EVIDENCE

GIVEN BEFORE THE

Royal Commission on the Irish Land Act,

BY THE

VERY REV. DR. WALSH,

President, St. Patrick's College, Maynooth,

IN REFERENCE TO THE

EVICTION OF THE TRUSTEES OF THE COLLEGE FROM THE FARM OF LARAGHBRYAN.

WITH

A COPY OF THE LEINSTER LEASE

AND

A REPLY TO THE EVIDENCE

OF

CHARLES R. HAMILTON, ESQ.

AGENT TO HIS GRACE THE DUKE OF LEINSTER.

"We grant that it would be inexpedient to interfere with freedom of contract between landlord and tenant, if freedom of contract really existed: but freedom of contract, in the case of the majority of Irish tenants, large and small, does not really exist."—*Report of the Royal Commission on the Irish Land Act.*

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Walsh, William *941.85*

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INTRODUCTION.

THE Evidence set forth in the following pages was given before Lord Bessborough's Commission solely for the purpose of placing on public record a statement of the facts of one individual case of eviction—the eviction of the Irish Bishops, as Trustees of Maynooth College, from the College Farm of Laraghbryan, in consequence of their refusal to sanction, by their acceptance, the "Leinster Lease." In the course of my examination, however, various aspects of the Irish Land Question not unnaturally came under consideration. Thus it happens that my Evidence deals with many topics on which I should, of course, have shrunk from volunteering a statement of my opinions, but on which, when questioned by the Commissioners, I had no option but to state those opinions, crude and unformed as they necessarily were.

Bearing in mind the purpose for which my Evidence was primarily given, I cannot but think that the statement for which a place has thus been secured in the "Blue Book" of the Commissioners, should be made more generally accessible than it can possibly become if printed only in that necessarily ponderous volume. I have, therefore, thought it well to publish my Evidence in pamphlet form. In doing so I have, in compliance with more than one request, reprinted also some letters of mine regarding it, which were written a few months ago to the editor of one of our leading Irish newspapers.

I have also reprinted in an Appendix, as useful for purposes of reference, the document which has in this, as in so

many other cases given rise to so much contention and unpleasantness—the "Leinster Lease."

In fine, I have availed myself of the opportunity which this form of publication affords, to point out, in full detail, the manifold inaccuracy of the statements by which Mr. Hamilton, the Duke of Leinster's Agent, has undertaken to "rebut" a number of the statements which had been made by me. In every instance, as will be seen, I am in a position to meet Mr. Hamilton's formal and explicit contradictions of my Evidence by a reiteration, no less formal and explicit, of the statements in question. And in every instance where the nature of the case admitted of such a form of proof, I am, fortunately, in a position, by the production of documentary evidence of the most satisfactory kind, to sustain the rigorous accuracy of those statements which Mr. Hamilton has, with so much rashness, taken it upon himself to contradict.

I do not suppose that anyone will be found to object to the action of the Commissioners in affording to every landlord, or his agent, whose dealings with the tenantry on any estate formed the subject of unfavourable comment in the Evidence taken before them, the fullest opportunity of meeting, and of disproving, the statements that had thus been made. So convinced, indeed, was I that the adoption of such a course was plainly demanded in the interests of truth and justice that, being unaware of the intention of the Commissioners to adopt it generally, I made, as will be seen by reference to my Evidence, a special request that it should be adopted in the case of the Duke of Leinster, and of his agent, as regards the Evidence given by me.

In Question 35,533, I was asked by THE O'CONOR DON,

> Is there any other matter with regard to the Duke of Leinster that you wish to mention?

My answer was as follows:—

> I do not remember any other matter; but I wish to observe that I think it would be only fair to let the Duke see a copy of my evidence.

> Of course, I have endeavoured to state everything exactly as it occurred; but everyone is liable to mistakes. I should regret very much that my evidence should contain anything not strictly true; and the best safeguard will be to allow his Grace to see it when it is printed. I think Mr. Hamilton, the present agent—the son of the gentleman of whom I have spoken throughout—should also see it; and I would also ask the Commissioners, in case the Duke or Mr. Hamilton considers that I am inaccurate in any statement I have made, that I should have an opportunity of explaining it.

The opportunity applied for in the concluding words of this answer, the Commissioners probably did not find it consistent with their practice to afford. Allowance must, no doubt, be made for the exigencies of official routine. But I fail to see any satisfactory reason why some such opportunity was not afforded me by those who represent in this matter the interests of his Grace the Duke of Leinster. The Duke was aware, from a letter of mine, that in my anxiety to secure strict accuracy in the official record of this unhappy transaction, I had made the special request which I have just transcribed. From the same source it was known that I had adopted this course from a conviction that "in such cases the interests of truth or of fair play are not sufficiently secured by merely affording an opportunity of subsequently contradicting misstatements which have been allowed in the first instance to obtain currency." Whether we can regard, then, as altogether free from unfairness, the course subsequently adopted by Mr. Hamilton, of placing before the Commissioners, without any reference to me, a series of statements in open contradiction of mine, and of thus securing for those statements a place in the "Blue Book" without offering me an opportunity of pointing out their inaccuracy, is a question on which I will not express any opinion. On questions of such a nature there may, possibly, be room for difference of view. I prefer to confine my attention to the questions of fact involved in this unseemly conflict of testimony. With these I have dealt, I trust with sufficient clearness, on pages 60-77 of this pamphlet. And in now referring to the light which I have thus been enabled to throw upon one very im-

portant section of the "rebutting" case of the Irish landlords, as laid before the Royal Commissioners, I do not think it out of place to ask, whether the disclosure of the hollowness of this one substantial portion of that case does not, to a large extent, go to show that a great deal of the Evidence given in similar circumstances is open at least to very serious suspicions of inaccuracy even where it purports to state the plainest matters of fact?

W. J. W.

St. Patrick's College,
Maynooth,
18th April, 1881.

ROYAL COMMISSION ON IRISH LAND ACT.

Monday, 22nd November, 1880.

Present:—The Right Hon. the Earl of Bessborough, Chairman; the Right Hon. Baron Dowse, The O'Conor Don, and William Shaw, Esq., M.P.

The Very Rev. William J. Walsh, D.D., President of St. Patrick's College, Maynooth, examined.

The O'Conor Don.—You are President of the College of Maynooth?—Yes.

I believe you attend here chiefly in order to give evidence with respect to land held by the Trustees of the College?—Yes.

The trustees held some land from the Duke of Leinster?—They did.

They have lately been evicted?—Yes.

State the circumstances under which they held, and what caused the eviction?—I should mention that we had two holdings under the Duke of Leinster: one in perpetuity, on which the College is built—that holding, of course, we still occupy. The other holding was a farm—the farm of Laraghbryan—of which the trustees became tenants under the late Duke of Leinster in 1849. The eviction regarded the farm of Laraghbryan alone.

Did the trustees hold it for a term of years, or from year to year?—From year to year.

Had the rent been altered since 1849?—The proceedings which resulted in the eviction arose on a demand made in 1877, by Mr. Hamilton, the Duke's agent, for an increase of rent from £300 to £400. The rent, as it then stood at £300, had been fixed by the late Duke of Leinster in 1867. In that year there was a slight addition made to the farm; some few acres were transferred, from the holding in perpetuity, to the farm. The late Duke then wrote, sending a new proposal, to be signed by the trustees, for the lands of Laraghbryan. This letter was written on the 12th of November, 1867: it stated that the rent was to be "for the future" £300 a year.* I should observe that I am giving the Commissioners not merely the substance but the words of this letter. It was written, not by Mr. Trench, the then agent, but by the Duke himself. His Grace, indeed, always transacted

* This statement Mr. Hamilton, the Duke of Leinster's agent, has formally contradicted in his rebutting evidence given before the Royal Commissioners.
My comments on this contradiction will be found on pages 66 and 67.

his business with the College personally. He seemed to feel a pride in having the College on his estate. I am told that he never thought of regarding the relations that existed between him and our representatives as the ordinary business relations of landlord and tenant. And of course those who acted for the College were always anxious, as they should be, to meet His Grace's wishes as far as possible. Thus they consented to the transfer, as it was a matter he showed some anxiety for. He had some view that he wished to carry out—I suppose regarding the rearrangement of boundaries. At all events, he wished to have this transfer made, and they agreed to it.* It was then that he wrote, as I have said, to the Bursar, sending a new agreement to be signed, and saying that, after the transfer then made, the rent was to be, "for the future," £300 a year. We have always relied on these words. During the negotiations of the last few years the attention of the present Duke was called to them as showing that, at all events if his father's wishes were to be respected, the proposal, made within so short a time after His Grace's death, to raise the rent to £400 from £300—the figure at which he had fixed it "for the future" in 1867—should be withdrawn.

What had been the previous rent?—£295. The portion then transferred from one holding to the other was about 3½ acres. £100 was paid to the College for the transfer. The Commissioners may think it strange that those acting for the College should have consented to sacrifice for £100 a fee-farm tenure of 3½ acres of excellent land, which we had held at the low rent of 24*s.* per acre. But, of course, I need hardly say that such a contract never would have been entered into—anxious as our representatives were to gratify the Duke of Leinster—if it were contemplated as possible that within ten years of this friendly transaction we should be deprived of those lands by eviction. During the negotiations, the attention of the present Duke was specially called to the circumstances of the transfer, as plainly indicating the construction which, at least in equity, should be put upon the terms of our tenancy. But the appeal was fruitless.

MR. SHAW.—What was the acreage of the farm?—134 acres.

Including the few acres?—No; that made it 137 acres. When the agent wrote in 1867, demanding £3 per acre, thus raising the rent from £300 to £400 a year, we objected to that increase, and stated that the arrangement was only of ten years' standing. This point was put forward in reply to the reason given by Mr. Hamilton for the proposed increase of rent. His reason, indeed, was a rather strange one. He did not say that since we had become tenants the Duke had improved the land for us; or, indeed, that it had been improved at all; but merely that it was, as he put it, "high time" for an increase

* Mr. Hamilton has selected also my Evidence regarding this proceeding as the subject of another of his "rebutting" statements. See page 61.

to be made. Here is his letter. It is addressed to the Bursar, Dr. Farrelly, and it is very short:—

"MY DEAR SIR,—His Grace thinks it high time for some more rent being paid by the College, and I think the trustees cannot object to taking out a new agreement at £3 per acre, Irish.—Yours faithfully,

"CHARLES W. HAMILTON."

As it seemed, in the first place, that Mr. Hamilton thought the arrangement then existing had dated from the time when the farm was taken, in 1849, we pointed out that it was made only in 1867. It was also relied upon for the trustees that the increased value of the land arose from the large amount of money which the College had expended upon its permanent improvement—farm buildings had been erected, old fences removed, new fences put up, thorough drainage executed, and valuable manures applied, all at the expense of the College, relying with confidence on the late Duke's word as giving us all the security that any lease could afford. A reply to the effect I have stated was sent by the Bursar on behalf of the College. To that reply no answer was returned. But in the following September the trustees received a communication demanding £470 a year rent—a further increase of £70 over the increase demanded, as I have explained, in the preceding June—and enclosing, as the basis of this new demand,* a valuation made by a person described as a "Public Valuator." I think it right to state the circumstances of this valuation. This person, who is described by Mr. Hamilton as a public valuator, was a Mr. M'Cullagh. He was, as I am informed, known in his own neighbourhood, not as a public valuator, but as the Duke of Leinster's valuator. He was, in fact, a tenant of the Duke's, and is now a land steward in the county of Carlow. Well, this valuator came to the College, and, without communicating with anyone there, he went upon the farm and made his estimate, taking the land simply as it stood, and knowing nothing, of course, about the improvements which the trustees of the College had made.

MR. SHAW.—He was not accompanied by any person on your behalf?—No; he had no communication whatever with any person connected with the College; indeed, no one connected with the College had any idea that any valuation was being made, or was even in contemplation.† We did not even hear of it for a month afterwards, when Mr. Hamilton wrote to the Secretary of the Trustees, enclosing this Public Valuator's "Report." It was only to be expected that a person undertaking a valuation in this surreptitious way should not do the work very efficiently. We had, in fact, a very substantial, and, in one sense, a somewhat amusing proof of the inefficiency in this case; for he included in his valuation, and set forth in his "Report," which

* See foot-note, page 24; and my comments in reply to Mr. Hamilton's statements, pages 62-65.

† This statement also has been contradicted by Mr. Hamilton. See page 66.

was actually sent by Mr. Hamilton to the Trustees, some land which did not belong to the Laraghbryan holding at all—a plot containing eleven acres, which formed part of the perpetuity! In this "Report" he stated that the farm was thoroughly well cultivated, everything in first-class order; he refers to its having been drained; and describes it as by a long way the best farm he had ever been employed to value for the Duke; that it had excellent fences, and was in every way well managed. He then valued the land in the only way, in fact, that a valuation in such circumstances could be made. He had no means of knowing how far the improvements, on which he relied, as adding so materially to the actual value of the holding, represented the property of the Duke of Leinster, or the property of the College in improvements executed at its own expense. His "instructions," in fact, were to take no account of this—to value the land at its then "fair letting value." And he carried out his instructions, I dare say, to the best of his ability—at all events, in the only way open to him. He valued the land as it then stood. And taking it in this way, he valued it at £470. This extraordinary proceeding, then, was made the basis of the new demand* made in September, 1877. Taking the value of the land as set forth by his own valuator, ignoring our improvements—to which his attention had been called by the Bursar three months before—or rather ignoring the fact that they were ours—Mr. Hamilton now claimed a rent more than 50 per cent. over that which had been fixed "for the future"—as I have already explained to the Commissioners—by the late Duke of Leinster only ten years before. The correspondence went on. The Trustees were anxious, of course, to come to terms, and applied to the Duke to be allowed to hold the lands on the original terms; but, after some time, the document, which has been called "The Leinster Lease," was sent to us.† This lease the trustees refused to sign. I fear it would occupy too much time if I were to trouble the Commissioners with the details of the correspondence that took place.

THE O'CONOR DON.—Were there any important points in it?—I think there were.

If so, if there was anything peculiar in the correspondence, or any statements that are exceptional, it would be well to state them?—I have seen a paper recently printed by the agent of the Duke of Leinster, in which it is made to appear that the first mention of an increase of rent to £400 came from the Trustees themselves. And it would also seem from the same document, that the first reference to the Leinster Lease was made, not by the Duke's agent, but by our Trustees, and made, perhaps, rather gratuitously, and therefore

* This statement has been contradicted by Mr. Hamilton. See pages 62-65.

† For the full text of this document as sent for acceptance to our Trustees, see page 44.

discourteously. I think that in this respect the paper I refer to is not altogether fair. There are four or five letters omitted in that statement; and one of these is the letter in which the Leinster Lease was sent, which the trustees then refused to accept. With regard to the increased rent, they said that, of course, they were at the mercy of the Duke, and that if he insisted upon it, they had no option but to pay it; and they passed a resolution agreeing to pay an increased rent of £400, in compliance with Mr. Hamilton's letter of the preceding June, but declining to sign the lease. That letter also, of June, 1877, in which this rent of £400 had been demanded, is one of those suppressed, or perhaps I should rather say, not published,* in the printed paper to which I refer. It is not pleasant to have to speak of such incidents. But I must endeavour, as far as I can, to secure the action of our Trustees against anything like unfair statement, even when the unfairness is only a *suppressio veri*. It is true that the Trustees consented to pay an increased rent of £400 a year. But it is not true that they volunteered to do so, or that they regarded this sum as a fair rent. They consented to it, as they wished to retain the farm if possible, and they felt they were under compulsion in regard to the rent.

MR. SHAW.—They agreed to pay the increase, because they had no option but to pay it, or else go out?—Yes. The words used by their secretary, Archdeacon Lee, in his letter announcing their consent to pay this rent, were that they were "at the mercy of the Duke." It was a strong expression, but it was the truth.

Was there any arbitration in the fixing of that rent?—No; it was fixed on the basis of the valuation made, without any reference to us, by the gentleman who is called in the agent's letter, "the Public Valuator." We made inquiries afterwards to discover who he was, and we ascertained that he was himself a tenant of the Duke's, and that not very long after his valuation of our farm, he found himself, with the rent he had undertaken to pay, unable to continue his farming on the Duke's estate. He failed, and paid only a small dividend. This, then, is the first point I wish to call attention to regarding the correspondence—that in this printed paper it is made to appear that the Trustees freely offered £3 per acre, and that it was they who introduced the reference to the Leinster Lease. The fact is, that this rent was demanded by the agent, and the Trustees yielded to the demand stating that they had no option as they were "at the Duke's mercy:" as to the lease, they merely declined to sign it when it was sent to them. Before this an interview had taken place. The Vice-President of the College—Dr. M'Carthy, now the Bishop of Kerry—waited on his Grace, with Dr. Farrelly, the Bursar, in accordance with a resolution

* This statement also Mr. Hamilton designates as a "mistake" of mine. See, however, page 67.

of the Trustees.* The Trustees used all their influence to induce the Duke to allow them to continue on the same conditions of tenure as before. He refused. During the subsequent negotiations he agreed to reduce his demand for an increased rent to £400—assuming the accuracy of Mr. M'Cullagh's valuation as a starting point, but taking off, as he said, £70 a year, in consideration of the monies expended on the land by the College. This, in fact, was reviving in another form Mr. Hamilton's proposal of June, 1877, to which we had objected as virtually a confiscation of our improvements. But, then, the Trustees, as they were unwilling to have any unpleasantness with the Duke of Leinster, made no difficulty in yielding on this point.† With them it was not so much a question of money as a question of principle. They could yield on one point: they could not on the other. They could not consent to sign the Leinster Lease; and the Duke throughout insisted on the signing of the lease as an essential condition. I should state that the great reason why our Trustees were so unwilling to sign the lease was, that being all Roman Catholic bishops, they felt they would place themselves in a false position before the

* The following is the resolution referred to. It was passed by the Trustees in October, 1877, in answer to the demand for the increased rent of £470:—

"That the Vice-President and Bursar be commissioned to wait, on the part of the Trustees, upon the Duke of Leinster, to acknowledge receipt of his communication with reference to the increase of rent of Laraghbryan farm—to refer his Grace to the arrangement made only ten years ago by his father, which the Trustees then and ever since regarded as the final fixing of the rent—to represent the constant and costly improvements made on the farm by the Trustees, which have given to it its present increased value—and finally, to express a hope that his Grace will favour and gratify the Trustees by leaving his father's arrangements unaltered."

This was in October, 1877. The "Leinster Lease" had not at that time been sent to the Trustees. It came to us in the following March, when some indications had been given that if necessary the Trustees would probably to some extent yield to the demand of an increased rent.

† As I am sure that everyone who knows of the old relations that had so long subsisted between our College and the house of Leinster, should regret that the interurption in those relations could be ascribed to any indication of want of confidence on the part of the College, I think it right to transcribe the following letter. It was written to the Duke of Leinster by Archdeacon Lee, the Secretary to the Trustees, in October, 1878, announcing that the Trustees yielded to his Grace's proposal as regards the increase of rent from £300 to £400 a year. I have indicated the passages to which I would call special attention. It would be difficult, I think, for any tenants to give a more unmistakable proof of their unlimited confidence in their landlord:—

"BRAY, October 17, 1878.

"MY LORD DUKE,—I have been directed by the Trustees of Maynooth College to inform your Grace that the Trustees *have the same confidence in the Leinster family as they reposed in the late Duke;* and that they accept the offer of the Laraghbryan farm at £3 per Irish acre, as tenants from year to year, in the same way as they held it from year to year under the late Duke, WITHOUT ANY LEASE.

"I have the honour, &c., &c.,

"W. M. LEE, Sec."

country if they gave sanction by their signatures to such a lease as this. Of course the fact of their signing it would be quoted all over Ireland as an argument for calling on other people to do so. The endorsement states that it is a lease to be signed "by all tenants of arable lands whose holding is valued at £50 or upwards." Of course the Catholic bishops of Ireland could not give their sanction to such a document.

What was the result of the Trustees refusing to sign?—The ultimate result was eviction. The Trustees tried to keep on the negotiations as long as possible; they made various offers—they proposed to take a lease for thirty-one years, and to make no claim for agricultural improvements, if the Duke would permit them to remain without signing this Leinster Lease. The answer was that he would give the farm for thirty-one years, but that the lease must be signed—that it was done all over his estate. Then the Trustees proposed to hold the farm merely from year to year, thinking that in this way the signing of the lease would not be insisted upon. But the result was the same. I feel that it would weary the Commissioners if I were to bring them through the details of this correspondence. I will put it briefly. To proposal after proposal the same answer came back. In one letter the lease is mentioned as the agreement which it was "necessary" the representatives of the College should sign. In another it is described as the form of lease which is "invariably adopted on his Grace's estate," and in which he "will not make any alteration." Again, in another, as the agreement that "the Trustees of Maynooth College, or their secretary on their behalf, should sign, if they wish to hold the farm."* In another as "the form adopted on every part of his Grace's estate," so that if the Trustees refuse to sign it, "it will be necessary to serve a notice to quit." In another letter the agent is directed to express his Grace's "determination" not to give any other form of lease or agreement. And, in fine, we have a letter which may be regarded as an ultimatum, the final expression of his Grace's "determination," that "all his tenants" shall hold under the same agreement. Towards the end of the negotiation a document of a very important character was sent to us by the agent—important, as throwing light upon the nature of the lease.

Perhaps you had better read the document?—I fear it is too long. But I can give the substance of it. There are, indeed, two documents. One is a letter from the agent to the tenants on the estate, in explanation of the Leinster Lease: the other is the report of an interview between the agent and a number of the tenants, on the same subject. After the publication of the letter, ten or twelve of the

* I would call special attention to Mr. Hamilton's statement on this point in his "rebutting" evidence, as referred to in a foot-note, page 51.

tenants in the Maynooth district had asked for an interview with the agent, that he might explain to them the clauses of the Leinster Lease, which had, they said, been the subject of much misapprehension. The agent met them, and he afterwards published a statement of the interview. I have taken a note of the points I think it well to call attention to in this document.* I should first state that a copy of it was sent in 1879, by Mr. Hamilton, to the secretary of our Trustees, enclosed in a letter which I have here. The Trustees had passed a resolution suggesting that Dr. M'Cabe, the Archbishop of Dublin, and Dr. Butler, the Bishop of Limerick, should wait upon the Duke, and try if they could induce him to leave the Trustees in possession, upon the old terms as regards the form of agreement, the Trustees, however, paying the increased rent of £400 a year. In Mr. Hamilton's letter in reply, he states this, which is important—

"His Grace wishes to convey to you and to the Archbishop his *determination* not to give any lease or agreement for the lands of Laraghbryan, except on the form adopted on the whole of his estate, *so that he declines any discussion on that subject*, but is willing, *in other respects*, to consult the convenience and wishes of the Trustees. I think that there must be some misapprehension on the part of the Trustees as to the terms of the lease—

I call special attention to the following words :—

"Which was DRAWN TO MEET THE PROVISIONS OF THE LAND ACT OF 1870, by two of our present eminent judges, and approved of by the Prime Minister in his speech in the House of Commons, and adopted by the tenantry on an estate of over 68,000 acres."

With the permission of the Commissioners I shall make one or two observations with regard to the latter portion of this statement, a little farther on—I mean with regard to the "approval" of the lease by the Prime Minister, and its "adoption" by the tenants on the estate. Just now I wish merely to point out that it seems to have been taken for granted by Mr. Hamilton that because the lease was not actually "illegal," the Trustees of our College should not object to sign it.

* Mr. Hamilton curiously complains that I should have thus commented on the portions of the letter, to which I objected, without publishing the entire letter! The letter, in fact, as I stated to the Commissioners, is a document of very considerable length. There was absolutely no reason why I should have published it. He does not allege that I have misquoted or distorted in any way the passages I have selected for comment. He merely says :—"I don't think it quite fair to take extracts from it, and comment upon them, *without publishing the entire letter.*" I fail, indeed, to see the point of his observation, and, I may ask, if the matter were of any utility to his case, why did Mr. Hamilton not publish the letter himself? He had exactly the same facilities for doing so that I had. Indeed he had special facilities ; for he came before the Commissioners with full knowledge of my Evidence, and of course the Commissioners would not have refused to take from him a document, even of such a length as the letter in question, if the publication of it could have been of the slightest benefit to his case.

No doubt the Land Act of 1870, like every other Act of Parliament, is capable of being "met," that is to say, evaded and neutralized, to a large extent, by the ingenuity of lawyers.* The Trustees knew very well that this Leinster Lease was within the lines of the Act. They conjectured, although of course they did not actually know until it was thus candidly pointed out to them, that it had been drawn expressly for the purpose of "meeting" the Act in this way. It was precisely because they saw that it was framed so as to "meet" and thus, as far as possible, neutralise the Act, that they felt it impossible to have anything to do with it.

What Prime Minister does he refer to?—Mr. Gladstone; but it is plain that in speaking with "approval" of the lease, Mr. Gladstone was misled by imperfect or inaccurate information as to its terms, or as to the manner in which it had been forced upon the tenants.† I have spoken of another point in this letter of Mr. Hamilton's, to which I should wish to call attention. He says that the lease has been "adopted" by the tenantry of an estate of over 68,000 acres. But why? Because the tenantry have in reality no option in the matter. Of course the Trustees of Maynooth College could afford to refuse to sign the lease, and give up the farm, as they

* For my comments on the extraordinary criticism of Mr. Hamilton on this point, see page 68.

† On looking into "Hansard," I have found the "approval" in question. The date of Mr. Gladstone's statement is the 24th of February, 1873. It occurs in the form of an answer to a question put by Mr. M'Carthy Downing, in regard to the Leinster Lease. See "Hansard," vol. 214, p. 834.

For special reasons, which will be sufficiently obvious on reference to the "Hansard" report, I think it sufficient to confine myself to a mere enumeration of the points urged by Mr. Gladstone, relying, as he did, on the sufficiency of the information supplied to him.

1. His first defence was an *a priori* one. "*No one*," he said, "*could think* that the landlord in question [the late Duke of Leinster] had gone beyond either the letter or the spirit of the discretion which had been entrusted to him by the Act." On this I need only say that in the lifetime of the late Duke, thus referred to, the Leinster Lease unquestionably was not made an indispensable condition of tenure for "all his tenants," over his vast estate "of 60,000 acres." Mr. Hamilton has since informed our Trustees that it is so now.

2. Mr. Gladstone added that "he had been informed . . . that upon the extensive property in question there were only about *five or six cases* where any comment had been made, &c." As to the relevancy of the information on which Mr. Gladstone thus relied, I need only refer to my evidence as given above.

But I wish most explicitly to state that as regards this incident, I ascribe no blame whatever to Mr. Gladstone's informant, his Grace the present Duke of Leinster, who was then Marquis of Kildare. It is not difficult to suppose that, like Mr. Gladstone himself, he was misled as to the facts of the case by the information on which he relied. I do not see how he could have known, for instance, that the tenants in the Maynooth district were dissatisfied. But now the facts are becoming known to all. And in writing this note (Dec. 17, 1879), I am in a position to add that his Grace, when even partially informed as to the truth, has made to his tenants concessions by no means insignificant.

were not living by agriculture; but the ordinary tenants, who have no other means of living, are simply powerless in such a case.

They must either accept the lease, or go out?—Yes. They must accept the lease, and pay any rent his Grace chooses to demand; there is no proposal of arbitration or anything else: pay this rent, sign this lease, or give up the farm.—At the end of this negotiation Mr. Hamilton somehow inferred from some letter that was written, that the Trustees had given way as regards the signing of the lease, and that thus the only question at issue was the increase of rent. This was in 1879. In point of fact, the Trustees had given no reason whatever for any such supposition. The recent depression had then unmistakably set in, so that they felt themselves constrained to withdraw the consent they had previously given to pay the increased rent of £400. Our farm account, in fact, showed that so far from being in a position to undertake the payment of an increased rent, we should, be justified, on the contrary, in asking for a reduction. We had lost £300 by the farm in the preceding year. However, we did not ask for a reduction. We were content to go on as we were. This proposal was made to the Duke, with a special request from the Bishops to his Grace, that he would make no change in the tenancy. It was at this point that the agent somehow imagined that the Trustees had given way in regard to the lease. So he wrote to the secretary:—"As to the statement of value, I am ready to make any reasonable concession; if you write to say the one difficulty has been got over, I have no doubt we can remove the other."

THE O'CONOR DON.—He was ready to do anything with regard to the rent provided the Trustees signed the lease?—Yes. I should mention that the Trustees passed this resolution in 1879:—

"That having considered the present great depreciation of agricultural produce of every kind, the Trustees feel constrained to withdraw the offer made some time ago on their part to the Duke of Leinster, of an increased rent for the farm of Laraghbryan, but that they will, with his Grace's kind approval, continue to hold the farm as yearly tenants at the rent hitherto paid."

These then, I think, are the important points of the correspondence. First, the offer of the increased rent was not made freely by the Trustees, but was an acquiescence in a demand made by the Duke, they being, as they said, at the Duke's mercy. In the next place, the proposal of the lease came altogether from Mr. Hamilton: it was steadfastly resisted by the Trustees; but it was as steadfastly insisted on by Mr. Hamilton, even after he had practically abandoned the proposal to increase the rent, though this was the point on which alone, as I have explained to the Commissioners, he had at first relied, in 1877, when endeavouring to get the "new agreement," as he called it, that is to say, the Leinster Lease, signed by our Trustees.

MR. SHAW.—Do the tenants generally complain of the lease? They do.

We have not had many of them before us complaining, so that it looks on the surface as if they adopted it to a great extent?—I stated in my letter to the Commissioners that I was anxious to remove the impression which I believed to exist in their minds in reference to this matter. I had read a published report of the evidence given by the Rev. Mr. Patterson, from our neighbourhood, and some of the questions put to him by the Commissioners seemed to imply that they were under the impression that the tenants, as a rule, were satisfied with the Leinster Lease, and with the present management of the estate generally. No impression could be more erroneous.

BARON DOWSE.—In fact, the Commissioners knew nothing practically about the matter?—I don't think there are very many estates in Ireland on which there are more widespread complaints than on the Duke of Leinster's property.

Is that owing to increase of rents?—That and the Leinster Lease. But the people feel that they are completely at the mercy of the Duke, and they are unwilling to speak out. I should be slow, indeed, to say that all the complaints I hear made are well grounded. It must be recognised that the presumption is certainly not in favour of people who make their complaints only in this secret way, so that those affected by them have no opportunity of justifying themselves, or of removing the grounds of complaint. I have never been able to see that the tenants on the Duke of Leinster's property are more absolutely dependent on their landlord than tenants in other places who speak out manfully. I have frequently said to persons who have spoken to me, complaining in this way, that I do not think it fair to the Duke of Leinster to speak of him so. Up to this, so far as I know, nothing has occurred, at least in the Maynooth district, from which his Grace could form the faintest suspicion that his Maynooth tenants, as a body, were not fairly content with the management of the estate, and that, indeed, they had little sympathy with such practical protests as were made by Mr. Patterson, and by our Trustees. I have as yet seen no evidence that if the Duke was made aware, by those concerned, of the state of feeling that really exists, he would not make some substantial concessions in deference to it.* Indeed, I should not be surprised if his Grace really believed that the prevailing feeling was in favour of the present state of things. One of the documents I have quoted for the Commissioners—Mr. Hamilton's letter to the tenants in 1872—assumed, and, indeed, stated that this was so; that the opposi-

* As I have pointed out in a previous note, this conjecture was, in fact, very soon verified.

I must, however, complain that Mr. Hamilton, when making, in his evidence, statements in all respects similar to those contained in the above paragraph, spoke as if what I had stated was the very opposite of all this, and that it was necessary to contradict me, in defence of the Duke of Leinster's dealings with his tenantry, viewed even under this aspect.

tion to the lease was "got up" by persons not connected with the estate, and only "from political motives;" that the tenants had no sympathy with the movement; that they viewed it "with suspicion;" and that their own feeling was a feeling of "confidence" in the Duke. Now, the tenants never protested against the statements of this letter. On the contrary, the only action that I ever knew to be taken in regard to it was that some few of the larger tenants soon afterwards addressed Mr. Hamilton in a document that reads very like an expression of sympathy, and an endorsement of his views. It may be no harm to point out that, in regard to this matter of making their grievances known to the public, there is a remarkable difference between two classes of tenantry on the estate—those of the districts of Athy and of Maynooth. I was much struck by reading Mr. Charles Russell's letter the other day, contrasting in the same respect the condition of Kenmare and Cahirciveen. In one case, he says, the tenants spoke with bated breath, and dared not let their complaints be known; in the other, they spoke out openly and boldly; and he conjectures that probably the difference was accounted for by the fact that in this case they are living at a distance from the agent's eye. The agent lives, in fact, near Kenmare, and is rarely seen in the other district. There is the same difference between the Athy people and those of Maynooth. The Athy people have always spoken out manfully and boldly. The Maynooth people feel their grievances no less intensely; but they are much more reticent about expressing them openly. I have often heard persons trying to account for the difference. I think Mr. Russell's conjecture gives a clue to the explanation of it. At all events, leaving conjectures aside, and keeping to the facts that I know, I can state, in answer to the question that Mr. Shaw put a few moments ago, that very many of the Maynooth tenants—though no earthly power, I am sure, could induce them even to come before this Commission*—are deeply dissatisfied with the tenure under which they hold their land. This would be made very evident to you if the

* I should perhaps modify this statement, or rather explain that in making it I in no way intended to imply that the tenants could not have been induced to come before the Commissioners by an intimation that the Duke of Leinster wished them to do so.

Mr. Hamilton in his rebutting evidence informed the Commissioners that it was regarded as a matter for regret that the tenants had not come forward. "In point of fact," he says, "the Duke would be *very glad* now that more of his tenants came forward to state what they thought of the management of the estate than have actually done so. . . . *Unfortunately* you only have had evidence from persons who hold no land under the Duke, with the exception of Mr. Patterson."

It is indeed a matter for regret that such an intimation was not in some way conveyed to the tenants before the close of the Commission. Especially if accompanied by the announcement made by Mr. Hamilton, that "his Grace would not visit the consequences" upon them, they would, I am sure, have felt bound to make openly the complaints to which I have referred in my evidence above.

Commission had an authority like that which Election Commissioners have, of giving a bill of indemnity to witnesses, and of protecting them against any evil consequences from having given their evidence, or at least, of removing from their minds the idea that any evil consequences could befall them on this score. You could get a good deal of evidence from the Maynooth district if you had such a power as that. And I certainly believe that even as regards the interest of the Duke of Leinster himself, it would be far more satisfactory if the complaints that are made were made openly and above board.

Cannot the large tenants take care of themselves—are they not free agents?—They are free agents, in this sense, that they fully understand the nature of the contracts into which they enter; moreover, they have the absolute power of withholding their consent, and of refusing to enter into these contracts; and when they do enter into them, they do so having full command of all their faculties.* But at the

* I have thought it a matter of importance to dwell with some emphasis on the point thus stated.

The question of "freedom of contract," or its absence, is not unfrequently looked at from a totally different point of view, as if the "freedom" required for a contract were merely that with which man is endowed as "a free agent," and which writers on Ethics (and Moral Theology) set down as an essential condition of a responsible, or as it is technically called, a "human" act.

Cases may no doubt occur, as those writers take care to point out, in which the terror under the influence of which one of the contracting parties acts is such as to deprive him even of this freedom. But altogether apart from this, there is another sense in which freedom of contract is not unfrequently wanting, and in which the State, by its legislation, may consequently have a right to interfere between the contracting parties, for the protection of one of them against the exactions of the other.

The cases in which this right exist are chiefly, if not exclusively, those in which the contract is entered into, to obtain the possession of something, in the disposal of which, one of the contracting parties has absolutely, or to a certain extent, a monopoly. Thus, for instance, the owners of land through which a projected railway is to run, are not allowed to dictate their own terms for its sale to the company, but are obliged to sell it at a reasonable price, which will be fixed, if necessary, by State authority. And so, in turn, the company, having to a large extent secured, by the construction of their railway, a monopoly of the traffic along the line, are not allowed to dictate their own terms to the travelling public, but, to a certain extent, are obliged to convey passengers in accordance with a tariff fixed by Act of Parliament.

Yet it by no means follows that in *all* cases where a monopoly exists, and where "freedom of contract" is consequently wanting, the State should thus interfere between the contracting parties. A second condition is necessary for the existence of this right. The nature of the contract, and its circumstances, must be such that the public good requires that such right of interference should exist. This condition is plainly present in the two cases which I have just now put. It is easy, on the other hand, to call to mind cases in which it is altogether wanting. Thus, for instance, a certain quantity of land may be as necessary for the construction of a skating rink as for the construction of a railway. But inasmuch as one is a matter of public necessity, which the other is not, the State, in the one case, obliges the landowner to sell, and will not oblige him to sell in the other. So, too, as regards railway traffic. The monopoly enjoyed by the company is no less complete as regards the conveyance of

same time they know that the penalty of refusal is the loss of the farm in question; and suppose that one even of the large tenants loses his farm, what can he do? He loses his means of livelihood.

Then the large tenants, as much as the small, are at the mercy of the landlord?—Practically many of them are. We hear the argument sometimes used that there should be freedom of contract between landlord and tenant, and that all legislative interference with it is wrong in principle. But, as a matter of fact, freedom of contract, in any fair sense of the word, does not exist. It exists, of course, in the sense I have explained; but in no other.

The parties do not stand on an equality?—No.

The tenant knows what he is doing, and has the physical power to refuse. In that sense he is free?—Yes; but he knows that if he does not accept the terms imposed, he will be turned out, and he may then have no means of living. In all this, of course, the Commissioners will understand that I am not speaking of persons who can very well do without a particular farm. There are, I believe, persons who have a number of farms on hands, just as a business man in Dublin may have a number of establishments in various parts of the city. There is no fear, I am sure, of my being misunderstood as speaking of these. The whole drift of what I have been saying excludes them. I do not see why the State should interfere with the

passengers by special trains, than it is as regards the conveyance of passengers in the ordinary way; but no such exigency of the public good demands the intervention of the State for the regulation of prices in the case of those who wish for the special advantages of this mode of travelling. They, it is considered, may very fairly be called upon to pay for those advantages if they wish to enjoy them. And unless in a very extreme case, it would be difficult to conceive that the State could be called upon to interfere for their advantage, as it does interfere for the maintenance, on reasonable terms, of ordinary means of public transit. Certainly in no case could such interference be justified except on some grounds connected with the public good.

In a somewhat similar way—for I should, of course, be slow to represent the cases as strictly parallel—it is obvious that it by no means follows that the holders of very large farms in Ireland have a claim to protection as regards the terms of their contracts, merely on the ground that the landlord under whom they hold as tenants, enjoys practically a monopoly in the possession of the necessary lands. A difference of opinion may legitimately exist, as in fact a difference of opinion does exist, as to whether, in Ireland, the system of farming in question does, or does not, tend to the advancement of the public good. And plainly this point should be resolved in the affirmative before the interference of the State in such a case could be demanded or justified.

The question is obviously one of very vital interest, and as I feel that it lies altogether outside of my sphere of information and judgment, I have thought it right to add this explanatory note, as I should not be surprised if, in the absence of such an explanation, the statement in my evidence, to which it is appended, might be understood by some as equivalent to an expression of opinion upon it.

In connexion with this point, I would also refer to my answer to a subsequent question (page 36).

rights at present enjoyed by landlords, merely to enable persons who are already well to do, to become better off than they are. Indeed, it might be as well if there was not as much "freedom of contract" as there is, in favour of this system of multiplying holdings in the hands of the same tenant.

THE O'CONOR DON.—Did the Trustees bring a land claim?—Yes; we brought a claim for £1,300 for improvements. We were advised that we had no claim for disturbance, and we made none.

Why?—Because the tenancy was created before the Land Act.

Was it by lease?—It was a tenancy from year to year. The Trustees were advised that they had no claim for disturbance. This was on account of the valuation being over £100 a year. Our tenancy was regarded as having existed before the passing of the Land Act of 1870, and in such a case the claim does not exist. At all events this was the legal view on which we had to act. But I believe a point has recently been raised in Mr. Patterson's case by the Duke of Leinster's lawyers, which, if upheld, would go to show that we had a claim for disturbance. Mr. Patterson, to prove the insufficiency of the notice to quit that had been served on him, relied on a clause in his contract of tenancy, made in 1869. Then it was replied, for the Duke, that that contract was at an end—that it expired, in fact, in 1874, with the late Duke, who made it, and who had no power to make a yearly tenancy except for his own life. Thus, they said, Mr. Patterson really held under a new parol tenancy, created when the present Duke first recognised him as tenant by receiving rent from him, in 1874. If this were so, the same view, I dare say, should hold in our case. So that, at least in the view of the Duke's lawyers, it would seem we had a claim for disturbance. The point does not seem to have been adverted to on our side. We put in a claim for £1,300 for improvements, of which £400 was for buildings, and £900 for farm improvements—chiefly drainage, fencing, and so on.

How much did you get?—£1,000. They first offered £600 as a compromise,* which we refused. They then offered £800. It was then suggested that if they gave us £1,000 we should take it, for of course it was felt that if we went into Court on that point we might not be able to substantiate our claim in full. In fact everyone had such absolute confidence in the former Duke that no very extraordinary precautions were taken in keeping accounts of the precise dates and amounts of the monies expended on the farm. The claim could have been proved, I think; but we should have had to rely to a large extent on parol testimony. And thus, in a claim for £1,300, after deducting the necessary expenses of a suit, with perhaps one or

* In reference to Mr. Hamilton's statements on this point, in his "rebutting" evidence, see page 70.

two appeals, we could hardly have expected to come off better than we did. For my part, I must say that I did not care to have the case come into Court merely on a question of account. I tried in every possible way to get it into Court on the main question, before the eviction. For reasons with which I need not trouble the Commissioners I was not then in a position very fully to carry out my views in the matter. At all events, as the eviction was an accomplished fact, it was thought better to accept the offer of £1,000 in the circumstances, and the Trustees did so.

You settled it out of Court?—Yes. We tried to come into Court on the question of the service of the notice to quit, but our counsel advised that we had no *locus standi* on that point, that the notice was validly served. It would seem that the service was not valid if the Trustees, who form a corporate body, were technically the tenants. But it so happened that the contract of tenancy was not under their seal, but was merely signed by one of the officers of the College. Hence technically he was held to be the tenant. And the notice to quit had in fact been served on him. If, however, the point to which I have just referred, as raised in Mr. Patterson's case, had been adverted to in our case, it would apparently have been a nice legal question whether, even technically, theTrustees were not the tenants. For it was invariably from them that the Duke of Leinster received rent. The receipt was always in this form—"From the Trustees of Maynooth College."

Does any other point occur to you that you wish to explain?—Yes, there is another point on which I should wish to say a few words. It is suggested by the reference to the value of our improvements. It regards the principle adopted by the agent in fixing the increased rent to be demanded, taking the actual value of the land as it stood, without making allowance for the expenditure that had taken place upon it while in the hands of the tenant.* They speak of that as the

* It is well to mention that the rent was not thus fixed as the result of a mere oversight of the valuator. Mr. Hamilton's statement on the point is explicit. Writing to the Secretary to the Trustees in September, 1877, demanding the increased rent of £470 a year, he states the grounds on which the demand was made, as follows:—"His Grace instructed me to have a new agreement made, fixing the rent at THE PRESENT FAIR LETTING VALUE, and I have had a valuation made," &c. &c.

As I have explained to the Commissioners, the Bursar of the College had a few months before pointed out, as a decisive reason for objecting to the increase even to £400 a year, that the increased value of the land, as it then stood, was owing exclusively to the free expenditure of money by the College. "Farm buildings," the Bursar wrote, "have been erected, old fences removed, new fences constructed, waste portions reclaimed, extensive thorough drainage executed, and valuable manures liberally applied, *all at the expense of the College, without the contribution of a single shilling from the estate*, with perfect confidence, however—the late Duke's word having for us all the security that any lease could give."

This plain statement, unquestionable as to its facts, unanswerable as to its reasoning, was simply disregarded. I understand that it did not elicit even the

"fair letting value," and we have one letter from Mr. Hamilton, in which he expresses surprise that the Trustees should hesitate in paying a "fair rent" to the Duke. Thus they assumed the actual value of the farm to represent the "fair rent," whereas, of course, it comprised our property in the improvements as well as the Duke's property in the land. This is a point that seems to be altogether overlooked in the discussion that is now going on about this valuation—"Griffiths," as it is called—the tenement valuation of 1852. I should not regret if my evidence had the effect of calling attention to it.*

Do you consider the tenement valuation a guide to what the rent ought to be?—I do not think it is; and for this reason—that, to a certain extent, the valuation of 1852 was made in the same way in which Mr. M'Cullagh valued the College farm, merely taking the land as it stood at the time. Of course, under the law of this country, as it existed when the tenement valuation was made in 1852, the tenant was not regarded as having any property in improvements. That was not recognised until the Act of 1870; so that the valuation made for taxation purposes, which valued the land as it stood—including, of course, to a large extent, what is now acknowledged to be the tenants' property—seems to give no clue to what the rent ought to be. It may give some idea of what the rent ought to be for a tenant who had not made any improvements, or whose predecessor in title had not made them. But it could not possibly give any clue to what the rent ought to be in the case of those who had. The valuators had not the *data* before them for considering that point; and even if they had, they were not authorized to take it into consideration, except within certain very narrow limits. Their business was to value the property as it stood. All property, of course, should be liable to taxation. But it would be a hard case if a man who first pays taxes for property as his own should afterwards have to pay rent for it as if it were his landlord's.

What was the valuation of your farm?—£214; the quantity of land was 134 acres, Irish. In regard to this question of Griffith's, or the tenement, valuation, there is another point I should wish to mention. It is, I believe, a fact that, in Ireland, Griffith's valuation is accepted as the standard or measure of the income tax that a landlord is to pay.

formal courtesy of an acknowledgment of its receipt. But fresh instructions were issued to the agent, directing him to take, as the basis of his new demand, the actual PRESENT value of the land. Even this was ascertained in the extraordinary mode I have set forth in my evidence (page 11). And the new rent having been thus fixed at £470 a year, the Trustees were called upon to choose between surrendering the farm, and paying a full rent for the enjoyment of their own property in the improvements which had been effected solely by themselves "without the contribution of a single shilling from the estate." On this point see also pages 62-66.

* See pages 53 and 54.

In England, the landlord's income is estimated by the amount of rent which he actually receives, certain deductions being made for monies laid out on the improvement of the land. But in Ireland, any rent he can obtain from the tenants over the amount of Griffith's valuation is free from income tax altogether. When we paid £300 a year to the Duke of Leinster for the Laraghbryan farm, his Grace paid income tax only on £214 of this; and it would have been precisely the same if he had got the increased rent of £400 or £470. He should have had to pay income tax only on £214 as before. It may perhaps seem unreasonable for a tenant to say, "I will pay nothing beyond Griffith's valuation." But there is another way of looking at the question. It does not seem quite so unreasonable that people should grumble at having thus to pay a large amount of rent, of which the landlord, in the statement of his income, when he is contributing to the maintenance of the State, takes no account whatever.

Is your case the only one on the Duke's property in which the signing of the lease was successfully resisted?—The only one.* But as to being "successfully" resisted, I don't think it was very successful, seeing that it ended in our eviction.

I mean was yours the only case in which the tenant resisted to the end?—I think it was the only case. Of course I understood the sense in which you put the question just now. We were successful to this extent, that they did not succeed in obtaining the sanction of our bishops for the Leinster Lease.—I referred just now to a document which was sent to us, containing Mr. Hamilton's explanation of the lease. There are some points of importance in that document. There is a clause in the lease providing that if the rent (even half a year's gale) shall be in arrear for twenty-one days, the lease shall be at an end, and the tenant may be ejected. Here is Mr. Hamilton's explanation of that clause:—

"As to the twenty-one day clause, as it is called, viz., the one enabling the landlord to re-enter if the rent be not paid within twenty-one days, it has not in practice been found to work adversely to the tenant. It has been the custom of the estate for the tenants to receive a printed notice of the days when the agent attends in the different localities to receive the rents, in June and December; *and no tenant has been, or will be, required to pay his rent before these regular days.* The experience of the tenants may be appealed to in confirmation of the statement that ejectments for non-payment of rent are unknown on the estate.

* I have since been informed that the attempt to force the lease on the acceptance of a tenant was resisted also, and with the same result, in another instance—that of the Athy Board of Poor Law Guardians. It is ominously significant of the condition of the tenantry in general, that the only cases of "successful" resistance were those of public bodies, who, of course, were in a better position than ordinary tenants to assert the principle of "freedom of contract," where the assertion of that principle necessarily involved the loss of the holdings in question.

The lease expressly says that—

"If and whenever any part of the said rents shall be in arrear for twenty-one days (*whether the same shall have been legally demanded or not*) . . . then the said Lessor, his Executors, Administrators, or Assigns, may re-enter upon any part of the said premises in the name of the whole, *and thereupon this demise shall absolutely cease and determine.*"

BARON DOWSE.—Have you heard that there is a serious question of law whether, at the end of twenty-one days, if the half-year's rent were not paid within the time, the effect of that clause* was not to absolutely determine the lease?—Yes. I heard that an opinion to that effect was given by Mr. Butt, and that it was also held by other eminent legal authority—that the lease came to an end every half year, unless the rent was paid within the twenty-one days. It may be no harm to observe that the words of the clause are very precise. They define that the provision is to be understood of all cases of the rent remaining unpaid, or of "any part" of it remaining unpaid, for twenty-one days, "whether it has been legally demanded or not." Now, as a matter of fact, the rent is not demanded, "legally" or otherwise, within the time specified. So that, even independently of the legal authority I have referred to, it is easy to see that in these circumstances the Leinster Lease gives very little security to any tenant on the estate. And I dwell on this, for I think it throws light upon an aspect of the Land Question that is of great importance in Ireland. It is sometimes said that tenants ought to be satisfied when they have a good landlord to deal with. The present Duke of Leinster is, of course, not likely to enforce this clause against his tenants; and, so far as I know the present Marquis of Kildare, and the other members of his Grace's family, I am sure we are quite safe in saying that none of them will ever do so either. But the tenants have no security who may be the possessor of the property before that lease is at an end. And it puts a tenant in a false position to be required to sign such a lease he never can feel secure. I am certain our good landlord, the former Duke, would never have insisted upon the Trustees of the College signing this lease. From the character of the Duke of Leinster, the Trustees took it for granted that they had security of tenure, and on the faith of it they expended their money freely, and, as I have explained, they practically sacrificed 3½ acres of the College fee-farm holding. We have learned by very painful and costly experience how little that sort of security is worth. And in the same way, what security could any tenants have if they signed this lease, that some future possessor of the property might not enforce this stringent and unfair twenty-one days' clause?—There is another passage in Mr. Hamilton's explanation which calls for comment. The lease, as is

* For Mr. Hamilton's "rebutting" statements in reference to this clause, with my observations in reply, see pages 71-72.

well known, contains a clause by which the tenant binds himself not to claim any compensation under the Land Act. In reference to this Mr. Hamilton says:—

"Clause 19 is probably that against which the greatest objections have been made, as debarring the tenant from compensation for improvements, save those made with the written consent of the landlord. It is to be observed that this clause applies only to cases where the yearly valuation)is £50 or upwards, and in which the parties are at liberty to contract without reference to the Act. The effect of it MERELY is to render it necessary to have the landlord's consent to the execution of IMPROVEMENTS for which compensation is to be claimed."

That statement is not correct. Here is the clause:—

"Provided always, . . . that the said Lessee, his Executors, Administrators, or Assigns, . . shall not make ANY CLAIM for compensation in respect of DISTURBANCE or improvements (except improvements made with the written consent of the Lessor, his Heirs or Assigns), or for compensation IN ANY OTHER RESPECT, under ANY of the clauses or provisions of the 'Landlord and Tenant (Ireland) Act, 1870, save and except that portion of buildings set out in the Schedule hereto annexed, which have been erected by the Lessee."

The clause, it is plain, bars two claims: (1) the claim on the score of disturbance, as well as (2) the claim on the score of improvements. But Mr. Hamilton's explanation, you observe, omits all reference to that important point, compensation for disturbance; and not merely omits it, but does what is much more objectionable, for he expressly states that the effect of the clause is "merely" to debar the tenant from compensation for improvements, and, indeed, only for improvements made without the written consent of the landlord.* I would also state that throughout this "Explanation" Mr. Hamilton relies upon the previous practice of the estate, which, he says, was to have no improvements made without a written permission from the landlord. But, as the Commissioners may readily understand from what I stated at the beginning of my evidence, the late Duke had not dealt in that way with the College. No one connected with the College ever thought of getting a written permission from the Duke. He used to come and see the improvements as they were being made, and, I believe, always took a special interest in looking at them. We, had, of course, no "written" authority from him for the improvements that were made; and according to Mr. Hamilton's rule we should lose all chance of compensation.

MR. SHAW.—Are the improvements on the Leinster Estate generally made by the tenants or by the Duke?—They are to a large extent made by the tenants. I believe they are in some cases made by the Duke. But that suggests another point about which there is a good

* I observe that Mr. Hamilton, when giving evidence before the Commissioners, was very properly subjected to a sharp cross-examination on this point. His answers, it may be well to add, leave the matter exactly as it is here stated in my evidence.

deal of complaint. The improvements are very frequently made under the loan system, by money borrowed from the Board of Works, the loans being repayable in the form of terminable annuities; and, I am informed, the practice is to treat the annuity as an interminable one—in fact, as an addition to the rent—the rent thus increased becomes a bulk sum; no separate account is taken of the annuity, so that practically the rent is increased by that amount; and at the end of the thirty-five years, when the loans have been paid off, the tenants, for all that appears to the contrary, must still go on paying the amount to the Duke. I observe Mr. Charles Russell refers to this in one of his letters as being a practice on some of the estates in the south of Ireland. Acquainted as he is with the dealings of landlords in England, he naturally finds some difficulty in believing that there is not some misconception on the subject in the minds of the tenants. He suggests that there is, and he expresses a hope that it may prove to be so, and that his mentioning the matter in the public newspapers may have the effect of obtaining an assurance on the subject from the landlord. I have frequently heard it said in our neighbourhood that this practice certainly prevails on the Duke of Leinster's estate. Individual tenants have assured me that it is the case in regard to themselves. I was told this yesterday, for instance, by a tenant of a small plot of a few acres—I think one of the town parks.

Are the town park leases for long terms?—They are leases nominally from year to year, but practically only from month to month, for they are terminable at a month's notice at any time. I am told that except in some rare cases those tenants have not a copy of their lease. I heard of one person who applied for a copy, and was refused. The tenants are obliged to sign the documents, which are then taken away, and they don't know under what tenure they hold. I should say that, having seen from the Query Sheet of the Commissioners that information was sought for in regard to the tenure of town parks, I endeavoured within the last few days to procure a copy of the lease of the town parks of Maynooth, but I succeeded only with great difficulty.* At all events I am now in a position to state to the Commissioners substantially what the provisions are. Several persons are believed to have copies of them, who appear to be afraid to show them, lest the result might be injurious to them in the Duke's estate office. The rent of the town parks is, I believe, £4 per acre, and in every case there is an express covenant against having any portion of the land broken up in any way, so much so that the people who occupy these plots of ground are unable even to grow cabbage or

* My statements regarding the town park leases have been contradicted by Mr. Hamilton to an extent for which his contradiction of so many of my other statements had not prepared me. The facts here in question are matters of public notoriety in the town of Maynooth. See my comments on Mr. Hamilton's statements, page 76.

potatoes in them, and so they are obliged to get their supplies of potatoes and other vegetables from Celbridge, and from the tenants of other neighbouring landlords, who are free from such restrictions.

BARON DOWSE.—With reference to the town parks, are you aware of the proviso in section 15 of the Land Act of 1870, that "nothing herein contained shall prevent the tenant of any such holding," (and this includes "town parks,") "making any claim which he otherwise would be entitled to make under sections 4, 5, and 7, of this Act" —those are the sections which relate to improvements, and to money paid for tenant-right with the consent of the landlord. The tenant of a town park is therefore not debarred from claiming compensation for improvements—or if he has paid money for tenant-right, with the assent of the landlord?—I do not think, as a rule, there are any improvements on those lands.

He can get no compensation for disturbance?—No.

MR. SHAW.—There are no buildings on them, I suppose.—No; they are grass lands. The tenants are not permitted to use them for tillage, nor can they grow even vegetables—nothing of that sort is allowed. I do not think they consider it a hardship not to be allowed to grow corn; but they would like to be permitted to grow potatoes and other vegetables for the supply of themselves and of the town. I suppose I need hardly point out that, among other bad results of this restriction, it operates most injuriously in limiting the sources of employment available for the labouring population of the district. No less than 150 acres in the immediate vicinity of Maynooth are kept out of tillage in this way.* Not many years ago those very lands gave employment to a great many labourers. This reference to the

* In explanation of this absolute prohibition of tillage in the town parks of Maynooth, Mr. Hamilton, in his "rebutting" evidence, says :—

"The Duke does not wish persons who occupy town parks to cut them up, make gardens of them, or plough them, as was done in some instances.

"In *some* cases the occupants of town parks plough them several years in succession, and take crops of corn out of them, and run them out of heart entirely. *I have seen* some town parks which were a mass of white daisies and weeds; they have been ploughed year after year, and crops of corn taken out of them until they were entirely exhausted. The Duke wants to prevent that being done."

I cannot but express my surprise, as well as regret, that the Commissioners should have allowed the presentation of such a series of irrelevant observations without at least putting to Mr. Hamilton some questions which would have made it plain, on the face of the "Blue Book" report, that his reply left absolutely untouched the statement I had made, regarding this particular grievance of the town park holders, and practical prohibition of the employment by them of the labouring population of the district.

If the Duke of Leinster merely wanted to prevent the ruinous system of cultivation described by Mr. Hamilton, his Grace was indeed not very efficiently served by those to whom he confided the carrying out of his wishes. The officials of the estate are not so destitute of resources as to know of no other way of preventing such abuses

town parks, and the restriction as to cultivating them, reminds me of a point I had forgotten when speaking of Mr. M'Cullagh, the Duke's "Public Valuator," who valued our farm at £470. He put down one portion as a "town park," and valued it at £4 per acre. This was the plot of eleven acres that I spoke of, which he included in the valuation, although it does not belong to the farm at all, as it is a portion of the perpetuity holding. It happens to be about the poorest land we have, and yet he put the highest rent upon it.*—Perhaps this is the most convenient place for me to refer to a point I wish to mention regarding the standard of a fair rent. I believe political economists very generally define rent to be the excess of the value of the produce over the cost of production—including, of course, in the cost of production not merely the money outlay, of the tenant, but a suitable allowance for his maintenance, and the charges fairly incident to his station. Now, as to the first item—the value of the produce—of course an average of years should be taken, and I fear that in doing this, in Ireland, valuators do not sufficiently take into account the terrible failures of crops to which in this country we are periodically liable.† Take, for instance, the Registrar-General's Returns for the last few years, and the great falling off that took place, especially in the potato crop. According to the Returns of the Registrar, the total failure during the last three years amounted to one entire year's crop—or, in value, to £10,000,000. I believe if the rent were to be valued by reference to the outgoings and produce of the land in a season like last year's, taking into account the cost of labour and other charges, the result would be to allow very little rent, if any at all. Yet political economists very generally tell us that it is by taking those points into account that rent ought to be estimated. There is no doubt that

than the absolute prohibition of tillage. Why did they not adopt some of these in the case of the town parks?

The ordinary "Leinster Lease," in fact, contains clauses which would have fully attained this object. See clauses 15 and 16 (page 48), taken in connexion with clause 14.

It is not easy, indeed, to resist the conviction that Mr. Hamilton's first statement on the subject, which I have quoted at the beginning of this note, really sets forth the true explanation of the present state of affairs. The Duke "*does not wish* the holders of the town parks to till them or plough them."

* See my Evidence on this point, page 11; also my comments in reply to Mr. Hamilton, pages 62-65.

† It is interesting to observe the definition of a "fair rent," laid down in the new Land Bill of the Government.

"A fair rent means such a rent as, in the opinion of the court, after hearing the parties and considering all the circumstances of the case, holding, and district, a solvent tenant would undertake to pay *one year with another*."

A proviso is then added that "the court, in fixing such rent, *shall have regard to the tenant's interest in the holding*" in respect of his "right to compensation for improvements effected by the tenant or his predecessors in title," &c. See page 24.

political economy is a very unpopular science in Ireland, and it is not to be wondered at that its doctrines are in such bad odour, for, generally speaking, when quoted at all, they are quoted in a sense unfavourable to the interests of the poorer classes. If there is question in Parliament of a grant for the relief of distress in Ireland, we may expect to hear that political economy cannot sanction such an employment of public money. And so, too, when a grant is proposed in aid of some decaying branch of Irish industry. It is no harm, then, if the principles of this "dismal science," as Mr. Carlyle, I believe, called it, can be applied in favour of the tenant farmers, to give them the benefit of it.

The loss on the three years' crops was equal to £10,000,000?—Yes; the loss on the years 1877, 1878, and 1879, was over ten millions. It was equal to the total failure of 1846.

THE O'CONOR DON.—You mean that the produce of those three years was deficient to that extent, compared with the produce of the previous three years?—No. If I took it in that way, the result would be much more startling. I was taking the case as I find it put in one of Dr. Neilson Hancock's papers. He takes the average of the preceding six years, that is to say, the period 1871-1876. If we take, as you suggest, the three years, 1874-1876, we shall find in the three years 1877-1879, an aggregate falling off, or deficiency, of no less than £16,000,000. I did not think it fair to take three remarkably prosperous years, such as 1874-6, to draw the contrast from. I took, as Dr. Hancock does, the average of the six years from 1871 to 1876. The average yearly produce during those years amounted to nine millions and a quarter. The produce of the three years 1877, 1878, and 1879, taken together and compared with that average, shows an aggregate loss, on the three years, of ten millions and a quarter.

Was the same amount of land under potatoes in all those years?—No; there is a slight variation every year.

Then, unless you had the same amount of land under potatoes it would not follow that there was a loss to that extent?—I think you will find that the returns show there was not much difference in that respect—I mean, no such difference as would account for so notable a shortcoming in the produce. And we must remember that, taking all crops into account, the returns of last year show a total falling off, or deficiency, of £10,000,000, as compared with 1878. The aggregate value of all crops, in 1878, was £32,758,000. In 1879, it was only £22,743,000,

Is there any other matter with regard to the Duke of Leinster that you would wish to mention?—I do not remember any other matter; but I wish to observe that I think it would be only fair to let the Duke see a copy of my evidence. Of course I have endeavoured to state everything exactly as it occurred; but every one is liable to mistakes.

I should regret very much that my evidence should contain anything that is not strictly true; and the best safeguard will be to allow his Grace to see it when it is printed. I think Mr. Hamilton, the present agent, the son of the gentleman, now deceased, of whom I have spoken throughout, should also see it; and I would also ask the Commissioners, in case the Duke or Mr. Hamilton considers that I am inaccurate in any statement I have made, that I should have an opportunity of explaining it.

Have you any suggestions to make with regard to the general question of the land laws?—Not many. I cannot say I know very much about them; of course I share in the general interest that every one takes in the land question at present. So far as the general question is illustrated by the special case of the College and the Leinster Lease, there are two or three points to which I would call attention. One is with regard to a matter to which I have made some reference already—the "contracting" clause of the Land Act, the clause under which it is competent for a tenant, rated over £50, to "contract himself out" of the benefits of the Act. There was a motion made in the House of Commons during the discussion on the Act, to fix a limit to the persons entitled to compensation for disturbance, and to assign as a maximum the limit of £50, valuation, so that no one whose holding was valued above that figure should have a claim. That was supported on the ground that tenants over £50 valuation were at liberty to "contract themselves out" of the Act, and that this came to pretty much the same thing as absolutely fixing £50 as the maximum entitled to compensation. Mr. Gladstone opposed this motion. In doing so he spoke of the moral effect of the provision of the Bill as regards the tenants whose valuation is between £50 and £100. As he said, their number was small: there were then only 36,000 tenants in this category in all Ireland. But he spoke of them as an important class—the leaders of opinion among the tenantry. He therefore declined to strike them out of the Bill. He said the proposal to do so was "a most unfelicitously devised proposition." Therefore *he would not fix £50 as the limit* beyond which all tenants were to be excluded from compensation. Cases, he said, might arise where it would be desirable to exclude some tenants of this class, and the Act provided for such cases by allowing such persons to contract themselves out of the Act; but that was a very different thing from a general provision excluding all tenants above that valuation from the benefits of the Act. The same amendment that I have already mentioned was proposed again during the discussion in the Lords, fixing £50 as the limit; and it was carried on a division; but when the Bill came up on Report, Lord Bessborough* moved that the original figure £100, should

* It may be right to observe that the Lord Bessborough here referred to was not

be restored; and this was adopted by a large majority of the House of Lords, so that we have the distinct authority of Parliament that tenants whose valuation is between £50 and £100 were not absolutely to be excluded from the Act.* Now, I find, all through this explanation of Mr. Hamilton's he seems to assume that Parliament fixed £50 as the limit beyond which all tenants were excluded from the Act, and that because the Act *permits* tenants valued at over £50 to contract themselves out of the claim, the Duke is acting in conformity with the Act in *insisting on tenants making the contract in every case.* No doubt, in so doing, he is within the letter of the Act; but he certainly seems to be acting contrary to its spirit and intention. "By the Leinster Lease" (Mr. Hamilton says) "this class of tenantry (those whose holdings are rated under £50) have secured to them all the rights provided for by the Land Act." That statement is inaccurate: the Leinster Lease "secures" nothing: the Land Act secures certain benefits; but the Lease, on the contrary, takes away, so far as it can do, every benefit that the Land Act does not absolutely secure. "With respect to the holders of large farms—those over £50 valuation—they are, by the Act" he says, "specially provided for and enabled to contract independently with the landlord when they find it their interest to do so;" and afterwards, he says, that the Leinster Lease was drawn up by two Queen's counsel expressly "to meet the provisions of the Land Act of 1870." Mr. Hamilton, in his explanation, speaks of persons being "enabled" to contract, who "find it their interest to do so." This is a strange way of describing the actual state of affairs on the Leinster estate. I have already quoted for the Commissioners the letters in which Mr. Hamilton conveyed to our Trustees the announcement of the Duke of Leinster's "determination" that "all his tenants" should sign the lease, that his Grace "would make no alteration" in it, and that, if these terms were not agreed to, "it would be necessary to serve a notice to quit." This, then, is what he means by a tenant "finding it his interest" to contract himself out of the Act. The tenant has to choose between that and eviction. And, as Mr. Kavanagh said in his speech supporting the second reading of the Land Bill of

the chairman of the Royal Commission before which this evidence was given, but his brother, to whom the present Lord Bessborough has succeeded in the title.

* The provision on this subject in the new Land Bill is as follows:—

"A tenant of a holding or holdings valued under the Acts relating to the valuation of rateable property in Ireland *at an annual value of not less than* £150, shall be entitled by writing to contract himself out of any of the foregoing provisions of this Act.

"But, save as aforesaid, any provision contained in any lease, or contract of tenancy, or contract inconsistent with any of the foregoing provisions of this Act, shall be void."

1870, speaking of farmers whose valuation was below £100 a year:—

"A small farmer has hardly an alternative. If he does not get the land, he has to choose between it, the poorhouse, and America. He only does what others do when the demand exceeds the supply. I think, therefore, it is only right that the Legislature should step in and shield him from those who would take advantage of his necessities."

In the course of the debate in the Upper House, Lord Cairns said it really was not a question of practical importance, for that "no landlord in Ireland would think of evicting a tenant valued at over £50 who paid his rent," so that in point of fact they were "legislating for a case that never would arise."

Who said that?—Lord Cairns. He made that statement in the discussion on Lord Bessborough's motion. My reference to Hansard is vol. 202, page 1443. I merely quote it in reference to the case of the Leinster Lease, and the manner in which it was, what Mr. Hamilton called "adopted" by the tenantry. This, I think, shows how unsafe it is for the legislature to act upon any assumption as to what some landlords in Ireland are likely or not likely to do, if they are not prevented by Act of Parliament.

BARON DOWSE.—I gather that your opinion is that whatever rights are conferred upon the tenant by the Act of Parliament, he should be incapable of contracting himself out of them, no matter whether his valuation be large or small?—Yes. Either the Act of Parliament should not give them to him, or he should be incapable of contracting himself out of them. There is no use in giving them with one hand and taking them away with the other. As to "freedom of contract," I have already said what occurs to me on that point. An illustration of my meaning suggests itself to me. It is from a case introduced by Lord Macaulay in his speech on the Ten Hours' Bill for factory workers. In showing that in many, even ordinary, transactions we are not left to depend on "freedom of contract," he gives the example of a cab driver and his fare. "Freedom of contract" is an excellent principle where supply and demand are free also. But sometimes they are subject to close restrictions. In the supply of cabs for hire, there is a restriction, imposed under the authority of Parliament, for purposes of police. As Lord Macaulay puts it, "we do not suffer everybody who has a horse and cab to ply for passengers in the streets of London." And this being so, "we do not leave the fare to be determined by the supply and demand. We do not permit a driver to extort a guinea for going half a mile on a rainy day when there is no other vehicle on the stand." Now, I am sure Parliament would not listen to a proposal that only the less wealthy classes should have the benefit of this interference with the fare, so that if the driver could identify the hirer as a man known to be well-to-do, with a good balance to his credit at the bankers, he might

then extort a guinea if he liked. In other words, the sound principle seems to be, to look to the nature of the transaction in question, and see whether any motive connected with the public good requires that the terms of the contract should be regulated by law, and should not be left to be dictated at the discretion of the person who has command of the thing that is to be supplied.* In such a case it would seem that legislation should proceed irrespective of the pecuniary resources of the individual purchaser or hirer. Of course, as I said before, there is, as regards land tenure, a fundamental question whether certain classes of tenants might not be excluded from the benefits of the Act altogether. That is a fair question.† But if so, they should not be brought into the Act at all. As to others, regarding whom Parliament pronounces its "moral judgment" that they are to be included, I cannot see how justice is done by placing them in a position in which they may so easily be forced to exclude themselves.

They have the same "freedom of contract" that a hungry man has when he is asked half-a-crown for a twopenny loaf, and no other food to be had?—Precisely so. That is, taking the question as you put it. No doubt in ordinary circumstances such a case could not occur. Where the supply is not limited, if one baker demands half-a-crown, we have only to go to another shop. But an evicted tenant has no such resource. Here we find in the county of Kildare this lease enforced over a vast tract of country—68,000 acres, as the agent reminded our Trustees. Throughout that district land can be had on no other terms. So much for "freedom of contract." There is another statement of Mr. Hamilton's in this document, on which I should wish to make a remark. He says:—

"It is a complete misconception to suppose that it is intended to force the new leases indiscriminately on the tenants. It is only on the termination of a tenancy, by the expiration of the term, or when a new valuation is necessary, that it is intended, by means of the lease, to define accurately the terms of the new letting."

Of course at any time he chose he could say that a new valuation was necessary; he might raise the rent as soon as he saw that the tenant had improved his farm, as occurred in our case. It is a curious circumstance, that in the second edition of this "explanation," printed

* On this point see also the foot-note on pages 21 and 22.

† The following are some of the principal classes of holdings which are excluded from the main provisions regarding security of tenure in the new Land Bill:—

1. Holdings that are not *at least partly* agricultural or pastoral.
2. Demesne lands, and town-parks.
3. Holdings let to be used "wholly or mainly for the purpose of pasture," unless they are below £50 valuation.
4. All holdings let to be used "wholly or mainly for the purpose of pasture," the tenant of which does not "actually reside" on the same, unless such holding "adjoins," or "is ordinarily used with" the holding on which the tenant actually resides.

within the last year, they have left out a foot-note which was inserted in the original edition, referring to the small number of cases in which pressure had been put upon tenants to compel them to execute the Leinster Lease. That foot-note has been omitted in the second edition of Mr. Hamilton's letter of explanation—probably because it is now so obvious that the statements it contained were altogether misleading. In this foot-note Mr. Hamilton undertook to answer what he called the "misconception," that it was desired to "force" the new leases indiscriminately on the tenants, and the "allegations" that pressure had been put on the tenants to "compel" them to execute those leases.* The proof given is that ejectments had up to that date been served in "only" seven cases—these being cases, as he proceeds to point out, of a somewhat exceptional character. It is not to be wondered at that this foot-note should not have been reprinted. A strange light is thrown upon its statements by the occurrences of the subsequent five years. In 1878, the agent informed our Trustees that then no other form of lease than this existed on the estate, that his Grace was "determined" that no other form should exist, and that our choice lay between signing the lease, and receiving "a notice to quit."† Evidently the Leinster tenantry, who had in the meantime "adopted" the lease, had understood the lesson of the seven ejectments with which the proceedings had commenced in 1872. It was hardly fair to suppress this foot-note. There is also another somewhat significant omission. It is of a foot-note referring to Mr. Butt. This had reference to a legal opinion Mr. Butt had given explaining the operation of the lease. It seems he had condemned

* See note, page 17.

† I regret to see that even yet the indefensible nature of this interference with "freedom of contract" does not seem to be understood by those who are responsible for it.

In the course of Mr. Hamilton's "rebutting" evidence, the following question and answer occur:—

"THE O'CONOR DON.—Dr. Walsh states that with the Trustees it was a question not so much of money as of principle; that the main reason why they refused to sign the lease was not on account of the increased rent, but that they refused to sign what was known as the Leinster Lease, but that the Duke insisted that they should do so?

"MR. HAMILTON.—Quite so. The Duke did require all the tenants to sign the lease; and there were but three tenants on the estate who refused to do so."

I believe I am correct in stating that of the three "tenants," two were public bodies—our Trustees and the Guardians of the Athy Union (see foot-note, page 26)—who were of course in a position, very different from that of individual tenant-farmers, to make a practical protest against this system of forcing objectionable contracts on the acceptance of a tenant. The third, I suppose, was Mr. Patterson, whose successful resistance on legal grounds—owing to the very special form of agreement under which he holds his farm—has enabled him, so far, successfully, to withstand, by a decision of the Irish Court of Appeal, the eviction process attempted in his case by the Duke's agent.

the lease submitted to him, giving his opinion that it was an "unreasonable" one, as excluding a claim for improvements—meaning, I suppose, that the landlord could not plead the tender of it as a defence to a claim for disturbance under the Land Act.* The foot-note, then, suggested that,

"Mr. Butt's opinion was probably taken on a yearly agreement offered to a tenant who would have had no claim for compensation for improvements, as the Duke had recently had the buildings on the farm erected at his own expense, involving an outlay of about £400. No notice whatever seemed to have been taken of the provision for securing to the tenant the validity of his claim for compensation for past improvements; and *Mr. Butt, or any other lawyer, would naturally regard the exclusion of such claim as unreasonable.*"

The clause guarding the tenant's right to the value of his improvements is stated by Mr. Hamilton to have been drawn up by Messrs. Ormsby and May; but, as far as I can see, there is now no such clause in the lease at all. It certainly is not in the lease which was sent to us for acceptance.†

THE O'CONOR DON.—The Trustees, you say, agreed to pay the increased rent?—Yes; but they should sign the lease—that was really the difficulty. The Trustees would have consented to pay the increased rent if they could have got out of the necessity of signing the lease. The Land Act is repudiated in every way by the lease; and if the Trustees signed it, their action would practically be a declaration in favour of the Leinster Lease, and against the benefits conferred on the tenant by the Land Act of 1870. Mr. Hamilton several times said the Duke was willing to give compensation for "buildings;" but though we frequently referred to the "improvements," other than buildings, which

* While those pages are passing through the press I have obtained, through the kindness of a friend, a copy of Mr. Butt's "Opinion." I find that it verifies the conjecture in my evidence as stated above. The concluding sentences of the Opinion are as follows:—

"I am not sure that I can offer any further advice than that which is implied in the answers I have given to the several queries. I have fully explained the position in which each tenant will stand in the event of their signing the new lease." [In a preceding paragraph, Mr. Butt had said, "the lease clearly operates as a *surrender* by the tenant *of all previous interest in the land.*"]

"By refusing to sign it he will expose himself, I apprehend, to eviction in November, 1873, on a notice to quit, served next May. He may on that eviction claim the compensation given by the Land Act. It would be for the chairman, or the judge on appeal, to say what compensation each tenant should receive for disturbance, in addition to any for improvements. The latter will depend on the improvements that have been executed.

"As to that for disturbance, the Act gives power to the Court to refuse it, if the landlord is willing to permit the tenant to continue in possession on *reasonable* terms; but, in my judgment, it would be impossible for any Court executing the Land Act to hold the terms of the new lease to be reasonable.

"On the contrary, I think an eviction for a refusal to sign it would be one calling for the *highest rate* of compensation allowed by the Act."

† See the Lease, as printed on pages 44-50.

we had made on the farm, he refused to notice the suggestion.* In every letter, when speaking of compensation, he confines it to buildings. In the lease, in fact, there is a clause—

Provided always . . . that the said Lessee . . . shall not make ANY CLAIM for compensation in respect of DISTURBANCE or IMPROVEMENTS (except *improvements* made with the *written consent* of the Lessor, his heirs, or assigns), or for compensation IN ANY OTHER RESPECT, under ANY of the clauses or provisions of the "Landlord and Tenant (Ireland) Act, 1870," save and except that portion of BUILDINGS set out in the schedule hereto annexed, which has been ERECTED by the Lessee.

The exception is obviously confined to buildings. It is true the schedule annexed to the lease is entitled, "Schedule of Buildings erected or Permanent Improvements executed, &c.;" but in the lease itself there is no provision for any improvements except buildings. It looks as if in modifying the lease from the original form they forgot to alter the title of the schedule. At all events, they refused to give us any compensation except for "buildings," so that Mr. Butt's opinion as to the unreasonableness of the lease would seem to hold good after all. Our Trustees saw it was a lease they could not possibly sign.

BARON DOWSE.—It would be said that the Trustees of Maynooth College were in favour of the Leinster Lease, and that what was good enough for them was good enough for the other tenants?—Yes. In every possible way the Act is shut out. If our Trustees had given way it would have left vast numbers of tenant-farmers throughout Ireland helpless.

Is there any other point you wish to mention?—Yes. On looking over the debate on the Land Act in "Hansard," I find there was an amendment moved by Mr. Headlam, that in all cases a person holding under a lease should be excluded from compensation under the Act. That was resisted by Mr. Gladstone, on the ground that a lease might be only "for a year and a day," and that no one could suppose that the granting of such a lease should satisfy the Act.† Mr. Gladstone did not

* Of course it is unnecessary to make further reference to the statement set forth in my evidence at page 25, and in my reply to Mr. Hamilton, page 70.

† I do not think it out of place here to note that in the construction of the new Land Bill—unless, indeed, its provisions have been generally misunderstood by those most competent to interpret them—the point thus previously noticed by Mr. Gladstone seems to have been to some extent overlooked.

For it is the view of high legal authorities that—with a partial exception in favour of holdings subject to the Ulster, or some corresponding tenant-right custom—all holders of existing leases, or other tenancies, for even "a year and a day," or for any other term in any way "greater" than a mere "yearly" tenancy, are left *absolutely without protection*, under the provisions of the Bill as it stands.

Since the passing of the Land Act of 1870, leases of this description have been forced upon the acceptance of thousands of tenants throughout Ireland.

At first sight, indeed, it might seem—and, no doubt, it should necessarily seem to an unprofessional reader—that the "Leinster" Lease, as sent for the acceptance of our Trustees in 1878 was merely a "yearly" lease.

The words defining the term of the tenancy (see page 45) are as follows:—"To

seem to contemplate the possibility that a lease might be granted for even a shorter period—for a year, for half a year, or for a month. Thus the forms of lease on the Leinster estate furnish in another way an example of the mistakes likely to be made in supposing that proceedings not usual in England, may not occur in Ireland if not excluded by Act of Parliament. I observe that during the discussion that followed, Lord John Manners appealed to the House not to legislate for the Irish people as if they were "a set of incapable and helpless savages"—to give them some credit for possessing common sense and understanding; and he argued that, "to say that the Irish tenantry might be compelled to accept leases for a year and a day, or any such terms, was to impose on the credulity of the committee." This, then, is another instance of the danger of trusting to the theory of the existence of "freedom of contract." Lord J. Manners evidently believed in it as a reality. He seemed to think that it was out of the question to suppose that any tenant would accept a lease from year to year, and that it was an insult to the common sense of the House of Commons to ask it to legislate on such an assumption. Of course no tenant would accept such a lease if he were really free; but the Irish tenant is not free.—I think one of the Commissioners (Mr. Shaw) asked me a question as to the Duke of Leinster making improvements. I notice in the legal opinion given in 1872 by Messrs. Ormsby and May—the present Mr. Justice Ormsby and Chief Justice May—a clause bearing on this point. They say:—

"We have read and considered the several forms of lease prepared for the Duke of Leinster's estate. They appear to us to be according to the forms *in general use in England*, and very commonly adopted in Ireland, and to be just and equitable as between landlord and tenant."

All through this question of the Leinster Lease it has been argued that because such leases are considered fair in England and Scotland, where the improvements are made by the landlord, therefore they are fair in Ireland, where, as a rule, the improvements are made by the tenant.

hold *for one year* from the 25th of March, 1878, and *so on* from year to year, until this demise shall be determined at the end of the first or any subsequent year, by *either party* giving to the other *Six Calendar Months' notice* in writing."

In a work, however, of high legal reputation I find the following statement:—"A lease for one year certain, and '*so on*' from year to year, *a form often inadvertently adopted*, creates a tenancy for two years at the least." De Moleyn's *Landowners' and Agents' Practical Guide*, 7th Edition, page 71.

Does this statement apply to the form actually employed in the "Leinster" Lease? Or does the question whether tenants, who are *practically* but "yearly" tenants, holding under that and similar leases, are to be protected by the new Land Act, or to be abandoned to their fate, depend upon the possibility of drawing by legal ingenuity some nice technical distinction between legal phrases so closely resembling one another as these do?

In either case, the fact that it is possible even to raise such a question does not promise well for the issue of this last effort at a settlement of the Irish Land Question.

THE O'CONOR DON.—What has been done with the farm from which the Trustees were evicted?—Ours was the farm which was referred to by Mr. Patterson in his evidence. He mentioned that a person who gave evidence on behalf of the Duke in his case was rewarded by getting the next farm that became vacant—a farm from which the previous tenants had been evicted for not signing the Leinster Lease. Mr. Patterson spoke of him as the principal witness at the trial. His name, I believe, is Chandler.

Has he had to sign the Leinster Lease?—I suppose so.

What rent is he paying?—I do not know.

At all events the Trustees were evicted?—Yes. The eviction was carried out in due legal form by the officers of the Sheriff of Kildare. And the sole cause of the eviction was the refusal of our Trustees, as Irish bishops, to repudiate, as they believed, the benefits conferred on the Irish tenants in the Land Act of 1870, by signing the Leinster Lease.*—I find I have diverged from the question put to me regarding the land laws generally. I do not wish to say much on the general question, for as I have already told the Commissioners, I have very little knowledge on the subject. I should wish merely to repeat what I have stated in my written answer to the question in the query sheet—that so far as fixity of tenure, and, generally speaking, the programme now known as the three F's, can be made available as a remedy for the present unfortunate state of affairs, I should, of course, be glad to see it introduced; but at the same time I consider that without some very extensive legislation in another direction—that of peasant, or occupying, proprietorship—it will be impossible to make very satisfactory progress towards the settlement of the Land Question. Every step taken in this direction has the strong recommendation that it proceeds on lines already laid down in Acts of Parliament—the Bright Clauses of the Land Act of 1870, and the corresponding sections of the Church Act. With regard to the operation of these there is a question in the query sheet. Their operation in our neighbourhood has been scarcely appreciable. The Bright clauses of

* It can hardly be necessary for me to comment on the quibbling defence set up by Mr. Hamilton in reference to this point.

"We never," he says "asked *the Bishops* to affix their names to the Lease; we should have been quite satisfied if the Bursar, or Secretary of the College, had done so."

What was, in fact, demanded during the negotiation (see page 15) was, that the Lease should be signed by the Bishops, or by their Secretary, or other representative, "*on their behalf*." Surely Mr. Hamilton understands that when an objection exists, by which a person finds himself, as a matter of principle, debarred from doing a certain act, it is not regarded as an honourable or straightforward course to secure the advantages of the act in question by authorising another to do it "in his behalf."

the Land Act have not had any effect at all. With regard to the Church Act, there were two glebe lands in our neighbourhood, and in both cases the tenants were anxious to purchase them under the Church Act. I understand that in one case the purchase was all but completed, but that the Duke of Leinster, or his agent, in some way interfered; the result being that the tenant relinquished the idea of making the purchase.

Were they tenants of the Duke?—It was glebe land. In this first case, the gentleman I speak of—he is now dead—was a tenant of the Duke's; he was one of our most respected neighbours. The glebe land in this case was a very small plot—only an acre or two. But it is a place of some interest. There is an old round tower on the land. And it was only natural that the tenant, finding that a right of pre-emption was conferred on him by Act of Parliament, should be anxious to exercise the right.*

Did the Duke or anyone on his behalf exercise any influence over them except persuasion?—I think not. And I should add that I know nothing of the matter except from general hearsay.

What was the result in the second case?—The result was that the occupying tenant bought the land, and he is now a proprietor in fee, like the Duke himself. This was the only instance in our neighbourhood in which the purchase was complete. The tenant of the glebe land in this case was not, I believe, in any way a tenant of the Duke's.

Have you any other suggestions to offer?—I think not. There is the question—but it is too large a one for me to go into—of the laws of entail and settlement. I believe that to their operation we may ascribe a great deal more of the present unhappy state of the country than is generally supposed. I am glad to see that Mr. Charles Russell puts the question of their reform in the very first place in his list of suggested remedies. In the present state of those laws, it is plain†

* In explanation of the case here referred to, Mr. Hamilton has made a series of statements evidently referring to some different case. It is unnecessary, therefore, that I should enter upon any examination of them.

The statement in my Evidence is, especially in one obvious respect, so unmistakably defined as to the particular glebe land to which it refers, that not even the carelessness which throughout pervades Mr. Hamilton's evidence can suffice to account for his mistaking the case of which I spoke.

At all events, it is sufficient for me here to note that, as a matter of fact, he has left that case without a word of explanation.

† When offering this conjecture I did not expect so soon to see its accuracy confirmed by a personal statement of the Duke of Leinster himself.

In replying, on the 18th of last December, to a Memorial presented by the Athy tenantry, in application for a certain percentage of abatement of the rent then payable, his Grace, among other pleas in justification of his refusal to grant the entire demand thus pressed upon him, informed the deputation that he had himself felt the pressure of the times as well as they: his estate, he added, was encumbered to the amount of *nearly a quarter of a million sterling.*

Can it be expected that a "settlement" of the Irish Land question is possible while a code of land law is maintained, which renders the removal of this heavy debt a matter of absolute legal impossibility?

that landlords—and perhaps the Duke of Leinster among the number—must frequently find themselves so hampered by restrictions that they are unable to act as their own kindly wishes would lead them to do towards their tenantry. Again, in regard to the difficulty which is sometimes raised as to the money required for the establishment on a large scale of a system of occupying proprietors, I had intended referring the Commissioners to some instances to show that Parliament is rarely deterred by considerations of that sort, when the necessity of attaining an object has been shown. But it is unnecessary to go into that point. Mr. Bright seems to have disposed of the difficulty to a large extent in his speech at Birmingham last week. Parliament makes very little difficulty in meeting the expenses of a war costing twenty or thirty millions. Then we have the case of the emancipation of the slaves in the West Indian Islands; £20,000,000 were voted for that purpose by Parliament. So that I think the money difficulty is not likely to stand in the way of an efficient measure for the emancipation of the poor tenants in Ireland from the misery of their present condition.

I do not wish to close my evidence without saying that I feel much regret, personally, at finding it my duty to give the evidence I have done, as regards the Duke of Leinster. I have experienced a good deal of kindness from his Grace, and from members of his family; but I felt it due to the College, and to our Trustees, that the history of this transaction should be laid before the public and before Parliament, and that the circumstances should be made known in which the Trustees, as the O'Conor Don said, "successfully" resisted the pressure that was put upon them to obtain the sanction of their signature for the Leinster Lease.

THE LEINSTER LEASE.

LEASE PROPOSED BY HIS GRACE THE DUKE OF LEINSTER FOR ACCEPTANCE BY THE TRUSTEES OF MAYNOOTH COLLEGE.

[The clauses of the Lease, to which reference is made in the preceding pages, or in my reply to Mr. Hamilton, are the following :—

CLAUSE 5. This fixes the term of the tenancy for which the "Lease" was to hold valid in law. "For *one year* . . . and so on *from year to year*," terminable by a "*six months*' notice."

CLAUSE 6. This names the Rent, "Four hundred and seventy pounds sterling." (See page 64.)

CLAUSE 7. This assigns a heavy Penal Rent—an *additional £5 per acre*—for violation of the covenant regarding the course of husbandry specified in the Lease. (See page 30.)

CLAUSE 8. The statement of the Rent—"Four hundred and seventy pounds sterling"—is here repeated. (See page 64).

CLAUSES 11 to 16. These prescribe the course of husbandry, &c., to be pursued, and secure the Lessor's right to ascertain how far they are complied with. (See page 30.)

CLAUSE 17. This is the "21 days' clause." (See pages 26, 27.)

CLAUSE 18. This is the clause by which the tenants on the Leinster Estate have been deprived—so far as it was possible for legal ingenuity to devise means of doing so—of all claim to compensation, under the Land Act of 1870, whether in respect of disturbance, or in respect of improvements made without the *written* consent of the landlord. (See page 28.)

CLAUSE 19. This clause excludes the tenants from the benefit of the arrangement in the Land Act of 1870, regarding the payment of half the County or Grand Jury Cess.]

This Indenture, Made the day of one thousand eight hundred and seventy-

1.—Parties. eight, BETWEEN THE MOST NOBLE CHARLES WILLIAM DUKE OF LEINSTER, IN IRELAND, hereinafter called the Lessor, of the one part, and of hereinafter called the Lessee, of the other part,

2—Testatum. WITNESSETH, that in consideration of the Rents hereinafter reserved, and of the covenants by the Lessee

hereinafter contained, the Lessor DOTH hereby demise unto the Lessee, his Executors, Administrators, and Assigns,

ALL THAT PART OF THE LANDS OF Laraghbryan and Maynooth, situate in the Barony of North Salt, and County of Kildare, containing Two hundred and eighteen acres and seven perches, statute measure, equivalent to one hundred and thirty-four acres two roods and seventeen perches, late Irish Plantation Measure, or thereabouts, now in the occupation of The Trustees of Maynooth College, with the Dwelling-house, Farm Buildings, and Appurtenances thereto belonging, or usually enjoyed therewith, as more particularly described in the map hereunto annexed, 3—Parcels.

EXCEPT all mines, minerals, coals, quarries of marble, slate, limestone, or other stone, gravel, sand, and brick-earth, and all waters, watercourses, turf, turbary, and bogs, and all timber and other trees, woods, plantations, underwoods, and bog-timber, which during this demise shall be in or upon the said Premises, and reserving to the Lessor, his Heirs and Assigns, and all persons authorised by him or them, liberty of ingress, egress, and regress, with or without horses, carts, carriages, and all other necessary things, into and upon and from the said Premises, for all reasonable purposes, and particularly to dig, search for, and work such mines, minerals, coals, quarries, gravel, sand, and brick-earth as aforesaid, and to take and carry away the same, and the produce thereof, and also to cleanse, turn, and divert such waters and watercourses, and to alter and divert roads, and to fell, lop, prune, cut down, root up, and saw all or any of the timber and other trees, woods, plantations, underwoods, and bog-timber aforesaid, and to take and carry away the same, and also to plant all sorts of trees on the several banks, hedge-rows, borders, or waste places of the said Premises, and to view the condition thereof, and to bring materials thereon, and repair or renew the same, making to the Lessee, his Executors, Administrators or Assigns, reasonable compensation for all damage occasioned by the exercise of the liberties hereinbefore reserved, and also reserving to the said Lessor, his Heirs and Assigns, and all persons authorised by him or them, the exclusive right to shooting, sporting, fishing, and preserving game, hares, rabbits, wild-fowl and fish, upon or on the said premises, 4.—Exceptions.

TO HOLD unto the Lessee, his Executors, Administrators, and Assigns, for one year from the twenty-fifth 5.—Habendum

day of March, 1878, and so on from year to year, until this demise shall be determined at the end of the first or any subsequent year by either party giving to the other Six Calendar Months' previous notice in writing,

6.—Reddendum.

YIELDING AND PAYING therefor during this demise unto the said Lessor, his Heirs and Assigns, the Yearly Rent of Four hundred and Seventy pounds sterling, by equal half-yearly payments, on the twenty-fifth day of March and twenty-ninth day of September in every year, the first of such half-yearly payments to be made on the twenty-ninth day of September, one thousand eight hundred and seventy-eight, and the said Yearly Rent to be paid clear of all deductions whatsoever, save the Landlord's proportion of Poor's Rate,

7.—Reddendum of conditional Penal Rents for over-cropping, etc.

AND ALSO yielding and paying the additional Yearly Rent of Five Pounds sterling for every statute acre (and so on in proportion for any less quantity) of the Arable Land which shall be over-cropped or used contrary to the course of husbandry hereinafter mentioned; the said additional Yearly Rents respectively to be paid and to be recoverable at the times and in the manner at and in which the said Rent first hereinbefore reserved is herein made payable and recoverable, and the first half-yearly payment of the said several additional Yearly Rents respectively to be made on such of the said half-yearly days of payment hereinbefore mentioned as shall first happen after such over-cropping or using as aforesaid, and to continue during this demise, and all the said several Rents to be paid clear of all deductions whatsoever, save as aforesaid.

Covenants by the Lessee.

AND the said Lessee doth hereby for himself, his Heirs, Executors, and Administrators, covenant with the said Lessor, his Heirs and Assigns, that he the said Lessee, his Executors, Administrators, or Assigns, will pay the said reserved Yearly Rent of Four hundred and Seventy pounds sterling, and also the said additional Rents, in case the same shall become payable, at the times and in the manner hereinbefore appointed for payment thereof, clear of all deductions, save as aforesaid.

8.—To pay Rent.

9.—Against under-letting, etc.

AND ALSO that the said Lessee, his Executors, Administrators, or Assigns, will not alien, underlet, assign, or otherwise dispose of the said Premises, or any part thereof, or in any manner part with the possession of the same, or any part thereof, for the whole of the interest hereby created, or any part thereof, or let the same, or any part thereof, in con-acre, without the consent in writing of the

said Lessor, his Heirs or Assigns, or bequeath the same by will to more than one person, or divide the same in any manner among his or their children, or next of kin, or other persons.

10.—Not to erect any unsuitable Building.

AND ALSO that the said Lessee, his Executors, Administrators, or Assigns, will not build or erect, or cause to be built or erected, any dwelling-house, offices, or any other building whatever, on the said Premises, or any part thereof, which shall or may be unsuitable to the said Premises, or the due occupation thereof.

11.—To properly cultivate the Lands.

AND ALSO that the said Lessee, his Executors, Administrators, or Assigns, will, during the continuance of this demise, cultivate and manage the said Lands in a good and husbandlike manner, according to the true intent and meaning of these presents, and of the covenants, clauses, conditions, and agreements herein contained.

12.—To repair farm-houses, fences, etc.

AND ALSO will, during the continuance of this demise, at his and their expense, well and sufficiently repair, maintain, scour, cleanse, and keep in good repair and condition, the said dwelling-house, and all other the edifices and buildings on the said Premises, and all bridges, gates, palings, rails, and fences, watercourses, dykes, drains, ditches, and appurtenances to the same Premises belonging, and any new buildings which may be erected thereon, when, where, and as often as occasion shall require, and whether particularly required by notice or not, and will, at the end or sooner determination of this demise, yield and deliver up to the said Lessor, his Heirs or Assigns, the said Premises, together with all buildings or erections now standing thereon, also all such buildings and erections as shall, during the continuance of the said tenancy, be built or erected thereon, and also all such fixtures as are or shall be in any way fixed or fastened to the freehold of the said Premises, and as between Landlord and Tenant are usually considered the property of the Landlord, in such good and sufficient repair and order, and in all respects in such state and condition as shall be consistent with the due performance of the several covenants hereinbefore contained.

13.—To permit reversioner to enter to view condition of premises and repairs.

AND further, that it shall and may be lawful to and for the said Lessor, his Heirs and Assigns, or his or their Agent or Receiver, or such other person by him or them authorised so to do, as often as he or they shall think necessary or proper, at all convenient or proper times during this demise, to enter into and upon the said Premises, or any part thereof, there to view, examine, and see

the state and condition of the said Premises, and all buildings and improvements thereon, and all defects, decays, and want of repairs.

14.—Not to plough or use in tillage the Lands in Schedule.

AND ALSO that the Lessee, his Executors, Administrators or Assigns, will not during this demise plough, turn up, or convert into tillage any part of the Meadow or Pasture Lands as set out in the Map annexed, and marked as Nos. or dig or break up for brick-earth, or any other purpose whatever, any part of the said Premises, contrary to the agreements hereinbefore contained.

15.—Not to raise two succeeding crops of grain, etc.

AND ALSO will not sow or take off from the said Premises, or any part thereof, two cereal or other crops ripening their seeds, without an intervening green crop, properly manured, and sown in the Spring of the following year, except with the consent in writing of the said Lessor, his Heirs or Assigns.

16.—To spend on the premises dung, etc., raised and made thereon.

AND ALSO that the said Lessee, his Executors, Administrators, and Assigns, will during the continuance of this demise spend, use, spread, and employ, in a good husbandlike manner, all dung, muck, manure, and compost, in and upon the said Premises, for the improvement thereof, that shall or may be made or raised on the said Premises, and leave all the soil, dung, muck, manure, and compost not spent on the said Premises at the end or sooner determination of this demise, for the use of the said Lessor, his Heirs and Assigns, he or they paying or allowing reasonable compensation for the same.

17.—Provision for re-entry in case of breach of covenants.

PROVIDED ALWAYS, and these Presents are upon this express condition, that if and whenever any part of the said several Rents shall be in arrear for twenty-one days (whether the same shall have been legally demanded or not), or if and whenever the said Lessee, his Executors, Administrators, or Assigns, or any of them, shall sell, assign, alien, sublet, or otherwise dispose of, or let in conacre, the said Lands and Premises, or any part thereof, or in any manner part with the possession of the same, or any part thereof, without such consent in writing as aforesaid, or bequeath the same by will to more than one person, or in any manner divide or attempt to divide the same among his or their children, or next-of-kin, or other persons, or be adjudged bankrupt, or become an insolvent debtor or debtors, within the meaning of any Act of Parliament, or if and whenever the said Premises, or any part thereof, shall be taken and sold in execution by any

creditor of the Lessee, his Executors, Administrators, or Assigns, or if and whenever there shall be a breach of any of the covenants hereinbefore contained by the said Lessee, his Executors, Administrators or Assigns, then the said Lessor, his Heirs or Assigns, may re-enter upon any part of the said Premises in the name of the whole, and thereupon this demise shall absolutely cease and determine.

18.—Agreement not to claim compensation.

PROVIDED ALWAYS, and it is hereby expressly agreed, that the said Lessee, his Executors, Administrators, or Assigns, or any of them, shall not make any claim for compensation in respect of disturbance or improvements (except improvements made with the written consent of the Lessor, his Heirs or Assigns), or for compensation in any other respect, under any of the clauses or provisions of the "Landlord and Tenant (Ireland) Act, 1870," save and except that portion of the Buildings set out in the Schedule hereto annexed which has been erected by the Lessee. The annual value of the said demised Premises being, under the Acts relating to the valuation of rateable property in Ireland, the sum of Two Hundred and Seven Pounds sterling.

19.—Agreement to pay Grand Jury Cess.

AND it is hereby further declared and agreed that the said Lessee, his Executors, Administrators and Assigns, will duly during this demise duly pay the entire of the Grand Jury Cess to be assessed in respect of the said Premises, or any part thereof, and shall not be at liberty to make any deduction in relation thereto out of the said Rents, under the provisions of the "Landlord and Tenant (Ireland) Act, 1870," or otherwise howsoever.

20.—Liberty to Lessee to kill rabbits.

PROVIDED ALWAYS that it shall and may be lawful to and for the said Lessee, his Executors, Administrators and Assigns, to kill rabbits which may be found on said hereby demised Premises by means of nets, ferrets and digging out; but such leave and licence shall not extend to the shooting of same.

21.—Lessee to be allowed for unexhausted tillages, etc.

AND it is also agreed that the Lessee shall be allowed at the termination of this demise for unexhausted tillages and manures in as full a manner as in such case provided by said Act of 1870, except that no allowance shall be made for artificial manures used during the last two years unless with the written consent of the Lessor or his Agent.

IN WITNESS WHEREOF the said CHARLES WILLIAM DUKE OF LEINSTER hath hereunto subscribed

his Title of Honor and affixed his Seal, and the said Lessee hath hereunto set h Hand and affixed h Seal the Day and Year first herein written.

Signed, Sealed, and Delivered by the said Duke of Leinster, in the presence of

Signed, Sealed, and Delivered by the said Lessee, in the presence of

[At the close of the Lease a blank space is left, to which the following heading is prefixed :—]

SCHEDULE OF BUILDINGS

Erected or Permanent Improvements executed either by the Lessor or Lessee previous to the execution of this Indenture.

LETTERS

IN

REFERENCE TO THE PRECEDING EVIDENCE.

I.

TO THE EDITOR OF THE FREEMAN.

ST. PATRICK'S COLLEGE,

Maynooth, 24th Nov.

DEAR SIR,

I find that some of my friends, especially in this neighbourhood, have been somewhat disappointed at not finding in the *Freeman's Journal* of yesterday a report of the evidence which I gave before the Land Commission the day before. Although the proceedings of the Commission are, for the present, private, no shorthand writer being present except the official reporter of the Commission, I was aware, through the courtesy of the secretary, Sir George Young, that no objection exists to the publication by any witness of the evidence he has given. Yet as it had hitherto been the practice, at least as regards the evidence taken in Dublin and the report of the proceedings of the Commission in the Dublin newspapers, to publish merely the names of the witnesses examined, without any statement of the evidence they had given, I was unwilling to avail myself of the means of publication which I knew your columns would afford, and intended not to ask you to publish any statement of my evidence until it had been published in the Blue Book embodying the Report of the Commission.

I find, however, that the *Freeman's Journal* of Tuesday contains a very detailed statement of the evidence of the witness who was examined immediately before me. And especially as you have deemed his evidence of sufficient importance—as it unquestionably is—to call special attention to it in your editorial columns, I feel that to those who naturally take the deepest interest in the subjects on which my evidence was given, it would seem to some extent inexplicable if all reference to that evidence were to be withheld for the period that must necessarily elapse before the publication of the report of the Commissioners. At the same time I am fully conscious of the inconvenience that cannot fail to arise from the publication of a report of evidence representing merely a witness's recollection of the answers which he gave, coloured to a certain extent by his subsequent impressions of the answers that he ought to have given, and that probably he would have given if he had received previous notice of each question that was to be put to him. I will ask you, then, for the present to publish merely the following summary statement of the points which I put in evidence, and which I trust, when set forth in detail in the report of the Commission, may be of some use to the statesmen

on whom the responsible duty now lies of framing a code of just land laws for Ireland.

1. My evidence regarded chiefly, I may say almost exclusively, the case of this College and the eviction of its Trustees from their College farm of Laraghbryan, as an illustration of the peculiar view of landlord rights held by his Grace the present Duke of Leinster. The Trustees of Maynooth—that is to say, the four Archbishops and twelve of the Bishops of Ireland—were evicted from their holding because, though consenting under compulsion to pay the increased rent demanded, they could not consent to sign the form of agreement unhappily known as the "Leinster" Lease. I need not burden your columns with a detailed statement of the ingenious devices embodied in this document for practically abrogating, so far as it was possible for legal ingenuity to do so, the provisions, inadequate as they were, of the Land Act of 1870. But I think it right to state that I hold in my possession a letter from his Grace's agent to the secretary of the Maynooth Trustees, in which the agent expresses his opinion that there must be "some misapprehension on the part of the Trustees as to the terms of the lease," inasmuch as it was a strictly legal document, and had, in fact, been drawn by two Queen's counsel expressly "to meet the provisions of the Land Act of 1870." In my evidence, it is hardly necessary to add, I brought this noteworthy statement under the consideration of the Commissioners. I trust that the disclosure of it may lead the Ministry, who are now responsible for the government of this country, to see that it is a hopeless task to attempt to meet the difficulties of the great crisis that is before them if they confine themselves to the framing of a Land Act, the provisions of which can be "met," that is to say, evaded and neutralised, by the ingenuity of counsel, however learned in the law.

2. In the second place I felt called upon to put before the Commissioners, as also illustrated by the dealings in connection with the Leinster Lease, another main source of the now admitted failure of the Land Act of 1870. That Act went upon the supposition that tenants of holdings valued above £50 a year enjoy "freedom of contract," and should therefore be left without legal protection. There is an obvious fallacy in this. "Freedom of contract," no doubt, exists to this extent—that the persons in question are rational beings, with full liberty of action, and, it may be conceded, notwithstanding the difficulties of their position, in the undisturbed possession of their faculties, so that they fully comprehend the nature of the contract into which they are called upon to enter. But in any other sense "freedom of contract" is for them an empty name. The possession of a farm may be for such a tenant a *sine qua non* of decent subsistence. It may even be his only means of livelihood outside the walls of a workhouse. But on the Duke of Leinster's estate of 68,000 acres he cannot obtain a farm of any size, however small, at any rent, however exorbitant, without signing the "Leinster" Lease. Is it any wonder that an Act should to so large an extent have broken down which went upon the theory that in such cases "freedom of contract" existed in any sense worthy of the name? Our Trustees exercised their "freedom" by steadfastly refusing, as in the interest of the tenant farmers of Ireland they were surely bound to refuse, to sanction by their signature, the "Leinster" Lease. The result was eviction. Let us hope that the official statement of this transaction, which will soon be placed before Parliament in the report of the Commission, will have the effect of convincing the Legislature that a "freedom of contract" which can be exercised only under a penalty that for a tenant farmer means absolute ruin, is not again to be relied upon as a plea for the insertion in a Land Act of clauses enabling any landlord in Ireland to coerce his tenants into a forfeiture of the rights to which Parliament considers them entitled.

3. I did not fail to explain to the Commission that the proceedings which resulted in the eviction of the Trustees had their origin in a demand made in 1877 for an increase of rent—the rent demanded being determined merely by a valuation of the land as it then stood. Until after repeated pleadings, as if mercy, and not justice, were in question, no allowance was made for the numerous and costly improvements which had been effected by the College during the lifetime of the late Duke, and in implicit reliance on the good faith of the House of Leinster. The extraordinary and all but incredible circumstances of this valuation are detailed in my evidence. I shall merely mention here that the hesitation of the College authorities to accede to a demand manifestly unjustifiable was described by the Duke's agent as an unwillingness on the part of the bishops to pay a "fair rent" to the landlord!

4. No better illustration could be found than is thus presented of the truth of a statement which is very commonly put forward, but in an entirely opposite sense, by many opponents of the tenants' claims, —that "Griffith's," that is to say, the Government valuation, is not a fair standard for rent. Mr. Murrough O'Brien, in an interesting paper in the *Journal of the Statistical Society of Ireland* (July, 1878), lays down this thesis:—"The public valuation is no guide to the fair rent between landlord and tenant; and this should be expressly stated in any future Valuation Act." And why? Is it because the valuation is, as we are so frequently informed, 25 or 30 per cent. below the fair value of the land? Not at all. But for a very different reason, which, strange to say, obvious as it is, seems altogether to have escaped the attention of many who should be deeply interested in giving prominence to it. The reason is thus stated by Dr. Neilson Hancock. In 1852, when the valuation was made, the tenant's claim to his property

at all events in the improvements effected by him, which has since been recognised by the Land Act of 1870, was ignored. The valuation, then, was made—fairly enough for the purposes for which it was intended, as a basis of taxation—by taking the value of the land as it stood. But, as the Act of 1870 has since declared, the property thus valued was in reality the property of two distinct owners. There was the property of the tenant in his improvements, as well as the property of the landlord in the soil. Each was a valuable property, and was therefore no doubt justly liable to taxation. But taxation is one thing, and rent is another. And as Dr. Hancock puts it, in his paper in the *Fortnightly Review*, of last January—

> The Irish tenement or Government valuation of 1852 is not fitted to determine a fair rent, or rent on scientific principles, for the obvious reason that the legal ownership of improvements was unsettled in 1852. The valuation includes all farm buildings, and certain specific tenants' improvements, if made more than seven years before valuation or revision, and includes other tenants' improvements. If the valuation were revised up to date, on the existing principles of the Act, and were right in other respects, it would, if taken as a conclusive guide, lead to a demand for rent that would confiscate the tenants' improvements.

I trust that my evidence may have the effect of calling more attention to this important aspect of the Government valuation of land in Ireland than, somehow, it has hitherto attracted. I refer to the matter now, merely for the purpose of noting that the method adopted on the Leinster estate, in 1877, to determine the rent to be paid for our college farm was that which is thus described, in a calm statistical essay by a very deliberate writer, as "confiscation."

5. There is but one other section of my evidence to which I think it of any present advantage to ask you to give publicity. I thought it right to call the attention of the Commissioners to some incidents of the debates in Parliament of 1870, on the Land Act of that year. These go to show how necessary it is that evidence, copious and unassailable, as to the dealings that have taken place in Ireland between landlord and tenant, even since the passing of that Act, should be placed before Parliament if we wish the Legislature to deal with this great question of the Irish land in a way that can be regarded even as a temporary settlement of the difficulty. I will ask you to reproduce two of the passages to which I thus referred. In one of the debates in committee of the House of Commons, a motion was made to exempt all "leaseholders" from the benefits of the compensation clauses. And when Mr. Gladstone resisted the proposals on the ground that in this way "a lease for a year and a day" might be made a bar to compensation, an eminent Conservative statesman, who had previously been a member of three Ministries, each time with a seat in the Cabinet, and who was subsequently a Cabinet Minister in the late Conservative Administration, protested against Mr. Gladstone's argument, declaring that he wished

> To say a word in favour of the common sense and understanding of the Irish people. If the tenantry of Ireland were offered leases for a year and a day they would refuse them. The tendency of Parliament to legislate as if the people of Ireland were a set of the most incapable and helpless savages, was to him a matter of regret and astonishment. To say that the tenantry would be compelled to accept leases for a year and a day, or any such term, was to impose upon the credulity of the committee.—(Hansard, vol. 200, p. 1070.)

Now, the "Leinster Lease," which I had the honour of laying before the Royal Commission on Monday as the document sent by his Grace's agent for the signature of our Trustees, is a lease from "year to year." Is it too much to hope that the noble lord, whose words I have just quoted, will express his opinion of it when it comes under the notice of Parliament, in words no less emphatic than those in which he ridiculed as unworthy of the serious attention of the house the idea that such a lease could be forced by any Irish landlord upon the acceptance of any body of Irish tenants?

Another extract and I shall bring to a close this long demand upon your space. In a debate in the House of Lords, when it was proposed to exclude from the benefits of the Act all tenants the valuation of whose holdings was over £50 a year, Lord Cairns supported the motion of the peer—Lord Bessborough, the brother of the Chairman of the present Commission—whose proposal was that no such limit should be placed. In his speech on that occasion Lord Cairns assured the house that

> He regarded the question simply as a theoretical one. Everybody acquainted with Ireland would bear him out in saying that the idea of ejecting a tenant in that country at upwards of £50, as long as he paid his rent, never entered into the mind of any Irish landlord. Therefore, to provide for consequences that were to happen on the hypothesis that a tenant paying £50 rent was evicted capriciously—was providing for an event that never had occurred, and never would occur.—(Hansard, vol. 202. p. 1443.)

The evidence in the Blue Book of the Commission will, no doubt, change Lord Cairns' views on this subject, at least so far as the Leinster estate is concerned. Will it induce him to contribute the aid of his powerful advocacy in convincing his brother peers of their duty to concur in the enactment of such legislation as will make it impossible that such things shall again occur in Ireland.

I remain, dear sir, most faithfully yours,

WILLIAM J. WALSH.

II.

ST. PATRICK'S COLLEGE,

Maynooth, 7th Decr.

DEAR SIR,

In giving evidence before the Royal Commission of Inquiry into the working of the Land Act of 1870, I thought it right to

inform the Commissioners that one of my objects in giving that evidence was to secure that the widest possible publicity should be given to the action of our Trustees—the Bishops of Ireland—in regard to the "Leinster" Lease. When the circumstances of that case, now placed on official record, come to be publicly known, the tenant farmers of Ireland will, for the first time, become aware of the extent of the obligation which they owe to our bishops for the unfliching determination of the Maynooth Board in regard to the document now so famous all over Ireland.

The same motive now impels me to request the publication of this letter. It is but natural that having so recently called attention to the matter in your columns, I should avail myself of the first opportunity that presents itself, to secure equal publicity for the announcement of an event which may fairly be regarded as the result of the events of the past few weeks.

The tenantry on the Maynooth district of the Leinster estate, and no doubt those of the other districts as well, have this morning received a printed circular conveying the gratifying intelligence that his Grace has instructed his agent, in addition to some other modifications, to strike out from all the existing leases the clause that debarred tenants paying over £50 per annum from claiming compensation for disturbance, as provided in the Act of 1870. Moreover, whether in individual cases, the clause be actually "struck out" or not, the Duke considers it "annulled."

There is, surely, an important lesson to be learned here. I have now before me the letters of the voluminous correspondence which preceded the eviction of our bishops. In one of these, the Lease—containing, of course,the "Leinster" clause, against tenants claiming compensation for disturbance—is mentioned as the agreement which it was "necessary" that the representatives of the College should sign. In another it is described as the form of lease which is "invariably adopted on his Grace's estate," and in which "he will not make any alteration." Again, in another, as the agreement that "the Trustees of Maynooth College, or their secretary on their behalf," should sign "if they wish to hold their farm." In another, as "the form adopted on every part of his Grace's estate," so that if the Trustees refuse to sign it, "it will be necessary to serve a notice to quit." In another letter the Duke of Leinster directs the agent to convey to the Archbishop of Dublin his "determination" not to give any lease or agreement for the lands of Laraghbryan except in the form "adopted" on the whole of his estate. Another letter, in fine, the last of the series preceding the notice to quit, conveys as an ultimatum to the bishops the final expression of the Duke's "determination" that "all his tenants" should hold under the same agreement.

The issue of the long correspondence is known. The bishops

unanimously declined to continue as tenants of the farm, when they could do so only by placing in the hands of the Duke of Leinster a weapon that could not fail to be used with deadly effect, if not by his Grace—whose tenantry were represented as having already submitted, —at all events by other landlords throughout the country. The result was our eviction. But, not for the first time, the cause that seemed to be vanquished was in reality victorious. The circular now issued from the office of the Leinster estate announces that at least one noteworthy concession has been made. And though we may perhaps regret, in the interests of the College, that the concession was obtained only at so heavy a cost, we cannot but feel strong satisfaction that the College has at least to this extent contributed towards the success of the movement now being made to obtain the undoing of the evil wrought in the past by the land laws of this country.

I remain, dear sir, most faithfully yours,

WILLIAM J. WALSH.

III.

ST. PATRICK'S COLLEGE,
Maynooth, 8th Dec.

DEAR SIR,

While anxious in my letter of yesterday to make the fullest acknowledgment of the importance of the concession to the force of public opinion implied in the withdrawal of one obnoxious clause of the Leinster Lease, I was careful to avoid the use of any expression which might mislead your readers into believing the concession thus made to public opinion to be of larger extent or of greater importance than it actually is.

In the present state of the Land question it would, I feel, be a public calamity if any foundation were given to the idea that by the change which has been made, the "Leinster Lease" has been, as I see you have inferred from my letter, "virtually withdrawn." I regret to have to say that this is far from being the case. Even as the lease stands it contains more than one provision which, if the question of signing this document were again to come before our Trustees, would insure the repetition of the noteworthy resolutions in which their Lordships more than once declared that they would consent, under compulsion, to pay the increased rent demanded, that they would agree to hold the farm under any other terms of time or of tenure that his Grace might think fit to arrange, "but not under the Leinster Lease."

As there is some danger that from what appeared this morning in your columns the idea may find currency that the lease, as it now stands

amended, may be regarded as a fair model for other landowners to copy, I will, with your permission, briefly set forth some of the actual provisions of the lease in its original and in its amended form. The importance, and indeed the necessity, of the publication of some such analysis is brought out more plainly by the fact that, as the document now stands, it represents, not an inherited mistake, but an actual expression of opinion, deliberately pronounced, within a month of the opening of Parliament, that the provisions now retained are not out of place in a lease amended, and thus practically issued, at this critical time, by a prominent and consistent supporter of the present Ministry. The Duke desires certain clauses to be considered as "annulled." Plainly, then, he stands by those that remain. It is of urgent importance, then, to ascertain what these are. And in my statement of them, as some of your readers may, especially in regard to one clause, be of opinion, that I am writing from information by which I may have been misled, I think it well to premise that I am not writing without book. The actual document sent by his Grace's agent for the signature of the Irish bishops, as Trustees of Maynooth, lies before me.

1. It contains the extraordinary provision known among the tenantry as "the 21 day clause." This clause provides that whenever the rent, or "ANY PART of the rent," shall have been "21 days in arrear," "WHETHER THE SAME SHALL HAVE BEEN LEGALLY DEMANDED OR NOT," then the Duke, his heirs, or assigns "may re-enter" on the premises, and thereupon the lease "SHALL ABSOLUTELY CEASE AND DETERMINE." Now, considering that as a matter of fact, the rents on the estate are not demanded, "legally" or otherwise, within the period thus specified, it would be an interesting legal question to ascertain what precise amount of protection is afforded by such a lease to any tenant on the estate. I trust it will not be considered that the Leinster Lease has been withdrawn, while such a clause as this is contained in the only form of agreement recognised by the Duke, and consequently,—to use the somewhat misleading phraseology employed by his Grace's agent in writing to our Trustees,—"adopted," by the tenants, over this vast estate of 68,000 acres.

2. The clause in which the tenant is obliged in every possible way to "contract himself out" of all claims under the Land Act of 1870 is set forth in the lease with much minuteness of detail. In the first place the tenant contracts that "he shall not make any claim for disturbance." Then, as regards "improvements," he contracts not to make any claim under this head, except for improvements made with the "written" consent of the Duke, his heirs, &c. Then, as if to close up every possible loophole, he is obliged to contract generally that he shall not make any claim for compensation "in ANY OTHER respect" under "ANY" of the "clauses" or "provisions" of the Land Act of 1870—the only exception admitted being in the case of "buildings," if he has erected any at his own expense.

3. An express clause is added that the tenant "shall pay the entire of the grand jury cess," and "shall not be at liberty to make any deduction in relation thereto," "under the provisions of the Act of 1870," "or otherwise howsoever." Or, as this clause is expressed in a still more objectionable form in another lease that I have examined, the covenant is that the tenant shall pay all rates and taxes, "including THE LANDLORD'S PROPORTION" of the grand jury cess.

Now, in addition to the tone so unmistakably manifest throughout these provisions, and the deliberate purpose, so plainly expressed, of neutralising in every possible way the Land Act of 1870—to "meet" which, as his Grace's agent informed our Trustees, the Leinster Lease was, in fact, drawn by the present Chief Justice May—we have at least three provisions most objectionable, in point of substance. Putting aside the clause regarding the Grand Jury Cess—which, after all, is a matter of minor moment—there are "the 21 day clause," the clause against claiming compensation for "disturbance," and against claiming compensation for "improvements." Now, of all these, only one—the clause regarding "disturbance"—has been removed. The others are retained. I find it difficult, indeed, to believe that the Duke's intentions have been faithfully or fully carried out in this matter. It so happens that, technically, all these claims are excluded by one "clause" of the lease. May it not be that his Grace really intended that they should all be removed? Otherwise, indeed, while the provision against claiming compensation for "improvements," as well as the famous "21 day clause," remain, we are far from having heard the last of the "Leinster" Lease.

I think it not out of place to ask you also to correct an inaccuracy of some consequence into which you have not unnaturally fallen. The remission of 10 per cent. on this half year's rent, notified as allowed to the tenants under £50 rental, does not extend to the holders of town parks. This extraordinary nature of the tenure under which the town parks, at least in this neighbourhood, are held, is a subject on which I was examined at some length before the Royal Commission. I shall not refer further to the matter now, except to say that the nature of that tenure should be regarded not as a reason for excluding them from the benefit of such a concession as this, but, on the contrary, as entitling them to very special consideration.

I remain, dear sir, most faithfully yours,

WILLIAM J. WALSH.

REPLY

TO

THE REBUTTING EVIDENCE OF THE AGENT OF HIS GRACE THE DUKE OF LEINSTER.

FOR more than one reason I think it advisable to deal somewhat fully with the statements which Mr. Hamilton, the Duke of Leinster's agent, has ventured to put forward in contradiction of my Evidence.

Those statements are, in all, thirteen.

I shall here set them down, one by one, omitting none of them, and faithfully stating them in Mr. Hamilton's own words. Also, for facility of reference and comparison, I shall take them in the order in which they occur in Mr. Hamilton's evidence as reported in the "Blue Book" of the Commission.

In each instance I shall append to Mr. Hamilton's statement my comment upon it. In several cases, indeed, I shall have merely to point out that my Evidence contains no such statement as he has imputed to me. In the remainder, where the statements ascribed to me are really mine, I shall have no difficulty in showing that, although thus formally and officially contradicted, they are literally and unquestionably true.

The thirteen instances, then, in which Mr. Hamilton has undertaken to contradict me are the following. Before transcribing them it may, perhaps, be right to observe that not one of them touches the really vital point of the Laraghbryan case, as put by me before the Commissioners. Mr. Hamilton does not venture to deny, on the one hand, that the "Leinster Lease" was drawn by the present Chief Justice May and Mr. Justice Ormsby to "meet" the Land Act of 1870; nor, on the other hand, does he venture to deny that our Bishops were called upon, under threat of eviction, to accept this "Lease," and that, as the result of their refusal, they were evicted from their holding, in due process of law, by the Sheriff of Kildare.

It will, however, be seen that several of the points on which he does venture to contravene my evidence are of more or less substantial importance. His statements, then, are as follows:—

I.—MR. HAMILTON'S FIRST STATEMENT.

The first of these thirteen "rebutting" statements has reference to a matter which, in some way to me unintelligible, seems to have caused much trouble to Mr. Hamilton—my account of the arrangement which was made in 1867 regarding the rent of the Laraghbryan Farm, on the occasion of the transfer of three acres from our holding in perpetuity to the yearly tenancy of Laraghbryan.

In reference to this matter he makes the following statement:—

> Dr. Walsh says that [in 1867] there was a slight addition made to the farm, and that on that occasion *the rent was readjusted.* I do not at all concur with him in that. It is true that there were three statute acres added to the farm, *and the rent was raised from £295 to £300 a year;* that three acres had previously formed a portion of the lands held by the College in perpetuity.

MY REPLY.

Mr. Hamilton here makes a distinction—to which he attaches great importance—between a slight "addition" to the rent, and a "readjustment" of the rent. He admits that the rent was slightly raised. He denies that it was "readjusted."

On what grounds then, it may be asked, did I say, in my Evidence, that, in 1867, a "readjustment" of the rent of Laraghbryan took place? The answer is very simple. *I said nothing of the kind.* What I did say was precisely that which Mr. Hamilton explicitly informs the Commissioners is "true," namely, that on the occasion of the transfer of the three acres referred to, "the rent was raised from £295 to £300 a year." As this is a matter not of argument, but of plain fact, I need only refer to my Evidence (pages 9 and 10). That statement will be found there, as clearly stated as we find it in Mr. Hamilton's "rebutting" testimony. And the closest examination of my Evidence from first to last will fail to disclose the faintest reference to "readjustment." This, I trust, is a sufficiently conclusive answer to Mr. Hamilton's first attempt at contradiction.

II.—MR. HAMILTON'S SECOND STATEMENT.

His second attempt at rebutting my evidence results merely in showing forth in the strongest light the carelessness and inaccuracy which characterise his testimony throughout. Once more referring to this bugbear of "readjustment," he says:—

> Dr. Walsh *seems to be under the impression* that upon that occasion what was done *amounted* to a readjustment of the rent. In that I entirely differ with him; practically there was no alteration of the rent. . . The rent was increased by that small amount; but on the other hand there were 3½ acres added to the farm, so that substantially the rent remained as before, and *there was no readjustment.*

My Reply.

In the first place, compare the opening statement of this paragraph with that with which I have dealt under the previous heading. Mr. Hamilton's former statement was this:—"Dr. Walsh *says* that on that occasion *the rent was readjusted.*" His second statement, with which we are now concerned, is:—"Dr. Walsh *seems to be under the impression* that what was done *amounted to a readjustment* of the rent." Evidently Mr. Hamilton, as he advanced, was not becoming more confident of his ground. There is now apparently no question of a "readjustment," but of something that "amounted" to a readjustment. And as regards my connection with it, he appears to abandon his former statement, regarding what I "said," and to confine himself to an account of my "impressions." Indeed, now he does not even go the length of saying that I am actually under the impression in question, but merely that I "seem" to be so.

In reference to all this, I can only assure Mr. Hamilton that his statement of my impressions, whether real or apparent, is no way more accurate than his statement of my words. I am not, and never have been, under any such impression as he ascribes to me. As a matter of fact, my only impressions,—as my only statements,—on the matter referred to are those which occur in my Evidence, and which are in all respects identical with those made before the Commissioners by Mr. Hamilton himself. I refer, then, once more to my Evidence,* where all this may be plainly seen. If the change in the rent, in the circumstances there described, from £295 to £300 a year is "readjustment," or if it "amounts" to readjustment, I have stated as a matter of fact that this took place; and Mr. Hamilton does not question it. If by "readjustment" is meant anything different from this, I can only repeat that the statements or impressions which Mr. Hamilton undertakes to contradict and correct are in no way mine.

III.—Mr. Hamilton's Third Statement.

We now come to a much more substantial point. The questions involved in the preceding issues may, perhaps, at least to some extent, be regarded as disputes on words. For this, however, as is obvious, it is not I that am responsible. Yet it is satisfactory to come to more solid ground.

In my evidence (see pages 11 and 12), I stated, in very full detail, all the circumstances of that extraordinary proceeding—Mr. M'Cullagh's valuation of the land, in 1877, when the farm was valued *as it then stood*, thus including, of course, the full worth of *our numerous and costly improvements.* Mr. M'Cullagh's valuation was £470 a year. In my

* See pages 9 and 10.

Evidence I stated that the demand then made by the Duke of Leinster's agent, on the basis of this valuation, for a rent of £470 a year, was practically a proposal to confiscate our improvements.* How does Mr. Hamilton "rebut" this statement? He boldly denies that the rent of £470 was ever demanded at all.

His statement is the following:—

> Dr. Walsh is also (!) under a mistake with reference to what was done by Mr. M'Cullagh. . . Mr. M'Cullagh valued the farm of Laraghbryan at £470 a year. The Very Rev. Dr. Walsh *seems to imagine* that when my father sent the Trustees of the College a copy of Mr. M'Cullagh's valuation, it was *equivalent to demanding £470 a year as rent.*
>
> I may mention that neither my father nor the Duke of Leinster, for whom he acted, had any such intention as that. . .
>
> I may add that *in no case* has the rent put upon a farm come to within 5*s.* per acre of what Mr. M'Cullagh valued it at. We *always* took off the valuation 5*s.* an acre, and in many cases 10*s.*
>
> Mr. M'Cullagh had no means of knowing what improvements the Trustees of the College had made, but *my father knew them*, and Mr. M'Cullagh valued the farm at £470 a year, but *the rent asked was only £400 a year.*
>
> *I am certain* that neither the Duke nor my father ever intended to demand £470 a year; because I was informed of *every move* that was made in the whole matter, and I KNOW that £400 a year, or £3 per acre, was the rent that was asked.

My Reply.

Here I must, in the first place, protest against the assumption, implied in this statement of Mr. Hamilton's—that on this point I drew upon my imagination for the statement which I made in my Evidence as to a matter of fact.

Having made this protest,—not, I think, needlessly,—it is, I suppose, right for me, in the face of so formal a contradiction, thus explicitly made by Mr. Hamilton before a public tribunal, and with such an elaborate asseveration of personal knowledge as to the matter in question, to establish the truth of the statement thus contravened.

Fortunately my proofs are at hand, proofs which, of their nature, are absolutely unassailable. The evidence is documentary; and the documents which furnish it have come to us from Mr. Hamilton's office.

The first of these is a letter, dated September, 1877, addressed to the Secretary of our Trustees, by the late Mr. Hamilton, then agent to the Duke of Leinster. In this letter Mr. Hamilton candidly states that he had received instructions from his Grace to have "a new agreement" made out, with, of course, a new rent, the rent to be fixed "at the PRESENT fair letting value." He encloses Mr. M'Cullagh's

* In connexion with this, see a point of some importance, in reference to "Griffith's" valuation, stated on pages 25 and 53.

Report of the valuation made in pursuance of these instructions. In this Report, the valuator,—considering, as he was instructed to do, the actual condition of the farm when he visited it, and necessarily relying, to a large extent, on the "first-rate condition" in which he found the land, its "excellent fencing" and "drainage," its "first-rate order," its "clean" and "good" management,—set down £470 as its actual fair letting value.

"I am afraid," he says, "the above figures *will alarm the whole College;* however, I consider the lands *full value for the Rent stated.*"

That the value thus assigned was the actual "present" fair letting value of the land as it came under Mr. M'Cullagh's observation, I do not think of questioning. But there was surely good reason why "the whole College" should be, not indeed so much "alarmed" as shocked, at learning from the Duke of Leinster's agent that it was at the value of the land, as thus determined, that the proposed new rent should be fixed. The "present" value of the land as it then stood, comprised, as it seemed to us, the property of two proprietors—the property of the College in its improvements, as well as the property of the Duke of Leinster in the soil. I have elsewhere quoted the statement of a very deliberate writer, that a valuation of land for rent purposes, which overlooks this obvious distinction, can be regarded only as confiscation.* It is not easy, indeed, to see how it can be regarded in any other light. I do not wonder, then, at Mr. Hamilton's extreme anxiety to get rid of the embarrassing statement contained in my Evidence, that such a proposal was in fact made to our Trustees in regard to the rent of Laraghbryan. No doubt he was unaware of the facts of the case, as he was evidently unaware of the contents of the letter to which I have referred. But I must express my surprise that he should not at least have seen the impropriety of endeavouring to deal with the difficulty by thus denying, without some previous communication with me, the truth of a statement so formally made by me to the Commissioners.

The second document to which, if it were necessary, I might refer in conclusive proof of the statement so rashly ascribed by Mr. Hamilton to my imagination, is the actual copy of the "Leinster Lease" which was sent to our Trustees for their acceptance in June, 1878. In this, the amount of the proposed yearly rent is, of course, inserted. We find it, indeed, set forth in two distinct clauses: in both it is "Four hundred and seventy pounds."† See pages 44 and 46.

* See Mr. Neilson Hancock's statement regarding "Griffith's" valuation, *antea*, page 54.

† I have already in my Evidence (pages 38 and 39) called attention to the repeated refusal of Mr. Hamilton to entertain the suggestions made that the rent should not be fixed on a principle which practically involved a confiscation of our improvements. The refusal was emphasised by his repeated statements that the rent named was subject to a reduction, representing "a certain percentage" on our outlay for "*permanent buildings.*" But these, as Mr. Hamilton himself points out, and as is plain from Mr. M'Cullagh's Report, did not enter into that gentleman's valuation at all.

IV.—Mr. Hamilton's Fourth Statement.

I now come to the statements regarding the manner in which Mr. M'Cullagh's valuation of the farm was made.

The details of this extraordinary, and, I should hope, unparalleled, proceeding, are set forth on pages 11 and 12, as narrated by me to the Commissioners.

I stated that the valuation, described by Mr. Hamilton, in his communication to our Trustees, as made by a "Public Valuator," was in reality made by a Mr. M'Cullagh, of whom we subsequently ascertained that he was himself *a tenant of the Duke of Leinster's!* I added, that not very long after making this valuation he became a bankrupt. I did not state—but as Mr. Hamilton has reopened the question it may be well to add the statement now—that I have been informed on excellent authority that whereas Mr. M'Cullagh's other creditors received but a small dividend of a few shillings in the pound, his Grace the Duke of Leinster, in accordance with the somewhat questionable provisions of our unreformed land laws, was paid his rent to the last farthing.

I also stated that the valuation was made by Mr. M'Cullagh without the knowledge of any one connected with the College; that, as a necessary consequence, he had, and could have had, no information as to the extent or value of the improvements which the College had made; and that, in fine, he furnished the most conclusive proof of the undefensible character of the entire proceeding by including in his valuation a plot of 12 acres which did not belong to the Laraghbryan farm at all!

It was, however, by this valuation, and *by this valuation alone*, that the figure of £470 was arrived at, as the amount of rent to be inserted in the new agreement.

In reply to all this, Mr. Hamilton candidly admits that Mr. M'Cullagh was a tenant-farmer on the Duke's estate. He also admits the bankruptcy. But, he says, Mr. M'Cullagh always valued "with great care." He quietly ignores the inconvenient fact that the valuation of this "careful" valuator included, as I had stated, a plot of 12 acres, not belonging to the Laraghbryan farm at all.

The only statement, in fact, of mine, on this branch of the case, that he undertakes to question is that which no doubt underlies all the complaint that I had made regarding it—the statement, namely, that not only did Mr. M'Cullagh come upon the lands, and make his valuation, without communicating with any one in the College, but that moreover, no one connected with the College had received any notice

of the intended valuation, or, as I stated in my Evidence, that "*no one connected with the College had any idea that any valuation was being made, or was even in contemplation. We did not even hear of it for a month afterwards.*"

How, then, does Mr. Hamilton undertake to dispose of this inconvenient statement? Here are his words. Of course he contradicts me. He says:—

MY IDEA IS that *my father wrote* to the College *informing them* that he wished to have a *revaluation of the farm* made, *and that he would send down Mr. M'Cullagh for that purpose.*

MY REPLY.

Once more I must protest against the extraordinary course which Mr. Hamilton has thought fit to pursue in thus recklessly contradicting the statements of my Evidence. He knew very well—for I suppose he attached sufficient importance to my Evidence to read it, when it was supplied to him for the purpose—that *I had distinctly stated as a matter of fact* that *no notice whatever of any such intention had been sent to anyone connected with the College.* How can he think to get rid of the damaging state of facts thus revealed, by a statement that it is his "idea" that notice had been sent? It remains, then, for me, notwithstanding Mr. Hamilton's idea on the subject, merely to reiterate my statement on this matter, as originally made in my Evidence.

V. MR. HAMILTON'S FIFTH STATEMENT.

Mr. Hamilton's next statement is no less openly at variance with fact than those we have just examined. Referring to my statement that, in 1867, the rent of the farm was fixed "for the future" by the late Duke of Leinster at £300 a year, Mr. Hamilton says:—

There was a new agreement in consequence of the slight alteration made in the farm; but that was not intended as fixing the rent for the future at £300 a year.

MY REPLY.

In one respect it is not easy to know how to deal with this statement. For in my Evidence, which Mr. Hamilton had a full opportunity of examining, the grounds on which that statement was based are explicitly set forth. I mentioned to the Commissioners (see page 9) that on that occasion the late Duke of Leinster had in fact written to the Bursar of the College, informing him that the rent was to be "for the future" £300. I added that in this statement I was giving, not the substance merely, but the very words, of his Grace's letter.

It may, perhaps, more fully satisfy Mr. Hamilton, if I print the letter here in its integrity. Fortunately it is short. It is as follows:—

CARTON, MAYNOOTH,
12th November, 1867.

MY DEAR SIR,

I have requested Mr. Trench to send you a new proposal for the

lands of Laraghbryan, adding the 3 acres, which I have purchased from the Trustees of the College, at the Rent of £4 18 0 from 29th September, 1867. *That will make the Rent* FOR THE FUTURE £300 *a year.* Thus:—

Old Rent	£295	2	0
Additional	4	18	0
	£300	0	0

I am, yours faithfully,

LEINSTER.

VI. MR. HAMILTON'S SIXTH STATEMENT.

The next point regarding which Mr. Hamilton summarily sets aside a statement of mine as "a mistake" is in reference to the absence, which I noticed, of a very important letter of the agent's, in an account of the transaction, printed on behalf of the Duke.

As I explained to the Commissioners, the absence of this letter, in which an increased rent of £400 was demanded in June 1877, makes it appear that the subsequent Resolution of the Trustees to pay this rent was a purely voluntary or spontaneous proposal on their part The fact was that the demand of this rent had been made in the letter I refer to, and so far were the Trustees from freely offering to pay it, that their Secretary's letter, announcing their consent to yield thus far to the demand, distinctly stated that they did so merely because they were "at the mercy of the Duke."

I spoke then of the omission of the letter in question as an important omission. After speaking of it as "suppressed," I took care to add the qualifying clause, "or perhaps, I should rather say, *not published.*"

Now, Mr. Hamilton's inexplicable contradiction of my Evidence on this point runs as follows:—

Dr. Walsh also states that there is a letter of June, 1877, in which a rent of £400 was demanded, but which was suppressed, *or at all events not published*, in the printed account of the transaction as circulated by the Duke.

That also is a mistake.

There was no suppression; we published, in fact, *all the letters we could find*; certainly no letters were *intentionally* suppressed.

I don't think there is anything in these letters which colours the facts in any way.

MY REPLY.

Mr. Hamilton's extraordinary statement, "That also is a mistake," may, I am satisfied, be safely left without a word of comment, to be refuted by the mere perusal of the statement which it professes to contradict.

To avoid, however, all possible misconception, it may be well for me to add that it is a fact beyond all controversy—and indeed Mr.

Hamilton, so far as I can understand his statement, seems to admit it—that the letter referred to is not published, or even alluded to in any way, in the printed paper in question.

VII. Mr. Hamilton's Seventh Statement.

In my Evidence I quoted the words of the agent's letter, in which he described the "Leinster Lease" as drawn by two eminent counsel, now two of her Majesty's judges—Chief Justice May and Mr. Justice Ormsby—to *meet* the provisions of the Land Act of 1870.

Independently of the admission thus candidly made, it is of course quite obvious that the Lease was drawn, and most skilfully drawn, precisely for the purpose specified. And, of course, "meeting," by a form of Lease, an Act of Parliament which was passed for the protection of the Irish tenants, necessarily means constructing the document so as to take advantage of every clause or proviso in the Act which will enable the landlord, within the limits of the law, to cut down that protection to a *minimum*. This, as an obvious and undeniable fact, has been done in the Leinster Lease. And it is no discredit to the lawyers, as lawyers, who were concerned in its production, that their portion of the work has been so skilfully and so successfully accomplished.

But let us hear Mr. Hamilton's statement on the matter. He is asked by the Commissioners, "Is there any other matter you wish to refer to?" His answer is:—

> Yes: Dr. Walsh refers to the Leinster Lease and to the printed address to the tenants upon the estate which my father issued, and in which it is stated that the "Leinster Lease" was framed for meeting the provisions of the Land Act. *But Dr. Walsh reads these words in the opposite signification to what was intended.*
>
> He reads the expression as meaning to evade the Land Act, whereas, what was meant was that the Lease was intended to be *in accordance with the Act.*

My Reply.

I fear that Mr. Hamilton does not even yet understand the force of the objection to this "Lease" which has so unhappily identified the name of the house of Leinster with probably the most unpopular of all the forms of resistance to even the most moderate claims of tenant-right.

What is meant by "neutralising and evading" an Act passed for the protection of tenant farmers is, as I have just stated, constructing the document so as to take advantage of every clause or proviso in the Act which enables the landlord, within the limits of the law, to cut down that protection to a *minimum*. This is precisely the statement made in my Evidence (see page 17), regarding the Leinster Lease. The Lease is "in accordance with the Act" in this sense, and in no other.

Did Mr. Hamilton suppose that I was under the impression that the Lease was an "illegal" document, not even "*in accordance* with the Act?" I can hardly believe that he read with even ordinary care the Evidence which he so unguardedly undertook to contradict. But, indeed, if he had not read a word of my Evidence, he might easily have known that if any such view as this were entertained as to the nature of the Lease, the story of the eviction of our Trustees would have come before the public, not in the "Blue Book" of a Royal Commission, but in the reported proceedings of a Court of Law.*

VIII. Mr. Hamilton's Eighth Statement.

In regard to the amount of compensation, £1,000, by the payment of which the Duke of Leinster's representative compromised the legal proceedings for compensation commenced by us subsequent to the eviction, the following facts were stated by me in my Evidence (see page 23)—that we put in a claim for £1,300, of which £400 was for buildings, and £900 for improvements—*that* £600 *was then offered as a compromise* on the Duke's part, *which we refused*—that they *then* offered £800, *which we also refused*—and that the *third* proposal of £1,000 was finally accepted.

Let us now take Mr. Hamilton's statement:—

> I went over the farm with my uncle, Mr. Frederick Hamilton . . . We estimated that the College had a right to £890.
>
> I believe the usual course, when you intend to compromise a claim, is to offer something less than you think the other party will stand out for.
>
> My instructions to the Duke's solicitor were to offer the Trustees £800, *and not*

---

* As I am throughout avoiding, as far as possible, all reference to statements, however inaccurate, which do not affect any point of substantial importance, it may perhaps be hardly worth while to notice a singular proof of Mr. Hamilton's carelessness and inaccuracy of statement, which his evidence here discloses. He refers most formally to my "answer to question 35,502," where, he says, I refer to the printed address to the tenants issued by his father, "*in which it is stated* that the Leinster Lease was framed for meeting the provisions of the Land Act."

Now, as a matter of fact, the printed address in question contains no reference to this matter at all; moreover, in the answer mentioned by Mr. Hamilton, which is the answer printed on page 16, and which, in fact, is the answer I am concerned with here, although there is indeed a reference to that printed address, it is distinctly stated that the statement in question was contained, not in that address, but in a letter written, in 1879, by the agent, to the secretary of our Trustees.

Over and above the illustration which it affords of Mr. Hamilton's strange inaccuracy of statement, this correction is of some importance in another way. The letter in which the statement is really contained was written so recently as 1879. At this time the opposition of the tenants to the lease had practically been beaten down. The "address to the tenants" was issued so long ago 1872, when the introduction of the Lease was being quietly and gradually effected. Notwithstanding the helpless condition of the tenantry generally at that time, I do not believe that the Leinster Lease could have been so easily forced on their acceptance if Mr. Hamilton had then published the statement that this Lease,—which in his address he so unreservedly extolled,—had, in fact, been drawn "to *meet* the provisions of the Land Act."

£600. The Trustees refused *our offer*, and eventually we offered them £1,000, which they accepted.

My Reply.

In the first place, it strikes me that this statement of Mr. Hamilton's —though, no doubt, worded so as to refer directly to his "instructions to the solicitor"—is calculated to convey the impression that in point of fact only *one* previous offer, and this an offer of £800, *not of* £600, had been made to our Trustees by the Duke's representatives.

Now that Mr. Hamilton has so candidly admitted that he considered we had a claim to £890, it is well to have no misunderstanding about the amount actually offered in payment of our legal demand. I will repeat, then, that before the final tender, of £1,000, there were *two* previous offers, *both* of which were rejected by the representatives of the College; and that *the offer of £800 was not made until we had previously rejected an offer of £600.*

Mr. Hamilton's Ninth Statement.

In further reference to the amount of compensation to which the College was entitled, Mr. Hamilton goes on to say:—

Dr. Walsh seems to *think* that if they had kept accurate accounts of their expenditure they would have recovered more. I am not at all of that opinion.

My Reply.

Again, Mr. Hamilton—once more revealing his notion that the statements which he undertook to rebut, were to be dealt with as "ideas," "thoughts," "imaginations," and "opinions"—speaks of me as "seeming to think" that if it had been considered necessary to keep a full account of our expenditure, we could have recovered more. In other words, this represents me as merely "seeming to think" that the actual amount of our expenditure, as represented by the value of our improvements, was, in fact, in excess of £1,000. Now, in point of fact, I did not merely "seem to think" this. *I expressly stated it* in my Evidence (see page 23) *as a matter of fact.* What I did state as a matter of *opinion*, was, that *even in the absence of accounts*, on parol testimony alone, we should have been able *to prove our claim in court.* Whatever Mr. Hamilton may consider to be "the usual course" in such matters, I can only say that, as acting President of the College, I felt it my duty to have directions given to the valuator we employed—and those directions were, in fact, given to him by the Very Rev. Dr. Farrelly, our Bursar—that *no item should be entered in the claim, which the valuator could not fully substantiate on oath in court of law.* The amount of the claim thus made out, was, as Mr. Hamilton knows, £1,355 15*s.* 10*d.* And, without implying the slightest want of respect for his judgment, or for that of his respected relative who accompanied him in his walk over the farm, I may be excused for accepting

this estimate, most carefully prepared, and studiously kept within the narrowest limits, in preference to a mere "opinion" of Mr. Hamilton's, that we had a claim to no more than £890.

And I should not pass from this subject without reminding Mr. Hamilton that the valuator employed by us for the purpose of thus accurately ascertaining the extent of our claims was, and is, a "Public Valuator" of publicly recognised eminence, and consequently not in any way dependent on the good will of those by whom he was in this instance employed.

X.—Mr. Hamilton's Tenth Statement.

In my Evidence (page 27), I stated fully to the Commissioners my objection to the clause in the Leinster Lease, which is known as the 21 days clause. It provides that if "the rent," or "any part" of the rent, "whether the same shall have been legally demanded or not," be in arrear for 21 days after the days of half-yearly payment mentioned in the Lease, "the Lessor may re-enter" upon the land, and the Lease shall thereupon "*absolutely cease.*" I also mentioned that as a matter of fact the rent is not demanded, legally or otherwise, within the time thus specified And I pointed out the inconvenience, not to say hardship, of inserting such a covenant as this, the insertion of which, as a matter of common sense as well as of law, could scarcely fail to involve effects most disastrous to the holders of such leases, if at any time the clause, thus formally embodied in the lease, were brought into court for enforcement.

I think it important, for several reasons, to direct special attention to my Evidence (page 27) on this point.

In reference to it, I am somewhat surprised to find that Mr. Hamilton, when asked by the Commissioners whether there was anything he "particularly" objected to in my comments on the agent's address to the tenants in 1872, singled out for special condemnation my observations on this point. His answer was as follows:—

Dr. Walsh refers to the clause in the Lease as to 21 days. I may mention that that clause was always inserted in every lease upon the estate long before what was called the Leinster Lease was framed; in fact, I believe some clause like it is put into *almost every lease in the country.**

The *object* and *effect* of that clause has been very much misunderstood. It is *supposed* that the object is to *enable* the Duke to re-enter if the rent was not paid, but *that was not the object or the effect of the clause at all.* The effect was rather *the other way*, for in that case the landlord *cannot distrain nor enter for 21 days*, whereas *without the clause* the landlord might distrain *immediately.*

He then went on to explain a point, which, as I took care to state

* I italicise this statement as I have just observed that one of the serious drawbacks which practically neutralises to a large extent the benefits otherwise conferred in the comprehensive scheme of land reform just introduced by Mr. Gladstone, is that the provisions of existing leases are in no way to be interfered with.

in my Evidence (page 27), is altogether irrelevant, namely, that the clause has never been availed of, and indeed is most unlikely ever to be availed of by any of the present members of the Leinster family.

Having done so, Mr. Hamilton then, in reply to a pointed question of The O'Conor Don, proceeded to justify the retention of the clause in the Lease. His statement on this aspect of the case so clearly demonstrates that his previous account of the matter must be regarded as mere special pleading, that I may rest satisfied with it for my reply.

My Reply.

I think it, then, sufficient to quote the following answers of Mr. Hamilton himself. He was asked by The O'Conor Don, "Don't you think it undesirable to retain clauses of this description, which appear stringent, if they are never to be enforced?"

"Mr. Hamilton—Well, that may be so; but *there may be good reasons* for preserving it. There might be a particular case of a tenant in which it might be of advantage *to be able to enforce it*. We never, in point of fact, have enforced it; but at the same time you must always *provide for unforeseen cases* when you are making contracts upon a large estate."

Is it necessary to call attention to the utter inconsistency of all this, with the preceding statements? Mr. Hamilton's first defence was that the operation of the clause was in favour, not of the landlord, but of the tenant; he now regards it as a clause to be "enforced." The use of such a phrase, in reference to a clause in a Lease, by an agent of Mr. Hamilton's experience, shows very plainly what view should be taken of the real effect of the clause in reference to which he uses it.

The following question and answer which bring his statements on this point to a close, are, if possible, more conclusive:—

"Mr. Kavanagh—I suppose you would not like to express an opinion as to its being advisable to omit that clause without having legal advice as to what the effect of such an omission would be?"

"Mr. Hamilton—Certainly; *it may convey more than I am aware of.*

XI.—Mr. Hamilton's Eleventh Statement.

In the next question Mr. Hamilton was asked by the O'Conor Don whether there was anything else he wished to refer to? His answer is:—

The Very Rev. Dr. Walsh says in reply to question 35,523:—"I am quite certain the former Duke would never have insisted upon this Lease." *With reference to that* I wish to say that *I know* the former Duke was anxious that written agreements should exist *in every case* upon the estate.

My Reply.

No doubt, as thus introduced, the second statement in the paragraph just quoted might naturally seem to imply that Mr. Hamilton, from his personal knowledge, could testify, in opposition to my statement, that the late Duke would have insisted upon our Trustees accepting the Leinster Lease. However, it would be unfair to ascribe such an assertion to him. For, putting out of sight the strange view which he seems to hold regarding the "reference" of one statement to another, if we look merely to the words he has used, we shall see that what he has really stated regards a totally different matter, and has no possible connexion with my statement, in "reference" to which he has introduced it.

I happen to be as fully aware as Mr. Hamilton of the anxiety of the late Duke that "written agreements" should exist in every case upon the estate. But the topic is altogether irrelevant here. What I stated was that I felt satisfied that his Grace would not have insisted on our holding under *this particular form of written agreement*—the Leinster Lease.

Mr. Hamilton, surely, is aware that, as a matter of fact, the farm of Laraghbryan, up to the date of the eviction last year, was held by the College under "a written agreement." That agreement was drawn up in the life-time, and under the direction, of the late Duke. It contained no "21 days clause," and, indeed, no restrictive or penal clauses of any kind—not even those which, I dare say, were at the time inserted in the case of every other holding on the Estate. I feel, however, that it is unnecessary to dwell further on this point, seeing that Mr. Hamilton has encountered it, not by a contradiction, but by an observation which is altogether irrelevant.

XII.—Mr. Hamilton's Twelfth Statement.

This regards the practice, to which I called attention, of imposing a payment, by way of addition to the rent, in cases where the Duke, for the purpose of making improvements, has borrowed money from the Board of Works, to be repaid by a terminable annuity, the obligation of which will cease in 35 years.

On this point Mr. Hamilton says:—

Dr. Walsh states that where the Duke makes improvements he charges the tenant 5 per cent. interest for it in the shape of increased rent. The Duke does not charge 5 per cent. for one half of the improvements that he makes.

Dr. Walsh also states that the Duke borrowed money from the Board of Works, paying, of course, interest for the loan in the shape of instalments, which are to end in a certain period of years, but that the amount of the instalments is added to the rent; and he *implies* that the increase will continue after the instalments have terminated. I have already observed that this is a mistake. In the loans . . . the payment of which is spread over twenty-two years, the amount charged by the Board of Works is

6½ per cent.: of that sum the Duke charges the tenants only 5 per cent., and he pays the other 1½ per cent. himself . . . The question as to what the Duke will do at the end of the Board of Works' loan has not arisen, nor will it arise for a good many years . . . The Duke *has not said* that it is his intention to continue to charge the increase.

MY REPLY.

It will be observed that the statements regarding drainage loans, thus elaborately and to a certain extent, I am glad to say, satisfactorily refuted by Mr. Hamilton, are in the most formal manner ascribed by him to me. "Dr. Walsh," he says, "states:" "Dr. Walsh also states," &c. &c.

In this I think I have serious reason to complain of what I might almost feel justified in designating an utter recklessness of assertion. *Not one of the statements thus formally set forth as mine was ever made by me.* And for the best of reasons. The matter to which they refer is one on which I could not undertake to make any such statement; for I had no knowledge whatever of the matter involved. What I did say was—and the statement is unquestionable—that it was the belief of very many of the tenants in this neighbourhood that the practice referred to was followed by his Grace, that thus I had been "informed" that such was the practice, that I had "frequently heard it said in our neighbourhood," and that "individual tenants had assured me that it was the case in regard to themselves." All this may be seen by referring to my Evidence (page 29); and it may also be seen that throughout the evidence, from first to last, there is absolutely no statement of any other kind in reference to the repayment of these loans.

I may here observe that the statements in question were, in fact, made, in his evidence, by Mr. Patterson. And I have no doubt that they would have been made by many others of the tenants from our neighbourhood if these had been examined before the Commission. The fact that they were thus made by Mr. Patterson, and that thus Mr. Hamilton was afforded an opportunity of explaining the true state of affairs, furnishes, I think, a very apposite illustration of the view put forward in a previous part of my Evidence (page 20) in reference to the complaints so generally made by the Duke's tenants in the Maynooth district.

Although, as I have already explained, I am myself in no way responsible for the statements in question, I have thought it only right to state in full the explanation given by Mr. Hamilton regarding the matter to which they refer. Thus I can best avoid all possibility of the references, in my Evidence, to those statements being in any way the occasion of giving continued currency to them, as of course I am anxious to do, now that Mr. Hamilton represents those statements as erroneous.

Before passing from this subject I would, however, add two observations:—

First, it may be well to note that, even in the case of loans to be repaid at 6½ per cent., the yearly payment of 5 per cent. for 35 years is a full equivalent for the payment of the 6½ per cent. for the shorter period. If the charge, then, be continued beyond 35 years, the subsequent yearly payments must unquestionably be regarded as a profit derived by the landlord solely from the use of public money.*

Secondly, I observe that in his repeated corrections of the "mistake" regarding the *permanence* of the yearly charge of 5 per cent. imposed on the tenants, Mr. Hamilton studiously confines himself to such forms of expression as the following:—"The Duke *has not said* that he intends to continue the charge." I cannot regard this form of "correction" as altogether satisfactory. The original statement was that "for all that appears to the contrary" the charge has become a permanent addition to the rent. (See my evidence, page 29.) It is obvious that this statement is still unquestionable. Certainly, nothing "appears to the contrary" in Mr. Hamilton's obviously reserved remarks. And it must not be overlooked that he simply passes by in silence the fact which I mentioned as confirming the view generally taken of this matter. I stated that at least one of my informants, in making the general statement, added in confirmation of it that the yearly charge was treated *as an addition to the rent*, the combined amounts being taken as *one bulk sum*. I can, indeed, state as a fact that at all events in some instances—and I have no reason to suppose that it is not the case in all—there is but *one receipt* given on the payment of the rent. The receipt is *for the bulk sum*. It makes no distinction whatever between the two amounts of which this sum is composed—the rent, which is the permanent charge, and the yearly payment on the score of the loan borrowed from the Board of Works.

This was my statement.

I am informed that the practice is to *treat* the annuity as an interminable one—in fact *as an addition to the rent*—the rent thus increased becomes a bulk sum—no separate account is taken of the annuity, so that *practically* the rent is increased by that amount; and at the end of the thirty-five years, when the loans have been paid off, the tenants, *for all that appears to the contrary*, must still go on paying the amount to the Duke.

I observe that Mr. Charles Russell refers to this in one of his letters, as being a practice on some of the estates in the South of Ireland . . . He naturally finds some difficulty in believing that there is not some misconception on the subject in the minds of the tenants . . . He expresses a hope that his mentioning the matter may have the effect of obtaining an assurance on the subject from the landlord.

So far, I fear, it can hardly be said that my calling attention to a

* On this point I may refer to one of Mr. Charles Russell's admirable Letters to the *Daily Telegraph*, republished in his volume entitled, *New Views on Ireland*. See that volume, page 190.

similar state of things on the Leinster Estate has had the effect of obtaining such an assurance here.

XIII.—Mr. Hamilton's Thirteenth Statement.

In one very important respect the statement to which I have now to call attention is the most startling of all those contained in Mr. Hamilton's evidence. The instances hitherto noticed in which he ventured to contradict my statements of facts had reference to matters which could hardly be regarded as of public knowledge. In those cases, disproof of his assertions, easy as it has happened to prove, might possibly have been little short of impossible. But in the case we have now to consider he has ventured to contradict a positive statement of mine regarding a matter of the most public notoriety—a matter concerning the tenants of the town parks of Maynooth—and fully within the knowledge of, at least, the great majority of them.

In my evidence (page 29) I had stated that, "having seen from the query sheet, sent to me by the Commission, that information was sought for in regard to the tenure of town-parks," I had endeavoured within the preceding few days "to procure a copy of the lease of the town-parks of Maynooth," and that I had "*succeeded only with great difficulty.*" I added,—what I knew to be a fact,—"several persons are believed to have copies of them, who appear to be afraid to show them, lest the result might be injurious to them in the Duke's estate office."

Now, let us take Mr. Hamilton's contradiction of all this. He begins with a misstatement, on which I shall make no further comment, as its refutation is sufficiently secured by the statement of what I really said, as italicised above. My reply therefore may be confined to his other statements in the following paragraph.

Dr. Walsh says *he has never seen or succeeded in getting a town-park agreement* (!) I shall be very happy to show you one . . .

I may mention that *in every case* where an occupier signs one of those agreements he gets a counterpart of it . . . *Every tenant gets a copy* . . . *Every tenant* who takes a town-park gets a counterpart . . . *We always forward them their counterpart immediately.*

My Reply.

My reply to this startling series of assertions may be very briefly made.

I have no hesitation in saying that, according to most credible information, of which I was in possession when I gave my evidence, and which has since then, on inquiry, been repeated, those assertions of Mr. Hamilton are, from first to last, at variance with facts well known to many holders of town-parks in Maynooth.

Mr. Hamilton, if he is satisfied of the truth of the statements he thus made to the Commissioners, has fully within his reach a means

of endeavouring to extricate himself from the difficulty in which he has here involved himself.

I wish publicly to challenge him to adopt it.

He has, of course, a list of the tenants of Maynooth town-parks. Is he willing to call upon those tenants individually to state, as a matter of fact, whether his statements or mine are true?

I may add that I should by no means be satisfied with a statement that the tenants in question are *actually* in possession of those leases. It will be necessary also to obtain a statement of the *date* at which the leases were delivered. For, if I am not grievously misinformed, the question at issue, between Mr. Hamilton's statement on this point and mine, is very practically solved by the fact that *since the date of my Evidence, the bailiff of the Duke of Leinster has delivered to the tenants*—I cannot say in how many instances, but I believe them to be numerous—*those very counterparts of the town-park leases, which Mr. Hamilton*, in contradiction of my express statement, has no less expressly stated to the Commissioners are *always delivered to the tenants immediately on the signing of the lease.*

It is, I think, worth Mr. Hamilton's while to clear up this point. If he fail to do so, he may rely on its being pressed as a test question in the discussion of the vital issue as to what weight is to be attached by the Ministry or by Parliament to even the most explicit and apparently most trustworthy statements of fact put forward in the "rebutting" case made before the Commission by Irish landlords and their agents.

THE END.

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