REPORT

OF

HER MAJESTY'S COMMISSIONERS OF INQUIRY

INTO

THE PROCEDURE AND PRACTICE AND THE METHODS OF VALUATION

FOLLOWED BY

THE LAND COMMISSION, THE LAND JUDGE'S COURT, AND THE CIVIL BILL COURTS IN IRELAND

UNDER

THE LAND ACTS

AND

THE LAND PURCHASE ACTS.

Presented to Parliament by Command of Her Majesty.

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ROYAL COMMISSION

OF

INQUIRY INTO THE PRACTICE AND PROCEDURE AND THE METHODS OF VALUATION FOLLOWED UNDER THE LAND LAW ACTS AND THE LAND PURCHASE ACTS (IRELAND).

VICTORIA R.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To

Our Right Trusty and well-beloved Councillor Sir EDWARD FRY, Knight, sometime one of our Judges of our Court of Appeal,

Our Trusty and well-beloved GEORGE FOTTRELL, Esquire,

Our Trusty and well-beloved GEORGE GORDON, Esquire,

Our Trusty and well-beloved ANTHONY TRAILL, Esquire, Doctor-of-Laws,

and

Our Trusty and well-beloved ROBERT VIGERS, Esquire.

GREETING.

WHEREAS we have deemed it expedient that a Commission should forthwith issue to inquire into and report upon the Procedure and Practice and the Methods of Valuation followed by the Land Commission and the Civil Bill Courts in Ireland under the Land Law Acts,

(*a.*) In fixing fair rents.
(*b.*) In ascertaining the true value to be paid for a tenant's interest in a holding by a landlord exercising the right of pre-emption.

Also to inquire into and report upon the Procedure and Practice and the Methods of Valuation followed by the Land Commission and the Land Judge's Court respectively in carrying out the provisions of the Land Purchase Acts.

Now know ye that We, reposing great trust and confidence in your knowledge, discretion, and ability, have authorized and appointed, and by these Presents do authorize and appoint you the said Sir Edward Fry, George Fottrell, George Gordon, Anthony Traill, and Robert Vigers, to be Our Commissioners for the purpose aforesaid.

And for the better effecting the purposes of this, Our Commission, We do, by these Presents, authorize and empower you or any two or more of you, to call before you or any two or more of you, such persons as you may judge necessary to examine, and by whom you may be better informed in the several matters hereby submitted for your consideration, and everything connected therewith; and generally to inquire of and concerning the premises by all other lawful ways and means whatsoever, and also to call for, have access to, and examine such books, documents, papers, writings or records, as you or any two or more of you shall judge likely to afford the fullest information concerning the several matters hereby submitted for your consideration.

And Our further Will and Pleasure is, that you or any two or more of you do report to Us with all convenient speed in writing under your hands and seals, your several proceedings by virtue of this Our Commission, and what you shall find touching or concerning the premises, together with your opinion upon the matters hereby referred for your consideration.

And We further will and command, and by these Presents ordain, that this Our Commission shall continue in full force and virtue, and that you Our Commissioners do, from time to time, proceed in the execution thereof, although the same be not continued from time to time by adjournment.

And for your further assistance in the execution of these Presents, We do hereby appoint our trusty and well beloved Richard Robert Cherry, Esquire, one of Our Counsel learned in the Law, to be Secretary to this, Our Commission; And We require you to use his services and assistance from time to time as occasion may require.

Given at Our Court, at Saint James's, the Tenth day of July, 1897, in the Sixty-first Year of Our Reign.

By Her Majesty's Command,

M. W. RIDLEY.

HEADS OF REPORT.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

MAY IT PLEASE YOUR MAJESTY—

Your Majesty's Commission, bearing date the 10th day of July, 1897, directed us "to inquire into and report upon the procedure and practice and the methods of valuation followed by the Land Commission and the Civil Bill Courts in Ireland under the Land Acts :—

(a) in fixing fair rents ;
(b) in ascertaining the true value to be paid for a tenant's interest in a holding by a landlord exercising the right of pre-emption ;

and also to inquire into and report upon the procedure and practice and the methods of valuation followed by the Land Commission and the Land Judge's Court respectively, in carrying out the provisions of the Land Purchase Acts ;" and your Majesty further directed us to report our several proceedings by virtue of the said Commission, and what we should find touching or concerning the premises, together with our opinion upon the matters by your Majesty's said Commission referred for our consideration. We have, to the best of our ability, conducted the inquiry committed to us, and having conferred together we have now the honour to present our Report to your Majesty.

I.—PROCEEDINGS.

We met for the first time in London on the 10th of August, 1897 ; and we then arranged to commence the public sittings of the Commission in Dublin on the 22nd of September. Public notice was given beforehand in all the Irish Daily Papers of the place and time of our first sitting ; and in the advertisement which we published we stated that persons interested might appear before us personally, or by Counsel or Solicitor, or agent, as they thought fit ; or that they might submit to us statements in writing or print ; and by the same advertisement we stated that we should be prepared to receive, from any person interested in the inquiry, suggestions as to the various matters to which our attention ought to be specially directed. We resolved that upon the conclusion of the statements by Counsel or others we should proceed at once with the examination of official witnesses connected with the Land Commission, Land Judge's Court, and Civil Bill Courts respectively, and that we should afterwards hear such other witnesses as the parties appearing before us might desire to examine, or as we thought would give us assistance.

Our Chairman, at our request, wrote to Mr. Justice Bewley, the Judicial Commissioner of the Land Commission, and to Mr. Justice Ross, the Land Judge of the Chancery Division of the High Court of Justice in Ireland, inviting them to attend and give evidence before us at the commencement of the inquiry. Each of the learned Judges deemed it best not to appear before us as a witness, but Mr. Justice Bewley was so good as to furnish us with a memorandum which will be found in the Appendix. In answer to the advertisement which we published we received several communications in writing and print which have received our consideration.

We commenced our public sittings in Dublin, as advertised, on the 22nd of September, 1897. Various bodies, representing landlords and tenants respectively, appeared before us by Counsel and Solicitors ; and one body of tenants was represented by its secretary. The statements of Counsel and Solicitors occupied the first three days of our inquiry ; and we then commenced the examination of witnesses. Except in the case of three of the Land Commissioners, questions were addressed to most of the witnesses by Counsel and Solicitors for the parties appearing before us. In the case of one of the Land Commissioners and of the Assistant Commissioners these questions were put with the consent of the witness. We sat in Dublin continuously from the 22nd of September to the 9th of October, both inclusive ; we then adjourned the Dublin sittings, and sat in Belfast from the 12th to the 15th of October, both inclusive ; and in Cork from the 19th to the 22nd of October, both inclusive. We resumed our sittings in Dublin on the 17th of November, and sat there until the 20th of November. We then visited Galway, and sat there on the 23rd and 24th of November, and we then held a third sitting in Dublin, commencing on the 30th of November, and concluding on the 3rd of December. We held altogether thirty-four public sittings, at which we examined 183 witnesses. These included the four Land Commissioners, other than the Judicial Commissioner, six County Court Judges, twenty-four Assistant Commissioners, two Inspectors in the Purchase Department of the Land Commission, two delegates from the Irish Committee of the Surveyors' Institution, the Registrar to the Land Judge, the Secretary and one of the Examiners in Title to the Land Commission, and a number of landlords, tenants, land agents, solicitors, professional valuers, auctioneers, and some clergymen. In addition to these witnesses, the Secretary of the Incorporated Law Society attended before us, and handed in a valuable paper of suggestions on the practice and procedure of the Land Commission, which will be found in the Appendix to our Report with the exception of one paragraph, the inaccuracy of which was subsequently admitted.

On the 5th January, 1898, we met in London to consider this report, and concluded our sittings on the 7th January, 1898. In the intervals between our various sittings, Messrs. Gordon and Vigers, and in some cases other members of our body, visited and inspected several farms and five small holdings in various parts of Ireland, in respect of which fair rents or true value or redemption price had been fixed, and compared their actual condition with the descriptions of them contained in the Schedules to the Land Commission Orders. We endeavoured to select farms for inspection, representing different qualities of soil, and different circumstances as to markets and general surroundings. Thus we inspected three tillage farms and a holding which was valued under the Redemption of Rent Act, near Belfast, in the Counties of Down and Antrim; one tillage farm in the County of Meath; one pasture farm in each of the Counties of Limerick and Tipperary; and five small holdings in the Congested District of Connemara, in the County of Galway.

On two occasions in our sittings in Dublin we invited the landlords and tenants respectively, to indicate holdings which they might desire to have inspected by the expert members of our Commission, but in neither case was this invitation accepted.

Five copies of the evidence in proof were, at the request of the Land Commission, forwarded to them from time to time as they were printed.

In Volumes II. and III. will be found the oral evidence given before us, and an Appendix containing a selection of the papers handed in. In the case of certain returns of sales of Tenant-right, we have for the sake of convenience caused an abstract of the returns to be printed in place of the original documents, which are very voluminous. It is needless to observe that the various returns appearing in the Appendix possess different degrees of value, and that the fact of their being appended to our Report must not be considered as showing that we have accepted them as accurate.

We desire to express our high sense of the services which have been rendered to us by our secretary, Mr. Cherry, Q.C. His extensive and accurate knowledge of the Land Laws of Ireland has proved a special qualification for the office he has held.

II.—Limits of the Inquiry.

In presenting this Report to Your Majesty we shall endeavour, as we have done in the prosecution of our inquiry, carefully to observe the limits of the reference contained in Your Majesty's Commission. But if in any particular we may be found to have transcended them, we crave indulgence by reason of the difficulty which obviously exists in the precise application of these limits to the complicated matters which have come before us.

The practice, procedure, and methods of valuation into which we are directed to inquire have their origin (i.) partly in the statute law, (ii.) partly from decisions of the Courts, (iii.) partly from rules and directions issued by the Land Commission, and (iv.) partly from the grooves into which business has fallen or been directed by those engaged in the administration of the Land Laws in question.

We have felt bound to inquire into the practice, procedure, and methods of valuation however arising, whilst we have striven to accept without question the principles of these laws and the decisions of the Courts on questions arising under them.

III.—The Constitution of the Land Commission.

By the Act of 1881 the Land Commission was originally constituted. It consisted at first of one Judicial and two other Commissioners; it now consists of one Judicial and four other Commissioners.

The 43rd section of the Act of 1881 authorized the Lord Lieutenant to appoint, and by Order in Council to remove Assistant Commissioners, who should have the prescribed qualifications and hold offices for the prescribed times.

There are now eighty-eight Assistant Commissioners, of whom seven are lawyers, and are known popularly as Legal Assistant Commissioners, and eighty-one are not acting as lawyers, and are known as Lay Assistant Commissioners.[1]

These eighty-one Lay Assistant Commissioners consist of three classes (i) thirty are permanent officials in the Civil Service with the usual rights, including a pension; (ii) forty-eight hold warrants terminating on the 31st December, and renewable from year to year, so long as the work remains to be done, and (iii) three are so-called supernumeraries, appointed from year to year, and receive three guineas a day for every day's work which they perform. Of the eighty-one Lay Assistant Commissioners on the 25th September last fifty-three were employed on Sub-Commission work, twelve were acting as Valuers on re-hearing, three were supernumerary, and thirteen were employed as Inspectors on purchase work.

From this body of Assistant Lay Commissioners it is now the invariable practice of the Land Commission to select persons to act as Court Valuers, and as Inspectors in purchase work.

By the 43rd section of the Act of 1881, the Land Commission was authorized to form Sub-Commissions, to consist of such number of the Assistant Commissioners or of a Commissioner and one or more Assistant Commissioners as the Land Commission might think fit, and to delegate to any Sub-Commission such of its powers except as to appeals as they might think expedient.

The Act of 1881, authorized proceedings under it to be taken either in the Civil Bill Courts, or before the Land Commission. Questions of fair rent or true value might according to the Act be heard in the first instance in any one of the following ways:—

(*a*) By the Civil Bill Court; or

(*b*) by the Land Commission; or

(*c*) by a Sub-Commission consisting of a Land Commissioner, and one or more Assistant Commissioners; or

(*d*) by a Sub-Commission consisting of Assistant Commissioners only.

It appears that no case was ever heard, in the first instance, either by the Land Commission or by a Sub-Commission, of which a Land Commissioner was a member. The cases have always been heard either by the Civil Bill Court or by a Sub-Commission, consisting of Assistant Commissioners only.

The pressure of business on the Land Commission no doubt accounts for the fact that they have never undertaken any original business in respect of fair rent or true value. It is a subject of regret that in the early days of the system the Land Commissioners were unable to take a part in the tribunals of first instance; and that the whole original business was left to Sub-Commissions.

The proceedings for the ascertainment of a fair rent may be commenced by either landlord or tenant serving on the other an originating notice.

IV.—Civil Bill Court.

When the proceedings for the fixing of fair rent proceed in the Civil Bill Court, the Judge appoints a valuer to inspect the holding and to report to him. This appointment is made by virtue of the powers conferred by section 37, sub-section 6, of the Act of 1881, which enables the Court in determining any question relating to a holding, to direct an independent valuer to report to the Court his opinion on any matter the Court may desire to refer to such valuer.

In some cases the County Court Judges hear the case first and then give instructions to the valuer to inspect and report upon the holding, and upon receipt of his report give judgment.[2] In other cases the valuer is sent before the hearing in the County Court, and attends the hearing as assessor.[3]

The matter referred to the valuer is often in fact not any particular matter involved in the inquiry, but the whole question of fair rent and all the subsidiary inquiries which precede the ascertainment of that rent. Some of the Judges endeavour to form an independent opinion as to the sum proper to be fixed, but the majority of them feel themselves incapable of so doing, and (in the absence of evident mistake) do nothing but adopt and register the finding of their valuer.[4]

There is power to remove applications under the Land Acts from the Civil Bill Court to the Land Commission, under which it has been held to be practically a matter

[1] FitzGerald, 107–108. Franks, 27037.

[2] Kane, 5733; Orr, 10715.

[3] Lynch, 1251; Thompson, 3634; Waters, 8573; Shaw, 19959.

[4] Kane, 5742; 5743; Waters, 8590, 8894, 8617; Shaw, 19990.

of right for the respondent to obtain an order for removal.[1] This power has been largely exercised and the number of cases heard in the Civil Bill Courts is comparatively very small.

V.—Sub-Commissions.

As before mentioned, all applications to fix fair rent before the Land Commission are, in the first place, heard by Sub-Commissions, which are now always constituted by one Legal and one or two Lay Assistant Commissioners.

All these Assistant Commissioners usually take part in the hearing of the case, when, in a general way, the opinion of the Legal Commissioner on legal points is allowed to prevail; after the hearing the holding is inspected by the Lay Commissioners or Commissioner; if two, and they agree in their findings, the Legal Commissioner does not generally intervene, but if they differ he often acts as moderator, and the decision is that of the Sub-Commission.

The practice of constituting the Sub-Commission of only one Lay Assistant Commissioner with his legal colleague has of late been on the increase.

VI.—Appeal and Rehearing.

From the decision of the County Court Judge an appeal lies, as of right, to the Land Commission; and on the decision of a Sub-Commission a right exists to demand a rehearing also before the Land Commission; and these appeals and rehearings are heard by the Judicial Commissioner and usually by two other of the Commissioners; less frequently by the Judicial Commissioner and one colleague; and in the unavoidable absence of the Judicial Commissioner, by two other Commissioners.

The Land Commission has a power similar to that of the County Court Judge, to refer any matter for report to an independent valuer (Land Act, 1881, section 48, sub-section 4), and this power is always acted on and a valuer or valuers are required to visit the holding and to report to the Commission. This inspection, now usually made by two valuers, takes place before the case comes on for hearing, and the report of the valuers was until very recently communicated to the parties.

Having thus briefly stated the course of procedure from an originating notice to a decision on appeal, we now return to consider various points which have been suggested by this narrative of the proceedings.

VII.—Different Positions of Valuers.

From what has been said it will appear that the valuers who inspect the holding fill a different place in the three proceedings to fix fair rent. In the Civil Bill Court and on rehearing or appeal these valuers are not members of the Court; and before the Land Commission they are never, and in the Civil Bill Courts only sometimes present at the hearing. Whereas, in the hearings before Sub-Commissions, the valuers who inspect the holding are members of the Court, are present at the hearing, and take part in the decision as judges. In the Civil Bill Court, and sometimes on rehearing, one valuer only is employed; in the Sub-Commissions, two expert Assistant Commissioners, until lately, usually took part in the decision, though as we have said, the practice is now increasing of employing only one Assistant Lay Commissioner. There is in our opinion no good reason for this remarkable diversity of practice.

The facts that comparatively few applications are made in the Civil Bill Courts, and that in most of those cases the applications are removed into the Land Commission, convince us that the mode of procedure in the Sub-Commissions with two Lay Assistant Commissioners is that which gives the least dissatisfaction.[2] We are satisfied that if the valuers who inspect the land are not members of the Court fixing the fair rent, they should, at all events, be made assessors of the judges, with liberty to call the attention of the Court to any matters appearing to them important in the course of the hearing, and subject to examination as to their own proceedings by the County Court Judge or the Land Commissioners.[3] The evidence convinces us that mistakes have occurred at the hearing of cases which their presence would probably have prevented.[4]

[1] FitzGerald, 33.

[2] O'Brien, 998; Lynch, 1279; M'Afee, 1665; Kane, 5734–5736; Verlin, 19386.

[3] O'Brien, 998, 1198; Waters, 8579; Rochfort, 16007; Shaw, 19958; Kincaid, 27289–27292.

[4] O'Brien, 1002; Crosbie, 18652–18661.

VIII.—Different dealings with Pink Schedule.

The Act of 1896 (section 1) requires that certain important particulars shall be ascertained and recorded in the schedule by the Court, whenever a fair rent is fixed, and here another diversity arises in the practice. The particulars are ascertained by the Sub-Commissions, because the lay members of the Court have by inspection and inquiry, as well as by evidence, ascertained the facts. But in the Civil Bill Court and before the Land Commission on appeal the important facts are never ascertained by the Court except through the report of the valuer employed as the eye of the Court, and the judges who are responsible for the decision as a rule do little other than register the findings of their valuer.[1] In some Civil Bill Courts the schedule in question, known as the 'pink schedule,' is in fact filled up and signed by the valuer only, this course being, it is suggested, authorized by the 133rd of the Rules of January, 1897.

IX.—Different Custody of Papers.

Another discrepancy in practice arises from the concurrent jurisdiction of the Civil Bill Court and the Land Commission. All the records of the former Court are kept by the Clerks of the Peace of the respective counties, and are kept, as we find, with very differing degrees of care. The records of the Land Commission are, however, in the custody of that body, and when a case is heard first in the Civil Bill Court and is appealed to the Land Commission, it is the duty of the Clerk of the Peace to send the whole of the relevant papers to the Land Commission.[2] Notwithstanding the letter of Mr. Justice Bewley to the Lord Chancellor of Ireland, of the 24th March, 1894,[3] this duty is still unsatisfactorily performed, and we learn from a written statement of Mr. Franks, the Secretary of the Land Commission, that there are still several thousand County Court cases in the books which have not been accounted for. In consequence, a search in both repositories is sometimes necessary.

In like manner the existence of two offices creates circuity in reference to the supply of papers required for proceedings in the Civil Bill Court.[4]

X.—Should the Civil Bill Court be retained?

Whether, considering the small number of cases which are heard by the Civil Bill Courts, the discrepant practices in it and the Land Commission, and the costs incident to the removal of cases from the one tribunal to the other, the concurrent jurisdiction of the Civil Bill Court should be maintained is a point which appears to deserve serious consideration. On the whole we are of opinion that it is in the interests of the community that the jurisdiction of the Civil Bill Courts in respect of the Land Acts should be abolished.

XI.—Field Books.

The field books used by the Court Valuers and Lay Assistant Commissioners are generally accessible to the judges on the hearing of fair rent applications, and are sometimes referred to by them, and it has been urged upon us that they ought also to be accessible to the litigant parties for their information. We do not think that any practical benefit would accrue from this production of the books to compensate for the additional trouble and expense.

XII.—Particulars of Improvements.

The proceedings for the fixing of a Fair Rent may, as already mentioned, be commenced by either landlord or tenant serving on the other an originating notice.

By the 130th of the Rules of January, 1897 (and previously under the same or a similar rule), where the originating notice is served in respect of a holding of which the tenement valuation (*i.e.*, the valuation for the purpose of taxation) is not under £10, the tenant is required by endorsement if the notice be his, or by writing served on the landlord if the notice be the landlord's, to give the particulars of any improvements in respect of which evidence is intended to be produced, or which are intended to be relied on by the tenant as having been made by him or his predecessors in title: and in the case of the notice being served by the tenant, to give, moreover, the dates at which the same were made according to the best of the tenant's knowledge or belief.

[1] Adams, 3052; Waters, 8613; Shaw, 19988.

[2] Waters, 8605; Kane, 5886.

[3] Report of Morley's Committee, p. 666.

[4] Guiry, 20196–7.

It has been urged before us that the like rule ought to be applied in the cases where the tenement valuation is under £10. We are of opinion that when the tenant claims for drains he should state the amount he claims under this head without further particulars, but that subject to this modification, the present rule should stand, having regard to the small inconvenience caused to the landlord by the want of particulars in small cases, except as regards drainage, and the poverty and illiterate character of most of the tenants of such holdings.[1]

It appears that tenants not unfrequently make mistakes and omissions in their specification of improvements; that in many cases the landlords have waived any objection to the proof of the unspecified improvements, and that in other cases amendments have been allowed; but it equally appears that in some cases tenants have, by reason of these errors in the particulars, been shut out from the benefit of improvements actually made by them.[2] We regard this result as contrary, if not to the letter, at least to the spirit of the Acts of 1881 and 1896, which give the presumption of all improvements to the tenants. We think that in all cases in which such errors appear to exist, and to have been made accidentally, amendments should be allowed in the particulars, and any adjournments, if such should become necessary, should be made at the cost of the defaulting party, unless for special cause stated the Court shall otherwise direct.

It will be observed that according to the present practice the tenant only and not the landlord is required to specify the improvements, or contributions towards improvements, which he claims. This practice is, in our opinion, one-sided, and we think that the landlord as well as the tenant should be required when serving, or within a reasonable time after being served with the originating notice, to give particulars of the improvements claimed by him.[3]

XIII.—Assistant Commissioners and Court Valuers.

Many of the Lay Assistant Commissioners and Court Valuers have appeared before us: and the expert members of our Commission, when visiting holdings, have been accompanied by various gentlemen filling these offices.

The qualification of Assistant Commissioners, whether legal or lay (for the rules draw no distinction of this kind), is prescribed by the 15th of the Rules of 1897 (following early rules of the same or the like character). Practising Barristers and Solicitors of not less than six years standing, and persons possessing a practical acquaintance with the value of land in Ireland, are by this rule made competent for the office of Assistant Commissioner.

Many of these officials are tenant-farmers, and continue to carry on their business conjointly with the discharge of their official duties; and are exposed to the temptation (against yielding to which strict injunctions have been given by the Land Commission) to leave their official for their private occupations.[4]

As already mentioned the work of the Lay Assistant Commissioners and Court Valuers has, in a few cases, been reviewed by the expert members of the Commission; but without any attempt to investigate the drainage by digging. With one exception, hereafter to be mentioned, they found no reason, so far as their investigations went, to differ from the figures fixed by the Lay Assistant Commissioners and Court Valuers. Of the holdings visited, the fair rent of one was fixed in the year 1894; the fair rents of five were fixed in the year 1895; two in the year 1896; and two in the year 1897. Of these, nine were first-term applications and one a second-term application. But the number of farms so visited was so small that although we think it right to state the facts we do not wish to draw from them any general conclusion.

We believe that, as a whole, the Assistant Commissioners and the Court Valuers have striven honestly, and to the best of their ability, to discharge the difficult duties cast upon them, and it is plain that their work is now done with more care and deliberation than in the early days of the Land Commission. Nevertheless it gives opportunity for dissatisfaction, and leaves much room for improvement.

The Act of 1881 contains no definition or explanation of the words "Fair Rent" and "True Value," and until very recently there was no judicial exposition of the one expression or the other. The investigation of the matters which come before the Sub-Commissions, often involves intricate questions of surveying and difficult points of

[1] FitzGerald, 114; Bailey, 461; Kane, 5699; Lynch, 6235.

[2] Harrington's Speech p. 82; Bailey, 464; O'Brien, 921; Lynch, 1245–9; M'Afee, 1756, 2417 O'Keefe, 2458; M'Kenzie, 3286; Eyre, 3935; Peet, 4589; Rice, 5071; Williams, 6072; Waters, 8829.

[3] O'Brien, 926; M'Afee, 1757; Thompson, 3492; Byers, 4737; Kane, 5704.

[4] Directions 1 July, 1897, No. 30. See Appendix B., No. 5.

fact and law. Certain general directions for the performance of their duties have been given to the Assistant Commissioners, but they leave them unguided on many of these difficult questions. It is not, therefore, a matter of surprise that there is great diversity of opinion and of practice amongst the large class of Assistant Commissioners. Indeed on the more fundamental questions—such as to whether an occupation interest is to be recognised,[1] as to the mode of dealing with the so-called improveability of the soil,[2] as to true value and the mode of ascertaining it[3] (of all which questions we shall speak hereafter) a great diversity exists amongst these officers; and in some cases views have been expressed by Assistant Commissioners on important points which appear to us to be unsound. It is remarkable that in many cases Assistant Commissioners and Court Valuers have been found to agree in their results, though differing in the process and principles by which the results have been arrived at.[4] Several remarkable illustrations of this fact are to be found in the evidence of Mr. William Daly, a large landed proprietor in County Galway:[5] he mentioned three cases on his estate, in each of which the carrying power of the holding was estimated at very different figures by the Sub-Commission and on rehearing by the Court Valuer; and in which nevertheless the Court Valuer and the Land Commission fixed the judicial rent at the same amount as the Sub-Commission. Such agreement on the part of the valuers is, if possible, more strange than their differences.

Mr. Morley's Committee reported, in reference to the proceedings under the Land Acts, that "there is neither a common understanding of the law or anything approaching to uniformity in practice": our experience convinces us that what was true in 1894 is true now.

In such fashion is the solution attempted of one of the most arduous problems of distributive justice which has ever been raised.

The result of this diversity of operation and practice amongst the Sub-Commissions and Court Valuers is dissatisfaction in the minds of the litigants and an increase in the number of applications for rehearing.[6] These results are intensified by the suspicions to which, unfortunately, the Assistant Commissioners and Court Valuers are exposed—we speak of these suspicions because they actually exist, however little they may be justified by the facts. An officer appointed when one political party is in power is the subject of suspicion to those of other political views; a landlord, if appointed, is suspected by tenants; and a tenant by landlords: nay more, an officer connected by family or social relations or by business ties with the landlord class on the one hand or with the tenant farmer class on the other hand, is exposed to suspicion from the other class: the whole body of Assistant Commissioners and Court Valuers, and especially those who hold office for short periods, or are paid by the day,[7] are suspected of lowering rents so as to keep the machine at work: the County Court Valuers are suspected of desiring so to act as to keep business from being removed from the County Court to the Land Commission[8]; the Assistant Commissioners, when acting as Valuers of the Land Commission, are suspected of being closely in sympathy with Assistant Commissioners from whom a rehearing is demanded (as they all belong to the same class, and perform interchangeable duties with them), and are therefore said to be wanting in that independence which is a statutory condition of their employment; and, lastly, a suspicion exists that Lay Commissioners are moved from one province or district to another, according to the satisfaction or dissatisfaction which their decisions give to the Land Commissioner who superintends their spheres of work. Many of these suspicions are, doubtless, unfounded. But we repeat that they exist, and add to the number of rehearings, and increase the friction of the machine. Furthermore, the whole spirit of our judicial institutions suggests that officers with such extensive powers should be selected with the greatest care and with reference to their possession of high qualifications, and that they should be placed in a position of independence, and should, so far as possible, be lifted above the suspicions which surround them.[9]

[1] Bailey, 804; M. P. Lynch, 1322–1324; MacAfee, 1686–1691; Byers, 4751; Roberts, 9411–9441; Bayly, 9538–9551; Headech, 9621–9652; Comyn, 9748–9758.

[2] M. P. Lynch, 1367–1370; MacKenzie, 3330–3339, 3458; O'Keeffe, 3477; Headech, 9553–9556 Bayly, 9595–9597.

[3] M. P. Lynch, 1371–1394, 2219–2227; MacAfee, 1781–1786; Byers, 4839–4842; Cunningham, 9271–9277 Bayly, 9559–9565.

[4] Bailey, 739–746; Kane, 5752; Roberts, 9494–9497.

[5] Daly, 24263.

[6] Wrench, 26974, 26988; Kincaid, 27286.

[7] Kane, 5713.

[8] Montgomery, 18943–4. Fitzgerald, 19475; Shaw, 19969

[9] Lynch, 7708.

Our opinion on the defects of the present system will perhaps be best made known by a statement of the alterations which we venture to suggest. In our opinion—

(i.) All Assistant Commissioners and Court Valuers should be permanent officials, paid on a sufficiently liberal scale to secure men of capacity and responsibility, who should be required to devote the whole of their time to the work of the Land Commission, and they should be entitled to a pension or allowance in the event of their services not being required either permanently or temporarily by reason of the diminution of work.[1]

(ii.) They should be appointed from a list to be approved by the Judicial Commissioner, with the concurrence of at least two other Commissioners.[2]

(iii.) The Lay Assistant Commissioners and Court Valuers should satisfy certain qualifications besides that of possessing a practical acquaintance with the value of land in Ireland, such as having passed a suitable examination in the subjects with which they will be called upon to deal.[3]

(iv.) They should be placed under a single head, who should have power to issue directions and instructions, who should have the general supervision of their work; and who should be charged with the duty of communicating to the Assistant Commissioners all relevant decisions of the Land Commission, or the other Courts.[4]

(v.) The districts of the Assistant Commissioners should from time to time be settled by orders of the Judicial Commissioner, and at least two of the other Commissioners, which should be published in the *Dublin Gazette.*

(vi.) A power should be given to Sub-Commissions to state cases for the Land Commission on questions arising before the Sub-Commissions, either on the application of a litigant, or of their own proper motion; and a power should also be given to the Land Commission to require Sub-Commissions to state such cases if an applicant showed that the statement of such a case was proper, and that it had been refused by the Sub-Commission. The cases thus stated should be dealt with in a manner somewhat similar to Crown cases reserved—*i.e.*, an opportunity of argument should be given to the parties interested, and in default of their appearance, the matter should be discussed by the Commission in public.

(vii.) A power should be given to the Land Commission to make inquiries from the Assistant Commissioners in respect of any matter which has come before them, as to the facts proved before them, the processes by which their conclusions were reached, and the principles by which they were guided, and generally in respect of any point arising in the performance of their duties.[5]

Hitherto the delegation of duties by the Land Commission to the Sub-Commissions has been unconditional, and has been considered as placing the SubCommissions in a position of equal independence with the Land Commission itself;[6] if the changes which we have suggested were adopted, the Sub-Commissions would, in our opinion, be placed in a much more independent position towards the public, but in a more dependent position towards the Head Commission, from whom they would derive guidance and assistance. By the plan we have suggested an opportunity would be given for training and instructing a properly qualified staff (as was done by Sir Richard Griffith when making his valuation of Ireland), and for checking that diversity of practice which after the sixteen years working of the Act of 1881 is still found to exist, and which necessarily creates a sense of uncertainty and distrust in the administration of the law.

Some specific charges of misconduct or negligence have been made against Lay Assistant Commissioners and Court Valuers; as *e.g.*: visiting the land without due notice to the landlord;[7] visiting the holding when lying under snow or water, or when suffering from prolonged drought, and refusing to wait whilst a trench was dug to show the condition of the alleged drainage.[8]

We have investigated many of these cases: and the explanations given have generally been satisfactory to us.[9] We think that cases of this kind were more frequent formerly than of late years, and that the instances in which there has been an ultimate miscarriage of justice arising from such circumstances are very few. At the same time we are of opinion that in some cases the inspections have been made with

[1] Peter Fitzgerald, 19475–19488. St. George, 24863. Wrench, 26715.
[2] Wrench, 26715.
[3] Wrench, 26900.
[4] Headech, 9730. Kincaid, 27277.
[5] Franks, 27052–27056.
[6] Franks, 27052–3.
[7] Comyn, 9742; Byrne, 20209.
[8] Bayly, 478; Lynch, 1261; M'Afee, 1968; O'Keeffe, 2485–2491; Thompson, 3514; Eyre, 3935; Byers, 4982; Kane, 5719; M'Kenzie, 8301; Byrne, 20202; Browning, 20220; M'Connell, 20269; O'Conor, 21809; Barnes, 27596.
[9] Smith, 14632; Browning, 20220–20245; M'Connell, 20269–20292.

undue haste, and that the recurrence of such circumstances as are complained of should be guarded against by an instruction to the Assistant Lay Commissioners and Court Valuers.[1]

In some cases, especially when work is resumed after a vacation, several groups of two Lay Assistant Commissioners sit concurrently, the Legal Assistant Commissioner sitting with one group, and leaving the others without his assistance. In such a case the general practice of the two Lay Assistant Commissioners is to postpone for their legal colleague any case stated to raise any question of law. This adjournment is often inconvenient to the parties and their witnesses,[2] and irregularities and difficulties sometimes occur, and create an objection to this course of practice which should in our opinion be avoided.[3]

The Sub-Commission Court now frequently consists of the Legal Assistant Commissioner and only one Lay Assistant Commissioner :[4]—In such cases, and sometimes in other instances, also, the inspection of a holding is made by one Lay Commissioner only, this being done sometimes with the consent of the litigants asked for before the inspection.[5] The litigants appear to be unwilling to refuse this consent when asked for, and yet to feel dissatisfied with the decision of a single valuer. In our opinion this practice should be discontinued, and two Lay Assistant Commissioners should be present at every hearing, and take part in every inspection.

A few cases have been brought to our attention in which the opinion of the Legal Assistant Commissioner on a legal point has been overruled by his two lay colleagues; and this, according to the present constitution of the Sub-Commissions, appears to be possible; but in our opinion it ought not to be allowed to occur.

When the decisions of the Sub-Commissions are not given immediately they are often given in a different town, and even county, from that in which the hearing has taken place; and as no previous notice is given of the intention to deliver judgment, the first notice received by the litigants of the decision of their case is by a post card, stating the result of the decision. The parties interested are thus without any opportunity of attending the Court and hearing in what way any points which may have been argued are dealt with and their cases disposed of. We think that this practice is justly complained of.

By the rules now in force a period of two months is given after the making of a fair rent order by a Sub-Commission for either party to demand a rehearing; and a right is also given to obtain a copy of the pink schedule, on payment of a fee. It is evident that no wise litigant would determine whether or not to apply for a rehearing without seeing this schedule; and yet it appears that there are frequent delays in furnishing it to the litigants, and delays often of considerable length, sometimes so long as to preclude the possibility of considering its contents before a rehearing is asked for.[6] This also appears to us to be a subject of just complaint, and in our opinion the officers of the Land Commission should be required to send the copy wihtin a specified number of days after receipt of the application for it.

XIV.—Rehearing.

Applications for rehearing to the Land Commission from the Sub-Commissions (commonly called appeals) on questions of fair rent, are very numerous; the changes made in the fair rents fixed are on the whole small; and the expenses incurred are greatly in excess of the pecuniary advantages resulting from them. The total number of appeals lodged in the Land Commission from 1881 to the 29th November, 1897, was 51,668.

An almost universal dissatisfaction is expressed with regard to these appeals, a dissatisfaction felt by some at least of the Commissioners themselves.[7] No witness, with perhaps a single exception, spoke in defence of the existing system. It is obvious that when the question is merely one of the amount of the rent fixed, the Court has little to assist it beyond the report of the Court Valuers or Valuer, and that this, the report, sometimes of a single man, is often of no more weight than the pink schedule, sometimes filled up by the two Lay Assistant Commissioners. The decisions of the Land Commission in a very great number of cases do little more than register the decision of the Court Valuer. Moreover the business is disposed of with a rapidity and with a silence as to the grounds of the decisions which create dissatisfaction in the minds of the litigants whose property is at stake.[8] Points of importance are often raised and discussed and the judgment adjourned, and when delivered it is a mere statement of the figure at which the rent is fixed.

It might have been hoped that one good result would have followed from this

[1] O'Conor, 21813.
[2] Turner, 29170.
[3] O'Keefe, 2497; Thompson, 3521; Eyre, 3982–3985; Bell, 4185–4186; Peet, 4578–4583.
[4] FitzGerald, 174; Lynch, 1361; Kane, 5726; Dawson, 7022.
[5] FitzGerald, 169, *et seq.*; Rochfort, 16000; Verlin, 19383.
[6] O'Callaghan Westropp, 23859–23866; Harvey, 28130–28133.
[7] O'Brien, 1119–1129; Hutton, 12471; Crosbie, 18651: Verlin, 19387; Barrington, 20608; O'Conor, 21883; Hussey, 22717–22725; St. George, 24861; Wrench, 26988.
[8] O'Brien, 1030–1032, 1176, 1184.

multitude of appeals which has been crowding the doors of the Land Commission now for many years, viz., that all the difficult points arising on the Act would have received judicial elucidation and determination. This benefit has not however been realized. It is only in the course of the last few months that anything like a judicial exposition of the meaning of "true value" has been given,[1] or any decision delivered as to the existence of an occupation interest in the tenant.[2] Even now after the Act of 1881 has been in operation for more than sixteen years, there is, so far as we can learn, no judicial exposition of the two weightiest words in the whole statute—"fair rent": and according to the statement of the Lord Chief Justice on the 29th November, 1897, "the members of the Head Commission differ amongst themselves as to the principles and method by which a fair rent should be ascertained"[3]

On the first application for the rehearing of a case of fair rent by the Land Commission in January, 1882, the Court, before the hearing, had the holding inspected by two Valuers, and a report made to assist them in determining the fair rent; and the report of the Valuers was made known to both sides at the conclusion of the evidence. This continued to be the usual practice of the Court for some years, until the report of the Court Valuers developed into a much more elaborate document than it originally was, and the Valuers were asked to report the amount at which in their opinion the fair rent should be fixed. In the year 1890 the system was adopted of obtaining a report from at least one Court Valuer in all fair rent cases on rehearing; and a notification was before the hearing given to each of the parties of the result of the Court Valuer's investigation, and the parties were enabled to obtain a copy of the report before the rehearing, a course which was found to lead sometimes to settlements and more often probably to the withdrawal of appeals. This system was in operation till the beginning of December, 1897, and therefore during the whole time of our public sittings. In practice the Court Valuer or Valuers were directed by the Land Commission to inspect the land, they were furnished with the pink schedule of the Court below, and also with an alternative form of Report, the one (Form A), stating shortly an agreement *in omnibus* with the findings of the pink schedule, and the other (Form B), which the Valuers were directed to use if they saw reason to differ substantially from the pink schedule.

But on the 29th of November, 1897, the judgments of the learned Judges in the case of the Queen (Gosford) *v.* the Irish Land Commission, in the Queen's Bench Division of the High Court, threw some doubt on the validity of this course of practice, and on the 7th December, 1897, Mr. Justice Bewley announced that, in deference to the judgments delivered in that case, the Land Commission had resolved that a new form of report should be adopted.

"In this," said Mr. Justice Bewley, "the valuers will report as hitherto on the description of the holding and its user. They will state the gross letting value of the holding, including buildings and all other improvements, and the extent to which the improvements allowed to the tenant in the schedule of the Sub-Commission or County Court (as the case may be) appear from the examination of the holding to exist, and the present capital value of and increased letting value due to each such improvement, so far as it can be ascertained by inspection. They will also report as to the extent to which the improvements allowed to the landlord in the schedule of the Sub-Commission or County Court appear from examination of the holding to exist, and they will state the particulars of any other improvements appearing on the examination of the holding to exist thereon, and the present capital value of and increased letting value due to each such improvement. They will further report on any other matter in relation to the holding ascertained from their examination of it which in their opinion ought to be known to the Court fixing the fair rent of the holding. But they will not give any suggestion as to what deduction should be made in respect of improvements nor what should be the fair rent of the holding, as to do this might in some cases involve matters of law. Under these circumstances, the Commissioners are of opinion that they should revert to the old practice of the Land Commission, and that the report of the Court Valuers in its altered form should not be communicated to the parties before the case comes on for hearing. Ignorant tenants, or tenants with imperfect knowledge of the terms of valuation, might mistake the sum named in the report as the fair letting value of the holding with the improvements thereon for the fair rent, though the gross letting value might in many cases be largely in excess of the fair rent. To disclose the report of the Court Valuers before the hearing would not, as a rule, promote the settlement of litigation between the parties, and in some cases might lead to rents being fixed by agreement on a wholly erroneous basis. The new form of report will be adopted as soon as possible."[4]

[1] Curneen *v.* Tottenham [1896] 2 I. R. 37, 356.
[2] Markey *v.* Gosford, 31 I. L. T. R. 97.
[3] Queen (Gosford) *v.* Irish Land Commission (*Q.B.D.*), 29th November, 1897.
[4] *Irish Law Times*, vol. 31, p. 575.

This recent change is a very important one, and we confess to a fear that it will not facilitate settlements, or give greater satisfaction than the practice which it supplants. In our opinion the early communication of the Valuer's report to both the litigant parties is highly expedient.

The investigation of the Court Valuer, as hitherto carried on, cannot be considered an independent one. He generally considered himself bound by the decision of the Sub-Commission as to what improvements were to be allowed for; he admittedly accepted much on the strength of the pink schedule under appeal, and he was left at liberty to determine for himself what is a substantial difference from the previous findings.[1]

A striking illustration of the danger of this course of practice has recently occurred. In thirty-one cases on one estate the amounts allowed for drainage in the pink schedules were considerably in excess of the amounts proved by the tenants at the hearing before the Sub-Commission: the cases were reheard, and in every case the reports of the Court Valuers agreed, as to the amount of drains, with the findings of the Sub-Commission: and yet it was shown to the Land Commission that in every one of the cases, the figure was wrong; for the evidence had been given in terms of the Irish perch, and the pink schedules and the reports were drawn in terms of the English perch: and in every case the change from Irish into English measure had been made on the ratio not of lineal but of square measure. Such slavish copying of a blunder is very cogent evidence of the want of independence in the operations of the Court Valuers.[2]

The present practice does not, in our opinion, satisfactorily secure a real rehearing of the whole matter under discussion. We think that the valuers of the Land Commission acting in appeals ought to constitute a separate body or list of officials, that the inspection ought always to be by two Court Valuers acting together, that they ought to be furnished not with the pink schedule but only with the map and description of the property, and that their report should be made in ignorance of the findings below; that this inspection should be made before the hearing, and that on that occasion the Valuers should attend the Court and act as assessors to the Land Commission, and be liable to be examined by them; that if occasion should arise, the Court Valuers should pay a second visit to the holding, taking with them, if so directed, the original pink schedule; and that before the Land Commission there should be not only the report or reports of the Court Valuers, but but also the pink schedule in the Court below.[3]

It appears from the evidence before us that the following practice has grown up. Where there is an appeal and the Court Valuer puts a higher or lower figure for the rent than the order appealed from, the Court will not alter the figure unless the landlord or tenant (as the case may be), give independent evidence of value in support of the higher or lower figure; and in no case will the Court go above the landlord's valuer or below the tenant's.[4] This practice is no doubt grounded on the view, that in the absence of such testimony the so-called appellant has given no evidence in support of his demand for a rehearing. But the result of this practice is to induce the valuer of landlord and tenant respectively, to go so high and so low as that his client shall run no risk of loss from him, and thus to place a direct premium on exaggeration.[5] Furthermore, having regard to the almost decisive effect given to the report of the Court Valuers, this practice (which has been established by judicial decision) appears to us inconvenient, as it requires as a condition precedent to giving effect to the Valuers' report the production of that expert evidence which, when given, is almost universally disregarded as against the report. This expert evidence ought, we think, to be discouraged, considering the great expense and little result which attend it.[6]

In some cases, especially recently, the practice has been found to exist amongst the landowners of not appearing or taking any part in the hearing before the Sub-Commission, and then of lodging an appeal, and taking the chance of a favourable report from the Court Valuer; and, when this report is made known, of either prosecuting or withdrawing the appeal, according to the character of that report: his withdrawal in the event of an adverse report being usually accomplished without his having to pay any any costs to the respondent.[7] One agent stated to us that in every case in which he was concerned he had pursued this course.[8]

In our opinion it would not be wise to abolish rehearings or appeals, but it is desirable to check the course of indiscriminate appeals to which we have referred. This might be brought about in one or other of several ways, as, *e.g.*, by placing a heavier stamp on the notice of appeal; by depriving the appellant of the right to retire

[1] Lynch, 1283, 1299; M'Afee, 1672, 1718, 1984.
[2] Goddard, 29882, *et seq.*
[3] Crosby, 18651; Trench, 18713; Shaw, 20008; Barrington, 20610.
[4] Fitzgerald, 223, 397; O'Brien, 1015; Nolan, 16484; Wrench, 26731.
[5] Wrench, 26732–26734.
[6] Shaw, 19987.
[7] MacAfee, 2067; Murray, 11612.
[8] Barton, 12953.

from his appeal without the leave of the Court; by requiring security for costs, or by depriving of the right of appeal any suitor who had failed to present his case to the Court of first instance, unless such failure was shown to have arisen from venial accident or mistake.

An attempt to check appeals was made by the 22nd section of the Act of 1896, which authorised the making of rules providing that every notice of appeal should state the grounds of appeal, and that on the hearing of the appeal no ground of appeal should, save by leave of the Court, be entered into except those stated. Accordingly, by the 85th of the Rules of January, 1897, it is provided that every notice of appeal shall specify definitely the grounds upon which the appeal is intended to be prosecuted. From the evidence we gather that in appeals on fair rent it is usual to specify the grounds of appeal in vague and general terms.[1] It may be worthy of consideration whether some more stringent rules, dealing especially with costs, could not be devised.

Certain general rules have been framed as to costs upon rehearings in fair rent cases subject to any special order which the Court may make in particular cases.[2] These rules in fact determine the costs in nearly all the cases heard. They include two to which our attention has been drawn: the one that when the landlord appeals and the judicial rent is increased but the former rent is not restored, each party abides his own costs, the other that when the tenant appeals and the judicial rent is reduced each party abides his own costs. In both these cases it appears to us that the successful appellant ought to be entitled to costs; unless, for special reason, the Court shall think fit to deprive him of them.

XV.—Valuation in Fair Rent Cases.

If the matter were perfectly open, it appears to us that two independent lines of evidence might be pursued by a person inquiring what is the fair rent to be fixed for a holding. One class of evidence may for shortness be called the popular evidence; the other the technical.

The popular evidence would comprise the prices obtained by the tenant for a sale of his interest or *bona fide* offers which he had received for it, evidence of the letting value or judicial rents of similar holdings, evidence of the sums paid for conacre or agistment, evidence of the long and punctual payment of a real rent, or of the long arrears of a nominal rent, and evidence of the prosperity or poverty of the persons who had successively lived off the produce of the holding.

The technical evidence would be that more familiar to professional valuators. They would inspect the land, ascertain the acreages of the several classes of land on the farm, and what they would produce or carry; they would consider the quantity and value of the produce and the cost of production, and the shares of the surplus remaining after the cost of production divisible between landlord and tenant respectively.

The popular evidence would be affected by all the motives which make men in Ireland desirous to occupy land; the technical evidence would assume the desire of making a money profit out of the occupation of land as the sole motive of such occupation.

The 8th section of the Act of 1881 seems to admit of both lines of evidence with a single exception. It provided that in fixing the fair rent consideration should be given not to some but to all the circumstances of the case the holding and the district with the single exception (sub.-sec. 10) that the price paid for the tenancy otherwise than to the landlord or his predecessors, was not of itself, apart from other considerations, to be taken into account: though conjoined with such considerations it still remains admissible.

An early decision of the Judicial Commissioner (Mr. Justice O'Hagan) excluded from evidence on the fixing of fair rent the letting value or judicial rents of other holdings.[3] We believe that much more attention was paid in the early days of the Land Commission to the remaining kinds of popular evidence than has been the case of late years, and we are assured by one of the Head Commissioners that the Act of 1896 has made a great change in the fixing of fair rents by placing an emphasis on the technical evidence and throwing the popular evidence into the background.[4] Thus of late years fair rent has been almost exclusively ascertained by a consideration of the acreable value of the land and the annual value of the improvements, and little or no weight has been given to the other considerations.[5] It appears that in fixing the second judicial rents the

[1] FitzGerald, 211; O'Brien, 1133.
[2] Cherry and Wakely, Irish Land Acts, 2nd Ed., p. 585.
[3] Campbell's speech, p. 2.
[4] Lynch, 1218; Comyn, 9780; Wrench, 26716, 26725; Trench, 29126, 29128.
[5] Doyle, 9981; FitzGerald, 19502.

evidence of what was done at the fixing of the first judicial rents has rarely, if ever, been considered. We think that what was done in respect of the then existing improvements and the rate of interest placed upon their value ought always be taken into consideration as far as obtainable ; as they are very important items of evidence, with regard to the circumstances of the holding and the case.

In order to express our opinion on the question whether the course of practice is in accordance with the mind of the Legislature as expressed in the statutes, we are most reluctantly driven to consider the meaning of the words "fair rent" as used in those statutes; and in order to that end we must consider what were the circumstances under which those Acts were passed, and the condition of the subject matter with which they dealt.

A great amount of evidence has been placed before us to account for the present high price of tenant-right, notwithstanding the depression in the prices of agricultural produce (of which more hereafter) ; and we shall probably be not far wrong if we assume that many of the circumstances which now tend to swell the prices paid for tenant-right operated before 1881, to increase the demand for tenancies, and to put it in the power of such landlords as chose so to do to obtain high and even excessive rents.

These circumstances may briefly be enumerated as follows :—

I. The absence of all other important occupations than agriculture in most parts of Ireland, and the consequent desire of a man with a family to obtain a safe and steady means of employing the labour of himself and his children.[1]

II. The fact that land is the only popular investment amongst the agricultural classes in Ireland.

III. The influx of money earned abroad, sometimes sent home by relatives, and sometimes brought home by emigrants who have returned with an earnest desire to establish themselves in their old land.

IV. The ancient love of their country habitual with Irishmen.

V. The desire prevalent amongst tenant farmers to increase the size of their holdings.

VI. The need or desire amongst fishermen, migratory labourers, and small shopkeepers, &c., to have a *pied à terre.*

VII. The strong preference felt by many Irishmen for working for themselves rather than for a master.[2]

VIII. In some cases prices are wildly paid at auctions ; there is evidence that in some instances puffers, locally called sweeteners, and the influence of free drink, have inflated the prices given.[3]

There are thus motives operating on the Irish agricultural population over and above the desire to earn money profits by working a farm. Some of these are motives by which a prudent and intelligent man may be influenced, *e.g.*, a prudent man with sons and daughters may take a farm producing but little or no pecuniary profit, because in the working of the farm he finds permanent employment and maintenance for his children. But when fair rent is fixed as at present by the technical evidence, *i.e.*, by a method proceeding by a consideration only of the reasonable expectation of a money profit from land, all these motives are excluded.

That it was the intention of the Legislature to exclude from fair rent the operation of all the unreasonable motives is we think not open to debate : was it the intention to exclude all reasonable motives besides the desire to make a money profit by the working of the holding ?

The statute of 1881 provided (with certain exceptions not needful to be considered) for the ascertainment of fair rent in respect of all the agricultural holdings of Ireland. As regards the greater part of these lands, the inquiry as to the money profit to be derived from their occupation might reasonably be made, but with regard to the very small holdings of districts in the western and southern parts of Ireland such a question could have no meaning. For the occupants of these holdings, the price of labour, the cost of artificial manures and feeding stuffs, the price of produce in the markets are comparatively immaterial facts: for they buy little and sell little. They do not pay wages ; they earn them. They are essentially cottiers—not farmers ; and their rents are cottier, and not farm rents.[4] Of the 486,865 holdings in Ireland, 369,502 are valued for purposes of taxation at less than £20, and 127,098 at less than £4. In the

[1] Sadlier, 17482 ; Barrington, 20779.
[2] Barrington, 20782.
[3] MacAfee, 1786.
[4] Bailey, 892 ; Cunningham, 9213; Lynch, 1428 ; MacAfee, 2080 ; O'Keeffe, 2444, 2571 ; Kane, 5760 ; Wrench, 26701–2, 26759.

parish of Gweedore, in Donegal, the average rental of the holdings is stated at 17*s.* 9*d.* per holding, "and for that" said Mr. Commissioner Wrench, "a man has an acre of potatoes, half an acre of oats, and perhaps some turnips, and he has got a little rough grass land and possibly some accommodation land—mountain land, where he can graze a few sheep, and he has a turbary for his holding." In the Clifden Union it appears that in 1881 the average of the holdings was three quarters of an acre of oats and an acre and a quarter of potatoes, whilst only three occupiers of land were in fact hirers of labour.[1] Having regard to the character of the climate and the soil we conclude that no owner in fee-simple could cultivate such holdings so as to make out of them any money profit. But in the Congested Districts of Ireland, the men are in some places migratory labourers who seek work in England or Scotland, or they are fishermen, or they burn kelp (now unfortunately a depressed industry), whilst in many cases the women spin or knit or weave, or are engaged in the making of shirts or underclothing.[2]

It seems impossible to suppose that the Legislature could have intended to apply to such holdings the test of pecuniary gain; it must have intended to allow in the ascertainment of fair rent for all the reasonable motives which operate on the mind of the peasant of Kerry or Connemara, and so make his small holding an object to him of reasonable desire. This intention of the Legislature is to be gathered not merely from the subject matter in respect of which fair rent was to be fixed, but from the express words of the Statute which require that in fixing it the Court shall consider, not some, but all of the circumstances not only of the holding but of the case and of the district.

Again, the matter may be looked at from another point of view. If we imagine the prudent and solvent peasant dealing face to face with a fair-minded landowner, the one would not hesitate to pay, nor the other to receive a rent in respect of the benefit which the tenant would derive from the occupation of the landowner's property.

We conclude, therefore, that in the fixing of fair rent it was the intention of the Legislature to include the consideration of all reasonable motives besides the desire to make a money profit by the working of the holding.

The Act of 1896 does not appear to us to have been intended by the Legislature to alter the meaning of the words "fair rent." The First Section is, no doubt, mainly concerned with matters which pertain to the technical line of evidence; and this, as we conceive, because the Legislature thought fit to so tie the Courts down to a definite and detailed statement of the particulars required as to the holding, as that each step in the process might stand on record for future use and be if necessary the subject of review. But the Court is directed to ascertain and record "such other matters in relation to the holding as may have been taken into account in fixing the fair rent thereof, or as may be prescribed," and under these words we conceive that it is the duty of the Court to consider as directed by the Act of 1881 "all the circumstances of the case, holding, and district."

In few, if any cases which have come before us (and we have examined many pink schedules), has any statement been made under paragraph 8 of the pink schedule except one, to be hereafter mentioned in reference to the Ulster custom: and as the result of our own examination, and of a search which we have directed, we find that the entries under this head are rare, and that they seem never to give anything like a history of the holding or of the case, but merely to contain some observations as to water, proximity, or situation; and we have come to the conclusion that in point of fact fair rents are now ascertained, with rare exceptions, by reference only to what we have called the technical line of evidence, and that the circumstances of the case and of the district do not receive that consideration which the Act of 1881 directs.

The discussion into which we have been compelled to enter with regard to the practice in the ascertainment of fair rent has led us some way towards an explanation for ourselves of the meaning to be attributed to the two words "Fair Rent." We repeat that we have throughout felt that one of the most important questions on which we were required by your Majesty to express our opinion is, how far the present practice and methods of valuation carry into effect the intention of the Legislature in the fixing of fair rent: and, further, that it was impossible for us to answer that question without explaining to ourselves the meaning which we placed on the words. We should have hailed with the greatest satisfaction a judicial explanation of the words "fair rent"; but in default of this we have done our best to understand them; and it is right that we should state the conclusion at which we have arrived.

In our view, assuming the law to be, as at present decided, that occupation interest is not to be taken into account in fixing the fair rent of the holding, the annual sum referred to in paragraph (*a*) of section 1 of the Act of 1896 (which we may call the gross fair

[1] Tuke, Lords Rep., Vol. II., pp. 261, 262.
[2] Return of Congested Districts Board, iii., 5 Dec., 1894.

rent) is the annual sum, at which, after all the circumstances of the case, holding, and district have been taken into consideration, the holding in the landlord's hands might reasonably be expected to let from year to year, to a solvent and prudent tenant, who desired to derive a benefit from the occupation of the tenement, and not from its sale: and the fair rent of the holding in paragraph (*g*) of the same section (or the net fair rent) is the gross fair rent less a reasonable annual allowance in respect of the sum which would represent the present value of the improvements, for which, according to the Acts, a deduction is to be made from the rent.

Some evidence has been given which is interesting, as showing the different conclusions which might be reached by following each line of evidence exclusively, and how the two results may be used to check one another.[1]

In the course of our investigation into the fixing of fair rent numerous distinct points have emerged and demanded consideration, and to these we now proceed. They may be dealt with under the following heads:—

Occupation Interest.
Improveability.
Drainage.
Deterioration.
Valuation of Improvements.
Improvements made by Board of Works' Loans.
Taxes.
Ordnance Map.
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XVI.—Occupation Interest.

A great discussion has been raised before us as to what is commonly called an occupation interest in the tenant—*i.e.*, a right on the part of a sitting tenant to have the fair rent fixed at a smaller sum than that at which it would be rightly fixed in the case of an incoming tenant. It has been asserted on the part of the landlords that such a right has no existence in law, but that it has been treated as existing in fact in the fixing of fair rent, and that the rents have been thereby unduly lowered:[2] on the contrary, it has been asserted on the part of the tenants that such a right does exist in law, but that it has not been treated as existing in fact in the fixing of fair rents, and that the rents have been in consequence insufficiently reduced.[3]

The case of Markey *v.* Earl of Gosford,[4] decided by the Land Commission, determined that in point of law there is no such thing as the alleged occupation right. The decision was not concurred in by the Judicial Commissioner, but as the judgment of the body appointed to determine such questions we accept it, and shall make it the foundation of this part of our report. It has been so accepted in the Queen's Bench Division.[5] "The phantom of occupation interest," said Mr. Justice O'Brien, speaking of the case of Markey *v.* Gosford, was "rejected by this tribunal."

It remains to inquire whether that occupation interest which does not exist *de jure* has been treated in practice as existing and has influenced the assessment of fair rents. The greater number of Lay Assistant Commissioners and Court Valuers who have been before us say that they have not taken this so-called interest into consideration, and that they have made no allowance for it.[6] Some of these officials on the other hand have stated that they do make an allowance for this reputed interest.[7]

The practice of making the allowance is not new, for we find that Mr. William Henry Gray, a highly respected valuer, appointed in January, 1882, allowed about 15 per cent. for it as a deduction; and Mr. Barnes, a valuer of high reputation and large experience from the year 1882 to the present day, spoke before us with great emphasis of the prevalence throughout his experience of the practice of fixing the fair rent at a lower figure than a prudent incoming tenant would be ready to give.[8]

[1] Shaw, 19990.
[2] Campbell's Speech, pp. 16, 17.
[3] Bodkin's Speech, pp. 62–64.
[4] Quarterly Irish Land Rep., part vi., p. 104.
[5] In the Queen (Gosford) *v.* Irish Land Commission, 29th November, 1897.
[6] Bailey, 481; O'Brien, 949; Lynch, 1317, 1416; Macafee, 1629, 2018; M'Kenzie, 2328; O'Keefe, 2567; Adams, 3121; Thompson, 3562; Bell, 4217; Peet, 4541; Butler, 4632; Byers, 4751; Pringle, 5099; Kane, 5749, 5754; Williams 6060, 6082; Robinson, 6264; Davidson, 6884; Waters, 8625; Cunningham, 9144; Roberts, 9411; Doyle, 29026.
[7] Kane, 5750; Bayley, 9538, 9551; Headech, 9621; Comyn, 9747, 9787; Nolan, 16456.
[8] Gray, 1970; Lords Rep., Vol. IV., p. 16; Barnes, 27451.

In the opinion of Mr. Justice Bewley, a number of the Assistant Commissioners had acted on the so-called principle of making the allowances from the commencement of the operations under the Act of 1881, and evidence was given before Mr. Morley's Committee which corroborated this view.[1] In some minds the habit is inveterate. It might have been supposed that the Act of 1896 and the pink schedule would either have suppressed the practice or compelled a confession of it, but it has failed in both alternatives with some officials, and the practice of allowing for it without dealing with it by way of specific reduction, has received the approval of Mr. Justice Bewley, in Markey *v.* Earl of Gosford (*ubi supra*), though not of the three other Commissioners who sat with him. That the existence of the doctrine of an occupation interest should have some influence on the assessment of fair rent, is almost inevitable[2]; and in some cases we have been able to follow it. One valuator said that if the tenant had not the occupation interest he would value the rent at 10 per cent. more.[3] Another witness (an Assistant Commissioner) assessed it at 6*d.*, 1*s.*, or 1*s.* 6*d.* per acre, according to the length of time during which the tenant or his family had been in occupation.[4] In other cases we have found it impossible to trace the influence of this belief. Two Legal Assistant Commissioners[5] told us that they had each worked for sometime with two Lay Assistant Commissioners, of whom one held, and the other repudiated the doctrine; and that they believed that the one who repudiated the doctrine valued lower than the one who held it; and evidence to the like effect was given by a very experienced Land Valuer[6]. In Markey *v.* Earl of Gosford (*ubi supra*), the Judicial Commissioner affirmed the doctrine in question, whilst the three other Commissioners who sat with him denied it;[7] but all the Commissioners assessed the fair rent in that and several other cases, in which the point was raised, at precisely the same figures. Whatever obscurity may hang around the extent to which the doctrine or sentiment influences valuations, the decision of the Court on the point ought to be made known to all the Sub-Commissions, and to be loyally followed by them.

With these conclusions as regards the so-called occupation interest, we should have been content to leave the subject, had not the contention that this interest has greatly affected the fixing of fair rents been ably supported before us by several arguments of a general character, and dealing with matters of great interest to the landlords and tenants of Ireland. The elucidation of these arguments has opened the door to a large number of subsidiary questions, and has occupied a great part of the evidence before us. These arguments and evidence are too important to be passed over in silence.

In the first place it has been argued that in many cases in the first settlement of fair rents they were fixed so low as to lead to the conclusion that some improper deduction was made, and that that deduction can be attributed to nothing but the so-called occupation interest.[8] This argument is well illustrated by the examination of Mr. Crosbie and his agent, Mr. Trench (see their evidence, and especially questions 18716–7).

It is impossible from the evidence before us, and would have been impossible from far wider evidence, to review the whole of the first fixing of fair rents; though we are, for reasons hereafter stated, inclined to conclude that the abatement then made was not on the whole excessive; and in the vague way in which this first settlement was carried through in its early years it is almost impossible to trace the influence of particular motives or arguments on the minds of the valuers. There is, however, reason, as we have already shown, to believe that this notion of an occupation interest existed in the minds of some of the early valuers, and did, in fact, influence them, and it is very possible that some cases in which the reductions then made appear startling may be in part attributable to this doctrine.

Cases of sales of tenant-right in which thirty years', forty years', fifty years', and eighty-four and a-half years' purchase of the rent have been paid have come before us[9]. A holding of 100 acres, all the improvements on which were the landlord's, in respect of which the old rent was £150, and a judicial rent of £80 was fixed in 1888, sold in 1896 for £740.[10] These facts are perhaps partly to be accounted for by a deduction from the rent by reason of an occupation interest.[11]

In the next place it has been contended that a comparison of the first and second fair rents fixed shows a reduction on the second rents greatly in excess of the fall in the

[1] Mr. Justice Bewley, in Morley's Rep., 10218, 10240.
[2] Nolan, 16456.
[3] Murray, 11655.
[4] Headech, 9627–9638.
[5] Bailey, 744; Kane, 5752.
[6] Barnes, 27630.
[7] Wrench, 26945.
[8] Vandeleur, 16619; Trench, 18716–7; Westropp, 24034.
[9] Adams, 3096; Eyre, 4050.
[10] Payne, 19700.
[11] Nolan, 16526; Vandeleur, 16620.

prices of agricultural produce, and that this fact can be attributed to nothing but an element recently introduced into the ascertainment of fair rents, viz., an allowance made for the occupation interest.[1] The average reduction in judicial rents between 1881–82 and 1896–7, up to the 1st March, 1897, was in the argument stated to be 28·5; whereas the fall of prices of agricultural produce of all kinds within the same period was, in like manner, stated to have been from 9 to 15 per cent. only.

This argument is inconsistent with the previous argument and the facts on which that was based: the one correctly treats the notion of occupation interest as old, and attaching to the first settlement of fair rents, and the other treats it as a novelty which was first disclosed in 1894, during the evidence before Mr. Morley's Commitee.

But there are other and not less serious difficulties in the way of the success of this argument. In the first place the fall in the prices of agricultural produce, as shown by the return of the Land Commission (dated 20th September, 1897) (see Appendix A, No. 2) is very different from that suggested in the argument. It ranges from 32·2 on flax and 32 on wheat to nothing on hay. In such important matters as oats it shows a fall of 20·8 per cent., on pork 31·1, and on potatoes 28·4. Mr. Barnes, who was unacquainted with this return, estimated the fall in the prices of produce between 1881–2 and 1895–6 at 18·4 per cent.[2] It is obvious that these falls in prices will differently affect the different holdings in the country; and where, as in some years has been the case, low prices have co-existed with short crops, the result is very serious.

In the second place it is to be observed that a fall in the price of agricultural produce of any given percentage may obviously justify the reduction of the fair rent by a greater percentage.[3] It may be worth while to illustrate the point, though it is one of great simplicity. Let it be assumed that the gross annual produce of a piece of

land is (say) worth	£100
that the cost of production was	40
there will be left for distribution between landlord and tenant .	£60

If of this one-third be attributed to the landlord he will have	£20	0s.	0d.
and the tenant two-thirds, or . . .	40	0	0
	£60	0	0
Or divided into halves—			
the landlord will have . . .	£30	0s.	0d.
and the tenant	30	0	0
	£60	0	0

If now we suppose the value of the gross produce to fall 20 per cent., we shall have	£80
and if the cost of production remain constant at . .	40
We shall have left for distribution only . .	£40

If this be divided in thirds the landlord will take .	£13	6s.	8d.
and the tenant	26	13	4
	£40	0	0
Or if divided into halves—			
the landlord will take	£20	0s.	0d.
the tenant	20	0	0
	£40	0	0

In each case the landlord's share is reduced by 33⅓ per cent. Conversely a rise in the price of produce might justify a similar rise in the rent payable.

[1] Campbell, p. 20.
[2] Barnes, 28845.
[3] Bailey, 519; MacAfee, 18201.

As regards the cost of production, though there is some difference of opinion, that difference is not wide, and on the whole our conclusion is that in comparing the years 1881-2 and 1896-7, the cost of production may be treated as a constant in dealing with Ireland as a whole.[1] But it must be borne in mind that the costs of production and the yield of different crops affect various districts differently; and there is evidence that in some cases the fall in the cost of production has to some extent countervailed the fall in the price of produce. The effect of the fall in prices can only be rightly considered in combination with the two other items of cost of production and amount of yield.

Again, it is to be observed that the fair rents fixed in the years 1881-2 were fixed with reference to the existing prices, without anticipation of a further fall in values.[2]

At Belfast, on the 6th November, 1896, Mr. Justice Bewley, sitting with Mr. Commissioner Fitzgerald and Mr. Commissioner Wrench, said that the Assistant Commissioners, when fixing rents in the two or three earlier years of the Land Commission, did not fix the rents solely upon the prices or conditions then prevailing; but on the contrary took into consideration the lengthened period of agricultural prosperity existing up to 1879, and the probability that the existing depression was of a more or less temporary character. Consequently he added—" a comparison between the prices existing at the date of such rents being fixed and the present prices would be insufficient to account in many cases for the difference between the rents then fixed and what might now be considered fair rents."[3]

It is, however, probable that the views entertained by the Valuers at the time referred to differed from one another; and the witnesses before us have given different accounts of their states of mind.

These considerations preclude us from attaching much weight to the comparison of first and second term fair rents as proving the allowance for occupation interest.

It has further been argued that a comparison of the fair rents recently fixed with the prices obtained for tenant-right in like manner shows an excessive reduction of the rents which can only be accounted for in the same way.

But here, too, difficulties exist in the way of the success of the argument. It is not easy to tell the exact relation between the rent and the value of tenant-right. More than fifty years ago the Devon Commission[4] found that in various parts of Ulster sums equal to ten, twelve, and fifteen years' purchase upon the rent were commonly given, even where the rent was fully equal to the value.

Before 1881, not in Ulster only, but in all parts of Ireland the sale of tenant right was a very common practice,[5] though there was neither law nor usage to prevent the landlord from raising the rent or evicting the purchaser. So, again, between the Acts of 1870 and 1881, when the tenant, though he had a right to compensation for eviction, had no fixity of tenure—tenant-right sold for high sums. According to some evidence before us the prices before 1881 were rather higher than now. According to other evidence they have been on the increase; but, however, this may be, it is certain that they were a valuable property before the Act of 1881, and at the old rents.[6]

While it has been proved that in many parts of Ireland the prices obtained for tenant-right have for several years past been high, our attention has, on the other hand, been drawn to the fact that during the same period a large number of eviction notices have been served on Irish agricultural tenants: it appears that in the year 1888, 12,387 of such notices were served, and in the year 1896 only 4,806: of the tenants so served there were actually evicted in 1888, 1,199; and in 1896, 665. But as regards the others we have no information to show what were the ultimate results of the proceedings taken against them.[7]

The inference sought to be drawn from these facts, is that in such cases the rents payable by the tenants were so high as to have rendered the tenant-right valueless. It was urged that inasmuch as the service of an eviction notice under Section 7 of the Land Act of 1887 has (in default of redemption by payment within six months of all rents

[1] Bailey, 519; Lynch, 1629; MacAfee, 1741, 2258; O'Keefe, 2403; Adams, 3048, 3092; M'Kenzie, 3268; Bell, 4201; Byers, 4783; Newman, 15815; Vandeleur, 16590; White, 16714.

[2] Bailey, 515; Lynch, 1274; MacAfee, 1861; Bell, 4250; Byers, 4786; Rice, 5449; Doyle, 9974; Barrington, 20700.

[3] *Irish Law Times*, 19th November, 1896.

[4] Rep. of Devon Com., p. 14.

[5] Rep. of Bessborough Com., p. 3, par. 9.

[6] Waters, 8667; Michelli, 16369.

[7] Kilbride, 23770, Appendix A, No. 9—Return of evictions.

and costs due), the effect of depriving the tenant of all his rights as a "present tenant"; the mere fact of the tenant submitting to this deprivation shows that at the existing rent he had no saleable interest in his holding. But the existence of an agrarian agitation against the payment of rents, the so-called Plan of Campaign, accounts for many of these eviction proceedings in the earlier years; and the evidence laid before us is not sufficient to justify us in expressing any opinion on the cause of the evictions in the later years.

In the next place it is to be observed that the influences and motives which (as we have already said) were in force before the passing of the Act of 1881, and which enabled such landlords as chose so to do to obtain excessive rents for their land have been intensified, though diverted, by the passing of that Act: for it has given to the Irish farmer that fixity of tenure which was long the object of his desire, and by checking sub-letting has increased the number of persons who competed for the purchase of small holdings.[1] Furthermore the effect of the Act of 1881 has been to divert the whole influence of all the unreasonable desire for land, the land greed or land hunger, or land madness as it is sometimes called, from operating upon the rent and driving it up, and has turned this influence upon the tenant's interest, and enabled the existing tenant, if so minded, subject to the landlord's right of pre-emption, to get the benefit of those very influences from which the landlord is excluded.

It is in our opinion by the combined operation of these influences that some of the most remarkable of the phenomena of Irish agricultural life are to be explained. Agricultural produce has sunk in value in Ireland and Great Britain. In England many farms are unlet and are thrown back on the hands of the landlords; and land to a lamentable extent has fallen out of cultivation. But, in Ireland, it appears, with the rarest exceptions, to be true that no tenant-farmer has voluntarily determined his tenancy,[2] even though consisting of land without buildings or improvements, and that the value of the interests of tenants, especially of small holdings, has been on the whole maintained.

Another reason which renders the comparison of tenant-right and fair rents difficult is the fact that in the sale of such rights there are included (where they exist) buildings and other improvements which belong to the tenant, and until the value of these is deducted we have no measure of the sum paid for the benefit resulting from the lowness of the rent. Though there is a considerable body of evidence before us in which the value of the improvements is shown with more or less of certainty, this most important information is often lacking in the evidence with regard to the prices of tenant-right. In some cases the prices paid on the sale of tenant-right include other items of property, such as tillages and unexhausted manures.[4]

One further observation must be made. The purchase of a tenant's interest is not the purchase of a property at a fixed rent, but at a rent capable of change, in accordance in part at least with the trend of agricultural prices. The price given is, therefore, not a conclusive evidence of the value of a holding at its then present rent. Under existing circumstances, with the great fall in agricultural prices, and the rapid approach of the period of revision, the purchasers of such interests have often been the purchasers of the not ill-founded expectation and hope of a further reduction.[5]

For these reasons the argument from a comparison of rents and the prices of tenant-right has failed to produce in our minds the conclusion to which it was directed.

The question of the justice or injustice with which fair rents have been fixed has been forced on our attention by reason of the arguments to which we have referred: and it is perhaps right that we should not part with it without a few more observations. We have said that it was urged upon us on the one side that the fair rents fixed were so low as to compel the conclusion that the machinery worked unjustly towards the landlords, and on the other hand that they were fixed so high as to prove that it worked unjustly towards the tenants. We believe, as already stated, that in the early years of the Land Commission rents were fixed higher than they would have been if the Commission had been endowed with the gift of prophecy: but the facts that tenant-right generally continues to fetch high

[1] Waters, 8694.
[2] M'Master, 12236–12240; Bell, 14329–14340; Pinkerton, 14614.
[3] Lynch, 7749–7764; Lowry, 11068–11075; Ingram, 13822–13879; Mairs, 15326–15333; Webber, 18995.
[4] Bailey, 581; O'Brien, 952; MacAfee, 1681; Rochfort, 16083.
[5] Kane, 5827; Montgomery, 18971.

prices, that no land is derelict, that farmers generally prosper, that the bank deposits of 1896 are higher than ever: and the increase of the volume of farming stock in Ireland[1] forbid the notion of a wide-spread injustice towards the tenants in the fixing of fair rents.

On the other hand, cases have been produced before us in which it is difficult to reconcile the very high prices paid for tenant-right where the tenant had no improvements, with the notion that the fair rent was adequate: these cases are sufficient to make it plain that individual cases of miscarriage have occurred, and to confirm us in the opinion that in some instances an occupation interest has been allowed for. For the reasons already given, we find it impossible to form any certain judgment as to the extent to which this allowance has been made; but so far forth as it has ultimately acted in lowering the amount fixed for fair rent, it has obviously worked an injustice towards the landlords. We recognise that rents in Ireland have been greatly reduced; but it is notorious that causes of a general character have operated to depress the rentals of all parts of the United Kingdom; and to unravel the distinct operation of these several causes, and thus to isolate the effect of an allowance for occupation interest, passes our ability. We thus feel ourselves unable to conclude that the machinery of the Land Statutes has been uniformly worked with injustice towards landlords. The recent Report of the Royal Commission on Agriculture shows that in the period since 1881 a great fall has taken place in Great Britain in rents, and in the value of agricultural property. They report that over a considerable part of Great Britain that rent which is a payment for the original powers of the land "has entirely vanished; since the owners are not receiving the ordinary interest upon the sums which it would cost to erect buildings, fences, etc., as good as those now existing."[2]

We are convinced, as we have already shown, that the settlement of fair rents has been effected in an unsatisfactory manner—with diversity of opinion and practice, sometimes with carelessness, and sometimes with that bias towards one side or the other which exists in many honest minds: but we are also convinced that the administration of justice has not been poisoned by any systematic endeavour on the part of the Commissioners or of the Assistant Commissioners to benefit either side at the expense of the other.

XVII.—Improveability.

One subject which affects a few cases in the fixing of fair rents is commonly spoken of as improveability. The question may be illustrated as follows.[3] Suppose that a piece of bog land is at the time of letting worth only 5*s.* a year for occupation in its then state. Suppose that it is reclaimed by the tenant at a cost of £3 an acre, for which an annual allowance of 3*s.* is made to the tenant. Suppose that in its reclaimed condition it is worth 10*s.* an acre; how is the 10*s.* to be divided between landlord and tenant? Five shillings are plainly to go to the landlord, and 3*s.* equally plainly to the tenant; but how are the remaining 2*s.* a year to go? Some Commissioners give them wholly to the tenant, some wholly to the landlord, and some divide them in equal shares between landlord and tenant.[4]

The cost of reclamation is usually so large—sometimes reaching, according to the evidence before us, as much as £20 an acre[5]—as to reduce the question to one of but rare practical importance. We are informed that at a recent sitting of the Land Commission at Belfast this point was mentioned, and was adjourned for argument in Dublin; but that it has not yet been argued or decided. In this state of facts, and more especially as the point is one affecting the rights of the litigant parties, we abstain from expressing any opinion upon it, beyond the obvious remark that whatever be the decision ultimately reached, it ought to be made known to, and loyally followed by, all the Sub-Commissions.

[1] See Table, Appendix G, No. 20.
[2] Final Report of Her Majesty's Commissioners on Agricultural Depression, p. 28.
[3] M'Dermott, 26594.
[4] M'Afee, 1710; Bell, 4230; Peet, 4546; Robinson, 6076; Roberts, 9456.
[5] Bailey, 844, 865; M'Afee, 2040; O'Keefe, 2582, 3477; M'Kenzie, 3336; Thompson, 3572, 3596; Bullen, 4635; Pringle, 5719; Kane, 5766; Morris, 6536; Davidson, 6890; Roberts, 9420; Bayley, 9553, 9575; Headech, 9655; Doyle, 9991.

XVIII.—Drainage.

One of the most important claims for improvements is in respect of drainage. It is obvious that it is less easy to ascertain the amount and character of drainage done than it is to ascertain the size and nature of buildings; and considerable dissatisfaction exists on both sides in respect of these claims; it being alleged on the part of the tenants that undue strictness is required in the proof of the work done; and on the part of the landlords that drains are claimed and allowed for beyond what the facts justify.[1] There is some conflict of evidence as to the extent to which drains are inspected and the care with which they are investigated. On the whole, we believe that the Lay Assistant Commissioners and Court Valuers try to do their best in this respect so far as is possible without incurring the delay consequent on opening the land, but that they have frequently alleged want of time as a reason for an imperfect investigation. In our opinion it should be the practice of these officials, from time to time, to direct that before their inspection such openings should be made in the drains as may be necessary to test their existence and condition and that they should do so in every case in which the landlord makes a request to that effect. The liability to investigation by opening would, we think, prove a useful check on any tendency to exaggerate the claim.[2] The Inspectors under the Board of Agriculture in England are instructed to make two openings in each field, or not less than two openings in every five acres.[3]

XIX.—Deterioration.

Another subject that emerges for consideration in the settlement of fair rents is the deterioration of the land by reason of the negligent or improper husbandry of the tenant. The evidence leads us to conclude that there is a prevalent notion amongst the tenants that it is for their interest that, when the land is inspected by the Assistant Commissioners or the Court Valuer, it should not be in high condition, and that in consequence they frequently abstain from treating the land as well as they would otherwise have done, and sometimes allow the land seriously to deteriorate with a view of obtaining a lower rent.[4]

This notion of the tenants is not, in our opinion, entirely without foundation: in the rare cases of excessively high cultivation the rent has probably in some cases not been sufficiently reduced, and in the commoner cases of deterioration we believe that the rent is frequently fixed too low, and the landlord thereby injured.[5] "In practice," said Mr. Doyle, "I think a deteriorated farm is fixed at a lower rent than a farm in good condition. . . . . . I think that the effect upon the Valuers of deterioration is to reduce the valuation."[6] An instructive instance of the influence of deterioration on the fixing of fair rent was brought before us by Captain O'Callaghan-Westropp: a farm was divided into two parts between two brothers; the parts were of equal size, and of uniform quality; one brother looked after the land well; the other greatly deteriorated his holding; on the same day and from the same Sub-Commission, the industrious man got a reduction in his rent of 7½ per cent., and the lazy man got a reduction of 17½ per cent.[7]

The 9th Section of the Act of 1881 enables the Court to refuse to accede to an application to fix fair rents where there has been unreasonable conduct by landlord or tenant.

It appears to have been held by the Land Commission many years ago that deterioration is not a ground for refusing to entertain the tenants' claim to have a rent fixed, and of late years it appears never to have been admitted as a bar to the tenants'

[1] Lowry, 10926; White, 16825; FitzGerald, 19627; Montgomery, 19850; Cooper, 20587; Barnes, 28232.
[2] O'Keefe, 2476; White, 16825; Montgomery, 18950; Fitzgerald, 19425; Barrington, 20753.
[3] Wrench, 26971.
[4] Turner, 29225; S. French, 19124; St. George, 27805.
[5] Pringle, 5076; Morris, 6503, 6507; Lowry, 10957; Newman, 15800; Rochfort, 16067, 16078; Bowen, 17809; Savage French, 19124; Brown, 19271, 19325; FitzGerald, 19438; Guiry, 20085; Barrington, 20757; Westropp, 23830; Barnes, 27822; Trench, 29121; Kane, 29522.
[6] Morley's Report, p. 138 and *id.* 597.
[7] Westropp, 24218.

claim to have a rent fixed.[1] In our opinion it is of great importance to the State as well as to the parties immediately concerned that deterioration should be checked. "Every man," said one witness, with what we hope is some exaggeration, "is farming down his land, and deteriorating as fast as he can do: and there is a most marked difference in the country between those who have bought their land and those who are tenants."[2] We are, therefore, of opinion that an express authority ought to be given to the Court in cases of deterioration to postpone the hearing of the application till the land has been again brought into good condition. In one case of gross and wilful deterioration a learned County Court Judge postponed the hearing for four years.[3] This we are willing to accept as a useful precedent.

XX.—Valuation of Improvements.

There are two circumstances affecting the valuation of improvements which appear to us from the evidence to have been overlooked and which ought to be considered.

An equipped farm in Ireland usually consists of the land belonging to the landlord, and of the buildings and other improvements belonging to the tenant; and when, by reason of the fall in agricultural prices, the value of agricultural property suffers depression, that depression ought to be apportioned between the two properties which go to make up the agricultural unit, the farm. In point of fact it appears that the practice has been to throw the whole effect of the depression on the land, and thus to place the owner of the improvements in the position of a preferential claimant on the produce of the joint property.[4]

It is quite true that according to the present pink schedule[5] the addition in respect of buildings in paragraph 5 is deducted in paragraph 7; but this applies to buildings only and not to other improvements. Furthermore, the pink schedule is, by the First Section of the Act of 1896, made a record admissible in evidence, and it is plain that this record, if giving an erroneous relative value of the improvements, may prejudice one or other of the parties if true value should come to be fixed.

In like manner it appears that the habit has been to add for proximity and to deduct for inconvenience of access or other disadvantages to or from the land only and not to or from the improvements; and yet it is evident that these influences affect the value of the farm as an agricultural unit, and that they should be apportioned between the two properties constituting the unit.

XXI.—Improvements made by Board of Works Loans.

Some questions have been raised before us in relation to drainage works done wholly or partially by landlords by means of loans from the Board of Works.

Such loans are made in one or other of two ways—*i.e.*, either when a general drainage scheme has been framed, and the lands in question are supposed to be benefited by it, or when the drainage is confined to the particular estate.[6]

In the case of a drainage scheme affecting land subject to a tenancy, the Board of Works ascertain two distinct sums, (i) the amount of the rentcharge which is to be borne by the landlord, and by which the amount due from him to the Board of Works is to be repaid with interest, and (ii) the amount of the increased value due to the drainage, which is added to the existing rent of the holding, and is payable by the tenant to the landlord so long as the tenancy continues, in addition to the fair rent.[7] The annuity payable by the landlord and the increased rent payable by the tenant are thus totally distinct sums.

[1] Reeves, 299, 3 Lords Rep. p. 32; FitzGerald, 19954, *et seq.*; Howe, 10303.
[2] Hussey, 22712.
[3] O'Connor Morris, 6503.
[4] Pringle, 5145 to 5157; Kane, 5795–6, 5800; Morris, 6546; Bassett, 7054; Waters, 8632; Cunningham, 9157, 9166, 9172; Rice, 5464, says that the cost of building has gone up, and that this should be a set off.
[5] See Appendix B, No. 4.
[6] Wrench 26789 *et seq.*
[7] Earl of Enniskillen *v.* Reilly, 32 Law Reports, Ireland, 372.

Where the fair rent comes to be fixed upon land after a drainage scheme has been completed, the Land Commission consider the work as done at the landlord's expense, and deal with it by reference to the improved value which it has created in the holding, but without regard to what annuity the landlord is paying, or what increased rent may have been fixed on the tenant. In like manner the Land Commission deal with drainage confined to the estate which has been done by a landlord by means of advances from the Board of Works; if the drainage be an improvement to the land, the landlord gets the benefit of it accordingly, and the terms on which he is bound to repay the loan are regarded as immaterial.

It is probable that in many cases the annuities payable by the landlord exceed the increase of the rental, by reason of the work done; but this circumstance does not affect the rights of the parties, and the case really does not differ from that of improvements effected by a landlord out of money in his pocket or money borrowed from his banker.

The landlords suggest that the rent should first be fixed independently of the drainage,[1] and then the increased rent attributable to the drainage works should be added; but in the case of *Gabbett* v. *M'Carthy*,[2] the practice of the Land Commission was upheld in cases in which the judicial rent does not fall so low as the increased rent fixed by the Board of Works; and the question was left open in other cases which must, very rarely, if ever, occur. So far as it goes this case confirms us in the conclusion that the practice of the Land Commission in these cases is consistent with justice.

XXII.—Taxes.

The pink schedule[3] contains a direction that the rate per annum put upon the land by way of gross fair rent is "to be estimated on the basis of the tenant paying all the county cess and being allowed the statutory proportion of the poor rate."[4]

The reference to the statutory proportion of the poor rate is explained by the fact that as a general rule the tenant who has paid a poor rate is entitled to deduct from his rent one-half of the sum which he has paid for poor's rate in respect of each pound or lesser sum of the rent which he pays, or when the valuation is below his rent, one-half of the whole sum which he has paid (1 and 2 Vic., c. 56, s. 74, 12 and 13 Vic., c. 104, s. 11).

But under the Statute 6 and 7 Vic., c. 92, sec. 1, where the whole of the rateable property occupied by one person in a union is not of greater value than £4, and when the occupier holds under a tenancy or lease made subsequent to the 24th August, 1843, the immediate lessor is rated and not the occupier.

When this happens in the case of a holding on which a fair rent is being fixed, it is the practice of many or all of the Sub-Commissions to add to the rent payable to the landlord a moiety of the poor rate the whole of which the landlord has paid; and thus, as it is submitted, to satisfy the assumption on which the rent is directed to be estimated.[5]

It has, however, been contended before us with much urgency that this course of practice is incorrect; and that it deprives the tenant of a holding not exceeding £4 in yearly value of a statutory exemption from bearing any share of the poor rate.

This contention we consider to be erroneous. The Statute with regard to the payment of the poor rate by the immediate lessor has nothing to do with the settlement of fair rent: and the addition of half the poor rate to the rent is necessary to adjust the facts of these cases to the basis on which the settlement of fair rent is directed to proceed. If this were not done the landlord would be paying the whole of the poor rate directly, and another half by deduction from his rent.

XXIII.—Ordnance Maps

We learn from the evidence before us that the Ordnance maps are constantly taken by the Lay Assistant Commissioners and Court Valuers, as evidence of the condition of the holdings, as regards fences, nature of occupancy, and other matters appearing on the face of the map, although according to the general law of the country it appears that

[1] Peter Fitzgerald, 19552; Wrench, 26920.
[2] 30 L. R. I., 720.
[3] See Appendix B, No. 4.
[4] O'Keeffe, 2533; M'Kenzie, 3267; Thompson, 3545; Bell, 4207, 4434; Peet, 4598; Butler, 4700; Byers, 5019; Rice, 5503; Davidson, 7004; Bayley, 9582.
[5] O'Keeffe, 2535; M'Kenzie, 3318; Pringle, 5090; Bayley, 9582, 9610.

these maps are by themselves not admissible evidence.[1] In our opinion it is desirable that in inquiries under the Land Acts these maps should, as regards the physical facts appearing on them, be made *prima facie* evidence of the state of things as they stood at the date which is borne by the map put in evidence.

XXIV.—Pink Schedule.

In the ascertainment of fair rent certain statutory obligations have to be satisfied.

These arise from the 8th section of the Act of 1881 and the 1st section of the Act of 1896. By the former the Court is required :—

(*a.*) To hear the parties.
(*b.*) To have regard to the interest of the landlord and tenant respectively.
(*c.*) To consider all the circumstances of the case, holding, and district.

By the Act of 1896 the Court is required to ascertain and record, in the form of a schedule, a large number of particulars; and it is provided that no deduction shall be made, except such deductions as shall be specified and accounted for in the schedule.

During many years of the operations of the Land Commission there was no documentary record of the manner in which the fair rent was arrived at. About the year 1888 a schedule came into use, which has been gradually made more and more full.

A form of the pink schedule now in use will be found in Appendix B.[2]

This schedule, it will be observed, is framed on the footing of valuing the land separately from the buildings, and of valuing it in the first place without reference to its actual position and circumstances, such as facility or difficulty of access. A difference of opinion may well prevail as to whether this is the best method of valuation; but it appears to be the one which was followed by Sir Richard Griffith, and is most familiar to the surveyors and land valuers of Ireland.[3] We should hesitate to interfere with the usual practice of the country on any theoretical views either of ourselves or of witnesses.

We recognize the value of this schedule as a record of the operation gone through in the fixing of the fair rent on any given occasion, and as of great value if and when that operation shall come to be repeated. In that point of view, it is evident that the more full and detailed it can be reasonably made, the more useful it will be; and, for that end, we are of opinion that the following suggestions should be considered:—

First, we are of opinion that wherever it is published, the Ordnance survey, on the scale of 25 inches to a mile, and the book of reference should be supplied to the Sub-Commissions, together with the 6-inch map which is now in use, and that both maps should form part of the record. The smaller map is, no doubt, the more useful on the field, but the larger map and book of reference would be of great value in the office, and would often enable the Assistant Commissioner or Valuer to check his quantities by those of the Ordnance Surveyor.[4] In cases of great complexity, especially in the congested districts, even the 25-inch map is scarcely large enough to show satisfactorily the minute and intermingled holdings.

Secondly, some ambiguity is thought to exist between the inquiry in paragraph 3 as to the assumption with regard to rates on which the fair rent is fixed, and the marginal direction in paragraph 5 as the basis to be taken.[5] We think that this ambiguity should be removed.

Thirdly, in paragraph 5, there should, in order to negative the tendency to allow for an occupation interest, be a direction to state the annual value on the assumption that the holding is in the landlord's hands.

Fourthly, to prevent the possibility of grouping several items together (of which some complaint has been made, but in our opinion without much ground), it would be well that the directions, contained in paragraph 5, should direct the specification of the several items to be separate.

Fifthly, the 8th paragraph should be recast so as to call the attention of the Court to the duty of weighing every relevant circumstance of the case, the holding, and the district.

[1] Butler, 4624; Williams, 6048; Robinson, 6252.
[2] See Appendix B, No. 4.
[3] Pinkerton, 14513; Barrington, 20723–20741; Nolan, 25956; Kincaid, 27063–27072.
[4] Peet, 4517; Williams, 6101.
[5] Shaw, 20016; Guiry, 20099; Barrington, 20720.

Sixthly, the particulars of the improvements allowed should be even more fully stated than at present.[1] Thus in the case of drainage the schedule should show by reference to the map, properly coloured, the fields or parts of fields in which the drains are allowed for. In the case of fences, if particular fences are valued, these should be indicated in the large Ordnance map when available, or if not in some other manner: if the fences are valued at so much an acre this should be so stated.

Seventhly, when an annual sum is allowed against the gross fair rent in respect of improvements, it appears to be generally so allowed by way of interest on the capital expenditure and for maintenance; but sometimes by way of interest and for repayment of a capital sum laid out on a temporary or terminable improvement. The intention with which the allowance is made should be specified in respect of the annual sums so allowed, so as to show whether the charge is to be permanent or to terminate at a definite time.

Eighthly, in cases of reclamation by the cutting away of bog, it should be stated whether the turf cut away was taken by the tenant, and whether any and what payments or allowances have been made by, or to, the landlord for the same, and in the case of cut-away bog, within what period after the commencement of the reclamation crops were raised from the land, and whether the reclamation has been effected at a capital cost or by ordinary cultivation.

XXV.—Ulster Custom.

There appears to be an impression that in some way the Ulster Custom does not receive proper consideration at the hands of the Land Commission.[2]

In numerous cases in the course of the present and last year arising in Ulster, a note has been appended to the pink schedule, to the effect that "this holding is subject to the Ulster Tenant-right Custom, but no special deduction has been made in fixing the fair rent on account thereof."[3]

Complaint has been made that this note has been added without evidence and without specifying the particular usage applicable to the estate.[4] But the evidence convinces us that the note has not as a rule been added unless in cases where it was either admitted or assumed by all the parties that the custom did apply; and, except certain cases which we did not investigate as they were under appeal, no case has been brought before us in which it has been shown that the note was erroneous, or in which it was shown that any usage existed which required special attention, or made any difference in the ascertainment of fair rent.[5] As the pink schedule forms a record in future proceedings, we think that it would be convenient in case any note be added that it should state the custom as explicitly as possible; and if landlords appearing before Sub-Commissions were to make an admission in precise terms, the Sub-Commission would be obliged either to act on this admission, or if it were challenged by the tenant, to investigate the precise character of the usage affecting the estate in question.

The note thus placed on the pink schedule has given the parties interested an opportunity of raising the question, whether a special deduction ought or ought not to have been made on account of the custom. Thus this note came up for consideration in the case of Markey *v.* Earl of Gosford,[6] and the Land Commission, though differing as to whether there be or be not in law an interest which may be called an occupation interest, seem to have been unanimous in holding that in this respect there is no difference between a holding subject to the Ulster Custom, and one not so subject since the passing of the Act of 1881. Whether the custom did or did not give any special presumption as to improvements was not then decided, but the point seems to have been left open, except so far as it may be covered by the judgment of Mr. Justice Bewley, in M'Glynn *v.* the Duke of Abercorn.[7]

Whatever matters may yet remain in controversy about the Ulster Custom, seem to us to be matters of right which the appointed tribunals will deal with, and not to require any observations from us as they are not matters of practice or procedure, or methods of valuation.

[1] FitzGerald, 142; Bailey, 497; Lynch, 1316; MacAfee, 1703.
[2] Shillington, 15220–15240.
[3] M'Kenzie, 3346, 3358, 3421, 3434; Eyre, 4033, 4129; Williams, 6065; Robinson, 6302; Davidson, 6903.
[4] Campbell's Speech, p. 7.
[5] Fitzgerald, 152; Bailey, 599; Howe, 10274.
[6] Quarterly Irish Law Rep., part vi., p. 104.
[7] Greer's Irish Land Cases, 539–555.

XXVI.—A Suggested Alternative Procedure.

Before parting with the subject of fair rent, we desire to state our opinion that in the great majority of cases the question is not one of law, but solely of valuation : and that the proportion of legal questions is likely to go on diminishing, as each successive time of fixing fair rents comes round. This consideration seems to show that the legal element at present occupies too large a space in the machinery, and that as years go on, it will do so more and more : it indicates the desirability of enacting a method of settling the fair rent without the necessity of a hearing in Court.

More fully to express our opinion on this point, we venture to submit that the following outline of a plan should be carefully considered.[1]

Let the proceedings begin, as at present, by an originating notice. Let two lay Assistant Commissioners be then sent to inspect the holding, with power to listen to statements not on oath, and also to consult their legal coadjutor, and with a further power, when so requested by both sides, to take part and assist in the friendly settlement of the fair rent between landlord and tenant. In the event of a difference of opinion between the two Assistant Commissioners, or in the event of a demand to that effect being made by either party, let a Court Valuer inspect the land, and let the Assistant Commissioners or the Court Valuer, as the case may be, then prepare a pink schedule and supply a copy to each of the parties. Let each party have the liberty within a fixed period after the receipt of the pink schedule to require a hearing in Court; and in that case let the matter proceed as at present, except that no fresh inspection be made, unless by direction of the legal Assistant Commissioner for special reason shewn, and subject to an express power in the Court to visit with costs the party demanding a hearing, unless the legal Assistant Commissioner holds that there was some real and important question which rendered the hearing in Court reasonably necessary.

If no requisition for a hearing be served, let the pink schedule prepared by the two Assistant Commissioners, or by the Court Valuer, as the case may be, act as a conditional order, which shall become absolute, unless within a limited time cause be shown against it by either party on any ground on which an award can be set aside.

If cause be shown the matter should be sent for hearing to the Sub-Commission, with the usual right of demanding a rehearing, and all its incidents.

By some such plan as this, we believe that a great part of the cases of fair rent would be disposed of at less cost than at present.

XXVII.—True Value.

We now come to the second head of our inquiry, which relates to the true value of tenancies when purchased by landlords under the right of pre-emption given by the 1st section of the Act of 1881.

317 cases only have arisen under this provision during the sixteen years of the currency of the legislation, and great uncertainty appears to prevail in the minds of the Judges of the Civil Bill Courts and the Assistant Commissioners and Court Valuers as to the true method of ascertaining this value.[2]

Inconveniences have also been found to arise in carrying the transaction into effect. These circumstances may account in part, though probably in small part only, for the comparatively few cases which have occurred. We have no reason to suppose that there has been, on the part of Irish landlords, any general or wide-spread desire to buy out their tenants' interests in their holdings[3]; but the fact that the fifteen years from 1881, during which any land so purchased and re-let was subject to a right on the part of the new tenant to require a fair rent to be fixed, has expired, may in the future exercise an influence in increasing the desire of landlords to purchase holdings.[4]

The questions of fair rent and true value have been approached in a very different way by the Courts. In the case of fair rent it has been, as we have shown, almost entirely determined by what we have called the technical line of evidence, but in the

[1] Kane, 5691; Adams, 3161; Peet, 4611; Lynch (a different plan), 7700; Waters, 8783; Orr, 10736–10739; Barrington, 20617; Wrench, 26711–26713.

[2] Bailey, 609; O'Brien, 1032; Lynch, 1395, 1431, 1507; MacAfee, 2092; O'Keeffe, 2615; Waters, 8637, 8763; Babington, 8945; Bayley, 9559; Headech, 9677; Doyle, 9993.

[3] Byers, 4814; Lowry, 10897; Shaw, 20042; Hussey, 22727; Wrench, 27020.

[4] See Land Law (Ireland) Act, 1881, see 20, Sub-Sec. 3

case of true value, the evidence received and principally relied on has been that which we have described as the popular line of evidence, such as the evidence of auctioneers and similar witnesses, with regard to the prices obtained by competition for tenancies in the district, and this has been moderated with a view to exclude extreme and unreasonable prices.[1] Information of this description is obtained by the Court Valuers by means of conversations, and not from strict evidence, and influences their report. In our judgment there often exists a disparity in the assessment of a fair rent, and the true value.

A case which illustrates this disparity of result between fair rent and true value is the following :—

A holding of 71 acres in the County Cork had been held at a rent of £77. In 1890 this holding came before a Sub-Commission who found, in the form of pink schedule then in use, that there were no improvements allowed to tenant or to landlord, and that the buildings, which were the landlord's, consisted of an old thatched house of no value, and they assessed the fair rent at £47 10*s.* The landlord and tenant both appealed, and the Court Valuer agreed with the Sub-Commission, except that he reported that the old thatched house was of the value of 10*s.* a year, and on the rehearing in July, 1892, the rent was reduced to £40.

In January, 1895, on the tenant having given notice to sell his interest, the landlord required the true value to be ascertained, and the Sub-Commission fixed the true value at £480; again, both parties appealed, and two Court Valuers inspected the property; they reported that the buildings were assumed to be the tenant's, and that they consisted of the following items: (i.) a thatched cottage dwelling-house, somewhat out of repair; (ii.) an old slated cow-house in bad repair; (iii.) a more modern one in fair order; and (iv.) a small detached thatched cottage, sublet. They further found that the judicial rent appeared very moderate, and that taking all the circumstances into consideration, they were of opinion that the true value should be fixed at £480. The landlord carried the matter no further, but consented to pay the sum.[2]

We have heard one of these two Court Valuers,[3] and find that the sum really arrived at by him was £460, but that he rejected, as of no importance, the £20 difference, and reported in favour of the identical sum under rehearing; and further, that no buildings had been erected within a few years before his inspection.

We find a curious discrepancy in these proceedings: as against the rent the one building only is taken into account, and this is said to be the landlord's; as against the purchase money five buildings are enumerated, and they are said to be the tenant's. When fixing the rent, £40 is held to be enough; when assessing the true value, the moderation of this sum appears as an ingredient to swell the price to £480.[4] This case well illustrates the intimate relation which exists between fair rent and true value, and shows how an error in fixing the former tends to produce another error in the same direction in the latter; and thus to do a double wrong. If, for a moment, we suppose that the £40 was an inadequate rent, the landlord suffered first, in that he received too little rent during the tenancy; and, secondly, in that he had to pay too much on his purchase: in like manner, if a fair rent be fixed too high, and the tenant has to sell to his landlord, he will pay too much during the tenancy and receive too little at its end.

In a second case of true value, a sum of 20 per cent. was charged against the landlord for proximity by the Sub-Commission, and a sum of 25 per cent. by the Land Commission, on rehearing, whereas, in the fixing of fair rent on several holdings on the same estate, and somewhat nearer to Belfast, no sum was allowed for proximity to that city. These properties were visited by the expert members of our Commission, and they could discover no reason for the different treatment of these adjoining farms.[5] Such explanations as could be offered in respect of this case by two of the Assistant Lay Commissioners concerned were heard by us, but without satisfying us of the justice of the proceeding.[6]

In the matter of true value we have the good fortune to have decisions of the Land Commission and of the Court of Appeal which throw light upon its true character.[7]

[1] FitzGerald, 232; Butler, 4651; Byers, 4837; Cunningham, 9186; Comyn, 9761; Headech, 9678; Doyle, 9995, 10025, 10035.
[2] Michelli, 16338; Lynch, 22247.
[3] Lynch, 22219–22270.
[4] Kane, 5823.
[5] Howe, 10185.
[6] Byers, 23481–23592; O'Callaghan, 23593–23626.
[7] See Curneen *v.* Tottenham [1896] 2 Irish Rep., 36, and 356.

From these cases we believe that we may conclude that there are two elements to be considered in the ascertainment of true value—viz.,

(i.) The value of the improvements on the holding when these are the property of the tenant.

(ii.) A reasonable compensation for the disturbance of the tenant in consequence of the notice of pre-emption.

"It is truly said that the landlord has not disturbed this tenant" said Lord Justice Fitzgibbon, in *Curneen* v. *Tottenham*. "But he claims to get his holding all the same, on the same terms as if he had disturbed him, and if 'the tenancy' continues for the purpose of being transferred to the landlord, it would be a contradiction in terms to say that the landlord may claim for nothing the very same thing which the tenant could sell for a large sum, and which the landlord could not otherwise acquire without paying compensation for disturbance. In substance, the compensation for disturbance is just as much included in the tenant's interest as is the compensation for improvements."[1] The price which it may reasonably be expected might be obtained for the holding from a solvent and prudent purchaser who desired, after paying his rent, to derive a benefit from the occupation of the tenement and not from its sale, will, we apprehend, be the measure of the compensation for improvements and disturbance. In estimating this sum it is evident that account must be taken of the condition of things as regards fair rent at two points of time—viz., the last settlement of fair rent, and the date of the notice for pre-emption, for it is evident that if fair rent had been fixed under the influence of agricultural depression, and if the true value came to be fixed at a time of inflated agricultural prices, there might be a difference between the fair rents at the two dates, which would exist for the residue of the statutory term of fifteen years, and might be of considerable value, and that to this the tenant would be entitled. The converse would, of course, be equally true in the event of a continued fall of agricultural prices.

At present it is optional with the Sub-Commission whether they do or do not embody in a document the process by which they fix the true value, and the assumptions on which they proceed.[2] There was a case before us where the true value had been fixed by a Sub-Commission. There was no document which showed whether the improvements had been treated as belonging to the landlord or to the tenant, and there was admittedly no means of ascertaining this simple but important fact short of an application for a rehearing.[3] In our opinion this practice should be altered and the Courts should be required to ascertain and record the several steps and figures involved in their assessment of true value in a way similar to that in the case of fair rent, and this record should be accessible to the parties interested.

There is often delay in the cases of pre-emption (which is in part at least unavoidable) —first, in the ascertainment of the true value, and secondly, in the completion of the transaction. The landlord is, from the date of the service of his notice of pre-emption, bound to complete the matter, and yet the tenant continues in occupation. The landlord is thus prejudiced in two ways at least. For, first he can only recover compensation for the occupation of the land by the tenant after the notice of pre-emption by an independent action in the courts for use and occupation; and, secondly, the tenant having little or no interest in the land often allows it to deteriorate or lie waste. We are of opinion that these inconveniences tend to prevent landlords availing themselves of the power of pre-emption given by the Statute and ought to be removed;[4] and that the court should be empowered to make a set off against the purchase-money of a sum equal to the rent from the time of the notice of pre-emption, and also to apportion cesses and other outgoings, and generally to adjust the account between landlord and tenant; and further that liberty should be given to the tenant to give up the occupation to the landlord pending the proceedings and so to stop his liability for rent; and on the other hand that power should be given to the landlord to take possession on payment into court of the sum fixed as the true value in the first court, or by an order of the court on payment into court of what it may consider a reasonable sum.

[1] Curneen *v.* Tottenham [1896], 2 I. R. at p. 361.
[2] Franks, 27054.
[3] Franks, 27055.
[4] FitzGerald, 230.

XXVIII.—Purchase

We now approach the third subject on which your Majesty has required us to report, viz. :—The procedure and practice and the methods of valuation followed by the Land Commission and the Land Judge's Court in carrying out the provisions of the Land Purchase Acts.

These Land Purchase Acts, extending from the Act of 1881 to the Act of 1896 inclusive, constitute a very complicated system of legislation, the object of which is to enable Irish tenants to buy out their landlords by means of advances provided by the Treasury, for whom the Land Commission act as agents in the transaction. Incidentally to the carrying out of this object means are provided for clearing the holdings sold from all superior interests, including head-rents, rentcharges, and Crown reversions, and also for distributing among the Vendor and his incumbrancers the purchases money so soon as the holdings shall have been vested in the tenants.

The estates in respect of which the Land Commission can make such advances are :

(1.) Estates sold by the landlord to his tenants by agreement. This forms by far the most numerous class of sales.

(2.) Estates purchased by the Land Commission in the Court of the Land Judge, for resale to the tenants.

(3.) Estates sold in the Court of the Land Judge (still popularly called the Landed Estates Court) direct to the tenants.

There seems to be a consensus of opinion in Ireland,[1] in which we concur, that beneficial results have followed from the sales already effected, and that it is very desirable to encourage landlords and tenants to avail themselves of the benefits of the Land Purchase Acts in the future more generally than they have done in the past.[2]

Unfortunately the efficiency of the Land Commission as a body for carrying out sales with dispatch has diminished instead of increasing. The staff has been fully maintained, but the amount distributed has fallen away. The sum of £515,252, paid out in the year 1896 is less than in any similar period since the year immediately following the passing of the Ashbourne Act of 1885, and is less than one-third of the sum which was distributed in 1887, viz., £1,599,271.[3]

The Purchase Acts from 1885 to 1896 do not disclose any reason why the proceedings of the Land Commission in sales should have become more complex or more dilatory. On the contrary, by removing certain legal difficulties which formerly impeded the progress of sales, these Acts have tended to simplify procedure and facilitate the rapid completion of sales. The conclusion is almost irresistible that the increasing delays must be, in part at least, due to the rules and methods of procedure followed by the Land Commission. "I am quite sure," said Mr. Commissioner Wrench, "that the delays in dealing with purchase now stop purchase . . . . . if we can only make the sales go through quickly and avoid 'red tape,' purchase will increase very much."[4]

XXIX.—Methods of Valuation.

As regards the methods of valuation pursued by the Land Commission and the Land Judge we do not find much to observe on. The valuations are made by an official selected for the purpose from the list of Lay Assistant Commissioners who inspects the land and reports his opinion. The questions which he is required to answer whether relative to the selling price of the land or the sum which may be prudently advanced upon it are questions free from the complexities which hang around the questions of Fair Rent and True Value. The form of report which the Inspector is required to fill up appears to us to be open to amendment: a copy of this form will be found in the Appendix.[5] The language used appears almost to suggest that the property to be valued is the interest of the tenant only; and even if this be not the true construction of the document, we are of opinion that it would be improved if it unambiguously drew the attention of the Inspector to the fact that he is required to value the conjoint interests of landlord and tenant which will be brought together in the tenant on purchase. We are also of opinion that, in every case, notice should be given to the landlord or his agent as well as to his solicitor and to the tenants, of the time of the inspection.[6]

[1] Nolan, 16573, 16585; Lynskey, 25610; Goddard, 29908; Stanuell, 29715.
[2] Wrench, 26824, 26891–26897.
[3] See table in Appendix A, No. 3.
[4] Wrench, 26824, 26896.
[5] See Appendix B, No. 6.
[6] Lord Castletown, 29477, 29587.

XXX.—Inadequacy of Advances.

It is thought by many witnesses that unreasonable strictness is exercised with regard to the amounts advanced, and that many proposals for loans which ought to have been accepted have been refused ;[1] the evidence of Mr. Commissioner Wrench strongly confirms this view.[2] As the property pledged as security are the interests of both landlord and tenant (united in the tenant by his purchase), and as the money required is only that representing the landlord's interest, and as furthermore a part or even the whole of the purchase-money may be retained by way of guarantee deposit, it would have seemed probable that there would rarely be any difficulty in advancing the whole of the sum required,

But such advances are frequently refused. The Commissioners acting in the purchase department decline to take into account the value of the buildings,[3] on the ground of difficulties connected with the insurance of them. Considerable attention is also paid to the personal condition of the tenant and the stock on the holding, and from these circumstances, advances appear to be sometimes refused which might have been reasonably granted.[4]

We have evidence before us of one case in which the landlord had agreed to sell to his tenants at what has been described to us by a most experienced surveyor as a very moderate figure.[5] On an application to the Purchase Department the Commission first reduced the prize of a particular holding and then, even when the whole purchase money was offered as a guarantee deposit, refused to advance the money. This is not the only case which has come before us where the landlord offered to leave the whole purchase money on particular holdings as a guarantee deposit and yet the advance has been refused.[6] In these cases it is obvious that it was impossible for the Treasury to lose, however deficient may have been the security of the land taken by itself. In our opinion the practice of the Department has been over strict in the matter of security, and applications to the Department have been thereby discouraged.

We think that in every case in which the landlord and tenant have agreed upon a price, and the landlord is willing that the whole amount should remain as a guarantee fund, the advance should be made as a matter of course ; and that where the landlord gives a consent to this effect before the inspection of the land, the advance should be made without the expense and delay of the inspection, except so far as may be necessary to ascertain that the purchasers are the actual occupants of the holdings.

We are further of opinion that, where the purchase is made within a fixed period, say five years from the fixing of a fair rent, and the purchase-money does not exceed, say eighteen years' purchase of the fair rent, that price ought to be accepted by the Purchase Department as the sum to be advanced by the State, without inspection, except to the extent of ascertaining that the purchasers are the actual occupants.

If any case of fraud, duress, or collusion be brought to the attention of the Land Commission, it should be their duty to stay their hand until it has been investigated and disposed of.

XXXI.—Vesting of Estates.

Complaints have been made to us of the unnecessary expense and delay entailed on the parties by the practice of the Land Commission in vesting the holdings in the several tenants who had agreed to purchase.[7]

These complaints seem to have been well founded. Up to 1896 the Land Commission used to insist upon having a separate vesting order prepared and fully printed for each separate holding, no matter how small the purchase money might be. Vesting orders have been produced to us, each one a separate work of the draughtsman and printer, each vesting only one single holding, and in none of these cases did the purchase-money exceed £25 ; in some it was less than half of that amount. We were informed that these documents represented a cost of between £1 and £2 each.

[1] Trench, 19170 ; George Young, 13585, 13599 ; P. Fitzgerald, 19525–19547 ; Kincaid, 27128–27143 ; Lord Castletown, 29577 ; Stanuell, 29623–29629 ; Sanders, 29934–29937.
[2] Wrench, 26849.
[3] Campbell's Speech, p. 48 ; Lynch, 7736–7737 ; Stanuell, 29719.
[4] Peter Fitzgerald, 19534 ; Lord Castletown, 29586.
[5] Kincaid, 28632.
[6] Young, 13588 ; Kincaid, 27133–27135 ; Sanders, 29944.
[7] George Young, 13577 ; Peter Fitzgerald, 19528 ; French, 27350–27359 ; Lord Castletown, 29588 ; Wrench, 27006–27019.

The vesting order is not, as was the Landed Estates Court conveyance, the purchaser's title deed. Since the passing of the Registration of Title Act, 1891, the evidence of the purchaser's title is a certificate from the Registration of Title Office, and not the vesting order. The evidence of the purchaser's liability to pay the annual instalments of his purchase-money to the Land Commission is not the vesting order, but a certificate from the Land Commission, given in pursuance of the Public Works Loans Act, 1889, Sec. 7. The document which the Land Commission transmit to the Registrar of Title, and from which he extracts the particulars requisite for entering the holding upon the Register, is not the vesting order, but is a separate memorandum, which states that the holding has been vested. The vesting order never leaves the precincts of the Land Commission. It is there executed, there filed in duplicate, and there buried.

Under these circumstances it seems not unreasonable on the part of the contracting parties to ask that the simplest and least expensive process of vesting the holding should be adopted.

By the Act of 1896 (sec. 32) the Land Commission were empowered to vest the holding in the tenant by simply stamping a fiat on the agreement to purchase. This provision for simplifying the process of vesting has in no single instance been availed of by the Land Commission.[1] The system of preparing and printing a separate vesting order for each holding has, however, been abandoned, and the Land Commission now make one order vesting several holdings by the simple expedient of setting out particulars of them in a schedule to the order. This change seems to us an obvious improvement, and if, especially in small cases, a fiat or a common form of vesting order be used, and if the particulars of the holdings be filled in in manuscript, and printing be not insisted upon, the complaint in relation to the system of vesting the holdings will, in our opinion, have been substantially met.

XXXII.—Inspection before Sale.

It is commonly the case that a landlord contemplating a sale enters into agreements with the whole of his tenants on an estate. When these contracts are laid before the Land Commission, it frequently occurs that in a majority of cases the desired advances are sanctioned in full, but in the remainder of the cases they are allowed only at a lower figure, and the landlord finds himself reduced to the alternative of accepting as his purchase-money for some of the holdings sums smaller than the tenants were willing to pay, or of selling the greater part of his property and retaining a few scattered holdings, generally of the least value.[2] This subject has received the attention of the Incorporated Law Society of Ireland, who, in their observations laid before us, say as follows:—(par. 23)—"We think that owners of estates ought to have a right, on payment of a fee to the Land Commission which would cover actual cash outlay in connection with an inspection, to have their estates inspected with a view to ascertaining what sums the Land Commission would advance on the security of them."[3] This suggestion meets with our approval, but we do not concur with the additional suggestion of the Incorporated Law Society that the Land Commission should ascertain whether the tenants would buy at the figures so found. In our opinion the landlords and tenants should be left absolutely free to negociate for themselves.

XXXIII.—Crown Reversions and Quit Rents.

Another circumstance which repels applicants to the Purchase Department is the requirement of the 31st section of the Act of 1896, that the sale shall be made, discharged from all superior interests "or any of them."

Amongst these superior interests are Crown reversions and quit rents due to the Crown.

One of the rules of the Land Commission for the preparation by vendors of their abstracts of title requires that in certain specified cases an extract from the Patent shall be given showing that there is no reversion in the Crown, that the lands are held in fee, and whether they are subject to quit or Crown rents.[4]

This is a rule which only the unwary Solicitor complies with: for in point of fact the Land Commission never enforce it; and that because it is needless in so large a number of cases that it is found safe to disregard it for the Quit Rent office always receives notice of the sale, and in nine-tenths of the cases the search is

[1] Lynch, 7959–7989; Wrench, 26814–26819; French, 27349–27361.
[2] Montgomery, 28923; Turner, 29258.
[3] Wrench, 26840–26844; Stanuell, 29722.
[4] Howlett, 20296.

unnecessary;[1] but the presence of a formal regulation of this sort of course leads Solicitors who have not had previous experience of the actual practice into needless trouble and expense. The Commissioners of Woods and Forests were so good as to direct the attendance before us of one of their officials, Mr. Howlett, and to state through him, they would be satisfied that this misleading rule should be omitted, provided another be inserted to the effect that whenever the Quit Rent office certify within a time to be limited, that a reference to the patent is necessary to clear up the title, the patent shall be searched for and if found an extract shall be produced.[2] In our opinion this change should be made, and the needless expenditure now caused by the rule be saved.

XXXIV.—Rent and Interest pending Purchase.

The legal effect of an agreement for sale from landlord to tenant having been entered into, is to discharge the tenant from all rent and arrears, not up to the gale day preceding the signing of the agreement, but up to the date of such signing; thus leaving an intervening period, in reference to which either the landlord must forego his rent, or the tenant must, prior to the signing of the agreement, pay such rent. It has been pointed out to us that this system causes inconvenience, and acts as a deterrent to sales.[3] The vendor, especially if he be a trustee, is unwilling to forego the rent; the purchaser often finds it very inconvenient, and regards it as a grievance to be called upon to pay up the rent at a time unusual to him.

In our opinion, it would be conducive to sales to make the agreement operate as discharging the purchaser from liability up to the preceding gale-day, leaving him liable to pay, not rent, but interest on the purchase money, from such gale-day up to the completion of the purchase.

XXXV.—Distribution of Purchase-moneys.

Up to the year 1896 it was the practice of the Land Commissioners to take charge, each in rotation, of the estates which were brought in for sale. The Commissioner who so took charge of the estate presided over its sale at every stage, vested the holdings in the tenants, and distributed the purchase-money among the vendor and his incumbrancers.[4] This system seems to have worked well. Under it a sum of about £9,000,000 of purchase-money was distributed, and so far as we could ascertain no complaints were made as to the mode or results of the distribution.

By the rules made after the passing of the Act of 1896, this scheme of distribution has been altered, and the evidence laid before us leans towards the conclusion that the alteration has not been an improvement, that it has tended to bring about confusion and delay, and that it would be better to revert to the old system.[5] In our opinion the Commissioner who takes charge of the sale of an estate at the beginning of the proceedings should have the control of them to the end, should have the power and the responsibility not alone of vesting the holdings but also of distributing the purchase-money, unless he finds some legal difficulty in his way, or unless some person interested in them should apply to have the funds dealt with in the High Court.

XXXVI.—Procedure in Chambers.

It has been pointed out to us that for some time past there has been a growing tendency in the Land Commission to assimilate its practice to that prescribed for the Landed Estates Court by rules made in the year 1859.[6]

This tendency seems to us unfortunate. The purposes for which these two tribunals were established and the circumstances under which they are respectively called upon to act differ materially, and, in our opinion, are not such as to recommend a uniformity of practice.

In the Landed Estates Court the institution of proceedings for sale in no way disturbs the relations theretofore existing between the owner and his tenants, and no matter how dilatory may be the conduct of the sale the owner suffers little from the delay, because in the meanwhile he by his Agent or by a Receiver appointed by the Court continues in receipt of his rents. In the Land Commission the case is reversed. The first step in the proceedings is the signing of agreements by the landlord to sell, and by the tenants to purchase, and the statutory effect of these agreements is to sever the

[1] Howlett, 20304.
[2] Howlett, 20299, 20320.
[3] Turner, 29245–29252.
[4] Franks, 27363–27367.
[5] French, 27363–27367.
[6] French, 27308; Stanuell, 29686–29689.

relations of landlord and tenant, and to release the tenants from rent and arrears.[1] From thenceforth pending the sale the tenant is liable to pay only interest on his purchase-money, and this interest is frequently at a rate lower than that which the landlord has to pay to his incumbrancers; thus every day's delay is an injury to the landlord and an inconvenience if not an injury to the tenant.[2]

The Landed Estates Court was established for carrying out sales of estates *en bloc* to outside investors, and as these estates were largely occupied by tenants a very elaborate procedure was devised for securing that in the preparation of the rental for sale every particular of each tenant's tenure should be set out; so that after the sale he should be estopped from setting up against the purchaser who had bought as a stranger, claims which he the tenant had failed to establish on the settlement of the rental. But inasmuch as sub-tenants had no legal claim against the purchaser their existence and their rights, if any, were alike ignored in the Landed Estates Court procedure.

The Land Commission has nothing to do with sales to strangers. It has to do with the sale of his holding to the occupying tenant thereof. It has to investigate whether or no there are sub-tenants on the holding, because the Land Commission will not make an advance in respect of any portion of the holding which is not in the actual occupation of the man who has signed the agreement to purchase. A rental prepared with due observance of all the elaborate precautions prescribed by the Landed Estates Court rules may fail to give to the Land Commission information which that tribunal is bound to obtain.[3]

Yet we have been informed that months are sometimes spent in mutual requisitions between the Landed Estates Court and the Land Commission in relation to the alteration and re-settlement of rentals[4] which the Valuer of the Land Commission who goes down to inspect and value each holding could probably more effectually rectify on the spot in as many days.

It appears that in several particulars different practices prevail in the different chambers. Our attention has been especially drawn to the difference of practice of different Commissioners on the important question whether or no a purchaser can lawfully give to his vendor a second mortgage to secure an unpaid balance of purchase-money.

On the one hand the form of agreement given by the general rules of March, 1897, contemplates the giving of such a mortgage,[5] and the practice of some of the Commissioners is in accordance with the rule, and they make no difficulty in the way of sanctioning an advance when such a mortgage is to be given.[6]

On the other hand, one of the Commissioners disapproves of the form given by the Rules and holds that the tenant by executing the mortgage embarrasses himself and prejudices the security of the Treasury, and further that by the effect of the 35th Section of the Act of 1896, the mortgage is invalid, and he consequently declines to allow any advance where such a mortgage is to be executed.[7]

In this conflict of views it would be wrong for us to express an opinion on the point in controversy. But we feel assured that the diversity of practice on an important matter of business in the sale of estates must exert a deterring influence on the public.

XXXVII.—Delay.

Complaints have been made of delay in the business of the Purchase Department.[8] In our opinion the delays complained of are sometimes due to the negligence of the representatives of the landlords,[9] especially in the preparation of maps on which the tenants' holdings are incorrectly set out. It has been suggested that vendors should be required to have their maps prepared either by the Ordnance Department or by one or more of a body of surveyors to be selected by the Land Commission.[10] Whilst we hesitate to adopt this recommendation we think it advisable that the attention of landlords should be called to the necessity of care in all, and especially in the initial steps of the proceeding.

We believe that delay would be lessened if, for reasons which will appear from what we have already said, the whole rules of procedure and practice in the Purchase Department were reconsidered with the view of making them more simple.

[1] Land Law (Ireland) Act, 1896, sec. 35.
[2] French, 27308–27309; Stanuell, 29686–29687.
[3] Stanuell, 29696–29700.
[4] French, 27348; Stanuell, 29696–29700.
[5] Form No. 10.
[6] Lynch, 7688.
[7] O'Brien, 8115 *et seq.*
[8] Geo. Young, 13577–13581; Peter Fitzgerald, 19528; Lord Castletown, 29588; Stanuell, 29685–29712.
[9] French, 27310–27316; Goddard, 29922.
[10] See Observations and Suggestions of Incorporated Law Society, Appendix B, No. 15.

XXXVIII.—Act of 1896.—Section 40.

Our attention has been called to several difficult questions which arise under the 3rd part of the Act of 1896, and especially under Section 40.[1] In consequence of the different views taken of the construction of this section by the Land Commission and the Land Judge, proceedings under it appear to be at a deadlock, and an appeal is now pending in a case in which this difference of opinion arose.[2] The statute is of so recent a date that there is as yet no ascertained practice. No single estate has yet been vested under the 40th Section: many of the questions raised under this section are undecided, and much litigation will probably take place before they can be solved. In this state of things we do not think that we can, except so far as we have already done so, usefully discuss the questions thus arising. The difficulties which are showing themselves in the construction of this enactment, exercise, we fear, a retarding influence on the conduct of Land Purchase, and will entail serious injury and heavy costs on the parties who are compelled by circumstances to litigate these questions.

XXXIX.—Conclusion.

We have thus endeavoured to obey your Majesty's command to enquire into the practice, procedure, and methods of valuation referred to in your Majesty's Commission. The system which we have had to investigate is of a highly complicated kind: in our opinion, as already indicated, it is susceptible of several improvements, many of them in matters of detail; but we do not conceal from ourselves the fact that no amendments can leave the existing system other than complicated, or relieve the processes of ascertaining fair rent and true value from the uncertainty which will always attend figures which rest on human opinion and not on scientific computation.

We believe that if the alternative procedure in fair rent cases, and the changes in the business of the Purchase Department, which we have suggested, be made, considerable saving will accrue both to the State and to the litigant parties. We are aware that if other of the suggested modifications of the existing system only be made, greater deliberation will be introduced into some of the proceedings of the Land Commission, and additional expenses may be thereby involved in the working of the machine. But suitors naturally resent even the appearance of undue haste in the settlement of fair rent and true value—questions which vitally affect their interests: and justice, like some other good things, must either be paid for or foregone.

We have, during the course of our investigations, been deeply impressed by the weight of that burthen which is laid upon the country by the existence of the great staff of officials employed under the Land Acts, and of the great body of solicitors and valuators who gather around them: and not less by the evil wrought by that unrest which is generated by the periodical settlement of rents. To pursue these subjects would be to go beyond the limits placed on our enquiry. But we venture to submit that if by an automatic adjustment of rents or by their conversion into rents charge or by other means which the wisdom of the Legislature may devise, this unrest could be stayed, and this burthen of a perpetually recurring litigation cast off, a great boon would be bestowed on your Majesty's subjects in Ireland.

[1] Lynch, 7471, 7497, 7503, 7522, 7527, 7780; Kennedy, 8444; Wrench, 26868, 26874, 26996, 27005; Kincaid, 27144, 27156, 27256; French, 27343–27348; Turner, 29263; Sanders, 29975.
[2] *In re* Harkness' Estate. Judgment of Land Commission delivered 4th January, 1898. 32 I.L.T.R. 16.

EDWD. FRY. [SEAL.]
GEO. FOTTRELL. [SEAL.]
GEO. GORDON. [SEAL.]
ANTHONY TRAILL. [SEAL.]
ROBERT VIGERS. [SEAL.]

R. R. CHERRY, *Secretary.*

4th February, 1898.

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