III.—*On the Law Relating to the realization of Judgments and Decrees, with special reference to Judgments and Decrees against Tenant-farmers.* By W. H. Dodd, A.M.

[Read, 10th December, 1878.]

When an advocate has carried a case to a successful termination in court, and the judgment or decree has been obtained, the anxious client often asks: "How am I to get it realized?" He is put off jokingly with the answer—"That is entirely for yourself. All we can get for you is the verdict." There is an amount of grim truth, however, in the answer, which rather spoils the jest. And it would seem as if our legal reformers had adopted the answer as one eminently just and right. For of late years many efforts at legislation have been made, and various Acts have been passed, with a view to facilitating the trial of actions. But comparatively little attention has been bestowed on what takes place after verdict had and judgment given. And yet this portion of our legal machinery needs adjustment and reform more than any other. The difficulties in the way of enforcing a judgment against a tenant, so as to realize the amount out of his interest in his farm, are very numerous.

Take one of the simplest cases. A farmer with an interest in a holding under a tenancy from year to year, incurs a debt of £18 to a neighbouring shopkeeper. The creditor, taking, as he ought, the least costly method of proceeding, has had recourse to the county court judge, and has obtained his decree for the amount: what is he to do with it? The debtor, in anticipation of the coming execution, has taken care to dispose of all his available moveable property, and leaves nothing to satisfy the execution. He may have debts owing to him, and he has a farm; and either or both would meet the creditor's claim. But the creditor cannot make his decree effective against either. The sheriff cannot seize an interest in land, under a civil bill decree; neither can he seize debts owing to the debtor; nor can the court attach them, or make them available in satisfaction—save, indeed, that by the late Act, cross-decrees in the hands of the sheriff may be set off against each other. But this goes a very short way, indeed, in giving effective relief. Is the judgment-creditor, therefore, to go without remedy? Can he not make the debtor a bankrupt, and realize all his effects? No; the county court has no jurisdiction in bankruptcy, and the Court of Bankruptcy cannot make a man a bankrupt on the petition of a creditor for less than £20. One course only remains open to him. He may, at some cost, and after a good deal of delay and difficulty, get an order from the court to commit the defaulting creditor to gaol for six weeks. The threat sometimes extracts the money. But if the debtor elect to continue in gaol for the six weeks, the creditor is no better off than before. Arrest for debt has been abolished by the legislature, as a cumbrous, and costly, and ineffective mode of enforcing a judgment, and it cannot be resorted to except under the direct and special order of the court. And yet this costly, and cumbrous, and ineffective method is the only method left to a creditor in a case such as that I have mentioned.

Take another case. A decree has been obtained for a sum of £30, the creditor having in this case also proceeded properly in the county court. But by reason of the decree being above £20, he has a remedy that the other creditor has not. He can have his decree brought up by *certiorari*, and made a judgment of the high court, and it can then be enforced as any other judgment of the high court. The sheriff now can seize and sell the tenant's interest in the farm. Assume that he does so. What happens? The sheriff advertizes a sale, and publishes conditions of sale, and among these conditions two are invariably found. One is that the sheriff cannot enter into any covenant as to title; and the other is that he cannot undertake to give possession. The sale comes on. Most frequently, from the lack of purchasers, the judgment-creditor himself becomes the purchaser. It is extremely foolish of him to do so, as we shall see; but he is, perhaps, driven to it as the last resource, and purchasers are lacking, not from any want of desire on the part of many persons to obtain a farm, but from the difficulties in the way of obtaining possession under a sheriff's assignment. Take it, however, that the land is sold to another person, and a deposit paid. We have now four persons involved in the transaction whose interests are more or less antagonistic. There is the original debtor, who has an interest in the balance of the purchase-money, if any, after payment of the debt and costs. There is the sheriff, who has got a deposit, but who may have some difficulty in getting the balance, and who is under a legal liability to pay to the judgment-creditor his debt. There is the judgment-creditor, who has not got his money, but has the remedy of an action at law against the sheriff instead. And there is the purchaser, who has paid part of his money, but is unwilling to pay the residue, as he has discovered a defect in the title, which will practically give him the sheriff's parchment as the only consideration for his money. There is here abundant room for complications and legal technicalities and difficulties. But for the present let us suppose the judgment-creditor has been paid, without having to sue the sheriff, and that the sheriff has succeeded in getting the purchaser to complete his purchase without having to sue him. The purchaser now has to proceed by ejectment to get possession, and the perils that beset him are very numerous. There is the technical difficulty of getting the process properly served and brought into court. But when in court the difficulties are far from technical. They are very substantial and real. I have seen such ejectments defeated in a variety of ways; indeed, I have seen very few succeed. Here are four of the most usual methods of resisting such a process. (1) A mortgage is produced made by the late tenant before the writ was delivered to the sheriff. The effect of this was to deprive the tenant of the legal tenancy, and to leave him only a right to redeem—called by lawyers the equity of redemption. But this equity of redemption the sheriff could not seize, and therefore nothing at all passed by this deed to the purchaser, as the tenant had no interest which the sheriff could convey. Assume that the mortgage was for £50, and that the land was worth £250; the £200 represents an interest which the tenant has still in the farm, but this is of no use to the purchaser. He cannot redeem, for he has not acquired the tenant's equity. (2) Another mode of defeating an ejectment is by an assignment of the tenant's interest before the writ was given to the sheriff. This may be a complete bar, even though it be done in anticipation of the sale, and in itself an act of bankruptcy. But the court has no power to deal with it, except in cases where the deed is so fraudulent as to be absolutely void. As a rule, it must be set aside before any benefit can accrue to the purchaser. This must be done, if at all, in Dublin, the county court having no jurisdiction in bankruptcy, and meantime the ejectment must be dismissed with costs. (3) A third method of defeating the purchaser's title, which I have seen succeed, is by bringing forward an old lease for a life. To the outside world, and to the purchaser, it seemed to be a tenancy from year to year; but the lease has beeh made to do good service. The estate held under it is in law a freehold, and the sheriff has no power to seize a freehold; and therefore the purchaser took nothing by his deed but the sheriff's parchment. (4) A fourth method consists in bringing forward an old will, and getting probate taken out by executors to it. A farmer dies in 1870. His son takes the farm, and to all intents and purposes is practically the tenant—accepted by the landlord, and trusted as such by the shopkeepers. But when he gets into debt and difficulties, say in 1877, the will of his father is proved, the executors represent the deceased, the son has in law no interest, and the ejectment is defeated. I cannot undertake to enumerate all the ways in which such ejectments can be defeated. I mention some of those which I have seen most frequently in practice.

Still, an ejectment sometimes does succeed, and as this is the best thing that can happen to the purchaser, let us see what position he is in when he has got a decree for possession. The landlord serves him with a notice to quit, to terminate the tenancy at next November. But that, it may said, can do him no harm, for Mr. Gladstone's Land Act entitles him to compensation. If he were sure of that, he would be moderately safe. But if the sale has taken place on an estate where a tenant-right custom prevails, and if sales by sheriff's auction are contrary to the custom of the estate, the purchaser is not entitled to any compensation under the custom, when evicted by the landlord. This was decided in the case of Hillock *v.* Cope, in a very careful judgment by the Lord Chief Baron. The sheriff's deed passed the legal tenancy, but as the landlord had not consented to accept the new purchaser, and as there had been a violation of the custom, proved as a fact in the sale by auction, the incoming tenant was held not to be entitled to compensation. And almost at the same time that the Lord Chief Baron so decided at Armagh, Mr. Justice Fitzgerald decided at Omagh, in the case of Lappin *v.* Coote, that the tenant whose interest had been sold had no claim for compensation under the custom. These decisions were based on matters of fact, and not on points of law, and accordingly there could be no case reserved for the Court of Appeal. But the decisions were made by most eminent and careful judges, and must be regarded as sound expositions of the law on the particular facts. Lawyers do not despair of distinguishing from this case cases on other estates, if the occasion arise; but lawyers are naturally timid in the face of such decisions in encouraging a man to risk voluntarily the possibility of being finally defeated after considerable cost. Thus, you see, if the original creditor were the purchaser, he must, in addition to his first proceeding to recover his debt, bring a second to recover the possession of the farm, and engage also in a third proceeding by bringing a land claim to establish his right to compensation. The second proceeding and the third are beset with the difficulties I have mentioned, and in the end the creditor may, as it is said, have thrown good money after bad. It is just possible that to get so far he might have been obliged to take proceedings against the sheriff] to compel him to do his duty.

It may be asked, is there no other mode of realizing a judgment but by selling under a sheriff's writ? There is. The judgment may be entered as a mortgage against the tenant's interest in the land, and this has certain marked advantages. The judgment attaches on whatever interest the debtor has, whether legal or equitable, and whether it be an estate for lives or years. If the estate be legal, and the creditor wish, he can bring an ejectment as judgment-mortgagee, and if he succeed, he will get possession; but as mortgagee in possession, he will be liable to account to the debtor for the profits; or, if he so please, he can proceed to sell under the court, and if the annual value of the farm be under £30, this suit can be brought in the county court. This avoids some of the evils incident to a sale under a sheriff's writ; but it creates others of no trifling character, for the Judgment-Mortgage Act is encompassed round and about by legal technicalities. Still, these are such as competent solicitors can by attention surmount. The great evil is, that the creditor is not nearer to his money than by the former method. If he does proceed in equity to have the land sold, the tenant has six months to redeem, and a sale even then under the court might be as much a violation of the tenant-right custom as a sale under a sheriff's writ. But as a court of equity it could, in my opinion, order a sale in such a way that it might be conducted in accordance with the custom; and accordingly, of all methods of realizing a judgment this method of procedure by judgment-mortgage is open to the least objection.

But it may be said, no landlord would countenance attempts to deprive a creditor of his just debt. I very much regret to say that many landlords do. At least, such things occur on their estates, and advantage is taken of the alleged custom to deprive the purchaser of his rights and the creditor of his debts. I am pleased to say that many landlords do not permit or sanction such a course, and do give facilities to creditors for enforcing their debts. But it is not a desirable thing to make the right or the remedy dependent on the landlord's assistance. The law should be able to give effective and speedy realization of its own decrees.

I am of opinion that it is not from any defect in the Land Act that a purchaser under a sheriff's sale is deprived of compensation in the way mentioned. The landlord may reasonably object to having a purchaser forced upon him—a purchaser who may be a very undesirable tenant, and who may reside at a considerable distance from the farm. It is the selling by auction that is the offence against the custom. But if the court had full power to sell by itself, or by its officer, according to such usage as was established on the estate, and if it had power to give the purchaser possession at once without putting him to an action of ejectment, as a court of equity and a court of bankruptcy would have, there is no reason why the landlord should not be bound by the proceedings. On the contrary, if in a sale conducted by the court in accordance with the custom, the landlord wilfully refused to accept a tenant to whom no just or reasonable objection existed, he would in his turn be guilty of a breach of the custom, and liable to pay the full compensation. It is not then the Land Act that is in fault. It is the general law and practice regulating sheriff's sales (which make it imperative on a sheriff to sell in a way contrary to the custom), that are in need of remedy.

It may be said, again, that it is rather a good thing for the tenants that it is so hard to execute decrees against them. This is rooting them in the soil in reality and truth; neither landlord nor creditor can oust them. But, apart from the dishonesty of it, this is a very short-sighted and suicidal theory. For some of the difficulties I have mentioned have reference not only to judgments obtained by adverse proceedings, but also to the mortgages and other charges on his land entered into by the tenant of his own free will and accord. A tenant-farmer has difficulty in borrowing on the security of his interest, because of the impracticability of realizing it. Banks decline to advance money upon it, and hence he is often compelled to run in debt, with the consequences I have pointed out, and with the prospect of more than doubling his debt in the shape of costs added by the creditor in endeavouring to obtain it; and, on the other hand, he has to work his farm with insufficient capital, by reason of the difficulty in borrowing, and it is a well-known financial law that difficulty in realizing the security increases the rate of interest.

On some estates which have come under my observation, a course has been adopted which is well worthy of attention. It is made a condition of the loan that the landlord consent to accept the lender as tenant. Without this no lender would be safe in advancing money. On one estate the landlord or his agent writes a letter consenting to the transaction, and to accept the mortgagee as tenant. This method is liable to the objection that there is no permanent record of it on the landlord's book, and the letter is liable to get lost; and even if it be not, the landlord and his agent have sometimes forgotten all about it, and are inclined to ignore it. On another estate a much better course is adopted. The mortgagee's name is entered on the landlord's book in respect of the tenancy, and a kind of record of title is thus established. But both come short in not giving a similar recognition to judgment-mortgages, which are involuntary alienations of the tenant's interest.

I think it will be conceded that there are some of these matters in connexion with the realization of judgments which call for a remedy. The remedy can, perhaps, best be discovered by scrutinizing carefully the defects in the present system.

(1) Some of them arise from the limitation put by law upon the mode of enforcing decrees of the county courts. There seems no good reason why a creditor for less than £20 should not have in the civil bill court a remedy against all the debtor's lands, and goods, and effects of every kind, as completely as if he had proceeded in the High Court, or why a creditor for more than £20 in the county court should be compelled to transfer his decree to the High Court before obtaining a complete remedy.

(2) Some of them arise from the anomalous position of the sheriff, and the proceedings necessary in consequence. The sheriff is in theory an officer of the court, but in reality he is an independent third party, whose aid is invoked by a litigant, and against whom relief can be enforced only by an action-at-law. The high sheriff is too high a dignitary to intermeddle with; but the real officer is the sub-sheriff, whose office is in a very unreformed state. In various papers read before this Society I have adverted very fully to this matter, and it is not expedient to go into the details of the subject anew. But if the sub-sheriff were in reality an executive officer of the court, realizing its decrees, and obedient to its orders, as the messenger of the Court of Bankruptcy is, compellable to return all money into court within twenty-four hours after receiving it, and with full powers from the court to take possession of all a debtor's effects, multiplicity of actions would be much avoided. In the case I have sketched above, the sheriff had to intervene three times, at least, to execute the first writ—to execute the writ of possession to the purchaser, and finally to execute the writ of possession for the landlord on evicting the purchaser. Six persons, as we have seen, might be involved in the litigation—the debtor, the creditor, the sheriff, the purchaser, the mortgagee, or the executors of a deceased tenant, and the landlord. I do not see any good reason why the court by one process should not have power to do complete justice between these parties.

(3) A third defect arises from the want of bankruptcy jurisdiction in the county court. The debtor who resorts to such devices is evidently in extremes. Other creditors will be pressing upon him. Fraudulent assignments and pretended mortgages can only be set aside effectually by a court having bankruptcy jurisdiction, and the resort to such devices would be very much checked by the very fact of the county court judge having jurisdiction to set them aside summarily. Besides, it would be much better when a man is unable to pay his debts that his estate should be administered in a process of equal distribution, instead of forcing each creditor to compete with the others, by very expensive processes, to get priority of judgment.

(4) A fourth defect arises from the want of a conclusive and binding record of title in the case of tenancies from year to year and small tenures. If there were some official record of the tenancies and the mortgages, and charges upon them, such as is practically adopted on the estate I have referred to, most of the difficulties I have above enumerated would be removed. I have been present on various occa-

sions, in various county courts, and have examined the rate-books of the unions which are almost always in court, and I do not see any reason at all why the rate-book, or a book fashioned on the same lines, could not be made a binding and conclusive evidence of title as to tenancies from year to year. It could be very simply done, indeed. It is already conclusive evidence for registration of voters and jurors, subject to the right of any man omitted from it to claim to be put on it. The county court judge might have power given him to hear and adjudicate upon any claim to be put on the register in respect of a tenancy from year to year. Without, therefore, establishing a compulsory record of title for great estates, there is no reason why these small tenancies, which are without the range of the registry Acts, should not have a register of their own. I do not see any reason why landlord and tenant, and mortgagees alike, should not be bound by its records, and an entry of a judgment in an official book should be sufficient to charge the land therewith.

I have pointed out some hardships in the present law, which have come under my attention. Whether the remedies should be those I have mentioned, or whether some other remedy should be given, I leave to the judgment and experience of this Society. I venture to submit that the subject is well worthy of serious consideration.

IV.—*A Description of some Leases based on the principle of Parliamentary Tenant-right.* By James McDonnell, Esq.

[Read, 28th January, 1879.]

SIR George Campbell, in an admirable pamphlet published in June, 1869, points out with great clearness the *de facto* state of land tenure in Ireland. He shows that although the legal conditions were at that time substantially the same in both England and Ireland they had seldom in practice been fully acted on or recognised by either landlord or tenant in Ireland. He shows how under this strange condition of things [laws made on the principle of contract only and customs prevailing on the principle of status or tenure] there had sprung up tenant-right in the north, and elsewhere somewhat analogous usages, or at least expectations, any interference with which on the part of the landlord was resented by the tenant, and often led to violence. He thus describes the Ulster custom.

"The tenant's-right is really a very beneficial co-proprietorship of the somewhat indefinite and uncertain character of rights held by custom rather than by law. The landlords certainly have some powers of control and regulation. It is admitted that they have a right of veto over the admission of the new tenant. The transaction is only completed by entry in their transfer books, and they may refuse to receive the new tenant on any fair and reasonable ground. They generally exercise their power to give a sort of right of pre-emption to the adjoining farmers, where the farms are so small as to render consolidation desirable; for the tillage farms of the north are as small as in any part of Ireland. Some landlords have striven hard to regulate the price—to say that they will not allow incoming tenants to exhaust their means by giving too much, and fix