# REPORT

ON THE

# LANDLORD AND TENANT QUESTION

# IN IRELAND,

FROM 1860 TILL 1866;

## WITH AN APPENDIX,

CONTAINING

A REPORT ON THE QUESTION FROM 1835 TILL 1859.

BY

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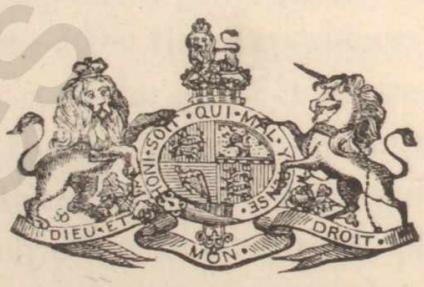


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1866.

# REPORT, &c.

64, Upper Gardiner-street,
Dublin, 21st April, 1866.

Sir,—In pursuance of your instructions to prepare an account of the Landlord and Tenant question in Ireland, from the date of my report to Mr. Cardwell in October, 1859, till the present time, I have now the honour to submit the following report, to which I have annexed a reprint of my report of 1859.

Legislation in 1860.

The discussion of the Landlord and Tenant question which had, as described in my last report, occupied the attention of Parliament for a quarter of a century, ended in the passing of two statutes in 1860, viz., "The Landed Property Improvement Act" (23 and 24 Vict., c. 153), and the "Landlord and Tenant Consolidation Act" (23 and 24 Vict., c. 154.) The first of these statutes dealt with the subject of landlords' improvements, leasing powers, and tenants' improvements; the second dealt with the consolidation of the law of landlord and tenant, especially with respect to procedure.

These measures after the experience of six years have now to be considered in two respects—first, with regard to the principles recognised in them; and secondly, with regard to the machinery which they provide for giving effect to such principles.

So far as the recognition of principles is concerned, more complete and comprehensive measures have seldom been passed by the Legislature. This will at once appear from a short statement of the principles that have been thus established.

They are as follow :—

1st. That no settlement of landed property should be allowed to stand in the way of beneficial and proper improvements by the owner however limited his estate may be ;

2nd. That no settlement or trust should be allowed to stand in the way of the proper leasing of landed property ;

3rd. That tenants making substantial improvements with the assent of the owner, however limited his estate, should be entitled to compensation.

4th. That the relation of Landlord and Tenant shall be deemed to be founded on the express or implied contracts of the parties, and not upon tenure or service.

Such being the principles of the legislation, we have next to consider the machinery provided for the operation of these principles, which I will consider under the different heads of my former report.

### I.—*As to Landlords' Improvements.*

In 1860 Parliament had before it three precedents for the mode of dealing with landlords' improvements ;—

1st. The Montgomery Act, which worked successfully for eighty years in Scotland, and which was specially recommended as a precedent by the Land Occupation Commissioners in 1844 ;

2nd. The Irish Acts for the improvement of land and erection of farm buildings, under the Board of Works, stat. 10 Vict., c. 32 ; 12 Vict., c. 23 ; and 13 & 14 Vict., c. 31 ;

And 3rd. The Act of 1845, for the improvement of settled estates by the sanction of the Court of Chancery, stat. 8 & 9 Vict., c. 56.

Each of these Acts was adapted to a different class of cases.

1st. The Montgomery Act was suited to the case of a solvent tenant for life, improving his estate out of his own savings, or by money raised on his own credit. The Montgomery Act.

Such a proprietor might wish to employ his savings in adding to the provision for his younger children, or all his children, if he had only daughters, and so might wish to have the power to charge part of such expenditure against his eldest son, or his brother, nephew, or cousin, who might be the next successor under the family settlement; and he would be naturally led to invest his savings in some other speculations than the improvement of the family estate, if he were deprived of all control over his savings the moment they were so invested.

2nd. The Board of Works' Acts were well suited for what they were intended—the improvement of land by borrowed money. Board of Works' Acts.

3rd. The Chancery Settled Estates Act was only suited to the case of improvements objected to on account of their being recklessly projected or likely to be unfairly charged for. Chancery Settled Estates Act.

The Legislature might have adopted all the facilities for improvements suggested by these precedents, by allowing proprietors executing improvements not objected to, if with their own money, to proceed in a manner similar to the proceedings provided by the Montgomery Act, and, if with money borrowed from private parties, to adopt proceedings similar to the Board of Works' arrangements for improvements by public loans. The intervention of legal tribunals might have been reserved for the cases where the proposed improvements were objected to.

Instead of this course being adopted, the two former precedents were entirely rejected, and the third precedent—of proceeding with legal sanction at every

step—was alone adopted. Thus the same expensive, troublesome, invidious proceeding was applied whether a proprietor was improving with or against the wish of his next heir, whether he was paying for the works with his own money or executing them entirely with borrowed money.

The Bill, as first introduced by Mr. Cardwell, adopted the cheaper proceeding of the Civil Bill Court as the tribunal to sanction improvements. This was, however, at the suggestion of Lord Naas, changed in the House of Commons, and the more expensive procedure before the Landed Estates Court substituted. At the end of nearly six years we can best judge of the working of the machinery of this part of the Act by experience.

Statistics as to Landlords' Improvements under Act of 1860.

It appears from the Judicial Statistics that in the past three years there have been only two applications by landlords to have improvements sanctioned under the Act of 1860. Of one of these cases I have ascertained the particulars. It was an application of a nobleman, a tenant for life of an estate of £10,000 a year, to charge £477 17*s.* 9*d.*, the cost of building a farm-house and offices.

Though there was no opposition to the improvements, and the proprietor got an annuity of £33 18*s.* 7*d.*, charged for 25 years, he had to pay a bill of costs which amounted to £35, making with the annuity a charge of £68 18*s.* 7*d.* in the first year. The amount of costs necessarily involved is a great cause of the failure of the plan of requiring judicial intervention at every step of improvement; and the Landlords' Improvements sections of the Act of 1860 have, for this reason, proved a total failure, as the Chancery Settled Estates Act had done for fifteen years before, from the same cause.*

* *Vide* Appendix, pp. 24, 25.

In singular contrast to this failure is the success of the Board of Works' Acts for the improvement of landed property by loans of public money. Under these Acts 4,268 applications were made before 1860, and 743 since, the proposed expenditure amounting to £5,080,857; while the Board of Works only sanctioned the issue of £1,790,645, of which £1,549,274 was issued before 1860, and £241,371 since that year.

Statistics as to Landlords' Improvements under Board of Works' Act.

The terms of the Board of Works' loans, creating a charge of £6 10*s.* for twenty-two years, are more favourable to a proprietor than the charge of £7 2*s.* for twenty-five years, which he would incur for borrowed money expended under the Act of 1860.

Improvements under Board of Works' Acts.

But the chief cause of the preference of the Board of Works' system so marked by the statistics I have referred to is, that under it the limited owner escapes such a bill of costs as I have noticed, as there are no expenses incurred for legal assistance, nor charge for the inspection or reports.

It is plain, therefore, that the failure of the part of the Act of 1860, as to landlord's improvements, is in the machinery alone; limited owners are quite prepared to execute the most extensive improvements, if the proper facilities be afforded them for doing so. The account which the Commissioners of Public Works give of the results of the expenditure under their sanction, is most interesting. They say—

"There can be no doubt that the improvement effected by the operations under loans sanctioned by your lordships has been the means of introducing a very decided and extensive improvement in the agriculture of the country. Reviewing the proceedings of the past year, we have the pleasure to state that recent proceedings have met with the same success which has hitherto attended the carrying out of the Land Improvement Acts.

"The operations under these salutary measures have progressed steadily and satisfactorily during the past year, the benefits resulting therefrom not only increasing the quantity of land suitable for cultivation, but also changing unskilled hands into trained labourers, and tending to diminish the poverty arising from want of employment at certain seasons of the year.

"The value and importance of the works executed under the supervision of our officers, are becoming better understood and more fully appreciated in each succeeding year, of which a more convincing proof cannot be adduced than the evidently increasing disposition to embark private funds in improvements similar to those which have been effected through the medium of loans obtained under the Land Improvement Acts.

"It is satisfactory to observe the successful result of expenditure under loans taken by resident proprietors of small estates, who devote much time and attention to agriculture, and the increased skilfulness with which the drainage and other improvements are carried out.

"But the benefits conferred are not confined to the lands improved under the provisions of the Acts, for many proprietors who prefer to improve their estates from private resources, acknowledge that they derive useful information from observing the approved mode of executing such works, and carry it into practice, being convinced of the value of the system, by the result apparent in the neighbouring lands of proprietors who have operated under loans."

When the loans for £2,000,000, sanctioned by Parliament as compensation for the repeal of the corn laws, have been, as will soon be the case, all granted, loans of public money to Irish proprietors of land, cannot be relied on as a permanent arrangement, and

for the cases of future improvements by limited owners with borrowed money, a provision should be made enabling proprietors to adopt the machinery of the Board of Works' Acts.

Limited owners. Description of improvements.

Mr. John B. Dillon, M.P., before the Committee of 1865, stated objections to enumerating the improvements which a limited owner can charge for.

He shows that the Act omits what are called good husbandry improvements,—liming, subsoiling, and manuring, which are the subject of customs in England.

The Act also allows a limited owner to assent to a tenant's creating a charge for irrigation, but cannot himself get a charge if he executes the improvements.

Want of power of supplying Mills for Scutching Flax.

The Commissioners of Public Works notice a similar anomaly, which exists both in their Acts and the Act of 1860, in connexion with mills for scutching flax. One of the objects for which a parliamentary grant has been made for the last three years is the encouragement of the growth of flax in Connaught and Munster. The Committee of the Royal Dublin and Agricultural Societies, to whom the management of this grant is intrusted, report that "the number of scutch mills is manifestly insufficient for the preparation of even the limited quantity of flax as yet under cultivation."

The Commissioners, after reporting the grant of two loans for the building of two scutch mills, add—"Many inquiries have been made as to loans for machinery, and remodelling old buildings, but under the existing law we have no powers to advance money for any other purpose than the erection of the building, which, it may be borne in mind, is less costly than the machinery."

Thus neither Act affords the means of supplying

one of the greatest wants in those districts where efforts are being so successfully made to introduce flax, the growth of which, in Ulster, is understood to be one of the chief causes of the development of the linen manufacture, to which that province owes so much of its prosperity.

Wanted power of limited owners charging for expenditure on mansion-houses.

Mr. J. B. Dillon, M.P., in his evidence before the Committee in 1865, referred to the non-extension to Ireland of the provisions of the Montgomery Act, enabling limited owners to charge for expenditure on the erection of mansion-houses.

It is difficult to see how aristocratic institutions can be maintained, unless proprietors reside for some part of the year on their estates, and Lord Dufferin, in his recent speech in the House of Lords, noticed the evils of absenteeism.

If we take the case of a proprietor succeeding to an Irish estate with no residence upon it, as tenant for life, at the age of sixty, if he expended £10,000 in building a mansion, he would, if he contemplated disbursing the expenditure out of his life estate, have to pay £500 a year interest besides £637 insurance, making £1,137 in all. While if he were allowed to charge the cost of building like other improvements under the Act, he would only have to pay £710 a year.

If such a proprietor succeeded at an earlier age without being a perfectly insurable life, he would still have to pay considerably above £710 a year.

I would therefore repeat the suggestion I made in 1859, that the building of mansions should be deemed an improvement in Ireland, as it has been for so many years under the Montgomery Act in Scotland.

Concluding observations as to Landlords' Improvements.

It is impossible to introduce the English and Scotch practice as to landlord and tenant into Ireland, unless improvements are extensively made by the

proprietors. Tenants for life cannot be expected to make improvements at all commensurate with what is required in Ireland, unless they can charge the inheritance for them, and the machinery for enabling the proprietor to charge is so defective that it will not work; the effect of this breakdown of legislation in the arrangements made by the Legislature for the proprietors' own acts—the breakdown arising from overcaution and timidity of trusting limited owners with the management of their family property—is to lower the class in the eyes of their tenants.

The economic aspect of these unwise restrictions in the making of improvements by landlords is not fully appreciated.

So far as they prevent a limited owner doing what a prudent owner in fee would do, so far they limit the contract he can make with his tenants.

If a limited owner is practically deprived of the power of charging for the improvements he may make himself, in the vast majority of cases he must ask the tenant to make the improvements, or ask him to work the lands as best he may without the essential elements of progressive agriculture. He must also ask the incoming tenant to pay for the improvements of an outgoing tenant.

When the Legislature has conceded that no settlement should entirely stand in the way of improvements, it is a most unfortunate circumstance that the machinery provided should be so expensive and cumbrous as to operate as a practical stoppage of all working of this part of the Act.

I would therefore suggest the following changes :— Suggestions as to Landlord's Improvements.

1st. That whenever a proprietor sought to improve with his own money, or with his own credit, and wanted only a charge against the remainder man, but not in priority to any charge upon the estate, or in

priority to his own debts, he should, if the next heir did not object, be at liberty to adopt a proceeding to be framed in accordance with the precedent afforded by the Montgomery Act.

2nd. That if the proprietor sought to borrow money for improvements, and the next remainder man under the settlement did not object to leave the matter to the Board of Works, improvements might be executed as under the Board of Works' Acts, and charged against successors in estate, and also in priority to any creditor who, on being noticed, did not object to such priority.

3rd. That if any remainder man objected, or sought an injunction to restrain the proprietor from proceeding, or if any creditor against whom the owner sought priority objected, the proceedings should be taken in the Landed Estates Court as at present, the persons objecting to be liable to costs if the Court should think the objection frivolous or vexatious.

4th. That the definition of improvements be extended, to remove the objections made by Mr. Dillon and the Commissioners of Public Works.

5th. That the provisions of the Montgomery Act as to charging the inheritance for the expenditure in the erection of suitable mansions should be extended to Ireland.

### II.—*As to Tenants' Improvements.*

The Act of 1860 established to the fullest extent the principle that a tenant making improvements assented to by his landlord should get compensation.

The machinery of this part of the Act, copied as it was from the machinery of the part relating to landlords' improvements, has, as appears from the statistics on the subject, been equally unsuccessful.

In the Judicial Statistics, including returns from twenty-four Counties, there were no proceedings returned under this part of the Act, 1864, and only one proceeding in 1863.

Statistics as to Tenants' Improvements.

As both parts of the Act have failed to the same extent, it is obvious that we are to look for the cause in the machinery of the Act itself, and not in any want of enterprize in the tenants.

In the reclamation of the 1,973,510 acres of waste land that have been reclaimed in Ireland since 1841, a very large expenditure of labour and capital has been made by tenants, so that it has been from no want of tenants' industry, or of capital, that this part of the Act has remained a dead letter.

During the same period, besides the capital sunk in the reclamation referred to, the deposits in the Joint Stock Banks, including extensive deposits of farmers, have increased from £5,567,851 in 1840, to £17,050,552 in 1865.

Defects in Act of 1860, as to Tenants' Improvements.

The defects in the machinery of the Act are clear enough. They consist:—

1. In requiring the intervention of the Irish County Court to sanction an improvement;
2. In requiring a minute detail of expenditure to be lodged in Court;
3. In giving compensation in the form of annuity;
4. In giving inadequate compensation;
5. In the way in which the amount of the charge is limited;
6. In requiring the express assent of the landlord to every single act of improvement.

Defect of requiring intervention of County Court.

As to the first it is unnecessary to say much. As the requiring the intervention of the Landed Estates Court involved such trouble and expense as to defeat the operation of the part of the Act as to land-

lords' improvements, so the necessity of the intervention of the Irish County Court in every case, was alone sufficient to paralyze the operation of the part which related to tenants' improvements.

And to this defect a remedy should be applied similar to that already suggested in the case of landlords' improvements;—the intervention of the Court should be confined to cases of opposition, objection, or fraud.

In all ordinary cases of a tenant *bonâ fide* making the requisite improvements for the best use of the land for the purposes for which it was let, nothing but the simple assent of the owner, however limited, should be required to give validity to his claim.

Defect of requiring Detailed Expenditure.

As to the second defect in this part of the Act, the requiring a detailed expenditure of the tenants' improvements to be lodged with the Clerk of the Peace, in every case, was a great mistake. It assumed that in the majority of cases there would be a claim against the proprietor for compensation.

In the English customs of compensation of tenants for improvements there is no such complication; the claims are dealt with in a much simpler and more satisfactory manner, and it is in the development and simple regulation of the spontaneous growth of customary law, that the true principles of providing for the complicated arrangements of progressive society are to be found.

Compensation by Annuity Defective.

As to the third defect, the plan of compensating the tenants by an annuity was a mistake. A terminable annuity is a fair enough principle of regulating how much of the cost of an improvement shall be borne by a limited owner and his successor. But in the case of tenants' improvements in England, as with us in Ireland, they are usually paid for in a lump by the incoming tenant;

and the recognition of the claim of the tenant to compensation for improvements, rarely involves a payment by the landlord or his successor. It simply operates as a check against the landlord raising the tenant's rent, so as to confiscate the tenant's capital invested in the soil before it has been repaid; it operates in the same way, in fact, as a lease.

As an assent to improvements has practically, in this way, nearly the same effect as a lease, it is inconsistent to give every limited owner a power of leasing, and not to give him the power of assenting, so as to give security for tenants' improvements. This is peculiarly injurious in Ireland at present, where landlords, in some places for political reasons, and in others from reluctance to bind themselves in the present transition state of agriculture, are unwilling to grant leases.

What is wanted for public interests is simple security for capital expended in improvements, and landlords ought to be quite free to adopt either leases or contracts for securing improvements, whichever they prefer.

It is upon the real identity between a lease and a contract securing improvements that the 21st section of the Bill proposed by some of the Irish members is based, which provides that the granting of a lease of the duration therein provided should be treated as a satisfaction of all claims for improvements.

Inadequate Compensation under Act of 1860.

As to the fourth defect in the Act of 1860,—its giving inadequate compensation for tenants' improvements,—several of the witnesses examined before the Commons Committee in 1865 referred to this defect in the Act.

Judge Longfield objected to the principle on which the annuity was calculated. He showed that an annuity of £7 2*s*. for twenty-five years is only equal

to £100, on the assumption that small sums like £7 2*s.* can be at once invested at £5 per cent. But this is not the case. The average rate of interest on deposit receipts in Joint Stock Banks last year was less than £3 per cent.

The principle on which the annuity was calculated is, however, open to another objection. The profits of capital in all trades involving any risk are much greater than the ordinary rate of interest of well-secured loans. The rate of interest of money lent in small sums on mortgage by trustees on the best security is £5 per cent. The ordinary rate of profits of farmers ought not to be estimated at the same rate. We cannot expect them to execute improvement unless they get on such expenditure the usual and proper profits of their trade.

The scale of annuity which will compensate a proprietor who does not employ his capital in trade, but in investments like the funds at £3 per cent., and in railway bonds at £4 10*s.* per cent., will not pay a farmer or a man of business for improving land. This circumstance explains why proprietors, when they have abundant capital, as the fertile mines and minerals of their counties give to so many English and Scotch proprietors, execute the more permanent improvements instead of leaving them to be executed by their tenants.

The compensation is inadequate in another way. It is calculated on the estimated expenditure. The provisions of the Montgomery Act in Scotland were wiser in this respect; they made the actual expenditure the foundation of the charge.

Mr. Curling pointed out in his evidence before the Commons Committee of 1865, (3914 *et seq.*), the inadequacy of the compensation in the case of the improvement of waste land and farm buildings.

In this respect the Act of 1860 contained inconsistent provisions, for the leasing powers for forty-one years for improvement leases, and ninety-nine years for building, are based upon the principle contended for by Mr. Curling, that these periods are requisite to secure that the improvements will be made.

The Committee of the House of Commons of 1865, which inquired into the operation of the Act of 1860, were impressed with this view, and recommended in their Report that the duration of the compensating periods in certain cases should be altered.

Charge too limited in case of waste land.

As to the fifth defect in the Act of 1860,—the way in which the amount of the charge is limited,—Bishop Keane, in his evidence before the Committee of 1865, pointed out that the limiting the amount of the charge to a third of the rent, by section 3, was a complete barrier to the improvement of waste land. Some figures, given by Mr. Curling in his evidence, prove this very conclusively. He says it costs £13 an acre to improve wet mountain land so as to increase the rent from 1*s.* to 14*s.* an acre.

Suppose a tenant to agree with his landlord to expend £1,300 in improving 100 acres of wet mountain land; the compensating annuity proposed by the Act of 1860 for this case, as proper compensation, is £92 6*s.* a year. But by section 53 it is provided that the charge shall not exceed one-third of the annual value of the land, as rated for the relief of the poor. Now, the valuation for poor relief in Ireland is the rent, less taxes, generally estimated at 25 per cent. The rent in this case would be, at 14*s.* an acre, £70 a year. Deducting 25 per cent. for taxes, the Poor Law valuation would be £52 10*s.*, and to take the most favourable case, of there being no charge for landlords' improvements, or for drainage or other improvements under the Board of Works' Acts, the annuity chargeable for an expenditure of

£1,300 in reclaiming waste land would be limited to £17 10*s.* a year for 25 years, or about a fourth of what the Act itself declares to be adequate compensation.

The obvious remedy for this defect is to fix any limit which may be required at so much per acre, and the evidence given by Mr. Curling shows that the improvement of wet mountain land would be curtailed if the limit were fixed at less than £13 an acre.

Express assent of landlord should not be required for every improvement.

The sixth defect of the Act of 1860 is the requiring the *express* assent of the landlord to every single act of improvement.

This provision is entirely inconsistent with the principle established by the Landlord and Tenant Consolidation Act of the same session, which provides that the relation of landlord and tenant in Ireland shall be deemed to be founded on the express *or implied* contract of the parties. It is entirely inconsistent with the practice of landlords in every part of Ireland for some years; for it is well known that agricultural leases are rapidly disappearing throughout Ireland, and that by far the greater part of the country is occupied by tenants holding entirely on the implied contract, called a yearly tenancy, which the law infers from the payment of a yearly rent.

It is also entirely inconsistent with the true contract between the parties, as all agricultural leases are by the Act made to imply on the part of the tenant a covenant to follow a regular course of good husbandry. Now, if we take a comprehensive view of what good husbandry is in the present state of agricultural knowledge, we shall find that it includes—

Rotation of crops for four or six years;
Proper manuring;
Thorough drainage;
Proper fences and farm roads;
Proper housing for cattle.

And again, if farmers and farm-labourers are to have the benefit of those laws of public health which are so stringently enforced in towns, the proper occupation of a farm implies the erection and maintenance of suitable houses for farmers and labourers to reside in. As to express assent of landlord.

If the landlords leave the greater part of the country to be occupied without any express contract, and the law has to imply one, the natural and true contract to imply is that the landlord intended the land to be used according to the most advanced notions of good husbandry, and intended that the people by whose labour and industry his land is made productive should live in houses really suitable for human habitation. Such a principle would only be extending to the improvements of modern husbandry the old implied contract of the yearly tenancy and the analogous law of emblements, by which a tenant whose life-lease runs out, is nevertheless, if he has cropped his ground, entitled to hold till the last gale day of the year of tenancy.

Both these implied contracts were intended to protect tenants against what was then thought to be the greatest risk, of not being able to reap the crops they had sown.

The modern tenant should have for the rotation what the wisdom of our ancestors established for the single crop.

In these ancient contracts the tenant is not required to serve a notice in order to get the benefit of them. He has not each year to wait for the express sanction of his landlord to crop his ground; the assent is implied from the act of letting, and the onus thrown on the landlord of giving notice if he wishes to determine the yearly tenancy.

In the proceedings of the Committee of 1865 the

As to express assent of landlord.

suggestion of Mr. Forster approached nearest to this view. He proposed, p. ix. :—

> "That the 40th clause of the Act of 1860 should be so altered that in all cases of tenancies-at-will no notice from the tenant to the landlord of intended improvements should be required, but that while power of *veto* to any improvement is preserved to the landlord, he should be required to compensate the tenant, in case of eviction, for any improvement he has not *vetoed*."

The term "veto" conveys the idea of a notice, though apparently not so intended, and by making the test of whether an improvement is to be paid for or not only whether it is *vetoed*, the limit of improvements is lost sight of. The true limit is whether they are within the original contract expressed or implied.

If we qualify the word "assent" by the addition of the words "expressed or implied," the resolution of the Commons' Committee of 1865—

> "That the principle of the Act of 1860, embodied in the 38th and 40th sections, namely, that compensation to tenants should only be secured upon the improvements made with the consent [*expressed or implied*] of the landlord, should be maintained"—

opposes no barrier to the changes in the law which are required.

If this principle of implied contract be thought by any landlord too favourable to his tenant, he can protect himself by granting a lease with such stipulations as he thinks right.

If it be thought, on the other hand, that no good is done unless tenants are enabled to expend what they think fit, whether or not contemplated by the express or implied contract with the landlord, it should be borne in mind that it has a very different effect upon the feelings of the poorer classes towards the Imperial Government and towards the ruling classes generally, whether the stoppage of improve-

ments or the loss of compensation for expenditure on them arises from the act of an individual landlord or from a defective state of the law. The act of an individual may be restrained by public opinion, but a defective state of the law can be remedied by legislation alone.

As to express assent of landlord.

After a discussion of twenty-five years, Parliament admitted that the law as to Tenants' Improvements was in an unsatisfactory state, and required a legislative remedy.

When a principle of this kind is once conceded, especially in a question between different classes of society—between the rich and the poor—it is useless to say that the Legislature is powerless to deal with the causes of complaint.

The character of the ruling classes as rulers is at stake upon providing simple and effective means for carrying out the principles conceded. For, when a just principle is not denied, but its operation is defeated by the legislative machinery which proposes to grant it turning out costly, cumbrous, mistaken, and inoperative, the strongest elements are laid for discontent and disaffection to the Constitution.

Though the Act of 1860 has failed in its details, it has produced one very desirable result. By establishing a just principle, it has reduced the Landlord and Tenant question to a matter of business; and accordingly the Bill proposed to the Government by some of the Irish members is simple, clear, and definite in its character.

Bill of some of the Irish Members considered.

It proposes to repeal the defective machinery of the Act of 1860. It then divides all tenants into two classes, those holding for leases for thirty-one years, and those holding for a less tenure. As to the first class, the length of tenure is taken as evidence that there was no implied contract contained in the

lease as to compensation for improvements; and it is proposed that in such cases compensation shall be regulated exclusively by express contract between the owner and the tenant, (section 23).

Bill of some of the Irish Members considered.

As to the second class of tenants—those holding for less than thirty-one years—it is proposed to provide compensation, on the principle that the letting of land for a term which manifestly does not provide compensation for the cost of the improvement, implies a contract that the tenant should be compensated, and the legislation proposed is merely to enforce this implied contract.

To such implied contract there is one obvious exception—when a tenant gets a farm at a reduced rent for a term of years, however short, in consideration of making certain specified improvements; and accordingly the Bill provides—"That no tenant shall be entitled to compensation in respect of any improvements which the owner might have compelled him to make in pursuance of any contract," (section 10).

The principle of compensation provided by the Bill is that "compensation for improvements shall be given in money, and only in the event of the determination of the tenancy by the owner; and the measure of such compensation shall be the addition to the letting value of the tenement, caused by such improvements at the time of such determination of the tenancy: Provided, however, that such compensation shall not exceed the expenditure incurred in making such improvements," (section 9).

Compensation should be in money.

The principle thus proposed is simple and just. It gives the compensation in money. This is in accordance with the usage in the English tenant-right customs and in Ulster; and it is in accordance with common sense, as the money is wanted at once by the outgoing tenant to enable him to settle his

engagements and to migrate to some other part of the United Kingdom, or to emigrate abroad.

Measure of Compensation.

The measure of compensation is also just. What is required is, on the one hand, that the tenant should get the full benefit of his expended capital, and, on the other, that if the expenditure should develop some valuable property of the soil, or the land should rise in value from proximity to towns or other causes, the tenant should not, under the name of compensation for improvements, get a share of the owner's property.

Now the limit, that the compensation shall not exceed the expenditure incurred in making the improvements, secures that the tenant shall never get any part of the landlord's property. For if the expenditure of £100 should make a farm worth £50 a year increased letting value, the tenant would, under this limitation, get, not £1,250, the value of the £50 a year at 25 years' purchase, but £100 only.

On the other hand, subject to this limit, the tenant is entitled to the increased value produced by his expenditure, at the termination of his tenure.

Compensating periods considered.

Objections have been made to this principle, on the ground that improvements may be assumed to compensate the tenants in certain definite periods; that capitalists are willing in particular cases to execute improvements on leases of a certain duration; and therefore that tenants should, in the absence of contract, and in the absence of security as to the duration or term of their tenure, be assumed in fact in every case to have been compensated at the time within which it is estimated, by the custom of some particular district, that a capitalist might expect to be compensated.

Such objections ignore the most obvious economic conditions of the question. The profit a man is

entitled to for his capital is in proportion to the risk he runs, and if a landlord, having the power in every possible case of giving the tenant perfect security by lease for his expenditure, chooses to keep his tenants as yearly tenants, as he thereby increases the risk they run, and consequently by his own act increases the rate of profit necessary to induce them to expend their capital, and to which they are entitled if they do expend it, he is therefore precluded from saying to the class of tenants for whom alone the Bill is intended, those holding for less than thirty-one years, that the improvements have necessarily compensated the expenditure with interest on the outlay.

Description of classes of tenants' improvements in Bill.

With regard to the class of improvements for which compensation should be provided, the Bill proposed by some of the Irish members seems very carefully framed. It first of all comprises the seven classes of tenants' improvements recognised by the Act of 1864.

1. The thorough drainage or main drainage of lands.

2. Reclaiming bog land, or reclaiming or enclosing waste land.

3. The making of farm roads.

4. Irrigation.

5. Protection of land by embankment from inland waters.

6. The erection of a farmhouse or any building for agricultural purposes, suitable to the holding, or the enlarging or the extending of any such farmhouse or building erected or to be erected thereon, so as to render the same more suitable to the holding.

7. The renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not required for maintaining the same, and increase durably their value.

The additions made to the descriptions are only three in number.

Additional classes proposed by the Bill to be protected.

1. Clearing land from rocks or stones.
2. Subsoiling.
3. Unexhausted manuring.

The first of these meets what is well known to any who are acquainted with Ireland as a most important step in the cultivation of mountain land.

The second is an expensive and laborious process, absolutely necessary where the subsoil is not naturally porous, in order to get the full benefit of thorough drainage.

The third is the improvement to which the greatest importance is attached in England in all the tenant-right customs there.

The suggested additions to the list of improvements are all works that as a matter of fact are usually done by tenants in Ireland, and are all proper additions which the law should protect.

The moderation of the claims now put forward renders it almost unnecessary to discuss what has been so much discussed with reference to other proposals, the extent to which a landlord should have the power of objecting to improvements.

Implication from letting land without express contract.

As the letting of lands without an express contract naturally implies a sanction of the several improvements of the different classes stated, so far as they are likely to be profitable, and as the tenant can get no compensation under the Bill unless the works executed are real improvements, that is, unless they increase the value of the land, there is no occasion to give the landlord any statutory remedy for stopping improvements, any more than he would be allowed in March, in the case of a yearly tenancy, to give the tenant notice not to crop the ground. He has sufficient protection in his power of determining the tenancy.

With regard to leases for not less than thirty-one years, the Bill provides that compensation shall be regulated *exclusively* by express contract between the owner and the tenant.

The cases between these limits of a complete express contract, like a thirty-one years' lease, and a total absence of express contract like a yearly tenancy, are left to be dealt with *not exclusively* by express contracts; in other words, so far as any contract between the parties exists, it will regulate the transactions between them, but so far as any such contract is incomplete or defective, then the implied contract that the necessary and proper improvements were intended to be executed by the tenant shall rule the case.

The Bill appears to me in this respect to have been most carefully and justly drawn, so as to protect the just rights of the landlord on the one hand, and to leave to a tenant a freedom of action for good, adapted to the exigencies of modern agriculture, similar to what he has so long enjoyed under the yearly tenancy established by the sages of the law.

**Suggestion that limited owners should have power of making compensation agreements.**

It is proposed in the Bill, (s. 9), that limited owners should have power of making agreements with tenants with regard to improvements, subject, however, to the two limits of not exceeding the worth of the addition to the letting value of the land, or the cost properly incurred.

This is a very just and wise provision. I made a similar recommendation in my Report in 1859, Appendix, p. 47.

An argument commonly put forward against any legislation for tenants' claims for improvements is that the Legislature cannot deal with the matter, as every tenant should protect himself by contract. Those who use this argument cannot object if the Legislature enables all limited owners, who form the

vast majority of the owners of land, to make such agreements.

The Bill contains other judicious provisions, such as that allowing a limited owner to redeem the claim for compensation, (section 20).

Section 21, providing that a lease shall be deemed a satisfaction of all claims for compensation for prior improvements, is also a judicious clause, calculated to facilitate the satisfactory adjustment of such claims without legal disputes.

Proposed tribunal to determine disputed cases.

The machinery proposed by the Bill for settling disputed cases by the General Valuation Office and the Commissioners of Public Works, is not what would have occurred to me to suggest. The railway Arbitrator and the County Court would seem to me a more convenient tribunal; but this is a matter more proper for the law officers to determine, and the rest of the Bill is so simple and free from technicalities, and framed on so just a principle, that whatever tribunal is intrusted with the decision of disputed cases would readily be able to discharge that duty.

Existing improvements and Ulster Tenant-right.

The Bill does not attempt to deal with two very difficult parts of the question,—existing unsecured improvements of tenants, and the tenant-right of Ulster.

The protection of these rests at present on public opinion, and the passing of a just and satisfactory law as to future improvements will strengthen instead of weakening that public opinion, and so increase the protection of tenants' claims under these heads, although they are not immediately expressly dealt with.

The view, however, which I ventured to express in my Report of 1859, (Appendix, pp. 46, 47), of the danger of leaving the protection of these valuable

interests to rest on public opinion alone, has received strong corroboration from Judge Longfield's evidence before the Committee of 1865, (Q. 260).

If in the progress of the legislation it should be thought desirable to deal with these questions, my former Report, (Appendix, p. 47,) contains suggestions on the subject.

To these should be added the valuable one of Judge Longfield, that the Landed Estates Court should have power to give leases for twenty-one years on sales in that Court, of Estates whereon the custom of Tenant Right had existed.

There are one or two objections commonly made to Tenant Right, which may be urged against compensation for tenants' improvements. One is that the payment for Tenant Right leads to a poor class of incoming tenants. To this I would observe as a matter of economic science, that the opposite is the usual result of all payments at entrance. Thus the higher price of commissions in the Guards than in Line regiments, has not had the effect of a poorer class entering the Guards, and my experience in Ulster is that the price paid for Tenant Right secures a wealthier rather than poorer class of tenantry.

Again, in Ulster, a sum is sometimes paid to outgoing tenants, where small farms are consolidated into large farms, beyond the actual value of the improvements, as a species of special compensation to the tenants for personal disturbance, on a change of plan in managing the estate, just as public officers get compensation on an office being abolished when no longer required.

Again, payments to outgoing tenants in Ulster are sometimes enhanced from motives of charity, to enable them to migrate to a manufacturing centre in the United Kingdom, or to emigrate abroad—such

payments are, in fact, a capitalized poor rate. These last two kinds of payments are for what is called the good will, distinct from the improvements.

Sums paid by either incoming tenants or landlords for such considerations are wise and proper payments. They allow the consolidation of farms and necessary emigration to go on with peace and satisfaction, and hence in the county of Londonderry, where they most prevail, notwithstanding as extensive an emigration and consolidation of farms as in other parts of Ireland, the police force now required is only 1 in 974 of the population; whilst in the North Riding of Tipperary, where such considerations for outgoing tenants have been least attended to, the police is 1 in 202 of the population, besides a considerable difference in the proportion of military.

As the military and Irish Constabulary are both paid out of the general taxes, this is a matter of interest beyond either landlords or tenants.*

Conclusion as to tenants' improvements.

In conclusion, I think the Bill submitted by some of the Irish members suggests the means of just, useful, and practical legislation on the subject.

* The actual cost to the general tax payer may be estimated as follows:—the population of the County of Londonderry is 184,209; the number of police is 152. The population of the North Riding of Tipperary is 109,220; the number of police is 537. The following table shows the number of police in the North Riding of Tipperary, that would be sufficient, if only in the same proportion to the population as in Londonderry.

POLICE IN NORTH RIDING OF TIPPERARY.

| | |
|---|---|
| Police in North Riding of Tipperary, . . . . | 537 |
| Police required if only in same proportion as in Londonderry, | 90 |
| Excess of Police in North Riding of Tipperary, . . | 447 |
| Estimated cost of excess, . . | £22,939 |

The cost of the excess of police is defrayed as follows:—

| | |
|---|---|
| Tenants paying county cess for excess charged for, . | £3,881 |
| The general tax payers of the United Kingdom, . . | 19,058 |
| | £22,939 |

The amount of police maintained in Ireland, and the payment of

## III.—*Leasing Power.*

As to leasing power, the principle established by the Act of 1860 is of the most comprehensive character. It is that no settlement or trust shall be allowed to stand in the way of the proper leasing of landed property.

The Act, however, establishes restrictions which have marred to a great extent its operations.

Improvement leases.

First, as to Improvement Leases.

The Act limits their duration to forty-one years, and provides that no improvement lease shall be granted without the sanction of the Irish County Court Judge. This latter circumstance gives an opportunity of accurately testing the working of this part of the Act.

It appears from the Judicial Statistics Returns that in twenty-four counties in Ireland from which complete returns were received, there was only one improvement lease sanctioned in 1863 and one in 1864.

The defects of this part of the Act are,—First, the cost involved in the sanction of the lease; second, the loss of dignity to the limited owner in not being

the force out of the general taxes, is rested in part on the use of the force as a standing army, and as dispensing with the necessity of maintaining so many soldiers.

But in the case of Tipperary (North Riding), and Londonderry, this argument has no weight, as appears from the following table.

MILITARY IN TIPPERARY (NORTH RIDING.)

| | |
|---|---|
| Military in North Riding of Tipperary, . . . . | 604 |
| Military required if only in same proportion as in Londonderry, . | 70 |
| Excess of Military in North Riding of Tipperary, . . . | 534 |
| Estimated cost of excess, . . | £49,128 |

The £22,939 a-year for the extra police does not, in effect, save the use of soldiers.

The general tax payers of the United Kingdom have to pay £19,058 a-year more for keeping the peace in one Riding of Tipperary than they would have to pay if it was similarly circumstanced to Londonderry, without reference to the £49,128 extra, they pay for soldiers in the same Riding.

able to grant a lease of some waste land or bog for improvement without the consent of a County Court Judge; and last, the shortness of the lease.

In the Bill introduced by Mr. Napier as Attorney-General of Lord Derby's Government in 1852, the limit allowed for improvement leases was sixty years. The Bill with the sixty years' limit for improvement leases passed the House of Commons in 1853. It was, by a Select Committee of the House of Lords in 1854, cut down to forty-one years; the shorter limit was, no doubt, introduced in the Act of 1860 in consequence of this decision of the House of Lords.

As experience has shown the failure of the shorter limit, a good case is made out for reverting to the proposition of Mr. Napier, which met with the sanction of the House of Commons in 1853; and this is one of the proposals in the Bill submitted by some of the Irish members on the Land Question, (section 6).

Building leases.

The Act of 1860 provides that no building lease comprising more than three acres, or reserving a rent of more than £100 a year, shall be valid without the sanction of one of the Judges of the Landed Estates Court in Ireland, and that no other building lease shall be valid without the sanction of the Irish County Court Judge.

This requisition affords materials for testing the working of the Act; and it appears from the returns in the Judicial Statistics that the building leases sanctioned by the Landed Estates Court were as follows:—

*Building Leases sanctioned.*

| | |
|---|---|
| 1863, | 1 |
| 1864, | 4 |
| 1865, | 2 |

Total in three years, 7, or about 2 per year.

In twenty-four counties from which complete returns were received, and in the towns of Belfast, Cork, Waterford, Galway, and Kilkenny, it appears that there was only one building lease sanctioned in the County Court in 1863 and two in 1864.

As the terms allowed for building leases are unobjectionable, it is natural enough to ascribe the non-operation of this part of the Act to the provisions requiring in every case the cost and trouble of obtaining the sanction of the Judge of the Landed Estates Court and the County Court Judge respectively.

If the requiring the sanction be injurious in the case of building leases, it must be equally injurious in the case of improvement leases, already noticed.

In the Bill submitted by some of the Irish members, the intervention of the Court is proposed to be reserved for its proper purpose—disputed cases. The limited owner is to serve notice of his intention to grant a building or improving lease upon his successor, as defined by the Act, and his successor may apply to the Landed Estates Court to restrict the granting of the lease (section 7). This seems to be all the check that can possibly be required.

**Agricultural leases.**

The term of agricultural leases is by the Act of 1860 limited to twenty-one years. No statistics have been compiled to show the extent to which the granting of the agricultural leases for twenty-one years has been carried out.

From all the information I can collect, the new leases are adopted to a very small extent.

The limit of twenty-one years is entirely unsuited to the circumstances of the greater part of Ireland; for it is quite inadequate to compensate tenants for the cost of the improvements which Irish tenants are still expected to make. The English and Scotch

analogies of twenty-one and nineteen years' leases, founded on the practice of English and Scotch landlords to make all permanent improvements, are so far inapplicable to Ireland.

In the Leasing Powers Bill, introduced by Mr. Napier in 1852, the limit of the agricultural leasing power was thirty-one years, and this term was passed by the House of Commons in 1853. It was in the House of Lords in 1854 that the limit was reduced to twenty-one years.

In fixing a limit of this kind, the extent to which it interferes with the liberty of contract is commonly overlooked. By enabling any private owner to grant leases for thirty-one years, he is not in the least compelled to grant a lease for a longer period than twenty-one years, if he does not desire to do so. Should he, however, think that the usual lease of thirty-one years is suited to the circumstances of Ireland and of his own property especially, if he is well founded in this opinion, he will not grant, nor will his tenants accept, leases for twenty-one years; and the restriction on his freedom of action and of exercising his own judgment, by limiting the leasing power to twenty-one years, does not force such leases to be granted, but simply operates in such cases to prevent any lease being given, and so to defeat the very purpose for which the Act was passed.

There is only one topic in the evidence before the Committee of 1865 as to leasing powers which requires to be noticed.

Explanation of cause of neglect in some cases of long tenure.

Instances of neglect, where long leases exist, are sometimes brought forward to show the inutility of tenure as a security for capital, and the strange economic theory is propounded that a precarious interest is more favourable to the investment of capital than a secure one. As well might the state of landed property in Ireland before the Incumbered

Estates Court was established be adduced as an argument against property in land.

The remedy, however, which the Legislature applied to incumbered estates of large proprietors was not to destroy property in land, but simply to secure its prompt, cheap, and effectual transfer to solvent hands.

For tenants' interests under leases where the value is small, and where the interests have become complicated, the Landed Estates Court is too expensive, and so these interests remain often for years untransferred, in the hands of some one who has a very limited and often uncertain interest in them. Such a leaseholder is deterred from making improvements by the state of the law which deprives him of the entire value of his improvements if any one should disturb him under a prior charge or claim, however obscure or unknown, affecting his interest.

No remedy is proposed in the Bill for this class of cases; the remedy is to be found in an extension of the principle of the Record of Title Act to the local registry of small leasehold interests, and in the providing for the local sale of such interests in a cheap manner, with an absolute title.

Conclusion of leasing powers.

These are too large questions to enter upon at present, and I merely notice them to remove a misapprehension as to the real cause of neglect in old leaseholds, which stands in the way of a cordial acceptance of the wise propositions for facilitating leasing powers, such as those contained in the Bill submitted by some of the Irish members.

## IV.—*Amendments in the Law in other matters besides Leases and Improvements.*

One of the Acts of 1860 was founded on the Bills for consolidating the law of landlord and tenant

referred to in my former Report, (Appendix, p. 49). This Act has had the effect of greatly simplifying the proceedings in cases between landlords and tenants, and indirectly in this way has diminished the tenant's security for compensation, as compensation was often given simply to avoid legal proceedings.

It has diminished the tenant's security in another way not intended,—by enabling an ejectment to be brought in such a manner that a mortgagee of a tenant with a registered mortgage can be deprived of his security without even getting notice of the proceedings.

One improvement in the law was carried out in this Consolidated Act of 1860, by agricultural and trade fixtures being put on the same footing.

In the Bill now proposed there is no change proposed except what is simply incidental to the compensation for improvements.

Irish County Court should, like English Court, have Equitable Jurisdiction.

A suggestion which I made in 1859, (Appendix, p. 51), about the Irish County Court being made a Court of Equity for the poor, was last year carried out in England by Statute 28 & 29 Vict., c. 99, entitled "An Act to confer on County Courts a limited jurisdiction in Equity."

This Act deals with the case of minors with small properties like leasehold interests which I also referred to, (p. 52).

The law of contracts amongst the rich rests as much upon the equitable jurisdiction to enforce them as upon the legal, and it is essential that those who desire that the dealings of poor tenants should rest on contracts should see that they have equal access to a cheap equitable as to a cheap legal jurisdiction.

I venture, therefore, to repeat these suggestions, as also the suggestions as to poor lunatics having similar interests, but I can do so in a form more likely to be

adopted when I suggest that the law of England as to equitable jurisdiction of small amount and for the protection of minors and lunatics with small property should be extended to Ireland.

I have the honour to be

Your very faithful servant

(Signed,) W. NEILSON HANCOCK.

The Right Honorable
Chichester P. Fortescue, M.P.,
Chief Secretary for Ireland.

# APPENDIX,

CONTAINING

## THE REPORT

ON THE

# LANDLORD AND TENANT QUESTION IN IRELAND,

FROM 1835 TILL 1859;

WITH

## SUGGESTIONS FOR LEGISLATION

IN 1859,

REFERRED TO IN PRECEDING REPORT.

# APPENDIX.

*History of the Question.*

64, Upper Gardiner-street, Dublin,
11*th October*, 1859.

Sir,

Some weeks since I had the honour to receive instructions from you to prepare a Report giving some account of the Landlord and Tenant Question in Ireland, since the subject was first brought under the consideration of the Imperial Parliament, with suggestions for legislation. I now beg to submit the following Report.

1835. The commencement of the modern consideration of the Landlord and Tenant question was the introduction of Mr. Sharman Crawford's Tenant-right Bill, in 1835.

History of the question. It is worthy of observation, that the Members who first brought the subject forward, were men of wealth and fortune, having estates in the North of Ireland. Mr. Crawford, the chief promoter of the Bill, has property of several thousands a-year in the county of Down; and the late Mr. M'Cance, who joined him in introducing his first Bill, was a wealthy banker, merchant, and landed proprietor, and then represented the Town of Belfast in Parliament.

The Bill was read a first time, the Earl of Carlisle (then Viscount Morpeth, and Chief Secretary) and Judge Perrin (then Attorney-General for Ireland) supporting its introduction, without pledging themselves to the principles of the Bill.

In 1836, Mr. Crawford, in conjunction with the late Mr. Shiel, introduced another Bill involving the same principles. Viscount Morpeth supported its introduction on the ground that he considered some measure necessary.

*History of the Question.*

From 1836 till 1843 the question seems to have remained in comparative abeyance. The consideration of this, amongst other social questions in Ireland, was at that time postponed to the more immediate object of introducing the Poor Laws. The Irish Poor Law Act, after a good deal of inquiry and discussion, was passed in 1838, and the law came into general operation about 1843.

1843.

In 1843 Mr. Sharman Crawford brought forward the Tenants' question again, and Sir Robert Peel promised inquiry, and shortly afterwards advised the issue of the Land Occupation Commission. The Commissioners appointed under it conducted a most extensive inquiry in every part of Ireland, collected a mass of evidence, and made their Report in February, 1845.

1845.

From the importance of the evidence collected by the Commissioners, and the nature and extent of their recommendations, the question of Landlord and Tenant in Ireland became at once a matter of important State policy, and the official history of the question may be said to commence with their Report.

There are two statements in this Report which are of great importance in the consideration of every plan for dealing with the Landlord and Tenant Question, as they explain why that question has assumed an importance in Ireland, and led to an amount of excitement and feeling there so far out of proportion to the feeling on the subject in either England or Scotland.

Difference between Ireland and England as to persons by whom permanent improvements are made.

The first statement relates to the difference of practice between Ireland and England and Scotland: the improvements in Ireland being made by the Tenants, which in England and Scotland are usually made by the Landlords.

The Commissioners state:—

"It is well known, that in England and Scotland, before a landlord offers a farm for letting, he finds it necessary to provide a suitable farm-house, with necessary farm-buildings, for the proper management of the farm. He puts the gates and fences into good order, and he also takes upon himself a great part of

the burden of keeping the buildings in repair during the term; and the rent is fixed with reference to this state of things. Such, at least, is generally the case, although special contracts may occasionally be made, varying the arrangements between landlord and tenant.

"*In Ireland the case is wholly different. The smallness of the farms,* as they are usually let, together with other circumstances, to which it is not necessary to advert, *render the introduction of the English system extremely difficult, and in many cases impracticable.*

"It is admitted on all hands, that, according to the general practice in Ireland, the landlord builds neither dwelling-house nor farm offices, nor puts fences, gates, &c., into good order, before he lets his land to a tenant. The cases in which a landlord does any of those things are the exceptions. The system, however, of giving aid in these matters is becoming more prevalent.

"In most cases, whatever is done in the way of building or fencing is done by the tenant; and in the ordinary language of the country, dwelling-houses, farm-buildings, and even the making of fences, are described by the general word 'improvements,' which is thus employed to denote the necessary adjuncts to a farm, without which, in England or Scotland, no tenant would be found to rent it."

Now, the principle of law which presumes that all improvements are the property of the landlord has a very different effect in England, where such improvements have been usually made by the landlord, and in Ireland, where they have been usually made by the tenant.

Nearly every plan that has been proposed for affording legal security to Irish tenants who have *bonâ fide* made valuable improvements, has been met by a statement of the opponents, that they were quite willing to submit to any measure, if it were only extended to England and Scotland. English landlords have been appealed to to resist particular proposals, because they were not required or would not work satisfactorily in England; whilst in Ireland, where the measure was to be applied, the state of facts, as to the usual habits and customs of the people, is wholly different.

The views of the Land Occupation Commissioners on this point are strongly corroborated by the speech of the Earl Fortescue, who had been Lord Lieutenant of Ire-

*History of the Question.*

land, in a debate in the House of Lords, shortly after the Report of the Commissioners was presented. He said:—

"In Ireland whatever improvements were made, whatever repairs were required in fences or drains, and whatever buildings were necessary to be erected, had to be done, if they were done at all, by the tenant, and at his expense, in some cases certainly with more or less assistance from the landlord, which assistance had, he understood, been increasing of late years, but which assistance had been, he believed, until a few years ago, the exception, and a very rare exception, and not the rule.

"He was, therefore, he thought, justified in saying that the circumstances of the two countries were not similar.

"Now, he thought, if those expenses were to be borne by the tenant, encouragement should be given to him to make them, by insuring him compensation for the outlay, if the tenancy were terminated before a fair return had been obtained. At present the tenant had no security that if the property were sold or passed into other hands advantage would not be taken of the improvements made by him to raise his rent to an unreasonable extent."

Effect of Penal Laws on the relation of landlord and tenant.

The next statement of the Commissioners, which is of general importance, relates to the effect of the Penal Laws and other disabilities in producing the unsatisfactory state of the relation of landlord and tenant, and the inequality of the existing laws on the subject.

The Land Occupation Commissioners, however, point out, that whilst in England and Scotland the change from the feudal tenures to the modern relation of landlord and tenant was gradually brought about, and, in a great part, completed many years ago, in Ireland the changes of property were nearly all the results of sudden confiscations and re-grants, and—

"These confiscations were followed," they state, "at a later period by the enactment of the Penal Laws, which, affecting as they did the position of the Roman Catholics as regarded landed property, must have had a very general influence on society in such a country as Ireland.

"These laws, both in their enactment and in their subsequent relaxations, have affected materially the position of occupier and proprietor. *They interfered with almost every mode of dealing with landed property by those who professed that religion,* and, by creating a feeling of insecurity, directly checked their industry."

The attention which the Commissioners have directed to the Penal Laws is of great importance, when it is

borne in mind that, until the famine, the Roman Catholics formed above eighty per cent. of the population of Ireland; and although the Penal Laws have been relaxed, and the disabilities of Roman Catholics to a great extent removed, still the spirit of inequality, which the long continuance of the Penal Laws gave rise to, is to be found in many of the 200 statutes by which the relation of landlord and tenant is regulated in Ireland. *History of the Question.*

Even the Protestant tenants in Ireland, composed as they chiefly are of Presbyterians, were, to a great extent, under political disabilities until the repeal of the Test and Corporation Acts in 1828.

There could not, therefore, be a greater historical error than that of holding the Roman Catholic and Presbyterian tenants entirely responsible for the state of the relation of landlord and tenant in Ireland, and the laws on the subject, of which they complain, and refusing well-considered alterations in those laws, on the simple ground that they should have protected themselves.

The historical view of the question which the Commissioners have given is, moreover, the true answer to those who consider every proposal for legislation, not by the history of the past and the actual state of the present in Ireland, but by their own experience of the relations of landlord and tenant in England or Scotland.

Having thus noticed the principal general statements of the Commissioners, and the conclusions to be drawn from them, I have next to notice their suggestions. Many of these have been made the subject of further inquiry and of legislation. Their four principal suggestions have, however, been only very partially, and in some cases not at all, dealt with; and they form the basis of the Landlord and Tenant Question that has now to be considered. These suggestions are— Suggestions of the Land Occupation Commissioners.

1st.—Statutable leasing powers.

2nd.—Power to tenants for life, and others, to charge the inheritance for capital expended in improvements.

3rd.—Power to tenants for life, and others to make

*History of the Question.*

agreements with their tenants, giving them security for capital expended by them in improvements, and to provide for cases not settled by contract.

4th.—Amendments in the Law of Landlord and Tenant as to the remedies for enforcing contracts and obligations. The passages in the Report of the Commissioners which contain these recommendations are the following:—

1.—As to Leasing Powers—

"We also think it would be desirable that extended leasing powers should be given under proper and equitable restrictions to tenants for life, and to Boards or Corporations, whose powers are restricted by law, such as Incumbents as to their glebe-lands, the Provost and Fellows of Trinity College, the Trustees of Erasmus Smith, the Board of Education, and the Trustees of Sir P. Dun's and Wilson's Hospitals."

2.—As to Powers for Charging the Inheritance for Landlords' Improvements—

"The removal of impediments, as far as it is possible to remove them by legislation, has formed the subject of inquiry and remark by the Committee of 1835 on Public Works, and various suggestions upon it have been offered to us in the course of our inquiry.

"In accordance with the recommendation of that Committee, we are of opinion that, for the permanent improvement of an estate, confining that expression to such operations as may properly be considered of an agricultural character, tenants for life, and other persons under legal disability, should be empowered subject to proper and efficient restrictions, to charge the inheritance to an amount not exceeding three years' income for such improvements, being bound to repay the principal by instalments, and to keep down the interest."

3.—As to Powers to make Agreements securing Tenants' Improvements, and to provide for Cases not settled by Contract—

"Although it is certainly desirable that the fair remuneration to which a tenant is entitled for his outlay of capital or of labour in permanent improvements should be secured to him by voluntary agreement rather than by compulsion of law, yet, upon a review of all the evidence furnished to us upon the subject, we believe that some legislative measure will be found necessary, in order to give efficacy to such agreements, as well as to provide for those cases which cannot be settled by private arrangement."

4.—As to Amendments in the Law of Landlord and Tenant—

After noticing several suggestions respecting the law, they add :— *History of the Question.*

"We recommend that steps be taken at an early period to revise the laws relating to ejectment and distress with reference to the suggestions now made by us."

Such being the main results of the Report of the Land Occupation Commission, I propose to trace the history of each of the four heads of recommendation of the Commissioners separately, as they have been nearly always separately dealt with in the various Bills that have been brought forward and Statutes that have been passed since 1845.

## I.—*Leasing Powers.*

After the Landlord Occupation Report was presented the first Act to be noticed is one passed in 1845, to remove the inconvenience of the limited leasing powers previously possessed by the Commissioners of Woods and Forests. It enabled the Commissioners of Woods and Forests to lease any part of the shore of the sea, lands derelict or gained from the sea, for any term not exceeding ninety-nine years, where lessees covenant to embank or construct docks. 1845. 8 & 9 Vic., c. 99.

This Act affords a remarkable precedent for the true mode of dealing with past improvements made by tenants on a belief, however mistaken, that they were secure in making them. Tenant-right clause in the Woods and Forests Leasing Powers Act.

It appeared that many persons had erected buildings on the Crown lands in ignorance of the title to the Crown. These buildings, as the law then stood, were, on the discovery of the rights of the Crown, forfeited. But the Legislature considered that it would be unjust to compel the Commissioners of Woods and Forests to insist on the forfeiture, or to prevent security being given for the future, because a large amount of capital had been expended under a mistaken notion of security.

The second section accordingly provides : "That where persons have erected buildings on Crown lands in igno-

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rance of the title of the Crown, the Commissioners shall grant leases *with reference only to the value of the land as building ground.*"

The principle thus sanctioned with regard to the estates of the Crown, would, if applied to property under settlement, meet some of the cases of the greatest injustice and hardship.

It would only be necessary to provide—that where persons had erected buildings under any understanding or custom, or on the faith of any fair expectation that they were safe in doing so, it should be lawful for any tenant for life, or other person, having a limited interest, to grant a lease under any leasing power with reference only to the value of the land, without taking the buildings so erected by the tenant into account.

1846. Reduction of Stamp Duties on leases. 9 & 10 Vic. c. 112.

The next step to facilitate the granting of leases was the reduction of the stamp duties on certain leases in 1846. This was in conformity with one of the recommendations of the Land Occupation Commissioners. The reduction was accompanied by unwise restrictions, requiring a particular form of lease to be adopted. The change was, however, beneficial, as it led, in 1849, to an entire modification of the stamp duties on leases, introducing the *ad valorem* principle, and so relieving leases of small farms of the very burdensome tax previously imposed on them.

The history of the stamp duties on leases shows that it is sometimes better to pass an enabling statute even with unwise restrictions, than to abstain from legislation. When the principle is once conceded, the absurd restrictions are easily removed.

1848. Amendment of powers of leasing mines. 11 Vic. c. 13.

In 1848 two important statutes respecting leasing powers were passed. It had been observed by Mr. Purdy, then Secretary to the Mining Company of Ireland, that the limit of rent, namely, one-tenth of the gross produce of the mine, required to be reserved in leases of mines, under the Irish statutes, was more than double the average amount of rent payable at the copper mines of Cornwall. When this impediment to Irish enterprise

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was properly brought under the consideration of Parliament in 1848, an Act was passed which recited the previous statutes on the subject, and repealed so much of them as specified a minimum rent upon leases of mines, or limited the terms of such leases to thirty-one years. The Act authorized instead leases for forty-one years, at the best improved rent that could be reasonably gotten.

Scotch Leasing Powers. 11 & 12 Vic. c. 36, s. 24.

In the same Session the Law of Entail in Scotland underwent a great reform; as part of which the Legislature enabled all heirs of entail, with consent of next heirs and approbation of the Court, to grant feus or long leases of one-eighth of any estate, provided no fines were taken and the best rent reserved.

The same statute entirely abolished the future entails of tenants' interests under leases.

Thus one of the principles recommended by the Land Occupation Commissioners for Ireland was in 1848 applied to Scotland, giving, with the provisions of the Montgomery Act, a very complete system of statutable leasing powers for that portion of the United Kingdom.

1849.

In 1849 some important evidence was given before the Poor Law Committee of the House of Commons, as to the very unsatisfactory state of the laws with regard to land in Ireland, and amongst other matters suggesting statutable leasing powers. (10th Report.)

The Commons' Committee, of the same year, that inquired into the management of property under Chancery Receivers in Ireland, noticed the want of leasing power, and recommended that the Court should be empowered to make leases for fourteen years of property under its management.

1849—1850. Sir John Romilly's Leasing Powers Bills, and the absolute security for leases provided for by them.

Sir John Romilly, Solicitor-General, in conjunction with Lord John Russell and Sir William Somerville, at a late period of the Session introduced the Estates Leasing (Ireland) Bill, which passed the House of Commons, and was read a first time in the House of Lords.

In 1850, Sir John Romilly again introduced his Bill, and it proceeded so far as a second reading in the House of Lords.

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The details of these Bills it is not necessary now to refer to; but there was one principle provided for in them which has been neglected in subsequent measures.

In the ordinary course of business a tenant does not investigate his landlord's title; the cost of doing so would be nearly always too great; besides the landlord would not consent to the investigation on every occasion of granting a lease.

It follows from this that it is a great hardship, if a flaw should be discovered in a landlord's title, that leases granted before the tenants had any notice of the litigation should be bad.

Take the case of the estate which the late Duke of Wellington and Mr. Leslie recovered from Lord Dungannon, after he had been for years in possession; or the case which is now pending for so many years between the Marquess of Donegall and Viscount Templemore. Is it not a great hardship that leases which tenants took, trusting to the honour of Lord Dungannon or Viscount Templemore, should afterwards turn out to be worthless on some point of law in title-deeds which they never had the opportunity of seeing; and which may be so subtle that it takes the Court years to decide?

Now, Sir John Romilly's Bill met this difficulty, by giving the tenants holding by statutable leases, *bonâ fide* made without fine, absolute security.

1851.

Trinity College, Dublin, Leasing Powers Act. 14 & 15 Vic. c. 128.

In 1851 the Board of Trinity College, Dublin, obtained by private Act of Parliament powers of leasing for ninety-nine years. The Legislature thus gave partial effect in the case of one institution, to the recommendation which the Land Occupation Commissioners intended to apply to all estates in the hands of Public Boards in Ireland.

1852.

Mr. Napier's Leasing Powers Bill.

In 1852 Mr. Napier, then Attorney-General for Ireland to Lord Derby's Government, introduced his plan for settling the landlord and tenant question, and one of his four measures was a Leasing Powers Bill.

This Bill, however, related to two perfectly distinct matters. The first part of the Bill proposed to create

general statutable leasing powers of different periods for different purposes— *History of the Question.*

| | | |
|---|---|---|
| 31 | years | for agriculture. |
| 60 | „ | improvement. |
| 41 | „ | mines. |
| 99 | „ | buildings. |
| 999 | „ | public purposes. |

This Bill, though having considerable merit, fell short of a complete measure, in not adopting some of the just principles that had been already recognised by Acts of Parliament and by Bills that had received the sanction of the House of Commons.

Thus it contained no clause like the just one in the Woods and Forests Leasing Powers Act, providing that where tenants had made improvements on a mistaken notion of security, the rent to be reserved should be the best value, irrespective of such improvements.

Again, as to mining leases, the Bill proposed to repeal the principle of best rent which had been sanctioned by Parliament, as I have noticed, so recently as 1848, and which has been again sanctioned by the Oxford and Cambridge Colleges Estates Act of 1858. 21 & 22 Vic. c. 44.

But the Bill entirely departed from the just principle of Sir John Romilly's Bill, and made the leases, though capable of being made without consent of incumbrancers, only binding on those claiming under the same settlement or title, thus leaving tenants exposed to the danger of some defect in the title of their landlord—the very danger they could least guard against.

The Bill, too, did not provide for the extension of the principle of the Irish Acts, which allow perpetuities for cotton mills. Such an extension is indispensable, to allow of the development of the linen trade in the North of Ireland.

On the contrary, the Bill in this and other cases abridged the duration of leasing power under existing Statutes.

The discussions on Mr. Napier's Leasing Powers Bill seem to have turned almost altogether on the second part, which provided that persons under disabilities should be

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enabled to make agreements securing compensation for improvements. It was on this part of the Bill entirely that clauses were introduced by the Special Committee of the House of Commons.

1853. Mr. Napier's Leasing Powers Bill having been carefully considered by the Special Committee, to whom all the Land Bills were referred, finally passed the House of Commons, with some amendments, in 1853.

In the House of Lords a discussion arose on all the Land Bills, and legislation upon the Leasing Powers Bill, amongst the rest, was postponed on the understanding that the Bills should be introduced first in the House of Lords next Session.

1854. In 1854, the Leasing Powers Bill was introduced in the House of Lords, and referred with the other Bills, to a Select Committee there. It passed the House of Lords with some amendments, the chief being a reduction of the term for agricultural leases to twenty-one years, and of improvement leases to forty-one years.

The further progress of the Bill was stopped in the House of Commons, in consequence of dissatisfaction at the House of Lords having not only diminished the protection contained in the compensation clauses of the Leasing Powers Bill, but having also entirely rejected the Tenants Compensation Bill, which, after lengthened consideration by the Select Committee to which the Land Bills had been referred, had been passed by the House of Commons in the previous year as a settlement of the question.

From this it would appear that there was no real difference of opinion as to the Leasing Powers part of the Bill; and that if the Bill had been confined to Leasing Powers alone, it would have passed both Houses.

1855. Leasing Powers Act for Religious Worship in Ireland. 18 & 19 Vic. c. 39.

In 1855, a very small but important part of the Leasing Powers Bill was introduced as a separate measure and passed—the Leasing Powers Act for Religious Worship in Ireland.

By this Act all persons are enabled to make grants in fee-farm, or to lease, for any term not exceeding 999

years, for a site for a place of worship or for residence of clergymen, or the erection of schools in connexion therewith; the rent to be the best improved rent, without fine. *History of the Question.*

This Act contains an important provision as to past improvements of tenants, similar to that contained in the Woods and Forests Leasing Powers Act already referred to. It provides—

"In case of the surrender of any existing lease, and the grant of a new lease, the value of any buildings, erections, or improvements on said lands, theretofore made for any of the purposes aforesaid, shall not be taken into account in the rent to be reserved in such new lease."

The leases granted under this Act are subject to one species of insecurity, as the lease binds only the lessor, his heirs and successors in estate, and all deriving under the same title or settlement as that under which the lessor derives.

This Act was intended for securing the sites of Roman Catholic and Protestant Dissenting places of worship and schools. But in the corresponding Act, for sites, in Ireland, for churches and schools for members of the United Church of England and Ireland, it is provided that sites duly granted or leased under the statutable leasing powers shall be "free from all demands or claims of any body politic or corporate, or person or persons whatever, and without being at any time subject to any question as to any right, title, or claim thereto, or in any manner affecting the same."

Absolute security given to leases for sites for churches and schools of the United Church in Ireland. 4 Geo. IV. c. 86, s. 19.

The difference in these provisions, as to school sites, was noticed by the Endowed Schools Commissioners in 1858. They recommended—

"That leasing powers should be conferred on all persons under disabilities, enabling them, and others on their behalf, to execute grants of land for the use of schools, not exceeding half an acre in towns, and two acres in the country, and that grants so made should give an absolute Parliamentary title."

In 1856 an Act of Parliament was passed, dispensing with the necessity of a private Act of Parliament, to introduce powers of sale and of leasing into defective settlements, and substituting the jurisdiction of the Court of

1856. Application to Chancery substituted for private Act of Parliament for

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obtaining powers of sale and leasing settled estates. 19 & 20 Vic. c. 120.

Chancery. For this purpose Ireland was included in this Act. From the expensive nature of the proceedings under it, it would only be suited for special cases. I have been informed by the Officer of the Court that only ten petitions have been filed under it in Ireland, in the three years since it was passed.

1857. Glebe Lands Leasing Powers Act. 20 & 21 Vic. c. 47.

In 1857 another portion of the Leasing Powers (Ireland) Bill was taken up by some persons interested in its provisions. An Act was passed called "The Glebe Lands Leasing Powers Act, 1857." It recites that it would be for the public advantage that ecclesiastical persons in Ireland should be empowered, in certain cases, to demise a portion of their Glebe lands for building purposes. They are thus enabled to lease for a term not exceeding ninety-nine years land within two miles of a town; provided only that the best rent be reserved, and certain conditions observed.

Defective state of law as to leasing of Glebe lands.

Although this Act relates specially to the leasing of Glebe lands, and grants one of the largest powers of leasing proposed to be conferred in any case, singularly enough it omits to remove the more pressing grievance of the total absence of leasing power with regard to the agricultural holdings on glebes suitable for residence.

It has been observed that the tenants of Glebe lands have been found to be the very worst class holding under the immediate landlord, their tenure being more precarious than any other, being for no definite period, and determinable at any moment on change of incumbent.

5 & 6 Vic. c. 27.

A similar difficulty of want of tenure was removed in England, seventeen years ago, by a Statute which enabled incumbents of ecclesiastical benefices to demise their lands for farming purposes for fourteen years, with consent of bishop, at best rent.

Here was a direct precedent of recent date; and yet the Glebe Lands Leasing Powers Act was allowed to pass without any attempt to remedy the greater grievance as to agricultural tenure.

It is often objected to any special legislation for Ireland, that such cannot be allowed, unless precisely the same

provisions be at the same moment of time extended to England. Those who make this objection are not equally careful to extend to Ireland with the same promptness the salutary provisions of English Acts of Parliament. Here is a statute seventeen years in force in England, but not yet extended to Ireland, though the appropriateness of its provisions had been pointed out, some eight years ago, in a book of established reputation.

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Such anomalies are inevitable when a great question, instead of being settled by a comprehensive measure, is left to be scrambled for in detail by the bit-by-bit legislation which individuals having special interests will be sure to have carried.

1858. Recommendations of Endowed Schools (Ireland) Commissioners as to leasing power.

In 1858 the Commissioners for inquiring into Endowed Schools in Ireland, as the result of their examination with respect to the management of estates belonging to the Commissioners of Education in Ireland, and other charitable boards and trustees, recommended—

> "That powers to grant agricultural leases for the term of twenty-one years, and building leases for long terms, should, under proper precautions, be given to all boards and trustees having estates for Endowed Schools under their management."

They have thus, after as extensive an inquiry, made precisely the same recommendation as the Land Occupation Commissioners made thirteen years ago; the principle involved in the recommendations having in the interim been sanctioned by the Legislature in the case of Trinity College, the only trustees that had a sufficiently strong interest to lead them to press for the application of the principle to their case.

When so much discontent prevails with regard to the relation of landlord and tenant in Ireland, it is a matter of serious consideration whether the course that has been followed on this question is the one best calculated to allay discontent and inspire confidence in the Legislature and in public men.

Noblemen and gentlemen of station and influence were appointed by the Crown in the Land Occupation Com-

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mission to inquire into the grievances of the people. They held Courts all over Ireland, published the evidence, and made recommendations founded upon it. These recommendations became such a subject of bitter contention between different political parties, that statesmen and officers of the Crown find it impossible to carry any comprehensive measure; whilst, at the same time, parties having special interests can with the greatest ease get these recommendations applied to their own cases, as in the instances of mines, Trinity College estates, religious and educational sites, and glebe building ground, to which I have referred.

1859. Connexion of case of O'Fay and Burke with leasing powers.

The case of O'Fay and Burke, which last year called forth such strong expressions from the Master of the Rolls, and afterwards from the Lord Chancellor and Lord Justice of Appeal, affords an illustration of the danger of leaving such questions unsettled.

The whole of that case arose out of defective leasing power. The Rev. Dr. O'Fay proposed to take the lands for the usual lease in Ireland—three lives, or thirty-one years. Mr. Burke was perfectly willing to accept this proposal; but before finally accepting it, he was desirous of ascertaining whether his leasing power permitted him to make such a lease as Dr. O'Fay asked for. Pending this inquiry he put Dr. O'Fay into possession of the farm. After he had been a short time in possession, Mr. Burke writes to him:—"I find I have not the power to execute the lease you propose. If you choose to take the farm in the usual way I will allow you £20 to get up a cottage, and a lease for your own life." This was in 1848, and Mr. Burke lived till 1854.

Now, had Sir John Romilly's Leasing Powers Bill passed the House of Lords in 1849 or 1850; had even Mr. Napier's Bill passed the same body in 1853, in all human probability Mr. Burke would have given a lease of sufficient duration to satisfy Dr. O'Fay, and the dispute of O'Fay and Burke, and all the bitter feeling it has caused, would never have happened.

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On the return of Lord Derby's Government to power in 1858, the subject of leasing power was considered as still requiring legislation. Towards the close of the Session of 1858 a Leasing Powers Bill was introduced and read a first time; and in May, 1859, the Earl of Donoughmore said that the Attorney-General had prepared a Bill on the subject of leasing power which he intended to introduce before Easter.

Suggestions for legislation as to leasing powers.

As to the mode of legislation to be now adopted, I would suggest that a Leasing Powers Bill should be prepared, confined to leasing powers alone, that the provisions with regard to agreements for securing tenants' compensation for improvements should be the basis of a Tenants Improvement Bill, and not be mixed up with leasing power. The two measures rest on principles sufficiently different to make this course expedient.

There is scarcely any difference of opinion about leasing power. The provisions of any Bill would be only amending the numerous Leasing Powers Statutes that exist in Ireland, and applying to similar cases principles that have already been frequently sanctioned in special cases by the Legislature.

The best basis for a Bill would, I think, be the clauses in the Leasing Powers Act for Religious Worship in Ireland, 1855, and the Glebe Lands Leasing Powers Act, 1857, so far as they are applicable, and for other provisions the Bill that was carefully considered by the House of Commons in 1853, and by the House of Lords in 1854, so far as it relates to leasing powers, with the following amendments:—

1st. A clause similar to that in the Woods and Forests Leasing Powers Act, enabling, but not compelling, landlords in estimating the best rent, to omit the value of any improvements that had been made by the tenant, and which the landlord thought he ought not to charge increased rent for during the lease.

2nd. Mining leases should be allowed for sixty years, as in the Oxford and Cambridge Colleges Estates Act,

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1858. That the best rent, as in that Act and in the Mining Leases Act of 1848, and not a proportion of the produce, should be reserved.

3rd. Statutable leases, made *bonâ fide*, should confer title, not only against the lessor and all claiming under same title, or settlement, but also where the lessor has been twelve months in undisturbed receipt of rents, and no *lis pendens* is registered against the estate, the lease should confer an absolute title.

4th. Leases for flax mills, manufactories for power looms, or any other mills or manufactories connected with the linen trade, or other trade or manufacture, to be like public leases for any term not exceeding 999 years.

5th. The duration of leasing power authorized by existing Statutes should not be abridged.

From my knowledge and experience on this subject, I can state that I know of no single reform in the law of landlord and tenant that would be so easily carried, and at the same time so beneficial, as a Leasing Powers Bill such as I have suggested.

It would, like the Incumbered Estates Act, after a few years, reflect credit on all who who were instrumental in its introduction.

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## II.—*Landlords' Improvements.*

Recommendation of Land Occupation Commissioners.

The second recommendation of the Land Occupation Commissioners to which it is necessary now to direct attention is, that impediments in the way of landlords executing permanent improvements should be removed as far as it is possible to remove them by legislation. That for this purpose tenants for life, and others under legal disability should be empowered to charge the inheritance for permanent agricultural improvements.

The Commissioners state very clearly one of the leading principles under which such powers should be given—

namely, that the tenant for life should be bound to repay the principal by instalments, and keep down interest. *History of the Question.*

The Commissioners make an important statement as to the frequency of settlements in Ireland, and the general state of the proprietors as to accumulated wealth :—

> "It *frequently* happens that large estates in that country are held by the proprietors in strict limitation; and the pecuniary circumstances of the landed proprietors generally disable many, even of the best disposed landlords, from improving their property, or encouraging improvement amongst their tenantry, in the manner which would conduce at once to their own interest and the public advantage. *Many of the evils incident to the occupation of land in Ireland may be attributed to this cause.*"

From this state of facts they arrive at the very natural conclusion, that where landed proprietors have not much accumulated wealth, and are strict tenants for life, the only way they can be induced to execute improvements is by giving them a power of charging a part at least of the expenditure as against their successors.

The Commissioners refer to the Montgomery Act in Scotland as a precedent for this legislation. The circumstances of Scotland when that Act was passed were not very dissimilar to those of Ireland at present. The Scotch landlords were then in a very different position as to wealth from the English aristocracy, and from what they are at present. 10 Geo. III. c. 51.

The state of feeling in Scotland until the defeat of the Pretender in 1745, was as unfavourable for steady improvements as the feeling in Ireland until the termination of the Repeal agitation in 1848.

The Montgomery Act begins by reciting that it would be an inducement and encouragement to proprietors of entailed estates to lay out money in improvements, if they were secured in recovering a reasonable satisfaction from heirs of entail. Nature of power of charging for landlords' improvements under the Montgomery Act.

The limit of charge is four years' full rent of the entailed estate, after deductions of all public burdens, life, rent, and interest of debts, as the same shall happen to be after the death of the proprietor who improved.

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Now, on the principle of charging the expense as a terminable annuity proposed by the Land Occupation Commissioners, the analogous limit would be that the annuity should not exceed one-seventh of the clear net income of the settled estate, after deducting all taxes, jointures, interest of debts, and ordinary expenses of management.

The most important characteristics of the Montgomery Act are—

1st. A proprietor has not to ask the leave of any court or public officer to make improvements, or to approve of the plan he proposes for them.

2nd. The only precaution adopted is, that three months before the proprietor begins to execute his improvements, he is to give notice in writing to the heir of entail next entitled to succeed to the estate after the heirs of the body of the proprietor, if within the United Kingdom, or if not to the nearest male relation on the father's side, or to his known factor or agent.

This notice is not for the purpose of making his consent necessary to the execution of the improvement, but to allow him to check the expenditure in any way, to see that it is honestly and properly incurred.

3rd. After he has made his improvements he has not to submit them to the approval or inspection of any public officer; but has simply to perpetuate the evidence of the expenditure, as that is not to be required till after his death.

The rule on this subject is of the simplest character.

That an account of the money expended in improvements in each year before Martinmas must be lodged with the sheriff or steward clerk, within four months from its termination, subscribed by the proprietor himself, with the vouchers by which the account is to be supported when payment is to be demanded.

4th. The next point to be noticed about the Montgomery Act is that the proprietors are allowed to manage the whole matter without resort to a public officer or court of law, unless there is a dispute; then a simple remedy is

given for the executors of the improver against the heir of entail.

5th. If the proprietor who improves thinks there is likely to be any dispute about the amount of his expenditure in improvements, he may in his lifetime institute a proceeding by action of *declarator*, and prove his expenditure; the next heir of entail, or any other, being allowed to set aside or diminish the claim.

All these provisions seem to be framed on the true principle for legislation on this subject, assuming that the proprietors of land are honourable gentlemen, anxious for the improvement of their estates, and not likely to commit a fraud on their children or near relatives, nor likely to be incapable of improving their estates without, on every occasion, having a dispute with their children or relatives, which it requires the intervention of a Court of Law or of some public officer to adjust.

Power of charging for erection of mansion house under Montgomery Act.

There is another provision of the Montgomery Act not generally noticed. It is that which relates to the residences of proprietors.

This is founded on the principle that for a proprietor to reside with his family on his estate, and discharge the duties of his position, is one of the greatest improvements that he can effect upon it. The Montgomery Act accordingly provides that proprietors building mansion houses and suitable offices may charge within certain limits a proportion of the expenses to their heirs of entail.

The non-residence of Irish proprietors has been a frequent subject of observation, and it is but reasonable that the provision which was adopted in Scotland to prevent the strictness of entails interfering with the building of mansion houses, should be applied to prevent the strictness of settlements producing the same result in Ireland.

The provisions of the Montgomery Act were modified by the Entail Amendment Act of 1848.

A power of charging terminable annuities against the entail was given in certain circumstances, such charge to be in lieu of the claim against the heir of entail.

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The making of private roads was included amongst the improvements to be charged for.

The Montgomery Act was, however, limited to entails created before 1848, as it seems to have been thought that the abolition of perpetual entails would render the Act no longer necessary. It was found, however, in a short time, that its provisions were so convenient, that new entailers wished to be allowed to adopt them; accordingly, this permission was given to them in 1853.

In Ireland the measures that have been proposed or passed since 1845, have all been with the view to enable proprietors to improve with money *borrowed in the first instance*, and have not contemplated the more important case of a proprietor wishing to improve with his own savings, or having sufficient credit to raise money without a specific charge, like a drainage charge, in the first instance.

Power of mortgaging settled estates for improvements under sanction of Court of Chancery.

8 & 9 Vic., c. 56.

The first of the Acts to which I refer contemplated the enabling the owners of settled estates to mortgage their lands for the purpose of drainage.

As the Act contemplated an immediate charge on the lands, on certificate of completion of works, it is full of precautions.

A proprietor must petition the Lord Chancellor for leave to make the improvements.

The Master is to inquire whether the petitioner is entitled to possession of the lands, whether they are in the occupation of a tenant, and what title the tenant has to them, and whether he has consented to the improvements proposed to be made. He is next to inquire whether there is anybody else interested in the lands, in remainder or reversion. Then the proprietor is to be at liberty to lay before the Master proposals for improving his estate, explaining the nature and extent of the improvements, and the estimated expense of them, and the estimated value of them. Then the Master is to find all these particulars, and whether it would be beneficial for all the persons in the lands that the improvements should be made.

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The proprietor wishing to improve has then to petition the Lord Chancellor to confirm the Master's report. The Master by whom the report was made is then authorized to give a certificate, authorizing parties to make improvements; and when money is expended, to endorse the amount on certificate as proof of the expenditure.

The provisions of this Act of Parliament are in singular contrast to those of the Montgomery Act. They involve every proprietor who seeks to improve in an amount of legal expense quite deterring to such an undertaking. The result has been that the Act has remained a dead letter, so far as Ireland is concerned, for I have been informed by the proper officer of the Court of Chancery, that not a single petition has been presented under it.

The position in which Irish proprietors were, even after the passing of this Act, as to expending money in improvements, is shown by Lord Monteagle.

When the Million Act for Drainage was introduced in 1846, there was, he observed, no provision for settled estates; the consequence was, money was not borrowed to any extent under it in Ireland. 9 & 10 Vic., c. 101.

What thus arose from a defect in the Bill was charged on the want of energy, of patriotism, or of public spirit of the landed proprietors; because they could not do that which the defect in the law made impossible, they were told they were to blame, and not the Bill.

In 1847, the defect Lord Monteagle thus referred to was remedied, and the Landed Improvement Act of that year was passed. 10 & 11 Vic., c. 32.

The result of that measure is thus noticed by Mr. Thom, in his Statistics of Ireland:—

"The beneficial results, in an agricultural view, which have followed the effective drainage works executed through the medium of the Land Improvement Acts, have, as a whole, been very successful; and improvements in agriculture, especially in the spread of rotative husbandry and the introduction of green crops, has always followed the completion of the works.

"Up to the 31st of December, 1857, the number of loans sanctioned was 3,293, amounting to £2,387,330. A considerable number of loans, however, which had been sanctioned, have been

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relinquished or cancelled by the Board, in consequence of which a sum amounting to £202,739 has remained unappropriated out of the fund of £2,000,000 voted by Parliament for the Land Improvement Service.

"The total area that has been thorough-drained, up to the 31st December, 1857, amounts to 179,400 acres, which has been effected at an average cost of £4 17*s.* per acre, of which 7,000 acres have been drained during the year 1857, and a considerable portion of the land drained has been subsoiled."

It would appear from these figures that there is a great willingness to make improvements amongst Irish proprietors, if they were only free to do so with a power of charging a terminable annuity on the land.

13 & 14 Vic., c. 31, s. 8.

In 1850, the provisions of the Landed Improvement Act were extended from drainage to building of farmhouses and offices.

Mr. Napier's Land Improvement Bill.

In 1852 a Land Improvement Bill was introduced for Ireland by Lord Derby's Government. It was one of Mr. Napier's four Bills, and was supported, in 1854, by Lord Eglinton and Lord Derby in the House of Lords.

The success of the Land Improvement Act of 1847 led to its provisions being copied, and the new Bill was simply a plan for having the same mode of transacting the business applied to loans from private parties as had been adopted with respect to the Government money.

This Bill passed the House of Commons in 1853. It was not referred to the Select Committee, like the other Land Bills, but in the House of Lords it encountered considerable opposition; and although read a second time and discussed in Committee, it was dropped.

The objections urged in the House of Lords to this Bill were, I think, well founded.

The interference of the Board of Public Works was perfectly proper, and was to be trusted where public money was concerned; but it was justly objected that in the case of private loans it was no longer necessary, and in such cases not so certain to be well exercised.

Again, the clause in the Bill which allowed tenants in certain cases to be treated as owners, and to make improvements without their landlords' assent, was also justly

objected to. To make the Board of Works an arbiter between landlord and tenant was thought a dangerous power, and one not likely to lead to satisfaction. *History of the Question.*

Another very proper objection was taken to allowing a mortgagee in possession to act as owner. Lord Monteagle noticed that the borrowing powers under the Bill were not complete, and argued from them that the Bill would not be effective.

I have considered the provisions of Mr. Napier's Bill very carefully, and I cannot recommend their adoption in any new Bill. They give too much power to the Board of Works, to tenants under lease, and to incumbrancers. They would promote improvement by borrowed money alone, and would not be suitable to encourage improvements by the savings of the proprietor.

It might be thought that the sales in the Incumbered Estates Court had effected such a change in the landed property of Ireland, that the amount of property in settlement was no longer so considerable as to require a remedy. What, however, are the facts? Mr. Griffith's Valuation of Ireland gives the real property worth about £12,000,000. This being generally twenty-five per cent. below the letting value, gives a gross rental of £16,000,000. Now, the gross amount produced by the sales in the Incumbered Estates Court is £23,000,000. If the estates produced twenty years' purchase on an average, this would give a rental of £1,130,000 sold, or only one-fourteenth of the rental of Ireland. Proportion of property in settlement.

Of the other thirteen-fourteenths it may still be said that "in Ireland settlements of all estates prevail much more extensively than in England, and the class of proprietors purely in fee-simple is so small that it does not deserve to form an exception to the general rule, all proprietors being under disabilities."

There is no change in the landed proprietors in Ireland more important than the increased taste for encouraging improved agriculture, shown by them in the manner in which the Royal Agricultural Society, the North-East Agricultural Society, and the various Farming Societies

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throughout the country are supported. Resident proprietors, too, have, in many places, got farmyards that are as useful as Model Schools in stimulating improvements. It is a matter of great importance to the welfare of the country that every obstacle should be removed that prevents such men from carrying on improvements on a much more extended scale, and all over their estates, instead of in their demesnes alone.

Suggestions for legislation as to landlords' improvements.

To encourage such landlords to improve their estates should be the object of legislation—not needy men, but men with some money, or in good credit; and for such a purpose I would recommend a measure framed on the principles so long acted on in Scotland, as I have noticed, enabling an owner of a settled estate to improve at his own time, and in his own manner, only lodging an account, once a year, in the Clerk of the Peace's Office of any expenditure he wished to charge against his successors.

To the next successor, after his own descendants, he should give three months' previous notice of his expenditure, the notice being registered in like manner.

His expenditure should be turned into a terminable annuity, as under the Land Improvement Act, and his charge against his successors should only be for so much of the annuity as, dating from the year of expenditure, would remain after his death, the money being only payable as an annuity.

There should be a limit to the amount of charge on the estate for such annuities to one-seventh of the net income, at death of improver, after deducting all charges.

The proprietor should be enabled to get annuity made a valid charge by petition for small sums to Assistant-Barrister, and for large sums to Chancery.

The improvements to be charged for should comprise farm buildings, labourers' cottages, drainage, fencing, and other improvements usually made by landlords in England, Scotland, or Ireland.

Provisions enabling a proprietor to charge a terminable annuity, in like manner as other improvements, for expenditure in the erection of a suitable mansion house with offices, should form part of the Bill.

## III.—*Tenants' Improvements.*

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The third branch of the Landlord and Tenant Question relates to the mode in which tenants who have made improvements, in good faith, with the assent and knowledge of the landlord for the time being, are to be secured against having their improvements confiscated by the remainder man, by a subsequent purchaser, or by the landlord himself.

It is quite impossible to understand the history of this part of the question without understanding the law of the subject as it actually stands at present, and has been in operation ever since this question first came under the consideration of the Imperial Parliament.

Law as to tenant's improvements, as illustrated by the case of O'Fay *v.* Burke.

This law has been very clearly laid down in the recent case of the Rev. Dr. O'Fay against Major Burke, which came before the Master of the Rolls, and afterwards before the Lord Chancellor, and Lord Justice of Appeal, and which was made the subject of observation in Parliament in the early part of last Session.

The facts of the case are shortly these :—

Irish Chancery Reports, vol. viii., pp. 225, 511.

The plaintiff was the Rev. Dr. O'Fay, Parish Priest of Craughwell, in the county of Galway, and the defendant, Major Burke, the landlord, on whose estate the priest resided. About ten years ago the priest was induced to take a farm that had been held by a former parish priest; the previous proprietor, father to Major Burke, promising a lease for three lives, or thirty-one years. After the priest entered into possession the landlord ascertained that he could not fulfil his promise.

As he did not possess such a power under the terms of the estate settlement, he offered, instead, a lease for the priest's own life, and £20 to aid in building a house. The priest continued in possession of the farm, and paid the rent agreed on, thus, as he alleged, accepting the arrangement proposed. He was on excellent terms with the landlord, and expended £70 in permanent improvements, and did not ask for the £20 which the landlord had promised. In 1854 the landlord died, and his son,

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Major Burke, succeeded to the property. He gave notice to all his yearly tenants of an intention to raise their rents. The priest claimed to have a promise of a lease, and the agent of Major Burke, during his absence in the Crimea, admitted this claim, and did not raise the rent. The Major said he had no notice of his father's promise ; he, however, allowed the priest to remain in possession, and the priest expended £400 in buildings, on the faith that he would not be disturbed. A dispute subsequently arose about trespass, and the fences on the boundary between the priest's farm and some land in the possession of the landlord. The landlord served notice to quit, and brought an ejectment. After some delay judgment was given in his favour, subject to an application to the Court of Chancery to compel him to fulfil his father's promise of a lease.

Judgment of the Master of the Rolls in the case of O'Fay *v.* Burke.

An application was made accordingly, and the Master of the Rolls, in his judgment, very clearly explains the extent to which the law does go in securing tenants who make improvements with the knowledge and implied assent of their landlords, and where it falls short. He says :—

"If the landlord, knowing that the tenant believes he holds under a valid lease, or a valid contract for a lease, looks on at an expenditure without warning the tenant that he means to impeach, such a proceeding is a fraud, and the tenant has a remedy in equity against the landlord, though he be a remainder man, if he seeks to turn the tenant out of possession without compensation."

This state of the law applies to both past as well as future improvements ; for it is the nature of judicial decisions to have always a retrospective operation ; they declare not only what the law is, but that it always was so.

Such being the very simple and righteous decision in the case of tenants under a contract for a lease, we now come to the case of yearly tenants, who form the bulk of the occupying tenantry of Ireland. On this point the Master of the Rolls is equally clear :—

"If a tenant holding from year to year, makes permanent improvements on the lands which he holds, this raises no equity as against the landlord, though he may have looked on, and not have given any warning to the tenant."

The distinction between the two cases is not easy to perceive; and on any view of the case it must be too narrow and refined a distinction to decide cases in which the feelings of an entire population are involved. *History of the Question.*

The distinction at best rests on judicial decisions on subtle points of real property law, and statesmen might think themselves free from responsibility if the Judges defended the law.

But how can the law be maintained by statesmen when it is condemned by the Judges of the land, as this distinction has been condemned by the Master of the Rolls, in such terms as these:—

"Even if the Rev. Dr. O'Fay had no claim except as tenant from year to year, I have no hesitation in stating that, although in point of law on the authorities I have referred to, and particularly the case of Pelling *v.* Armitage, the petitioner's suit could not be sustained, *yet nothing can be more repugnant to the principles of natural justice than that a landlord should look on at a great expenditure carried on by a tenant from year to year, without warning the tenant of his intention to turn him out of possession.* Major Burke's offer to allow Dr. O'Fay to remove the buildings was a mockery. *I have no jurisdiction to administer equity in the natural sense of that term, or I should have no difficulty whatever in making a decree against Major Burke.* I am bound to administer an artificial system, established by the decisions of eminent Judges, such as Lord Eldon and Sir William Grant, and *being so bound, I regret much that I must administer injustice in this case, and dismiss the petition;* but I shall dismiss it without costs. *I should be very glad, for the sake of justice, that my decision should be reversed by the Court of Appeal.*"

Lest it might be supposed that this was the opinion of a single Judge, we find in the Court of Appeal equally strong views stated:—It was thrown out that it was a case for amicable settlement, but Major Burke's counsel assured the Court that "the Major had resolved to spend his fortune, if necessary, in resisting the claim of the Rev. Dr. O'Fay." Lord Justice Blackburne pronounced this to be a very irrational determination, although he had to decide that the claim could not be sustained in law or equity. Judgments of Lord Justice Blackburne and Lord Chancellor Napier, in case of O'Fay *v.* Burke.

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Lord Chancellor Napier in concluding his judgment said :—

In Irish Chancery Report, Vol. viii. p. 522.

"I think I am not overstepping my duty in suggesting to Major Burke, the respondent, that, under all the circumstances of this case, he will best maintain the character and honour of a British officer, satisfy the exigencies of justice, and uphold the rights of property, by making *such an arrangement* with Dr. O'Fay, as to the possession of this farm, *as may leave him the full benefit of an expenditure made in good faith, and with the reasonable expectation of having the full benefit of it sufficiently secured by an undisturbed possession.*"

When the landlord's counsel asked for costs, the Court of Appeal refused them, although affirming the decision of the Court below, and said, "the *landlord could pay himself out of the improvements he was getting possession of.*"

Here, then, we have an Irish landlord instructing his counsel to state in the Court of Chancery that he will spend his whole fortune, if necessary, sooner than give the parish priest of his tenants the benefit of £470 expenditure in permanent improvements, which the Lord Chancellor says were honestly made with the reasonable expectation of being sufficiently secured.

What effect is such a case likely to have on the peasantry? When their priest is so treated; what safety is there for them? They cannot afford to bring their cases into the Court of Chancery, and to get even judicial sympathy with their sufferings. What a state of the law it is when the highest Judges of the land, instead of securing peace and good order by enforcing what is just, have to humble themselves and the Courts in which they preside, by asking individuals not to insist upon what the Court has to award to them as their legal right.

When the Judges condemn the law the true remedy is legislation.

Suggested legislation, founded on judgments in the case of O'Fay *v.* Burke.

If it be said legislation may be necessary, but what is to be done? The answer is plain: Leave the cases in dispute to the Judges, and they will decide rightly. The Master of the Rolls says, in effect, "*If I had jurisdiction*

to administer equity in the natural sense of that term, I should have no difficulty whatever in making a decree against Major Burke."

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Now why should the Legislature not give him jurisdiction, by simply enacting that every tenant, at whose expenditure his landlord looks on without warning him of his intention to turn him out of his possession, shall have the same equitable remedy that a tenant has whose landlord knows that the tenant believes he holds under a valid lease?

Lord Chancellor Napier states very precisely what he would compel the landlord to do under such circumstances *if he had jurisdiction*. He, in effect, says, that the cause of justice and the rights of property require that the landlord should make such an arrangement, as to the possession of the farm, as would give the tenant the benefit of the expenditure he had honestly made with the reasonable expectation of being sufficiently secured.

When such principles are laid down by the highest Judges in the land, how can it be contended that it would infringe on the rights of property, if courts of equity were empowered to compel landlords to do that which the Master of the Rolls, the Lord Justice of Appeal, and the Lord Chancellor say they ought to do?

Apart from any concurrence with, or difference of opinion from the judgments of these eminent Judges to which I have referred, it is impossible for Statesmen to overlook the effect of such expressions of opinion on the popular mind in Ireland.

The feelings of the tenantry are excited against the law; they sympathise with every grievance of their neighbours, whether well founded or not. It is no longer an answer to them that a landlord is only asserting his legal rights.

They can quote Lord Justice Blackburne, that for a landlord to assert his legal rights may be a very irrational determination; or Lord Chancellor Napier, that a landlord may sometimes best maintain the character of a British officer, the cause of justice and the rights of property, by

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not asserting his legal rights; or finally, the Master of the Rolls, that a landlord's assertion of his legal rights may be such that nothing can be more repugnant to the principles of natural justice.

Can anything be more calculated to produce discontent, sullen resentment, and, in extreme cases, outrage, than such a state of affairs? The time, therefore, seems to require a strong effort to remove the opprobrium which this case throws on the law of landlord and tenant in Ireland.

History of attempts at legislation on the Tenants' Improvement Question.

In considering the history of the attempts at legislation on the tenants' improvement question, it will not be necessary to go much into detail, as certain general characteristics pervade the different measures that have been brought forward on the one side and on the other.

On few questions that have in recent years come under the consideration of Parliament, have there been such consistent and persevering efforts to get grievances redressed as have been shown by the advocates of the tenants' claims.

Mr. Sharman Crawford, in conjunction with different Members of Parliament, introduced Bills on the subject in 1835, 1836, 1843, 1845, 1846, 1847, 1848, and in 1852.

On Mr. Crawford retiring from Parliament the subject was taken up by Sergeant Shee and Colonel Greville, in November, 1852, and in 1853.

By Sergeant Shee and Mr. Pollard Urquhart in 1854.

By Mr. Moore and Mr. Maguire in 1856 and in 1857, and by Mr. Maguire and The O'Donohoe in 1858.

This persistence is readily accounted for by the unjust state of the law, as disclosed in the case of O'Fay and Burke. It is the hardship of the tenant's case, as it has been, and still is, in Ireland, that has led to all these efforts for redress.

It is remarkable that, on every occasion, permission has been given to introduce the several Bills. The House of Commons, and the leading Statesmen in it, have always conceded that improving tenants ought, in some way, to be secured.

The real objection has been to the several plans proposed. *History of the Question.*

The number of Ministerial Bills is no less remarkable. Lord Stanley's in 1845, Lord Lincoln's in 1846, Sir William Somerville's first Bill in 1848, and his second Bill in 1850, and lastly, Mr. Napier's Bill in 1852.

Without attempting to refer to all the details of these several measures, I will, from the several Bills, and the discussions they gave rise to, bring under your notice one or two principles that have, in the course of these lengthened discussions, been actually adopted by either House of Parliament, or been received as established axioms.

In 1845, on the Earl of Derby, then Lord Stanley, explaining the principle involved in the second reading of his Bill, the House of Lords passed the Bill by a majority of forty-eight to thirty-four. The principle thus affirmed was, "that it was expedient to secure, by legislative enactment, to the tenants in Ireland compensation for such improvements of a permanent character, adding to the permanent value of the fee of the estate, as they should effect on the land, supposing they should be ejected before they had derived any return from the outlay." Decision of the House of Lords on Lord Stanley's Bill.

Whether a landlord should have power to interpose a veto, and prevent such improvements, was a question entirely left open for the House to consider.

It afterwards appeared that it was plainly the feeling of the House of Lords that a landlord should have power to interpose a veto and prevent improvements if he thought right to do so. Improvements without landlord's assent.

The various measures founded on a tenant giving notice to his landlord, and then improving against his landlord's opposition, have all been unsuccessful, no matter what machinery, whether Commissioner of Improvements, Arbitrator, Assistant-Barrister, or Inspector, was proposed to sanction a tenant's acting against his landlord's veto.

I have always thought these compulsory clauses, as

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they are called, to be founded on a wrong principle, and to be justly open to the objections generally entertained by the House of Lords to them, and I do not think any measure founded on the compulsory principle will pass; nor do I think it would work well if, through the influence of a strong Government, or any compromise, such clauses were adopted.

Views of Liberal Statesmen.

The views of the leading Statesmen on the Liberal side, as I collect them, are, that the difficulties of the Tenants' Improvement Question are to be dealt with by promoting agreements between landlord and tenant, by treating the whole subject as a question of contract, expressed or implied, and by leaving it to the ordinary tribunals of the law to enforce such contracts, without the interference of a Government officer on every occasion of a tenant wishing to improve.

The same was the view of the leaders of the Radical party in England.

Views of the late Mr. Hume.

The late Mr. Joseph Hume said, in 1852—"They must trust in Ireland to private bargaining, and the only practicable Tenant-right would be in passing laws to remove every impediment which precluded fair and equal dealing between landlord and tenant."

It is to be observed, too, that the only proposals for legislation on the Compensation Question which have been sanctioned in both Houses of Parliament have been based on this principle.

Powers of landlord to make agreements as to improvements.

In 1849, Mr. Pusey introduced a Bill to remove the impediments to persons under disabilities making agreements to secure Tenants Compensation for improvements. This Bill was extended to Ireland. It received a great deal of consideration in the House of Commons, and was passed by very large majorities, but it was unfortunately rejected in the House of Lords. The principles of the Bill were, however, afterwards incorporated with, and formed the second part of Mr. Napier's Leasing Powers Bill, and in that form were adopted by the House of Lords in 1854, after having been approved of by the Special Committee of the Commons, in 1853.

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In the discussions on Mr. Pusey's Bill, I find a statement which explains the defective state of the law as to agreements by landlords of settled estates:—

"On the Earl of Yarborough's extensive estates in Lincolnshire the tenantry were flourishing under a system of Tenant Right which could not be too highly commended; and it appears from the evidence taken before the Committee that the Earl was desirious of extending the advantages of that system to the tenants on his property in the Isle of Wight. It was, however, a mistake to suppose that this was a matter which could in all instances be settled by a voluntary agreement between landlord and tenant, for he was informed by high legal authority *that an agreement for compensation, when not supported by the custom of the country, would be of no more value than waste paper.*"

Now, when such is the state of the law, it is useless to say that the whole matter may be left to agreement.

If agreements such as landlords and tenants may both wish for are to continue to be waste paper, demands for legislation on other principles are inevitable, and it is not easy to see how such demands can be answered.

This statement shows, too, that Irish tenants are in a much worse position than English tenants, for no agreement for compensation in Ireland, however long or generally recognized,—not even the Ulster Tenant-right—is considered by the Courts of Law to have attained the position of a legal custom, so as to be binding on the successor of the landlord who was party to the agreement.

Suggestions for legislation on the Tenants' Improvement Question.

The chief principle of legislation to be deduced from the history of the Improvement Question seems to be, therefore, to enable all landlords under settlement, who, instead of granting building leases or improving themselves, choose to sanction their tenants' improvements, to make agreements securing what they have sanctioned against their successors and against their creditors.

1. Power of making agreements.

Limits should be put on such agreements analogous to the limits to leasing powers, and to landlords creating charges for their own improvements; but within these limits the landlords should be left as free as possible.

2. Provision for cases of there being no contract.

Whatever arrangements be adopted for facilitating agreements, the law must always provide for the cases

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where there are no contracts, just as we have a Statute for Wills, and a Statute of Distributions for those who die intestate. The principle which the Master of the Rolls suggests in the case of O'Fay and Burke, and the analogy of the law as to emblements, indicate the legislation for the cases where there are no express contracts.

The Law of Emblements has been simply stated thus: —"Where the estate of the tenant is uncertain, 'lest the ground should be unmanured, he shall reap the corn which he soweth in peace.' This rule is established to compensate the labour and expense of tilling, manuring, and sowing the land, for the encouragement of husbandry, and the public benefit."

Now, the case strictly analogous to this, with regard to buildings and other permanent improvements, would be where a yearly tenant erected these in a manner suitable to the use of the land, for the purpose for which it was let to him, and did so with the knowledge of the landlord for the time being, and without the landlord objecting.

In such a case the analogous rule would be, that the tenant be allowed to occupy for such a time as would allow him to reap a fair return for his expenditure. If the landlord or his successor sought to disturb him sooner, then the principle of equity stated in O'Fay and Burke should be open to the tenant as a defence; and as the landlord had looked on at his improvements without warning him not to make them, he should either allow him to enjoy them or compensate him for them.

There would be no practical difficulty in this legislation —the Assistant Barrister's Court is already a court of equity for the defendant.

Such legislation would impose no obstacle to a good landlord; to any one who did not wish to take advantage of his tenants having expended their capital without security. Even on an unjust landlord it would impose no real burden. The State would simply say to such a landlord, the entire powers of the law and military force of the country shall not be put at your disposal against

your tenant, until you have satisfied whatever claims of his an Equity Judge shall determine to be justly made out against you.

The question of existing improvements.

The part of the Compensation Question about which the greatest diversity of opinion has prevailed is the question of existing improvements.

On the part of the tenants it is urged that the permanent improvements have been in fact made by them in the confidence that they would be honourably dealt with, and that it is unjust to allow the successor of the landlord, who encouraged them to improve, or a purchaser, to turn them out without the slightest regard to their improvements, and without the slightest compensation.

To secure the tenants against such injustice, it has been proposed to declare all existing improvements made by them their property.

On the part of the landlords it is objected, that notwithstanding the hardship of the case, it would be dangerous to provide a remedy by law; and, above all, that the remedy of declaring all improvements made by tenants, even against the assent of the landlord, to be the tenant's property, would be subversive of the rights of the landlord.

The difficulty of coming to an adjustment of this question has been, I think, very much enhanced by the favour which has, as I have noticed, been unwisely shown to plans for the future for allowing tenants to improve against their landlord's veto.

If compulsory clauses are to be adopted for the future, it is no objection to any existing improvement that it is unsanctioned.

If the plan of permissive legislation and agreements be adopted for the future, then a very wise and just rule as to existing improvements can be deduced from the case of O'Fay and Burke.

It has been truly observed, that all questions of right on one side involve questions of duty on the other. The case of existing improvements can best be considered by seeing what is the landlord's duty in the case.

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Now, suppose a case of improvements already made, under such circumstances as in O'Fay and Burke, where a Court of Equity considered that it would be a fraud on the part of the landlord to look on at a tenant's improvements and afterwards take advantage of him, what would a landlord's duty be? The Judges in O'Fay and Burke stated that very clearly. To make such an arrangement as would secure the tenant fair compensation for his improvements.

If such would be the duty of a landlord himself, what would his successor's duty be? This is plainly established, for in those cases where a Court of Equity now grants relief against a landlord looking on at improvements, it equally grants relief against the remainderman; the Court considering it equally objectionable for the landlord to take advantage of the tenant, whether he relied on the implied contract of the landlord himself or of his predecessor.

If the protection of tenants, for the future, be limited to the principle of O'Fay and Burke, or to those cases where the landlord, for the time being, assented to, or acknowledged the improvements, and improvements against the landlord's assent be left unprotected, as they ought to be, then there cannot be any objection on principle to extending the protection to existing improvements that have been sanctioned.

It would be no interference with the rights of property to prevent a man so disregarding a past implied contract, as to amount to fraud, for the principle of O'Fay and Burke is founded on what a court of equity considers fraud.

The question of existing improvements, with reference to purchasers of Incumbered Estates.

The case of the purchasers under the Incumbered Estates Act, affecting about one-fourteenth of Ireland, has sometimes been brought forward as conclusive against any possible recognition of past improvements. The objection is, so far as compulsory clauses are concerned, I think, well founded; but against legislation on the principle of O'Fay and Burke, it cannot, I think, be maintained.

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The Incumbered Estates Act was passed for a high and noble purpose; it substituted for needy embarrassed proprietors, unable to discharge the duties of property, men of solvency and wealth, who should promote the advancement and prosperity of the country by their example.

They were expected to be an improvement on the preceding landlords in the honourable principles on which they would deal with their tenants. It was thought, as the needy state of their predecessors begat dishonourable dealings and distrust, which produced discontent and outrage, that the wealth and solvency of the new purchasers would put them above temptation, and so lead to a more honourable and safe way of dealing with property.

The great majority of the purchasers have acted as was to be expected, and have been a blessing to the tenants.

The Parliamentary title was intended to protect the purchasers against the complications in the landlord's title; but it never was intended to enable a purchaser to do an act to a tenant that would be a fraud if done by the preceding landlord.

No honest or honourable purchaser would be injured, if some greedy purchasers, who covet the unsecured improvements of tenants, were restrained from confiscating them, by allowing a tenant an appeal to a Court of Equity, on the principle of O'Fay and Burke, as to existing improvements which a landlord sanctioned.

The Tenant-right of Ulster.

Having considered the general question of tenants' improvements, I have next to bring under your notice the part of this question which relates to Ulster, owing to the very general usage of the landlords there to recognise their tenants' improvements, and to allow the outgoing tenant to receive compensation from the incoming tenant. This usage is what is called the Tenant-right of Ulster.

The mode in which this is managed may be very simply explained.

The tenants are nearly all yearly tenants; every change of tenancy takes place with the landlord's knowledge and assent. If a tenant dies, the landlord or his agent de-

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cides which member of the family is to get the farm; it cannot be divided without his assent. The common practice is for some one member of the family to get it, the others being paid a small sum of money as a provision, the agent compelling the son he accepts for the farm to pay the charges on it.

If a tenant gets into arrear, or wishes to leave the estate, he asks leave from the landlord or agent to sell his interest. Leave is given, subject to the new tenant being approved of by the agent; the rent is fixed by the landlord, generally by a valuation, so as not to confiscate the tenant's improvements.

The new tenant usually pays the purchase money, either into the agent's hands, if arrears are to be deducted out of it, or with his knowledge, if there be no arrears.

In fact, the new tenant does not consider himself safe to pay the purchase money until he has been accepted by the agent or landlord himself.

In the course of twenty or thirty years nearly every farm changes hands from death or other causes, and on every change some money is paid to the preceding tenant, or to his creditors or representatives, by the new tenant, with the landlord's or agent's perfect knowledge or assent.

I will give an illustration that came under my notice. At the last March Assizes, an action was brought by a creditor against the executor of a deceased tenant. It appeared, as part of the proof of the executor having had assets, that the deceased had held a farm, in the county of Down, of forty acres of land, with a good house, farm buildings, and other improvements upon it, erected by himself, or preceding tenants. On the death of the tenant the landlord had the farm valued. He raised the rent five shillings an acre, and then allowed it to be sold. A new tenant offered, who was approved of, and the purchase money came to £540. This was paid into the agent's office, and the arrears of rent and some of the tenant's debts paid out of it; the balance was handed to

the executor, and he was subsequently sued by another creditor. *History of the Question.*

The landlord who assented to the purchase I am referring to is an old man ; if he should die, ought his successor be allowed to take advantage of the tenant, if he were disposed to do so ?

The estate is one which the landlord or his father purchased. He recognised improvements effected during the time of his predecessor ; but suppose the person who purchased from him refused to do so, should a court of law assist the purchaser to turn out the tenant without compelling him to compensate the tenant for the £540 he had paid with the perfect knowledge and entire assent of the landlord whose interest the purchaser would represent ?

It may be said the tenant should not have paid his money without a contract that would be binding on remaindermen and purchasers. If he neglected to obtain such a contract he has only himself to blame.

This argument assumes that the landlords are free to make such a contract. If they are, the answer is complete ; but if they are not, nothing can be more futile or mischievous than relying on abstract propositions that do not meet the facts of the case.

Now it has been stated, on authority which I can quote with confidence, " that the legal and natural disabilities, together with the frequency and strictness of settlements of all property of any value, have imposed so great restrictions on commercial contracts, with respect to land, that it may be said, without exaggeration, that *there are very few persons in Ireland who can enter into full and unrestrained commercial contracts with tenants for the occupation and cultivation of the soil of which they are proprietors.*"

It is impossible, then, to hold the tenants responsible for not making adequate contracts with the landlords while the law allows the landlords to be restrained from making adequate contracts with them.

The solution of the Tenant Right Question in Ulster comes back to the same point as the solution of the gene- Suggestions for legislation on Ulster Tenant-right.

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ral question of tenants' improvements. The impediments which the law imposes on landlords making contracts which they approve of should be removed, they should be allowed to enter into any contract *bonâ fide* made for the purpose of securing their tenants in their improvements according to the usual practice of the estate or district, provided they received no fine, and such contract was not a fraud on the remainderman.

This solution has been before the public for some years, and has been favourably received by moderate and impartial men in Ireland.

It is, in truth, in strict accordance with the remedy proposed for the much less pressing evil of the insecurity under the agricultural customs in England.

The Committee of the House of Commons which, in 1847–8, inquired into agricultural customs in England, made a very important report containing the following propositions :—

"That different usages have long prevailed in different counties and districts (of England) conferring a claim to remuneration on an out-going agricultural tenant for various operations of husbandry, the ordinary return for which he is precluded from receiving by the termination of his tenancy.

"This claim is called Tenant Right.

"That in practice the compensation agreed to be paid by the landlord to the outgoing tenant is paid by the incoming one.

"That it seems very desirable to your Committee that estates under settlement should be endowed with every practical privilege for their advantage which is attached to absolute property, and that landlords having limited estates, in addition to the ordinary leasing powers generally conferred on them, should be enabled, under proper precautions, to enter into stipulations of the nature of those above referred to, which at present it appears they cannot do."

Now, the Tenant Right of Ulster only differs from the English usages of Tenant Right in the sort of improvements for which compensation is claimed. As the tenants in Ireland put up the farm buildings and make fences and drains, their claim is, of course, more extensive and of longer duration than that of English tenants, but does not differ in the slightest degree in principle.

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The principle of enabling landlords to make compensation agreements was, as I have already noticed, adopted in two sessions by the House of Commons, after the most careful consideration, and was also affirmed by the House of Lords in 1854, when they passed the agreement for compensation clauses of the Leasing Powers Bill of that year.

There would seem to be no real difficulty in the way of framing a Bill to give landlords under settlement such powers of contracting as are necessary to give fair and just security to tenants for their improvements.

The introduction of such a measure is especially appropriate for those statesmen who contend (as I believe correctly) that the true solution of the difficulty of the Tenants Question is to be found by legislating on the principle of contract.

If legislation be not adopted on that principle, it will be impossible to stop the continued discussions of other plans of settling the question, which involve the creation of peasant proprietors, as in France, or a division of landed property, as in Prussia.

Extent of existing interests under Ulster Tenant-right.

The existing interests of tenants in Ulster would require to be dealt with in any legislation. It is hard to estimate the exact amount of property at stake on the question. But as the arable land of Ulster is 3,400,000 acres, and much more than half is held by yearly tenants, the tenant right of those tenants, which usually brings at least £10 an acre, cannot be worth less, in Ulster alone, than £20,000,000.

How, then, is this £20,000,000, to which the law at present affords no protection, to be secured by contract? As the insecurity has arisen from the inability on the part of the landlord to make contracts, it follows the true remedy for the present as well as the future is to remove that disability, and to enable the existing landlords, though under settlement, to make contracts ratifying the interests in improvements which they have admitted, and now admit, in all their dealings with them that their tenants have.

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They should be restricted, as in Leasing Powers, from taking any fine, and their contracts should not bind for a longer period than the Leasing Power for the corresponding class of improvements.

Another provision for the protection of the Ulster tenants would be an extension to this case of the principle of equity in the case of O'Fay and Burke. Wherever a landlord looked on at a tenant paying a large sum for the interest in the improvements of a preceding tenant, then, in case the tenant was disturbed, he should have the same equitable remedy as if he had himself expended the money in improvements with the landlord's knowledge.

It has sometimes been proposed, as a great favour, to except the custom of Tenant Right from some proposed legislation. As it has been demonstrated that this £20,000,000 has no legal security, to exempt it from legislation is to leave it insecure; whatever opinion any one may hold as to Tenant Right, or as to legislation upon it, it is absurd to represent the excepting it from any wise legislation as a favour.

Insecurity of existing interests. Tenant-right interests in Ulster.

Again it is said, that, after all, the Ulster tenants are safe enough. This is true on many properties; but still there are cases occurring of total confiscation of improvements.

These produce a feeling of insecurity; they lead every now and again to agitation, and, in some cases, to frightful outrages.

I was much struck with one of these cases which came under my notice last March. A hard working man, of good character and with a small family, held about eight acres (statute measure) of land, at £1 5*s.* an acre. He had either purchased the preceding tenant's improvements on the farm, according to custom, or succeeded his father as tenant, on paying some charges on his father's improvements; I did not collect which. In any case, he had paid money on being taken as tenant. After being in occupation for some time, he proposed to leave the farm to engage in some contracts elsewhere. He had been offered £8 15*s.* an acre for his interest, or £70 in all; and

the landlord for the time being would have allowed him to sell. He, unfortunately for himself, changed his mind, and stayed on. In the interim, the property, some small townland, or half a townland, was sold in the Incumbered Estates Court, and purchased by a money lender in the neighbourhood. He immediately gave the tenant notice to quit, and refused him the slightest compensation. The tenant at once lost £70 that he believed he possessed. He owed some £20 or £25. When ejected he was sued for these debts, and cast into prison. He came up to be discharged as an insolvent. The Assistant-Barrister, like the Master of the Rolls, dwelt on the hardship of the case. He noticed the good character of the man and refused to keep him one hour in custody. *History of the Question.*

What good purpose was served by allowing the money-lender to get the poor man's farm without compensating him, it is hard to see.

If the law be not altered, the tendency will be for the unscrupulous and the greedy to have an advantage over men of honour and principle, in purchasing land where Tenant-right prevails.

A purchaser who proposes to himself to confiscate the tenant's interests, and clear the land without allowing compensation, can afford to give a higher price for an estate than an honourable gentleman who would scorn to take such an advantage of a poor tenant.

Such purchasers, if not restrained by a jurisdiction of natural equity, such as the Master of the Rolls contemplates, will involve other landlords in quarrels and questions they little think of.

In conclusion, the plan I would recommend for dealing with the question of tenants' improvements, consists of the following propositions :— Suggestions for legislation as to the tenants' improvements.

1st. All landlords under settlement should be enabled to make contracts, securing against their successors the improvements of tenants which they sanction. This power should extend to existing as well as future improvements.

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2nd. Wherever a landlord looks on at the expenditure of a tenant in effecting improvements, or in purchasing the improvements of preceding tenants, as in the case of Tenant-right, without warning the tenant that he means to give him no security, the tenant should be entitled to the same equitable relief, before being turned out, as courts of equity now give to a tenant where the landlord looks on at expenditure, knowing that the tenant believes he holds under a valid lease, or contract for a lease.

3rd. Courts of Equity should be allowed to grant the same relief as to existing improvements if the Court should be of opinion that it would be fraud on the part of the landlord to confiscate them.

4th. Where there is no contract as to improvements, and no assent or dissent on the part of the landlord, the doctrine of emblements—that he who sows shall reap—should be extended to all permanent improvements, whether buildings or others, which the tenant *bonâ fide* puts up for the purpose for which the farm was let to him, and which are suitable and necessary for the proper occupation of the land, and the production of the rent from the soil.

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## IV.—*Amendments in the Law of Landlord and Tenant.*

The last branch of the Landlord and Tenant Question which remains for consideration, relates to the defects in the Law of Procedure for enforcing the rights and obligations of landlords and tenants, and the proposals that have been made for the consolidation of the law on this subject.

The Land Occupation Commissioners noticed some defects in the Law of Ejectment and Distress. A Bill was introduced by the Earl of Lincoln on this subject in 1846; it was taken up by Lord John Russell's Government, and passed the same session.

Since then improvements have taken place in Ejectment Procedure, by the abolition of the old fictitious form of pleading, and by the change in the Law of Evidence,

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which allows the parties to be examined. The statutes relating to the Civil Bill Jurisdiction of the Assistant Barrister (County Judge) were consolidated in 1851.

Notwithstanding these improvements, defects in this part of the Law of Landlord and Tenant have been pointed out, which undoubtedly require a remedy. The following may be taken as examples :—A tenant should not be bound when his assignee has been accepted ; an assignee should not be discharged by assigning over to a pauper ; the statute of limitations for arrears of rent ought not to be six years in some cases and twenty years in other cases, but six years in every case. The law of waste should not be such as to make the cultivation of waste land waste.

The only question for consideration is whether it would be more practicable at the present time, and in the present state of the question, to have defects, such as those I have noticed, with respect to which there is little controversy, removed by direct legislation, or whether an attempt should again be made to consolidate the entire Law of Landlord and Tenant.

Mr. Napier's and other Bills for consolidating law of Landlord and Tenant.

In 1852, Mr. Napier introduced, as part of his land scheme, a Bill to consolidate and amend the Laws relating to Landlord and Tenant in Ireland. This Bill was referred to a Select Committee of the House of Commons in 1853. It was amended, and sent to the House of Lords.

In 1854, the Duke of Newcastle had this Bill read first in the House of Lords.

Lord Donoughmore at the same time introduced a Bill for the same object, which was understood to be Mr. Napier's Bill, with certain alterations. The Marquis of Clanricarde at the same time introduced a Bill to Consolidate and Amend the whole Law of Landlord and Tenant in Ireland. These Bills were all considered in a Select Committee of the House of Lords; and a Bill, as amended by the Committee, was passed, and sent to the House of Commons.

This Bill failed to give satisfaction in the House of

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Commons, because the House of Lords had rejected the Tenants' Compensation Bill; and because notice was given of a large number of amendments which there was not time to consider.

So after the consolidation had occupied the House of Commons one Session, and the House of Lords another, nothing was done.

The failure of this attempt at consolidation seems to have arisen from the simple fact that it was premature. The work of codification or consolidation is properly a matter of detail, and not of principle. When there is a general unanimity of sentiment on any question, or where there is a strong party, or a strong Government, determined to carry out certain ascertained principles, then is the proper time for consolidation, which is truly the business rather of jurists than of legislators.

When, on the other hand, a real and strong diversity of opinion as to principles prevails, then a proposal for consolidation only leads to endless discussions. Each point of detail is watched and fought over as a matter of principle; and, in the end, there is either an abortive result, or else the measure finally produced may, through compromises and successful tactics, be one that does not really satisfy any one, and is injurious to the character of our legislation.

Suggestions for legislation as to amendments in law of Landlord and Tenant

In the present state of the Landlord and Tenant Question, the course which I would suggest would be to select some of the defects in the law of landlord and tenant, such as I have noticed—defects which are proved and not defended—and to leave the work of consolidation for a period which I hope will soon come, when there will be a more general unanimity of feeling as to the principles on which the relation of landlord and tenant should be regulated.

When the Incumbered Estates Court was introduced into Ireland, there was such a diversity of opinion on the subject, that it would have been impossible to have passed a measure based on the general principle of facilitating the transfer of land in all cases. When, however, the public

had a few years actual experience of its operation, the Landed Estates Court was adopted with great unanimity. *History of the Question.*

In the same manner, if the principles of facilitating leases and contracts, and of securing the improvements of both landlords and tenants, were in operation for a few years, there would be much less difficulty than at present in simplifying and improving the other parts of the law of landlord and tenant.

Besides the general subjects to which I have directed your attention, there are one or two special branches of the law of landlord and tenant in which amendments would be required.

Thus all the privileges which the law now gives to a man putting up machinery or other fixtures for the purposes of trade, should be extended to agricultural fixtures. Law of Fixtures, amendment of.

Again the Irish Timber Acts require to be amended, to remove the singular hardship by which a tenant who obtains a renewal of his lease is compelled either to cut down the trees he has planted and so destroy his place, or to lose all property in them by the acceptance of a renewal. A hardship, too, which the law does not allow the owners of a settled estate to relieve him of. Irish Timber Acts, amendment of.

I cannot conclude my Report without offering a suggestion as to a change in the law, which would have a very beneficial effect on the class to which the tenant farmers in Ireland usually belong. Suggestion to making Assistant Barrister's County Court a complete Court of Equity.

According to the theory of our law all men have equal rights to its advantages; but it happens, in practice, that arrangements are often allowed to grow up which, in fact, exclude large classes from all benefit of some of the best part of our laws.

Take, for instance, the jurisdiction of the Court of Chancery with respect to the protection of the property of lunatics. The relative or friend of any lunatic may sue out a commission, get committees appointed, and have the person of the lunatic cared for, and his property protected. But as nearly the entire expense of this proceeding is thrown on the lunatic's property, it happens that the expense is so great of issuing a commission and of

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defraying the annual charges under the Court, that very few are, in fact, protected. Thus it appears by the last returns referred to by Mr. Thom, that there were estimated to be about 14,000 lunatics in Ireland. Now the number of lunatics whose property is actually protected by the Court of Chancery is about 140, or one per cent.

If returns were obtained of the number of minors who are wards of Court, and of the number of orphans with some little property that required protection throughout the country, the same result would, I have no doubt, appear—that it is only about one per cent. of the class that are entitled to protection that are in fact protected.

I may observe, too, that lunatics and orphans require protection even though they have no property. A lunatic in a workhouse or a public asylum would be all the better cared if some relative or friend was, as committee of his person, specially charged to take care of him.

An orphan would be safer in his apprenticeship, in his school, or elsewhere in life, if some relative or friend was his lawful guardian, authorized to speak for him and defend him.

I have known practical cases of extreme difficulty and hardship in the case of tenants and persons of small property becoming lunatics or leaving orphans, and there is no reason why the protection which is thought wise and prudent for the rich should be denied to the less wealthy.

The Probate Act of 1857 affords a precedent for the manner in which this evil may be met. By it the Assistant-Barrister has jurisdiction in all wills where the personalty is under £200.

I would suggest that, in like manner, the Assistant-Barrister should have the same powers of appointing Committees of Lunatics and Guardians of Minors as the Court of Chancery, in all cases where the property was less than the amount with respect to which the Court of Chancery now usually exercises jurisdiction.

The Clerk of the Peace, a permanent county officer, could discharge all the duties, with regard to matters referred to him, which the Masters do in the Court of Chancery.

I have suggested what I consider the most important branch of this extension of jurisdiction; but I entertain a strong opinion that the Assistant-Barristers should be enabled to exercise, with regard to the less wealthy classes of the community, all the jurisdiction which the Court of Chancery does with regard to the rich. The Assistant-Barrister's Court is now a Court of Equity for the defendant; it ought, I think, to be also a Court of Equity for the plaintiff.

I have the honour to be,

Your very faithful servant,

W. NEILSON HANCOCK.

To the Right Hon. Edward Cardwell, M.P.,
Chief Secretary for Ireland.

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