

The London Companies and Tenant Right in Nineteenth-Century Ireland

By OLIVE ROBINSON

THE London companies as owners in fee of lands in county Londonderry were faced with tenant right as an established custom when they undertook the responsibility of direct management of their estates in the nineteenth century. The companies were granted lands in the early seventeenth century in return for the financial contribution to the Crown's scheme for the plantation of Ulster with British colonists, and although for two centuries they had delegated their responsibilities as landlords to middlemen, in the nineteenth century all but four of the twelve great companies transformed their association with Ireland by repossessing their lands on the expiry of middlemen's leases.

Under their lease covenants the lessees of estates had been required to maintain and improve the property, but for two centuries the companies had failed to enforce these obligations, and estates had consequently deteriorated as middlemen sought to maximize their income by permitting unrestricted subdivision of holdings and by rackrenting the occupying tenantry. This change in the companies' association with Ireland, however, signified their intention of letting lands directly to the occupying tenants, and introducing a system of estate administration which would increase their income as landlords and improve the lot of the tenantry.¹

Tenant right, by contrast, was inextricably bound up with the general lack of landlord interest in estate improvement in Ireland. Thus the implications of 'the Ulster custom' were summarized by the Devon Commission: "Large tracts having become the property of public bodies or of individuals resident at a distance, landlords were well contented to let their farms to those who would undertake the cultivation and entire management, reserving to themselves a rent, but making no expenditure and exercising little interference with the land. Under such circumstances it seems neither extraordinary nor unreasonable that a tenant quitting a farm either at his own desire or from any difference with his landlord, should obtain from his successor a sum of money, partly in remuneration for his expenditure, and partly as a price paid for the possession of land which the new tenant would have no other means of acquiring."² It was generally acknowledged that estates on which the custom prevailed showed more improvement than those where it did not: "anomalous as the custom is, if considered by reference to all ordinary notions of property, it must be admitted that the district in which it has prevailed has thriven and improved in comparison with other parts of the country."³

Tenant right did, of course, exist on estates of landlords who were regarded as good or improving proprietors,⁴ but where landlords in-

¹ O. Robinson, 'The London companies as progressive landlords in nineteenth-century Ireland', in *Econ. Hist. Rev.*, 2nd ser., xv, no. 1, 1962. The eight company estates which were repossessed on the expiry of the lease covered an area of approximately 205,550 statute acres in the county of Londonderry.—T. W. Moody, *The Londonderry Plantation, 1609-41*, Appendix G.

² Digest of Evidence taken before H.M. Commissioners of Inquiry into the state of the law and practice in respect to the occupation of land in Ireland, 1847, pt II, pp. 1119-20. See also W. D. Ferguson and A. Vance, *The Tenure and Improvement of Land in Ireland*, p. 302, and Tenure (Ireland) Bill, Sel. Cttee. H.L. 1867 (518), xiv, 101.

³ Digest of Evidence, 1847, *op. cit.*, pt II, p. 1120. Cf. W. E. Gladstone, *Speech on the 2nd Reading of the Irish Land Bill, 1870*, p. 14.

⁴ W. D. Henderson, *Lecture on the History and Origin of Ulster Tenant Right to the National Reform Union*, Manchester, 1877. See also J. Hamilton, *Sixty Years Experience as an Irish Landlord*, ed. H. C. White, London, 1894, and Earl of Belmore, *History of Two Ulster Manors*.

tended to improve their estates, tenant right by its nature presented a potential threat to the landlord's interest; at the very least improving landlords would encounter the difficulty of separating whatever interests the tenant had in improvement from those of his landlord. The tenant right system appeared in fact to imply that the interests of the tenantry and improving landlords would eventually conflict. On the one hand, tenant right was open to the threat of restriction or "submergence under a programme of genuine agricultural improvement,"¹ while on the other, the landlord's improvements were endangered by the possibility that tenant right was "carved out of the landlord's interest."²

There is little detailed information to indicate how improving landlords were affected by the operation of the tenant right custom, beyond evidence that at times they endeavoured to choose the incoming tenants and control the prices paid for tenant right of farms.³ The London companies on repossession of their estates in the nineteenth century were prepared to grant leases to the occupying tenants, but only to those with larger farms (ranging from 15 to 30 acres), so that leaseholding tenants were in the minority. The bulk of the tenantry on company estates held farms from year to year, as tenants at will, which meant that in practice the majority of company tenants continued (as under the middlemen) to rely on tenant right as a protection against possible landlord expropriation of their interest in improvements. Since the companies, however, were genuinely interested in the development of their property for the mutual benefit of landlords and tenants, consideration of their experience should help

to show if, and to what extent the tenant right system involved an irreconcilable conflict between the interests of the occupying tenantry and progressive landlords in nineteenth-century Ireland.⁴

I

The earliest extensive evidence concerning tenant right on company lands relates to the operation of the custom on the Clothworkers' estate in the late 1830's, while the property was still under the control of a middleman who was holding the estate for the duration of the two surviving lives named in the lease granted in 1770.⁵ Edward Oseland, the company's representative in Ireland paid particular attention to the question of tenant right, and reported at length on the subject. Describing tenant right in 1838 he wrote: "the custom for the outgoing tenant to obtain a cash payment from his successor has been permitted by the landlord as long as he received his rent (and the agent his fee for altering the tenant's name in the rent book), and it has become a right equal in effect to a law; on the Clothworkers' property no one can now be found to take a farm unless the outgoing tenant is perfectly satisfied on leaving, and not a few cases have occurred recently, and even in this peaceable part of Ireland, when parties have been ejected for non-payment of rent, not having received a compensation as the tenant right for leaving, the incoming tenant's house and corn stacks have been set on fire." Oseland also learned that incoming tenants were "paying exorbitant prices for land, far in excess of the value of any improvements made by their predecessors, yet the outgoing

¹ C. R. Fay, *The Ulster Custom of Tenant Right* (unpublished paper, Public Record Office, Northern Ireland (P.R.O.N.I.), 1952, p. 13.

² W. E. Gladstone, *op. cit.*, p. 131. Cf. *Digest of Evidence*, 1847, *op. cit.*, pt II, p. 1120: "The increasing interest which many landlords, particularly some amongst the largest proprietors, take in their estates, the improved intercourse with their tenants, the liberal expenditure made by some of them in permanent improvements, all tend to place the relation of landlord and tenant on the footing most advantageous for both, and in proportion as feelings of confidence grow up, the evils of an unrestricted tenant right will be avoided, and the beneficial results, which under a modified form it is calculated to produce, will be secured."

³ Cf. *Digest of Evidence*, 1847, *op. cit.*, pt I, p. 295, evidence of John Hancock, land agent in county Armagh.

⁴ This study is based on an examination of the Irish estate records of the Worshipful Companies of Drapers, Fishmongers, Grocers, Clothworkers, Merchant Taylors, Ironmongers, Salters, and Skinners of London, to which companies the writer is indebted. The records of the Mercers' company were lost when the company's Hall was destroyed in 1941.

⁵ P.R.O.N.I., 2nd Report on the Clothworkers' estate, by E. Oseland.

tenant expected payment even where the landlord excused him 3 or 4 years' rent."¹ In 1840, the year in which the middleman's lease expired, Oseland's findings were fully confirmed in a survey of the estate undertaken for the company by his successor, Edward Driver.²

Agents on other company estates agreed with Driver that the effects of tenant right were "injurious"; they were "certain that tenant right could not be maintained in law." There was no uniform practice in regard to the value of tenant right, payments ranging from seven to fifteen years' rent of the farm. Some agents thought that tenant right should be limited to five or seven years' rent, whether tenants held from year to year or on lease, but most agents feared the tenants' reaction to any control of the tenant right—the damage that would be done to the incoming tenant's crops and stock if he did not pay the tenant right.

Driver however, did not attempt to conceal his opposition to tenant right. He denounced as "outrageously absurd" the action of the Mercers' company in admitting that "all their tenants may claim for tenant right, even the yearly tenants, a compensation to be computed at 5 years' amount of the rent of their farms;" he equally condemned as "monstrous and exorbitant" the advice of his predecessor that the Clothworkers should allow an outgoing tenant a maximum of seven years' rent for his tenant right. Driver suggested to company agents that in future the outgoing tenant should be paid only for "any outlay or improvement he may have made on the premises," and argued that if the companies showed a united front

"the whole of the inconvenience of the present abominable system of tenant right claim might be abolished, and a wholesome substitute provided." He admitted that it might prove difficult to find an incoming tenant on such terms, but thought that in view of "the anxiety manifested for taking land," the tenant would take "all risks" after the farm had been kept in hand by the landlords for a year.³

While the companies' representatives and agents thus had strong views about tenant right, the earliest formal statement of company attitudes to the custom did not appear until their estate agents submitted evidence in answer to the inquiries of the Devon Commissioners in 1845. On the Drapers' estate, which had been repossessed by the company in 1817, farms were selling at £7 to £20 per acre. If a farm was improved it "sold so much the better," but values varied with the quality and situation of the land; tenure did not affect the sale "one way or another." The agent encouraged the adjoining tenant to buy in the interest of the company's consolidation policy;⁴ he also required the name of the incoming tenant to be submitted to him for approval. He often objected to the incoming tenants proposed. When some tenants lost their holdings through the squaring of farms by the landlords they received compensation of not less than ten years' rent of the holding. The Drapers did not interfere with the sale of tenant right but "by degrees were checking the immense sums given for tenant right;"⁵ it was the opinion of their agent that "anything like radical reformation would cause poverty and confusion."⁶ The Fishmongers' agent reported

¹ P.R.O.N.I. 3rd Report on the Clothworkers' estate 1838, by F. Oseland.

² P.R.O.N.I., E. Driver, *Survey of the Manor of Clothworkers 1840*.

³ E. Driver, *op. cit.*

⁴ The Drapers regarded some enlargement of farms as a prerequisite of improvement on their estate, and instructed the agent to encourage consolidation at every opportunity. (See Minutes of the Court of Assistants of the Drapers' Company, 1820-53, Drapers' Hall, London.) All the companies were anxious to enlarge holdings but they were not prepared to enforce consolidation because of the disaffection which would have ensued. (See Minutes of the Court of Assistants of the Fishmongers' Company, vols. O-U, Fishmongers' Hall, London; Minutes of the Irish Committee of the Grocers' Company, 1840-70, Grocers' Hall, London; Minutes of the Court of Assistants of the Ironmongers' Company, 1842-55, Ironmongers' Hall, London.) Cf. J. H. Johnson, 'Population Movements in County Derry during a Pre-Famine Year', *Proc. Roy. Irish Academy*, LX, section C, no. 3, 1959, p. 153: "Consolidation (in county Derry) was the result of emigration and not the cause."

⁵ In the 1840's the average rent per statute acre on the Drapers' estate ranged from about 8s. 4d. to 13s. 10d. so that tenant right prices could have been as high as the equivalent of twenty-eight years' rent.—Drapers' Minutes, 1842.

⁶ 'Law and practice in respect of the occupation of land in Ireland', in *Mins. of Evidence*, 1845, 606, xix, 648, 682.

that on his company's estate which had been under their direct management from 1820, the occupying tenants were obtaining from five to seven years' rent for the tenant right of their farms, "farms without leases selling for as much as farms with leases."¹ On the Clothworkers' property although the company had been fully informed about the disadvantages of tenant right before they repossessed the estate in 1840, they nevertheless fully recognized the custom. Their estate agent did not seem to share the doubts about tenant right expressed earlier by Driver and Oseland, and thought that it was "not only judicious to allow the sale of tenant right," but that it would be "cruelly unjust to prevent it;" unjust because "the tenantry and their forefathers had been permitted to make all the permanent improvements at their own expense," and injudicious because "with the poor classes it was the best security against dilapidation of the premises, the price of tenant right always being in proportion to the condition of the farm." In the 1840's tenant right on the Clothworkers' estate was selling at three years' rent of the holding.² On the Ironmongers' property tenant right was fetching up to £15 per acre in 1844 and the money received enabled tenants to emigrate to America. The company had repossessed the estate in 1841 and when a farm was offered for sale they expected the agent to persuade the adjoining tenant to buy it, and he had been successful in several cases although tenant right was often as much as fifteen years' rent of the farm.³ In the case of the Grocers' estate where there were signs that the landlords were opposed to tenant right by 1845, the average price of tenant right was reported by the agent to be "equal to 2 or 3 years' rent of the farm, the company allowing the sale of tenant right in certain cases." From 1821 when the property was repossessed the company "had allowed the adjoining tenant of a farm offered for sale to pay something like 2 years' rent, but they were not

anxious to recognize tenant right on the estate."⁴

From the evidence quoted it is apparent that the companies had decided that recognition of tenant right was their only practical course. Although the Drapers and Grocers appeared anxious to control prices paid for tenant right there is no indication that they imposed any general sanctions on the tenants' freedom to sell tenant right for as much as they could obtain. While the records suggest that the value of tenant right on company estates was at least influenced by the condition of a farm, there was no reliable evidence of any unique relationship between the value of tenant right and the value of improvements on the farm. The Clothworkers' agent was the only witness to claim that the price of tenant right was *always* in proportion to the condition of the farm, and his statement was strikingly inconsistent with the earlier evidence about tenant right on the Clothworkers' property.⁵ It is not possible on the basis of the evidence available to ascertain the extent to which sums paid for tenant right represented compensation for improvements carried out by the tenant or compensation for the surrender of his right of possession, but it seems fairly clear that the tenant's improvement interest was invariably small. As the evidence of Driver and Oseland indicated, there were no improvements whatever on the Clothworkers' estate to support the tenants' claim that they had an interest in improvements. By 1845 both the Clothworkers' and Ironmongers' estates had been under direct company management for only four or five years, and while the companies had embarked on policies of estate improvement, little progress could have been achieved in so few years. Even on the estates of the Drapers, Fishmongers, and Grocers where conditions were somewhat better than on the estates which had been more recently repossessed by companies, progress was not spectacular despite the companies' large outlay on the development of their properties

¹ *Ibid.*, 729.

² *Ibid.*, 652.

³ *Ibid.*, 633, 648; Report of the Deputation to the Ironmongers' estate, 1841 (Ironmongers' Hall, London).

⁴ 'Law and practice in respect of the occupation of land in Ireland', in *Mins. of Evidence*, 1845, 606, xix, 728.

⁵ Cf. pp. 55-6 above. Of course, the comparatively low tenant right prices quoted by the agents in respect of both the Clothworkers' and Grocers' estates may not have represented the prices actually paid. The agents did not always know the true prices received for tenant right (cf. evidence of John Hancock, *op. cit.*).

over a period of twenty-five years,¹ and the tenants' capacity for improvement continued to be very limited. It is therefore probably fair to assume that until 1845 payments for tenant right of farms on company estates were largely payments to the outgoing tenant for his interest in the occupation of land. There was in fact no change in the essence of the tenant right custom as it had existed on company estates before repossession.

II

While companies had obviously accepted tenant right as an established custom they became increasingly apprehensive about the effects of the system. As landlords directly responsible for the management of their estates they were investing almost half their annual income from the property on improvement, and although progress was slow, they had a growing interest in improvements which could be expected to materialize in the long term. The companies were spending large sums annually on general farm improvements, repair, and erection of farm buildings, consolidation of farms, construction of roads, support for educational, medical, and religious institutions, and on the provision of direct financial relief for distressed tenants.² Company lands were let at rents which the companies considered to be 'just' to both landlords and tenants—rents which would give the landlords some return on their investment in the property and at the same time leave the occupying tenants with a reasonable standard of living, a standard well above the subsistence level to which they had been accustomed when holding from middlemen.³ The companies were absentee landlords

but they maintained contact with the occupying tenantry by sending deputations of company members to inspect estates at intervals, and make recommendations concerning estate improvement and rent policies; the companies' estates were managed by resident estate agents carefully chosen and controlled to ensure that they did not usurp the landlords' functions.⁴ The companies were consequently in a rather different position from landlords who limited their estate administration to the collection of the maximum rents their tenants could be made to pay, and who left the occupying tenant, with his subsistence standard of living, responsible for the maintenance and improvement of the productive powers of the soil and all permanent structures thereon; the most (or worst) such landlords had to fear from tenant right was that when farms changed hands the incoming tenant's capacity to cultivate the land and pay his rent was depleted by payments for tenant right, whether financed out of his own capital or by borrowing.

Until about 1850 the companies' actual criticism of tenant right was limited to remarks about the disadvantages of payments for tenant right which exhausted the incoming tenant's resources, an effect of tenant right which they tried to minimize by requiring that the incoming tenant should be approved by the estate agent. But during the period 1850-70 the companies directly expressed anxiety about the lack of any close relationship between the value of tenant right and the value of the improvements for which the tenant alone was responsible.

The Clothworkers were the first company to reveal their anxiety about tenant right, although their agent had defended the system in his evi-

¹ Cf. O. Robinson, *op. cit.*, p. 113.

² Between 1817 and 1870 the Drapers' company spent £190,000 on such objects, the Fishmongers £158,028 (1820-70), the Grocers £124,499 (1822-70), the Clothworkers £62,587 (1840-70), and the Ironmongers £40,949 (1841-68). In addition the companies had to meet the costs of estate administration (salaries of agents, costs of estate inspections by company deputations, general administrative expenses in England and Ireland), together with estate charges (tithes, county cesses, poor rates, and property taxes). See O. Robinson, *op. cit.* pp. 197-8 and 114; Clothworkers' Irish Estate accounts, 1840-71, (Merchant Taylors' Hall, London); Ironmongers' Irish Estate Account Book, 1840-68 (Ironmongers' Hall, London); T. Girtin, *The Triple Crowns. A Narrative History of the Drapers' Company, 1364-1964*, pp. 305-12.

³ O. Robinson, *op. cit.*, pp. 108-110. Even contemporary opinion considered that the rents charged by the London companies were reasonable. Cf. H. D. Inglis, *Ireland in 1834*, II, p. 220: "Company lands on the whole are reasonably let"; J. Wiggins, *The 'Monster' Misery of Ireland*, p. 56: "The rents of company lands approach more in proportion to those of England."

⁴ See O. Robinson, *op. cit.*, p. 106.

dence to the Devon Commission. In 1850 the company attempted to define the limits of tenant right: "As far as all reasonable improvements go and for all erections made upon a holding, an outgoing tenant is justified in looking for compensation, but this compensation must be based upon a due regard to all rights, and must not be extended so as to compromise the rights of the proprietor." The company also noted that "tenants were giving considerable sums for the tenant right of holdings, which did not include any valuation of crops in the ground," and considered it "strange" that such tenants had been seeking rent reductions.¹

Members of the Ironmongers' company who visited their estate in 1853 advised the company to warn tenants who asked for supplies of tiles for drainage and for roofing houses and farm buildings, that assistance would be granted only if it could be given "without giving any pretence to the tenants for claiming an interest in the increased value of the property in consequence of such grants." The Ironmongers were always prepared to pay a tenant the value of his tenant right if he wished to give up his farm; in 1853 for example, when the company sold 11 acres of land to the Directors of the Derry, Coleraine, and Castledawson Railway Company for a line through the estate, they obtained £15 per acre for the landlords' interest, "the Railway company undertaking to settle with the tenants for any claims they may have for severance or otherwise."²

In 1861 a company deputation which inspected the Fishmongers' estate complained about the effects of tenant right. They stated in their report that tenant right encouraged landlords to withhold assistance from tenants: "Tenant right invades landlords' rights, almost depriving him of the right to relet his land at a fair and equitable rent; the tenant has a vested interest in the improved condition of the property even though improvements are not done by him." They were convinced that tenant right values on the estate had been inflated as a

result of the company's high investment in improvements and their policy of charging reasonable rents. A statement of the prices paid for the tenant right of sixty-six leasehold farms on the Fishmongers' estate sold during the years 1857-70, showed that the incoming tenants were paying twenty-five and a half years' rent for leases which on average had only twelve years to run. The deputation recalled that members of the company who had been to Ireland in 1857 had reported that "tenants were getting more for their tenant right than formerly, or than is obtained on other estates," and expressed the view that the landlords' interest might have been better served in Ireland "if they had provided farm buildings sufficient for the working of the farm and the preservation of crops."³

Tenants on the Grocers' estate were reported by the agent in 1865 to be "eager to obtain allowances for improvement, not with the idea of improving the estate of the company, but of increasing their own profits, considering that they have a property or interest in the improvements affected."⁴ In 1870 he defined tenant right as "a payment by the incoming tenant nominally for improvements effected by the outgoing tenant, but really for the quiet and peaceable possession of the premises." Tenant right on the Grocers' estate generally amounted to ten years' rent of the holding though in some parts of the property more than this sum was given, "chiefly to satisfy the claims of the creditors of the outgoing tenant." The agent admitted that tenants did not deny the company the right of participating in the increased value of the property, and had hitherto agreed to a reasonable increase in rent, but he "nonetheless felt after 34 years' experience of tenant right in all its bearings, that the wise and judicious interference of the government had become necessary to declare and substantiate the legal rights of both the owners and occupiers of land." It was his opinion that the tenant right of Ulster had during the preceding few

¹ Minutes of the Clothworkers-Merchant Taylors' Irish Estate Committee of Management, 1853 (Merchant Taylors' Hall, London).

² Minutes of the Court of Assistants of the Ironmongers' Company, 1852-3, and Report of the deputation to the Ironmongers' estate, 1853 (Ironmongers' Hall, London).

³ Minutes of the Court of Assistants of the Fishmongers' Company, vol. S-U (Fishmongers' Hall, London).

⁴ Minutes of the Irish Committee of the Grocers' Company, 1865 (Grocers' Hall, London).

years "assumed the character of an undefined outstanding claim against property;" he considered that any law which would systematize such claims must favour landed proprietors: "The want of capital amongst landlords and their indolence combined to produce the gigantic proportion that tenant right has lately assumed in reference to the actual fee simple of estates; the abuse would gradually deprive the landlord of a right periodically to increase rent."¹

In the early 1860's less than a decade after they had repossessed their estate, the Salters' company became particularly worried about the effects of tenant right. The company was convinced that the tenants' ability to maintain and improve their farms was seriously impaired by payments for tenant right. When the estate had been taken over on the expiry of the ninety-nine-year lease term in 1853, the company had immediately started to improve the property and had been spending at a rate of some £6,000 annually (almost half the rental). Considerable care had been taken to set rents which the tenants' circumstances allowed them to pay, and the company expected that tenants would be able to undertake some improvement of their holdings, but this expectation had not been fulfilled. The Salters therefore adopted the attitude that some control or restriction of tenant right was essential.²

III

Whatever the advantages of tenant right, it seems evident that from the early 1850's the companies as landlords had begun to regard the disadvantages of the system as a considerable problem. Although tenant right payments had

helped to finance the emigration of tenants prepared to give up farms, and so enabled the companies to effect some enlargement of farms (a feature of the system which they regarded as highly beneficial), tenant right prices were being continually forced up by the growing pressure for land, as the experience of the famine years receded and the prospects of agriculture appeared more promising. In the latter part of the 1850's and throughout the 1860's company deputations and agents were reporting that tenants were reluctant to give up holdings owing "to the increased value of estates;" tenants were "clinging tenaciously to the land" and were not anxious to emigrate because "of the present disturbed state of America."³ On company estates tenant right prices were also undoubtedly affected by the companies' moderate rent policies. On the Fishmongers' estate for example, a tenant "who had lately paid £550 for an interest of 18 months in a lease of 69 acres let at £13 10s. per year", told the company in 1857 that he had been "induced to part with £550 for the tenant right of the holding knowing the easy terms on which the company let their estate;" the Fishmongers had actually reduced their rents in 1852 by an average of 9 per cent, and subsequent company deputations to the estate had observed that tenants were "generally contented" with the rents set in 1852.⁴ In such circumstances it is hardly surprising to find that the companies which recorded protests about tenant right were complaining that the custom was encroaching on landlords' rights. As improving landlords the companies were beset with the practical difficulty of distinguishing the tenant's interest in improvements from those of the landlord.⁵ The

¹ Minutes of the Irish Committee of the Grocers' Company, 1870 (Grocers' Hall, London).

² Irish Society and the London Companies (Irish Estates), Select Cttee. Mins. of Evidence, 1890, 322, xiv, 433. See also, J. Steven Watson, *A History of the Salters' Company*, pp. 132-3.

³ Minutes of the Court of Assistants of the Drapers' Company, 1856-68 (Drapers' Hall, London); Minutes of the Court of Assistants of the Fishmongers' Company, vol. P-W (Fishmongers' Hall, London); Minutes of the Irish Committee of the Grocers' Company, 1851-70 (Grocers' Hall, London). See also G. Campbell, *The Irish Land*, p. 40: "Demand for land has again become great; tenant right has become as valuable as ever, or more valuable than ever." Cf. S. C. Johnson, *A History of Emigration to North America, 1763-1912*, p. 344, and J. H. Johnson, "The Population of Londonderry during the Great Irish Famine", *Econ. Hist. Rev.*, 2nd ser., x, 1957-8, pp. 283-5.

⁴ Minutes of the Court of Assistants of the Fishmongers' Company, vol. U. (Fishmongers' Hall, London.)

⁵ Cf. p. 59 above, statement by the Fishmongers' company deputation in 1857, that the "landlords' interest might have been better served in Ireland if they had provided farm buildings sufficient for the work of the farm and the preservation of crops."

Fishmongers, Ironmongers, and Grocers were accusing tenants of expecting payment for improvements carried out not with their own but with their landlords' capital, while the Salters were directly suggesting that the tenants could have no interest in the improved value of farms since the company alone was responsible for all improvements on the estate.

Notwithstanding this hardening attitude towards tenant right, only the Ironmongers and Salters took positive action to limit the tenants' freedom to sell their tenant right for its market value. From 1860 the Ironmongers limited the price which the incoming tenant could pay for a farm on their estate to ten years' purchase of the rent. The company at the same time informed tenants that they would pay this price to any tenants anxious to quit, and were prepared to lend capital to tenants willing to buy the tenant right of adjoining farms offered for sale.¹ The Salters placed a similar restriction on their tenants in 1864, when it was ordered that the price paid on the transfer of a holding should not exceed ten years' purchase of the rent. Specific rules to control the tenant right custom on the estate were introduced: "A tenant cannot sell his tenant right in his farm until he has first obtained permission of the landlords; when a farm is sold the purchasing tenant is required to sign a contract in which the value of the tenant right is stated to be a sum not exceeding ten years' present rent of the farm; when a tenant dies his son or successor in the farm is required to sign a contract similar in its terms to the contract signed by the purchasing tenant."²

There is no explicit reference in the Ironmongers' records to the effects of their restriction of tenant right, other than a statement that twenty tenants had availed themselves of loans from the company at 5 per cent for the purchase of tenant right at ten years' rent.³ But in the case of the Salters' estate where the restriction of tenant right was more thoroughgoing than on

the Ironmongers' property, tenants at once objected to the "restriction of the tenant's liberty to sell his improvements to the highest bidder, the old and immemorial custom of the estate." They disputed the company's claim that limitation of tenant right would be "a benefit to the tenant and a protection to the landlords' interest," and feared the "placing of the value of tenant right, i.e. of the tenants' property, under the arbitrary control of landlords." Despite these protests the Salters did not alter their decision to limit tenant right. After "due consideration" the company informed tenants that "they had not taken the course they adopted without the fullest consideration, and that it was their firm intention to carry it out in order to curb the exorbitant sums being paid by the incoming tenants for ruinous and dilapidated buildings."⁴

IV

In view of the Salters' adherence to the policy of restricting tenant right, it might appear remarkable that the other companies did not follow their example. They too had been expressing dissatisfaction with tenant right and were equally anxious to prevent any infringement of their rights as landlords. Their apprehensions about the effects of tenant right were certainly no less than those of the Salters. In fact the Drapers, Fishmongers, and Grocers had been investing capital on their estates from 1820 and consequently had cause for greater concern about tenant right as a threat to their interests, than the Salters' company which had not repossessed lands until 1853.

However, it seems reasonable to conclude that the failure of these companies to take steps to relieve their fears about tenant right reflected their appreciation that the benefits which should accrue from control of tenant right might not be realized. It was only to be expected that with the majority of tenants holding their farms from year to year, regulation of

¹ Report of the Deputation to the Ironmongers' estate, 1860 (Ironmongers' Hall, London).

² Irish Society and the London Companies (Irish Estates), Select Cttee. Mins. of Evidence, 1890, 322, XIV, 433-4.

³ Reports of Deputations to the Ironmongers' estate, 1860, 1863, 1868, 1871 (Ironmongers' Hall, London).

⁴ Livery Companies of the City of London, R. Com. Returns of the Great Companies, 1884, c. 4073-1, xxxix, 355; Irish Society and the London Companies (Irish Estates), Select Cttee. Mins. of Evidence, 1890, 322, XIV, 433-4, 559-64. Cf. J. Steven Watson, *op. cit.*, p. 131.

tenant right would evoke opposition similar to that aroused on the Salters' estate. It should be noted that the Salters' tenants were in no way inhibited from expressing objections to the control of tenant right by the lack of evident improvement on their holdings. In an assertion that restriction of tenant right would "tend greatly to discourage improving tenants from expending either capital or labour upon their farms" they were unequivocally implying that by interfering with the tenant's freedom to sell his tenant right, landlords were running the risk of destroying the tenant's willingness to improve, if and when he possessed the means to do so.¹ The relationship between landlords and tenants in nineteenth-century Ireland was a non-contractual one, whether landlords chose to recognize it as such or not. The Landlord and Tenant Law Amendment Act of 1860 (Lord Justice Deasy's Act) which had sought to place the relation of landlord and tenant on a basis of contract between the parties and not upon tenure or service, had been a failure.² If landlords intended to carry out policies of estate improvement as the London companies were doing, it was in their own interest to recognize the non-contractual nature of landlord and tenant relations and make every effort to foster goodwill between the two.³ The companies' estate improvement policies necessarily involved a considerable measure of co-operation from the tenants, and failure on the part of the companies as landlords to gain and maintain the tenants' co-operation would have inevitably increased the cost of developing estates. The yield on the companies' investment in land improvement in county Londonderry in the nineteenth century must have been en-

hanced by the efforts of a generally co-operative occupying tenantry prepared to supply their labour and gradually acquire a knowledge of improved agricultural techniques.

While the operation of tenant right on the estates of improving landlords in the circumstances of nineteenth-century Ireland probably enabled the occupying tenants to encroach on the value of the landlords' interest in improvement, just as in conditions of land shortage they were able to cash in on the scarcity of land by giving up mere possession of farms, the very fact that the tenants' improvements or potential improvements were protected, ensured a measure of protection for the landlords' improvements. By attempting to enforce rigid control of tenant right the London companies were more likely to extinguish than sustain their increasing interest in the improved value of their property. Restriction of tenant right would almost certainly have destroyed the tenants' willingness to maintain existing improvements or participate in any future development. Tenant right afforded the occupying tenants protection for any improvements they had done or might do, and once landlords sought to interfere with the custom they simultaneously endangered the value of existing improvements and made future progress more difficult and more costly. There was no evidence that restriction of tenant right on the Ironmongers' and Salters' estates led to any significant improvements in the condition of tenants' farms, or that the landlords' burden of estate improvement was diminished.⁴

The experience of the London companies as landlords in nineteenth-century Ireland suggests that though tenant right often conflicted

¹ For example, in 1871 the Grocers' agent reported that small tenants preferred to invest their capital in the banks at 2½ per cent, rather than on the development of their farms. (Minutes of the Court of Assistants of the Grocers' Company, 1871, Grocers' Hall, London.) The companies of course, did not exploit their freedom to increase the rents of tenants at will as often as they wished, but from the tenants' point of view there was always the risk that a company might change its rent policy.

² Landlord and Tenant Law Amendment Act (Ireland) 23 & 24 Vic., c. 154. Cf. J. E. Pomfret, *The Struggle for Land in Ireland, 1800-1923*, p. 68: "The act . . . was a total failure because landlords uniformly refused to give assent to the proposals which the tenants placed before them."

³ Cf. Joan Thirsk, *English Peasant Farming. The Agrarian History of Lincolnshire from Tudor to Recent Times*, pp. 265-6.

⁴ Reports of depositions to the Ironmongers' estate, 1863, 1868, 1871, 1874, 1877 (Ironmongers' Hall, London); Livery Companies of the City of London, R. Com. Returns of the Great Companies, 1884, c. 4073-1, xxxix. 355; Irish Society and the London Companies (Irish Estates), Select Cttee. Mins. of Evidence, 1890, 322, xiv, 433-4, 559-64.

with landlords' rights, on balance Irish landlords, including the most progressive, had something to gain from the continuance of the tenant right system where it existed as an established custom. It was not worthwhile for landlords to attempt to control tenant right in order to avoid its incidental dangers; it was more worthwhile to tolerate its disadvantages for the sake of its advantages.¹ The existence of tenant right was a feature of the land system in nineteenth-century Ireland which helped to promote agricultural advancement and ensure that the occupying tenants were not wholly indifferent to progress. Clearly, interference with tenant right was unacceptable to tenants, for though it was only a permissive right existing through the force of custom, it implied some notion of co-partnership in the land. The essence of tenant right was that the tenant "exercised a right to dispose of his holding for a valuable consideration although he may himself be a tenant at will, and although he may have expended nothing in permanent improvements."² It was therefore inevitable that efforts

by improving landlords to control or regulate tenant right should be regarded by the tenantry as an attempt to destroy the custom. The Land Act of 1870 was a major legislative endeavour to settle the problem of landlord and tenant relations in Ireland by legalizing the Ulster custom of tenant right and similar usages throughout Ireland. It proved unsuccessful because tenants were offered a measure of compensation for their improvements, yet denied sufficient protection against rising rents to guarantee them the degree of co-partnership interest implicit in the tenant right system.³ Progress could not be hastened by paring down tenant right. It was only to be attained by the replacement of tenant right with something stronger in the shape of the Three F's (free sale, fair rent, and fixity of tenure) of the Land Act of 1881, which recognized dual ownership in land and took the Irish landlord and tenant problem another stage towards its eventual solution by land purchase and the establishment of a peasant proprietary.⁴

¹ Cf. B. A. Kennedy, 'Tenant Right before 1870', in T. W. Moody and J. C. Beckett (eds.), *Ulster since 1800*, London, 1954, pp. 41-2: "Ulster landlords tolerated this custom for several reasons; they were well aware that the efficiency of their tenants' culture was 50 per cent better than that of the average tenant in other parts of Ireland. The more produce, the more assured they were of their rental. . . And of course, it was all the better to have a contented tenantry. Yet landlords did not love tenant right for its own sake. The Ulster custom curbed their power to extort exorbitant rents, and they probably regarded it as a necessary evil."

² Digest of Evidence, 1847, *op. cit.*, pt II, pp. 1119-20.

³ Act 33 & 34 Vict. See Working of the Landlord and Tenant (Ireland) Act, 1870, Mins. of Evidence, 1881, c. 2779, xviii, 7; cf. A. G. Richey, *The Irish Land Laws*, p. 62, *et seq.*

⁴ Cf. C. R. Fay, *op. cit.*, p. 13: "The Land Act of 1881 took tenant right to its furthest point, but beside it now was the alternative of Land Purchase."