

SOCIETY FOR PROMOTING SCIENTIFIC INQUIRIES INTO
SOCIAL QUESTIONS.

REPORT
ON
THE LEGISLATIVE MEASURES
REQUISITE TO
FACILITATE THE ADOPTION
OF
COMMERCIAL CONTRACTS

RESPECTING THE
OCCUPATION OF LAND IN IRELAND.

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DUBLIN :
HODGES AND SMITH, 104, GRAFTON STREET,
LONDON RIDGEWAY, PICCADILLY

1851

SOCIETY FOR PROMOTING SCIENTIFIC INQUIRIES INTO SOCIAL QUESTIONS.

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REPORT.

GENTLEMEN, .

Having been requested by you "to report for your consideration the principal leading alterations in the laws respecting the relation of landlord and tenant in Ireland, required for the full adoption of the following general principles of legislation:"

1st—That landlords and tenants should be placed in the most favourable position for making commercial contracts as to the occupation of land.

2nd—That legislative provision should be made for all cases that may be left unprovided for by such contracts.

3rd—That the forms of procedure for reciprocally enforcing the rights and duties arising from the relation of landlord and tenant should be made simple and effectual."

I have now the honor of laying before you the following report, and suggesting amendments, arranged in the order of the preceding three heads, as the result of concurrent recent authentic works, and of my individual examination of the subjects.

SECTION I.—*Restrictions on a Landlord's power of making commercial contracts with his Tenants.*

The freedom of commercial contracts, it is well known, does not prevail in contracts between landlord and tenant, and this arises principally from two leading causes—the restrictions imposed on the chief contracting party, the landlord, and the insecurity to the other party, the tenant; and hence it will be necessary, previously to suggesting any alterations in the laws, to review shortly these causes—restriction and insecurity—how they are produced, and how they may best be remedied.

The proprietors of land in Ireland, including in this class all persons acting as landlord to the person occupying and tilling the ground, are of a very mixed and varied description; they include owners in fee, and under strict settlement, corporations lay and ecclesiastical, fee farm grantees, lessees for lives renewable for ever, paying small head rents amounting merely to chief or quit rents, lessees for very long terms of years also paying small rents, college lessees, and lastly, the class who, scarcely removed from farmers or occupying

tenants, derive an income from subletting at a high rent the lands for which they have contracted no light obligations to their immediate lessors, and whose interest in their lands is often but of very brief duration ; but there are few indeed, if any, of the preceding classes of proprietors or landlords, who are not by law, or by their own acts, fettered by obligations, restricting the power of making free contracts with tenants for the beneficial cultivation and actual occupancy of the land. A tenant in fee-simple alone, that is, one who holds lands to him and his heirs, and in Ireland generally under the crown, subject to a mere quit rent, can make leases for any length of time, and subject to any stipulations. He may, arbitrarily, accept a small rent ; may covenant to allow for improvements, to renew at the expiration of the original term, to compensate his tenant for unexhausted outlay, and in fine, is perfectly free to enter into unfettered contracts with his tenants ; but he is the only person thus privileged, and even his contracts are not without the insecurity to which I shall afterwards advert. But how rarely does such a proprietor really exist !

In Ireland settlements of all estates prevail much more extensively than in England, and the class of proprietors purely in fee-simple is so small, that it does not deserve to form an exception to the general rule, that all the proprietors, or those who are deemed landlords, are subject to such restrictions on the power of leasing lands, that the commercial freedom of making free and intelligent contracts for the occupation is almost unknown. Municipal corporations are prohibited from making leases for more than thirty-one years, except of grounds, for building purposes, when they are empowered to lease for a term not exceeding 75 years. Spiritual corporations, such as bishops, deans and chapters, and collegiate bodies, are disabled from making leases for longer terms than 21 years. Tenants in tail have indeed the power of acquiring an estate in fee in the lands entailed ; but while they continue simply tenants in tail, their power of leasing is restricted to leases for 41 years, unless the lease is inrolled in Chancery, and they are in other respects also, which need not be particularly adverted to, restricted in the power of making commercial and free contracts for the occupation of land. Persons having limited interest in lands, such as tenants for life under devises or settlements, lessees for lives or years, or uncertain terms, are at common law disabled from granting any lease to endure beyond their own estate in the land, however limited or uncertain that may be ; idiots and lunatics, or the committees of their estates, are incapable of granting any leases whatever, which shall bind those in reversion, unless with the previous concurrence of the Court of Chancery ; and infants are disabled from making leases binding even themselves when adult ; and lastly, no person who is himself a lessee can make a lease to endure beyond the term which he has himself in the land, and then his contracts for possession or improvements do not bind the reversioner. When it is

remembered how largely the land in Ireland is held by the immediate occupiers, under parties who are themselves only lessees for lives or terms under others, it will at once be seen how extensively and prejudicially this restriction on the freedom of contracts must operate.

A precise enumeration of the statutes relating to these classes of persons, under a natural or legal incapacity of contracting freely for the occupation, has not been attempted; nor have I referred to the instances in which sometimes a more enlarged or confined power has been created by statute in relation to some particular subject of demise, as for instance of bogs, or mines, or glebe lands, or mill sites;* but it is sufficient to state that the powers of ecclesiastical corporations to lease form the subject of thirty-four statutes, extending from the time of Charles II. to that of William IV.; that leases by infants, idiots and lunatics, and married women, and husbands and wife, are the subject of six other statutes; and the powers of tenants in tail or for life to make leases for the promotion of favored objects, such as corn mills, fisheries, linen manufactories, are regulated by no less than twelve statutes, from the early part of the reign of George II. to the last year of the reign of George IV.

✓ All this long array of legal and natural disabilities, together with the frequency and strictness of the settlements of all property considered of any value, has imposed so great restrictions on commercial contracts with respect to land, that it may be said without exaggeration, that there are very few persons in Ireland, who can enter into full and unrestrained commercial contracts with tenants for the occupation and cultivation of the soil of which they are the proprietors.

SECTION II.—*Restrictions on powers of making contracts respecting land under the management of Receivers, &c.*

Other causes, however, besides those just referred to, interfere to prevent commercial freedom in making contracts for leases, and often the most potent is the prevalence of receivers over the estates of Irish proprietors. These receivers were originally introduced as a compensation for the delay which inevitably occurred between the institution of a suit in equity for sale of an incumbered estate, and its conclusion, the sale and division of the produce among the creditors. This compensation for delay had the not unnatural effect of inducing further delays, as the rents being from time to time brought into court and divided, there was not the same pressure for expedition which would certainly exist if the litigant

* The construction given to these statutable powers was very strict, and a site leased for one purpose could not be converted to another.

could only expect from the completion of his suit the payment of his demand, and thus the mischief of receivers was extended and repeated. But during the time an estate is subject to receivers in ordinary cases, no effectual or secure lease can be made—one on which the tenant may with safety calculate, both as to its duration and validity. The entire management of the estate is taken out of the hands of the owner, and committed to a tribunal and to persons confessedly incompetent to fulfil the duties assumed by or imposed on them. The owner, however likely it may be that after some years some remnant of his property will be restored to him, is unable to make a lease, or give possession of any land to an improving tenant; he cannot check, correct, assist, or in any way interfere with his former tenants, and the receiver or the court cannot make leases save during the continuance of the litigation, as for instance, the usual lease of “seven years pending the cause;” and thus, for a long series of years, estates may be left without any ostensible owner empowered to manage or lease the property administered by the court.

It is true that in two cases, viz. the cases of minors and lunatics under the control of the court, leases may be made after certain forms are observed and consents are given; but in the vast majority of cases, where receivers are over estates, no leases can be made, and the consequence has followed that property under the management of Chancery is proverbially wretched, and the longer it is subject to the jurisdiction of the court, the more certainly and rapidly does it degenerate. The tenants, who are scarcely better than strict tenants at will when holding under the court, have no direct head to whom they can look for advice or assistance, whose approval or displeasure is important. Needy creditors and incompetent receivers take what they can get by force or fraud from the tenants, and there is no effectual check against oppression or gross mismanagement.

On the subject of receivers, I must refer to the evidence given by Sir Edward Sugden, the Master of the Rolls, and others;* the injurious tendency of the management of receivers is by them forcibly expressed, and the additional evil is, that receivers not only do much injury, but prevent any hopeful attempt at improvement, by impeding the commercial freedom which would lead to the granting of desirable leases to enterprising industrious tenants.

Not greatly less in its injurious tendency, but far less extensive in its present application, is the system of receivers appointed by creditors without the intervention of the court. It is now not unusual for a lender to stipulate that he shall have the nomination of the agent over the estate, on the security of which he advances money, and this is effected by the mortgage deed. Practically, the lender's attorney nominates the receiver, who is both irremovable

* Committee on Receivers, 1849. *Vid.* General Evidence, before Devon Committee. Report of the Commons' Committee, Poor Laws, 1849.

and irresponsible, and the borrower finds his estate gradually deteriorated under the management of one over whom he has no power of control; the lender has all the advantages of being in the actual receipt of the rents and profits of the estate, paying himself his interest from them, and from which he cannot be removed at law or in equity, while he is free from the responsibility attaching to a "creditor in possession." This system has been introduced from England, and cannot be too much discouraged.

SECTION III. — *Impediments to commercial contracts for leases, arising from Insecurity.*

I have thus shortly glanced at the several restrictions which exist on the freedom of commercial contracts for letting land, on the part of the landlord, and which limit equally the power to grant a certain duration of lease, and to enter into binding collateral engagements; and this leads to the second great leading impediment to such contracts on the part of tenants, "*insecurity.*"

A person wishing to take land may consent to any rent, and stipulate to make any specified improvements; he may be naturally industrious, and inclined to employ his capital in an enterprising spirit of commercial bargaining; but he is at once prevented by the sense of legal insecurity to him from making any such bargain; another may reap the fruits of his labours, and his expenditure may be only productive of advantage to some person not bound to perform the landlord's obligations. Now it is only necessary to advert to the formidable list of restrictions on powers of leasing which I have before given, to see how this insecurity is produced, and how extensively it must prevail, and the effect is increased by this restricted dominion being so frequently distributed between joint tenants, parceners, and tenants in common, who cannot sever the proprietorship without much trouble and expense.

Of all the classes just enumerated of persons with whom the tenant might wish to contract for the occupation of land, and take a free, mutually advantageous, commercial lease, reciprocally binding, an unincumbered fee simple proprietor is the only one with whom it is secure, as the law at present stands, to contract. The positive restrictions imposed by law on the others cannot be obviated by mere contract; and the insecurity which attaches to all others extends even to this privileged class; for it is impossible for the tenant, without a disproportionate expense, and an investigation of title to which he is unsuited, and which perhaps his means do not permit, to ascertain in which class, the sole privileged, or one of the many restricted, his intended landlord is. The great probability is, that he is of the number of restricted persons, and the tenant must, in prudence, act on this supposition. If the landlord is tenant for life, lessee, committee of lunatic, guardian of infant, mortgagor, or even debtor in possession, every contract which a tenant makes with him is insecure. Of course, therefore,

the spirit of commercial bargaining, which tempts judicious outlay, with the hope of remunerative and stipulated returns, cannot enter into contracts for leases; the possession, though nominally for a term certain, may be at any time put an end to, under such circumstances as to deprive the tenant of all title of compensation or return for outlay. The remainder-man, the reversioner or head landlord, and the creditor, are alike unfettered by the arrangements made by the tenant for life, lessee, or debtor, and the tenant has no mode of preventing the insecurity resulting from this state of the law.

It is indeed true, that leasing powers are frequently given to tenants for life, but they are not uniform; they are complex, too often confined to empowering leases for short terms at the best rent, and without the right of entering into collateral advantageous contracts with the lessee for improvements, allowances, &c. But such powers are frequently not conferred, and when given they are not known to the tenant; and should any deviation from the power designedly or accidentally happen, the lease ceases to be binding on the remainder-man, and the tenant may be turned immediately out of possession, his expenditure lost, and his improvements confiscated.

The same result happens where the landlord, being himself a lessee, is ejected for non-payment of rent, or other reason. Again, if a person has executed a mortgage or confessed a judgment, and is permitted to remain in the receipt of the rents and profits of his estate, still his subsequent leases are not binding on his mortgagee or creditor; the tenants may, at law, be evicted without even a demand of possession, and this not unfrequently happens. If, indeed, the creditor resorts to a Court of Equity to enforce his demands, the lessees of his debtor may not perhaps be disquieted; but the insecurity still prevails, and the condition of the landed gentry of Ireland shews how widely this sense of insecurity must operate.

It may not be uninteresting to illustrate the present state of the law on this point, by referring to a somewhat similar evil which anciently existed, but which was checked by legislative interference.

Before the reign of Henry VIII. in England, and in Ireland, a lessee for years, under a fee simple proprietor, had no security for the duration of his term, and its consequent benefits. A *common recovery* (which was a judgment of the Court of Common Pleas, made by arrangement between the lessor and a purchaser, or other party, and by which the court awarded the lands to such party or purchaser) destroyed the tenant's interest, and the recoveror was not bound by the lease, however *bona fide*, even though it was made long before the recovery. This was remedied by stat. 21 Hen. 8, c. 15, in England, and in Ireland by stat. 33 Hen. 8, sess. 1, c. 11. But a still greater injustice is now permitted, by which not only the mortgagee, to whom the lands are assigned to secure a debt, but a creditor, who has obtained only a

judgment to recover so much money, is allowed to evict all subsequent leases, although up to the moment when he has exerted his legal power he has permitted the debtor to remain the visible and undisturbed owner of the property.

It would be both unprofitable and wearisome to go into an extensive detail of instances in which this state of the law has operated to produce great oppression and injustice. Its prejudicial effects in producing insecurity, and preventing freedom of contract, the expenditure of capital, and improvement of land, are described in a short essay of Professor Hancock, "On the causes of distress at Skull and Skibbereen," from which the following paragraph is extracted:—"From the time of Lord Audley's death, in 1837, to the present time, instead of there being one landlord to deal with the property, to discharge the duties of a proprietor, to administer the local institutions, to make a commercial contract with the middleman, securing his improvements, or to execute commercial contracts with the occupiers, or to do, in fact, any one act that would be beneficial to the community, there have been upwards of eighty incumbancers, without whose unanimous consent no valid contract could be made with respect to this large tract of country."—p. 6.

That obstacle to improvement and commercial contracts, which the professor has illustrated by the statistics of the Audley estate, has hitherto prevailed most extensively in Ireland, the frequency and large amount of charges on the estates of the landed proprietors rendering all dealings with them most insecure; and this well-known sense of insecurity pervaded the class of which occupying tenants usually consist, and operated most injuriously in retarding the improvement of the country, by preventing in many cases, and by deterring in many more, a free and secure contract between landlord and tenant.

A testimony, nearly unanimous, is borne by the witnesses examined by the Devon Commission, to the paralyzing effects on industry produced by "insecurity" of tenure, whether from the land being held under the Court of Chancery, or from other causes; and the uncertainty of tenure is greatly aggravated by the causes to which I have just adverted, the leasing-right of a proprietor being dependent on his creditors or head-landlord, as every tenant of a "middleman," is liable to ejection, not only for his own default, but for the defaults of his immediate landlord, with the expiration of whose tenancy, from any cause, the rights of the occupiers are instantly determined.

SECTION IV.—*Impediments arising from the laws regulating the ownership of trees, buildings, fixtures, and improvements, from the use of technical language, and stamps.*

There are some additional causes which operate to prevent freedom of dealing on the footing of commercial contracts between

landlord and tenant, and one of these may, perhaps, be classed under the head of restrictions, or under that of insecurity; that is, the impediments resulting from the legal maxim, *quicquid plantatur solo, solo cedit*, or, whatever is once fixed in the soil becomes part of the soil, and goes with the proprietorship of it. This is especially the case with respect to trees, buildings, and agricultural fixtures, and no one who is not an unembarrassed owner in fee can give, as the law at present stands, power to the tenant for years to cut trees, alter buildings, or pull them down, or to remove, at the expiration of his term, agricultural fixtures. And with respect to the latter class of valuable improvements, the law is directly the reverse of that affecting trade fixtures, the utmost strictness prevailing in the one, to benefit the landlord of an agricultural tenant, the greatest liberality in the other to stimulate commercial and trading enterprise. Trade fixtures can be removed without the landlord's assent, and agricultural fixtures cannot be removed even with it, unless the landlord be owner in fee, or tenant for life without impeachment of waste.

The prejudicial effects of this state of the law can scarcely be too highly estimated at the present time, when the daily contrivances for economising human labour by the use of machinery are applied to agriculture, and when, from the progress of science, a still further use of machinery in the cultivation of land may be fairly expected.

I may here notice the serious impediments to the adoption of mercantile energy and enterprize in agricultural pursuits, from the existence of the absurd and technical rules defining what acts shall be considered "waste," and subject the tenant to a suit at law, or an injunction in Equity. Thus, it is stated in a legal work of high repute,* that "a tenant having the use and not the dominion of property demised, any material alteration made in its nature or quality, though the value may not be lessened,† will constitute waste. If a lessee pull down a house, and build another in its place of less value, or remove a partition wall between two rooms, or pull down a brew-house and erect in its place private dwelling houses, though of greater value, or convert a logwood mill into a cotton mill, or a corn mill into a fulling mill, it will be considered waste." So, a tenant has no right to alter the nature of land demised, by converting ancient meadow or pasture into arable land, or meadow into orchard, or by *enclosing or cultivating waste land*; and if a tenant burns the surface of the soil for the purpose of manure, or opens pits to dig gravel, or brick earth, it is waste. He is, whether he thinks of building, or tilling, or quarrying, or indeed of doing any thing save pursuing the old dull routine of husbandry,

* Furlong's Landlord and Tenant, 687.

† Or even if it is greatly increased. or if he builds a new house.—*Co. Lit.* 53 a.

to decide not what should be done, but what may be done. It is difficult to hope for great improvements against such impediments.

In the ordinary mercantile dealings there is very seldom experienced a want of skilled professional assistance in *making* contracts, however necessary it is in order to enforce them ; but each party to a mercantile contract can generally express in plain language the nature of his obligations, and expected equivalents. In contracts between landlord and tenant the case is different, and partly by positive provision requiring deeds to be prepared and engrossed by professional persons, and partly from the intricacy of the technical language of the reciprocal engagements of the contracting parties, landlords and tenants cannot make their contracts with the same facility with which merchants or traders enter into theirs. Take the familiar instances of bills of exchange, charter parties, policies of assurance, bought and sold notes, and however minute the provisions, each party expresses himself intelligibly and concisely, and without much or indeed any attention to technical language. But the necessity of the employment of legal forms in leases, and of skilled professional advisers to peruse and fill leases, interferes with the freedom which prevails in other contracts, and produces frequently two sorts of contract, one the short proposal for a lease and acceptance of it, and the other the long technical carrying out of the contract by a formal lease.

The stamp duty on leases, which until lately was high, and still is intricate, operates prejudicially to the freedom of contracts between landlord and tenant. It frequently requires the formal decision of the court to fix the proper amount of stamp duty to be paid on a lease. Stamps for leases are not as ordinarily sold and easily procurable in country towns as bill or note stamps ; and the law, too, favours an evasion of the stamp duty, by permitting operative but informal contracts for letting, usually called *accepted proposals*, to be stamped long after being executed, on payment of a penalty ; that is, to evade the penalty and stamp until the document is wanted, and often for ever.

SECTION V.—*Suggestions as to the legislation necessary to secure the principle of commercial freedom in agricultural contracts—Leasing Powers.*

Having thus, gentlemen, presented to you a summary of the chief causes operating to prevent a perfect freedom in the contracts usually entered into between landlord and tenant, I have now to offer for your consideration suggestions for such legislative measures as may diminish, if not wholly remove these serious impediments to the adoption of sounder principles and mercantile reciprocal freedom in agricultural contracts.

It has been commonly said that it requires little effort to detect faults, and much skill to correct them ; and in my inquiries as to the best remedies for the defective state of the law before men-

tioned, while I found the defects to have been readily exposed, and with some uniformity, the improvements suggested were too often vague, contradictory, and insufficient. To frame a totally new code for the regulation of landed property would not be very difficult, and it might happen also that in many respects the new code might prove superior to that for which it was substituted; but there is much more difficulty in partially altering any existing system, correcting evils, and yet retaining undisturbed the grand features of the system itself, and making what is new to harmonize with the old.

There have, however, been recognised, either in the ordinary dealings of owners in the settlements of their property, or by the legislature from early times, some principles, the extension of which, and their more general adoption in the law of real property, would greatly remedy the evils arising from restrictions on leasing rights, and insecurity afterwards. Owners of property have acknowledged by the frequent creation of leasing powers in settlements and devises, that the temporary owner of land may, within some definite limits, be safely trusted to make contracts for the occupation of land, to endure not merely while he is likely to be owner, but after his interest has ceased, and that of others has commenced.

There is, for example, nothing more common in settlements than a leasing power for tenant for life to lease for a term of lives or years, which may exist long after the decease of the lessor, tenant for life. It is felt, that if he is prevented from taking a fine or other consideration for receiving a low rent, the tenant for life, while providing for his own interest only, and making a good bargain with his tenant, must of necessity also guard the interests of the remainder-men, and this truth has induced the legislature to confer powers of leasing on parties nearly similarly situated as tenants for life under settlements, and in many instances, some of which have been already enumerated, the legislature, for the benefit of society, has given parliamentary leasing powers, but of most varying and arbitrary extent, to numerous classes of particular temporary owners. Some checks have always been imposed; either the best and highest rent that can be procured without fine is required, or the usual rent at which the lands were formerly leased must be reserved, or, as in the cases of leases under the powers in the Drainage Act, valuers must decide on the sufficiency of the rents.

It being obviously unjust and inexpedient to invest every one, however limited his rights in landed property, with an absolute uncontrolled leasing power such as that possessed by a tenant in fee; and it being as obviously necessary, for the welfare of society, for the progress of agriculture, and for the improvement of the great social relation of landlord and tenant, to give enlarged leasing powers to limited owners, and certainty to the occupation and contracts of tenants; the only mode of effecting these objects is by a compromise, giving absolute security within a moderate and

sufficient range to tenants, and empowering limited owners within this range to contract for leases, which may contribute both to their own advantage and that of the future owner of the property, of which the temporary management is entrusted to the lessors. My inquiries, therefore, lead me to recommend, as absolutely necessary to the freedom of contracts between landlord and tenant, the sweeping away, by a general consolidation and amendment, all the acts of parliament relating to leasing powers of tenants for life, corporations lay or ecclesiastical, guardians, committees, husbands, trustees, &c and the other classes before alluded to, and by the same statute of consolidation to confer three distinct leasing powers on all "owners" of estates, defining as such, every person in possession or in receipt of the rents and profits of any lands, and who is not himself a tenant *occupying* at a rack-rent payable to some superior landlord.

The three powers should be,

1st.—To make leases for the ordinary farming purposes for a term not exceeding 40 years, at the best or usual fair letting rent, and without fine directly or indirectly taken. This provision, or safeguard, is deemed sufficient where the powers are conferred by devise or settlement, and would be quite as effectual in the cases of parliamentary powers. The fair letting value of farms is well known in the country, and the public valuations, although not affording a safe criterion, will always be a check against fraud and underhand bargaining for fines, or private benefits to the lessor.

2nd. To make leases of waste and improveable land and mines for a term of sixty years, under similar restrictions as to rent.

3rd. Leases for building in towns and villages and for mill sites for a term not exceeding ninety years. And in all these cases that the lessor should be empowered to enter into collateral stipulations, binding the reversion as to specific improvements, allowances of tenant-right, or other customs. *perfect*

Simplicity and entire uniformity should prevail in all powers of leasing. There is no reason why a tenant for life should have one kind of power, a corporation another, or other classes different kinds of powers, the object of all being the same, the encouragement of agricultural improvement and enterprise, by giving tenants security consistently with the rights into which the proprietorship, or landlord's dominion over the soil is modified. These three classes of leasing powers seem amply sufficient to provide for the varying circumstances of different estates, and when conferred by the legislature, and not by conveyancing, and accompanied with an absolute parliamentary title, ought to promote commercial enterprise, by certainty and security, with simplicity, in contracts between landlord and tenant.

The leases should be in writing, signed by each party, and witnessed, and should be accompanied with the actual transfer of possession to the tenant. They should also be registered by the Clerk of the Peace in the county where the lands are situate,

within three months from the time of their being made, or be void; and the registry, when the Ordnance Survey is adopted as the basis of registration, should state name and residence, or description of the lessor, name of lessee, name and particulars of the farm, barony, and parish, term, rent days, and witnesses. These particulars could be readily comprised in books, with columns headed appropriately for each. In the same book, and immediately under the entry of the registry of the lease, should be entered the registry of the assignment, by will or instrument *inter vivos*, date, particulars, names, etc.; also of improvements from time to time made on the premises, and for which compensation would be required at the end of the term. Thus, in the clerk of the peace's book would be furnished, at a cheap rate, and in a readily accessible form, all the desired information connected with any of these "new statutable tenancies." Local registration is very much preferable for minor purposes to a central one; and for validating and registration of contracts for tenant's occupation, local county registers are far more commodious and better adapted than any central register office, however perfect may be its machinery. Thus, the tenancies created under the new statutable powers would be wholly independent of title or perfect ownership in the lessors.

It may be asked where can be found any principle or analogy which can be safely followed for conferring such large powers on temporary owners, and this too in cases where the rights of reversioners and remainder men are so deeply involved. To this not unreasonable objection it will be perhaps sufficient to answer, that to correct similar evils, which were found to prevail in Scotland, the statute 10th George 3rd, chap. 51, was passed, which interfered quite as much with existing rights as I now propose to do. That act recites, "Whereas many tailies of land and estates in Scotland do contain clauses preventing the heir of entail from granting tacks or leases for a longer endurance than their own lives, or for a small term of years only, whereby the cultivation of land in that part of the kingdom is greatly obstructed, and much mischief arises to the public, and which must daily increase so long as the law allowing such entail subsist, if some remedy be not provided," and then confers on all proprietors of entailed estates uniform and greatly enlarged leasing powers, and among others, a power of making building leases for ninety-nine years. This is certainly a safe precedent and an example of wise and cautious legislation. Private rights must at all times be subservient to the true interests of the public, and without at all infringing on the sacredness of private property, it is the duty of the legislator to correct the evils arising from injudicious restrictions and caprice in the management of it.

I must further recommend, that to increase the security to the newly created classes of tenants under the suggested powers, no mortgage or judgment made or confessed by the lessors or parties

from time to time entitled to the reserved rent, should affect the statutable leasing powers. And that the term, subject of course to eviction for nonpayment of rent, or for nonperformance of conditions, should continue notwithstanding the termination or eviction of the interests of the lessors, thus securing beyond the reach of accident the legal term to the tenant for the time agreed on, so long as he performs the stipulated duties of his tenancy.

The lessees should be prohibited from subletting, except in the case of building lots, but they may be permitted the privilege of assigning, by deed or will, the interests in their farms to any one person, to a member of their family, or other party. All wills relating to such tenancies should be made proveable by oath before the clerk of the peace of the county where the lands are situate. The term of years in cases of intestacy would ordinarily be divisible amongst all the next of kin; but this is attended with disadvantages, and convenience requires that in all cases there shall be only one tenant; and hence the propriety of in some respects assimilating the statutable tenancies to freeholds, and providing a practical remedy for this inconvenience, by affording increased facilities for sale with clear title, by executors, trustees, and guardians, by will or nurture. Devises and assignments of such leases should also be registered within the period of three months in the same manner as the lease itself.

SECTION VI.—*Suggestions as to Receivers.*

The general sense of the public has been so recently and strongly shown on the subject of court receivers, and has so justly stigmatized the system as most detrimental to the best interests of the country, that I am induced to recommend that the power of appointing receivers at the instance of creditors be entirely taken away, and that receivers should not be appointed, even in "minor" cases, but that the Court of Chancery should nominate a person, with the same powers as the committee of the estates of lunatics, and accountable to the court for the rents; but in no case to be controllable by the court in the management of the estate under his superintendence.

A great injustice is at present practised on head landlords, by the appointment of receivers over their tenants' interests. The head landlord cannot distrain or bring an ejectment without obtaining permission from the Court of Chancery, by motion on notice at considerable expense, which he cannot recover unless in a few instances, where the tenant redeems the premises from eviction, and the head landlord's power of interference and control is otherwise abridged and injured.

Little, indeed, I am inclined to think, no injury to private interests would result from the abolition of receivers, while the interests of the public would be greatly advanced. The nuisance of receivers is so great as to admit of no other remedy or mitiga-

tion; the system should be wholly abolished, and increased facility to creditors to sell the estates subject to their demands, at slight expense, and with a parliamentary title, would more than compensate for any injury to them, while no one questions but that the tenants, and thus ultimately the creditor's security, would greatly profit by this change.

SECTION VII.—*Suggestions as to giving Tenants compensation for unexhausted improvements.*

The security from mere certainty of the duration of the tenure would be incomplete, unless some mode is devised of compensating tenants at the end of their term for unexhausted improvements; and in this case, again, following the analogy of former legislation, and admitted principles, it appears only just to give every reasonable facility to tenants being reimbursed, at the end of their term, for the outlay from which they should not then have received a full return. The necessity of registration of improvements, within a short time after they have been executed, should be recognised, and any tenant intending to claim for improvements should be obliged, previous to executing the same, to serve a notice on his immediate landlord, merely stating his intention of executing such improvements, whether drainage, building, farm houses and offices, &c. When the improvements are executed, he should serve a detailed notice of their nature and expense, and after summons to the petty sessions, and full time allowed to investigate the claim, and proof of the outlay, he should get a certificate in an appointed form, which he might then register in the manner before suggested as to his tenancy.

All general contracts, depriving the tenant of a right to compensation for future unexhausted improvements, should be declared illegal, but this should not extend to prohibit special contracts as to specific improvements provided for in his lease. For the second and third classes of tenants no provision as to improvements need be made, the increased duration of term being sufficient compensation, and the right to register improvements should be confined to ordinary agricultural tenants for a term not exceeding forty years.

It has been frequently said that the want of security for improvements is merely alleged as a pretext by idle and ignorant tenants for not improving their farms, and that it is not the absence of a right of compensation, but of a spirit of industry, which prevents them from building, or permanently benefiting the soil by a judicious expenditure of labour and money. But to those who are inclined to say that the state of the law is used as an excuse, I would refer in reply to the success which attended the only practical regulations on the subject with which the public are acquainted, viz. the Irish Timber Acts, those for promoting the building of glebe-houses in Ireland, the tenant-right custom

in the north of Ireland, and the recent regulations of the "Squatter system" in New South Wales. The Irish Timber Acts, commencing with the 10th Wm. 3rd, chap. 12, and after several intermediate acts terminating with the 23rd and 24th Geo. 3rd, chap. 39, although defective in many respects, too restricted in some of the provisions, and complicated in others, have led to an amount of planting by tenants under lease and by owners of terminable interests under settlement, which no one can question would never have taken place but for the encouragement and protection afforded by them; and this code presents an example of the local registration such as I have recommended to be extended to all improvements. One of the Timber Acts has also a very significant recital, which is quite in point as to other improvements. I allude to the 5th Geo. 3rd, chap. 17, which, as a reason for the provisions afterwards enacted by it, states that "it is equal to inheritors whether tenants do not plant or have a property in what they plant." Equal indeed in the direct and immediate pecuniary result, but most unequal in all others, as it make all the difference between improving and slothful tenants, between contented thriving farmers, certain to reap the results of their industry at the expiration of their term, and paupers, who, when their lease ends, have no capital either in hoarded labour or improved self-reliance.

The numerous statutes also, by which the incumbent of a parish who builds a glebe-house is enabled to secure the repayment of the larger portion of the amount by his successor, have greatly promoted the desirable and necessary improvement of building good glebe-houses in Ireland.

The prosperous state of the north of Ireland cannot be disregarded when legislating on the head of improvements, and nearly all who have examined the subject have concurred in attributing it to the predominant influence of the tenant right custom which has hitherto prevailed there.

This custom has been generally defined as the right of compensation for unexhausted improvements, the compensation being usually paid by the incoming to the outgoing tenant. Different opinions have indeed been held, both as to its precise nature, and its tendency to promote improvements by the incoming tenant, as it is said to exhaust his capital, &c.; but nearly all have agreed that has given great confidence to the tenants of the north in their cultivation of the land and their desire to improve it: and it must be admitted that the district in which it prevails has thriven and improved in comparison with other parts of the country.* The principle on which this tenant's right is founded has been clearly shewn by Professor Hancock† to be the right of the tenant to compensation for improvements effected by him, and this is entirely accordant with the evidence given by the chief and

* Report of the Devon Commissioners. The advantages have, perhaps, been overrated.

† Tenant-right of Ulster considered economically. 1845 p. 33

best informed witnesses examined before the Devon Commissioners.

The case of the squatters in New South Wales is also a strong illustration of what may be effected by judicious encouragement to labour, with a hope of future reward for it. While the right to compensation for improvements was denied, no improvements took place;* and to promote a better state of things, the squatter class has been declared by the orders made pursuant to the Lands Sales Amendment Act 9 & 10th Vict. chap. 104, entitled to pecuniary compensation for all improvements they may have. The prudence of such a stimulus has been thus admitted; and the result, even during the very short time in which it has been in operation, has fully justified its adoption. The present state of the law may indeed be alleged by some as a mere excuse for the want of industry, but by many more it is felt, and surely it must be admitted to constitute a serious impediment to improvement† Men are not ordinarily philanthropists, and they will not either build or improve for landlords without the certain prospect of benefitting themselves and their families by their exertions, and the common law has admitted that "he who ploughs should plough in hope," and accordingly has given the right of emblements to tenants whose tenure is of uncertain duration, such as for life, or at will, and has sanctioned for other tenants the custom of the country, or right to a certain portion of the last crop at the expiration of the term.

The general outline of the Timber and Drainage Acts may be safely adopted both in defence of the principle, and as affording a convenient mode, but capable of beneficial amendments, of the proposed plan of registration. On this head of legislation, also, the consolidation of the timber acts, which are both numerous and complicated, would form a most desirable and important part, which I must therefore recommend for consideration.

The mode of fixing the amount of compensation, and of its payment, should be settled by the adoption of the principle recognized in Sir William Somerville's Bill, and the Drainage Acts, by which a certain portion of the expenditure is considered as paid off at the end of each year of the tenancy from the registration of the improvements. In the ordinary cases of drainage, and similar farming expenditure, a twentieth part should be considered to be paid off each year; but in the case of farm buildings, one thirtieth; and authorized sworn officers, or inspectors of local improvements, should at the end of the tenant's term ascertain and state by their award the sum payable to the outgoing tenant. This sum should be payable by the then lessor, and be considered as paid by him for improvements, and with a right to compensation similar to that given to tenants for life and others under the drainage acts.

* Griffith's Present State and Prospects of Port Philip, 1848

† On the causes of the want of industry in Ireland, much information will be found in "Pim's Condition and Prospects of Ireland," 1848, chap. 2.

SECTION VIII.—*Suggestions as to giving Landlords power to charge the inheritance for permanent improvements.*

But some additional encouragement should be given to limited owners to improve their estates, and the precedent of the 10th Geo. III. chap. 51, generally called the "Montgomery act," might be adopted with advantage in Ireland. That act authorizes owners of entailed estates in Scotland to recover from the success or to the entail three fourths of the sum expended by him in improvements of the estate, but the entire sum to be recovered not to exceed four years' rental of the estate. This provision has undoubtedly been found beneficial in Scotland. It was wisely inserted in the same act which allowed tenants in tail the liberal leasing powers before referred to, and if the present state of Scotland is contrasted with the state in which this act found it 80 years ago, and from which its object was to elevate it, the contrast from the effect of prudent institutions will be admitted to be great indeed. Ireland, however, seems to have anticipated the wisdom of the British Parliament, in giving encouragement to limited owners to improve their estates, at least by planting, as the 9th Geo. 2, chap. 7, gives to the executors of tenants for life, who have planted trees, half of their value, to be ascertained within one year after the death of their testator; for which the estate of the successor is to be charged as by a judgment. This statute, and the code before referred to, for encouraging the building of glebe-houses, have recognised the principle of compensation for improvements of a visible and substantial kind, and there seems no reason against extending similar powers to other cases, such as buildings, drainage, reclamation of waste or bog, &c.

Judicious guards are necessary to prevent the encouragement afforded by the proposed modification of the law, from being used as the means of committing frauds on those in reversion or remainder; but such checks, I imagine, can be readily adopted, by requiring full notice by tenants, and proof before a local tribunal, and registration, and the subsequent certificate of competent officers; and the same checks and control as already suggested should be adopted in the case of improvements by tenants for life, in dower, by the courtesy, &c.; thus applying the machinery of the drainage acts and timber acts, to the proposed extension of powers of improvement to occupiers and limited owners of estates.

SECTION IX.—*Additional suggestions for the removal of other impediments to free contracts between landlord and tenant.*

There are some few more alterations required to promote the freedom of commercial contracts between landlord and tenant, and these are; to confer on all trustees of estates under devises or settlements, statutable powers of sale, exchange, and

partition, with the assent of the person entitled or in receipt of the rents and profits; continuing the facilities afforded by the Incumbered Estates Act to partition and exchange estates, and to sell them for incumbrances; giving to every sale effected by the court of chancery, bankruptcy, or insolvency, the privilege of a parliamentary title; and, lastly, great simplification of the forms of leases. To effect in part this latter object, it would be expedient to provide that in future all leases in writing signed by the parties or their agents, should be effectual though not sealed, and that what have hitherto been known as equitable articles for leases, or accepted proposals, should at law and in equity, so far as the parties to them were either under the existing state of the law, on the proposed amendments empowered to lease, have the same operation as actual leases. This will be but a slight extension of a principle long admitted in several Irish acts; as agreements for leases were subjected to the same stamps as actual leases by the 56 Geo. III. chap. 56; and the 25 Geo. II. chap. 13 enabled landlords to distrain and bring ejectments where lands had been enjoyed under "articles, minutes or contracts in writing, ascertaining the rent, as if such article, minute, or contract in writing contained an actual demise." Thus, landlords may in some instances treat such articles as actual leases, and the law and rights of the landlord and tenant should be reciprocal, and such articles should for both contracting parties be considered legal demises or leases.

I would recommend, further, that the common clauses inserted in every lease, covenant to pay rent, clause of distress, and re-entry, to keep and deliver up in repair, should be legal obligations, flowing from the mere contract of tenancy, and not from express stipulation; and thus the following form:—

"A. B. agrees to let, and C. D. to take the Lands of Blackacre for the term of 40 years from the 1st May, 1851, at the rent of £100 per annum, payable half-yearly, on 1st of November and 1st of May.

Witness, I. K.

(Signed) *A. B.*

O. P.

C. D."

would comprehend and import all that is now contained in the ordinary printed leases.

Simplifying the forms of Leases, and making the common obligations to flow from the relation of landlord and tenant, will be attended with many advantages, and will enable parties to contract for leases with as much facility as they can now express their arrangements in mercantile instruments. The act 8 and 9 Vict., chap. 124, was designed to effect the desirable object of shortening and simplifying leases, and parties were by it enabled to substitute a concise form for the prolix one heretofore used; but this act has been unattended with any benefit, and the simplest method will be to declare by law the duties resulting from the mere con-

tract of tenancy, independant of any express covenant whatever, and wholly dispensing with the necessity of using either a short statuteable, or long common form of expression, to indicate what the law implies.

Heirs and assignees of both landlord and tenant, as well as the executors, should be bound, though not named, by all the stipulations in the lease. Indeed, by an enactment peculiar to Ireland, 11th Anne, chap. 2, section 4, this is already effected, as to "covenants," *i. e.* contracts in leases *under seal*, so far as regards the tenant.

Although the recent stamp act, 13 and 14 Vict., cap. 97., has much improved the regulations affecting the stamps on leases, they are still too complicated, and depend on the rent, fine, nature of lease, and the length of the document itself. The duty should depend only on the rent, and the stamps would then be sold and as easily procurable in country towns, as receipt or bill stamps.

Such, gentlemen, is the present state of the law, which impedes the freedom of contract between landlord and tenant, and such are the alterations and amendments which a very close and minute enquiry on the subject has induced me to report to you as prudent and necessary to be made on this head.

SECTION X.—Present state of the Law respecting Land held without written lease or other express contract.

I shall now proceed to the second branch of the subject of the enquiry proposed to me, and here again it will be useful briefly to state what the law at present is, when no express contract fixing time, rent, and other terms of tenancy, is entered into between landlord and tenant, before suggesting some useful modifications of which it is susceptible.

If a person is merely put into possession of land by any one, he is then said to become tenant at will, and bound to pay the value of the holding for the time he continues in possession; but this tenancy is of the most uncertain kind, and either party may determine it by a demand of possession, or offer to surrender the holding. The privileges conferred by law on such a tenant are very few; he is entitled to emblements, that is, to the produce of the crop which he may have sown at the time when his tenancy was determined, but for fixtures or improvements which he may have set up or made, he is not entitled to any compensation. This class of tenants is not, however, very important or extensive, as payment of rent at stated periods, even a lengthened possession, will convert a tenant at will into a tenant from year to year.

Tenancies from year to year are more generally created by mere parol agreements to take land, without ascertaining the term, at a fixed rent payable at stated periods, usually 1st May and 1st November, or 25th March and 29th September. They may also be created by written contracts for a definite term of years, but

which do not amount at law to an actual demise; but to such tenancies, however created, the law annexes certain rights and obligations, and the principal are, on the part of the landlord, a right to distrain for the rent reserved, and to determine the tenancy by a half-yearly notice to quit, terminating at the period of the year corresponding with the tenant's entry; and on the tenant's part, a right to put an end to his tenancy by a similar notice, and an obligation to pay the rent and treat the premises in a husbandlike manner. By "the Custom of the Country" also, prevailing with some variations in the several counties of Ireland, the tenant from year to year has a right to a certain portion of the away going crop, usually one-third, sometimes, however, amounting to two-thirds. But, as respects fixtures and improvements, he is no better off than a tenant at will, but he is as fully privileged, or rather as unprotected as a tenant for lives or years.

SECTION XI—*Suggested legislation respecting cases where there are no express contracts made between landlord and tenant.*

It is a difficult matter in legislation to make contracts for those who themselves have full power to enter into commercial contracts, and do not choose to make any; and accordingly, while this power was limited, the law has made no provision for ordinary tenants from year to year, save in providing for the mutual right and obligation of a notice to quit, and allowing the custom of the country, to secure the tenant against the accident of an unexpected removal from his farm before he has reaped his crop. When facilities have been afforded to make or procure a valid lease, if the alterations I have before suggested are adopted, it will be unnecessary to make much special provision for yearly tenants, but to them also should be extended the full benefit of the privilege of compensation for improvements, and right to tenant's fixtures; and in these respects they should be placed in the same favourable position as tenants holding under leases. I would suggest, too, that a full year's notice to quit should be required from the landlord, while the tenant was allowed to quit on the present half yearly notice; the inconvenience to the tenant of a sudden termination of his tenancy being generally much greater than that to the landlord, and it being useful to give a greater security to the tenant than he at present possesses.

There should of course be extended both to the landlord and tenant of this and every other class, the benefit of the alterations which I have presently to suggest on the third head of this inquiry and report; and provision should be made that, to the limited extent of their holding, tenants from year to year should have the same certainty of tenure as those holding under leases, and should not be summarily removeable without the regular year's notice, even though the lessor should be tenant for life, or though his estate should determine by any collateral event.

Very few cases will occur in which the rights and duties of such landlords and tenants will not be sufficiently provided for by those alterations, and by declaring that the tenants, as they are now by law, in all cases not expressly regulated by contract, should be bound to keep the demised premises in tenantable repair and condition.

SECTION XII.—*Present state of the law respecting proceedings to enforce the rights and duties of landlord and tenant; law of distress, &c.*

In reporting on the alterations necessary to be made in the present state of the law, to simplify and make effectual the modes of proceeding for reciprocally enforcing the rights and duties of landlord and tenant, I shall adopt the same course which I have pursued in reporting on the preceding branches of inquiry; and as introductory to the proposed alterations, briefly state the present mode of proceeding, which alone will be a strong argument in favour of the contemplated amendments.

I shall take, then, the ordinary rights of a landlord, viz.; to have the stipulated rent paid, the premises properly farmed, kept in repair, all covenants observed, and the farm delivered up quietly at the expiration of the term, or on a forfeiture by non-payment of rent; and the rights of the tenant, to enforce the landlord's duties of repairing when he has so stipulated, or of enforcing any other obligation into which the landlord may have entered with his tenant.

Rent is recoverable by the summary remedy of distress, and by civil bill before the assistant barrister, where the amount does not exceed £20; by action in the superior courts, whatever the amount may be; payment also may be indirectly enforced by proceedings in ejectment, which action has in Ireland been always considered both as a mode of obtaining payment and of evicting the premises.

The remedy of distress for rent is one which the law gives (or perhaps has connived at the landlord retaining) to a party disposed to do himself justice, rather than appeal to the authorised tribunals for the enforcement of civil claims. It is obviously derived from those barbarous ages when the strong with impunity oppressed the weak, and were allowed, because they could not be restrained, to use their own powers to assert their real or fancied claims, without waiting for the tedious formality of an adjudication by a legal tribunal. It is plainly enough derived from the ages "when might made right," but it still, though with many modifications and checks, is one of the supposed remedies which the law as a privilege confers on the landlord for the recovery of his rent, and which he may adopt to enforce the payment of six years arrears.

It is now exercised and used as follows :—

The landlord himself or his agent being seldom able to distrain in person, must appoint a bailiff, and this must be done by a written or printed warrant signed by the landlord or his known agent or receiver, directing the bailiff to distrain the person named therein, and bearing upon it the date when, and the name of the place at which it is signed, and this appointment and authority are only in force for twenty days. It will easily be conjectured how seldom those somewhat precise directions of the statute 9th and 10th Victoria, chap. 111, are complied with, and any, the least deviation from the requisites of the warrant, exposes the landlord to be deemed a trespasser, and his distress consequently illegal.

If however, the first difficulty has been carefully or happily avoided, and the bailiff properly appointed comes to make the distress, he is required by the same statute, at the time of making the distress, to deliver to the person in possession, or, if no one can be found in possession, to affix on some conspicuous part of the premises a particular in writing, specifying the amount of rent demanded, the time or times when the same accrued, and the name of the person by whose authority the distress is made, or otherwise such distress shall be deemed illegal and void. From my own experience, and the information derived from others, I can state, that there are now very few instances indeed of a distress being made, which is not liable to some fatality either on the form of the distress warrant or particular, and which has not rendered the landlord, instead of a summary redressor of his wrongs, a trespasser, and liable to damages at the suit of his tenant.

The cases in the superior courts, of litigation encouraged by the strictness required in these formalities, have been very numerous; and these requisites, instead of serving tenants, merely countenance and promote litigation. In England, accordingly, where a nearly similar evil, in demanding great particularity in the notice of claim for rent under 9th and 10th Victoria, chap. 25, section 107, prevailed, it has been corrected by the 20th section of the Amended County Courts Act, 13th and 14th Victoria, chap. 61, "because it led to technical objections and unnecessary expense."

But suppose all these preliminary difficulties conquered, and that a distress has been properly effected, and that the goods of the occupying tenant, save growing crops, which are not now distrainable in Ireland, have been seized, the next consideration for the landlord is, what he must do with them if not replevied. The landlord's powers and duties, and the tenant's privileges of contesting the due exercise of these powers are regulated, defined, modified, altered, and enforced by some thirty statutes, extending from the time of Edward the First, to the most recent years of her present Majesty's reign. The general result is, that if the rent is not paid, the landlord may, after observing certain formalities and posting notices of sale, at the end of fourteen days sell the distress and pay himself the rent due, and the expenses of his proceedings.

This desirable termination of a distress rarely happens, as the tenant, if living in an unruly part of the country, generally rescues the distress from the not-over vigilant keepers; and in the more peaceable and civilized counties, at once promptly resorts to the laws made for his protection from oppression, and brings a civil bill replevin, when the premises are held at a less rent than £50 per annum, or at his option in all cases, sues out a writ of summons and writ of replevin, returnable in one of the superior courts of law. The replevin directs the sheriff of the county, to cause the goods which the landlord has seized, to be re-delivered to the owner, on certain securities being found to the sheriff by the claimant, that he will prosecute the suit and return the goods if he shall not be successful in the action. The sheriff is, by stat. 36 Geo. III., chap. 28, obliged to take a bond from the person replevying, "with two responsible sureties," in double the amount of the value of the goods distrained, conditioned for prosecuting the suit with effect, and to return the goods, if a return shall be awarded. The tenant having got back his goods through the first operation of the replevin, and having thus gained all that he, perhaps, expects from his action, tardily prosecutes his suit against his landlord, and when he has been compelled to file his "declaration," or complaint, generally pleads to his landlord's "avowry,"* or "cognizance," (if he has not fortunately got some nice point, and some verbal defect on the warrant or notice of distress,) with all due formality, two pleas, 1st—a technical one, which may be sustained by the "avowry" not being made in the name of the party entitled to the "reversion"; 2nd—one going to the merits, that he does not owe the rent. The first is familiarly known as the plea of *non-tenuit*; the latter as the plea of "*riens in arrear*." The venue being "local," some months, perhaps, elapse before notice of trial on these pleadings can be served for the assizes for the county where the distress was made, when the case is called on, the tenant is probably absent, and the landlord succeeds and gets a judgment, entitling him to the rent, and a return of the goods originally seized. This is the brightest side of the picture, as the landlord is very frequently defeated on some technicality connected with the warrant and distress notice before referred to.

Suppose, however, the landlord to be successful in getting judgment in the replevin, his success has been rather dearly earned, and £40 or £50 may be ordinarily calculated as the amount of costs which he first has to pay, but which he is entitled

* A short statement of the landlord's right of distress, *avowing* or admitting it to be made in his own right, made under the 25th Geo. II, chap. 12, sec. 4, Irish, and 11 Geo. II, chap. 19, sec. 22, Engl, a sufficiently concise form of pleading. Several avowries are generally filed varying the statements as to the tenancy. A cognizance differs from an avowry, only in being by a bailiff in the name of a party who may be entitled to the "reversion." Several cognizances are also generally filed.

to levy from the tenant, in addition to the rent, and for which he is empowered to get back the distress ; but it is almost needless to say that the distress is very seldom to be found, and that the attempt to levy the rent and costs would always ruin the tenant, who has already been himself profusely mulcted by his own attorney in the progress of the litigation. The landlord, with some hope, thinks of the replevin bond, with "two responsible sureties," to an assignment of which he is entitled, and he enquires for the names of the sureties, and most commonly finds them hopelessly insolvent. He goes to the sheriff, and remonstrates with him on his accepting such persons as sureties, and in the first promptings of anger, resolves on an action against the sheriff ; but he finds that this experienced officer has made precisely such enquiries as to the solvency of the sureties, as, with a jury of persons, all known to the sheriff, and under some obligations to him, will completely exonerate this official from all responsibility for alleged carelessness. Litigation has only commenced instead of terminated, by a seizure of the tenant's goods and chattels, and the history of the distress closes at the end of some months, with the landlord having to pay his attorney a considerable bill of costs for his successful action, the tenant being ruined, and the rent, of course, lost.

Such is commonly the result of a distress and replevin, and when it is added, that the power of distress is sometimes exerted most oppressively ; that the occupying tenant, though he may have paid all rent due to his immediate landlord, is subject to this summary proceeding at the caprice of every landlord over him ; that it frequently produces violent breaches of the peace, and but seldom attains its object, it will be readily admitted that this remedy requires at least very extensive modifications and improvements. The nature of the proposed alterations I shall state, after having briefly noticed the landlord's other remedies, either to enforce payment of rent, or performance of other duties, or to recover possession of his land.

SECTION XIII.—*Present state of the Law as to the modes of recovering Rent otherwise than by Distress.*

One mode of recovering rent, which at times is really of service to the landlord, but which is more frequently used as a friendly device to screen the property of the tenant from his other creditors, is the right conferred by statute 9 Anne, chap. 8, secs. 1 and 2, on a landlord, to claim from an execution creditor of his tenant all arrears not exceeding one year's rent, before the goods of the tenant are removed from the premises ; but this not being one of the landlord's ordinary remedies, it will be sufficient thus briefly to notice it, before passing to his more frequent and well known remedy by action.

When the amount of rent due does not exceed £20, a landlord

may sue before the assistant barrister of the county where his tenant lives, and he not unfrequently avails himself of this cheap jurisdiction. But if the rent claimed exceeds £20, he must, if he proceeds by action at law, resort to the aid of the superior courts to enforce his demand. The mode of proceeding is as follows :—A writ issuing under the seal of the courts must be served on the tenant, commanding him within eight days after service thereof, to appear, e.g., in the Queen's Bench, by attorney. If, at the expiration of the eight days, the tenant does not appear, and lets an appearance be entered for him by the landlord, the latter can get judgment for his rent, and £5 costs : but if the tenant employs an attorney and appears to the action, the landlord must prepare for opposition, and his first step is to “file his declaration.”

The “declaration” is a statement necessarily prepared by counsel, when the claim for rent is founded on a lease, and when it is not an action between immediate parties, *i. e.*, between lessor and lessee, is a very prolix explanation of the landlord's claim or cause of action. It might really be set forth, for example, in some such manner as the following :—

“A. B., the plaintiff, claims from C. D., the defendant, £50 due to him from the said defendant, for one-half year's rent of the lands of Blackacre, due 1st November, 1850, and payable by lease, dated 1st May, 1840, of said lands, made by E. F. to G. H., for a term of 100 years still unexpired, at the rent of £100 per annum.”

This is the substance of the demand, but the “declaration” used is very different. It commences by stating, in legal phrase, what estate the landlord had in the lands at the time when the lease was made ; whether seized in fee, or in tail, for lives, &c. ; then shortly states the lease, the parties to it, term, rent, and covenants for payment, and then, in language of the strictest technicality, deduces the title of the present claimant from the original lessor, through every will, settlement, or other deed on which his title depends ; it avers concisely enough that the defendant is assignee of the tenant's interest, and then sets out the amount of rent in arrear, and the time when it accrued due.*

As the action of covenant for non-payment of rent must be brought in the name of the party “entitled to the legal estate in the reversion,”† it is often necessary for the person beneficially entitled to the rent, to sue in the name of some forgotten trustee of an old term to raise family charges, some mortgagee (better remembered) or personal representative, in whom it appears, after an expensive and troublesome investigation, that the legal estate in the reversion is vested, and this, although the nominal plaintiff

* Vide “declaration” in *Hozier v. Powell*, 3 Ir. L. R. 395, which is not an unusual example of length in such pleadings.

† So of other covenants.

has never interfered with the estate, and may not be conusant of the pending action. Indeed, it may in future happen, from the inconsiderate changes made in the laws relating to judgments, that a landlord may find that he is obliged to sue in the name of a judgment creditor, who has registered his judgment under the provisions of the stat. 13 and 14 Vict., chap. 29.

To the landlord's demand thus verbosely set forth, the tenant is allowed to make every kind of reply or "plea." He may plead to the same action, that the lease was never made, that the alleged lessor had not the particular title stated, that the defendant is not assignee, and that he paid his rent, and besides, deny every step of the present claimant's title, and he has nearly the same facility of embarrassing the plaintiff, by wanton litigation, as in a replevin suit, and with, not unfrequently, the same result; a nominal triumph to the landlord, attended with great loss to both him and the tenant. Indeed, every one practising at the bar frequently finds, that there is as much difficulty and expense in deducing the title necessary to be set out in a "declaration" in covenant by the assignee of the original lessor against the lessee, or his assignee, as would be incurred in making out a title to a purchaser; and this, where there is no doubt at all as to the party beneficially entitled to the rent, and whose receipt would be a good discharge to the tenant, but for which the party beneficially interested must sue in the name of some one in whom the law has technically vested the right of action, as "assignee of the reversion."

SECTION XIV.—*Difficulties in enforcing Landlord's and Tenant's obligations and duties.*

Difficulties similar to those detailed in the preceding section exist, where either landlord or tenant seeks the enforcement of any incidental duty, such as to keep the demised premises repaired, to use a due course of husbandry, to insure against fire, &c. In all these, and analogous cases arising from the contracts of the parties, where the breach of duty is not at once clearly measurable by a fixed sum, or matter of mere calculation, the only remedy afforded by law to the party, is an action,* slow in its progress, and most expensive and inefficient as a remedy. The proceedings by action are attended with the same minute formalities which I have before described, as characterising a "declaration" for rent; and the questions, whether a breach of covenant has been committed, and what is the amount of damages sufficient to compensate for the breach, must be submitted to a jury, and if their verdict is for a moderate sum; from £20 to £50, the costs will far exceed the damages. Indeed, if the action is for not keeping in repair, or

* Civil bill proceedings are only available when the damages do not exceed £20.

for using bad husbandry, the damages being calculated on the principle of the amount of "injury done to the reversion," (in other words, how much less in value the lands will be at the end of the lease from the breach of covenant complained of,) may be often merely nominal; this will heavily punish the tenant, but will really give no redress to the landlord. There is no mode afforded by law of summarily and specifically enforcing the performance of these and similar covenants, and it may be broadly stated, that in the ordinary class of tenancies, a landlord or tenant is without any *practical remedy* to enforce any of their rights, save the payment of rent, and that the modes of enforcing even this first duty are oppressive and inadequate.

The due performance of covenants is sometimes attempted to be secured by penal clauses in the leases, but every intendment is made against a landlord claiming damages for breach of a covenant thus secured. Penalties have been at all times odious: judges are astute in discountenancing them—juries indignant at attempted oppression, and the landlord in the end finds that his most strictly framed clauses are those most easily evaded in practice.

Suppose a tenant ploughs up ancient meadow land, cuts down trees, cuts turf for sale, or pulls down houses, unless in cases where the injury to buildings is malicious, and which is, by 9 Geo. IV., chap. 56, made a misdemeanour, an injunction from the Court of Chancery is the only remedy by which the landlord can prevent the continuance of the mischief; and those acquainted with proceedings in Chancery dread the remedy nearly as much as the grievance. This jurisdiction, however unfitted to pronounce on agricultural injuries or improvements, is sometimes resorted to, as the only remedy to prevent great injury to the property of the applicant, and in not a few cases is invoked to repress and discourage really enterprising and improving tenants, who have deviated from the strictly legal course, and committed "waste," and which the Court of Chancery will restrain, even when it admits that the "waste" has made the farm more valuable.*

SECTION XV.—*Present state of the Law, with regard to the Landlord's recovery of the possession of land.*

I shall now detail the remedies given by law for the recovery of the possession of demised lands, either on the expiration of the lease, or on the forfeiture justly caused by the non-payment of the reserved rent. The law would, indeed, be unjust, if the tenant could retain the land and yet not pay the rent which he contracted to pay annually. The contract for a lease has a double operation; it is an engagement that the tenant shall be at liberty

* For extreme cases, where the Court of Chancery interfered to prevent judicious expenditure and improvements, I would refer to Anon 1 Jones, 627 note. *White v. Walsh*, 1 Jones, 626. *Hunt v. Hodges*, 1 Ir., Jur. 33.

to occupy for a certain number of years, at a stipulated fixed rent ; but it also imports naturally that the right of occupation for any succeeding year shall be strictly dependent on the fulfilment of the tenant's engagement for the preceding year.

An ejectment to recover possession of premises overheld at the expiration of the tenancy, may be brought before the assistant barrister of the county, when the lands have been held at a rent not exceeding £50 per annum, or at the option of the landlord, may be brought in one of the superior courts, which in all cases have concurrent jurisdiction with inferior tribunals, which cannot be ousted except by express words of the statutes, creating inferior jurisdictions. The process to cause the tenants and persons interested to appear, which is essential to the landlord's title to remove the possession, must be served fifteen days before the commencement of the quarter sessions, and must be served upon every one in possession of the farm overheld, and requires the parties thus served, and all others interested in the premises, to appear at the time stated therein, and answer the plaintiff's demand for the recovery of the possession of the premises there described. At the appointed time, the plaintiff must be prepared to prove, not only his title to recover possession of the lands which have been overheld from him, but the compliance in the strictest and most literal manner, with every requisite of the statutes regulating civil bill ejectments ; and if, as recently happened in a case which professionally came under my notice, any one who has been served can prove that the name was mistaken, for example—Bridget for Mary ; or that some cottier or labourer on the farm was not duly served with the ejectment, the plaintiff will be defeated after all his expense and trouble fruitlessly incurred, and the defendant will be enabled to withhold the possession, by the rigid technicality necessary in this inferior court. The landlord's expenses are often as much as if he had brought the ejectment in the superior courts, and the chance of defeat from the minute technicalities which must be observed is so great, that many landlords prefer the dear, but more certain results of an ejectment in the Queen's Bench, to the casual event of a civil bill before the assistant barrister.

An appeal lies from the assistant barrister to the next assizes, before the going judge of assize, and this frequently tempts the tenant to further litigation, to prolong his unjust possession. There are several statutes, at least six, relating to civil bill ejectments, and all presenting features of difficulty, and few sessions or assizes pass without many questions arising, each, of course, attended with delay and expense to the landlord, on the construction of those statutes, on purely technical grounds, but never on a point relating to the only substantial question and just defence, whether the tenancy has been duly determined, and the plaintiff consequently entitled to the possession of the land withheld from him.

If the landlord proceeds in the superior courts, he must then serve persons in actual possession of the lands, or in receipt of, or claiming the rents, and he may in the cases provided for by the 1st Geo. IV., chap. 87, obtain security for costs from any one taking defence; but in ordinary cases he is subject to the fraud of a mere pauper occupier taking defence, and putting the landlord to the expense of a trial at the ensuing assizes, and in the meantime keeping him out of possession. This will be more fully explained in detailing the practice of ejectment for non-payment of rent in the superior courts.

To recover the costs of the ejectment and the intermediate profits, another action is necessary, called "trespass for mesne rates." In all these cases, the venue is local, *i.e.*, the action must be tried in the county where the lands lie, and it is apparent to what expense and delay this rule may lead, since the landlord can only try his action at the spring or summer assizes.

The most important class of ejectments are, perhaps, those brought for non-payment of rent. Such an ejectment can only be maintained where the lands are held under a lease by deed or writing, or under an article in writing, ascertaining the rent, although not containing an actual demise; and this action is not now maintainable where the tenancy is by parol without a written agreement.

Here, too, a limited jurisdiction is given to the several assistant barristers, in all cases, where lands are held at a rent not exceeding £50 per annum, and one year's rent is due; but all the technical difficulties I have just stated, as attendant on other ejectments by civil bill exist in this class, and with this additional embarrassment, that not only must all persons in possession be served with the civil bill, but also all other parties having or claiming any interest in the lands, created by a duly registered deed or instrument. Registry searches must, therefore, in prudence be made by the landlord, but yet the costs of those searches are not taxable against the tenant. The plaintiff must be ready at the sessions to prove his entire case: the lease, or article in writing under which the lands are held—that a full year's rent is due (of which, however, the lease is sufficient evidence, and the tenant should shew the rent is paid), and that the requisites of the statutes, as to service of this ejectment on all proper parties, have been strictly complied with. There is no provision for obtaining judgment by default; the plaintiff must, in all cases, be prepared with his witnesses to prove his right to recover; and often, after he has incurred this great expense and trouble, finds it useless, the case when called on being undefended. The plaintiff is also subject to be summoned from a distance to be examined by the defendant—a power often used for the mere purposes of annoyance.

If the lands have been deserted, and a half-year's rent is due, the assistant barristers have jurisdiction, whatever may be the

amount of rent at which the lands are held, but this species of ejectment is rare, and the jurisdiction not very useful, as here more strictness is required than in either of the other civil bill ejectments.

If the landlord gets judgment* in his favour in a civil bill ejectment for non-payment of rent, and goes into possession, the tenant has six months, within which he may redeem the lands from eviction, by paying the rent and costs. The tenant's mortgagee is allowed nine months for the like purpose, and during those six or nine months the landlord must try to make some profit of the farm, and he usually lets it for the period "subject to redemption." Few, of course, will take the premises on such terms, subject to be evicted at a moment's notice, however unlikely the event is to happen, and the lands are more frequently waste and unproductive during this period of redemption, humanely intended by the legislature to afford the tenant an opportunity of preventing his lease being avoided by payment of the rent and costs.

A landlord is entitled to bring an ejectment in the superior courts for non-payment of rent, if more than a half-year's rent is due, and no sufficient distress can be found on the demised premises ; and although a sufficient distress may be found, if one whole year's rent is due. So many difficulties are experienced in proceedings under the stat. 11 Anne, chap. 12, which regulates ejectments where more than a half-year's rent is due, and no sufficient distress is to be found, that the power is rarely resorted to, and it is not felt to be a safe or practical remedy, and the landlord generally proceeds under the provisions of the subsequent statutes.†

Suppose, then, a full year's rent to be due on the 29th September in any year, and the landlord is desirous of bringing an ejectment to recover the possession. His first step is to serve a summons in ejectment not only on the tenant who owes the rent, but on his assignee or mortgagee, and every one claiming any estate on the lands, or the receipt of the rents and profits, but on all persons, tenants, cottiers, labourers, or "squatters," in actual occupation of the farm, the lease of which is to be evicted. The number of persons whom it is necessary to serve with the summons in ejectment is usually very large ; and so great was frequently the number, and so much expense was incurred by it, that by statute 4 Geo. IV., chap. 89, it was provided that no attorney shall recover either against his client or the opposite party, any charge beyond the actual expenditure for serving

* Called a "decree."

† There are at least twelve subsequent statutes regulating this latter class, "ejectments for non-payment of rent," from 4th Geo. I, chap. 5, to 13th and 14th Vict., chap. 18.

more than 200 copies.* Expensive searches are usually made in the registry office, to ascertain the parties to whom the tenant may have assigned or mortgaged his interest, or other persons necessary to be served with the summons in ejectment in the manner prescribed by the statute 1 George IV., chapter 41, and the rules of the courts. If, by accident, regular service has not been effected, an application to the court to substitute service must be made, and this is, of course, productive of increased expense to the landlord. Affidavits† of the due service of all necessary parties having been made, and verified by an affidavit of the attorney for the landlord, and of the landlord himself, the court, if no one "takes a defence," permits the landlord, at the end of eight days, to get judgment, and issue execution, by which, after serving notices on the relieving officer of the poor law union where the lands are situate, he is formally entitled to take possession of the lands from the defaulting tenant.

But the course of an ejectment rarely runs thus smoothly; more frequently "defence is taken," and this not by the tenant owing the rent, who, perhaps, could pay it, and who alone could be sued for it, but by some miserable occupier of some half acre of the farm served with the summons, and who is put forward by the more solvent and deeply interested parties, and who can, at an expense of less than £1, take defence for all the premises sought to be evicted. There may be no doubt of the justice of the landlord's claim: the rent may admittedly be due, and yet he is prevented by this defence, taken by some one he never heard of until obliged to serve him with the ejectment, from trying the justice of his claims with this person until the ensuing spring assizes in February or March. The "venue being local," the landlord is in this action obliged, by this technicality prevailing in the law for centuries, to try in the county where the lands lie, whether the rent is due or not. At the assizes the landlord must employ one or more counsel, and be prepared for a vigorous contest, and have his witnesses in attendance; he may, perhaps, expect to find that in some way unknown to himself, the rent is paid: but the object of delay having been gained, the case is often undefended, and the landlord may nominally triumph.

It may happen, however, that the defendant appears at the trial, but it is always to contest the technical regularity of the details of the action *but not the merits*; to insist that a lodger merely was served with the ejectment, and not the occupier himself, or his wife, child, or servant; that the lessor had brought his ejectment in the Queen's Bench within twenty-one days after the gale day,

* The new rules of the judges have certainly not at all tended to diminish the number of services. In two out of three courts, the number of services and difficulties attending ejectments have been increased.

† Here again the new rules have added to the expense and difficulties.

usually called "days of grace;"* or in the Exchequer, that he has omitted to serve some assignee or mortgagee; or that "the reversion was severed," or the "condition suspended;"† applying the technical rules derived from feudal times, to the present relation of landlord and tenant. In only two cases within my legal experience has a tenant proved that he has paid his rent; and one ejectment I knew to be unsuccessful, because the tenant had unasked paid the quit rent, always paid by his landlord, and kept the receipt until produced at the trial to show he was entitled to a credit of some £3 out of £200.‡

Perhaps the landlord, on succeeding at the assizes, may shew the presiding judge that the defence was fraudulent, and that he should be allowed at once to take possession, thus wrongfully withheld from him; or, perhaps, he cannot satisfy a very scrupulous judge that there has been any dishonesty in the defence, and then the landlord must wait until the 20th April, to procure the order of the court called a *habere*, or writ to the sheriff, to put him into possession of his land. In no case, however, is the landlord completely reinstated in his rights. The tenant is afforded six months, and his mortgagee nine months, within which to petition the Court of Chancery for permission to redeem the lands, upon payment of the rent and costs, and this proceeding may lead to much litigation to ascertain the sum properly payable after all just credits: and, as an agreeable episode, an appeal to the House of Lords, to decide whether the landlord is obliged to receive the rent from some one, who thus tardily is anxious to pay it.§ During these six or nine months, the farm can only be let "subject to redemption," that is, as before stated, subject to the right, seldom indeed exerted, of the tenant to redeem the lands, by paying the arrears of rents, and the heavy costs of the ejectment: and few will take a farm on such a precarious tenure, and fewer still will give any considerable rent for it. This term, allowed for redemption, expires in October, and then the landlord, after two years rent being due, and having been put to expensive litigation, is fully vested by law with the right to consider the lease at an end. If no defence has been taken his position has been but slightly improved by avoiding the subsequent costs.

But the judgment in ejectment, however obtained, does not enable a landlord to issue execution for the rent in arrear; another action must be brought for that, and the landlord may have to bring two actions, one to recover his rent, another his land, and in both be the nominal victor, but really vanquished party. This

* Lessee Colgan v. Kelly, Trin. Term, 1843.

† As instances of such defences vide Jack d'Purcell v. Kirby. Furlong, L. and T. 1129. Lessee Delap v. Leonard, 5 Ir. L. R., 287.

‡ The new rules have done away with the "points" on the affidavit of service, the other points will flourish more vigorously than ever.

§ Geraghty v. Malone, 1 H. L. Cases 81.

state of the law has been aptly illustrated by supposing the case of a tradesman, e.g., a baker, who had contracted to supply an union workhouse with bread for seven years, on getting half-yearly payments, and who was compelled, on default of the guardians of the poor, to bring two actions, one to recover the debt, the other to be permitted to terminate his contract, and in this latter action, was compelled to serve all the paupers who had been eating his bread, and with any one of whom he ran the risk of further expensive proceedings being necessary, and after all, then to be disabled for six or nine months from making a new valid contract with another union.

I trust you will perceive the gross hardship of the present state of the law, which, in ordinary cases, lends its full effect to fraud, and its feeblest assistance to the ends of justice. But the present practice on this head or class of ejectments, may sometimes be made ancillary to the most grievous oppression of the occupying tenant, whom, ordinarily, it helps to commit frauds. Occupying tenants, who have punctually paid their rents to their immediate landlord, may find that he has neglected to pay his rent to the chief owner or head landlord, and the latter may bring his ejectment for, perhaps, many years' rent, evict the middleman's lease, and then sue the occupying tenants as mere trespassers, and recover from them, if solvent, the value of the lands, for the years during which they had punctually paid their own lessors. At present the eviction of a middleman's lease destroys all the interests created subsequent to it, and the occupiers may then be turned out of possession. The only protection afforded to this class, against such injustice, is by action against the immediate landlord by whose fraud or default the wrong has been permitted. The legislature, in one case, indeed, did intend to give the occupier some little remedy, and the 56th Geo. III., chap. 88, sec. 16, empowers any occupier, who has paid his immediate landlord, and has afterwards been distrained by the head or superior landlord, to sue the immediate landlord for damages, and for £10 per cent. in addition to the sum distrained for. But it has been well remarked,* that "this enactment is so ill designed for its express object, the protection of the tenant from undue distress, that it has seldom, if ever, been acted on." In truth, it is valuable only for the humane and just principles which it has recognised, but not enforced.

The ejectment statutes, it may be added, apply only to such persons as have what in law is termed "a reversion" in the land, expectant on the lease or article in writing. Thus, for instance, if a person who has a lease for fifty years, or is tenant for his own life, leases for forty-nine years, or for the life of another, he can bring an ejectment for non-payment of rent; if he leases for fifty-one years, or for his own life, he cannot, and his only remedy is

* Smyth's Landlord and Tenant, p. 498.

"a common law ejectment," which is so difficult and intricate that it is seldom attempted with success. This distinction was established by an appeal to the House of Lords, in the well-known case of *Pluck v. Diggs*,* on the clauses of the statutes giving "landlords" a short form of "avowry" in replevin; but the distinction established by that decision has since governed the courts in the construction of the word "landlords," in the ejectment clauses, and such persons only as have a "reversion" are deemed landlords entitled to the benefits of these statutes. If there is not a written lease, or an article in writing, ascertaining the rent, the landlord cannot avail himself of this statutable ejectment, and his only remedy is the tedious one of serving a notice to quit, and after it expires, bringing an "ejectment on the title."

Jurisdiction has been recently conferred on justices of the peace, to give possession in a summary way, of tenements in cities and market towns, when the tenancy has expired, and where the letting is for a period not greater than one month, and at a rent not exceeding £1 per month.

I have thus briefly described the several remedies given by the present laws to landlords, to enforce the payment of rent, or performance of the collateral contracts relating to the tenancy, and for getting possession of the land, when the conditions on which it is leased have not been performed; and I think it must have struck you that these laws are singularly inefficient; that they are apparently prompt, but really tardy in their operations; seemingly violent and inevitable, but in truth most lax and easy to be evaded; inadequate for the landlord, though occasionally oppressive to the tenant. I will now proceed to the remedies for those evils, which you will perceive, from the preceding section, to exist.

SECTION XVI—*Suggested alterations in the laws for better enforcing payment of rent, and other contracts incidental to the relation of landlord and tenant.*

In proceeding to suggest such alterations in the present system of procedure, as may at once prove simple, effectual, and inexpensive in their machinery, two principles should be constantly borne in mind, 1st. That mercantile freedom in *making* contracts between landlord and tenant will be useless, without mercantile punctuality in *observing* them. 2nd. That laws facilitating the evasion of his obligations, by a tenant, are really injurious to him. The first will, perhaps, be freely admitted, but the second is easily demonstrated, and it is, in fact, only applying to contracts between landlord and tenant, the economic principle which condemns usury laws; which shews that a money-lender exacts a higher rate of interest from a minor or expectant heir, than from one not spe-

* 5 Bligh, N. S. 31.

cially protected by law, and which, in short, is evidenced by the daily transactions of men who lend to government for $3\frac{1}{4}$ per cent interest, money for which they demand from private borrowers 5 or 6 per cent, and from minors and expectant heirs from twenty to fifty per cent. interest. Security and certainty diminish the per centage, as surely as an improved state of the law would lower rents. Good tenants are now compelled to pay higher rents as insurance for the bad; and the latter, too, while they can or will, also pay this increased premium of insurance for themselves. The law may protect a man too effectually from the performance of his contracts, and few would trust one whom the law could entirely protect from observing his engagements. Loans are not readily obtained by monarchs. To this cause may, I think, in a great measure be attributed the present anxiety to consolidate farms, and to take the management of estates into the immediate hands of the owner. Every tenant adds to the chances of expensive litigation and consequent loss; and men can scarcely avoid being "exterminators," when they are merely desirous of getting freed from persons too highly favoured by law in evading their engagements, and promoting unjust litigation.

Proceeding on the two principles just enunciated, I venture to recommend the abolition of the present law of distress,* and as a full compensation, substituting the following methods of summary procedure. 1st. To justices in towns and at petty sessions, jurisdiction to the extent of one whole year's rent should be given, where the tenant holds at a rent not exceeding £20 per annum, and they should be empowered to decide, on summons, all questions as to the rent due, and to issue their warrant either to the police or local bailiffs, to levy the amount, and to pay it to the landlord, with costs not exceeding £1. Their jurisdiction should be limited to the year's rent immediately preceding the summons, to prevent litigation, and to discourage the pernicious practice of allowing tenants to fall heavily into arrear.

In England, justices of the peace have, by 1 and 2 Vic. chap. 74, been entrusted with a jurisdiction in ejectment, where the premises are held at a rent not exceeding £20 per annum. In Ireland, their jurisdiction is limited to tenements in cities and market towns held for a period not greater than one month, and at a rent not more than £1; but there seems to me to be no valid reason against conferring the increased jurisdiction now proposed on justices of the peace in Ireland, more especially when it is recollected, that in Ireland justices at petty sessions generally have the assistance of a stipendiary magistrate, who is supposed to be appointed by government for his superior intelligence and sagacity, to fill this important office in the administration of the law.

In all cases, also, whatever might be the amount of the annual rent, justices should be empowered and required, on an affidavit being made, by the immediate landlord, of the tenant having removed his goods, or that he had sufficient cause to apprehend that

the tenant's goods will be fraudulently removed, to avoid a pending or threatened action at his landlord's suit, to issue their warrant to the police or local bailiffs, to seize the goods on the farm, and to demand security by the tenant and two sureties, conditioned to appear to a civil bill, or plead to the merits to an action in the superior courts, and pay the amount of rent recovered in such civil bill or action, and with costs, not exceeding in the whole, the appraised value of the goods thus seized. Two days' notice of sureties' names should be given to the landlord, or his agent, making the affidavit. Until the security was found, the goods should remain in the custody of the police, and the bail bond or security should, as at present in cases of distress, be assignable to the landlord. If no security was perfected within one week, the goods should be sold to satisfy the demand and costs, the landlord previously entering into a similar security to the tenant, to pay the damages in any action brought against him for maliciously and falsely making the affidavit, and procuring the seizure of his tenant's goods. The immediate landlord of the occupier should alone have the remedy, and he should not have it unless the lease under which the lands were held was in writing, duly signed by both parties, and stamped. Parol leases should be discouraged, as contrary to the policy of the laws, and as productive of fraud and litigation.

This, is indeed, but a slight, yet important modification of the 8 Geo. 1, ch. 12, sec. 8, and 7 and 8 Geo. 4, ch. 67, sec. 17, by which justices of the peace, are enabled *after* a rescue has been committed, to grant their warrant, authorising constables again to distrain. But it seems to me, that for the prevention of such breaches of the law as rescues, and as compensation for the right of distress as it now exists, the power should be given *before* the rescue is committed or fraud attempted; but only on the oath of the party that he has grounds to apprehend that unless such aid is afforded, the landlord may be defrauded by the removal of the tenant's goods. This is similar to the law regulating the arrest of parties about to quit the country, and will not be subject to abuse. In England, landlords can, by 11 Geo. 2, ch. 19, sec. 7, procure the assistance of constables and peace officers, and break open the doors of houses, to distrain goods fraudulently removed, and this assistance they can demand, on making oath before a justice of peace, that he has reasonable ground to suspect the goods are concealed in the house which he requires to enter. The proposed alterations are derived partly from those statutes, and the law regulating arrest of the person by mesne process. Justices of the peace in Ireland have also been, for a considerable time, entrusted with a summary jurisdiction to decide on rights more extensive than those proposed to be now given them, such as demands for tithe rent charge against quakers, &c., and there does not appear any sufficient reason why they might not be safely entrusted with a jurisdiction in all cases of disputes between landlord and tenant, when the rent of the holding does not exceed £20, and with a

mutual appeal on security being given, to the quarter sessions, or, if deemed preferable, to the judge of assizes.

There is little doubt that this modification of the present law of distress would be equally advantageous to both landlord and tenant. The useful portion of the landlords' present rights would be retained, and that part only abolished which enabled oppression to be committed, and fraud attempted, and often perpetrated with impunity. The temptation to fraud and acts of violent resistance to the law would be removed, and the principle introduced, that in all cases the power of the state should enforce rights recognized by the state, and that private parties should never be entrusted, without the most urgent necessity, with the right of asserting their civil claims without recourse to the ordinary tribunals of the country.

To the justices at petty sessions I would recommend that full jurisdiction should be given to determine all questions incidental to these limited tenancies, where the rent did not exceed £20 per annum, and they should be empowered to deliver possession of the farm to the landlord on the termination of the tenancy or forfeiture for nonpayment of rent, and with power to the tenant to redeem, also to decide as to repairs, proper cultivation, breaches of agreements against assignment or subletting, for not insuring* and with a mutual right of appeal to the landlord and tenant on giving security, to the quarter sessions, or judge of assize. The want of a cheap and summary jurisdiction to enforce specific performance, or to interfere by prohibitory orders, in comparatively trifling cases of ordinary occurrence between landlord and tenant, is much felt; and therefore it is I recommend that this summary jurisdiction, with a power to make orders, either in the nature of a decree for specific performance, or of an injunction, should be given to justices at petty sessions. Indeed, a very useful jurisdiction, in the nature of enforcing specific performance, has been long given to justices of the peace in Ireland, by 40 Geo. 3, ch. 71, which enables them to order the repair of bounds and fences; and the principle of this statute might, with great advantage, be extended to all such cases, where the remedy really wanted by the party is the specific performance of the contract, and the only remedy at present given by law is that most inappropriate and expensive one, an action for damages, incurred by non-performance of the duty.

In another class of breaches of duty on the part of the tenant, which amounted to bad husbandry, the "grafting" or burning land, a jurisdiction has, for nearly 100 years, been exercised by the justices of peace, and which was conferred on them by 3 G. 3, ch. 29, "because the remedy provided by the former acts had been found not only difficult to the lessor, but disadvantageous and very expensive to the lessees."† Indeed justices of the peace resident in the neighbourhood of the lands are peculiarly fitted to determine

* All these are put as examples merely, but they should have a *general* jurisdiction where the rent did not exceed £20, at the suit of either party.

† Recital of 3 G. 3, ch. 29.

the questions so frequently arising between landlords and tenants of small holdings, and their order either to perform specifically the contract, or refrain from committing a breach of it, enforced by distress and sale of the offender's goods on default, would prove a very beneficial jurisdiction.

A similar jurisdiction, where the rent of the holding is more than £20 but does not exceed £50 per annum, and with a similar mutual appeal to the judge of assize, I would suggest as expedient to be conferred on the assistant barristers of the counties, who should have power, though not sitting at quarter sessions, to make conditional or *ad interim* orders, in the nature of injunctions.

Such are the alterations which I venture to suggest are necessary in the law of distress, and the remedies for specific performance or observance of the rights and duties of landlord and tenant in small cases.

SECTION XVII.—*Alterations suggested in the law of Ejectment, Waste, &c.*

As to ejectments generally, where the rent exceeded £20 per annum, (for as to this class I have suggested that jurisdiction should be given to justices of peace,) it seems to me that all the statutes should be consolidated, with modifications; the leading principles to be,

1st. To extend the provisions of 1 G. 4, c. 87, entitling the landlord to obtain security for costs, to all cases of ejectment against over-holding tenants.

2nd. That the only parties to be served with the summons in any ejectment, should be those who at present might be served with a notice to quit, viz. the actual tenant of the landlord, and not all the occupiers, cottiers, &c., as before mentioned. In England the tenant in possession alone need be served, and he is bound by 11 G. 2, ch. 19, sec. 12, to give notice to his immediate landlord, of the ejectment proceedings. Thus the tenant is there trusted with the protection of his landlord's interest; here the rule should be to serve the actual tenant, and that he should give notice to all his tenants of the ejectment being brought. The present rule as to service of parties will, I think, have struck you to require this alteration.

3rd. That an ordinary action of ejectment should include also the action of "trespass for mesne rates." In theory, substantial damages may be recovered in ejectment, but in practice this is performed by the action of "trespass for mesne rates."

4th. That a judgment in ejectment, whether against an over-holding tenant, or for nonpayment of rent by a superior landlord, should not affect the rights of the "statutable tenants"* in actual

* Vid. sec. 5, p. 11 to 15.

occupation, on their attorning to him, at the rent, *bona fide* and without fine, reserved and payable to their immediate landlord.

5th. As to ejectments for nonpayment of rent, I must suggest that here too the first steps should be a general consolidation of the many statutes relating to the remedy, extending it to all contracts or leases under which land is actually occupied, whether the lessor has a reversion or not, or whether the contract is by parol or in writing.

6th. The principle of the 1st Geo 4, c. 87, should be also applied to ejectments for nonpayment of rent, and all landlords, on making a similar affidavit to that prescribed in that statute, and producing the lease or agreement under which the land is enjoyed, should be entitled to demand security for the accruing rent and costs from any party taking defence.

7th. The right of the landlord to recover in such ejectments should be always referred to the gale day preceding the bringing the ejectment; thus the intervening rights of lessees and others would be preserved, and not affected by relation to a former gale day long past, after which the landlord had neglected to pursue his remedy.

8th. That the venue in ejectment might at all times be laid in Dublin, subject to be altered by the court to the county where the lands lie, on security for rent and costs being given. At present, an action for covenant for non-payment of rent of lands in Kerry may be brought at any time in Dublin, an ejectment for non-payment of the same rent must be brought in Kerry. The one action can be tried, in term or out of it, at the Nisi Prius sittings in Dublin, which will now be nearly permanent; the other can only be tried at the Tralee Assizes, which take place twice a year.

9th. The judgment in ejectment for nonpayment of rent should include a judgment for the arrears due, and the sheriff should be empowered both to levy the rent and execute the habere.

10th. Only one month should be allowed after the execution of the habere for the tenant to redeem, but the mode of redemption should be by motion to the court where the ejectment was brought, for a reference to the officer to compute the rent and costs; and on payment of the sum found due into court, a restitution should at once be awarded. A landlord should in no case be enabled to claim in *an ejectment* more than the last year's rent, thus facilitating redemption, and punishing the landlord's previous negligence, but not depriving him of the remedy for the arrears by action.

11th. The only question to be tried in the ejectment should be the fact of one year's rent being due on the lease produced in evidence to the claimants or some of them, and all technicalities should be disregarded.

12th. The civil bill ejectment acts should also be consolidated, and provision should be made for obtaining judgment by default, by requiring the defendant to enter an appearance with the clerk of

the peace, and deposit a small sum as security for costs, on an affidavit similar to that provided by 1st Geo. 4th, c. 87, being sworn.

13. Some alterations should be made in other points relating to the law of landlord and tenant. Thus, the tenant's liability to rent, or for breaches of covenant, should cease, when once rent had been accepted from an assignee; and the liability of the latter should remain until, in like manner, the landlord had accepted rent from the new transferee; and the right to sue in covenants, or agreements relating to land, should in all cases pass to the party beneficially entitled to the performance of the covenants or other stipulations;* and concise modes of pleading should be provided, adopting the principle of the General Avowry Act, 25 Geo. 2, chap. 1, 2, sec. 4. Indeed, the new form made by the judges as to ejectments, which is an excellent model of concise pleading, might readily be adapted to actions of covenant, and similar actions between landlord and tenant. And lastly, such alterations in buildings, or in the user of the land as were really "improvements," not diminishing, but on the contrary enhancing the value of the farm, should in all cases be within the ordinary privileges of a tenant, unless restrained by *special* covenants. As the law at present stands, such improvements are, in the consideration of courts of equity, "*waste*," and the enterprising tenant may be restrained by injunction, at the instance of any of the parties who may be landlords over him, from the owner in fee to his immediate lessor.

SECTION XVIII.—*Conclusion.*

I have now, gentlemen, gone through the several topics on which I was requested to report, and submitted to you the result of my enquiries, and the general nature of the alterations necessary to effect the desirable objects you have had in view. I have purposely avoided entering into minute details of the proposed modifications of the existing laws, which might have obscured the leading features, and drawn attention to the mere technicalities of legislation, which unlearned persons, not habituated to the profession of the law, could not well understand or appreciate, besides extending this report to an undue length. To many, the alterations, when viewed separately, and not as an entire system, may seem to recommend great interference with the existing rights of property; to many, they may seem even ineffectual to meet the professed design to remove former evils, and to provide for future improvement. I may not have succeeded; indeed, I am not sanguine enough to hope that I have done so, in convincing landlords that the proposed alterations are, when they at all interfere with their present rights, just or expedient; and tenants may be

* This is imperfectly done or attempted by 8 and 9 Vict. c. 106, sec. 105.

dissatisfied at my not having recommended changing their temporary interests into clear and undisputed fee simple estates, freed from the obligation of paying rent or exerting industry ; but as I did not aim at such impracticable ends, I shall not feel disappointed at experiencing much censure, either for the freedom or inutility of the remedial legislative measures which I now venture to offer for your consideration. The present juncture is in many respects a most favourable one for extensive changes in the law of landlord and tenant. A new proprietary is being daily created, with enlightened feelings, fresh and unexhausted hopes and energies. Extensive emigration, and the severe affliction of many years' famine, have materially diminished the population, and have caused great alterations and abandonment of tenancies. Every facility which wise and liberal laws can create should be afforded to the new proprietors, to make their newly acquired territorial rights useful to the community, and under them, too, the occupying tenant should be placed in a situation where his industry may be encouraged and effectually protected.

I have the honor to remain,

Gentlemen,

Your obedient servant,

ROBERT LONGFIELD.