

STATISTICS

RESPECTING

SALES OF INCUMBERED ESTATES

IN

IRELAND.

A PAPER READ BEFORE THE STATISTICAL SECTION OF
THE BRITISH ASSOCIATION AT EDINBURGH,
AUGUST 6, 1850.

BY

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DUBLIN :

PUBLISHED FOR THE DUBLIN STATISTICAL SOCIETY,
BY HODGES AND SMITH, GRAFTON STREET,
BOOKSELLERS TO THE UNIVERSITY.

1850.

Statistical Section of the British Association for the Advancement of Science.

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Some Statistics respecting the Sales of Incumbered Estates in Ireland. By W. Neilson Hancock, LL.D., M.R.I.A., Archbishop Whately's Professor of Political Economy in the University of Dublin, and Professor of Jurisprudence and Political Economy in Queen's College, Belfast.

In this paper I propose to direct your attention to some statistical information which I have collected respecting the sales of estates in Ireland by the Incumbered Estates Court. The questions which I proposed to myself in arranging the information which I collected are the following:—First—Does it appear that any necessity existed for establishing the cheap, simple, and expeditious forms of procedure of the Incumbered Estates Court, in lieu of the proceedings previously required in the Courts of Chancery and Exchequer? Secondly—Is there any evidence of the parties most interested having confidence in the proceedings of the new court? Thirdly—At what rates of purchase have the estates been really sold? Fourthly—To what cause is the difference of prices realized for the different classes of estates to be ascribed?

As to the first question, then. Does it appear that any necessity existed for establishing the cheap, simple, and expeditious forms of procedure of the Incumbered Estates Court in lieu of the proceedings previously required in the Courts of Chancery and Exchequer?

Before the passing of the Incumbered Estates Act, the form of proceeding for the enforcement of the payment of an incumbrance was by filing a bill in one of the courts of Equity for a sale, or by applying by petition to have a receiver appointed. By the Incumbered Estates Act parties were enabled to file petitions for a sale in the new Court, and to stay proceedings in Chancery and Exchequer. The petitions so filed disclose, in each case, the date of the commencement of the previous proceedings in Chancery or Exchequer, and so indicate the length of time which it required in those Courts to effect a sale.

From an examination of the petitions, it appears that no less than 89 cases had been depending in the Courts of Equity for 10 years, 40 cases for 20 years, 26 cases for 30 years, 13 cases for 40 years, 8 cases for 50 years, 5 cases for 60 years, and 1 case for 70 years.

As illustrations of the mode in which the delay took place in the Courts of Equity, I may mention one or two cases.

In one case the incumbrances were created by a will in 1780. An ejectment was brought in 1813. A bill was filed in 1815. A decree to account was made in 1816. A final decree was made in 1831. The defendant filed a bill of review in 1841. His bill was dismissed in 1844; and the estate was still unsold in 1849. Interest for 70 years was claimed.

In another case the debt, for which a petition was filed in the Incumbered Estates Court, was a judgment obtained in Hilary Term, 1817. The owner of the property became insolvent in 1821, and died in 1834. A bill was filed in 1837; a decree to account was made in 1841; and a final decree in 1849. The result of this protracted litigation has been that the incumbrances now amount to £20,000 on £600 a-year.

In another case a sum of £5000 was lent on an Irish Estate by the celebrated Lord Mansfield. He got a receiver appointed in 1781, and a receiver has been in possession for 70 years.

In another case where a receiver had been in possession since 1818, and had not accounted regularly, some of the tenants proved that they had been allowed to remain in possession of their farms for 20 years without payment of any rent, and so had acquired an absolute title to their farms, and ousted the incumbrancers, inheritor, and every one.

I may also mention one or two cases to show the evils arising from the Courts of Equity not having the power now conferred on the Incumbered Estates Court of giving parliamentary title.

An estate producing a rental of £514, on which the incumbrances now amount to £10,121 was sold in the Court of Exchequer for £12,000. Some objection, however, was made to the title, and as the Court could not give an absolute or parliamentary title, the sale was not completed, and the consequence is that the interest in arrear now amounts to £2,235, and the rent in arrear to £750. The estate will most probably not sell now for near £12,000; and the whole loss resulting from the sale not having been then completed, will fall on the unfortunate inheritor, who would then have received £2000, and will now run the risk of losing everything.

In another case a bill was filed in Equity Exchequer on the 16th May, 1830. A decree to account was made in May, 1834. A final decree in December, 1836. Then an ineffectual sale for £5,500. For want of the power of giving a parliamentary title the estate remained unsold in 1849, and the incumbrances now amount to £11,000.

Such being the dilatory method of proceeding adopted by the Courts of Equity, we have next to consider what effect it produced upon the interest of the inheritors, of puisne incumbrancers, and of the community at large. For this purpose I have constructed the following table, in which I have stated the amount of incumbrances due on each of the 26 estates with respect to which pro-

ceedings had been pending in the Courts of Equity for upwards of 30 years. I have also calculated the extreme price for which these estates could possibly be sold, by taking 20 years purchase of the nominal rental, and deducting from the amount 30 years' purchase of the head rent.

No.	Date of commencement of proceedings in Chancery or Exchequer.	Amount of Incumbrances stated in Petition as filed.	Amount of 20 Years Purchase of Rental, deducting 30 Years purchase of Head Rents.
1	1781	£12,000	£28,000
2	1786	14,769	6,600
3	1787	69,681	51,280
4	1787	116,000	51,280
5	1790	42,172	39,540
6	1791	7,719	6,920
7	1799	24,768	23,720
8	1800	51,942	51,140
9	1801	32,090	12,000
10	1807	8,187	1,710
11	1809	4,966	3,520
12	1810	41,188	32,870
13	1810	50,732	32,900
14	1811	9,000	4,000
15	1813	8,799	3,660
16	1813	12,285	8,540
17	1815	9,125	4,620
18	1816	9,407	5,330
19	1817	17,202	1,940
20	1818	10,593	3,380
21	1818	8,616	3,280
22	1818	14,555	13,420
23	1818	21,075	6,340
24	1818	17,641	15,200
25	1818	11,555	13,420
26	1820	9,722	9,540

TABLE OF TOTALS.

Classes of Cases pending in Chancery or Exchequer.	Incumbrances.	Extreme possible Selling price.
5 Cases for 60 Years	£254,622	£176,700
8 Cases for 50 Years	339,051	258,480
13 Cases for 40 Years	476,124	341,480
26 Cases for 30 Years	635,699	444,250

From this table it appears that in only two cases out of the 26 cases will the inheritors be entitled to receive any amount from the produce of their estates, and if these estates be sold for the estimated amount of £444,250, the entire of that sum which the two inheritors that have not been made bankrupt by costs and delays in the Courts of Equity, will be entitled to receive is £18,000.

The effect of the dilatory proceedings in Chancery on the interests of inheritors may be well illustrated by the fact that

in the second case contained in this table, where the proceedings have been pending since 1786, the owner is a pauper inmate of the North Dublin Workhouse.

But what effect have these delays had on the interests of the incumbrancers?

Here, again, the table shows that out of £444,250, the possible selling price of these 26 estates, the incumbrancers will receive only £422,000, on account of incumbrances amounting to £635,699; so that in these few cases the incumbrancers have lost upwards of £200,000; or in other words, one third of the incumbrances cannot possibly, in the most favourable view of the case, be paid.

The way in which delays and law costs in the Courts of Equity destroyed the interest of puisne incumbrancers, may be well illustrated by the case of the Audley Estate, to which I directed your attention in a former paper.* Of the £89,400 incumbrances actually created on that estate, £16,200 were created prior to 1824, and £25,100 up to 1829. Now, the puisne incumbrancers, who lent £9,000 between 1824 and 1829, had at the time they lent only £16,200 charged before them—and supposing the £577 a year rental to sell for £25,000, they would be paid in full. But when their rights came to be ascertained after seven years delay in Chancery, the interest on the prior charges had accumulated to £9,000, and the law costs on the prior charges to £1,700, making the total amount prior to them instead of £16,200, £26,900 or more than the estate could possibly sell for. But even this does not give a complete view of the injury which puisne incumbrancers sustained under the Courts of Equity. For, as it was quite uncertain what the length of the proceedings, and consequent accumulation of interest, and costs on prior charges would be, puisne incumbrancers were forced to incur heavy law costs before they could discover whether they would be paid or not—so that those, who ultimately were not paid, lost not only the principal, and all the interest, but also a large sum for law costs. Thus, in Lord Audley's case the puisne incumbrancers for £9,000, who might have been paid in full, had the estates been sold in 1829, have lost not only the £9,000, but £4,600 for interest, and £2,200 for law costs.

The rapid sales under the Incumbered Estates Court, therefore, do not cause the ruin of puisne incumbrancers—they only make manifest the ruin which the costly and dilatory proceedings in the Courts of Equity had already brought upon them, but which the complicated forms of procedure of those courts concealed for a time. And when a loss is inevitable, it is manifestly far better that the parties to suffer should know at once the full extent of their loss, than that they should be kept in a state of anxiety—and be induced to waste their time and their money in seeking to establish claims, that, however established, can never be paid.

* *On the causes of distress at Skull and Skibbereen, during the famine in Ireland. Published by the Dublin Statistical Society.*

But we have lastly to consider whether the dilatory and expensive proceedings in the Courts of Equity have had an injurious effect on the interests of the community at large. Now as far back as 1844, there was £600,000 of the rental of Ireland under the Courts of Equity, and nothing could exceed the difficulties of managing property so circumstanced. The only tenure that could be granted—was a lease for seven years if the cause should last so long; and to obtain such a lease, great costs would have to be incurred. The costs in one case that came under my observation, would have amounted to £30, and consequently the lease was not taken out. Every other arrangement for managing property was attended with the same ruinous expense, and consequently all attempts at wise arrangements became practically impossible, so that the invariable consequence of property being placed under the Courts of Equity was a deterioration in cultivation and in the condition of the people.

So that whether we consider the proprietor, the incumbrancer, or the community at large, it is manifest that an absolute necessity existed for establishing some cheap, simple, and expeditious form of procedure, in lieu of the costly and dilatory proceedings in Equity.

Having disposed of the first question, I proceed to direct your attention to the second. Is there any evidence of the parties most interested having confidence in the proceedings of the Incumbered Estates Court?

It appears that out of the 1,003 petitions filed in the court from the end of October to the end of June, no less than 155 petitions were filed by owners themselves, these petitions relating to a rental of £180,000, subject to incumbrances amounting to £2,892,000. It might be thought that these petitions were all filed before any sales took place. But it appears that in the months during which sales were going on, the number of petitions filed by owners continued at a large amount, far exceeding what it had been at first.

We now approach the third question, which, although of no greater importance, has been much more discussed than the preceding. At what rates of purchase have the estates been really sold by the Commissioners?

For the purpose of solving this question I examined minutely 58 sales, where the purchase money amounted to £186,000, being all the sales, which were capable of calculation, included in a return made up to a certain date in June last. I have classified the results in the following table:—

SPECIES OF PROPERTY SOLD.			
Land in fee simple	--	--	25 sales.
Leases for lives renewable for ever	--	--	13 —
Terminable leases of long duration	--	--	14 —
Estates subject to annuities	--	--	6 —
			—
			58

The twenty-five sales of land in fee produced £125,176 on a nominal rental of £7,072. In order to calculate the rate of purchase it will be necessary to take the fair letting value, instead of the nominal value. From the reductions recently made by many proprietors in Ireland, and from some observations I made for the purpose of ascertaining exactly the depreciation in the letting value of land in Ireland, I have been led to the conclusion that a reduction of 20 per cent. on the nominal rent will give the fair letting value more accurately than any other method. This will give the real rental of the 25 sales in fee at £5,658, so that the purchase money in this case *will amount to 22 years purchase of the real rental*. If the abatement were not made, it would give nearly 18 years purchase of the nominal rental.

The thirteen sales of leases for lives renewable for ever produced £22,930, on a gross nominal rental of £2,285, subject to head rent and rent charge, amounting to £278.

In order to calculate the rate of purchase indicated by these figures, it will be necessary to reduce the nominal rent by 20 per cent. to get the real rent; so we shall have a gross rental of £1,814 out of which a head-rent of £278 is to be paid. Now, the common way of calculating the rate of purchase is to deduct the head-rent from the gross-rent, and state the rate of purchase of the profit rent. But the value of a small head rent is worth many years' purchase more than the same amount of gross rent, and is therefore not comparable with the gross-rent. The way of calculating the rate of purchase, to give this high value of the head-rent its full influence on the rate of purchase, is to add to the sum realised by the sale 30 years purchase of the head-rent, and then to calculate the rate of purchase by comparing the amount so obtained with the gross-rental. By adopting this method of calculation we arrive at the result, that the 13 sales of leases for lives renewable for ever *produced 17 years purchase*.

The 14 sales of leases for terms exceeding 60 years, produced £33,155, on a nominal rental of £4,195, subject to a head-rent, amounting to £768. If we adopt the same basis of calculation as in the last case we arrive at the result that these sales *produced 16½ years purchase*.

The last class of sales, consisting of six where the estates sold were subject to annuities producing £5,285, on a nominal rental of £1,014. In these cases I found it impossible to calculate the rate of purchase, as the ages of the annuitants were not stated.

These results naturally suggest the enquiry,—To what causes is the difference of prices obtained for the different classes of estates to be ascribed?

Why do estates in fee simple produce 22 years purchase, and leases for lives renewable for ever only 17 years?

This arises in part from the renewal fines and covenants reserving mines and imposing restrictions on the lease-holder, but is caused in a great degree by the different operation of the In-

cumbered Estates Act on the two classes of estates. When the commissioners sell an estate in fee, they sell the land itself with an absolute or parliamentary title. When they sell a renewable lease they give an absolute title, not to the land but to the interest under the lease. And a purchaser who buys a renewable lease is still liable to be deprived of the land, if it should turn out that the person who originally granted the lease was not owner in fee at the time he granted it, or if it should turn out that the covenant of renewal was not correctly worded. Even if the purchaser's title be not overthrown he may be exposed to great expense and delay in completing it. An Act of Parliament has been recently passed enabling parties to convert renewable leases into fee farm grants. But the onus is thrown on the tenant or purchaser to prove the right to renew, and there is no statute of limitation to protect the tenant's interest, for no matter how often renewals have been granted the right is not secured, but depends on the title of the original lessor to grant the lease.

If we examine the next class of sales, those of long terminable leases, we find a similar result; they only produced $16\frac{1}{2}$ years purchase instead of 22 years. Part of this is no doubt caused by their being terminable, but as they all have a duration exceeding 60 years this cause will not account for the whole difference. A great part of it arises from the same circumstance as the low price of renewable leaseholds. The commissioners give only half a parliamentary title; that is, they give a right to whatever the tenant originally took under the lease, but they do not give a title to the lease itself.

From the statistics that I have thus brought forward, it follows; first; that there is no serious depreciation in the value of land in Ireland; for where the land itself is sold it brings 22 years purchase: and secondly; that there is a depreciation to the extent of five years purchase in the value of complicated and precarious interests in land—a great part of which arises from the state of the law respecting those interests, and which can be removed by wise legislation.

It is particularly important to attend to causes of depreciation arising from legal technicalities; because such causes arise entirely from human legislation, and are, therefore, within human control; and being removeable by the legislature alone, for such causes the intelligent portion of the community are responsible.

These statistics also show the fallacy of the opinion that the low price for which many estates sold, arose from want of capital; for such a cause would affect all estates in fee as well as leasehold; and we could not have 22 years purchase given with a scarcity of capital and consequent high rate of interest.

They explain, too, why so few Englishmen and Scotchmen have purchased. Because the land is really going for its full, fair, present value—and it would require such a depreciation as would give great bargains, to induce Englishmen and Scotchmen to change their residences.

Did time permit, I might notice some other points respecting these sales,* but I have thought it better to direct your attention to a few leading points, proving the following important propositions.

That the costly and dilatory proceedings in Chancery and Exchequer had rendered the cheap, simple and expeditious forms of procedure in the Incumbered Estates Court absolutely necessary.

That the parties most interested are, as a body, satisfied with the proceedings of the New Court.

That the estates sold have produced the fair market value.

That the plan of giving a complete parliamentary title, has been successful in the cases where it has had full operation, in stopping the depreciation from cost or risk of long title.

That the want of a perfect parliamentary title is one chief cause of the depreciation of leasehold interests.

These results must be a matter of extreme satisfaction to every one who has investigated the causes of distress in Ireland—as it is admitted on all hands that the state of the law, coupled with the incumbrances on Irish estates, preventing the land of Ireland being a marketable commodity, is one great cause of distress.

When the Incumbered Estates Commissioners have sold the twenty millions worth of land with a parliamentary title, that they will in a short time do, we shall no longer see the anomaly disgraceful to our civilization, of 4,000,000 acres of waste land, capable of improvement, being unproductive, whilst hundreds of thousands of labourers cannot get employment, and capital at the rate of £1,000,000 a year is exported to England for investment. Here are the three elements of production in abundance, land, labour, and capital, nothing wanted but the necessary protection to their exercise which human laws are instituted to afford, and which they alone can afford. The parliamentary title, of the Incumbered Estates Commissioners will emancipate the land from the impediments that hitherto doomed it to barrenness, and will place it in the hands of those who can make the best use of it; for those who can produce most from the land can give the highest price for it. The parliamentary title will give perfect security for all capital employed in that first of human occupations, the production of human food. The employment of capital will necessarily lead to the employment of labour; thus all classes in the community will be benefited together, and the mutual co-operation naturally resulting from the free intercourse of enterprising capitalists, and industrious, because well paid labourers, will lead to that peace and good feeling between different classes to which, in the artificial state Ireland has been placed, they have long been strangers.

* Those who wish to know more of the operations of the Incumbered Estates Court will find a very able and interesting article on the subject in the *Dublin University Magazine* for September, 1850.

DUBLIN STATISTICAL SOCIETY.

THIS society was established in November, 1847, for the purpose of promoting the study of Statistical and Economical Science. The meetings are held on the third Monday in each month, from November till June inclusive, at 8, P. M. The business is transacted by members reading written communications on subjects of Statistical and Economical Science. No communication is read unless two members of the council certify that they consider it in accordance with the rules and objects of the society. The reading of each paper, unless by express permission of the council previously obtained, is limited to half an hour.

Applications for leave to read papers should be made to the secretaries at least *a week* previously to the meeting.

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The subscription to the society is one pound entrance, and *ten shillings* per annum.

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That the books that have been presented to the Society, and such books as shall hereafter be presented to or deposited with the Society, be placed under the care of Mr. Richard D. Webb as Librarian, to be by him lent to the members or to such other trust worthy persons as he may approve of.

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