not our purpose to enter. Viewed as a form of occupation, the perfect immunity afforded by the freehold, necessarily imparts to

property so enjoyed the highest degree of eligibility.

Copyholds of inheritance, and for lives, with or without the right of renewal, have hitherto been considered freeholds of a secondary order, being subject to fines, arbitrary or certain, heriots, quit rents, and similar manorial charges.

The customs are of very remote origin, and the heriot is the present form of the Saxon heregild. It consists of a payment, in money or kind, to the lord of the manor at the death of the copyholder, or at the alienation of the property, by which a new heirship, or course of inheritance, is established. Experience seems to have settled the practice of holding these fines equal to one certain every seven years; but in some manors, fines are payable on the death of the lord as well as that of the copyholder, which proportionately increases the frequency of their occurrence.

TABLE 1.

FOR THE EXTINGUISHMENT OF HERIOTS OR FINES CERTAIN AT INTERVALS OF 2, 3, 5 AND 7 YEARS, AND AT 3, 4 AND 5 PER CENT. INTEREST ON THE PURCHASE MONEY.

Interval of Years.	Years' Purchase 3 per Cent.	Years' Purchase 4 per Cent.	Years' Purchase 5 per Cent.	Interval of Years.
2	16.420	12.255	9.756	2
3	10.784	8.009	6.344	3
5	6.278	4.616	3.619	5
7	4.350	3.165	2.456	7

Quit-rents, being the small reserved rents, paid in token of manorial subjection, are of high capitalization value; and though in the arrangements between lords of manors and their copyholders, associations of immemorial subsistence may have some influence on the case, the enfranchisement usually ranges from twenty-eight to thirty years' purchase, to which there is added a consideration for the minerals, though this is in many cases a merely nominal sum.

The peculiarities of copyhold tenure are being rapidly extinguished by statutes of recent date, the provisions of which are carried into effect under the superintendence of a board of commissioners. Upwards of four thousand enfranchisements and commutations had been completed at the end of 1862, and the consideration had amounted to nearly £700,000 in money, £5000 a year in rent charges, and 1400 acres of land.

By these laws, and the Universities and Colleges Estates Acts, more simple and satisfactory modes of holding land will be substituted for the less perfect forms hitherto in use, and under the operation of which ecclesiastical estates have especially suffered. "The enfranchisement will not affect the rights of either party to the mines and minerals in the lands enfranchised, or in any other lands, and the tenant will still be entitled to his former commonable rights, although he has obtained the freehold of his land."

LIFE ESTATES.

LIFE interests may be enjoyable for the period of the holder's own life, or that of another, or may be contingent on events in which several lives are combined.

Since Dr. Halley, the contemporary and friend of Newton, directed attention to the statistics and probabilities of human life, the subject has been a constant theme for the mathematician, and the data, originally very imperfect, have been so continuously improved by observation, and rendered more practically available by science, that reliable information is now generally accessible, while means for the future acquisition of particulars are ensured by the new system of registration. Modern observations indicate a greater equality of life than early accounts represented, and this result may be due, in part, to more accurate modes of computation and record, and is perhaps yet

more largely attributable to the progress of sanitary observances, education, habitual temperance, vaccination, and other means for the prevention and treatment of disease.

The Carlisle table formed by Mr. Milne, from the observations of Dr. Heysham, on the mortality of that town in the years 1779 to 1787, which have been singularly corroborated by later authorities, gives a high rate of vital stability. The ages reached by 10,000 persons are indicated by Table 2.

TABLE 2.

THE RESULTS OF 10,000 BIRTHS, SHOWING THE NUMBERS LIVING AT EVERY PERIOD OF TEN YEARS, AND THE EXPECTANCY OF LIFE AT DIFFERENT AGES.

Age.	Number Living.	Expectancy in Years.
Birth.	10,000	38·72
5	6797	51·25
10	6460	48·82
20	6090	41·46
30	5642	34·34
40	5075	27·61
50	4397	21·11
60	3643	14·34
70	2401	9·18
80	953	5·51
90	142	3·28
100	9	...

The table of approximate equivalents between life tenures and leases for fixed terms, shows some remarkable contrasts with the days of Henry VIII., when corporations were empowered to grant leases for three lives, or twenty-one years!

Since that time the practice of leasing upon lives has become common, and is accompanied in some instances with the right of renewing each life as it drops, and in others with such a privilege during a specified term only, as by a lease for years, should either A, B, or C so long live; but the working of the Ecclesiastical Commission with episcopal and capitular property, and the ability recently given to universities and colleges, will bring into future action a more equable and certain mode of leasing.

TABLE 3.

SHEWING THE EQUIVALENTS OF LIFEHOLD AND LEASEHOLD TENURES ACCORDING TO THE CARLISLE TABLE OF MORTALITY.

AT 3 PER CENT. INTEREST.

Age.	1 Life equal to a Lease for Years.	2 Joint Lives equal to a Lease for Years.	Longest of two Lives equal to a Lease for Years.	Longest of three Lives equal to a Lease for Years.	Age.
10	43	31	57	64	10
15	40	28½	53	59½	15
20	37	26	49	55	20
25	34	23½	45	50½	25
30	31	21	41	46	30
35	28	19	37	41¾	35
40	25	17	33	37½	40
45	22	15	29	33¼	45
50	19	13	25½	29	50
55	16	11	22	25	55
60	13	9	18½	21	60
65	10½	7	15	17¼	65
70	8¼	5	11½	13½	70

TABLE 3.

SHewing THE EQUIVALENTS OF LIFEHOLD AND LEASEHOLD TENURES ACCORDING TO THE CARLISLE TABLE OF MORTALITY.

AT 6 PER CENT. INTEREST.

Age.	1 Life equal to a Lease for Years.	2 Joint Lives equal to a Lease for Years.	Longest of two Lives equal to a Lease for Years.	Longest of three Lives equal to a Lease for Years.	Age.
10	34	27	53	61	10
15	32	25	49	56½	15
20	30	23	45	52	20
25	28	21	41½	47½	25
30	26	19	38	43	30
35	24	17	34½	39	35
40	22	15	31	35	40
45	20	13	27½	31	45
50	17½	11	24	27	50
55	15	9½	20½	23½	55
60	12½	7¾	17	20	60
65	10	6¼	14	16½	65
70	7½	4¾	11	13	70

LEASES.

LEASEHOLD interests may exist in every kind of property, and be of the most beneficial and secure character, or of the most precarious and uncertain description; conditions which are dependent on the comparative receipts and liabilities, and on the period of continuance, but all are subject to cessation by the course of time, or the occurrence of circumstances, sure at some period to happen. "A common lease," says Lord St. Leonards, "is called a chattel real, and forms a part of the owner's personal estate, and is not deemed real estate."

Leases possess the essential character of terminable annuities. The capital is no longer separated by any obvious distinction from the interest, but each annual payment contains an instalment of the capital; and as every such instalment is paid, the interest thereupon is discontinued, so that the part of an annuity applicable to the repayment of capital, becomes larger in proportion as the amount necessary for the payment of interest decreases. It would be found, for ex-

ample, in the table for buying leases, which shall by the time they expire, have repaid the capital with interest at 5 per cent., that £100 a-year for three years, is worth £272 6s. 6d.

The £300 will not repay £272 6s. 6d., and three whole years of interest upon it (which would be £40 17s.), but the account must be kept in this way.

Purchase	£272 6 6
Five per cent. Interest	13 12 4
	<hr/>
	285 18 10
Deduct Annuity, 1st Year	100 0 0
	<hr/>
	185 18 10
Five per cent. Interest	9 5 11
	<hr/>
	195 4 9
Deduct Annuity, 2nd Year	100 0 0
	<hr/>
	95 4 9
Five per cent. Interest	4 15 3
	<hr/>
	100 0 0
Deduct Annuity, 3rd Year	100 0 0
	<hr/>
	£ 0 0 0

When part of a leasehold estate only is taken by a company, the rent of the parts alienated and retained must be respectively apportioned and

agreed to between the parties, and cannot be made the subject of arbitration. If agreement be impracticable, the amount must be settled by two justices, according to Section 119 of the Lands Clauses Act.

Leaseholds furnish a good practical means for the establishment of sinking funds; and they would probably stand higher in the market if covenants were framed with more equitable moderation. Arbitrary conditions serve only to strengthen a general prejudice, and should be resolutely discountenanced and rejected. In long tenures, where the interest of lessees is altogether paramount, it would seem but right to extend to them the power of enfranchisement lately given to copyholders.

Having in the following table preferred to represent the value of an estate of £1 per annum, for terms of years, in money rather than whole numbers and decimals, it may be convenient to append a table showing the decimal corresponding to every 3*d.* in the pound.

The decimal for every week in the year is also given.

TABLE 4.

SHEWING THE PRESENT VALUE OF AN ESTATE OF £1
 PER ANNUM FOR ANY NUMBER OF YEARS WHEN
 THE PERPETUITY IS RESPECTIVELY ESTIMATED AT
 35, 30, 25, 20, AND 15 YEARS PURCHASE.

Term of Years.	Perpetuity 35 Years, or £2 17s. 2d. per cent.	Perpetuity 30 Years, or £3 6s. 8d. per cent.	Term of Years.
	£ s. d.	£ s. d.	
1	0 19 5	0 19 4	1
2	1 18 3	1 18 0	2
3	2 16 7	2 16 2	3
4	3 14 5	3 13 7	4
5	4 11 8	4 10 8	5
10	8 11 3	8 7 6	10
15	12 0 6	11 13 6	15
20	15 3 3	14 8 3	20
25	17 17 0	16 15 3	25
30	20 2 0	18 15 3	30
35	22 1 1	20 9 3	35
40	23 15 0	21 18 0	40
45	25 4 7	23 2 4	45
50	26 10 3	24 3 3	50
55	27 12 7	25 0 10	55
60	28 11 11	25 15 10	60
65	29 8 9	26 8 8	65
70	30 3 5	26 19 4	70
75	30 16 1	27 8 6	75
80	31 7 1	27 16 3	80
85	31 16 9	28 2 10	85
90	32 5 0	28 8 5	90
95	32 12 2	28 13 3	95
100	32 18 6	28 17 4	100
Perpetuity.	35 0 0	30 0 0	Perpetuity.

TABLE 4.—(Continued.)

SHEWING THE PRESENT VALUE OF AN ESTATE OF £1
PER ANNUM FOR ANY NUMBER OF YEARS WHEN
THE PERPETUITY IS RESPECTIVELY ESTIMATED AT
35, 30, 25, 20, AND 15 YEARS PURCHASE.

Term of Years.	Perpetuity 25 Years, or £4 per cent.	Perpetuity 20 Years, or £5 per cent.	Perpetuity 15 Years, or £6 13s. 4d. per cent.
	£ s. d.	£ s. d.	£ s. d.
1	0 19 3	0 19 0	0 18 9
2	1 17 9	1 17 2	1 16 3
3	2 15 6	2 14 6	2 12 9
4	3 12 8	3 10 11	3 8 2
5	4 9 0	4 6 7	4 2 8
10	8 2 3	7 14 5	7 2 6
15	11 2 4	10 7 7	9 6 0
20	13 11 10	12 9 3	10 17 4
25	15 12 5	14 1 11	12 0 1
30	17 5 10	15 7 5	12 16 7
35	18 13 4	16 7 6	13 8 7
40	19 15 10	17 3 2	13 17 3
45	20 14 5	17 15 6	14 3 6
50	21 9 8	18 5 2	14 8 3
55	22 2 2	18 12 8	14 11 4
60	22 12 6	18 18 7	14 13 9
65	23 1 0	19 3 3	14 15 5
70	23 7 11	19 6 10	14 16 9
75	23 13 7	19 9 9	14 17 10
80	23 18 4	19 11 11	14 18 3
85	24 2 2	19 13 8	14 18 9
90	24 5 4	19 15 0	14 19 1
95	24 8 0	19 16 1	14 19 4
100	24 10 1	19 17 0	14 19 6
Perpetuity.	25 0 0	20 0 0	15 0 0

TABLE 5.

SHOWING THE DECIMAL EQUIVALENT TO EVERY 3*d.* IN
THE POUND.

<i>s. d.</i>	Decimal.	<i>s. d.</i>	Decimal.	<i>s. d.</i>	Decimal.
0 3	·012	7 0	·350	13 9	·687
0 6	·025	7 3	·362	14 0	·700
0 9	·037	7 6	·375	14 3	·712
1 0	·050	7 9	·387	14 6	·725
1 3	·062	8 0	·400	14 9	·737
1 6	·075	8 3	·412	15 0	·750
1 9	·087	8 6	·425	15 3	·762
2 0	·100	8 9	·437	15 6	·775
2 3	·112	9 0	·450	15 9	·787
2 6	·125	9 3	·462	16 0	·800
2 9	·137	9 6	·475	16 3	·812
3 0	·150	9 9	·487	16 6	·825
3 3	·162	10 0	·500	16 9	·837
3 6	·175	10 3	·512	17 0	·850
3 9	·187	10 6	·525	17 3	·862
4 0	·200	10 9	·537	17 6	·875
4 3	·212	11 0	·550	17 9	·887
4 6	·225	11 3	·562	18 0	·900
4 9	·237	11 6	·575	18 3	·912
5 0	·250	11 9	·587	18 6	·925
5 3	·262	12 0	·600	18 9	·937
5 6	·275	12 3	·612	19 0	·950
5 9	·287	12 6	·625	19 3	·962
6 0	·300	12 9	·637	19 6	·975
6 3	·312	13 0	·650	19 9	·987
6 6	·325	13 3	·662	20 0	1·000
6 9	·337	13 6	·675		

TABLE 6.

DECIMALS FOR EVERY WEEK IN THE YEAR.

Week.	Decimal.	Week.	Decimal.
1	·019	27	·519
2	·038	28	·538
3	·058	29	·558
4	·077	30	·577
5	·096	31	·596
6	·115	32	·615
7	·135	33	·635
8	·153	34	·654
9	·173	35	·673
10	·192	36	·692
11	·211	37	·711
12	·230	38	·731
13 or 3 Months.	·250	39 or 9 Months.	·750
14	·269	40	·769
15	·288	41	·788
16	·308	42	·807
17	·327	43	·827
18	·346	44	·846
19	·365	45	·865
20	·384	46	·884
21	·404	47	·904
22	·423	48	·923
23	·442	49	·942
24	·461	50	·961
25	·480	51	·981
26 or 6 Months.	·500	52 or 12 Months.	1·000

REVERSIONS.

REVERSIONARY or deferred interests presuppose the alienation of an estate for a fixed or nominal term. A freeholder may grant building or other leases of land, which his lessee may sublet, and nothing is more common in testamentary dispositions of property than bequests for lives, the return to the original proprietorship being by occasional steps or the natural efflux of time. A reversionary interest will, under these circumstances, frequently be for the remainder of a lease, after the life of the present holder, or to a perpetuity after the expiration of a lease in a fixed time.

For the ready estimation of such estates reference may be made to Table 4.

In order to find the present worth of a leasehold reversion proceed as follows. From the value of

£1 per annum for the whole period, subtract the value of £1 per annum for the time deferred, and multiply the remainder by the annual value of the estate.

Example.—Required the present value of a leasehold estate of £50 per annum at 4 per cent. interest, the whole term being eighty years, and possession deferred for twenty years.

£1 per Annum for Eighty Years	£23 18 4
£1 „ Twenty Years	. 13 11 10
	—————
	10 6 6
	50
	—————
Present value required . . .	£516 5 0

A similar process will serve for the deferred possession of an estate in perpetuity.

Example.—Required the present value of the reversion to a perpetuity of £40 per annum at £2 17s. 2d. per cent. interest, possession deferred for thirty years.

£1 per Annum for Perpetuity	.	£35	0	0
£1 „ Thirty Years	.	20	2	0
				<hr/>
		14	18	0
				40
				<hr/>
Present value required	.	£596	0	0

If the convenient period be a single or compound life contingency, reference must be made to the third table; and the equivalent lease employed as a fixed term.

Example.—Required the present value of a perpetuity of £60 a year, after the life of a person aged 45, to yield the purchaser interest at 5 per cent. The life in question is found equal to a lease for twenty years; therefore,

£60 per Annum in perpetuity, at 20 years' purchase	.	£1200	0	0
And by Table 4—				
£1 per Annum for 20 years =				
£12 9 3 × 60	.	747	15	0
				<hr/>
Present value sought	.	£452	5	0

TENANT BY THE YEAR AND AT WILL.

YEARLY tenures, being terminable only by notice at a particular period, leave a tenant, when that period has passed, in a state of security for a year and a half, but the stake of the "tenant at will" is so slight as to afford him little more than nominal interest in land or tenements. Companies are in these cases to be regarded as incoming tenants, and subject to analogous claims.

An owner cannot be constrained to sell part of a house, and in the construction of this term there is no strict confinement to the absolute building, but the courts and gardens, orchards and plantations, appurtenant and essential thereto, are included and may not be separately interfered with. Still, if a company give notice for a part, and the proposal be not accepted, they may de-

cline to take the property altogether. Upon the operation of this provision turned the recent necessity for the purchase by the Charing Cross Railway Company of the whole of St. Thomas's Hospital, of which they required in fact but a very small portion.

TEMPORARY OCCUPATION OF LANDS BY COMPANIES.

TEMPORARY occupation for the purposes of a railway may, subject to certain conditions of notice and appeal, be taken of lands not being a garden, orchard, avenue, plantation, park, or ornamental ground, and not being nearer than five hundred yards to a mansion, excepting also quarries of stone or slate worked for sale, and brickfields. From ground so taken, materials and minerals, clay, sand, gravel, etc., may be dug by side-cuttings, or as the owner's surveyor shall direct, or the company may deposit soil and materials thereon, erect workshops, and perform all requisite acts.

A company so occupying lands may be required to purchase the same, and if not so required before the acceptance of any compensation, the company shall within one month pay the occupiers of such land for any crops and dressings,

and for any damage, and shall thereafter pay half-yearly rent and compensation to the full value of all clay, gravel, sand, etc., dug and removed. The company will be further liable for any nuisance or injury occasioned by their works to adjoining owners. (See Railway Companies' Act, Section 41—43.)

OMITTED INTERESTS.

THERE may be grounds for supposing that when large estates are severed and greatly subdivided, portions more or less minute fall from accidental causes out of conveyance, and are left to be eventually absorbed by adjacent properties. Provision is made, however, by the 127th Section of the Lands Clauses Act, as follows:—

“ Within the prescribed period, or if no period be prescribed within ten years, after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase money arising from such sales to the purposes of the special Act, and in default thereof all such superfluous lands, remaining unsold at the expiration of such period, shall thereupon vest in and become the property of the owners of the lands

adjoining thereto, in proportion to the extent of their lands respectively adjoining the same." But if there is no "default," certain rights of pre-emption are secured to these owners by the three subsequent sections.

To be classed with similar waifs and strays are cases where interests in lands have been omitted to be purchased, contemplated by Section 124, in which it is provided that, if a company shall have entered upon lands they were authorized to purchase, and which shall be permanently required for the purposes of the special Act, and any party shall appear to be entitled to any estate, right, or interest therein "which the promoters shall through mistake or inadvertence have failed or omitted duly to purchase, or pay compensation for," then the promoters shall remain in undisturbed possession, provided they purchase the interest within six months, making "full compensation" for accrued profits, and paying the entire costs if the claim be disputed, and established.

INJURIOUS EFFECTS.

COMPENSATION covers injurious effects of an imminent character only, while those which arise from future and unforeseen acts are the proper objects of subsequent adjustment. If a company, for example, purchase lands for a specific purpose, and afterwards occasion damage by a negligent use of the property or works, redress may be obtained, but by the operation of suits at common law, and not by the ordinary mode of obtaining compensation.

Promoters of railway and other undertakings are liable not merely for the land they take, but for the injurious manner in which they may affect adjacent property.

“An occupier of premises contiguous to the line of a railway in formation, but whose premises were not directly interfered with by the company,

gave notice of claim for compensation, under section 68, on the ground of his property being 'injuriously affected' by the railway works, by reason of his goods being damaged, and his custom being diminished thereby; and required the company to issue a precept to the sheriff to summon a jury for settling the compensation. The company filed their bill for an injunction to restrain the defendant from proceeding on his notice, on the ground that his property was not 'injuriously affected,' within the meaning of the above section. It was held that these words were not confined to the case of persons whose lands were directly interfered with by the company, but extended to a case of consequential damage, and that 'the jury had jurisdiction to decide upon the title to compensation as well as the quantum of damage.' "

And again, "If a landowner's property is depreciated in value by a railway company doing that which would support an action if done by a private individual, the landowner is entitled to be compensated in respect of his property being injuriously affected."

If we waive for a moment the positive con-

nection with the soil, there seems to be a class of persons, who, while injuriously affected by causes that are obvious, are quite beyond the pale of redress.

e.g. A rector failed to obtain compensation for tithes, from having no absolute right to any part of the land touched, nor power to compel such a use of the land as would produce tithes.

Compensation was unsuccessfully sought by a publican, when a company took down houses and blocked thoroughfares, to the great prejudice of his trade.

A metropolitan district-surveyor has lately seen the prospect of fees diminished by the destruction of whole streets; but, being of course conversant with such predetermined cases, will not, it may be presumed, invoke the courts.

If a beginning in this direction, which seems easy, were made, the ramifications would certainly be intricate, and the end distant; the only solace of many subjected to such disadvantages, must therefore be the reflection that, when the rights of individuals and the public are opposed, the individual must give way.

EASEMENTS.

THE legal tenet, which regards as one integral property all the space above and beneath the surface of the soil, has frequently to be modified by what are termed "easements." These are rather of the nature of rights and privileges for special purposes, than of tangible possessions.

A landowner has power to grant permission for a tunnel to be formed under, or an arch to be erected over, ground of which he continues to possess the surface. Peculiar rights and restrictive privileges are occasionally purchased also by the Commissioners of the Admiralty, and the Secretary at War, who put the same statutes in action, and proceed in all respects as other "promoters;" as does also the Metropolitan Board of Works.

The right to use mines is not destroyed by the

alienation of the soil, and if they lie near or under railway works, notice of intention to use them must be given to the company, who may exercise the option of purchase ; but with respect to coal, slate, or other minerals, under lands bought by companies, they are to be deemed exceptions to the conveyance, and unless expressly purchased, companies can dig the same to such an extent only as the construction of the works may render necessary (Railway Act, sec. 77).

When not the consequence of a grant, easements are closely allied to nuisances, and might generally, in their origin, be dealt with as such. They frequently arise out of the presumption that property will long remain unchanged, and by such means the possessions of one owner are benefited, and those of another impaired.

It is not an offence in the eye of the law to open a window next to a neighbour's land, as you do not encroach visibly upon his premises ; and the neighbour could maintain his own by building against the window, or, if one fails to dig sufficiently deep for his foundation, the adjoining owner may dig his own earth, so as to leave him without support ; but, if such precautions are not

taken within twenty years, the law will assume acts of that standing to have been done on agreement, and excuse the production of the deed. Questions relating to such easements as the above, and others having a direct relation to the soil, may be determined by an appeal to the facts, and to the evidence of vested legal rights.

FIXTURES.

IN discriminating objects absolutely fixed to, and forming part of a freehold, from such as are severable, the latter alone are denominated "Fixtures." There is a corresponding difference in the legal estate, for, assuming a freehold, with all its accompaniments, to belong to the same person, the irremovable parts would go to the heir of the land, while the fixtures would merge in the personal estate, and be taken by an executor.

In deciding to which class an object belongs, it is necessary to consider the circumstances under which it was affixed, as the cause has a direct influence upon the consequences of the act.

Domestic fixtures comprise things so fixed to a building as to be for the time a part thereof, but yet admit of being separated, without substantial injury to the fabric. They appertain

chiefly to the personal comfort and convenience of the tenant—grates, coppers with their furnaces, cupboards, shelves, ornamental objects fixed by screws, and whatever the tenant may have introduced, may generally be removed by him, provided the premises be left in their original condition after such removal.

But it is only when there is some necessity for the introduction of articles, that they can be legally severed from the estate, and every other erection, not immediately subservient to the domestic comfort of the tenant, is made part of the freehold.

There is considerable latitude, however, with regard to trade fixtures, and such matters as belong to the occupation rather than to the soil. Whatever is erected for the especial purposes of trade (not being buildings suited to trade, agriculture, or general occupation) may be removed by the erecting tenant. Nurserymen remove their garden-houses and stock of trees, etc.; distillers their vats and coppers; farmers their mills and presses; brickmakers their kilns; while if an ordinary tenant added a substantially built conservatory to his house, he could not remove it,

nor could he remove shrubs planted in a garden.

In conveyancing, fixtures pass with the land if not expressly excepted.

There seems to have been a well-sustained progress for many years, in the degree of completeness with which houses have been prepared for the reception of tenants. In the way of chimney-pieces, grates, bells, dressers, shelves, cupboards, cisterns, gas-pipes, and general fittings, nothing is left to be desired, and the once copious subject of "tenant's fixtures," is almost at an end.

MORTGAGES.

BESIDES the representation of money by freehold property, where, the revenue being perpetual, the property lies dormant, and is only called up when the land is resold, there is the temporary form of investment by way of mortgage, where an agreed interest, commonly greater than that derivable from permanent sources, is paid during a stipulated term, when the capital is returned, and may become the subject of a new transaction

Where a mortgage exists on lands sold to a railway, the company may pay off and redeem the same, or should the land be of less value than the sum advanced, the value of the lands only may be paid, and the lands taken.

An objectionable form of mortgage sometimes adopted, makes the borrower responsible for any rise in the public stocks, and abrupt interference

in such cases may be attended with very injurious consequences to the landowner.

The 108th and several following sections of the Lands Clauses Consolidation Act, are devoted to the redemption and treatment of mortgaged lands.

SOURCES OF WEALTH.

HAVING briefly noticed the nature and tenure of estates, I shall, under a full consciousness of its difficulty, make an attempt to develop their relative and actual values.

*

Upon a subject which frequently carries opinions to the extremes of difference, and leaves justice to act by the indications of an oscillating and uncertain balance, few would step without hesitation; but these discrepancies indicate the want of some recognized basis of calculation, and if my suggestions further that object in any degree, their claim to usefulness will not be denied.

The promoters of any undertaking, it should also be recollected, embark voluntarily in their enterprise, and upon the faith and principle of making "full satisfaction" to individuals, are

entrusted with powers that overrule accustomed modes of dealing, break through the supposed impregnability of private right, and level the castled stronghold in common with the meanest tenement. These circumstances seem to present a case in which there is no appeal to any sentiment, but that of strict impartiality; and as some key to the formation of accurate conclusions, by those disturbed or affected, through the operation of similar powers, I purpose to represent the absolute and relative values of property, and then to apply the result to the subject in question.

As the chief sources of riches are commercial and territorial, so the two great depositories of invested capital are government securities and land. With the national guarantee it is generally practicable to raise large sums on perpetual annuities, which yield to the lenders, or rather purchasers, an interest of three per cent. When £100 produces an annuity or interest of £3 a-year, £33 6s. 8d. would buy £1 a-year, and the annuity is accordingly said to be at the rate of thirty-three and a third years' purchase. There exists, indeed, a government stock upon which only £2 10s. per annum is received for each £100 invested, being at the rate of forty years' purchase; but this is

considered by some, well qualified to form an opinion, to be below the standard which capital permanently invested is likely to approximate, in any but a remote period ; and perfect fairness seems to require that this, in some degree, exceptional character should be here admitted.

CLASSIFICATION OF INTERESTS.

LAND is, as elsewhere mentioned, the safest of all investments, being less subject to extraneous influences than any other, and whether by an unprecedented influx the specific value of gold be lowered or produce be cheapened by the results of machinery, or if, by the happy incident of both these causes, we have at once more money and more for our money, yet the ratio of rent to current prices is, perhaps, as unchangeable as the area of the United Kingdom.

Land varies, according to quality and fitness for cultivation, as well as locality, from a few shillings to several pounds in annual value per acre, but taking that value as it may happen to exist, an income from agricultural land, in fee simple, or perpetual possession, is worth thirty-five years' purchase, when taken in the gross, and

under ordinary circumstances, where the buyer and seller are willing parties.

Estates may be thus classified :—

CLASS I.

To this head of prime securities I would refer all lands let simply as such, and consequently indestructible.

Also, ground rent secured by substantial erections of six times the value of such reserved rents, leaving the amount of a reversionary interest in the buildings to form another item of consideration.

Copyholds (subject to the extinction of fines) will merge in this class.

CLASS II.

When freehold land is let at more than its agricultural rate, as for gardens, the increase must be deemed of an artificial character. That is to say, a high rent for a small parcel of ground is not so valuable as a low rent from a large quantity.

When buildings form one freehold estate with the ground upon which they are erected, and constitute, it is presumed, a chief part of its value, an increased degree of attention and skill is demanded.

When land is taken upon a long lease direct from the freeholder, and is sublet for purposes by which the additional rent is secured by property of five times the sum of the larger ground rent ; in this case the under lease may be for a shorter term than the first, and the reversion for a period to the rack rents may have to be taken into account.

These form securities of the second order, and are assumed to be, on an average, worth thirty years' purchase.

CLASS III.

Leasehold property, consisting of improved ground rents, with a security of not less than three times the value in rack rents, are estimated at the relation they bear to twenty-five years' purchase in perpetuity.

CLASS IV.

Incomes arising from the profit balance of substantial property let on lease, are to be taken proportionably to twenty years for the freehold.

CLASS V.

Profits from rack rents of tenements, let by the year or shorter periods, are to be taken at a ratio to fifteen years for the perpetuity.

Finally.—Profits arising from trade and the exercise of special vocations, will usually be compensated by an allowance of from one to three years' purchase.

The most thoughtless only would suppose, that because one pound is in itself as good as another, an income of any number of pounds from one source must be as valuable as the same quantity derived from any other means. The difference in the respective value of yearly incomes is soon apparent when they are subjected to the financial test of capitalisation, and their

relative certainty of continuance made the scale of comparison; thus, £100 per annum in

Class I. . .	capitalizes at . .	£3500
„ II. . .	„ „ . .	3000
„ III. . .	„ „ . .	2500
„ IV. . .	„ „ . .	2000
„ V. . .	„ „ . .	1500
Personal, good-wills, etc. . .		300

ANNUAL PROFIT THE ELEMENT
OF
COMPUTATION.

THERE is one leading principle that is understood to form the foundation-stone, as it were, of every valuation of property in land, tenements, fines, good-wills, and such-like profitable contingencies, and that uniform process is the reduction of the gross derivable income to a net annuity free of all deductions whatsoever, except the temporary tax upon that annuity itself. Were a surveyor called upon to assess an estate, where the land had lately been bought at a known price, and a residence built thereon at a cost which could be demonstrated, such data would be of no avail, the ascertained or estimated clear yearly profit must be primarily fixed, and the capitalisation value deduced therefrom.

The constant adoption of this very simple rule is of the utmost importance, for although, in the determination of this basis, there may be some range for individual opinion, it has the effect, when once settled, of enabling all concerned to look at the same thing, though still from various points of view; and it furnishes the most direct key to a purchaser's natural inquiry of "What per centage shall I obtain for my money?"

It is a system, in fact, that brings the matter before all alike, in much the same way that estimates for buildings are made out, so far as quantity is concerned, and leaves to the competitors no other option than the price they respectively deem remunerative for the extent and quality of the work to be done.

In dealings with companies, when the clear annual value has been ascertained, consideration should be turned to the loss of income and expenses privately incurred by proprietors in the course of a change of investment. The costs of the one conveyance are professedly borne by promoters, but how often do they simply "keep

the word of promise to the ear, and break it to the hope," leaving necessary services unrecognized, and inevitable charges to be defrayed by the vendor. Then it must be recollected that although bound to sell on the instant, he has to enter the market with no such absolute authority for aiding his purchase.

But the Legislature has evidently had regard to such contingencies, and section 6 of the Railway Clauses Act provides, that the company "shall make to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purpose of the railway, or injuriously affected by the construction thereof, FULL COMPENSATION for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company."

Now, if for the purpose of comparison, we waive the fact that injury should be separately assessed according to the peculiar circumstances of each case, and combine compensation with in-

jurious effects, an increase of thirty per cent. on the net original value will not be very unreasonable, and it agrees, moreover, with the minimum increase provided by statute, in certain prescribed events.

It is not upon claims, governed by some moderate, yet sufficient scale of profit, that litigation would often be permitted to arise. When companies perceive no room for the halving or quartering process, to which claims are occasionally subjected, they will not find their account in "splitting straws." The dignity and administrative sentiment of the law are moreover opposed to the exercise of its agency upon trivial pretences.

EXAMPLES.

FREEHOLDER'S CLAIM.

CLASS I.

Three acres of land, let at £2 17s. 2d. per acre, at 35 years' purchase	}	£300	0	0
Half an acre, not included in the notice, but being completely detached from land in the same possession must be taken by the company under section 93, Lands Clauses Act	}	50	0	0
A piece of about three quarters of an acre is also cut off, but the company may exercise the option of purchasing this, or of making a proper communi- cation therewith, by means of a bridge or culvert, under sec- tion 94, Lands Clauses Act	}	75	0	0
Compensation and severance .		127	10	0
		£552	10	0

FREEHOLDER'S CLAIM.
CLASS II., 30 YEARS' PURCHASE.

One and a half acres of freehold land, being part of a garden, let at £8 per acre	}	£360	0	0
A freehold house with land of the clear annual value of £50, including fixtures	}	1500	0	0
Compensation for removal, severance, etc.	}	558	0	0
		£2418	0	0

LEASEHOLDER'S CLAIM.
CLASS II., 30 YEARS' PURCHASE.

<p>A leasehold ground rent of £35 per annum, arising from a certain piece of land, and five houses built thereon. The land is held at £25 a-year, for a term of which sixty years are unexpired, and the building lease falls in in thirty-five years.</p> <p>The rent received from the builder is £60 a-year.</p>				
£60 less £25=£35 for 35 years		£716	3	9
A reversion to the rack rent of five houses, of the yearly value of £60 each, after 35 years, and continuing thenceforward for 25 years	}	1465	10	5
Compensation		654	6	0
		£2836	0	2

A TRADESMAN'S CLAIM.

Lease of premises for an unexpired term of 15 years, held at a rent of £30, and now from a general rise in the value of property, and outlay in additions and improvements, worth £50 per annum.		
£20 for 15 years at 5 per cent. .	207	11 8
Profits on trade wholly destroyed } £200 a-year, at 2 years' purchase }	400	0 0
Loss on stock by sudden realization and damage }	150	0 0
Domestic fixtures	15	0 0
Trade ditto	25	0 0
Compensation but not severance	199	7 11
	<u>£996</u>	<u>19 7</u>

LATENT VALUE.

It may be noticed that land has frequently a prospective or latent value, in comparison with which the previous earnings are insignificant. There is at this time before me a tender for the purchase, at a thousand pounds an acre, of land that has hitherto been let at fifty shillings a-year.

Or lands may be let on leases of long standing, below their present value, and in this case, the immediate income must be first acted upon, and the result augmented by the present worth of such prospective advantage, keeping always fairly in mind the strongly marked difference between probability and fact.

RENT CHARGES.

By the 10th section of the Lands Clauses Act, it is provided, that any vendor entitled absolutely to sell and convey, for his own benefit, may do so in consideration of an annual rent-charge; but the amount is left entirely open to agreement or other settlement.

By the 3rd and 4th sections of the Amendment Act, persons under disability to sell, and who, by the original statute, were obliged to realize the value in money, are authorized to accept a rent-charge; and although surveyors may determine the amount, it is provided that no such rent-charge shall be less than an increase of one-fourth on the income derived from the land on an average of the previous seven years, with a further minimum addition of 5 per cent., "by way of compensation for any damage done to the lands."

But here it must be observed, that the security is no longer land in its natural expanse, but the tolls or earnings of an entirely speculative undertaking, and therefore of "uncertain value."

The surveyor will compare the capital worth of the two estates, in order to protect the vendor from injustice, and (without assuming that we have to deal with a 6 per cent. debenture line) the highest rate may be taken. What railway company, let us then inquire, can sell its debentures for more than twenty-five years' purchase? Those, if any, who can obtain such terms, are exceptions to the general rule, and I am aware of no pretence for placing them higher.

A person transposing his property would undoubtedly look to the rate of exchange, and if it appeared that ten pounds a-year from land represented £350, while a railway rent-charge stood at £250, he would of course expect an income of fourteen pounds a-year for every ten pounds so exchanged.

Applying this reasoning to some of the above cases, we find that—

£552 10 0	} In Example 1, would be met by a rent- charge of . . .	£22 2 0
2418 0 0		ditto 2, ditto 96 14 5
2836 0 2		ditto 3, ditto 113 8 10
996 19 7		ditto 4, ditto 39 17 7

One advantage of this capitalisation principle is, the facility it affords for equitably commuting the most temporary, as well as most permanent interests, by railway rent-charges.

PREPARATION OF CLAIMS.

It is often the province of a judge to decide upon the precise significance of terms deemed in a general way convertible, and it has been judicially declared that valuations are for the prevention of differences, and arbitration for the settlement of such as exist.

As the preparation of the initiatory appraisal or valuation is always the duty of the vendor's surveyor, and upon the accuracy or intelligence with which this estimate is formed, the after proceedings are usually dependent, it should unquestionably be made under a befitting sense of the responsibility involved; for if, on the one hand, it fall short of the truth, the employer is injured; and if it be much exceeded, false hopes are awakened, only to be followed by defeat, expense, and disappointment.

The claim is usually rendered in a prescribed form, something like the annexed, and the details, furnishing the names of parties, locality, description, and tenure of property, the claimant's interest therein, with dates of deeds, particulars of occupancy, and the items which make up the amount of the valuation, should be stated in their respective columns.

NEGOTIATION.

IN ordinary business, when two surveyors, valuing the same thing with regard to opposite interests, fall into discrepancies or dispute, the matter is submitted to an arbitrator or referee, but a plurality of arbitrators in the same case seems contemplated by the formal language of the statutes, and the power of decision is vested in an "umpire."

When a claim for compensation has been delivered to a railway, the surveyors to the company and the vendor usually meet to discuss it, and if happily the statements are clear, and the conclusions based upon correct principles, the subject may be promptly adjusted, and a long train of formal and costly delays precluded.

FORM OF

*Schedule of claim, to be filled up and signed
purposes of _____*

Name, Residence, and descriptions of parties claiming.	Situation and description of property.	The estate, share, or interest claimed, whether freehold, copyhold, or leasehold. If freehold, whether fee simple, fee tail, or for life. If copyhold, of what manor held, and whether fine certain (and of what amount) or arbitrary. If leasehold, the landlord's name and address, the terms of years unexpired, and rent reserved, and the nature of any special covenants.

A contract to purchase arises when notice is given by a company,
must be done within twenty-one days)

CLAIM.

_____ RAILWAY.

*by Owners of Property, required for the
_____ Railway.*

<p>Names of occupiers, stating whether lessees, and for what term; or, yearly tenants, at what time the tenancy commenced, amount of rents, and of premium, if any.</p>	<p>Particulars of amount claimed, specifying separately the proportion claimed for the value of the property, and that for compensation.</p>
<hr/>	<hr/>

and in representing his estate and interest in the schedule (which the claimant should be brief and precise.

SETTLEMENT.

My own impression is that business would be very much facilitated if the company's valuer could always negotiate with the vendor's surveyor. But if the calls upon his attention render this impracticable, he the more strongly urges the resort to arbitration, and so by "writing underhand," paves the way for *mandamus ex parte*, fees, and costs in full and formidable array. "Both the arbitrators and umpire are empowered to call for documents, and may examine witnesses upon (and administer the) oath." If the arbitrators or their umpire fail for three months to make an award, or if no final award be made, it becomes a case for a jury.

Then why not a jury at once? There can be no connection between this question and the fact that out of the thousand and one competent valuers of the metropolis, there are but a score or so who acquire the reputation of unchallengable

umpires! For this small number a company may it is true have several hundred bits of patronage, and a vendor only his single transaction, but does not the very eminence of these umpires guarantee independence and impartiality?

The cynical may object that a very slight modicum of independence in one way would effectually block the road to independence in another; and it may be a question, though most deferentially opened, whether gentlemen forming the professional nucleus above alluded to should ever consent to act as witnesses? The thorough-going partizanship too often evinced in that capacity, placing in a light hardly compatible with the honourable exercise of a responsible vocation, the seductive influence of a trifling commission, or a few guineas a day.

This inability, however, to discern a cause does not remove an impression that the necessity of reference to a third party is in most cases due to the proneness of companies to arbitration, and their unwillingness to treat as an ordinary purchaser would do.

If an agreement cannot be made, cases where

the sum required or offered is under £50, are to be settled by two justices; but if above that amount, and the claimant declines to proceed by arbitration, the question must be referred to a jury.

The company, in this event, give under their common seal a warrant to the Sheriff, who takes the prescribed steps consequent upon such authorization, but "before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give, for the interest in such lands, sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works."

This is a point of great importance, and gives a period of ten days for the careful consideration of the best terms at command, without award or verdict; and leads no doubt, in many instances, to pacific conclusions. When otherwise, a body

of twelve jurors, presided over by the Under-Sheriff, and guided by an experienced barrister in the capacity of assessor, is surely a court to whose decision most persons would readily confide their cause.

The crude form in which cases are frequently referred, shows that no serious attempt at agreement has been previously made, as ought always to be the case, for even if the railway surveyor happened to be too much engaged to give much personal attention to claims, nothing could be easier than for the company to appoint a deputy-valuer, in order that such useful preliminaries might be duly observed.

ARBITRATION AND JURY.

IT would therefore appear to be the duty of every surveyor who has fixed the amount of compensation due to his client upon some rational and systematic foundation, to insist upon a clear view of the objections raised by his opponent, rather than at once to allow the matter to be transferred to the jurisdiction of an umpire. When a requirement so reasonable is denied, the proper course seems to be for the claimant to resist arbitration altogether, and resort in preference to a jury, whose verdict, resulting from the collective opinion of its members, under a conscientious sense of individual responsibility, seems more perfectly invested, than any other form of inquisition, with that force of equity and consistency of precedent to which the general *dicta* of the courts, and public administration of the law, owe the most profound deference and respect.

Of the comparative scope of authority between arbitrators and juries, it may be said that both are confined by certain limitations, but the range of a jury involves all the power with which an arbitrator is vested, and would seem to extend to certain points beyond.

Arbitrators cannot apportion rents, or direct the formation of approaches to land not taken, in place of such as existed over lands taken, nor are they bound to look to future contingencies, but seem closely confined to pecuniary awards, both as to purchase money and injurious effects.

Juries, like arbitrators, are restricted in their functions, the chief object of which is the assessment of values and damage, by severance or other consequences of the works; and as the title of the claimant is for the purpose of the inquiry admitted so far as regards the estate, it does not come within their province. But a jury may determine the question—1. As to the title to compensation for asserted injury as well as—2. The amount of damage sustained.

COSTS.

Looking to the primary circumstances out of which railway powers arise, strong reasons appear for subjecting promoters to the whole expense of directing those powers to final results.

The inducements for entering upon such undertakings are, it is needless to say, only those of self-interest. The general field of operation, the route from point to point, are open to the will of promoters—along the line submitted to Parliament some latitude of deviation is permitted—nor until notices are actually served upon owners and occupiers, are the responsibilities of purchasers incurred. Modes of obtaining, with great facility, decisions bearing the legal validity of the higher courts have also been accorded, so that unless encountered by litigious and vexatious opposition of a marked character, the simplest possible machinery for working out their own

measures is alone brought into action, and leaves not a shadow of pretence for throwing the burden elsewhere.

A public body I could name, having property for disposal, requires from applicants for terms, a deposit on account of the costs of supplying those terms should the matter fall through. So if a railway company requires a house, the total expense of placing the owner in another as good, with something by way of *douceur* for the moral violence and indignity inflicted upon him, can hardly be complained of, or should the restitution be made in money, the expenses can properly form no part of the amends.

Regarded as penalties for exorbitant demands, costs are severe in their effects, for the 34th Section of the Lands Clauses Act states, that "all the costs of any such arbitration and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, UNLESS the arbitrator shall award the same, or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators

shall be borne by the parties in equal proportions.”

It must be recollected that the private costs are generally considerable, and that it is within the power of either party to influence their total sum. The expense of deciding a question seems to depend less upon its difficulty than upon the funds at command. Poor men weigh testimony by grains, the rich by tons, and though the balance of evidence be the same, justice is grossly violated if (as suggested in the “Builder,” Aug. 29th, 1863) proceedings are “made costly by one of the parties to the dispute, in order that the award may not be taken up.”

The employment of many surveyors on each side as corroborators, serves rather to demonstrate a want of reliance on the probity and merit of the testimony adduced, and the costs are fearfully intensified by a process that fails to affect an intelligent jury.

When the admitted facts of a matter can be laid in the form of a case before an arbitrator, leaving him to weigh the statements and exercise his experience in arriving at a conclusive opinion,

the advantages that are no doubt expected by many who submit questions to be so determined, would be realized. But when antagonistic surveyors have been elevated into arbitrators, to discuss their subject before an umpire; when attornies are called in, that forms may be nicely adhered to, extraneous witnesses are examined and cross-examined, and counsel are retained to gloss, to emphasize, and dazzle, arbitration assumes a gigantic and unnatural dimension, embarrassing in itself, and wholly at variance with the anticipated functions of an empirical judge.

In the event of a decision favourable to a company, the charges incurred for an inquiry are deducted, and the balance, if any, tendered to the vendor; but should the costs due from him "*exceed the total value of the land or interest therein,*" he may be sued, and visited with all the punishment to which captious and litigious conduct is commonly, and it may be admitted properly liable, for all should be actuated by such a degree of public spirit as will preclude either apathy or perversity with respect to works that tend to open new provinces of industry, and promote, by their consequent effects, the increase of national wealth.

FUTURE LEGISLATION.

MR. WORDSWORTH has, in the preface to his work, proposed an alteration in the law relating to costs. "Exaggerated claims," he says, "are of common occurrence, and it is suggested that full justice might still be done to parties whose property is wanted for the particular works to be executed, if it were enacted, that unless they succeeded by award or by verdict in getting two-thirds of the amount claimed, in cases where the company had offered a specific sum, they should not be entitled to costs." But does not the counter suggestion arise, that companies must be justified by their own acts rather than by the errors of others, especially if we bear in mind that promoters, as opposed to individuals, are as trained, disciplined, and compacted troops to a mere multitude of units without agreement or combination.

In a case quoted, a railway sought £908 5s. from a party, but by successful resistance and taxation, the amount was afterwards fixed at £459 6s. In a recent arbitration (not railway) at Liverpool, the costs of which have been published in detail, the arbitrator's fees, including umpire, amounted to £348 12s. 2d., but the total costs of inquiry were swollen by counsel, attorneys, witnesses, shorthand writer, and incidental expenses, to about £1700 or £1800.

The trite observation that those who enter law courts should have full pockets, is just as applicable then to the arbitration room, however superior in promptness and simplicity the latter may sometimes appear; and those engaged on the weak or vendor's side will be more disposed to regard the "provisions" as both sound and equitable. Exaggerated claims are probably not more frequent than depreciatory offers, and were companies to avoid these, their outlay in costs would assuredly be reduced. Say a property required for some undertaking is of the absolute value of £300, the owner claims £500, and the company offer £200. Here both parties are in error, but

as the owner was called upon to make the first statement of value, he acted under some disadvantage from which the company were free, and the true value, when ultimately determined, ought surely to be handed to the owner without diminution. In other words, where a company, knowing the vendor's price, fails to offer as much as the true value, it ought in fairness, I submit, to defray the costs attendant upon its own cupidity. Yet according to the proposal under consideration, the unhappy vendor would be forcibly dispossessed of his property, and probably find his total compensation dissipated in costs.

By the interposition of rational defences alone can we prevent the utter triumph of adverse interests, and with every desire to meet useful works in a spirit of welcome, it is doubtful whether further privileges or further terrors can be entrusted to the executive of any speculative undertaking, if we would not allow the iron horse to be driven altogether roughshod through the land ; cutting up in its unrestricted course, to use the words of a complainant,* “men's parks, estates, and darling properties.”

* *Times*, Oct. 10.

A legislative change equitably called for, seeing that the full tax upon profits is levied on railways, seems to be the abrogation of the separate duty on passenger traffic, when the net duty to shareholders falls below 5 per cent. per annum.

SURVEYORS' CHARGES.

It may have been sometimes experienced that, almost simultaneously with the receipt of a railway notice, some gentleman that "gets the compensation," presents himself to the owner of an estate or interest, tempts him with hopeful visions, takes up his case in the most engaging and unselfish way, and will receive no return but such as "the company" allows. The credulous proprietor presently finds his claim the subject of an arbitration, and with ultimate chagrin arrives at the conclusion that his plausible agent must have been a sort of "lion's provider," and his share in the result is as inscrutable as the accident of his first appearance. "Let no such man be trusted."

When recourse is had to arbitration, all the costs of and incident thereto, are to be settled by

the arbitrators (Lands Clauses Act, Section 34), and borne as mentioned at page 77; but when a vendor's surveyor prefers to work his case through in the interest of his client, the reward for his services must not be left to his opponents. There are few intelligent persons, let us hope, who would fail to treat with befitting consideration the zeal to which success is mainly due; but the weak and parsimonious fall readily into such snares as are indicated above, while those are not wanting who deem even the disingenuous labourer worthy of his hire.

The scales of surveyors' charges are not so uniform and free from anomaly as could be desired, for some, that from their origin and general propriety would be authoritative, occasionally make the fees almost inversely as the amounts.

For valuing property, preparing claims, combating the influences with which compulsory powers are accompanied, and conducting to the best attainable conclusion, sales under Acts of Parliament, the full standard for ordinary business ought to be maintained. Lord St. Leonard's says in his "Handy-Book on Property Law," edit. 1863, "It is only the other day that, after

an unsuccessful attempt to sell an estate by auction, the owner sold it by private contract for £10,000 and paid commission to the agent who completed the contract. The auctioneer then recovered from him in an action, half commission, viz., $2\frac{1}{2}$ per cent. on the first £5000, and 1 per cent. on the remaining £5000, on the ground that after the auction, he had upon the application at his office, of the person who ultimately purchased the estate, furnished him with the particulars of the estate and a card to view it."

In another place his lordship states that, "where a person in the first instance obtains the information from a house agent, which leads him ultimately to become a purchaser, the agent is entitled to the usual commission, 5 per cent. on the first £100, and $2\frac{1}{2}$ per cent. on the rest of the purchase money."

A first survey and general report, with terrier and valuation of an estate, is charged at 5 per cent., or, if without valuation, according to time. Valuing for letting is at 5 per cent. on the first £500, and $2\frac{1}{2}$ per cent. on the remainder. Negotiating the letting, advising on covenants, etc. to

be charged by the day. For letting unfurnished houses, the commission is 5 per cent. on the rental and the premium, if any. If let for more than seven years, the commission is chargeable on two years' rent. Valuing timber, $2\frac{1}{2}$ per cent. Tithe commutations, $4d.$ to $6d.$ per acre. Copying plans, $2d.$ per acre. For the valuation (purely and exclusively) of estates, the commission on the fee simple value is subject to classification, according to the extent of the property, *e. g.*, under £500 upon the first £100, 5 per cent., and on the remainder 2 per cent. From £500 to £1000, on the first £500 2 per cent., and on the remainder 1 per cent.

A Royal Commission fixed the charge payable to its officer for valuing estates, thus :—

Up to £400	.	.	.	at $2\frac{1}{2}$ per cent.
After £400 to £1000	.	.	.	at 1 „
„ 1000 to 2000	.	.	.	at $\frac{3}{4}$ „
„ 2000	.	.	.	at $\frac{1}{2}$ „

The scale observed by a gentleman of the first eminence is—

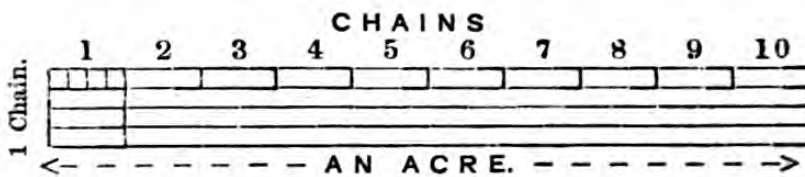
On the first £1000	$1\frac{1}{2}$ per cent.
„ next £2000	$1\frac{1}{4}$ „ „
„ „ £3000	1 „ „
„ „ £4000	$\frac{3}{4}$ „ „
All above	$\frac{1}{2}$ „ „

The Institute of Architects, to whom reference would probably be made in cases of excess, authorize a charge of 1 per cent. on the first £1000, and $\frac{1}{2}$ per cent. on the remainder up to £10,000 for cases between those amounts, but leave to special arrangement the charges below £1000 and above £10,000. The charges for such valuations are applicable for the assessment of duty, the adjustment of benefactions, bequests, loans, and other objects where a professional opinion only is required, and include no further duty or attendance whatsoever.

If “promoters” were compelled to take estates at the price fixed by the vendor’s surveyor, railway business would be more closely allied to the foregoing classes, but companies have, on the contrary, special opportunities of

contesting such appraisements, and more than ordinary energy and attention are usually required in effecting a sound and satisfactory conclusion. The surveyor's fees, therefore, are properly assimilated with those ordinarily charged for selling, and not for merely valuing property.

LAND MEASURE.



THE unit of space by which land is reckoned is the acre, a term that may have been left here by the Romans, if we accept its derivation from *ager*, a field. It is divided into four roods or quarters, and the quarter is subdivided into forty perches. There are, therefore, one hundred and sixty perches in an acre.

An inroad on the ancient notation of the field was made by Gunter, the mathematician, soon after the invention of decimal arithmetic; and the "chain" which bears his name continues to be the chief instrument of the land surveyor. It has a length of 66 feet, or 22 yards, and is divided into 100 parts, or links, of 7·92 inches

each. The square of 25 links makes a perch, and the square chain equals 16 perches, or 484 yards, or the tenth part of an acre. It will be seen that upon this system, the acre itself is not reducible to the square of any whole number of feet or yards.

The bill, proposed in Parliament in May 1863, and withdrawn, if adopted at a future time, will make calculation by decimals general, and the opportunity for exchanging the yard, or Henry III.'s arm, and the three barleycorns of ancient memory, for a measure assignable to some law of physics, would be received with welcome; but in adopting the French metre as our standard, it should not be forgotten that the decimal division of time has been long since suggested in France, and may eventually predominate.

If the solar day were divided into 10 hours, the hour into 100 minutes, and the minute into 100 seconds, the number of these last would be 100,000, in lieu of the present 86,400. Assuming such a change to be probable, the length of a pendulum performing 100,000 vibrations a day, at the equator, would seem to suggest

itself as a measure of extension worthy of universal adoption.

The scientific interest attaching to this derivation of a metrical basis, is not likely to be wholly lost sight of, and the present mechanical attempt at establishing an accordance between our existing system of weights and measures, and those of foreign countries, is not sure to be final. The point seems at least worth consideration, before a step is taken that must necessitate the recomputation of every foot of land in the British empire.

PAROCHIAL ASSESSMENTS.

THE revision of parochial valuations (pursuant to the Union Assessment Committee Act of 1862), upon a footing of improved uniformity and exactitude, has rendered necessary a more frequent recurrence to the original principles of the art of valuing.

According to the language of the Act, "the full annual rateable value," or the "gross estimated rental at which the hereditament might reasonably be expected to let, from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge if any," is to be determined; that is to say, from the gross estimated rental the allowances are to be deducted, in order to show the rateable value set forth in the schedule.

An "estimated rental" is here indicated for all the property involved in the operation of the Act, but the valuers will naturally seek, in practice, the criterion of actual payments; and in cases where owners of premises are also the occupiers, comparisons with similar properties of known rental will be instituted.

The actual process of valuing for letting, demands the utmost care and judgment on the part of the surveyor, and it is one that in the absence of the close approximation to truth presented by often revised and corrected lists, must frequently have to be performed upon original bases.

The value of land is so arbitrary, and so dependent upon special circumstances, that local conditions must always have a chief place in the assessor's consideration; but with such discrimination, the worth of land in any position may be assumed with tolerable accuracy, and if to its value, that of buildings or works erected thereon be added, the total will be obtained.

For this purpose it may be useful to state that substantial houses of the plainest kind, erected under the London Building Act, will cost sixpence

per cubic foot, while those of the first quality, the clubs, for example, will cost double that sum; but speculative buildings of inferior character, and country works not under Building Acts, may be taken at fivepence per foot. The surveyor will, however, find little difficulty in the application of the proper scale.

The building capital being thus found should be subjected to some moderate rate of interest, say 4 or 5 per cent., and this, added to the ground-rent, would constitute the estimated rateable charge.

Let it be assumed that a house in some country town has a frontage of twenty feet, for which the ground-rent, at 3*s.* per foot, amounts to £3 per annum. The depth of the house is thirty feet, and the height twenty. There is also an outhouse, twelve feet square and nine feet high, contiguous to the building, and making therewith a total of 13,296 cubic feet, amounting at 5*d.* per foot to £277. Four per cent. upon this, is £11 1*s.* 7*d.*, which, increased by the ground-rent, gives £14 1*s.* 7*d.* for the rateable value.

In London, the ground-rent would vary from 5s. per foot to £5 ; and the latter would still be beneath the current value in very choice localities. Taking, for the purpose of this estimate, the ground at £40 a year, and supposing a building having a basement story, and a total height of sixty feet, the frontage being twenty, and the depth thirty, we have a capacity of 36,000 feet cube. This, at 7*d.* per foot, amounts to £1050 ; the interest upon which, at 4 per cent., is £42, making, with the ground-rent, a rateable value of £82.

So if a railway pass into or through a parish, the yearly value of the land, according to locality and applicability (apart from that special application), should be fixed and augmented by a moderate per centage on the estimated cost of works and buildings, for the rateable yearly value.

When gas and water mains pass through parishes, whose convenience they in no way subserve, an assessment might be established upon a similar ratio to the expense of formation ; but generally the process would appear to be a mere bootless refinement, increasing the cost of supply

for commodities essential to every ratepayer, and the question of privilege to underlay public thoroughfares somewhere raised, seems altogether extra-judicial.





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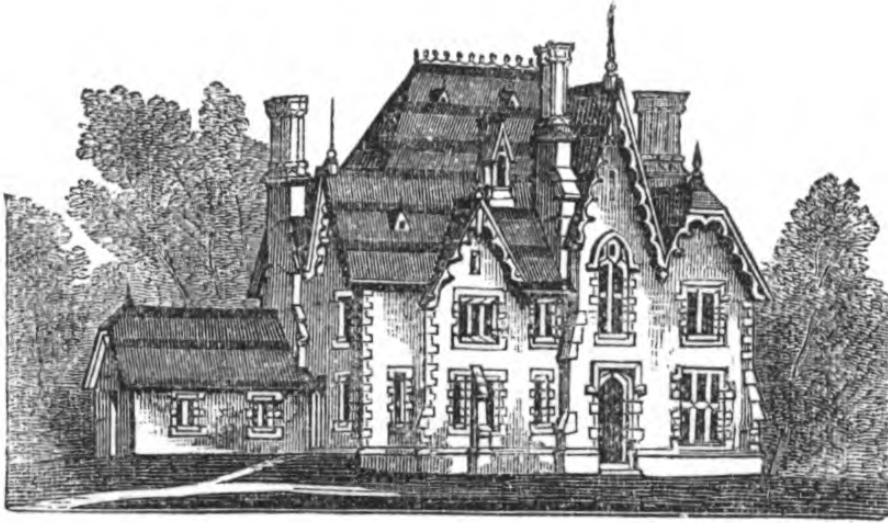
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