



**'THE FIVE YEAR EXPERIMENT': THE INCUMBERED ESTATES
COURT, 1849-54.**

by

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Abbreviations

BL - British Library

HC – House of Commons

HL - House of Lords

NAI - National Archives of Ireland

NAMA – National Assets Management Agency

NLI - National Library of Ireland

PRONI - Public Records of Northern Ireland

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Introduction

The Incumbered Estates Act was passed by the House of Commons on 28 July 1849.¹ This radical measure had been long in the making. The first Incumbered Estates Bill was brought before the House of Commons in 1846 by two Irish MPs but to no avail. A second bill was brought forward in 1847, and while this measure had enjoyed considerable support in the House it was ultimately unsuccessful. In 1848 a third proposal providing for the sale of incumbered estates was again brought before parliament. This measure was passed into law. However, it quickly became apparent that this measure was inoperable and insufficient. It was replaced by the 1849 Incumbered Estates Act. This legislation became the first tentative step taken by the government at Westminster to resolve the Irish Land Question.

The measure was designed to create a landowning middle class in Ireland by facilitating the sale of landed estates crippled by debt as the Great Famine drew to a close. In doing so, it was hoped that the legislative union between England and Ireland which had existed since 1800, could be bolstered by establishing a loyal and wealthy class of landowners whose allegiance was to the crown and whose capital could be applied to the improvement of Irish society. The creation of an independent Court of Record was a significant deviation from the existing policies of the government at the time which had previously operated a system of gradual reform. A Court of Record is one where acts and judicial proceedings are enrolled 'in parchment for a perpetual memorial and testimony'. These rolls, known as the

¹ In the interest of consistency the spelling 'incumbered' will be used throughout this study. This spelling is taken from the legislation which established the court. The spelling 'encumbered' will be used only in quotations or titles where it originally appears.

records of the Court, were held in such high and 'supereminent' authority that their truth could not be called into question, and therefore its formal records were deemed infallible.² While the Irish Courts of Equity- the Courts of Chancery and Exchequer - were deemed Courts of Record, their rulings were considerably undermined by the provisions of the Act of Union. Article eight of the Union directed that 'all civil and ecclesiastical laws and courts shall remain as now established, subject to future alterations'.³ This meant that any amendments to the powers, processes and authority of the Irish legal Courts could only be made through parliament at Westminster. J.C. Wylie suggested that of all the branches of Irish law retained after the Union, that pertaining to land most stridently resisted the influence of English common law and maintained a distinctly Irish set of characteristics and complexities. He stipulated that a fundamental flaw of the Act of Union was parliament's failure to recognise that the subsequent social and political history of Ireland had meant that its administration had not developed in line with the British equivalent. As a result it was often the case that the infrastructure required for legislative or administrative reforms passed by Westminster were incompatible with the system which existed in Ireland.⁴ While the Courts of Chancery and Equity were Courts of Record, the failure of successive reforms had left both bodies unable to progress the business before them in an efficient manner. What would follow was a significant revolution in the nature of Irish landownership and the administration of Ireland.

This work will examine the role of the Incumbered Estates Court in the administrative and social revolution that was undertaken by the British government

² W.S. Holdsworth, *A history of English Law*, vol. v (London, 1924), pp 157-8.

³ An Act for the Union of Great Britain and Ireland (39 & 40 Geo., c. lxvii).

⁴ J.C.W Wylie, *Irish land law* (3rd ed., Dublin, 1997) pp 28-30.

in various aspects of Irish governance as early as the 1830s. It will look at the factors which led government to establish a policy of interference in the world of property ownership which had not previously been a parliamentary concern. The radical notion that a new court could be created to divest the previously sacrosanct Irish landed class of their extensive and deeply-indebted holdings was the first of many remedial steps which began the slow and irreversible decline of the Irish landed class. Through an examination of the intricate workings of the Incumbered Estates Court, the business of this revolution will be discussed and its impacts highlighted. This study will look at the shift that occurred during the late 1840s which led the Westminster government to abandon its tried and tested system of gradual reform and piecemeal legislation. The eventual acceptance that this haphazard approach was an insufficient response to such a significant issue resulted in the creation of a whole new type of administrative structure. This body was designed to alter the structure of landholding in more than a superficial manner.⁵ This coincided with what Oliver MacDonagh termed 'a new sort of state being born in Britain'. This new state abandoned the system of *laissez faire* in favour of centralised regulation for certain aspects of economic and social organisation, such as poor law, education and public works.⁶ These systems created inspectorates in each of the affected areas. The creation of these bodies was typically quite sudden.⁷ In its earliest form the base of the activity was in Britain with Ireland having its own inspectors. However, MacDonagh noted that in these cases Ireland was treated in the same manner as

⁵ Oliver MacDonagh, *A pattern of government growth, 1800-60* (London, 1961), p. 18.

⁶ For more see R.B. McDowell, 'Administration and public services, 1800-70' in W.E. Vaughan (ed.), *A new history of Ireland, V: Ireland under the Union, 1801-70* (Oxford, 2010), p. 538-61.

⁷ Oliver MacDonagh, 'Ideas and institutions, 1830-45' in Vaughan (ed.), *A new history of Ireland, V*, p. 206.

English counties such as Yorkshire and East Anglia. In the case of Irish land, the experiment required the establishment of an administration in Ireland. The body established by the Incumbered Estates Act was granted the extraordinary power to dictate its own rules and guidelines for operation, amending its proceedings to facilitate the unusual circumstances of Irish land. It is this escalation in reform that made the Incumbered Estates Court an administrative revolution.

The term 'revolution' is in itself problematic. The term is ambiguous, overused and frequently misunderstood. Dale Yoder in his attempt to map the current use of the term revolution, suggests that it is one of the most used and misused words in modern language.⁸ In its most basic form a revolution can be seen in terms of a bicycle wheel. It starts at one point and turning in full circle, returns to that point. That is the conservative meaning. However, most commonly the term is associated with a political revolution, a violent uprising with the mass mobilisation of the proletariat to bring about a change in government. Such revolutions intended to overthrow the 'legally constituted elite', as was the case with the American Revolution of 1776, the French revolution in 1789 and the Russian revolution of 1917.⁹ Political revolutions result in a violent and sudden political change. However Yoder notes that truly great revolutions are not the ones that 'strike the historian most forcibly' but are those of 'manners and thought... those which transform the destinies of people' and he notes that these revolutions are frequently accomplished so slowly that historians 'can

⁸ Dale Yoder, 'Current definitions of revolution' in *American Journal of Sociology*, xxxii (Nov. 1926), p. 433.

⁹ Raymond Tanter and Manus Midlarsky, 'A theory of revolution' in *The Journal of Conflict Resolution*, xi (Sept. 1857), p. 266.

hardly point to their beginnings'.¹⁰ And this is the type of revolution which created the Incumbered Estate Court.

The unstable political position of Ireland in 1848 was a particular concern to the government in Westminster. While political revolutions gripped Europe, the British government set about instituting a social revolution in Ireland. Such social revolutions were a far more infrequent occurrence than their political equivalent. By facilitating this revolution through legislative means, government ensured that while externally things appeared to have changed significantly, fundamentally, on the level of government, they in fact remained the same. Oliver MacDonagh has suggested that the root of this type of reform in Ireland can be found in the period 1830 to 1845. MacDonagh suggests that following the implementation of the Act of Union and the removal of the Irish parliament to Westminster, what was left behind was a disjointed and inefficient administrative system. Furthermore, the creation of the Kingdom of Great Britain and Ireland in 1801 had led to the steady movement of Irish peers and the richest of the gentry from Ireland to the seat of power in London on a permanent or semi-permanent basis. This left a deficit of qualified persons to fill existing administrative positions in Ireland. The absence of a middle class, meant that suitable candidates for such appointments were difficult to find. The absence of this class was lamented throughout the period but the term 'middle class' was not used in reference to merchants and solicitors but rather in relation to landowners. It was suggested that a large portion of the proprietors were non-resident and unwilling to invest in the land which they held in Ireland, the resident gentry who remained were 'few and

¹⁰ Yoder, 'Current definitions of revolution', p. 437.

scattered' and the other inhabitants were paupers.¹¹ As such there was no 'middle class' in Ireland. This was as a direct result of the complex system of land sale which prevailed. The failings of the Irish Equity Court had created a system which meant the interests of creditors superseded those of the owners of land, regardless of the change of ownership. This served to exclude persons with newly-acquired wealth from gaining a foothold in Irish land as it prevented the creation of a secure title on property acquired privately or through the Courts. By 1830 it had become clear that the existing arrangement of indirect rule and external control of Ireland from Westminster was no longer a feasible means of managing Irish society. A new model was gradually introduced and a number of administrative bodies were created to take on various functions associated with the management of Ireland. Thus began a process of Government encroachment into aspects of life which had previously been the jurisdiction of an autonomous Irish administration.

One of the first examples of this government encroachment was the creation of the board of works set up in 1831. This body, modelled on the English equivalent, far exceeded its corresponding body in Britain. While the English board was responsible for the administration and organisation of *ad hoc* relief projects, the Irish body was intended to be a permanent part of a national plan. The Irish board had more comprehensive powers and its function was 'both deliberative and executive' while the role of the English board was strictly deliberative.¹² While initially established to oversee work on roads, ports and harbours, its activities soon extended to railways, inland navigation, coastal fisheries, land reclamations and drainage. The

¹¹ Jonathan Pim, *The conditions and prospects of Ireland and the Evils arising from the present distribution of landed property: with suggestions for a remedy* (Dublin, 1848) pp 88-9.

¹² MacDonagh, 'Ideas and institutions, 1830-45', p. 207.

establishment of the Irish Poor Law of 1838 followed the developing trend of government intervention. This vast and localised undertaking was, MacDonagh observed, managed by a parent body in London, but a significant portion of the staffing, particularly within the individual unions, was undertaken by large farmers, middlemen and the agents of absentee landlords, those who would ideally have formed the Irish landed middle class.¹³ This system was once again based on the English model but its responsibilities increased significantly with the outbreak of the Great Famine. Jonathan Pim, a prominent Quaker, philanthropist and later MP, observed at the time that the absence of a 'resident body, of an intelligent middle class' was a significant failing in Irish society.¹⁴ He suggested in 1848 that Famine was 'like a revolution or an earthquake' and that the devastation wrought by the Great Famine provided the opportunity for a 'new and wiser era for Ireland'.¹⁵ Similar administrative and supervisory bodies were introduced in education, economic development, the police, prisons and public health.¹⁶ MacDonagh suggested that by 1845 in place of the system of static and purely executive administration, a system of dynamic, creative and expert government had been established in Ireland. He contended that in addition to these bodies a new flexible form of law was required which could have accommodated the lessons learned from these experimental administrative structures but he stressed that a lengthy period of

¹³ Ibid. p. 206.

¹⁴ Pim, *The conditions and prospects of Ireland*, pp 88-90.

¹⁵ *Nation*, 12 Feb. 1848.

¹⁶ For more see David M. Anderson, *Policing the empire: government, authority and control, 1830-1940* (Manchester, 1992); R.B. McDowell, 'The Irish Executive in the nineteenth-century' in *Irish Historical Studies*, ix (1955), pp 264-80; Matthew Potter, 'The rise and fall of local democracy' in *History Ireland*, xix (2011), pp 40-43; Eamon Slater & Terence McDonough, 'Marx on nineteenth-century colonial Ireland: analysing colonialism as a dynamic social process' in *Irish Historical Studies*, xxxvi (2008), pp 153-72.

testing would be required to establish the utility of these new processes.¹⁷ The regularity with which these reforms were introduced led contemporary observer, Nassau William Senior, who advocated for the centralisation of the Poor Law system, to comment to Alexis de Tocqueville, who was responsible for the idea of soft despotism, that ‘experiments are made in that country [Ireland] on so large a scale, and pushed to their extreme consequences with such a disregard to the sufferings which they inflict’.¹⁸ Declan Kiberd has more recently noted that as the ‘laboratory’ of the British Empire, Ireland was subject to some of its ‘less pleasant experiments’ citing *laissez-faire* economics, the alternation and interchange between conciliation on the one hand and coercion, curfews and martial law on the other as examples of this disordered strategy. He continued that Ireland was a ‘crucible in which Britain not only tested ideas for possible use back home, but also for likely implementation in other colonies’.¹⁹ The Incumbered Estates Act was one such experiment. Karl Marx in his extensive writings on Ireland, suggested that the country was selected for these colonial experiments as it was both England’s nearest neighbour and the ‘Empire’s jugular’ and if it were lost ‘the British Empire is gone’.²⁰

The reality of the experiment to which Romilly refers was the circumventing of the workings of the Irish Courts of Equity (the Chancery and Exchequer) and replacing them with an independent tribunal to expedite the process of land sales. Peppered throughout the evidence of the 1843 Devon Commission, set up by Government to

¹⁷ MacDonagh, *A pattern of government growth*, pp 344-5.

¹⁸ MacDonagh, ‘Ideas and institutions, 1830-45’, p. 206.

¹⁹ Declan Kiberd, *Inventing Ireland: The literature of a modern nation* (London, 1996), p. 24.

²⁰ John Rodden, ‘The lever must be applied to Ireland: Marx, Engels and the Irish Question’ in *The Review of Politics*, lxx (2008), pp 610-5.

inquire into the state of law and practice in respect to the occupation of land in Ireland, were references to estates ‘under the Court’.²¹ The report by the Commission provides considerable insight into the management of Irish estates in the period immediately preceding the Great Famine and the introduction of the Incumbered Estates Court. This expression ‘under the Court’ had, by the nineteenth century, become the common term for estates subject to lengthy legal proceedings in either of the Irish Courts of Equity. By 1844, Chancery receivers were administering 874 problematic Irish estates, the Exchequer dealt with a further 478 cases between 1844 and 1847.²² The Devon Commission was quick to identify serious delays in the Chancery and Exchequer Courts as the root cause of the problematic Irish land holding system. Indebted landed estates were seen as the primary barrier to the improvement of Irish society. Under the costly and inefficient system of Ireland’s equity courts, a stalemate had developed. Bankrupt landlords were unable to divest themselves of their estates and creditors were powerless to bring an estate to sale for the repayment of debt without incurring ruinous cost. In the majority of cases the actual cost of bringing proceedings would far exceed the amount which was owed, and even in the event of successfully pursuing a sale through the Courts it would not have been possible to satisfy even the smaller creditors.

Owners or the life tenants of such estates were described as occupying a false position, that of a nominal owner. While they were responsible for large properties

²¹ *Report from Her Majesty’s Commissioner of Inquiry into the state of law and practice in respect to the occupation of land in Ireland, Pt.II* . p. 685, H.C, 1845 [C.616] xx, 1. (hereinafter the *Devon Commission pt.II*).

²² *Estates in chancery, &c. (Ireland). Abstract return from the Registrar’s Office of the Court of Chancery in Ireland, and the Chief Remembrancer’s Office in the Court of Exchequer in Ireland, of the number of causes, rental of estates, arrears of rent, gross amount paid by Receiver, and amount expended in improvements, in each county in Ireland, during 1844, 1845, 1846, and 1847, with reference to estates under the management of said courts.* pp 228-9, H.C.1847-48 (226) lvii, 213.

and populous districts, they received only a trifling income and possessed no means of fulfilling their basic duties, such as provision for the poor, providing local employment and investment in infrastructure, roads, railways and drainage schemes. The Devon Commissioners suggested that it was impossible for a proprietor to put his duty to his estate ahead of his duty to his creditors. Owners were described as being 'bound hand and foot, surrounded on every side with insurmountable difficulties' awaiting the sale of their estates which were being wasted under the management of Court receivers and which had greatly deteriorated in value and vastly increased in liabilities.²³ The contemporary digests of the Devon Commission observed that a great deal of capital in Ireland rested in the hands of persons of moderate fortune who held a desire to become landed proprietors on a smaller scale than those already in existence. If lots became available within their means, the commission suggested the result would be significant investment and improvements in agriculture with relatively small intervention from government. Put simply, the Devon Commission recommended that it should be easier for a landowner to sell his estate than incur it. The Incumbered Estates Court was Government's first attempt to facilitate this. By circumventing the processes of the Courts of Equity it was hoped that the free sale of land could be permitted and a 'replantation' of Ireland with solvent landowners could take place.²⁴

MacDonagh in his examination of the 1803 Passenger Acts, suggests that history is written as though we are still in the 'heroic age' and there is a tendency to seek explanations for change in the nineteenth century in the great ideas, individuals and

²³ John P. Vereker, *An economic consideration of the Irish judgement acts: a paper read before the Dublin Statistical Society* (Dublin, 1849), p. 5

²⁴ 'Sir Robert Peel on confiscation' in *Dublin University Magazine*, xxxiii (1849), p. 509.

events of the time.²⁵ He further notes that there is a propensity to disregard administration as the passive end- or a by-product of dynamic forces, social, political and economic. He suggests that history must be re-written to correct the view that government is explained in terms of other factors and is not in and of itself explanatory. MacDonagh states that for government the process of growth and the choice of a new direction was always initiated and affected by external forces, but that it is a mistake to treat this change as 'altogether their creature'.²⁶ This insight is applicable to the Incumbered Estates Court, and while the Famine provided an emotive reason to introduce the legislation, there are a number of others factor which should be considered. The European revolutions of 1848 provided the necessary catalyst to spur this radical piece of land legislation through the houses of parliament. Furthermore, the findings of the Devon Commission had brought the urgent need for reform of the Irish land holding system to the fore and in each of the four years which followed the presentation of its evidence to parliament, a proposal for the sale of incumbered estates was presented to the House of Commons.

The historiography of the Irish Incumbered Estates Court has, to this point, fallen into the same trap. The legislation, and the body which it created, have been examined exclusively in terms of the Great Famine and the Court has always been regarded as a solution to the crippling debt accrued by landowners as a result of declining rental incomes associated with this subsistence crisis. Although it is undeniable that the Famine did play a significant role in the creation of the Court this narrow view has left many elements of the Incumbered Estates Court unexamined.

²⁵ MacDonagh, *A pattern of government growth, 1800-60*, p. 16.

²⁶ *Ibid.*

In his contribution to the *New History of Ireland*, James S. Donnelly Jnr. examined the establishment of this new tribunal with ‘drastic powers’, bookending it first with analysis of the administration of relief and evictions during the Famine, followed by excess mortality and emigration in its aftermath.²⁷ In doing so Donnelly clearly aligns his examination of the Incumbered Estates Court with the results of the Great Famine. While his analysis of the Court is well founded, it has a regional bias towards estates in Cork and focuses primarily on the property of the local aristocracy, such as Lord Mountcahsell, Lord Gort and Lord Kingston. Although significant estates, these properties accounted for only a small number of the total number of properties which were transferred through the Court in that county. In his 1973 work *Landlord and tenant in nineteenth-century Ireland*, Donnelly acknowledged that the Incumbered Estates Court was established to bypass the Chancery by setting up an entirely new tribunal and he examined the evictions and improvement which took place in the aftermath of the Famine.²⁸ Peter Gray extensively discussed the creation of the act in *Famine, land and politics*.²⁹ He suggests that for the Tory government, the concept of free trade in land and the recapitalisation of Irish agriculture were interlinked. It was noted that while lobbying for the introduction of an Incumbered Estates measure, Peel suggested that the legislation would function in a similar way to the Ulster plantations.³⁰ The creation of an independent commission for the sale of incumbered estates under the 1849 Act is also addressed. Gray’s study is rooted in the Great Famine and although noting that additional factors may have influenced

²⁷ James S. Donnelly Jnr., ‘Landlords and tenants’ in Vaughan, *A New History of Ireland*, V, p. 346.

²⁸ *Ibid.*, pp 48-58.

²⁹ Peter Gray, *Famine, land and politics: British government and Irish society, 1843-50* (Dublin, 1999), pp 202-9.

³⁰ *Ibid.*

the legislation, these were not examined. The extensive research of Padraig Lane grounds the establishment of the Court in the aftermath of the Great Famine. His probing examination of the impact of the legislation on counties Galway and Mayo sheds significant light on the impact on the region through the use of case studies which include the Gerrard estate in Ballinglass, the Richard estate at Newport and the property of the Law Life Assurance Company.³¹ As with Donnelly, Lane's examination of the Court is geographically constrained and excludes a number of factors including the technicalities of the legislation itself and the regional disparities such as the extent of evictions.

The majority of studies completed on the Court are provincial. Although there are significant benefits to such an approach there are also a number of challenges. The work of Mary Cecelia Lyons does not contribute to the historiography of the Incumbered Estates Court in any considerable manner. Lyons' primary focus was a comprehensive examination of the lithographic material of the court that, by her own estimation, was present in less than 1 per cent of the overall surviving rentals and particulars of the Incumbered Estates, Landed Estates and Land Judges Courts.³² The rentals and particulars of the Court, the equivalent to modern day auctioneers' catalogues, have been the subject of a number of studies. Mary Kavanagh's 'Local

³¹ Padraig Lane, 'The general impact of the encumbered estates act' in *Journal of the Galway archaeological and historical society*, xxxiii (1974), pp 44-74; Padraig Lane, 'The Encumbered Estates Court and Galway ownership' in Gerard Moran (ed.), *Galway: history and society: interdisciplinary essays on the history of an Irish county* (Dublin, 1996), pp 395-420; Padraig Lane, 'Purchasers of land in counties Galway and Mayo in the encumbered estates court, 1849-58' in *Journal of the Galway archaeological and historical society*, xliii (1991), pp 95-127; Padraig Lane, 'The impact of the Encumbered Estates Court upon the landlords of Galway and Mayo' in *Journal of the Galway archaeological and historical society*, xxxviii (1981), pp 45-58; Padraig Lane, 'The Encumbered Estates Court, Ireland, 1848-9' in *Economic and social review*, iii (1972), pp 413-53.

³² Mary Cecelia Lyons, *Illustrated incumbered estates: Ireland, 1850-1905: lithographic and other illustrative material in the incumbered estates rentals* (Whitegate, 1993).

history and the Incumbered Estates Court Rental for County Galway' examines the sale catalogues of the Court, looking in particular at the information relating to tenancies, maps, rents and descriptions of the properties, although failing to acknowledge the technical aspects of the legislation which limited the number of residents included in the rentals.³³ Similarly Thomas Patrick O'Neill conducted a brief examination of the rentals as a source for family history and genealogical study. This study is once again grounded in the Famine.³⁴ Both W.A. Maguire and C.E.B. Brett surveyed the workings of the court in relation to Lord Donegall's estate in Belfast. Both identified problems with land ownership and land sales in mid-nineteenth century Ireland through the case of Lord Donegall's estate which was of a 'spectacular size' encompassing the majority of the city of Belfast. However, once again this study is limited in both scope and geographical location.³⁵

Perhaps acting as an impediment to more detailed studies of the Court is the absence of court records. On 3 July 1922, *The Irish Times* carried an article which read:

Those previous records which would have been so useful to the future historian, have been devoured by the flames or scattered in fragments by the four winds of heaven. The record treasury, with its tall side windows, is now a sorry looking wreck.³⁶

This article refers to the destruction of the Public Record Office of Ireland, the forerunner of the National Archives, which was located at the Four Courts. Countless records were destroyed in the blast, including the papers of the Incumbered Estates Court and its successor bodies the Landed Estates and Land Judges Courts. A.M.

³³ Mary Kavanagh, 'Local history in Incumbered Estates Court rental for County Galway' in *Galway Roots: Journal of the Galway Family History Society*, ii (1994), pp 24-9.

³⁴ Thomas Patrick, 'Rentals of encumbered estates' in *Irish Family History*, x (1994), pp 66-68.

³⁵ William Alexander Maguire, 'Lord Donegall and the sale of Belfast: a case history from the Encumbered Estates Court' in *Economic History Review*, xxviii:iv (1976), pp 570-84.

³⁶ *Irish Times*, 3 July 1922.

Sullivan estimates in his 1877 study that in excess of approximately 598,750,000 documents were created by the commissioners, between 25 October 1849 and 31 August 1857.³⁷ All of these documents were destroyed. Included in this material were the petitions presented to the Court, the deeds of sale, notices, objections, schedules of incumbrances, the commissioners books, as well as the minutes and correspondence of the court.³⁸ In addition, the official set of Incumbered Estates Court rentals and particulars were completely destroyed.

Despite the destruction of all of the official set of rentals and particulars, some have survived in private collections and in smaller sets held by lesser courts for reference purposes. These are the most commonly used records in relation to transactions of the Incumbered Estates Court. Published as part of the sale of an estate, these rentals are problematic. Their content is frequently misunderstood and the collections which have survived are incomplete volumes. Those compiled by private individuals were subject to their collector's bias. Rentals were only received on application and those acquired were estates which interested them; these tend to be confined to limited geographical area and those outside of this tend to be the more high profile estates which attracted significant attention. In total four sequences are now available to the public, two of which are housed at the National Archives of Ireland and two are in the National Library of Ireland. A fifth set of rentals are held in the Public Records Office of Northern Ireland in Belfast. These are a microfilm copy of the O'Brien rentals at the NAI. With the exception of the set at PRONI which are organised by county, the rentals are ordered by date of sale. Generally understood to be the most

³⁷ A.M. Sullivan, *New Ireland*, vol. 1 (3rd ed, London, 1877), p. 296.

³⁸ For more on the documentation required for a sale under the Incumbered Estates Court see chapter 2.

complete set of rentals are those at the National Archives known as the O'Brien rentals. Lyons has suggested that these were most likely a backup set maintained by the Incumbered Estates Commission and its successor bodies until the establishment of the Land Commission in 1881.³⁹ The two sets held in the National Library are of considerable size but incomplete. The first set were maintained by the Land Commission and overlap considerably with the O'Brien rentals. A significant number of the earlier rentals from the 1850s are absent from this collection. The second set housed in the NLI are the private collection of Joseph Burke. Bound and deposited with the Royal Dublin Society following his death in 1864, they passed to the NLI on its foundation in 1877. These rentals largely exclude the business of the Landed Estates Court and the Land Judges Court.

These rentals and particulars form part of an endeavour to build a record of the Court for the initial period of the tribunal which this study examines. Family papers examined at PRONI and the NLI did not yield significant information in relation to either the owners, creditors or purchasers. As part of the process of a sale through the Incumbered Estates Court, the estate rental for the portion or property to be sold was filed with Court. These private papers do not appear to have been returned to the original family or transferred to the new owner, therefore, there is insufficient information to ascertain the condition of the estate when it was brought under the Court. For many of the families whose estates transferred through the Court, little or no record has been found. However, in 1849, *Allnutts Irish Land Schedule and Incumbered Estates Advertiser* was established by Henry Allnut at the request of the commissioners of the Incumbered Estates Court. This self-styled registration office

³⁹ Lyons, *Illustrated incumbered estates*, p. v.

was located at 117 Grafton Street, Dublin. Published from May 1850, the publication was printed monthly or bi-monthly, depending on the volume of sale, and detailed the particulars of each sale which came before the court. The circulation of the paper is estimated to have been in the region of 4,000 copies per issue and it was sent to the chief hotels, news-rooms and club houses of Dublin, London, Manchester, Liverpool, Edinburgh and the principal towns of Ireland and Scotland. Copies were also furnished to banks in Dublin, London and branches in provincial towns, to resident magistrates, county surveyors, district engineers, drainage inspectors of the board of works and all money order post offices in Ireland.⁴⁰ Allnutt further offered assistance to 'capitalists' wishing to invest in estates, establishing a system for a survey visit to be conducted and furnished to the investor, confirming that the details contained in his paper were correct.⁴¹ These extensive records have been consolidated, in conjunction with numerous other media sources, to form a database of the land transactions undertaken through the Court between 1849 and 1855.⁴² The information which Allnutt published was taken from the rentals and particulars circulated for a sale. While not all information contained in the auction catalogue was published, Allnutt consistently published the names of the owner, county, barony, parish, union, townland, statute acres, Griffith's valuation, annual rental, tenure, properties, tithe and head rent liabilities, the rental and date of sale. Elements

⁴⁰ *Allnutt's Irish Land Schedule*, 10 May 1850.

⁴¹ *Ibid.*

⁴² Database constructed from the following:- *Allnutt's Irish Land Schedule*, no.1-106, 10 May 1850 - 15 Feb. 1856; *The Advocate*, Aug. 1850 - Dec. 1855; *Cork Examiner*, Aug. 1850 - Dec. 1855; *Cork Southern Reporter*, Aug. 1850 - Dec. 1855; *Connaught Watchman*, Aug. 1850 - Dec. 1855; *Dublin Evening Mail*, Aug. 1850 - Dec. 1855; *Evening Mail*, Aug. 1850 - Dec. 1855; *Evening Freeman*, Aug. 1850 - Dec. 1855; *Examiner*, Aug. 1850 - Dec. 1855; *Freemans Journal*, Aug. 1850 - Dec. 1855; *Morning Chronicle*, Aug. 1850 - Dec. 1855; *Southern Reporter & Cork Commercial Courier*, Aug. 1850 - Dec. 1855; *Tuam Herald*, Aug. 1850 - Dec. 1855; *Ulster Gazette*, Aug. 1850 - Dec. 1855. Available for consultation on request.

of the sale such as the petitioner and degree of incumbrance were not typically published. Despite its wide circulation a complete set of *Allnutt's Land Schedule* is not held in an Irish repository. A partial set is held at the British Library, which is currently being digitised and a complete set is available at the Bodleian Library in Oxford. This source was used in this study to identify purchasers, petitioners, trends and statistics for transactions processed through the Court.

The most significant source utilised for this study were parliamentary papers associated with the Court. The Incumbered Estates measures proposed in 1846 and 1847, along with the acts introduced in 1848 and 1849, provide the basis upon which the court was established. In the first five years of its establishment, during the experimental phase of the Court, annual returns were made by the Commissioners to parliament reporting on the business conducted and other general statistics relating to the sales and general business of the of the tribunal. The parliamentary debates of the Commons and Lords provide a significant insight into not only opposition to the bill, but also the intentions of the legislators, reasoning behind amendments and views of the supporters of the measure. However, this source is not without its problems. The Famine and its devastating impact on the fabric of Irish society was almost completely overlooked throughout the debate and, of course, there was no representative of the lower classes. The reports of the Incumbered Estates Commissioners to the House relate strictly to the business of the Court and do not look at the effects or impact of sales.

Contemporary sources provide a significant degree of context. The private diaries of John Locke, auction clerk of the court, provide an insight into the workings of the commission, his relationships with the Commissioners, details on the sale of his own

estate and descriptions of day to day life in the Court.⁴³ Equally his 1851 pamphlet on the land and law of Ireland, written at the behest of the Commissioners, provides vital statistics in relation to purchasers under the court.⁴⁴ Other pamphlets such as those of Issac Butt, W. Neilson Hancock, Pierce Mahony, Robert W Osbourne and Jonathan Pim provide a remarkable insight into not only public perception of the Court but also the impact which the legislation had on the people of Ireland.⁴⁵ While Richard MacNevin's book *The practice of the Incumbered Estates Court in Ireland, from the presentation of the petition for a sale to the distribution of the funds with notes of all practice cases, the authorised forms, precedents (sic) of conveyances, the acts, general rules, schedule of fees and statistics of the Court* first published in 1850 and again in 1853, provides significant insights. The publication is intended as a hand-book for legal practitioners in the Incumbered Estates Court and was compiled with the permission and assistance of the Commissioners of the Court. The

⁴³ Two diaries of John Locke of the Incumbered Estates Court containing jottings on scientific topics and on personal and family matter, Jan. 1851-Dec. 1856. (NLI) MSS 3727-3728; Personal literary and religious writings of John Locke, sometime official of the Encumbered Estates Court, 1849-1851, including some papers on the court and family letters. Late 19th c. (uncatalogued)

⁴⁴ John Locke, *Ireland, observations on the people, the land and the law in 1851, with especial reference to the policy, practice and results of the Incumbered Estates Commission* (Dublin, 1852); John Locke, *On Irish emigration, with especial reference to the working of the Incumbered Estates Commission*, xv (1852), pp 339-45 and John Locke, *Ireland's recovery, or, excessive emigration and its reparative agencies in Ireland: an essay* (London, 1855).

⁴⁵ Issac Butt, *The transfer of land by means of a judicial assurance: its practicability and advantages considered in a letter to Richard Bethall...* (Dublin, 1857); W. Neilson Hancock, *On Irish absenteeism: A paper before the Dublin Statistical Society* (Dublin, 1850); *The Economic causes of the present state of agriculture in Ireland. pt. I: A paper read before the Dublin Statistical Society* (Dublin, 1848); *pt. II* (Dublin, 1849); *pt. III* (Dublin, 1849); *pt. IV* (Dublin, 1849); *pt. V* (Dublin, 1849); *pt. VI* (Dublin, 1849); *On the effect of the limitations of Parliamentary Title to Ireland, in promoting purchases of Land by English and Scotch capitalists* (Dublin, 1855); *A plan for extending the jurisdiction for selling Incumbered Estates to cases where a Receiver has been appointed over a life estate* (Dublin, 1855); Pierce Mahony, *Letter to Sir John Romilly, knt., H.M Solicitor General for England: on incumbered estates bill- Ireland.* (Dublin, 1848); Robert W. Osborne, *The transfer of land considered in relation to the rights of judgement creditors* (Dublin, 1850); Jonathan Pim, *Evils resulting to Ireland from the insecurity of title and the existing laws of real property with some suggestions towards a remedy* (Dublin, 1847); *Conditions and prospects of Ireland and the evils arising from the present distribution of landed property with suggestions for a remedy* (Dublin, 1848); *The land question in Ireland: suggestions for a solution by the application of mercantile principles to dealings with land* (Dublin, 1867).

twenty-one chapters that form the book detail the steps in the progress of a sale through the Court using examples and sample cases. It details the legislation, amendments and additional rules created by the Commissioners between 1849 and 1853 and critically for this study a significant portion of the publication is dedicated to the process after the sale, including the rights to arrears outstanding on the estate at the time of the sale, title and evictions. Later publications also proved useful such as the writings of W.T.H, who was sent by the *Daily News* to report on the early sales under the Incumbered Estates Court in 1850. The letters sent by W.T.H to his editor were later published in *The Encumbered Estates of Ireland. Reprinted from the Daily News of Aug. and Sept. 1850*. These contain details of the excitement which was created by the sales and provides an interesting insight into the early cases that came before the Commissioners of the Court. The writer does, however, state that he was a friend of some parties subject to the proceedings of the Court, so, his opinions are naturally swayed by this. By comparison, the *Letter to the earl of Bantry [criticising his conduct towards his tenants] or, A warning to English purchasers of the perils of the Irish Incumbered Estates Court; exemplified in the purchase by Charles Pelham Clinton, MP, of two estates in the barony of Bere, county Cork*, by John Patrick Prendergast, examines the execution of almost 200 civil bills against Lord Bantry's former tenants for arrears owed. This included the driving of cattle off tenants' lands and the destruction of property. By all accounts this does not appear to have been a common practice; however, it details the possible options available to new landowners in relation to arrears owed to the former owners of the estate, a subject which is not examined in other publications relating to the Court.

This study will examine the first five years of the Incumbered Estates Court, from its establishment in 1849 until the end of the experiment in December 1854. It is separated into three distinct sections. The first section, chapter one, examines the introduction of the legislation and the parliamentary debate which surrounded the revolutionary measure. It will identify the events and circumstances that led to the rapid introduction of such a radical act despite strong early opposition. The second section comprising chapters two, three, four and five, will examine the technicalities of the legislation and the business which the Court conducted. The general orders created by the Commissioners provide a valuable insight into the society which it was designed to reform. A number of specific aspects of the court's business will be examined; the price of land, the acreage sold, the owners, petitioners, the level of incumbrance and those who purchased land under the Court. Areas such as gender, religion and property will also be scrutinised. Trends in relation to the price of land, location of auctions, quantity of land and progress of sale will be identified and key persons involved with the court's proceedings will also be identified. Furthermore, failings of the legislation will be scrutinised. The impact of the sales will also be discussed by examining evictions and violence on estates which transferred through the Court and the fraudulent transaction conducted through the Court by the former Carlow MP John Sadleir. Furthermore, the introduction of reforms to the legislation and measures designed to assist the process will be examined. The final section, chapter six, will scrutinise the colonial applications of the legislation. Similar measures were introduced for the West Indies in 1854 and a number of Indian provinces from 1856, immediately after the end of the five year experiment in Ireland. Common factors such as the violence and rebellion associated with the

introduction of the legislation, as well as the necessity for social reform will also be examined. While the legislative template remained essentially the same, this study will examine the modification of the act in order to address the specific problems in the colony to which it was being applied.

Chapter 1

Legislation and revolution

The traditional historical orthodoxy surrounding the Incumbered Estates Acts of 1848 and 1849 has always seen the Great Famine as the driving factor behind the introduction of these radical legislative and social reforms. However, an examination of the parliamentary debate, press coverage and other contemporary sources relating to the introduction of the acts suggest that modern historians have placed too significant a focus on the decline in rental incomes and increased indebtedness of landlords during the Famine. In citing this as the motivating factor behind the legislation and have failed to examine other significant and extraordinary factors, particularly the European springtime of the people's revolutions of 1848. As a wave of unrest and republican revolts against the monarchies of France, Germany, Italy and the Austrian Empire spread there was a palpable sense of apprehension that the already shaky union between Britain and Ireland could soon be challenged by force. The subsistence crisis caused by the Great Famine, and the revival of nationalist movements that had once again gained significant foothold in Ireland, compelled the government at Westminster to consider measures to counter this unrest. Gradually a proposal was drawn up for a conservative social revolution in Ireland which could be closely managed by parliament and bring about the significant and necessary social and land reform. The Incumbered Estates Acts quickly came to the fore as the means by which this silent social revolution could be accomplished. Through an examination of the legislation's introduction and political shifts which occurred in Ireland and Europe throughout the period, the complex set of circumstances which

surrounded the introduction of the legislation and the enormous expectations which were placed upon it become clear.

Government's reaction to the crisis of the Great Famine was circumscribed by the single most significant political belief of the time. Throughout the early nineteenth century *laissez faire* was the prevailing ideology. It was thought that any direct government intervention or tampering with market forces would bankrupt landlords, dislocate trade and ultimately destabilise the prevailing government structure. For the duration of his tenure as prime minister between 1841 and 1846, Robert Peel had stressed the moral superiority of *laissez faire* and he had, as Peter Gray notes, approached Irish problems with the rigid and mechanistic outlook of his liberal Toryism. As Gray puts it: Peel believed in the desirability of promoting a 'natural' self-regulating economic system.¹ In government Peel had maintained a simple policy of non-intervention combined with occasional modest measures of assistance to encourage improving proprietors. However, the outbreak of blight in the Irish potato crop in 1845 posed a significant test of the administration's commitment to this *laissez faire* philosophy. Many within the establishment believed that the Famine presented an opportunity to regenerate Irish agriculture. Popular theorists, such as T. R. Malthus, suggested that the Famine was a visitation of divine providence sent to remove the ills of Irish society.² Philosophies such as this dampened the British public's response to the Irish plight and led to calls for Irish landlords to meet the growing cost of poor relief. In his examination of the provision of relief, James

¹ Peter Gray, *Famine, land and politics: British government and Irish society, 1843-1850* (Dublin, 1999), p. 80.

² T. R. Malthus, *An essay on the principle of population*, ed. Geoffrey Gilbert (Oxford, 2008), pp 57-61.

Wilson of the *London Economist* advocated the removal of aristocratic ‘misgovernment’, a step which he deemed necessary to ensure the social advance of Ireland.³ Despite Peel’s adherence to the policy of *laissez faire* there was a general acceptance that Ireland could not be expected to follow the same ‘English path’ of development without significant assistance and reform stimulated by government. Peel, however, remained strongly committed to *laissez faire* specifically in relation to Irish land policy and he pressed landlords to complete their duty with respect to their tenants.

In disagreement with Peel’s policy, James Graham, the then Home Secretary, noted in correspondence in 1843, that ‘the real seat of the evils of Ireland is the bankrupt condition of the landlords’. Graham suggested that ‘we can not heal this gangrene but we may probe it, and propose to administer decisive remedies’.⁴ These comments mark the beginning of a particularly strained period in Anglo-Irish relations coinciding with the popular re-emergence of Daniel O’Connell and the growing strength of his Repeal movement, formed in 1830.⁵ Having secured the repeal of the last of the Penal Laws in 1829, O’Connell turned his attention to dismantling the Union between Great Britain and Ireland, calling for Ireland to be created as an independent self-governing kingdom. In the wake of this growing unrest a concerned parliament began to discuss steps which could be taken to pacify Ireland and shift public focus away from the campaign of repeal and towards another serious social and financial issue which could be more easily managed by the government. Graham

³ Gray, *Famine, land and politics*, p. 76.

⁴ Graham to Peel, 6 Sept. 1843, Peel papers, BL, Add. MS 40,449, fols 27-28.

⁵ For more see Séan McMahon, *Daniel O’Connell* (Dublin, 2000), John Curry, *Daniel O’Connell: a study of his career* (Dublin, 1987), Oliver MacDonagh, *The emancipist: a study in relation between Great Britain and Ireland, 1830-47* (London, 1989) and Christine Kinealy, *Repeal and revolution: 1848 in Ireland* (Manchester, 2009).

suggested that the landlord-tenant question in Ireland – a central concern of the repeal movement – should be the issue chosen for reform and restructuring. In advocating a public inquiry into the terms of landholding in Ireland, Graham suggested it would show ‘sympathy with the sorrow of an entire people evinced by the government... and soothed in some degree of kindness of purpose and the exposure of injustice’.⁶

Spurred by Graham’s reassurance that the concerns of the Irish could be to some degree soothed by a display of sympathy by government, in November 1843, the prime minister Robert Peel created *the Royal Commission on the state of the law and practice relating to the occupation of land in Ireland*, commonly referred to as the Devon Commission. The enquiry was chaired by William Courtenay, 29th earl of Devon, who Daniel O’Connell described as a ‘very unhappy choice’, as he was the absentee landlord of a considerable Irish estate. Devon and his colleagues were given the onerous and unenviable task of travelling the country collecting evidence from more than 1000 witnesses including landlords, agents, sheriffs, clerics and surveyors. The commission was the first in a number of steps taken by Peel to counterbalance his uncompromising rejection of requests for repeal with measures of moderate reform. The commission’s final report was presented to parliament in February 1845.⁷ The digests of evidence published in two volumes in 1847 and 1848 included in the introduction a concession that:

The physical and social condition of Ireland has been so materially altered from what it was at the time the commissioners reported, that the

⁶ Graham to Peel, 17 Oct. 1843, Peel papers, BL, Add. MS. 40,488, fols 91-3.

⁷ For more on the Devon Commission see, Alvin Jackson, *Ireland, 1798-1998*, (Oxford, 1999) and Joel Mokyr, *Why Ireland starved: A quantitative and analytical history of the Irish economy, 1800-1850* (London, 2010).

consideration of the evidence in reference to this altered state seem quite essential, in order to enable the reader to arrive at any useful conclusions.⁸

While many of the findings of the commission were broad, it contained considerable information in relation to incumbered estates. In the absence of detailed estate records, and the papers of the courts and the chancery, these returns provide a valuable, although at times exaggerated, insight into the workings of indebted estates in the pre-Famine period. The commission found that where estates were financially embarrassed it was almost impossible for a landlord to sell his estate in small lots for the highest possible price to satisfy his creditors. Significantly, the report examined the processes of land registration, court proceedings and the management of estates by court appointed receivers. The Devon Commission was extremely critical of the fact that in Ireland it was easier for a landowner to further incumber his estate than to sell it and as a result the owner had 'no beneficial interest in the land', and that the nominal owner was 'unable to pay off all the debts'.⁹ The digests concluded that there was a great deal of capital in Ireland which rested in the hands of persons of moderate fortunes who had a desire to become landed proprietors, on a smaller scale than those already in existence, if lots became available within their means. The commission suggested that the creation of a new class of financially-motivated rather than paternally-led landlords would result in significant investment and improvements to Irish agriculture with relatively small intervention from government. William Sherrard, a land agent, had stated in his evidence to the commission that 'any thing that would tend to put landed property into the hands of

⁸ *Digest of evidence taken before her Majesty's Commissioners of inquiry into the state of law and practice in respect to the occupation of land in Ireland, pt. II, p. 701, HC 1848(002)* (hereinafter the *Digest of the Devon Commission pt.II*).

⁹ *Ibid.*, p. 866.

capitalists would be a great advantage to the country; and to capitalists who have money to enable them to improve property, instead of having it locked up as it is now'.¹⁰

The arrival of the potato blight in 1845 overshadowed the findings of this commission. In response to the crisis Peel set about dismantling the Corn Laws. This set of enactments levied a high duty on the import of corn into the United Kingdom making the procurement of grain from outside of Britain an expensive commodity.¹¹ Peel was committed to 'the removal of all impediments to the import of all kinds of human foods', and remained preoccupied with the abolition of the Corn Laws during the initial years of the Irish Famine crisis stating in 1846 that 'I would have done anything to carry the repeal of the Corn Laws'.¹² Although it has been observed that the Famine provided an opportunity for 'political discourse to be expressed in humanitarian rather than pragmatic terms', Peel's commitment to the reform of the contentious Corn Laws led to his ridicule in parliament.¹³ The issue of the Corn Laws twice prompted Peel to resign his position as prime minister, first in December 1845 and later in July 1846 when the unpopular reform was eventually introduced. It was only following Peel's resignation and Russell's appointment as prime minister that the issue of Irish landlord insolvency once again came to the fore of parliamentary debate. Peel's preoccupation with the repeal of the Corn Laws pushed the recommendations of the Devon Commission further from the consideration of

¹⁰ Ibid., p. 870.

¹¹ For more see Donald Grove Barnes, *A history of the English Corn Laws* (3rd ed., London, 2010).

¹² George Peel (ed.), *The private letters of Sir Robert Peel* (London, 1920), p. 364.

¹³ Christine Kinealy, 'Peel, rotten potatoes and providence: The repeal of the Corn Laws and the Irish Famine' in Andrew Marisson (ed.), *Free trade and its reception, 1815-1960: Freedom and trade* (London, 1998), pp 55-60.

parliament and created political upheaval; as a result proposals such as the 1846 Incumbered Estates Bill were overlooked.

In August 1846 two Irish Liberal MPs, Benjamin Chapman and Morgan O'Connell, ambitiously proposed seven significant land reforms in the House of Commons. The proposals registered included a Registration of Deeds Ireland Bill, a Real Property Management Ireland Bill, a Tenants for Life Bill, a Registration of Births Ireland Bill, a Leasehold Tenants Ireland Bill and a Tenants of Corporate Bodies Ireland Bill.¹⁴ These proposals set out to provide solutions to issues highlighted by the Devon Commission, the most notable of which was the bill facilitating the sale of incumbered estates in Ireland.¹⁵ The legislation proved unsuccessful and it excited no attention in the media or houses of parliament, but in private quarters the proposals were viewed as a significant, albeit it slightly premature, step.

The measure proposed the easy, swift and inexpensive sale of an estate. As with all the proposed Incumbered Estates Bills that followed, this measure was intended to convert estates into money for the payment of incumbrances. The scheme was designed to function within the processes of the Court of Chancery allowing the

¹⁴ *Registration of deeds (Ireland). A bill for altering and amending the mode of registering deeds and instruments affecting real property in Ireland.* H.C. 1846 (633), iii, 533; *Real property management (Ireland). A bill for preserving in repair, letting and generally managing real property in Ireland, pending suits regarding such property in courts of equity in Ireland.* H.C. 1846 (635), iii, 511; *Tenants for life. (Ireland). A bill to enable tenants for life and mortgagors in possession of lands in Ireland to grant leases; and to enable tenants for life of lands in Ireland to make exchange; and for giving a summary remedy for partition of lands in all cases in Ireland.* H.C. 1846 (636), iv, 403; *Registration of births, &c (Ireland). A bill for registering births, deaths and marriages in Ireland.* H.C. 1846 (637), iii, 515; *Leasehold tenures (Ireland). A bill for converting the renewable leasehold tenure of lands in Ireland into a tenure in fee-simple, and for apportioning rents issuing out of lands in Ireland, and for authorising the redemption of fee-farm rents.* H.C. 1846 (638), ii, 433; *Tenants of corporate bodies (Ireland). A bill to enable tenants holdings lands for limited interests, mediately or immediately, under aggregate bodies politic, corporate and collegiate, ecclesiastical and lay, or trustees for charitable or other public purposes, in Ireland, to acquire estates in fee simple in the same lands, and for other purposes.* H.C. 1846 (639), iv, 415.

¹⁵ *Sale of incumbered estates (Ireland). A bill for facilitating the sale of incumbered estates in Ireland.* H.C. 1846 (634), iv, 1.

owner of a freehold estate, that is one over which the landlord had outright ownership for an unlimited period of time, to petition the Court for a sale of the estate or interest effected by the incumbrance towards the payment thereof. Incumbrancers, that is those entitled to a payment, were not permitted to petition the Court for a sale.¹⁶ Despite its failure in the House of Commons this ineffective proposal made by the two Irish MPs would go on to form the basis of both the 1847 and 1848 Incumbered Estates measures.

In 1847, with the end of the railway boom, Britain suffered a commercial crisis, causing the financial markets to collapse. During the economic downturn which followed the increasing financial burden created by the cost of poor relief gave rise to renewed calls in Britain for Irish landlords to assume the majority share of the financial burden. This coincided with a change in government. The Peel administration had operated a traditional system of relief through the Poor Law, relying on two temporary relief measures, Indian corn and public works. Coming to power in 1847, the Liberal administration of Lord John Russell, in a significant concession, recognised that the public works scheme had failed disastrously and was not only incapable of saving lives, but had also proved cumbersome and expensive to administer.¹⁷ It was clear a new system of relief was required. James S. Donnelly Jnr. noted that the decision to adopt a new policy in relation to poor relief was one thing, but to implement it rapidly, as the deteriorating situation in Ireland required, was another.¹⁸ The Soup Kitchen Act was passed as a temporary measure of extraordinary relief and a new administrative machinery was established to manage

¹⁶ Ibid.

¹⁷ Kinealy, *Repeal and revolution*, p. 89.

¹⁸ James S. Donnelly Jnr., 'The soup kitchens' in Vaughan (ed.), *A new history of Ireland*, v, p. 307.

the scheme. This system followed the model which had been established under the poor law in 1838. It included a parent body located in Dublin Castle, with a series of inspecting officers in the individual Poor Law unions. In July 1847 approximately three million people (almost 40 per cent of the population) were dependant on the free soup scheme; despite this the temporary soup kitchen scheme ended in September of that year.¹⁹ In 1848 government declared that the Famine was over and recognised the amended poor law system as the principal means of affording relief to Irish paupers. This was, as Donnelly noted, a measure of government's unwillingness to allow what it considered the enormous dead weight of Irish poverty to be a burden on the financial resources of the British treasury.²⁰ The transfer to Poor Law relief, Christine Kinealy notes, signalled a draconian approach to the Famine and heralded a more punitive attitude to the Irish destitute and landowners alike.²¹ The amendments made to the system of aid meant that Irish landlords now carried the main financial burden of poor relief. It quickly became apparent that the growing insolvency of a significant portion of the Irish landed class would prove a significant barrier to the relief of the poor. Sir Charles Wood, chancellor of the exchequer, noted in his correspondence to Lord Russell: 'there is no real prospect of regeneration... for Ireland till substantial proprietors possessed of capital and will to improve their estates are introduced into that country'.²² Despite Wood's suggestion, Russell's hastily established replacement administration was at first reluctant to engage in the creation of the incumbered estates legislation. However, despite this

¹⁹ Kinealy, *Repeal and revolution*, p. 90.

²⁰ Donnelly, 'The soup kitchens', p. 315.

²¹ *Ibid.*

²² Quoted in James S. Donnelly Jr., 'The administration of relief, 1847-51' in Vaughan (ed.), *A new history of Ireland*, V, p. 316.

reluctance Wood continued to press for the introduction of a measure writing to Lord Bessborough, lord lieutenant, in September 1846, stressing the importance of remedial measures for Irish land while predicting significant opposition: 'The lawyers will be against it; and I dare say the Chancellor will cry out against it... [but] great evils must be dealt with by extraordinary remedies'.²³

The decision to create a draft measure for the sale of indebted Irish estates was made privately by key members of the Privy Council at Bowood House, home of the third marquis of Lansdowne, then lord president of the council.²⁴ While the Russell administration publicly struggled to manage the Irish subsistence crisis calls for Irish land reform came to the fore of parliamentary debate. In the Lords, Lord Brougham, former lord chancellor, encouraged the introduction of a most 'judicious and well devised reform'.²⁵ Known for his radical politics, the former lawyer believed that such reform ought to 'have the effect of throwing aside the learning of old lawyers' and represent a complete overhaul of the current system.²⁶ This was seconded by Lord Hatherton, who had acted as chief secretary of Ireland from 1833 to 1834.²⁷ Hatherton argued that Irish landowners should hold the same rights of sale as their British counterparts, stating that landlords in Ireland should be at liberty to sell off a portion or the whole of their property in order to pay incumbrances should it be required. The significant differences between Irish and British land legislation together with the financial burden of poor relief fostered a growing sense of disenchantment amongst the Irish landed class. This disillusionment provided a

²³ Wood to Bessborough, 16 Sept. 1846, Hickleton papers microfilm, Bodleian Library, A4/185/1.

²⁴ Gray, *Famine, land and politics*, p. 65.

²⁵ *Hansard 3 (Lords)*, lxxxix, col. 57 (19 Jan. 1847).

²⁶ *Ibid.* col. 58.

²⁷ G.F.R. Baker, 'Littleton, Edward John (1791-1863) in *Oxford Dictionary of National Biography*, vol. 34 (Oxford, 2004), p. 33.

common ground for repealers and non-repealers to join together to push the Whigs into adopting a new policy toward poor relief. Prominent nationalists, such as William Smith O'Brien and Charles Gavan Duffy, felt that the nationalist independence movement's Irish Confederation which had been established in January 1847, echoing the Irish Catholic Confederation established in Kilkenny in 1641, could become the banner under which repealers and non-repealers could unite. They conceived that if they could avoid the ultra-Catholic and ultra-democratic tendencies which had previously been associated with repeal, then this more conservative organisation could attract the support of Protestant landlords, as well as Catholics and tenant farmers of all persuasions. An increased membership would give greater bargaining power in seeking concessions from government. However, the parties involved were unwilling to compromise, and the Confederation failed. Despite its failure this movement acted as a strong warning to government. It suggested that if government continued to fail the landed class by placing an increasingly heavy fiscal burden on their shoulders through the poor law, yet providing no means by which to extricate their estates from debt, it ran the risk of dispirited landowners being drawn to the side of radical politics. This growing restlessness would become one of the driving forces in the introduction of the Incumbered Estates Acts.

Within the houses of parliament, calls were frequently made for the introduction of a measure to facilitate the sale of indebted land and the subject of insolvency had moved firmly to the fore of parliamentary debate. Once again Charles Wood, chancellor of the exchequer, was instrumental in this debate. He highlighted what he deemed the injustice of incumbered estates, stating that in parts of Ireland large tracts

were in the possession of persons who could at best be described as nominal owners. Wood outlined that these landlords were not in a position to avail of any facilities to improve their estates and were certainly not in a condition to provide aid to the starving or employment to the poor. He stated:

A bill for facilitating the sale of incumbered estates... a greater benefit we could not give to Ireland. In no country in the world are there so many estates whose owners are merely nominal; and much benefit, I think, will arise from their being transferred to the hands of more enterprising persons who are able and willing to expend capital and employ labourers for their improvement.²⁸

On 2 February, Mr George Hamilton, Conservative Member for Dublin University outlined the process Irish landowners used to borrow money. In Ireland he stated the landowner invariably used his bond, written promise, as security. In doing so he created a judgement secured upon the whole of the estate, rendering it impossible to sell a portion of the estate in order to satisfy incumbrances. This was not the case in England where a mortgage was secured on a particular part of the estate only.²⁹ Describing himself as an advocate of the maintenance of the Act of Union, he rebuffed criticism that the Irish gentry were ‘occupying stations without the means of discharging their duties’.³⁰ He was quick to ascribe some of the blame for this to the Act of Union, stating that the Union took from Ireland many key persons and positions which would have enabled them to discharge this duty to the tenantry. Peel, leader of the Conservative party, interjected that the introduction of legislation to facilitate the sale of incumbered estates would prove ‘ten times more important’ in elevating the permanent condition of Ireland than any other proposed measure such as the reclamation of waste land.³¹ Despite his reluctance to bring forward such a

²⁸ *Hansard 3 (Commons)*, lxxix, col. 669 (1 Feb. 1847).

²⁹ *Ibid.*, col. 708 (2 Feb. 1847).

³⁰ *Ibid.*, col. 710.

³¹ *Ibid.*, col. 763.

measure under his own administration, Peel, highlighted the importance of facilitating incumbered landlords in divesting themselves of their estates. He also felt it necessary for legislators to teach Irish proprietors to act independently of government aid. He claimed Irish landlords were ‘not so inactive, so devoid of intelligence’, that they should constantly be calling on the aid of government, or have become so blatantly reliant on such.³² On 5 February 1847, Stafford O’Brien, MP for Northamptonshire, stated if an incumbered estates measure was to be brought forward in that session it would be ‘heartily welcome[d]’ by the people of Ireland and the house.³³ On 8 March Lord John Russell suggested that landed proprietors whose incomes were burdened by heavy mortgages would soon have a legislative means of selling assets in order to create a smaller income free of incumbrances, while those who purchased their estates would have the capital and inclination to make necessary improvements.³⁴

The Incumbered Estates Ireland Bill was introduced to the House of Lords on 22 March 1847, just days before the Easter recess. It was suggested that the introduction of the bill should have been postponed until the Irish members returned as many had departed home to Ireland for Easter. As a result a debate on the measure did not take place until 27 April. The proposal was a considerably more comprehensive document than the private bill brought to the Commons by Chapman and O’Connell the previous August. Despite changes to the bill it was not the new departure Brougham and Hatherton had envisaged during the previous debate in January when they sought a radical change which afforded Irish landowners the same rights as their British

³² *Ibid.* col. 763.

³³ *Hansard 3 (Lords)*, lxxix, col. 691 (2 Feb. 1847).

³⁴ *Hansard 3 (Commons)*, xc, col. 1054 (3 Mar. 1847).

counterparts. Because of its unobjectionable nature, the proposal was met with limited resistance. The Incumbered Estates (Ireland) Bill totalled fourteen pages and contained forty-three clauses. The measure designed to function within the Court of Chancery, allowed the lawful owner or a person claiming to be the lawful owner of land or an estate to contract for the sale of all or part of the property. Where incumbrances affected a portion of the whole of the estate, any incumbrancer could apply for the sale of the particular interest upon which their incumbrance was based. Applications for sale were made to the lord chancellor of Ireland for confirmation to carry a sale into effect. The bill proposed to utilise a system of advertisements to call for incumbrancers of the estate to come forward and prove their claim. It stipulated that the advertisement was to run at for two consecutive weeks in a daily paper and contain a short description of the land to be sold and the location of the estate. The bill required that all persons claiming an incumbrance should appear before the Master of the Court of Chancery either in person or through a solicitor. The proposal maintained the existing structures of the Chancery and sought to operate within them.³⁵

In moving for a reading of the bill, Lord Clarendon, the lord lieutenant, highlighted the fundamental benefits of the legislation which was designed to cure a 'great national evil'.³⁶ Lord Monteagle, comptroller general of the exchequer, hinting further at public unrest, reminded the house of the social disorder caused by the 'dens of pauperism' which had manifested on Irish estates. He suggested that on many of the indebted estates in Ireland, there was not 'a single individual connected to them

³⁵ *Incumbered Estates (Ireland). A bill, intituled, an act to facilitate the sale of incumbered estates in Ireland.* H.C. 1847 (355), ii, 1

³⁶ *Hansard 3 (Lords)*, xcii, col. 3 (27 Apr. 1847).

who could be pointed out as standing in the position of owner, or whose business it was to look after the tenants'.³⁷ He concluded that nothing would raise the condition of Ireland from its state of degeneration more than the social revolution envisaged by the creators of the Incumbered Estates Act stating:

There was no one who knew anything about the condition of Ireland who did not grieve to think of its condition from the absence of the middle class of proprietors; one that should stand between the larger class and the lower, or cottiers. Such a middle class formed the strength of a country.³⁸

The bill passed quickly through the Lords on 3 May 1847. This cemented the link between the sale of bankrupt estates and the creation of a middle class of proprietors in Ireland.

The Incumbered Estates Bill was introduced into the Commons for consideration on 5 May 1847 and once again on the 11 May. Unlike the Lords, opinions in the lower house were split. Members such as Sir Benjamin Hall, Whig MP for Marylebone, were critical of the conduct of Irish landlords and suggested their conduct toward their tenantry did not warrant such a measure, going so far as to declare 'to death or to Liverpool' was their approach to this lower class.³⁹ Others such as Sir Montagu Norreys, Conservative MP for Oxfordshire, were warily supportive. Norrey's suggested that the small steps contained in the bill under consideration would not suffice. He contended that more comprehensive measures were required but conceded that as it stood the proposal would prove extremely beneficial. Although silent early in the debate the *Nation* carried a letter on 15 May 1847 from John O'Connell, leader of the Repeal Party and son of Daniel O'Connell, in which he

³⁷ *Ibid.*, col. 6.

³⁸ *Ibid.*,

³⁹ *Hansard 3 (Commons)*, xcii, col. 1328 (21 May 1847).

praised the measures. He stated that 'they afford us a means of supplying a link hitherto wanted in our social system, by creating a yeomanry class consisting of small proprietors, stimulated to industry, as the small proprietors of Switzerland and France are, by the magic of property'. He continued that

It is amongst the advantages of colonialisation also that it leaves room for such a class at home, while it produces it in remote lands – a class most essential to the well-being of the country, and the creation of which will, I trust, be further stimulated by the facilities about to be afforded for the sale of encumbered estates.⁴⁰

On 23 June, Lord Russell brought forward a motion that the bill be sent to Committee *pro formā* with a view to having it reprinted. This step was strongly criticised. John Bankes, MP for Dorset, claimed that the legislation had 'excited great anxiety' in Ireland. Bankes stated that he was in possession of a letter from a 'professional' testifying that the bill had caused insurance companies, who financed much of Irish landlord debt, to decline to enter into financial arrangements with Irish proprietors until such time as the bill was disposed of.⁴¹ Similarly William Sharman Crawford, Irish-born MP representing Rochdale, had been made aware of a case in which an eminent lawyer had advised an insurance company to 'refuse any money until they saw what was to be done with the Bill'. English creditors, the prime creditors of Irish incumbered properties, feared that the future of the landed estates, the security upon which they based their loans and mortgages would be jeopardised if small creditors were permitted to force land sales causing a glut in the market, and a collapse in land prices. In defence of the bill, Lord Russell stated that it would be a 'very difficult

⁴⁰ *Nation*, 15 May 1847.

⁴¹ *Hansard 3 (Commons)*, xciii, col. 809 (23 June 1847).

one to attain with justice for all parties' in drafting such important legislation.⁴² The bill was moved to committee and ordered for recommitment to the house.

The bill subsequently went forward and was amended by committee, although all of this endeavour was in vain. On 5 July 1847, Lord John Russell announced:

The first to which I shall direct the attention of the House of Commons is the Encumbered Estates (Ireland) Bill... the object and intention of that Bill would be found, I am convinced, very beneficial to the country, but... it appears that very great alarm has been excited by it... If we were now in an early period of the Session I think it would be impossible to allay the alarm which already exists. We think it necessary, therefore, to defer to another session the further consideration of this Bill.⁴³

On 8 July Ralph Bernal Osborne, Whig MP for Tipperary, who had been amongst the early critics of the measure, expressed his deep regret at its withdrawal and suggested it was the only viable means to 'ameliorate the condition of Ireland'.⁴⁴

The deferral of the bill excited a more significant response in the Lords than its introduction. The day after it was withdrawn Earl Fitzwilliam demanded to know why the 'great lion' had been stopped. He declared it a political move. The Irish landowner claimed this step was taken not as a result of any 'remonstrance' from the Irish gentry, but due to opposition from English insurance companies and mortgagees and in anticipation of the coming election.⁴⁵ Lord Brougham during a review of the session expressed his frustration with the conduct of the government and the proceedings of the session:

He hoped he might never live to see another such Session of Parliament as what had just passed. He trusted that he might never live to see such a fate befall any other Bills as that which had befallen ... the Sale of Incumbered Estates Bill... His hopes were summed up in this: that the result of the

⁴² Ibid.

⁴³ *Hansard 3 (Commons)*, xciii, col. 1192 (5 July 1847).

⁴⁴ *Hansard 3 (Commons)*, xciv, col. 73 (8 July 1847).

⁴⁵ *Hansard 3 (Lords)*, xciv, col. 99 (9 July 1847).

approaching general election would enable them to witness the gratifying spectacle of a Government... strengthened and made self-reliant by the support of a people—a Government enshrined by its own merits in the admiration and affection of the people, and having at its command in both Houses such majorities as would enable them legislate wisely, deliberately, and fearlessly, for the benefit of the country... When the Parliament was again restored to its functions, he trusted he should never again have to witness or lament over the history of such a Session— a Session disheartening and disappointing to the people; ruinous to the character of the Government; injurious to the constitution; and damaging, beyond the power of language to describe, to the reputation of this great country all over the world.⁴⁶

The following year, in his assessment of the session, Jonathan Pim, Dublin born philanthropist and Quaker MP, noted that the ‘threat’ by English mortgagees ‘was sufficient’ to force the interests of Ireland to be sacrificed in favour of those of wealthy British bankers.⁴⁷ In his examination of the Incumbered Estates Court, Padraig Lane found evidence to support Fitzwilliam’s claim that the bill had been deferred due to opposition from English mortgagees. Lane noted correspondence between George Glyn of the Globe Assurance Company and James Graham, the home secretary, as early as December 1846, which lamented the increasingly difficult economic condition of Ireland. These letters suggested that many ‘mortgagees were beginning from alarm to contemplate immediate foreclosure on mortgages which were based on the security of Irish estates’.⁴⁸ Lane also identified a campaign to obstruct the progress of the incumbered estates measure led by the Law Life Assurance Company. It is suggested that it was this threat and fear of a backlash in the following election that prompted the measure to be withdrawn. Indeed the board of directors of the Law Life Assurance Company noted with relief

⁴⁶ *Hansard 3 (Lords)*, xciv, col. 579 (20 July 1847).

⁴⁷ *Nation*, 12 Feb. 1848.

⁴⁸ Graham to Peel quoted in Padraig Lane, ‘The Encumbered Estates Court’ in *Economic and Social Review*, iii (1972), p. 427.

that the bill had been abandoned in July.⁴⁹ Further supporting Fitzwilliam's claims of political manoeuvring a general election was called nine days after the legislation was withdrawn, on 29 July.

The 1847 election returned the Whig administration under the continued leadership of Lord John Russell. The election had been fought on the issues of the constitution, civil and religious liberty and repeal of the Union, issues which would grow more contentious in the months which followed.⁵⁰ The subject of incumbered estates was not noted amongst the concerns of candidates further emphasising the divisive nature of the proposed measure. One notable exception was John Sadleir, MP for Carlow and an Irish banker. In addition to advocating for the taxation of absentee landlords. Sadleir called for the adoption of new principles for Ireland demanding that every 'proper facility' should be afforded for the sale of Incumbered Estates.⁵¹ Once parliament resumed the issue was quick to again come to the fore of debate. On 29 November, George Grey, home secretary, reminded government of its duty to 'look at the cause of evils, rather than to their symptoms' and encouraged them to effect legislation which would take the 'idlers off the land'.⁵² Liberal MP for Cork, William Fagan, attributed the unhappy state of Ireland to two causes, the first being the undue competition for land and the second the embarrassed state of the landowners. While Fagan and other party colleagues acknowledged government claims that a measure was in preparation there was disagreement about the priority which had been assigned to the legislation. whether It was also questioned whether or not the

⁴⁹ Lane, 'The Encumbered Estates Court', p. 427.

⁵⁰ Brian Walker, 'Politicians, election and catastrophe: the general election of 1847' in *Irish Political Studies*, xxii (2007), pp 1-34.

⁵¹ *Nation*, 17 July 1847. For more on John Sadleir see chapter 5.

⁵² *Hansard 3 (Commons)*, xcvi, col. 275 (29 Nov. 1847).

measures in it would be sufficient to address the evils of the Irish landholding system.⁵³

During a debate on crime and outrage in Ireland on 6 December, John O'Connell suggested that there was sufficient reason to doubt that the revised Incumbered Estates Bill would be adequate. He explained that in order to address the unique set of Irish concerns a radical and searching measure was required, echoing the earlier observations of Brougham and Hatherton.⁵⁴ Later during debate on the introduction of the Crime and Outrage (Ireland) Bill, William Smith O'Brien, leader of the Young Ireland movement, lamented parliament's continued failure to bring forward an Incumbered Estates measure. O'Brien suggested that there was a high probability, as had happened with the bill in the previous session, that this effort to introduce the legislation would be brought forward late in the session, repeatedly postponed and eventually withdrawn. Considering the upheaval brought about by the Famine, O'Brien felt it was necessary, for the preservation of law and order in Ireland, to introduce comprehensive measures to facilitate the sale of incumbered estates. This bold statement was followed by expressions of support from politicians such as John Bright, MP for Bristol, who demanded to know why such a bill was not ready? Russell's admission that a bill to this effect had been ready for a 'long time' brought considerable disquiet to the assembly.⁵⁵ Citing the withdrawal of the previous bill, Bright asked if it was parliament's intention to wait until landlords and mortgagees requested the Incumbered Estates legislation before introducing it. He argued that parliament had shown no regard for the wishes of Irish landlords when introducing

⁵³ *Ibid.*, cols 332-3.

⁵⁴ *Ibid.*, xcv, cols 703-4 (6 Dec. 1847).

⁵⁵ *Ibid.*, col. 986 (13 Dec. 1847).

the Poor Law measure and if parliament had taken their wishes into account there would not have been a Poor Law. It was not, he argued, the responsibility of Irish landlords to request an Incumbered Estates Bill and continued that in the case of Ireland nothing less than a comprehensive measure would suffice, predicting that a 'patchwork' piece of legislation would ultimately fail.⁵⁶ Specifically, Bright called for legislation to prevent estates from being entailed, a process of pre-determining inheritance for future generations and in the case of Ireland largely prohibited estate sales. He deemed this an 'absurd and monstrous system, for it binds... the living under the power of the dead'.⁵⁷ Despite the calls of members and Russell's admission that a bill was ready, parliament broke on the 20 December without the introduction of an Incumbered Estates measure. The political situation to which the House returned in 1848 was decidedly different.

By February 1848 when the House resumed, the political and social landscape of Europe had changed significantly. In Ireland the lower classes continued to suffer in the aftermath of Black'47 but now in addition news of the outbreak of revolution throughout Europe threatened Ireland's stability. The growing political tensions between Ireland and Britain on the issue of repeal seemed poised to erupt and concern quickly grew. This anxiety was fuelled by copious warnings that had emerged in the preceding years. Reflecting on the first French revolution from the viewpoint of 1837 Thomas Carlyle, the Scottish philosopher, warned of the danger of allowing the Irish peasantry to continue in a situation of such abject poverty. Ominously in his examination of the role played in France in 1793 by 'the sans-

⁵⁶ Ibid., col. 987.

⁵⁷ Ibid., cols 987-8.

culottes' he warned that if they could be roused once more from their 'lone death-sleep' to die fighting for the immortal hope and faith of deliverance, they would only be the 'second-miserablest of men'. He suggested that the 'Irish sans-potato' would be far more wretched. Carlyle described the Irish peasant as being in:

frozen darkness, it is bitter for him to die famishing; bitter to see his children famish. It is bitter for him to be a beggar and a knave... wind of beknighted want, perennial from sir to son, had frozen him into a kind to torpor and numb callosity, so that he saw not, felt not- was this, for a creature with a soul in it, some assuagement; or the cruellest wretchedness of all?⁵⁸

In the event of a crop failure he questioned how law and order would be maintained, but provided no solution. William T. Thornton, noted economist, would later suggest that an investment in agriculture and employment for the poorer classes was the only means of settling Ireland and ensuring any sense of social stability. In his 1848 pamphlet *A plea for peasant proprietors*, Thornton warned of the challenges such a reform would present, stating:

the country can not be tranquillised until the people are employed, nor the people employed until capital be introduced, and capital will not enter until tranquillity be established.⁵⁹

In this Thornton captured the sentiments which drove the introduction of the Incumbered Estates legislation in 1848. Thornton's proposal was significantly more radical than those which followed. It included a proposition that 2,000,000 persons should be transported across the Atlantic in order to facilitate the adoption of the English mode of agriculture. He noted that the concept of 'peasant proprietorship' which had been introduced in France following the first revolution did not obtain a fair trial until the 'worst abuses of tyranny and feudalism were swept away by

⁵⁸ Thomas Carlyle, *The French Revolution: A history. By Thomas Carlyle in three volumes, vol. iii* (Leipzig, 1851), p. 393.

⁵⁹ William T. Thornton, *A plea for peasant proprietors with the outlines of a plan for their establishment in Ireland* (2nd ed., London, 1871), p. 213.

revolution'.⁶⁰ Count Cavour, a leading figure in the movement toward Italian unification, during his 1844 visit to Ireland wrote:

The land, to which the Irish are attached by an insurmountable necessity, belongs almost wholly to a foreign race, which has for them neither sympathy nor affection, with which they are not united by a multitude or moral ties that everywhere else exist between the owner and the cultivator of the soil.⁶¹

Cavour warned of the dangers of this system. He continued to describe the system as the 'complete and absolute oppression of the poor by the rich' and called for a reform of the land holding system which he viewed as the 'saddest spectacle to be found in any civilised society'.⁶² Perhaps the most explicit campaigner for the introduction of an incumbered estates measure was the Irish Quaker, Jonathan Pim. Reflecting the views of many in the houses of parliament in his 1848 pamphlet Pim called for government to 'free the land from all restriction; make it an article of free sale... make it answerable for the debts of its owner'.⁶³ He suggested that unincumbered land owners could also benefit from such a measure, utilising it as a means of financing improvement. Throughout his writings, Pim portrayed incumbered landlords as toxic to the wellbeing of Ireland. He stated that it was only when this land 'would eventually fall into the hands of those who have the capital' that it could be utilised to the 'greatest advantage' of the country.

These authors were also quick to recognise the seismic shift which took place with the events of 'the Spring of Nations' in 1848. Thomas Carlyle observed that in the wake of the revolutionary explosions in Europe, the ills of Ireland's contemporary

⁶⁰ Ibid., p. 117.

⁶¹ W. B. Hodgson (ed.), *Thoughts on Ireland: Its present and its future. By the late Count Cavour* (London, 1968), p. 9.

⁶² Ibid.

⁶³ Jonathan Pim, *Condition and prospects of Ireland*, pp 251-2.

society reached 'breaking point' and appeared to be less a turbulent microcosm and more an aspect of the confused social and political situation of Europe.⁶⁴ Radicals such as John Mitchell formerly associated with the Young Ireland movement, recognised that in the wake of events in France, Ireland could not continue unchanged and his revolutionary impatience with the 'sham government' grew.⁶⁵ Carlyle however considered the Russell administration paralysed by red-tape, and its Irish policies formed on a misunderstanding of its political and economic situation. The root cause of Ireland's social problem was accurately identified by the *Dublin University Magazine* in March 1848 as Irish landlords who had, it proclaimed, driven their 'unhappy victims mad'. It continued that

vast numbers of the peasantry are leagued together by a bond of blood; that a law of opinion prevails... that no effectual efforts have been made to impress upon an ignorant and excitable, a horror for a violation of the sixth commandment.⁶⁶

The dissatisfied Irish peasantry and the suggestion that they would revolt, permeated both media coverage and parliamentary debate when the session resumed in February 1848. The *Nation* summarised this suggesting that 'the passion to possess land is one of the deepest our humanity knows continuing that 'the love of independence and the desire for land, are two phases of one passion'.⁶⁷

The outbreak of revolution and the end of the Orléan monarchy of 1848 in France further increased concern. The connection between France and Irish revolutionary movements had been long established. However, once Britain and Ireland were 'Siamese twins' rather than separate kingdoms there was in reality very little that

⁶⁴ Michael Goldberg, 'Carlyle and Ireland' in *The Canadian Journal of Irish Studies*, v (1979), p. 4.

⁶⁵ 'The state prosecutions' in *Dublin University Magazine*, xxxi (1848), p. 798.

⁶⁶ 'The late commission in Ireland' in *Dublin University Magazine*, xxxi (1848), p. 389.

⁶⁷ *Nation*, 12 Feb. 1848.

could be done to repress Irish society other than a change from within society itself.⁶⁸ In September 1800 the correspondence of Edward Baker Littlehales, then Military Secretary of Ireland, noted that 'The safety of the state must always rest upon the support of the great map of its proprietors who are attached to its establishment'.⁶⁹ Therefore, when revolution suddenly erupted across Europe in 1848, the fear that the shaky stability of Ireland was once again under threat was palpable. The repeal movement against the Union, which had been viewed as an inconvenience also became a significant threat. The British elite had long suspected it was a crypto-revolutionary movement whose goal, if achieved, was to destroy any semblance of a union between the two islands.⁷⁰ This fear that Ireland would once again 'catch the cold' from France and rise up against the establishment was utilised by government to attempt a social revolution.

The radical reform that was proposed in the 1848 Incumbered Estates legislation was intended to bolster the Anglo-Irish ascendancy class of Ireland with the introduction of English and Scottish men of capital and bolster the union by re-anglifying and re-capitalising this ruling class. While there were many similarities between the 'experiment' conducted under the Incumbered Estates Court and the plantations of the sixteenth and seventeenth centuries, the measure endeavoured to be uniquely fair and in many ways represented a conservative revolution. The rhetoric of indebted landowners and falling rental incomes in the parliamentary debate was almost completely replaced with unrest and the need for change. The Incumbered Estates

⁶⁸ Oliver MacDonagh, *The Union and its aftermath* (Dublin, 2003), p. 26.

⁶⁹ Letter to Edward Baker Littlehales from 'Catholic', Sept. 1800 (Maynooth University, Littlehales Papers, Uncatalogued).

⁷⁰ James S. Donnelly, 'A famine in Irish politics' in Vaughan (ed.), *A new history of Ireland, V*, p. 357.

Bill was popular within nationalist movements. The *Nation* recorded a 'Meeting of Peers and Commoners convened by the Irish Council' in November 1847. The 'Irish Council' referred to a series of meetings which took place between members of the House of Commons and landed gentry to consider the distressed state of the country and suggest remedial measures. Lord Miltown, an Anglo-Irish peer, declared at this meeting that the 1847 Incumbered Estates measure, which had been deferred by the House was 'a great principle which will do justice to landlord and tenant' and criticised the Irish Council for failing to express an opinion on the measure.⁷¹ From the perspective of Ireland's nationalist movement, John Mitchell commended the measure. Drawing comparisons with France and Prussia he stated that having been 'impoverished and wasted nearly as miserably as Ireland' the creation of a free land market in these countries had 'suddenly produced innumerable small capitalists, eager to invest their money in land'.⁷² He predicted that should a similar measure be introduced in Ireland, the results would undoubtedly be similar.

In Europe, unrest grew. In January 1848 an Italian insurrection in Palermo Sicily spread to the mainland and the King was forced to grant a constitution.⁷³ Meanwhile in France the banquet campaign in Paris, which had been building in the preceding months, had intensified significantly. By 3 February the reintroduction of the incumbered estates legislation in to the British parliament was once again high on the political agenda. Lord Russell hastily responded to persistent questioning that a bill was to be introduced to the Lords in 'a few days'.⁷⁴ However by 15 February

⁷¹ *Nation*, 13 Nov. 1847.

⁷² *Ibid.*

⁷³ Jonathan Sperber, *The European Revolution, 1848-51* (Cambridge, 2005), p. ix.

⁷⁴ *Hansard 3 (Commons)*, xcvi, col. 4 (3 Feb. 1848).

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⁷³ Jonathan Sperber, *The European Revolution, 1848-51* (Cambridge, 2005), p. ix.

⁷⁴ *Hansard 3 (Commons)*, xcvi, col. 4 (3 Feb. 1848).

William Trant Fagan, MP for Cork and an advocate of the legislation, noted the administration's failure to take active measures with respect to the sale of incumbered estates. He questioned the delay in the re-introduction of that proposal, supported by others including Feargus O'Connor, the prominent Irish chartist.⁷⁵ On this same day the Bill for the Sale of Incumbered Estates (Ireland) was introduced to the Lords and a first reading took place.⁷⁶ The bill had been speedily drafted in January by Lord Campbell, who in addition to his parliamentary role, acted as a director of the Law Life Assurance Company, which had forestalled the previous years' measure. Charging Campbell with the responsibility of drafting this contentious legislation served to pacify the interests of London financial houses and as a consequence defused their objections. While this factor served to ease the passage of the legislation, it failed to address many of the concerns held by members of the house in relation to some of the provisions of the previous measure.

The new proposal was not manifestly different from that which had been withdrawn the previous year. The Court of Chancery was to administer and process transactions under the legislation, despite the damning report of the Devon Commission which had highlighted the extensive delays in the Chancery as the greatest impediment to the management and sale of indebted Irish estates. The sales of estates and receipt of petitions was to be overseen by the lord chancellor and the master of the Court of Chancery. The lord chancellor was responsible for the approval and direction for sales, while the master of the Chancery undertook the sales. The measure did not stipulate any level of incumbrance threshold to qualify for sale and, as had been the

⁷⁵ *Hansard 3 (Lords)*, xcvi, col. 692 (15 Feb. 1848).

⁷⁶ *Ibid.*, col. 632.

case with the proposed 1847 measure, only the owner or first incumbrancer of the estate could petition for its sale. Failing again to address the recommendations of the Devon Commission, the measure included no proposal to reform the failed system of land registration in Ireland.⁷⁷

Before the measure had been debated the press began to dissect it. Opinions, at least at this early stage, were overwhelmingly in its favour. The *Nation* heralded the introduction of the bill comparing it to the Prussian Edicts after the Napoleonic War. In an article titled 'Way out of Egypt', the Prussian reforms were glowingly described as the 'cornerstone' of prosperity designed to free the peasants east of the Elbe from feudal dependence on landowners.⁷⁸ However, later analysis of the Prussian Edicts determined that while originally intended to create a 'numerous and loyal self-supporting peasantry' the edicts were in fact detrimental to the prosperity of the peasantry.⁷⁹ The statute provided Prussia's large landowners with compensation in lieu of the loss of their dependant workforce. This compensation came in the form of an appropriation of between a third and half of the land received under the terms of the Edicts or a comparable monetary payment. Subsequently tenants unable to meet their compensation payments and carve out a living from their remaining holdings were frequently forced to sell their lands back to the landlords. East Elbian peasants lost about 1 million hectares, estimated to be 8 per cent of their arable land, to landlords. The nobility, as a result of the Edicts, saw its privileges significantly reduced but its overall position reinforced. The result was also a very

⁷⁷ An Act to facilitate the sale of Incumbered Estates in Ireland, 1848 (11 & 12 Vict., c. xlvi).
⁷⁸ *Nation*, 12 Feb. 1848.

⁷⁹ Steve Hochstadt, *Mobility and modernity: migration in Germany, 1820-1989* (Michigan, 1999), p. 188.

significant expansion of the class of landless labourers.⁸⁰ On 12 February, a second article titled 'Agrarian rights in America and at home', purporting to be written by an Irish emigrant to America, stated that 'our principles of human rights and justice are overlaid and hindered by privileges, customs, conventions, selfishness- the antique rubbish of many evil generations'.⁸¹ It went on to praise the actions of the French revolutionaries stating:

We cannot imitate their radical reformation... but we have heard men speak of a confiscation of property in Ireland by law, by fate, or by revolution. And if we cannot attain to the peaceful agrarian reforms of Prussia, the other dazzling hope will still dance before men's eyes... Our agrarian policy must be revolutionised. It were well if it were done peacefully; and promptly, it may be peacefully done'.⁸²

Others, such as Jonathan Pim, suggested that 'a Famine is like a revolution or an earthquake' suggesting that the devastation caused by the potato blight provided the opportunity for a 'new and wiser era for Ireland'.⁸³ Pim identified the absence of a 'resident body, of an intelligent middle class' as a significant failing in Irish society.⁸⁴ He continued that despite Russell's declaration to the House that the measure would again be brought before them; the 1847 Bill had not been deferred in order to 'prepare a better or more ample measure, but from sheer intimidation'.⁸⁵ Pim begged the government not to once again sacrifice Ireland for the propitiation of the 'Jews' leaving the nation to the possession of 'weeds and briars'.⁸⁶

On 22 February 1848 the French people took to the streets and Paris was gripped by revolution. Within forty-eight hours King Louis Phillipe had abdicated and fled the

⁸⁰ Ibid.

⁸¹ *Nation*, 12 Feb. 1848.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Jonathan Pim, *The conditions and prospects of Ireland*, pp 88-90.

⁸⁵ Ibid., p. 255.

⁸⁶ *Nation*, 12 Feb. 1848.

capital. A second republic was proclaimed and a provisional government was established. This coincided with the first debate of the Incumbered Estates Bill in the Lords. This bloodless French revolution encouraged Irish nationalists and followers of the late Daniel O'Connell in their belief that repeal could be won without spilling much blood. John Merriman in his examination of the revolutionary period, noted that had a revolution occurred in Britain or in Ireland during this time it would have come from domestic chartists and Irish nationalists. He suggests that Britain chose the path of reform rather than risk a revolt.⁸⁷ For Ireland it meant land reform and an attempt at a conservative social revolution.

Further fuelling the anxiety within the houses of parliament was a rise in hostile pamphleteering. Most notably, coinciding with the outbreak of the revolution in France, John Mitchel, described by George Boyce as 'the most extreme nationalist in Ireland', published a letter to the earl of Clarendon in the *United Irishman*.⁸⁸ Mitchel had previously advocated for the use of ambush tactics which had marginalised him from both the moderate element of the Young Ireland movement and Daniel O'Connell's passive repeal movement. Mitchel's revised brand of republicanism believed that Ireland should be 'an Irish republic, one and indivisible'. His beliefs were coloured with 'social-revolutionary implications' and were more radical than previous forms.⁸⁹ The defamatory letter in question began, 'My Lord, to you, as the official representative of the foreign dominion in our enslaved island', and quickly reminded parties that 'an exact half century has passed away since the last holy war waged in this island, to sweep clear of the English name and nation',

⁸⁷ For more see John Merriman, *The French Revolution to present* (3rd ed., New York, 2009).

⁸⁸ D. George Boyce, *Nationalism in Ireland* (London, 1982), p. 174.

⁸⁹ *Ibid.*

being a reference to the 1798 rebellion.⁹⁰ Parliament viewed this declaration as a threat. In moving a second reading of the bill, the debate was brief. Lord Clarendon, to whom Mitchel had addressed his letter, noted that the present land situation in Ireland was injurious to the community at large. He suggested that the proposed legislation would facilitate the introduction of a class of proprietors who were capable of performing the duties of a landowner and stimulate the introduction of agricultural improvement and the provision of employment. This, it was suggested, would pacify Ireland.⁹¹

On hearing of the revolution in France, William Smith O'Brien wrote that 'the shock awakened mankind. Those who had believed themselves to be weak now felt themselves to be strong. Everywhere the oppressor trembled before his victim'.⁹² Charles Gavan Duffy claimed in the *Nation* days later that 'a republic means war with Europe; and war means Irish liberty'. The rhetoric within the Young Ireland movement grew distinctly more radical with Duffy writing that he had no desire to see the streets of Dublin flow with blood 'even if it were the blood of our oppressors', but that 'out of Famine, bankruptcy, and disgrace' no other option had been left to the people of Ireland. He begged that God would give them 'vantage ground and the victory'.⁹³ The administration in Dublin Castle and Lord Clarendon, the lord lieutenant, feared the possible results of such unrest writing:

Heaven knows what will happen... I quite tremble to think of the amount of disaster that may be coming... the lower order in Dublin are already somewhat excited and say now that the French have got their liberties they will come and help us. The lower order are all Young Irelanders. They

⁹⁰ *Hansard 3 (Lords)*, xcvi, col. 1245 (24 Feb. 1848).

⁹¹ *Ibid.*, col. 1251.

⁹² Robert Sloan, *William Smith O'Brien and the Young Ireland rebellion of 1848* (Dublin, 2000), p. 209.

⁹³ *Nation*, 4 Mar. 1848.

repudiate Old Ireland & moral force & denounce the late O'Connell as the greatest robber and humbug that ever yet deceived them.⁹⁴

Within the leadership of the Young Ireland movement, a revolution had seemed inevitable, but leaders were conscious of choosing their timing. Writing to Duffy in 1848, O'Brien said that 'if we attempt any outbreak at present they will be put down, but circumstances may occur hereafter which will render a *sans coulottes* revolution in Ireland a possible event... Neither the scaffold on the one hand not an infuriated mob on the other shall deter me from pursuing the course which I deem conducive to the interests of Ireland'.⁹⁵ Duffy would soon reply that the revolution in France had 'fallen like fire on powder' in Ireland and that there would be an outbreak in Ireland soon enough. Duffy predicted that if such a revolution were to succeed it would mean the death and exile of the upper classes, while they would meet on the scaffold like 'Marat and Robespierre' before them.⁹⁶

On 24 February 1848 the new Incumbered Estates (Ireland) Bill was read in the Lords. In prefacing the reading the lord chancellor, the earl of Cottenham, stated that the current situation regarding Irish property was detrimental to the community at large. He claimed that Irish landlords all too frequently found themselves in a financial position which prohibited them from performing their duties and they were unable to extricate themselves from their precarious position. The aim of this new bill, he continued, was to allow the owners of incumbered estates to dispose of them to their advantage and allow them to invest the proceeds in a beneficial manner.⁹⁷ It

⁹⁴ Sloan, *William Smith O'Brien and the Young Ireland rebellion*, p. 211.

⁹⁵ William Smith O'Brien to Charles Gavan Duffy, 1 March 1848 (N.L.I, Gavan Duffy Papers, MS 2542, f. 3479).

⁹⁶ Charles Gavan Duffy to William Smith O'Brien, March 1848 (N.L.I, Smith O'Brien papers, MS 441, f. 2255 & 2344).

⁹⁷ *Hansard 3 (Lords)*, xcvi, col. 1249 (24 Feb. 1848).

was envisaged that this reform would facilitate the transfer of land to persons who could become 'real masters of the soil' while acknowledging that 'inconsistent rights to property' in Ireland, posed an extreme difficulty in carrying the bill into effect.⁹⁸ Lord Monteagle stated that a reform of the Chancery was necessary for the bill to succeed. Lord Stanley agreed that while the bill would be beneficial, he anticipated considerable difficulties. The bill was commended by Lord Campbell who highlighted the benefit in decreeing a parliamentary title to purchasers of land, as the existing system of title in Ireland was 'deplorable'.⁹⁹ Despite the extensive debate which took place by the 22 March 1848 the failure of the Incumbered Estates Bill to advance through the House of Lords was the subject of criticism in the Commons.¹⁰⁰ Once again the parliamentary progress of the Bill was overshadowed by nationalist unrest, on 20 March a meeting was held at the North Wall in Dublin to adopt an address to the French people. On 22 March, O'Brien, Mitchel and T.F. Meagher, a leader of the Young Ireland movement, were arrested and charged with seditious libel for printing and publicising inflammatory material in relation to the government and monarchy. John and Maurice O'Connell, sons of the late Daniel O'Connell offered bail for both O'Brien and Meagher. On this same day O'Brien left for France, to congratulate the new government, arriving in Paris on 28 March.¹⁰¹ Lord Clarendon declared O'Brien and his party 'vile traitors' accusing them of travelling to France seeking assistance for a rising. This belief permeated the proceedings of the Commons. Although O'Brien would later reflect that the trip was never intended

⁹⁸ *Ibid.*, col. 1250.

⁹⁹ *Ibid.*, col. 1253.

¹⁰⁰ *Hansard 3 (Commons)*, xcvi, cols 874-5 (22 Mar. 1848).

¹⁰¹ Susan Campbell Bartoletti, *Black potatoes: a story of the Great Famine, 1845-50* (New York, 2001), p. 141.

to seek the armed assistance of France but was simply to rouse sympathy for the Irish cause, he was reprimanded in the House when he returned on 7 April.¹⁰² The concerns of parliament were further demonstrated in the steps taken on 28 April 1848 when British Chartists organised a demonstration on Kennington Common.¹⁰³ Although the gathering was only intended to support the presentation of a petition to parliament, government feared the event could ignite a revolution. The gathering passed without incident.

It was against this backdrop that the Incumbered Estates Bill, which had progressed cautiously, gained sudden momentum. In a period of just two weeks the Incumbered Estates Bill would be passed by the Lords with remarkably little discussion and brought before the Commons. Once introduced to the lower House the bill was sent to committee pro-forma without debate on 18 May at the request of the solicitor general. This sudden change of pace did not go unnoticed; the earl of Lincoln observed that having 'been allowed to fall asleep for several months' suddenly within three days it been recommitted to the Lords, read a third time, passed and been brought down to the Commons'.¹⁰⁴ He argued that this not only showed 'unnecessary delay in the first instance' but 'precipitate haste in the next'.¹⁰⁵ The increase in momentum was no doubt influenced by Smith O'Brien's trip to Paris to congratulate the revolutionaries.

The turmoil in France from 22 to 26 June changed the revolution from a relatively peaceful insurrection to a bloody revolt and served to further increase apprehension

¹⁰² Sloan, *William Smith O'Brien and the Young Ireland rebellion*, p. 219.

¹⁰³ Christine Kinealy, *Repeal and revolution*, p. 149.

¹⁰⁴ *Hansard 3 (Commons)*, xcvi, col. 1195 (18 May 1848)

¹⁰⁵ *Ibid.*, col. 1196.

in the houses of parliament. The surge in support for radical measures of reform is clearly evident in the Commons debate on the Incumbered Estates Court which was peppered with warning of possible revolution. On 4 July, William Monsell, MP for Limerick, stated that should the government fail to introduce substantial reform, they were inflicting misery and ruin on vast multitudes merely to uphold a vicious law. He continued that any reasonable man would look at the condition of Ireland and realise that failure to change its society fundamentally could only 'lead to a not bloodless revolution'.¹⁰⁶ Estates in his locality resembled something 'that had been plundered by an enemy... under an enlightened government... in a country which had long been exempt from the calamities of war'.¹⁰⁷ On 11 July 1848 Fergus O'Connor, a key figure in the Chartist movement and a strong advocate of land reform, assured government that if the Incumbered Estates measure were to pass, Irish people 'would not ask for a better political position' and the Union would be secure.¹⁰⁸

The former home secretary, James Graham, had previously called for 'remedies' to the 'gangrene' that was bankrupt landlords. In saying this, Graham was acknowledging the prevailing belief that the Incumbered Estates legislation was an Irish solution to a distinctly Irish problem. Having looked on in 'despair' at parliament's attempt to introduce a measure of paramount importance to Ireland, Graham did not pass comment on the technicalities of the measure, rather he argued against John Sadleir, and others who had spoken out against the amendments

¹⁰⁶ *Harvard 3 (Commons)*, c, col. 107 (4 July 1848).

¹⁰⁷ *Ibid.*, col. 108.

¹⁰⁸ *Ibid.*, col. 402 (11 July 1848).

introduced by the solicitor general following the bill's passage from the Lords.¹⁰⁹ He thought it best that the bill should specifically address the peculiar land holding system in Ireland and he believed the measure had been materially improved by the amendments which had been added to it. He further stated that had the bill stood as it was sent from the Lords it would have been subject to significant objection as its precautions were insufficient.¹¹⁰ Graham argued that the bill, while still not fully practical, represented the best means of converting estates into money and reuniting the 'Roman Catholic population to the soil of Ireland' which he believed was a critical step of strengthening the Union. He contended that the Catholic population had accumulated wealth since the repeal of the Penal Laws which could be invested in Irish land under the terms of the bill.¹¹¹ Sir J.B Walsh, a Welsh MP for Radnorshire, warned that there was a danger the legislation would be viewed as a large-scale confiscation of land and create unrest amongst the landed class.¹¹² Fergus O'Connor agreed that the Irish landlords had long viewed their estates as the basis of their political power but were now obliged to 'give them agricultural importance'.¹¹³ On 20 July 1848 the report of the Incumbered Estates Bill was further considered by Committee. John Stuart, MP for Newark-on-Trent, warned that the bill was inherently flawed and added that 'no man-not even an Irish man- would be so insane as to purchase an estate under this bill'.¹¹⁴ C.P. Villiers, MP for Wolverhampton, and William Monsell highlighted the benefits of attracting capital

¹⁰⁹ *Ibid.*, co. 390.

¹¹⁰ *Ibid.*, col. 392.

¹¹¹ *Ibid.*, col. 393.

¹¹² *Ibid.*, col. 396.

¹¹³ *Ibid.*, col. 402.

¹¹⁴ *Hansard 3, (Commons)*, c, col. 600 (20 July 1848).

to Ireland and the prosperity and employment which would follow as a result.¹¹⁵

Despite these conflicting opinions, the bill was brought forward for a third reading.

On Monday 24 July 1848, the Incumbered Estates (Ireland) Bill, was brought before the House of Commons for the third time and passed following a short and unremarkable debate.¹¹⁶ Five days later on 29 July 1848, there was an abortive Young Irelanders' rebellion in Ballingarry, County Tipperary. This was a brief and inglorious encounter, which Donnelly noted 'had nothing which could be dignified with the name of a strategy'.¹¹⁷ However, its political effects were profound and far-reaching. It also confirmed the worst fears of parliament.

Once passed in the House of Commons the bill was returned to the House of Lords for consideration. Lord Stanley referred to the bill, as having been 'framed for the purpose of dealing with certain interests in Ireland in a manner which their lordships would certainly not deal with similar interests in England and Scotland'. He questioned why a bill which had been almost unanimously passed by the Lords had been returned to the house with such significant alteration that it represented a new bill attached to the old one.¹¹⁸ This suggestion is perhaps an exaggeration as the changes to which Lord Stanley referred related to the priority of incumbrances and other technical aspects and in fact the proposal was not materially altered. It was argued that many of the clauses introduced by the solicitor general in the lower house superseded the very principle proposed by the government and destroyed safeguards

¹¹⁵ *Ibid.*, cols 601-603.

¹¹⁶ *Ibid.*, cols 767-774 (24 July 1848).

¹¹⁷ Donnelly, 'A famine in Irish politics', p. 369.

¹¹⁸ *Hansard 3 (Lords)*, c, col. 1021 (31 July 1848).

which had previously been considered indispensable by the lord chancellor. However, this did not stall the progress of the measure.

Once again the timing of the bill was criticised: firstly, the scheduling coincided with a period when ‘nearly every Irish Peer had gone to attend more pressing duties which awaited them in Ireland’; and secondly, because English and Scottish peers were being asked to vote on a measure which they could not and would not apply to their jurisdictions. Lord Stanley recommended that only parties who had the ‘misfortune to have property there [Ireland]’ should be permitted to vote on the measure.¹¹⁹ However, his objection was overlooked. The earl of Glengall, a Tory Irish peer, added that never in his memory had a bill been altered so fundamentally as that which had been laid before them, declaring the measure ‘a Bill of robbery’, cruelty, outrage and injustice which served only to drive estates onto the market plundering owners and creditors of fair value.¹²⁰ Glengall accused a ‘body of persons’, referring to Pim and other prominent Quakers, of influencing those tasked with amending the legislation to ensure that estates could be purchased at the lowest possible price. He stated that six persons had concocted a plan which had been circulated amongst the Lords in a ‘suspicious character’ to encourage them to pass the bill as amended.¹²¹ He believed that the Quakers intended to form a company to purchase Irish estates to sell for profit. He continued that the passing of this bill would carry into operation the will of Daniel O’Connell by confiscating the property of Protestant landlords and

¹¹⁹ *Ibid.*, col. 1023.

¹²⁰ *Ibid.*, col. 1028.

¹²¹ *Ibid.*

warned that enacting the legislation would be effectively bringing about the repeal of the Union.¹²² Glengall's criticisms fell on deaf ears.

Endeavouring to pass the measure in the absence of Irish peers indicated that the government was eager that the legislation should quickly and unobtrusively pass. Given the overall political situation at the time the absence of Irish members limited the prospect of significant opposition. Moreover, Lord Ellenborough accused the government of harbouring a desire to 'get rid of the present race of Irish landholders', again this would suggest that the absence of the Irish peers would smooth the passage of the bill. Two weeks later on 14 August 1848 the Incumbered Estates Act received royal assent.¹²³ On 5 September 1848 Her Majesty Queen Victoria during the prorogation of parliament, spoke of the measure:

In the midst of these difficulties you have continued your labours for the improvement of the laws; the Act for facilitating the Sale of Incumbered Estates will, I trust, gradually remove the evil of great magnitude in the social state of Ireland.¹²⁴

Once the process of implementing the Incumbered Estates legislation began it became clear that this rushed measure, not unlike many of the European revolutions of 1848, was destined to fail.

Throughout the Act's progress through the houses of parliament a number of the aspects which ultimately proved to be legislation's downfall were highlighted by members. The bill conferred the power of sale on the owner of the estate, first incumbrancer, and the mortgagee holding title deeds. John McCullagh, MP for Dundalk, shrewdly noted that these parties were the least likely to initiate the sale of

¹²² *Ibid.*, col. 1029.

¹²³ *Hansard 3 (Lords)*, ci, col. 100 (14 Aug. 1848).

¹²⁴ *Ibid.*, col. 791 (5 Sept. 1848).

an estate.¹²⁵ In order to protect the rights of landowners and incumbrancers a delay was implemented in the grant title. This meant that following the purchase of an estate through the Court the new owner was required to wait a mandatory period of five years before being granted title to the estate. Joseph Napier, MP for Dublin University, highlighted the significant risk this presented to potential investors and that it would serve only to discourage the middleclass of purchasers which the administration hoped to attract.¹²⁶ When returned to the Lords, the earl of Ellenborough argued that the amendments made to the bill by the lower house had created an ‘unreasonable facility’ for the sale of landed estates. He stated that while some accused government of harbouring a desire to ‘get rid of the present race of Irish landholders’ this amended proposal showed an ‘infinite preference’ for those very proprietors and he went on to predict that the measure would fail as a result.¹²⁷ However, the primary failing of the Act was the decision to work it within the constraints of the Court of Chancery. When first introduced to the Lords, the Earl Fitzwilliam warned of the difficulties associated with implementing a bill designed to operate under the largely discredited mechanisms of the Court of Chancery.¹²⁸ In agreement Lord Monteagle of Bandon stated that the bill would only succeed if the Chancery was significantly reformed.¹²⁹ Ralph Bernal Osborne, MP for Waterford, anticipated:

while they kept in the old track of the Court of Chancery, and the Masters’ Offices, and did not put the matter in the hands of a Commission, they would never have a good Bill for the sale of encumbered estates.¹³⁰

¹²⁵ *Hansard 3 (Commons)*, c, col. 474 (13 July 1848).

¹²⁶ *Ibid.*, col. 584 (20 July 1848)

¹²⁷ *Hansard 3 (Lords)*, c, col. 1026 (31 July 1848).

¹²⁸ *Hansard 3 (Lords)*, xcvi, col. 1251 (24 Feb. 1848).

¹²⁹ *Ibid.*, col. 1253.

¹³⁰ *Hansard 3 (Commons)*, c, col. 768 (24 July 1848).

This aspect was neither debated nor amended and it did prove the downfall of the legislation.

As anticipated by Fitzwilliam and Monteagle, the mechanisms of the Court of Chancery were unable to adapt to business of the Incumbered Estates Act despite the introduction of a series of minor reforms. The general orders of the Act, a set of regulations created by Maziere Brady, the lord chancellor of Ireland, and Thomas Berry Cusack Smith, the master of rolls of the Chancery, comprehensively and considerably enlarged the powers of the Court but failed to address the inefficiency of the body.¹³¹ While some petitions were presented under the legislation, such as that presented by Lord Blaney of Blaney Castle who petitioned for the sale of his Monaghan estate in late 1848, no sales took place and these estate remained in the Chancery.¹³²

The 1849 session of parliament began in February. By the third meeting of the house the Incumbered Estates Act had been declared a complete failure. On 5 February during a debate on the Irish Poor Law, Mr. Bright, now familiar as a staunch supporter of the legislation, set about outlining the many inefficiencies of the Act. Bright had previously stated that 'patchwork' legislation would fail and he now believed this had been confirmed.¹³³ Having commended John Romilly, the solicitor general, on the late introduction of a number of beneficial clauses, he believed that serving the interests of members had 'destroyed nineteen-twentieths of any good' which could have been done by the act. It was suggested that Romilly permitted the

¹³¹ *General order of the Court of Chancery for regulating proceedings under Act for sale of Incumbered Estates in Ireland*, H.C. 1849 (626) xlix, 405.

¹³² *Anglo-Celt*, 1 Dec. 1848.

¹³³ *Hansard 3 (Commons)*, xcv, col. 987 (13 Dec. 1847).

insertion of these clauses to facilitate the smooth passage of the legislation without giving consideration to their implications. Bright continued that the bill had not ‘done one particle of good in the direction in which it was intended to operate’.¹³⁴ Four days later during a debate on the Habeas Corpus Suspension Bill for Ireland, John Sadleir condemned the government for failing to increase the facilities afforded to the Court of Chancery while knowingly increasing its work load. The Incumbered Estates Act he continued, ‘rendered it necessary for every inheritor and creditor to place their property under the control and operation of the Court of Chancery’, therefore further overburdening the institution it had proposed to relieve.¹³⁵

During debate on the relief of distress in Ireland, Edward Horsman, Liberal MP for Cockermonth, declared the Incumbered Estates Act a failure solely because it could not be brought into operation and not because it had been improperly framed. He suggested that ‘Ireland’s calamity was England’s opportunity’ and that by reducing local taxation and poor rates, purchasers could be encouraged to invest. Comparing Ireland to other colonies he suggested it afforded ‘more advantages than a new country’; infrastructure such as roads were already in place, English law already existed and it presented inducements to men of enterprise that no other country exhibited.¹³⁶ Tentative steps were made toward amending the measure on 22 February when Sharman Crawford introduced a motion for ‘an amendment to the Encumbered (sic) Estates Bill’.¹³⁷ Criticism of the legislation centred around the management of estates under the control of the Chancery with the proposed process

¹³⁴ *Hansard 3 (Commons)*, cii, col. 287 (5 Feb. 1849).

¹³⁵ *Ibid.*, col. 501 (9 Feb. 1849).

¹³⁶ *Ibid.*, col. 815 (16 Feb. 1849).

¹³⁷ *Ibid.*, col. 1136 (22 Feb. 1849).

under the 1848 legislation accused of creating the 'most abject wretchedness'.¹³⁸

Despite this support Crawford withdrew his motion.

The failed legislation became not only an embarrassment to the government but also an issue of considerable discord between parties. On 6 March Torrens McCullagh, MP for Dundalk, argued that the home secretary, Sir George Grey, had made an incorrect assessment of the Act and the reasons for the legislation's failure stating:

Gentleman the Secretary for the Home Department seemed to say that the Incumbered Estates Bill had failed to work, from the conditions imposed on it by the Court of Chancery, in Ireland. His belief was that it had failed to work in Ireland because the Bill was incapable of working.¹³⁹

On 2 April, almost two months after the matter was first raised, Lord Russell addressed the House on the Act's failure. During a particularly animated debate on the Irish poor laws he encouraged parliament to remove every obstacle to the sale of Irish land. He revisited a proposal from the previous year which had suggested the establishment of a separate court for the 'adjudication of cases connected with land'.¹⁴⁰ While Russell acknowledged the failure of the legislation, he was quick to place blame wholly with the aging lord chancellor, the earl of Cottenham, declaring him: 'rather timid as a minister and inert as a statesman... in a great measure responsible for the failure of the Bill'.¹⁴¹ Russell continued that he had been prepared to make 'any sacrifice' for the purpose of changing embarrassed to solvent landowners. He summarised his sentiments stating that 'The condition of Ireland at this moment is this- the rich are menaced with ruin, and ruin from which, in their present course they cannot escape; whilst the poor are menaced with starvation and

¹³⁸ *Ibid.*, col. 1146.

¹³⁹ *Hansard 3 (Commons)*, ciii, col. 291 (6 Mar. 1849).

¹⁴⁰ *Hansard 3 (Commons)*, civ, col. 173 (2 Apr. 1849).

¹⁴¹ *Ibid.*, col. 174.

death'. He stated that it was the government's intention to introduce an amended version of the Incumbered Estates legislation for the consideration of parliament.¹⁴²

On 17 April, John Sadleir proposed 'a Select Committee be appointed to inquire into the legal circumstances which unduly impede the sale of landed property in Ireland', seconded by John O'Connell.¹⁴³ Sadleir criticised the solicitor general for his failure to consult 'practical men' versed in Irish property law when constructing the measure and as a result an act was passed which 'would rather tend to impede than to facilitate the sale of encumbered estates'. Sadleir went on to offer a series of suggestions to render the act in 'some degree ameliorative of those evils which all parties had just cause to complain'.¹⁴⁴ Somewhat ironically, considering what would later transpire, Sadleir stated that the legislation was clogged with so many safe guards against possible fraud and so many formalities to complete a title, as to render it defective.¹⁴⁵ Sadleir, stating he was speaking on behalf of the gentlemen of the Irish bar, claimed that the 'evils of the present system were so intolerable... as to be practically inoperative'.¹⁴⁶ The solicitor general in response declared the act was not intended to function as a 'touch of magic wand' and continued that it was not possible to heal all the evils outlined by the various parties with a single measure, rather it would require a series of measures.¹⁴⁷

¹⁴² *Ibid.*, col. 178.

¹⁴³ *Hansard 3 (Commons)*, civ, col. 397 (17 Apr. 1849).

¹⁴⁴ *Ibid.*, col. 390.

¹⁴⁵ For more on John Sadleir see Chapter 5.

¹⁴⁶ *Hansard 3 (Commons)*, civ, col. 391 (17 Apr. 1849).

¹⁴⁷ *Ibid.*, col. 401.

Just nine days later on 26 April, Romilly brought 'A bill further to facilitate the sale of incumbered estates in Ireland' before the House.¹⁴⁸ In defence of the previous measure he suggested that the peculiar circumstances in Ireland were responsible for the failure of the Act and 'would have made it very difficult for any measure to succeed', and he suggested that the new legislation was designed to 'get over' obstructions.¹⁴⁹ The new bill contained a number of significant provisions, most remarkably the establishment of a new independent commission outside of the control of the Chancery to administer transactions under the Act.¹⁵⁰ The relatively sudden introduction of a radical new tribunal, which had been dismissed during the course of the 1848 debate excited little opposition.¹⁵¹ The court would be self-regulating and it was suggested that a period of three years would be sufficient for the discharge of its duty with an additional two years allowed for the settling of any outstanding business. This would later become known as the five year experiment. Romilly stated that the intention of the act was to 'prevent them [Ireland] from getting into the state of complication as now existed'.¹⁵² In the expectation of great criticism the solicitor general went on to say:

He anticipated the it would be said that this measure went a great deal too far; that it superseded the jurisdiction of the Court of Chancery, and disposed in somewhat an arbitrary manner of the property of one class of persons, to divide the proceed among another class. His answer was, that the emergency and circumstances of the case justified the expedient.¹⁵³

¹⁴⁸ *Incumbered Estates (Ireland). A bill further to facilitate the sale of incumbered estates in Ireland.* H.C. 1849 (235), iii, 211.

¹⁴⁹ *Hansard 3 (Commons)*, civ, col. 893 (26 Apr. 1849).

¹⁵⁰ *Ibid.*, col. 894.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, col. 898.

¹⁵³ *Ibid.*, col. 900.

The very suggestion that this bill would facilitate the transfer of land to ‘another class’ and that that situation was an emergency, links this new piece of legislation back to the revolutionary sentiments of the 1848 Act, the Famine and the revolutionary fervour which had gripped Europe and alarmed Britain. With the support of members such as John Stuart, MP for Newark-on-Trent, who replied that the problem which they proposed to remedy was ‘one of no ordinary difficulty’, the measure moved quickly through the house.¹⁵⁴ The new proposal was quickly declared ‘a mass of complicated enactments... not thoroughly understood by one out in ten of the Irish members who had so eagerly called for it’ and the legislation deemed to be nothing short of veiled ‘confiscation’.¹⁵⁵ As a result many were slow to assert outright support for the measure, with some members such as William Keogh, MP for Athlone and later founding member of the Catholic Defence Association, tentatively suggesting that the new offering was ‘a step in the right direction’ and defended the measure asserting that ‘the House would not deliberately inflict an injustice upon anybody’ but that it was their duty to assist a country labouring under a ‘monstrous gangrene’, echoing the observations made by Graham to Peel in 1843.¹⁵⁶

Throughout the debate on the introduction of the Incumbered Estates legislation, comparisons were drawn between the proposed measure and the Slave Compensation Committee of the West Indies between 1834 and 1844. As an interesting point of comparison both pieces of legislation were brought about by the very real threat of social unrest. The Slave Compensation Committee had been

¹⁵⁴ *Ibid.*, col. 901.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*, col. 904.

established to adjudicate the payment of £20 million in reparations to slave owners in the West Indies following the abolition of slavery in 1833. This was the largest government funded compensation scheme in British history and accounted for 40 per cent of government expenditure that year.¹⁵⁷ The compensation scheme was established in order to avert a move to radical politics by former slave owners, who, following a loss of property, found themselves at a significant financial loss and burdened with unforeseen payments for labour and diminishing profit margins. In the wake of this forfeiture and the remnants of the fiercely fought anti-abolition campaign, the Slavery Compensation Committee aimed to stem a move toward radical politics by landowners. While in the West Indies the emancipation of the slaves was of itself a revolutionary moment and the compensation which followed a move to ease social tensions, in Ireland the Incumbered Estates Court ambitiously proposed to do both and foster a social revolution.

When advocating for an unfettered commission, John Romilly, solicitor general regularly cited the impeccable record of the Slave Compensation Committee and the example which it provided. In doing so they neglected to acknowledge the fundamental difference in how the two would operate. The three Compensation Committee Commissioners responsible for the dispersal of funds- James Lewis, Hastings Elwin and Henry Frederick Stephenson- conducted the business of the commission from an office based in London and used a system of assistant commissioners to take applications and undertake any necessary field-work in their respective colonies. All compensation payments made by the commissioners were

¹⁵⁷ For more see Nicholas Draper, *The price of emancipation: slave-ownership, compensation and British society at the end of slavery* (Cambridge, 2009).

made through the Bank of England in conjunction with the Court of Exchequer at Westminster.¹⁵⁸ Under the Incumbered Estates Act payments were made directly from the Bank of Ireland on the authority of the commissioners of the Court alone. Therefore, the Slave Compensation Commissioners, although independent in their decision making, were subject to an additional check and remained within both the sight and mechanism of the government.

Charles Wood, chancellor of the exchequer, defended the proposed powers of the new commissioners against those who claimed they were too radical, citing the recently established Slave Compensation Commission in the West Indies which had been charged with the responsibility of granting monetary compensation to former slave owners following emancipation in 1844. The powers this body possessed were similar to those which were proposed for the Incumbered Estates Commissioners and the former body had proved both judicious and successful. It was Wood's opinion, therefore, that this was not a sufficient reason for the house to 'oppose the trial of the experiment now sought to be made... to remove a millstone from their neck'.¹⁵⁹ Sir Robert Peel, now leader of the opposition, continued the comparison with the Slave Compensation Commission. Both reserved the right to decide on the validity of a claim to property, in the case of Ireland this related to an estate and in the case of the West Indies the number of slaves.¹⁶⁰ Peel claimed that the

¹⁵⁸ *Accounts of slave compensation claims; for the colonies of Jamaica. Antigua. Honduras. St. Christopher's. Grenada. Dominica. Nevis. Virgin Islands. St. Lucia. British Guiana. Montserrat. Bermuda. Bahamas. Tobago. St. Vincent's. Trinidad. Barbadoes. Mauritius. Cape of Good Hope.* p. 215, H.C. 1837-8 (215), lxviii, 331.

¹⁵⁹ Susan Thorne, 'Capitalism and Slavery Compensation' in *Small Axe*, xvii (2012), pp 154-167; *Hansard 3 (Commons)*, civ, col. 908 (26 Apr. 1849).

¹⁶⁰ *Ibid.*, col. 912; See also An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves, 1833 (3 & 4 Will., c. lxxiii). Under this statute, five Commissioners of Arbitration were appointed for inquiring and deciding upon the claims of

appointment of a special tribunal for the direction of a particular interest was the most effective means of avoiding injustice and represented the best remedy for Ireland's particular social difficulties.¹⁶¹ The opposition leader called for an immediate grant of parliamentary title to purchasers and an assurance against indefinite poor-rates as an encouragement for investors.¹⁶² Bright declared that 'he could not find the slightest fault with the proposition' and that it was 'calculated to meet great emergencies'.¹⁶³

On 11 May, Romilly moved for a second reading of the bill. Stafford of the opposition announced that he 'highly approved of the measure' and thanked the government for bringing it forward.¹⁶⁴ Indeed the bill appeared to have cross-party support, with members of the minority parties such as that of John O'Connell for the Irish party and Stafford's fellow Tories also declaring their support for the measure. Criticism of the bill in this instance came from within Russell's own party in the form of Colonel Francis Dunne, MP for Portarlington who condemned the proposed commission as having 'inquisitorial powers'. His objections were soon dismissed with the argument that the powers vested in the commissioners were in fact

compensation brought to them under the act. A minimum of three Commissioners was required for a quorum. Each of the 'several colonies' had separately appointed Colonial Commissioners elected by the Commissioners of Arbitration. A quorum of the Commissioners could compel attendance, examine a witness under oath and penalties were introduced for swearing falsely before the Commissioners. All payments were made only in regard to registered slaves, no compensation was allowed for persons illegally held in slavery. The Commissioners were permitted to institute inquiries to ascertain the facts to be taken into account effecting the apportionment of the compensation fund between the proprietors in each colony, following which the Commissioners could frame general rules for the equitable distribution of the fund assigned to each colony. Any person claiming to have any right, title, interest, mortgage, judgement, charge or incumbrance on any slave or slaves was entitled to claim through the Commission provided their claim met with the General Rules established by the Commissioners and all the required proof was provided.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*, col. 913.

¹⁶³ *Ibid.*, col. 916.

¹⁶⁴ *Hansard 3 (Commons)*, cv, col. 345 (11 May 1849).

‘reasonable enough’.¹⁶⁵ At this important stage, the solicitor general was quick to highlight that the measure was designed to reinforce the Union. In reference to the repeal movement and the Young Irelanders, he stated that the Incumbered Estates legislation would allow the Irish people to feel the advantages of English law and silence ‘any talk about a repeal of the Union’.¹⁶⁶

On 21 May 1849, the House of Commons resolved into Committee on the Incumbered Estates (Ireland) Bill. Opposition in his instance was in relation to the radical and ‘sweeping’ nature of the proposal.¹⁶⁷ Sir John Walsh, Tory MP for Radnorshire, declared the measure wholly inoperative and compared attempts to sell land in Ireland in its present state to trying to ‘sell a house by auction while it was on fire’.¹⁶⁸ He doubted that the new proprietors, upon whom such great expectations were being placed, would prove any more prudent than their predecessors. Colonel Dunne continued his opposition to the measure comparing the powers given to the commissioners to those exercised by Tsar Nicholas I the ‘Autocrat in Russia’ whose reign was notorious for repression of dissent, economic stagnation and poor administrative policies.¹⁶⁹ Some such as Shafto Adair, Liberal MP for Cambridge, retorted that the failure of the 1848 Bill was in itself sufficient justification for the newly-proposed legislation.¹⁷⁰ Lord John Russell stated that the real question before the committee was:

whether the situation in Ireland was such as to demand some extraordinary remedy for the purpose of securing the sale of land and putting estates which were greatly incumbered into the hands of other persons, who would be

¹⁶⁵ *Ibid.*, col. 351.

¹⁶⁶ *Ibid.*, col. 360.

¹⁶⁷ *Hansard 3 (Commons)*, cv, col. 766 (21 May 1849).

¹⁶⁸ *Ibid.*, col. 763.

¹⁶⁹ *Ibid.*, col. 766.

¹⁷⁰ *Ibid.*, col. 762.

enabled not only to do their duty to the land, but also to the persons upon the land?¹⁷¹

It was clear to Russell and his colleagues that the circumstances of Ireland were indeed extraordinary and that it was considered necessary to propose such a radical remedy. Following extensive debate a report was scheduled and presented to the House on Thursday 24 May 1849.

On 4 June 1849 an order was made and a motion introduced 'that the bill be now read the third time'.¹⁷² Colonel Dunne, continued to draw comparisons between the proposed Incumbered Estates measure and confiscation stating:

The House had tried confiscation after confiscation, but Ireland was to-day in the state which Spenser described it as being in the days of Elizabeth, while her people were flocking to the shores of America, and carrying with them feelings which were not favourable to the legislation of this country.¹⁷³

Joseph Napier also warned against separating Ireland from England by legislation and of the danger of placing every property owner in the country at the mercy of a court. He argued that the defective legislation encouraged fraud and suggested there was a real danger of 'collusion' between owners and incumbrancers 'for the purpose of forcing sale to the disadvantage of the other creditors'.¹⁷⁴ The solicitor general stated that there was little danger in separate legislation for England and Ireland as 'the measure was but a temporary one' and continued that 'no great evil could arise from its failure'; however if such a measure was to fail in the Chancery, 'the injury

¹⁷¹ *Ibid.*, col. 764.

¹⁷² *Hansard 3 (Commons)*, cv, col. 1094 (4 June 1849).

¹⁷³ *Ibid.*, col. 1095. The term to 'Spenser' is in reference to the work of Edmund Spenser (1552-1599) the author of *A View of the present state of Ireland* written in 1598. M.S Rawlinson (ed.), *A View of the present state of Ireland* (London, 1934).

¹⁷⁴ *Ibid.*, cols 1096-97.

might be irreparable'.¹⁷⁵ Romilly closed his address with an expression of thanks to Walter Coulson, who had assisted him in framing the act:

without whose great abilities and legal knowledge he should have found it impossible to have presented to the House a Bill which he really believed would carry into effect that which was the object of all parties, and which would be a useful and beneficial measure, though not alone able to effect the reforms which they considered necessary to the regeneration and amelioration of the existing state of things in Ireland.¹⁷⁶

The bill was then read and passed.

The Incumbered Estates (Ireland) Bill was introduced to the House of Lords on Thursday 5 June 1849.¹⁷⁷ On 11 June an order for the second reading of the bill was the subject of extensive debate. In his address to the House, Lord Campbell, author of the 1848 bill declared that he had warned that the measure was insufficient and would fail. In support of the suggestions made in the Commons, relating to the introduction of supplementary legislation, Campbell pronounced that should such measures follow, 'the regeneration of Ireland might be confidently anticipated'.¹⁷⁸ Lord Brougham highlighted that public auctions would not provide the transparency that was proposed as there was no means for the commissioners to ascertain if 'the buyer was a separate and independent person, or merely the friend and trustee of the owner'. He also used the opportunity to criticise the 'high and transcendental power of making rules and regulations which was to be granted to the commissioners'.¹⁷⁹ Lord Brougham argued that the judges of the Chancery favoured the measure as it relieved them of a significant number of duties but continued that of the most

¹⁷⁵ *Ibid.*, col. 1106.

¹⁷⁶ *Hansard 3 (Commons)*, cv, col. 1107 (4 June 1849).

¹⁷⁷ *Hansard 3 (Lords)*, cv, col. 1138 (5 June 1849).

¹⁷⁸ *Ibid.*, cols 1341-3 (11 June 1849).

¹⁷⁹ *Ibid.*, col. 1347.

eminent judges in Ireland 'every one of them, more or less, was opposed to it'.¹⁸⁰

The earl of Glengall, an ardent supporter of the reform stated he:

was never more astonished in his life than on seeing a Bill of this kind introduced to the House; and he could not but wonder that any man should have had the hardihood to propose so downright a confiscation of property for their adoption.¹⁸¹

While he agreed that while 'great misfortunes' had fallen upon Ireland's property, the measure now before the house involved aspects of both 'communism and socialism of the deepest degree' and would not have been out of place had it been proposed at the National Assembly in France during the revolution. Glengall went so far as to recommend the infamous French socialists, who advocated ideas of anarchy and utopia, Louis Blanc, Considerant and Proudhon, as commissioners for the proposed court.¹⁸² Lord Wicklow stated that there existed in Ireland a state of panic which would result in an absence of purchasers and it was most likely the 'commissioners would sit at the desks receiving their salaries and, doing little else'.¹⁸³ With these objections considered, the bill was then read, sent to a select committee and the House was adjourned.

On 22 June, the bill as amended by the Lord's Select Committee was brought before the House.¹⁸⁴ Following its amendment, when very few alterations were made, debate in the House was notably short with few objections. It was proposed that the measure should be recommitted on Monday 25 June. Lord Campbell expressed his 'great pleasure and satisfaction' with the revised proposal and that in his 'humble

¹⁸⁰ Ibid., cols 1349-1350.

¹⁸¹ Ibid., col. 1351.

¹⁸² Ibid.

¹⁸³ Ibid. cols 1366-7.

¹⁸⁴ *Incumbered Estates (Ireland). A bill [as amended by the Lords] intituled an act further to facilitate the sale and transfer of incumbered estates in Ireland.* H.C. 1849 (444), iii, 283.

opinion the measure had been considerably improved'.¹⁸⁵ Lords Stanley and Brougham both reiterated their concern that no purchasers would be found in Ireland's present state despite the granting of title.¹⁸⁶ Brougham was also scathing of those who maintained the stance that no harm would be done should this bill suffer a similar fate to the 1848 measure, stating 'that was the great mistake which people fell into from reading absurd, false, and trumpery articles which were published upon the subject' and that he believed it would do great harm and little good.¹⁸⁷ However the progress of the bill continued.

On 28 June an order was made for a third reading of the Incumbered Estates (Ireland) Bill in the House of Lords.¹⁸⁸ The bill was read with amendments and passed.¹⁸⁹ It was then sent down to the Commons. Once again the passage of the bill gained considerable momentum. On 19 July, Romilly as solicitor general moved that the Lords' amendments to the bill be considered. The conference took place on 23 July 1849. The Incumbered Estates (Ireland) Act received Royal Assent on 28 July 1849.¹⁹⁰

¹⁸⁵ *Hansard 3 (Lords)*, cvi, cols 709-10 (22 June 1849).

¹⁸⁶ *Ibid.*, cols 712-713.

¹⁸⁷ *Ibid.*, col. 714.

¹⁸⁸ *Hansard (Lords)*, cvi, col. 1040 (28 June 1849).

¹⁸⁹ *Ibid.*, cols 1040-2.

¹⁹⁰ *Hansard (Lords)*, cvii, col. 1071 (28 July 1849).

Conclusion

The failure of the 1847 Incumbered Estates Bill illustrated that the Famine alone was not the major driving force behind the introduction of the radical reform. By 1848 the political landscape in Europe had been changed so significantly by the “Spring of Nations” that the measure quickly gained momentum and there was almost universal support for this ground-breaking legislative driven reform. The bills of 1847 and 1848 were not manifestly different. Many clauses remained unchanged and the limited alterations which were introduced were almost exclusively intended to pacify the ‘monied interest’ or ease the passage of the measure through the Houses of Parliament. Without question the 1848 Act was rushed and its failure seemed almost inevitable as a result. Its immediate failure was an embarrassment to the government but their determined adherence to the principles of the measure indicated that the transfer of land from the existing landed class to a new industrious one was, at least in the eyes of the house, a viable solution. The 1849 Act enjoyed a similarly rapid passage through the houses, recognised the fundamental faults of the 1848 measure and created an independent self-regulating Court. The Commissioners of the Incumbered Estates Court, were granted the power to rectify any omissions under the Act. While the Court itself was radical, it is only in its operation that we find the results of this unusual and unprecedented social revolution orchestrated by the liberal government.

Chapter 2

Law and advances

Shortly before the second Incumbered Estates Bill passed, the *Irish Examiner* wrote that they were 'prepared for the announcement' and the passing of the Incumbered Estates Act was merely 'carrying out' the system which had been commenced immediately after the passing of the Act of Union.¹ As MacDonagh noted, government was gradually encroaching on aspects of Irish life which had not previously been its concern.² Supporting MacDonagh's later argument, the *Examiner* stated that when it was perceived the law could no longer be efficiently administered in the superior courts of justice in Ireland it had become the norm that this function ought to be transferred to Westminster and controlled directly from there. The reporter suggested that by undermining the practices of the Irish Court of Chancery, and their jurisdiction in the realm of equity, the kind of legislative partnership which successive English governments seemed 'determined to establish', with the 'weaker island' of Ireland, could be facilitated.³ The manner in which the proceedings were conducted played a considerable role in this.

In establishing the general rules for the operation of the Incumbered Estates Court, the commissioners chose to invert the processes of the Court of Chancery and by extension the Exchequer, both of which followed almost identical processes.⁴ This provides an insight into the appointment of the Commissioners of the Court. While

¹ *Irish Examiner*, 1 June 1849.

² MacDonagh, 'Ideas and institutions, 1830-45', p. 206.

³ *Ibid.*

⁴ For more see *First report from the Select Committee on Receivers, Courts of Chancery and Exchequer (Ireland); together with the minutes of evidence, appendix, and index*, H.C. 1849 (438), viii, 439; *Second Committee on Receivers, Courts of Chancery and Exchequer (Ireland); together with the proceedings of the committee*. H.C. 1849 (494) viii, 645.

a great number of prominent judges and solicitors were rumoured to have been considered for positions within the Court, contemporary observers suggested that many were inclined to uphold the old institutions and were not willing to deviate from the well-worn and familiar track of the Courts in which their 'younger days were passed'.⁵ As a result the Commissioners selected were not those who had been anticipated.

Rumours of possible appointments began to circulate even before the Act was passed. The first prominent legal mind rumoured to have been approached for an appointment to the Court was Edward Sugden, later Lord St. Leonards. He had a reputation as a 'poor politician' but his legal abilities had seen him appointed solicitor general in 1829 and lord chancellor of Ireland under the Peel administration in 1835. Sugden was the very embodiment of the investors which this new Court hoped to attract. He was a self-made respectable gentleman, who was described in 1828 as 'another example of the effects of talent and industry, to raise their possessors to fortune and distinction, though wholly unaided by the advantages of birth and connections'.⁶ It was rumoured that Sir Edward Ryan and Walter Coulson would join him at the bench.⁷ Ryan had previously been appointed to the Supreme Court of Calcutta in 1833 and he sat on the Privy Council from 1843. Coulson had played a key role in drafting the Incumbered Estates Act, winning the praise of Romilly and others in the House; however, he had limited legal experience, serving as parliamentary counsel to the Home Department. These rumours were soon superseded when it was reported that Sugden had in fact accepted the appointment

⁵ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 323.

⁶ [Anon], *Public characters of the year 1828* (London, 1828), p. 364.

⁷ *Cork Examiner*, 9 July 1849.

of head of the commission and would be joined at the bench by Jonathan Henn as his second commissioner. Henn was a popular figure in both England and Ireland.⁸ Henn was the first Irish lawyer rumoured to be considered for a position in the Court. He was widely associated with the Repeal Movement and served as a member of Daniel O'Connell's defence team during the 1843 Repeal prosecution. Despite the guilty verdict, his work in O'Connell's defence was widely praised. However, neither Sugden nor Henn were appointed.

Despite the extent of the early coverage and speculation, the *Cork Southern Reporter* noted in August that it 'passed in the hurry and excitement on Her Majesty's visit, the names of the Commissioners appointed... to carry out the provisions of the Encumbered Estates' Act, have been passed over almost unnoticed by the press'.⁹ The arrival of Queen Victoria in Queenstown on 2 August 1849 consumed the British and Irish media for the duration of her visit.¹⁰ The *Cork Southern Reporter* confirmed that the three appointed judges were the Right Honourable Baron John Richards, Mountifort Longfield and Charles Hargreave. It would later be suggested by a former examiner of the Court that more established members of the bar were unwilling to accept appointments to a new tribunal which had a limited lifecycle.¹¹ However, despite lower public profiles and limited experience, the commissioners appointed to the Court had between them the understanding necessary to create revolutionary new land court without the pitfalls of its predecessor.

⁸ *Kerry Evening Post*, 11 July 1849.

⁹ *Cork Southern Reporter*, 16 Aug. 1849.

¹⁰ For more see Paula Lalor, 'Queen Victoria's visits to Ireland, 1849-61: views from the Irish country house' (M.A. thesis, Maynooth University, 2012).

¹¹ R.D. Urlin, 'The history and statistics of the Incumbered Estates Court, with suggestions for a similar jurisdiction in England' in *Journal of the Statistical Society of London*, xlv (1881), p. 208.

Baron John Richards had sat as Baron of the Exchequer from 1837, having previously served as solicitor general of Ireland in 1835 and attorney general the following year. Coming from the exchequer, Richards was familiar with the snares of the former court and his appointment to the Incumbered Estates Court was declared 'if not the best possible, it is certainly a good one'.¹² However, his close ties to the Whig party were criticised and some claimed his appointment was a 'flagrant violation both of the sound principle and of the spirit of the act'.¹³ Throughout his appointment in the Incumbered Estates Court, Baron Richards was permitted to retain his position in the exchequer. The practicalities of permitting the 'perfectly conscientious judge' to retain both posts at first garnered criticism and latterly it was suggested that his lengthy absences from the Court were detrimental to his efficiency as a judge and he was called upon to resign.¹⁴ However, Richards appointment during the initial experimental phase of the Court was significant, as R.D. Urlin noted, without his input the system would not have been able to hold its own against professional prejudice and the unconcealed dislike of landowners and MPs opposed to the measure.¹⁵

Mountifort Longfield, the second appointment to the Court, was a member of an Anglo-Irish aristocratic family and his appointment was seen as a concession to the ascendancy. A younger son, he had chosen to follow a career in law with great success. He had been appointed deputy professor of English and feudal law at Trinity

¹² *Cork Southern Reporter*, 16 Aug. 1849.

¹³ *Ibid.*

¹⁴ *Incumbered Estates Court (Ireland). Copies of correspondence between the Lord Chancellor of Ireland and Mr Baron Richards, on the occasion of the removal of the latter from the office of Chief Commissioner of the Incumbered Estates Court; and of a letter from Mr Baron Richards to the Lord Chancellor of Ireland, in relation to certain arrears of business in that Court.* H.C. 1857 Session 2 (90), xlii, 421.

¹⁵ Urlin, 'The history and statistics of the Incumbered Estates Court', p. 208.

College Dublin and was subsequently promoted to professor of both political economy and later English and feudal law. On his appointment Longfield was praised for his 'uncompromising integrity, his legal acquirements and exalted love of justice'. The *Cork Southern Reporter* noted that he possessed a mind capable of 'taking a large comprehensive view of any subject brought before him'.¹⁶ This would prove integral to the work of the Court. His political views no doubt contributed to his popularity; he had built a reputation as a 'consistent and unwavering opponent of the Whigs at all times'. The *Examiner* declared him the most intelligent member of the Tory party in Ireland.¹⁷ The appointments of Richards and Longfield reconciled both sides of the British political divide.

The final commissioner appointed was widely criticised. Charles Hargreave was an English-born solicitor with little experience within the English legal system and no familiarity with the complex Irish system. This would later prove to be an advantage as he was not tied to the maintenance of either system. Early assessments of his appointment were scathing. In August 1849 the *Dublin Evening Mail* reported:

Here we have a young gentleman disqualified by law from filling the office of an assistant-barrister – a stranger to Ireland and its habits, and peculiar, as well as complicated, law of real property, and who can possess no practical experience as to the various important questions on titles, searches, and the rights of incumbrancers depending on the laws which have no application to England... Truly this appointment has been described as an insult – aye, and a gross insult – to the Irish bar and to Ireland.¹⁸

Despite his lack of court experience and his young age –he was just twenty-nine when he was appointed– Hargreave had been selected as professor of jurisprudence at University College London from 1843. The young legal mind had only been called

¹⁶ *Cork Southern Reporter*, 16 Aug. 1849.

¹⁷ *Ibid.*; *Examiner*, 18 Aug. 1849.

¹⁸ *Examiner*, 16 Aug. 1849.

to the bar in 1844. R.D. Urlin later noted that he possessed a 'rare genius for legal problems' and that he gradually earned the respect of the people and on his death it was said 'he *was* the Incumbered Estates Court'.¹⁹

The Commissioners took their oath of office at Dublin Castle on 18 August 1849.²⁰ Shortly after their appointment the Incumbered Estates Commissioners set about creating the general rules of the court. Urlin highlighted the challenge which this presented as there was little help to be gained from proceedings already in existence, stating that the practice of the Chancery was to be 'deviated from as far as possible' and deeming the equity courts proceedings torturous, technical, costly and ineffective.²¹ He continued that it was 'not too much to say that these commissioners were the first in modern times to strike out a simple and rational mode of procedure' at a time when courts were overborne with weight of 'cumbrous usages and rules of practice'.²² The Commissioners were a court of record and the general rules completed on 18 October 1849, once approved by the Privy Council, were to have the same authority as if they had been enacted by the authority of parliament.²³ Having been circulated in the press, these rules were printed by the order of the House of Commons on 20 February 1850.²⁴ While the legislation governed the scope of the court, it was these general rules which decided the conduct of business.

The administrative structure of the Incumbered Estates Court was loosely modelled on the system of the Court of Chancery and the law courts of England, with the

¹⁹ Urlin, 'The history and statistics of the Incumbered Estates Court', p. 209.

²⁰ *Nenagh Guardian*, 25 Aug. 1849.

²¹ Urlin, 'The history and statistics of the Irish Incumbered Estates Court', p. 209.

²² *Ibid.*

²³ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 317.

²⁴ *Incumbered Estates (Ireland). Copy of general rules under 12 & 13 Vict. c. 77, dated the 18th of October 1849*, H.C. 1850 (72), li, 469.

employment of clerks, examiners and assistant clerks. The staff of this fledgling court however, received significantly smaller salaries than their colonial counterparts. Commissioners Longfield and Hargreave, each received a salary of £2,000 and Baron Richards was appointed on a salary of £1,500 per annum, in addition to his salary from the exchequer.²⁵ By comparison, William Henn, Edward Litton, William Brooke and Jeremiah Murphy, all masters in the Court of Chancery, received £3,000 per annum.²⁶ The Court employed a considerable number of administrative staff. In addition to the three commissioners, the initial appointments to the Court included a master, a secretary and registrar with an assistant, general clerk and taxing officer with an assistant, notice clerk and his assistant, keeper of deeds who was also appointed an assistant, an accountant and each of the three commissioners was appointed an examiner.²⁷ The roles and titles of these clerical staff was borrowed from the Chancery. The total wage bill of the Court in 1849 stood at just £9,250; by 1851 this had increased to £9,950 and by 1856 with the doubling of the number of appointed officials from sixteen to thirty-two, the annual wage bill of the Court had increased to £14,449 excluding casual staff and housekeeping.²⁸ The salaries of the commissioners and court staff were paid out of finances provided by parliament.²⁹ The increase in cost coincided with a marked decline in the business

²⁵*Incumbered Estates Court (Ireland). Return of the names of all persons holding any offices in the Incumbered Estates Court in Ireland, with the amount of salary paid to each, and stating whether or not previously employed in the public service, and in what capacity*, p. 1, H.C. 1851 (94) 1, 651. (hereafter *Return of persons holding office 1851*).

²⁶ *Incumbered Estates Court, &c. (Ireland). Return showing the names, age, date of appointment, and amount of salaries and other emoluments, of all persons holding office in the Incumbered Estates Court, Ireland: and a similar return from the masters, examiners, clerks and assistant clerks of the Court of Chancery in Ireland &c.*, p. 3-4, H.C., 1856 (53) liii, 427. (hereafter *Return of persons holding office 1856*).

²⁷ *Return of persons holding office 1851*, p. 1.

²⁸ *Ibid.*; *Return of persons holding office 1856*, p. 1.

²⁹ *Incumbered Estates (Ireland) Act, 1849* (12 & 13 Vict. c. lxxvii), sections iii & vii.

which came before the Court and was no doubt a contributing factor to the decision in the following year to replace the independent Incumbered Estates Court with the Landed Estates Court within the Chancery

In 1850, *Dublin University Magazine* pointed out that the success of the Incumbered Estates Court was down to the manner in which it conducted proceedings.³⁰ Despite borrowing the clerical structure of the Court of Chancery, the Incumbered Estates Court did not copy its proceedings, rather the Commissioners chose to invert them. Under Chancery proceedings, there was first a hearing and then a decree to account, which was followed after a lengthy process by the order for sale. However, under the Incumbered Estates Court the order for sale preceded all other aspects of the sale and the investigation of title and accounts proceeded together. Furthermore, the expense of a completed sale under the Incumbered Estates Court did not exceed the costs of preparing a single brief at the first hearing in the either of the courts of Equity.³¹

There were a number of key differences between proceedings under the Incumbered Estates Court and those under the Chancery. Under the new body any person holding an incumbrance of any value could affect the sale of the estate. Those eligible to petition were parties holding a mortgage, judgement, or portion of a family or other charge on a fee simple property, lease for lives renewable forever, bishops' lease or lease of a term exceeding sixty-one years. The owner of the estate was also eligible to petition.³² This was a significant deviation from the processes of the Chancery which permitted only the first incumbrancer of an estate to initiate proceedings for its sale. A party wishing to sell the estate for the discharge of their claim, presented

³⁰ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 323.

³¹ *Ibid.*, p. 322.

³² Incumbered Estates (Ireland) Act, 1849 (12 & 13 Vict. c.lxxvii).

a petition to the Commissioners, verified by the affidavit. This petition stated in the shortest and simplest language possible, the date and parties names to the mortgage or judgement, that the mortgagor had such an interest in the lands sought to be sold, and which were described by reference to a schedule annexed to the petition. This document also stated the amount which remained due on the account of the petitioners' claim. Two schedules were annexed to a petition. The first set out in columns the names of the lands, whether they were held in fee or under lease, the tenants' names, tenures, rent and arrears as far as was known to the petitioner. The other stated the dates of the incumbrances on the estate, including that of the petitioners, how the debt was created, whether it was a mortgage, judgement or otherwise, for what amount, at what rate of interest, and what was due on each charge to the best of the petitioners' knowledge.³³ The purpose of a petition was to provide the Commissioners with one clear view of the state of the property which was being presented and the degree to which it was incumbered. It was not a requirement that this application be prepared by counsel, but it became common practice that they were, and in such cases these bills were generally completed at a 'much smaller price' than the fee which was paid for the preparation of a bill in the previous courts of equity.³⁴ This petition was lodged with the Court at no charge. In creating such a simple document, the Incumbered Estates Commissioners not only eliminated a considerable cost but also abolished the formal proceedings associated with Chancery.

³³ Richard MacNevin, *The practice of the Incumbered Estates Court in Ireland, from the presentation of the petition for a sale, to the distribution of the funds with notes of all practice cases, the authorised forms, precedents of conveyance, the cats, general rules, schedule of feeds and statistics of the court* (Dublin, 1854), p. 35.

³⁴ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 321.

Once a petition was presented, a single commissioner took charge of the case. Upon reading the petition and examining the schedule, a conditional order for sale was made directing that the lands should be sold. This order was transmitted to parties named by the commissioner and a fixed period of time was set during which reasons against the proposed sale could be brought before the Court.³⁵ It was during this time that the owner of the estate could halt the process of the sale. To do so he was required to provide evidence to indicate that the charges on the estate did not exceed one-half of the annual rental income.³⁶ However, the proof required was significant. Under section 22 of the Incumbered Estates Act, the owner was required to file a sworn affidavit stating, as precisely as possible, how much had been received in rent during each of the seven years immediately preceding the presentation of the petition and also indicate any arrears owed.³⁷ This period was generally limited to twenty-eight days when no proceedings were pending in a Court of Equity. In cases where other proceedings were already pending only ten days were allowed for the presentation of cause against the sale.³⁸ Under proceedings in the Chancery, the onus of proof had always laid with the creditor; the Incumbered Estates Court reversed this process and placed the burden of proof or refute with the owner. As parties were not required to appear in person at a formal hearing, the costs of these proceedings were also considerably reduced.

³⁵ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 321.

³⁶ James O'Dowd, *The law and practice relating to the sale and transfer of Incumbered Estates in Ireland, as regulated by statute 12 & 13 Vict. c. 77, (the Incumbered Estates Act), with introduction, explanatory notes, the act, new general rules, forms, and directions for regulating proceedings for sale of incumbered estates and a very copious index* (London, 1849), p. xix.

³⁷ Incumbered Estates (Ireland) Act, 1849 (12 & 13 Vict. c. lxxvii), section 22; O'Dowd, *Law and practice relating to the sale of estates*, p. 36.

³⁸ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 322.

Once the allotted time expired, the commissioner moved the order to absolute. Thus, in a period of just six weeks, the order for sale had been made. The *Dublin University Magazine* argued that this was the least important part of the process under the Incumbered Estates Court despite being the most significant source of expense under Chancery.³⁹ At this point, a party was entrusted with carriage of the sale. This solicitor was required to ascertain the tenants of the estate to be sold, how and what rents they paid, and all other necessary pieces of information pertinent to the sale. A solicitor deemed not operating with due diligence in this regard could be removed and charged with the cost of a replacement and the proceedings to that point.

With this information, a rental was then drawn up and a copy of the portion relevant to their tenancy was served to each tenant, allowing for an objection to be lodged if their tenure was improperly stated.⁴⁰ A preliminary notice was served and ten days later a final notice was served to tenants on the land. Copies were also circulated amongst the Protestant and Catholic clergy.⁴¹ This was designed to protect the illiterate tenants of an estate. All of these steps were taken simultaneously which added to the rapid progress of a sale. An expensive step under Chancery was eliminated by discarding the need for a formal court hearing at this point. It was no longer the practice that each tenancy was declared in open court and noted in the record. The process was much more informal. From this point the process progressed swiftly. The sale being approved and title searches being completed, tenants' leases and additional documents were lodged, a posting for sale was permitted, the estate was divided into lots, the rental and particulars were prepared, surveys and valuation,

³⁹ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 322.

⁴⁰ MacNevin, *The practice of the Incumbered Estates Court*, pp 109-13.

⁴¹ *Ibid.*, p. 110.

if deemed advisable, were ordered and after repeated advertisements in both English and Irish newspapers, the estate was sold by the commissioners at public auction in open Court.⁴²

Although the exact conduct of a sale is unclear, in February 1850, Baron Richards declared (to laughter in the court) that it was not the commissioner's intention to adopt the phraseology of the 'auction room' and say 'going, going, gone' to complete a sale.⁴³ He later remarked that in all sales under the act, parties were to 'look sharp after their own interests, and come prepared to do business'.⁴⁴ Once a sale was completed, a deposit was paid by the successful bidder within fourteen days and the purchase money was to be paid into the Bank of Ireland to the commissioners' account. Once the purchase money was lodged by the purchaser of the estate, a final schedule of incumbrances was drawn up. The first payment made from the purchase money was the costs consequential to the application for the order of sale to solicitors and legal representatives, then costs of the sale itself, and all other the expenses thereafter. The second payments were to any tenants who had established during the earlier court process a lease or agreement disputed by the owner of the estate. Finally, the surplus remaining was put towards the payment of incumbrances which affected the lands which had been sold. This was done in order of their priorities, which was generally oldest first.

The general orders further stipulated that no payment in part discharge of an incumbrance impacted upon the incumbrancers' right to pursue recovery of the unpaid residue; however, this balance could not be sought against the land which had

⁴² 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 322.

⁴³ *London Daily News*, 23 Feb. 1850.

⁴⁴ *Freeman's Journal*, 22 Feb. 1850.

been sold through the Court.⁴⁵ Incumbrancers could bid for holdings on an estate on the same terms as any other party. This was a good strategy if the projected sale proceeds of an estate were unlikely to repay all incumbrances. Should an incumbrancer successfully acquire any lots from the estate sale, the commissioners would issue a credit in favour of the incumbrancer which allowed them to deduct their debt as estate creditors from the purchase price they were due to pay for the holding they had purchased.⁴⁶ For example, if a creditor of £2,000 purchased a lot valued at £2,100, a credit was given for the £2,000 leaving a payment of just £100 to be made.

Year ending 31 Aug.	Absolute credits given to creditors who became purchasers	Cash receipts
1850		483,791
1851	22,450	2,061,430
1852	163,314	2,631,147
1853	745,360	3,032,221
1854	549,698	2,454,840
1855	562,198	1,161,447
Total	2,043,020	11,341,085

Fig. 2.1 – Value of absolute credits and cash receipts issued by the Incumbered Estates Court, 31 Aug. 1850 and Dec. 1854.

Source: Umlin, 'The history and statistics of the Incumbered Estates Court', p. 214.

Once final payment was made the conveyance was executed by the commissioners. It was stipulated that every conveyance 'shall be effectual to pass the fee-simple and inheritance of the land'. The act permitted a grant of title. The term 'parliamentary title' was used in reference to purchases under the court. This was to differentiate between this title and a judicial title conferred through the ordinary course of proceedings under the Courts of Equity.⁴⁷ The title granted by the Incumbered

⁴⁵ O'Dowd, *The law and practice relating to the sales of estates*, p. xxxv.

⁴⁶ *Ibid.*, p. xxvi.

⁴⁷ *Ibid.*, p. xxvii.

Estates Court was indefeasible, meaning it could not be lost, annulled or overturned, and was valid by the force of an act of parliament. James O'Dowd in his guide to conduct of proceedings under the Court suggested that this was 'nothing short of the exercise of the most supreme legislative power could accomplish the object' for which this act had been established. The land was conveyed subject to such tenancies, leases, and under-leases, and the property was discharged from all rights, titles, charges and incumbrances.⁴⁸

The Incumbered Estates Act not only permitted the sale of indebted estates but also provided facilities for the partition and exchange of lands. While acknowledging that joint owners could simply agree to the partition of an estate in a friendly manner and eliminate the need for a legal contract, the commissioners noted that this was not always the case. Under the 1849 Act the commissioners were enabled to order the partition of an estate on the application of any interested party. The Commission also accepted applications for exchanges. This permitted not only the exchange of lots purchased in a sale but the commissioners were further empowered, on the application of interested parties, to examine lands which were intermixed or divided into inconvenient parcels of inconvenient quantity and not subject to be sold, to make an order for the more convenient and beneficial division of such lands.⁴⁹

The physical and geographical location of the Incumbered Estates Court served to reinforce its independent and self-regulating nature. It was initially suggested that there was 'no great choice of localities' for the Court considering the hasty nature of its introduction. As a result, it was first proposed that it should be housed at the

⁴⁸ *Ibid.*, p. xxvii.

⁴⁹ *Ibid.*, p. xlv.

Custom House, in a building which would be jointly tenanted by the Board of Works and the Poor Law Commissioners.⁵⁰ This plan to create a relief headquarters in Dublin was later abandoned as the location was deemed inconvenient and unsuitable. While the Board of Works remained at Dublin Castle and the Poor Law Commissioners continued at Custom House, the Incumbered Estates Court was established in a residential property on Dublin's north-side at no. 14 Henrietta Street. Although a residential property was an unusual choice, the location was selected for its close proximity to both the King's Inn and the Registry of Deeds building which were located on the same street. While Henrietta Street had once been amongst Dublin's most prestigious residential streets with former inhabitants including Viscount Molesworth and the earl of Farnham, by the mid-nineteenth century the street had 'fallen into sordid slumdom'.⁵¹ Percy Fitzgerald reflected in 1862 that the commissioners established their 'rostrum in an old-fashioned red brick street of the last century's pattern' and referred to the 'mammoth marble chimney-pieces and arabesques on the ceiling' as remarkably out of place and in no way in keeping with the building's new function as a court.⁵² However, despite extensive evidence that the venue was unsuitable, the Incumbered Estates Court remained at Henrietta Street for the duration of its existence.

⁵⁰ *Cork Examiner*, 9 July 1849.

⁵¹ Janet M. Brown, 'Henrietta Street, Dublin; The rise and decline of a Georgian Street, 1724-1901' (M.A thesis, Maynooth University, Maynooth, 2000), p. 34; Percy Fitzgerald, *The story of the Incumbered Estates Court from "All year round"* (London, 1862), p. 23.

⁵² Fitzgerald, *The story of the Incumbered Estates Court*, p. 23.

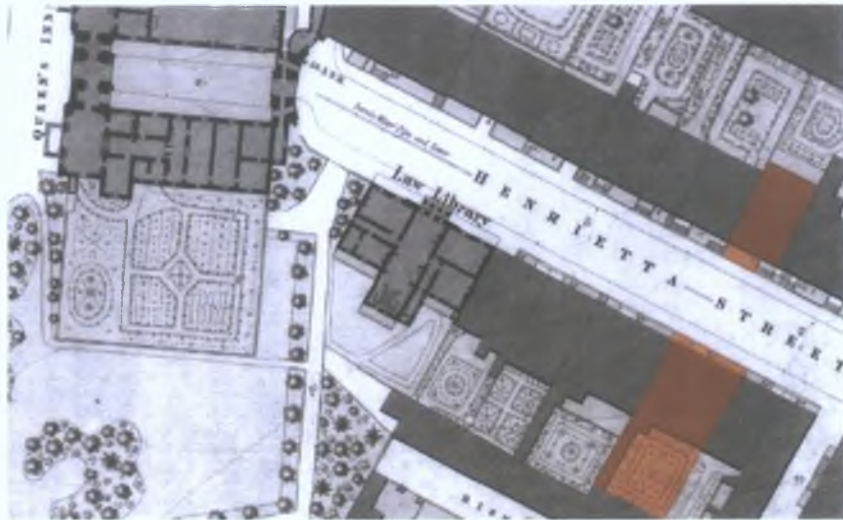


Fig. 2.2- No. 4 & 14 Henrietta Street, Dublin.
Source: OS five-foot plan, Dublin, xviii, sheet 7 (1846-7)

The Court's administrative independence was further reinforced by its distinctly separate location. When additional space was required, rather than looking for alternative locations, a lease was taken on no. 4 Henrietta Street located immediately opposite no. 14 (see fig. 2.2). The location of the Court was continually criticised and many alternatives were proposed in the years which followed. In 1853 a proposal was made to remove the court from Henrietta Street to suitable accommodation at the Four Courts.⁵³ Baron Richards and J. Owen, architect for the Board of Works, suggested that sufficient accommodation could be provided if lesser officers were housed in properties on Pill Lane and a bridge built to link them with the Four Courts to 'afford direct and speedy communication'.⁵⁴ This proposal was rejected. A further

⁵³ *Incumbered Estates Court (Ireland). Copy of official statement, &c., relating to the removal of the offices of the Incumbered Estates Court from Henrietta-Street to the Four Courts. Return of the number of appeals from the Incumbered Estates Court, Ireland, to the Privy Council, Ireland, from 1 May 1852 to 20 March 1854; with reversals and affirmations of such appeals, and names of the parties in each case*, p. 4, H.C. 1854 (184), lviii, 377. (hereafter *Return of appeals and removal of offices*)

⁵⁴ *Ibid.*

proposal to build a fit-for-purpose building at a cost of £11,000 was also dismissed in 1857.

Although a location for the commission was decided relatively quickly, the location of the Court's auction room took significantly longer. The *Cork Examiner*, in January 1850, wryly observed that 'by one of those blunders peculiar to the English government in Ireland the machinery of a vast revolution was set up for the sale of property' without a provision for a court. It detailed the peripatetic existence the commissioners had been obliged to adopt, moving from the Court of Exchequer to the Court of Admiralty, until the Board of Works 'took compassion on their wanderings' and fitted out a 'very poor stall' for the purposes of allowing a 'county judge to dress up for a petty sessions tribunal'.⁵⁵ In choosing a location for the auction room little consideration was given to comfort or appearance. A stable to the rear of no. 14 was selected, enlarged and converted for the purpose of conducting sales. The *Freeman's Journal* in February 1850 expressed regret that 'one of the most important tribunals in the Kingdom' would transact its business in such small quarters and noted that there were 'many country petty sessions or manor courts of much more ample dimensions' than those of the Incumbered Estates Court.⁵⁶ The space provided for the public, press and legal professionals was deemed 'miserably limited' and, although less than a one hundred metre walk away, the distance of the Court from the King's Inns was a constant source of complaint.⁵⁷ The location brought with it further challenges with parties unwilling to attend proceedings where

⁵⁵ *Cork Examiner*, 20 Jan. 1850; 28 Jan. 1850.

⁵⁶ *Freeman's Journal*, 22 Feb. 1850.

⁵⁷ *Cork Examiner*, 20 Jan. 1850.

they were forced to 'crush themselves in'.⁵⁸ However, despite these criticisms the acceptance of petitions for sale had began apace.

In one of the few declarations of opposition to the Court, on 17 October 1849, the *Cork Examiner* published a scathing summary of the Commission. The newspaper demonstrated a clear understanding of governments attempt at a 'peaceful revolution' when it warned the 'Repeal electors of Cork' that 'attempts are made to bamboozle you... to delude you'. The reporter declared that the Incumbered Estates Bill 'rivets their attachment to England' and clinched their 'devotion to the Union'.⁵⁹ However, most publications supported the Court. The *Nation* was cautiously optimistic of the legislation's potential with one writer stating that 'there is, I understand, a general run to be the first to the market with the encumbered estates' and it was expected that a formidable array of properties would be offered for sale. In defence of both the legislation and of landowners it was suggested that 'landlords in embarrassed circumstances cannot do all they would. Time and the Encumbered Estates Act are the only remedies for these cases... too numerous in this country'.⁶⁰

While it was unsurprising to contemporary commentators that creditors would eagerly resort to the facilities of the Incumbered Estates Court, this new tribunal was clearly preferable to the evils of the 'long-condemned' Court of Chancery.⁶¹ The commissioners of the Incumbered Estates Court accepted their first petitions on Sunday 21 October 1849. The initial public sitting of the Court took place four days

⁵⁸ *Ibid.*

⁵⁹ *Cork Examiner*, 17 Oct. 1849; 13 Oct. 1849.

⁶⁰ *Nation*, 27 Oct. 1849.

⁶¹ 'Incumbered Estates Court' in *Dublin University Magazine*, xxxvi (1850), p. 327.

later at twelve o'clock on Thursday 25 October 1849.⁶² Continuing the air of cautious optimism, little was published in relation to these early proceedings, with almost no mention of the early petitions to the commissioners. Some were unhappy with the delay in commencing proceedings, the *Cork Examiner* on Friday 19 October asked: 'By the way what have these commissioners been about that they have not yet opened their Court?'.⁶³ By 30 October, headlines declared that the Incumbered Estates Court was undertaking 'A thriving trade!'.⁶⁴ In just nine days, Commissioners Hargrave, Longfield and Richards had accepted seventeen petitions. These early cases included the County Mayo estate of Hercules Brabazon, consisting of 6,000 acres with incumbrances standing at more than £65,000. The estate of Walter Blake which spread across Galway and Mayo, included Oran Castle and demesne, consisting of more than 4,200 acres and carrying debts in excess of £108,117.⁶⁵ Of these seventeen initial estates petitioned through the Court, thirteen would progress to auction by December 1854.⁶⁶

Appendix 1 illustrates the rapid pace at which the business of the Court proceeded. In the month of November 1849, 137 petitions were accepted; in December 119 cases

⁶² *Incumbered Estates enquiry commission, Ireland. Report of Her Majesty's commissioners appointed to inquire into the Incumbered Estates Court, and into the expediency of continuing it, or transferring its powers to the Court of Chancery; together with an appendix, containing evidence and returns*, p. 81 [C.1938], H.C. 1854-55, xix, 527. (hereinafter *Incumbered Estates enquiry report*).

⁶³ *Cork Examiner*, 19 Oct. 1849. Rumours circulated in relation to the ability of Baron Richards to work jointly between the Court of Exchequer and his role as Chief Commissioner in the Incumbered Estates Court. It was stated that the 'Attention to the duties of the encumbered estates court implies total absence from the Exchequer... chief and other barons have just cause to complain'.

⁶⁴ *Belfast Newsletter*, 30 Oct. 1849.

⁶⁵ Henry Allnut, *List of petitions filed from the commencement of proceedings, October 25th, 1849, to July 28th, 1853, pursuant of Acts of Parliament, 12th & 13th Vic. Cap. 77, and the 15th & 16th Vic. Cap. 67: with index showing what estates have been sold, and what petitions dismissed, up to the end of December, 1853; also an appendix, giving the petitions subsequently lodged in the Court, from July 28th, to December 21st, 1853, pursuant to Act, 16th & 17th Vic. Cap. 64.* (Dublin, 1853), p. 3.

⁶⁶ Database created by author.

came before the Court; and by the end of that first year, a period of just over two months, the commissioners had received a total of 273 petitions.⁶⁷ After ten months of operation in August 1850, the Right Honourable Sir George Grey, Lord Justice of Ireland, commissioned a report to determine the progress of the Court. The resulting returns showed that 1,085 petitions had been presented to the Court.⁶⁸ By the close of that year the number of causes brought forward had increased to 1,200 petitions.⁶⁹ On average at this early stage the judges were in receipt of 100 petitions per month which equated to 3.5 per day. However, following the rapid pace of this early business, these figures dwindled considerably over the following four years, dropping by almost 50 per cent between 1850 and 1851. (Fig. 2.3)

Year petition presented	Number of petitions presented.
1850	1,200
1851	627
1852	488
1853	453
1854	372
Total	3,405

Fig. 2.3 – Number of petitions presented to the Incumbered Estates Court per year between Aug. 1849 and Dec. 1854.
Source: Incumbered Estates inquiry report.

By 1854, the number of petitions accepted by the commissioners had decreased by 70 per cent in comparison with the 1850 figure, a decline of almost 20 per cent on the previous year.⁷⁰ The average number of petitions presented had by this time

⁶⁷ *Incumbered Estates inquiry report*, p. 81; *Report of the Commissioners for the Sale of Encumbered Estates, as to their progress, &c.* p. 1 [C.1268], H.C., 1850, xxv, 55. (hereinafter *Report of progress 1850*).

⁶⁸ *Ibid.*

⁶⁹ *Incumbered Estates inquiry report*, p. 7.

⁷⁰ *Ibid.*

dropped from an average 3.5 petitions to just one case per day.⁷¹ It was this significant decline in business which led government to declare its 'anxious desire to ascertain how the experiment... had worked'.⁷²

A panel of twelve representatives were appointed which included the Lord Chancellor of Ireland Maziere Brady, Sir John Romilly and Incumbered Estates Commissioner, Mountifort Longfield, to consider the expediency of continuing the Court either temporarily or permanently and whether it should be modified in any way or annexed to or be transferred to the administration of the Court of Chancery. While the declining business of the court justified the examination, a further impetus was provided by concerns expressed by the judges of the tribunal themselves. It had become a matter of some public notoriety that a significant portion of the charges being presented to Court by this time, were to a certain degree fictitious and were 'constantly created upon estates for the purpose of enabling the proprietor to sell them through the apparatuses of the Incumbered Estates Court, and thus gain parliamentary title'.⁷³ When one considers the cost to the government of the tribunal it was, perhaps, inevitable that the inquiry would conclude that the peculiar set of circumstances which once necessitated the establishment of an 'extraordinary tribunal', such as the Incumbered Estates Court no longer existed. All parties were unequivocal in their conclusion that the premise under which the legislation had been introduced, which was to 'supply an urgent want' that had almost 'overwhelmed the landed interest' was no longer a concern. They also suggested that the continuation

⁷¹ *Ibid.*, p. 7.

⁷² *Ibid.*, p. xi & iii.

⁷³ *Ibid.*, p. x.

of the measure no longer served the public interest.⁷⁴ The inquiry concluded that rather than facilitating the sale of distressed or encumbered estates the Court had become largely concerned with processing small cases which could be efficiently litigated elsewhere.⁷⁵ The declining pace of progress of transactions through the Court contributed to this decision. When the Court was first opened, a petition presented to the commissioners progressed to sale within three months; however, by 1854 it was concluded the average duration of a case had increased to three years.⁷⁶ Having been petitioned in November 1849, the earl of Portarlington's estate which sold in ten divisions over a period of exactly ten years, the first sale taking place within six months of the petition being lodged in May 1850 and the last sale in May 1860.⁷⁷

The report concluded that a total of 3,405 petitions had been presented in the five years period examined by the inquiry. Of this number just over 40 per cent or 1,448 had successfully progressed to sale. In January 1855, more than 1,927 estates were awaiting completion through the various stages of the sale process and 307 were awaiting the final settlement of the rentals and particulars with a reported total of 1,326 estates were still awaiting an auction. Romilly's forensic examination of the processes of the Court highlighted two factors which he believed were responsible for this substantial accumulation of business, the first was simply a result of the Court's great workload and the second suggested that the staff employed by the

⁷⁴ *Ibid.*, p. xi

⁷⁵ *Ibid.*, p. xii.

⁷⁶ *Ibid.*, p. xiii.

⁷⁷ 1st division 7 May 1850, 2nd division 9 August 1850, 3rd division 20 February 1852, 4th division 16 January 1855, 5th division 27 May 1856, 6th division 17 June 1856, 7th division 5 May 1857, 8th division 22 June 1858, 9th division 23 November 1858 and 10th division 8 May 1860; John Stocks Powell, *'Shot a buck', the Emo estate 1798-1852* (York, 1998).

commission were inadequate.⁷⁸ Despite the extent of the arrears in business, the three commissioners, when asked, were in agreement that any backlog could feasibly be dispensed with inside the two year window which had been prescribed by the Westminster parliament, provided the Court ceased to accept new petitions.⁷⁹

Without access to the paperwork of the proceedings of the Court, it is difficult to ascertain whether there was merit to the commission's claims that the majority of cases brought before the Court in the later petitions were nuisance cases created for the purpose of gaining parliamentary title. There is sufficient cause to suggest there is a grain of truth to this argument. Between October and December 1849, the average estate petitioned through the Court was encumbered by more than twenty times the annual rental income. However, figures for the same period in 1854 show a significant decrease, the figure having dropped by 35 per cent to just thirteen times the estate's annual rental income.⁸⁰

A comprehensive examination suggests that a total of 2,326,925 acres were brought forward for sale at public auction between 1849 and December 1855. The estimated rental income of this land was in the region £953,649. It is important to note that almost 10 per cent of the 7,644 lots brought forward for sale did not state a rental figure as part of the petition or rental advertisement. A number of factors account for this; for example, lots may not have been under lease, or were in the owner's possession, or tenanted free of rent by an agreement.⁸¹ Furthermore, the rental figures stated in the rentals and particulars or in the advertisements for the sale were those

⁷⁸ *Incumbered Estates inquiry report*, p. xiii.

⁷⁹ *Ibid.*, p. 7.

⁸⁰ *Ibid.*, pp 82-133.

⁸¹ Figures taken from database created by the author.

detailed on the lease or other agreement held by the landowner; they were not an indication of the actual rental collected. Figures for arrears in rent were not included as part of a lease during the initial period of the Court.

The level of incumbrance charged on an estate did not form part of the rental and particulars for the sale and were intermittently published in the newspapers. Those figures which were printed were frequently incorrect. For example, debt on the earl of Portarlington's estates was recorded in the *Morning Chronicle* at £600,000; however, official returns show incumbrances at £700,000.⁸² Sales of estates which processed from Chancery did not normally state the level of incumbrance on the estate. These applications, as previously outlined, followed an alternative process to standard Incumbered Estates' petitions. Her Majesty's inquiry included the value of incumbrances on estates petitioned through the Court excluding those which transferred from the Court of Chancery (Fig. 2.4). In total 2,000 petitions were detailed on this return with less than 1,500 of them having progressed to auction by December 1854. As stated above, the rental figure that was given makes no reference of the arrears in rent and it is likely that the debt to rental income ratio was significantly greater than that which is shown below.

⁸² *Morning Chronicle*, 11 Dec. 1850; *Incumbered Estates inquiry report*, p. 82.

Year	Rental Income	Incumbrances	Income to Debt %	Years to repay
1849	£ 251,343	£ 5,793,181	4%	23
1850	£ 151,837	£ 2,370,894	6%	16
1851	£ 185,471	£ 3,022,574	6%	16
1852	£ 199,375	£ 3,761,617	5%	19
1853	£ 139,976	£ 2,689,884	5%	19
1854	£ 120,440	£ 2,203,004	5%	18
Total	£ 1,048,442	£ 19,841,154	5%	19

Fig. 2.4- Income vs. debt analysis for peitions presented to the Incumbered Estates Court, Oct. 1849 – Dec. 1854.

Source: Incumbered Estates inquiry report, pp 83-133.

While nineteen years rental income was the average level of debt per estate during this phase of the Court, within the petitions presented there were significant fluctuations and cases of inordinate levels of debts emerged. For example, the estate of Charles St. Cromie petitioned by the Reverend J. Murdock on the 28 November 1853, was incumbered by £77,492 and the fifty-seven acres estate only generated an annual rental income £28. This figure represented a mere 0.04% of the overall debt which stood at 2,768 times the annual rental income of the estate.⁸³ While the Cromie case was quite an extreme example, a significant number of the estates which came before the commissioners were subject to unfathomable levels of debt. The estate of Thomas Philips of Clonmore House in County Mayo with a rental income of £125 was incumbered by £37,225 or 303 times its annual rental.⁸⁴ The Galway estate of Denis Clarke petitioned on 18 October 1850 stated a rental income of just £91 but was incumbered to the extent of the £21,194 or 228 times the annual rental income

⁸³ Ibid., p. 124. Cromie's estate sold on 9 November 1855. The 57 acres at Cloughleigh, in the barony of Kilmaine County Mayo sold to Mr. W. Roach for £610 or twenty years' purchase. £76,882 of the incumbrance owed to Cromie's creditors went unpaid.

⁸⁴ The Phillips estate sold on 24 May 1853 for £23,125. All lots were sold to Mr James B. Kennedy, solicitor with carriage of the sale, in trust for an undisclosed party.

of the estate.⁸⁵ Later figures advertising the sale of this estate suggest a more significant rental income of £620 setting the incumbrances at thirty-four times the annual rental income of the estate.⁸⁶ The reason for this discrepancy is unclear but it is possible the lower figure represented the rent collected on the estate rather than its official rental valuation. The lower figure could be a result of the impact of the Great Famine, or possibly a deliberate misrepresentation of the figures or might offer an example of poor estate management. The correction of this figure on the Galway estates of Denis Clarke was the result of a court-ordered valuation of the estate.

The 3,405 estates petitioned through the Incumbered Estates Court, came before the judges for a variety of reasons but the petitioners can be broken into six distinct categories: those petitioned by the legal owner of the estate, petitions presented by a legally appointed representative such as a trustee, advisee or executor, members of the Church of Ireland clergy, women, guardians of the Poor Law Unions and all other petitioners. A total of 73 per cent of the 1,365 petitioners recorded in the 1854-5 report came under the umbrella category of other petitioners, 27 per cent belonged in the remaining five categories. In total just over 12 per cent of the estates brought before the Court were petitioned by women and 10 per cent were by the owners of the estate. Just 2 per cent of the estates petitioned were brought forward by the legal representative of an estate and Poor Law Guardians, while more than 4 per cent were Church of Ireland clergymen.

⁸⁵ *Incumbered Estates inquiry report*, p. 95.

⁸⁶ *Alruitt's Land Schedule*, 1 May 1852.

Conclusion

The legislation which governed the Incumbered Estates Commission created a court of record which was wholly independent from the other law making bodies of Ireland. While the commissioners endeavoured to facilitate the creation of a middleclass of proprietors, as parliament had envisaged, they were limited by their location in Dublin and the economic landscape of Ireland. Although many had expressed concern in relation to public reaction to the Court, there was little cause for concern. The commissioners established a fair and structured means of petitioning for the sale of an estate. The literacy of the lower classes, the nature of Irish landholding and the complex nature of incumbrances were all considered in the drafting of the general rules of the Court.

The diversity of petitioners presenting cases to the Court illustrates the scope of the Act. It permitted women, clerics, trusts and landowners to petition and be petitioned for the sale of an estate. In doing so the measure eliminated the notion of a sacrosanct landed class. This is further demonstrated in the number of titled parties brought under the jurisdiction of the Court. The volume of petitions which came before the Court was testament to the extent of the problem which land insolvency presented Ireland and through an examination of the business of the Court its true extent will be shown.

Chapter 3

The business of revolution

The most significant aspect of the social revolution which Government set in motion was the conduct of sales under the Court. These trends and statistics are the immediate result of the Incumbered Estates experiment. Identifying trends such as the success of attracting British and Scottish investors, form a significant part of assessing the achievements of the Court. Examining national trends and the interactions of various social groups within the Court provides an insight into how the Court was perceived, and the types of investors which it attracted.

The initial business undertaken by the Incumbered Estates Court was the subject of great fanfare and discussion. The *Cork Examiner* described parties awaiting the progress of a sale as ‘clinging with desperate tenacity to a wreck- scuffling with one another, like drowning passengers with a drowning crew’. It went on to compare the Incumbered Estates Court to a ‘life-boat’, questioning how many it could safely bring ashore.¹ Reports in the *Southern Reporter and Cork Commercial Courier* suggest that rival papers had published ‘figments’ with the intent of creating a ‘clamour’ against the commissioners. It was suggested that

no rational being now pays the slightest attention to the manifest and monstrous exaggerations of the *Evening Mail* about the “ruinous depreciation of landed property”... that journal has, within the last week, entirely changed its tone about the Commission, which it had described as a project for plunder and confiscation, but now admits to be the best arrangement that Legislative wisdom could devise.²

¹ *The Cork Examiner*, 29 Oct. 1849.

² *Southern Reporter and Cork Commercial Courier*, 15 Dec. 1849.

The reporter ridiculed the suggestion that ‘English Jews, money-lenders and solicitors’ were the only parties to benefit from the Court. Others described the interested parties as ‘vulgar agriculturalists’ and ‘mean-souled graziers’ who felt an ‘Indian pleasure in going down to see this scalping of our enemy’.³ In his contemporary examination of the court, R. Denny Urlin hastened to add that the process of the Incumbered Estates Court had ‘its romantic side’, suggesting that regret was often felt ‘when a fine ancestral mansion was knocked down to some newly-enriched butter merchant of Cork, distiller of Dublin, or ship owner of Belfast’.⁴ Urlin argued that while some of the purchasers may indeed have proved themselves to be ‘grasping rent-raising speculators’, the vast majority were not.⁵

By December 1849 speculation on who would be the first victim of this ‘coming guillotine’ had already begun. On 15 December the *Southern Reporter* carried the first preliminary notice of sale issued by the Commissioners which stated that the estate of John and Morgan O’Connell of Grenagh in County Kerry would be the first estate brought forward for sale.⁶ The *Cork Examiner* reported its ‘regret that the first sale under the law in the operation of which we are inclined to place much reliance for good, should be that of John O’Connell of Grenagh, the brother of Daniel O’Connell’.⁷ Many questioned why nothing could or had been done to help the family of a man who on one side received ‘the worship’ of the populace and on the

³ Percy Fitzgerald, *The story of the Incumbered Estates Court from All year round* (London, 1862), p. 34.

⁴ R. D. Urlin, ‘The history and statistics of the Irish Incumbered Estates Court, with suggestions for a tribunal with similar jurisdiction in England’ in *Journal of the Statistical Society of London*, xliv (1881), p. 210.

⁵ Urlin, ‘The history and statistics of the Irish Incumbered Estates Court’, p. 213.

⁶ *Southern Reporter and Cork Commercial Courier*, 15 Dec. 1849.

⁷ *Cork Examiner*, 14 Dec. 1849.

other saved the administration from the ‘displeasure of an indignant nation’.⁸ Further criticisms were levelled at the ‘members of his tail’, referring to the friends of ‘the Liberator’, who were, it continued, not recognised ‘beyond the fumes of the mughouses in which they nursed their genius’. It was questioned why these great men of significant influence and wealth did not rescue the Grenagh estate from this fate. The O’Connell estate was described as the ‘last rose’ which resented being ‘left blooming alone’ and the nationalist movement was once again criticised as ‘ungrateful’ for allowing the decline of the estate.⁹ It was not questioned why the estate was advertised as the first for public auction when it was not actually brought forward until August 1850, seven months after the first sale through the court which was that of the estate of William D’Arcy in Meath. The choice of an estate associated with such a prominent figure in the repeal movement, iconic to Irish nationalists, as the first to be publicised for sale under the court could not merely have been a coincidence.

Nationally the business of the legislative revolution had a profound effect. More than 3,405 petitions were presented, which by 1855 had resulted in 1,448 sales. From these John Locke, who held the position of auction clerk in the Court, estimated a total of 5,952 were new purchasers. This meant that, on average, each landowner was replaced by four. Each year sales followed a similar pattern. (fig. 3.1)

⁸ *Dublin Evening Mail*, 21 Jan. 1850.

⁹ *Ibid.*

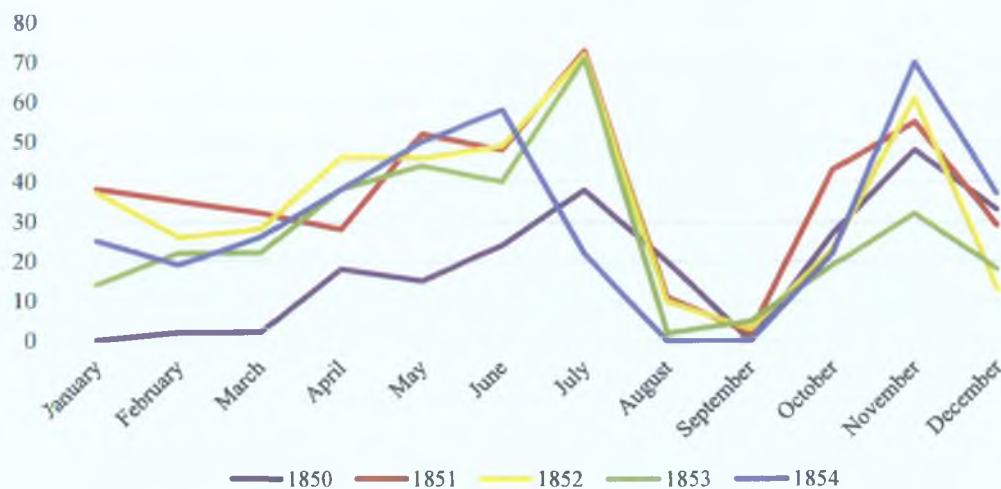


Fig. 3.1- Estates sold under the Incumbered Estates Court by month 1850-4.
Source: Dates of sale taken from database created by author.

In 1850 sales stood at a moderate 227, this increased to 446 in 1851, 414 in 1852 but began to drop in 1853 to 327 and similarly in 1854 just 367 sales took place. Sales peaked annually between June and July and again in November. This increase was associated with the availability of capital following the harvest, collection of rents at annual gale days commonly held in May and November. Provincial sales peaked during this time. In total there were 601 sale days between February 1850 and December 1854 under the Incumbered Estates Court. This figure includes both public auctions at Henrietta Street and provincial sales held elsewhere.

The average price paid per lot under the Incumbered Estates Court was £1,782, although within this there were significant highs and lows (Appendix 4). The lowest average price per lot was in County Wexford where the average purchase was £1,155. Dublin lots outside of the city fetched just £1,497, Clare £1,515 and lots in Cork sold for an average of £1,536. Lots in Meath achieved the highest rate at £3,394 and Londonderry £3,093. Lots in Westmeath were also sought after fetching on average £2,984, with lots in Tyrone, Antrim and Kilkenny selling for between £2,600

and £2,500 each.¹⁰ In total 1,664,189 acres were sold at public auction at an average of £6.73 per acre. Mayo achieved the lowest price per acre at just £3.63, with an acre in Kerry selling at £4.36, Donegal £4.84 and Longford £4.88. Galway had the highest number of lots to go unsold at public auction with 314 failing to find a purchaser. A total of 754 lots were brought forward for sale in Tipperary with 248 going unsold at auction. In Donegal a mere thirty-nine lots were brought forward for sale, with five failing to sell. In Londonderry, seven of the sixteen lots which came before the Court failed to sell. Kildare saw just twelve of sixty-eight lots unsold, Wicklow six of ninety-one, Wexford seventeen of 221, Meath nineteen of 150 and Queen's County ten of 115.¹¹

The Incumbered Estates Court provided owners with a means of disentangling their estate from the Chancery. A return made in 1853 detailed the number of petitions which had transferred between 1849 and that year from either the Court of Chancery or Equity to the Incumbered Estates Court. It revealed that a total of 968 cases had been moved to the jurisdiction of the new body.¹² One year later the end of 1854 this figure had risen significantly to 1,633 cases.¹³ In a paper delivered to the London Statistical Society in 1855, John Locke calculated the number of years cases had been subject to proceedings under the Chancery.

¹⁰ Information taken from database created by author.

¹¹ Information relating to land prices and sales taken from database of the Incumbered Estates Court in the author's possession.

¹² *Incumbered Estates Inquiry Commission, Ireland. Report of Her Majesty's commissioners appointed to inquire into the Incumbered Estates Court, and into the continuing of it, or transferring its power to the Court of Chancery; together with an appendix, containing evidence and returns*, p.2, [C. 1938], H.C. 1854-55, xix, 527.

¹³ *Incumbered Estates inquiry report*, p. xiii.

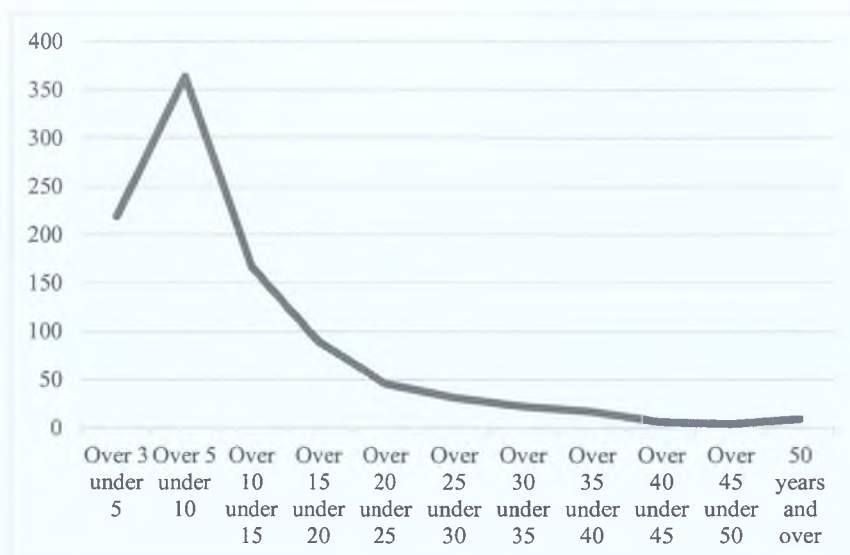


Fig. 3.2 - Length of proceedings pending under the Court of Chancery Oct. 1849 – Apr. 1853.
Source: Locke, *Ireland's Recovery*, pp 77-8.

A total of 78 per cent, or 750 of the total 974 cases transferred from the Court of Chancery to the Incumbered Estates Court by 1853 (Fig. 3.2), had been subject to proceedings for between three and fifteen years.¹⁴ Fourteen per cent of cases had been subject to proceedings for between fifteen and twenty-five years, 5 per cent between twenty-five and thirty-five and the remaining 3 per cent for more than thirty-five years. William H. Smyth's Tipperary estate was first presented to the Chancery in April 1772.¹⁵ Consisting of just four acres this estate had been subject to proceedings for seventy-seven years when it sold through the Incumbered Estates Court in June 1852. Similarly the Kildare estate of Frederick Hamilton first came before the Chancery in 1781 and remained under this body for a further sixty-eight years until it was sold under the Incumbered Estates Court in November 1852.¹⁶ Illustrating the constrictive nature of the Chancery process, in April 1850 the estate

¹⁴ *Ibid.*, p. 77.

¹⁵ *Incumbered Estates (Ireland). Return of the petitions filed in the Court of the Commissioners for the sale of Incumbered Estates in Ireland, for the sale of estate in respect of which proceedings had theretofore been had in the Courts of Chancery and Equity Exchequer; &c*, p. 11, H.C. 1852-53 (614) xciv, 577. (hereinafter *Return of petitions filed 1852*).

¹⁶ *Return of petitions filed 1852*, p. 6.

of Thomas Spinner was sold by the commissioners. Spinner himself was both the petitioner for sale and also the purchaser. The estate had been subject to Chancery proceedings since November 1824, totalling almost twenty-six and a half years. Once petitioned in the new court in January 1850, the estate sold in just three months. In the case of Spinner the incumbrance on the estate stood at £1,420 and as purchaser the owner paid £1,500, £80 more than the debt. Under the processes of the Court of Chancery, it was not possible to extricate the estate despite the funds being available to clear the stated debt.

The rentals and particulars issued at the behest of the Incumbered Estates Court during the sale process were its greatest inconsistency. Although a template and guidelines for the documents were laid out by the commissioners in the general orders of the Court, the degree to which these were followed varied significantly from case to case. Created for each sale being processed under the court these auction catalogues were unique in content and were created independently subject to the approval of the commissioners of the court. However, the reality was that the commissioners and clerical staff responsible for approving these advertisement catalogues were unfamiliar with the properties and estates to which they related. This left the process open to significant manipulation and permitted parties to portray an estate in the manner which they preferred. As the court progressed there is mounting evidence that rentals were tailored to attract certain purchasers and moreover to protect certain interests. Take, for example, the earl of Portarlington's estate at Emo Court. The rental for this estate included a description of the townlands surrounding Emo which noted the advantageous transport links to Dublin via canal and railway, the highly respectable population, and that the area included the Borough of

Portarlington which returned a member to parliament.¹⁷ The property was marketed to those aspiring to public position allowing ‘control over one of the smallest constituencies in the Kingdom’.¹⁸ The significance of a parliamentary seat was also highlighted by W.T.H in his description published in the *Daily News* which stated:

There can be no question that the proprietorship of Emo must always influence the Portarlington election... a popular proprietor of Emo may always fill the seat if he so pleases... To any one in England who desires to exercise political, accompanied by great social influence, the Emo estate, therefore offers an opportunity of the foremost class. It is difficult to purchase either in England or Scotland... It certainly would be quite impossible to do so in either country without paying an exorbitantly high price. Here is an improbable property, which will probably sell for little more than its real value, although to many a wealthy merchant or manufacturer aspiring to public position, it would be worth five times as much.¹⁹

The house at Emo was described in the rental as ‘in every respect suited for the residence of a Nobleman or Gentleman of the first distinction’; other reports on the state of property are far less glowing.²⁰ W. T. H. described the property as ‘far from complete’ and continued that the late earl had ambitions for a design that not only exceeded his means but also were beyond any possibility of execution.²¹ It was suggested that the second earl of Portarlington had desired a property which ‘must partake rather the style of a palace than of a mansion for a third or fourth class nobleman’.²² *The Advocate* contradicted this, instead likening the interiors of Emo to ‘more what might be expected in the neighbourhood of some volcano, where all

¹⁷ *Incumbered Estates Commission Rentals*, 19 & 20 Feb. 1852, NLI Burke Collection, vol. 7. (NLI).

¹⁸ *Ibid.*

¹⁹ W.T.H., ‘*The Encumbered Estates of Ireland*’, reprinted in the *Daily News of August and September 1850* (London, 1850), pp 22-3.

²⁰ *Allnut's Irish Land Schedule*, 2 Feb. 1852.

²¹ W. T. H., *The Encumbered Estates of Ireland*, p. 17.

²² *Ibid.*

of a sudden a city was buried in sulphurous ashes' and not what should be expected in a civilised country'.²³



Fig. 3.3- Rental and particular for the sale of third division of the Portarlington Estate, 20 Feb. 1852.
Source: NLI, Burke Rentals, vol. 7.

Such descriptions no doubt facilitated the new earl of Portarlington, heir to his profligate uncle's bankrupt estate, in acquiring the property for himself with just over 10,000 acres, for the relatively small sum of £142,000 at private sale before it could be brought to public auction.²⁴ In the case of the Portarlington estate, efforts had been made to stay the sale of the estate. Arguments were put forward that 'great exertions' had been made to improve the condition of the property. Furthermore, this had the backing of a number of the estates creditors whose incumbrances totalled £275,000.²⁵ However, as the property remained under the management of receivers and the incumbrance level was more than twenty-three times the annual rental

²³ *The Advocate*, 14 Jan. 1852.

²⁴ *Allnut's Land Schedule*, 15 Feb. 1852.

²⁵ MacNevin, *The practice of the Incumbered Estates Court*, p. 67.

income, the sale was permitted to progress. In this case the petitioner's principal sum stood at a paltry £318.²⁶ The question as to how the purchase of Emo was financed is simply answered. Coinciding with the sale of Emo in 1852, the young earl sold his father's Milton Abbey estate which he had inherited in 1841 to finance the purchase of Emo. As with his Irish estate, this property in Dorset, in South West England, was badly managed and heavily incumbered. The estate consisted of 8,600 acres comprising of the manor and entire parish and village of Milton Abbey House and Abbey together with a number of other townlands. This estate sold £240,000 to Carl Joachim Hambro a Danish banker.²⁷

Determining the exact geography of an estate also presents a challenge. While the rentals and particulars usually included maps, these were the work of either surveyors or solicitors whose qualifications were not necessarily of a high standard. Surveys of estates were carried out at the discretion of the commissioners. However, the commissioners were not in a position to visit each estate which came before them and were, therefore, largely reliant on information provided by petitioners, owners, agents or receivers, all of whom had varying interests in the estate. In many cases these parties were not familiar with the estate themselves. It was only in 1862 that the use of Ordnance Survey maps became a compulsory practice for estates sold under the Court.²⁸ Prior to this there was no regulation for the quality, accuracy or production of the maps included. For example in the case of William Stewart

²⁶ Ibid.

²⁷ *Morning Chronicle*, 1 July 1852.

²⁸ Mary Cecelia Lyons, *Illustrated Incumbered Estates, Ireland, 1850-1905: Lithographic and other material in the Incumbered Estates Rentals* (Whitegate, 1993), p. xv.

Grainger's estate at Caucestown in County Meath, the rental was accompanied by a warning that the court could 'not guarantee the accuracy of this sketch'.²⁹

The Irish country house was once described as 'akin to an island' and its treatment within the Incumbered Estates Court represents an equally mysterious prospect.³⁰

Peter Somerville-Large likens the impact of the Famine on country houses and their owners to 'ice from the Northern Seas... it ran like melted snows in the veins of Ireland for many years'.³¹ The loss of records and poor descriptions in what remains make it difficult to ascertain with a degree of certainty the exact number of country houses standing in Ireland on the eve of the Famine. Mark Bence-Jones in *A guide to Irish country houses* estimated that by the 1870s there were approximately 2,000 country houses in Ireland. Simultaneously, Bence-Jones, admitted that this figure represented a 'single-handed effort produced in a very limited time' which was 'incomplete'.³² In *The decline of the big house in Ireland*, Terence Dooley supports this theory, stating that most Irish country houses had been built before 1850 during a building boom which peaked at the beginning of the eighteenth-century.³³ This suggests that the number of country houses in Ireland, reached its highest point shortly before the introduction of the Incumbered Estates Act.

Some accounts suggest that there were many cases of estates sold through the Incumbered Estates Court with the demesne lands purchased at 'good figures' but the 'noble but unpaid for mansion' simply thrown in' during this initial experimental

²⁹ *Incumbered Estates Commission Rentals*, July-Nov. 1860, NLI, Burke Collection, vol. 59.

³⁰ Terence Dooley, *The decline of the big house in Ireland: A study of Irish landed families, 1860-1960* (Dublin, 2001), p. 18.

³¹ Peter Somerville-Large, *The Irish Country House: a social history* (London, 1995), p. 285.

³² Mark Bence-Jones, *A guide to Irish Country Houses* (London, 1988), p. vii.

³³ Dooley, *The decline of the big house*, p. 28.

phase.³⁴ Of the 7,640 lots brought forward for public auction through the Incumbered Estates Court between 1849 and December 1854 a total of 453 country houses have been identified. These properties varied in size, condition and value. Rev. Ambrose Smith's property Maidenhall (fig. 3.4), a three-bay three-storey over basement country house built in the 1740s and set on forty-nine acres in County Kilkenny was described as a mansion house.³⁵



Fig. 3.4- Maidenhall House, Kilkenny (c. 2000).
Source: National Inventory of Architectural Heritage.

By comparison George Boate's five-bay, five-storey Duckspool House (fig. 3.5) in County Waterford set on 160 acre lot had the same description despite being a considerably larger property with a far more substantial demesne.³⁶ Lithographs of the properties were not included in rentals and particulars of either estate. In many cases, the description in the rental was the basis upon which a property was purchased.

³⁴ Fitzgerald, *The story of the Incumbered Estates Court*, p. 37.

³⁵ *Allnut's Irish Land Schedule*, 1 Sept. 1852.

³⁶ *Ibid.*



Fig. 3.5- Duckspool House, Waterford (c. 1953).
Source: Waterford County Museum, TT346.

Properties were frequently misrepresented in the rentals of the Court. For example, Castle Hyde (fig. 3.6) the property of John Hyde on the banks of the Blackwater, with an extensive demesne of 2,549 acres was described as a ‘splendid mansion’.³⁷



Fig. 3.6- Castle Hyde, Cork (c. 1865-1914).
Source: NLI, Lawrence Collection, L_CAB_01404.

However, in stark comparison Lord Langford’s expansive Palladian mansion designed by Sir Edward Lovett Pearce and set on 1,351 acres at Summerhill (fig.3.7)

³⁷ Ibid., 1 Dec. 1851.

in County Meath was simply described as a ‘dwelling house and demesne’ despite dwarfing Castle Hyde, Maidenhall and Duckspool.³⁸



Fig. 3.7- Summerhill House, Meath (c. 1913).
Source: Irish Architecture Archive, C 5/639

While it is difficult to pin-point a specific reason for the unreliable and disparate descriptions of property, certain factors could be seen to have influenced their phrasing. In the case of the Langford family seat at Summerhill House, the estate was petitioned by John Nembhard Hibbert and Philip Pleydell-Bouverie MP with debt of £103,211. In this case Summerhill House and demesne was purchased by the Langford family’s solicitor Robert Rynd in trust for the Langford family for just £16,000.³⁹ Maidenhall, Duckspool and Castle Hyde, however, were all purchased by new landowners and the descriptions of the properties were designed and intended to attract a purchaser.

In Mary Cecilia Lyons’ study of lithographic material in the rentals and particulars of the Court, she states that less than 1 per cent of the overall material which has survived contained these images. However, despite their scarcity they played a

³⁸ *Ibid.*, 1 July 1851.

³⁹ *Freeman’s Journal*, 12 July 1851.

significant role in the business of the Court. In the case of Oldcourt House in Doneraile, County Cork, which was sold on behalf of John Watkins, the property was described in the rental as ‘of modern architecture, affording such accommodation, beautifully situated, and in good repair’. The detailed lithograph depicted an idealised image of a country house set amongst trees with animals grazing, the figure of a man working and another is shown reading (fig. 3.8). A floor plan for the property is also included which detailed the interior layout and included the proportions of the rooms.⁴⁰ In this instance the lithograph was used to sell a lifestyle as well as the property. Consisting of 2,022 acres the estate was only marginally incumbered by £470, with an annual rental of £551. The estate sold for £2,275.

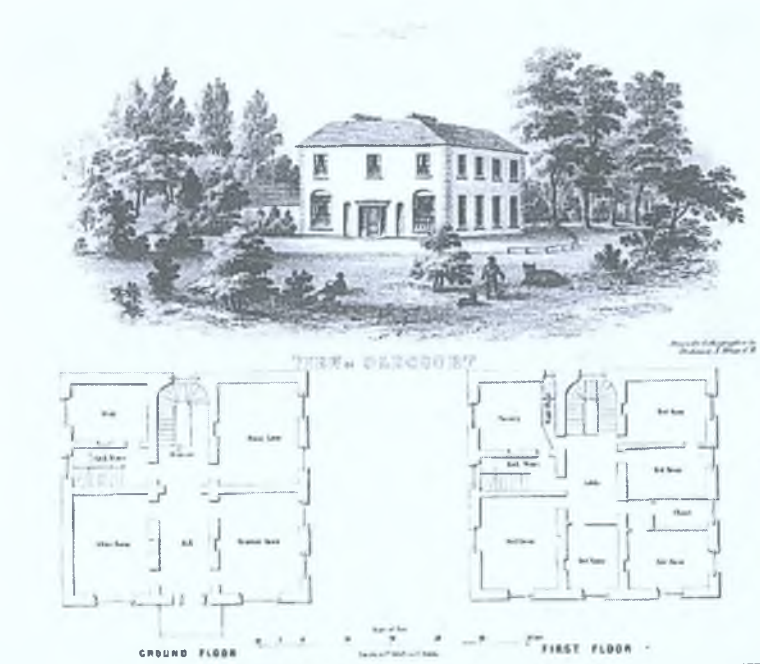


Fig. 3.8- Rental and particular, Watkins estate, Oldcourt House, Doneraile.
Source: *Incumbered Estates Court Rental*, 24 June 1853, NA 1A/3/21:52.

⁴⁰ *Incumbered Estates Court Rental*, 24 June 1853, NA 1A/3/21:52.

Although some feared the Incumbered Estates Court would be a ‘guillotine’ for the Irish landed elite, and that the resultant social revolution would lead to their complete downfall, many of this elite class took an active role in the Court, both as owners and as petitioners of estates.

Title	Petitioner
Earl of Portarlington	James Delaney
Earl of Carrick	Owner
Earl of Aldborough	Henry Norwood Tyre & others executor of John Harvey Ollney Esq.
Earl of Kingston	Eliza Hoops & Sylvester Young
Earl of Belmore	Owner
Earl of Kenmare	Owner
Earl of Mountnorris	Owner
Earl of Shannon	Owner
Earl of Courtown	Owner
Earl Fitzwilliam	Owner
Earl of Mornington	Lord Wellesley
Earl of Glengall	Owner
Earl of Bantry	Owner
Lord Gort	Vicimus Knox
Lord Langford	John Nembhard Hibbert and Philip Pleydell-Bouverie MP
Lord Oranmore & Browne	Sir Moses Montefiore Bart. & S. Gurney
Lord Baron Audley	David William Neilgan
Lord Oranmore	Marquis of Salisbury & others
Lord Carlingford	William Richard Smith
Lord Ferrard	William Murray
Baron Fitzgerald & Vesey	William Robert Seymour Vesey Fitzgerald
Sir Richard Gethin Baronet	Owner
Sir George Forster Baronet	Owner
Sir Edward Hoare Baronet	Thomas Garde
Sir Thomas Staples Baronet	Owner
Sir Hugh Stewart Baronet	Owner
Assignee of E. Ellis, Knight	James Ahern
Knight of Kerry	Marquis of Salisbury, Earl of Lauderdale, Earl Talbot & John Balfour.

Figure 3.9- List of titled persons petitioned through the Incumbered Estates Court between Oct. 1849 & Dec. 1854.⁴¹

Source: Information taken from *Allnut's Land Schedule*, 1849-55.

⁴¹ Information taken from *Allnut's Land Schedule* 1849-55.

In total the estates of twenty-eight titled persons were petitioned through the Incumbered Estates Court. Almost half, thirteen in total, of petitions in these cases were presented by the owner of the estate, with the remainder presented by creditors, seven of whom were members of elite society. Of these four were British residents. Lord Wellesley and his uncle the duke of Wellington petitioned for the sale of the earl of Mornington's estate on 24 June 1852 for incumbrances of £163,769, while Sir Moses Montefiore brought forward the estate of Lord Oranmore and Browne. The knight of Kerry's estate was petitioned by the marquis of Salisbury, earl of Lauderdale and Earl Talbot. Salisbury was a serial petitioner through the Court, petitioning not only for the knight of Kerry's estate but also that of Lord Oranmore in January 1850. In both instances Salisbury acted as a trustee on the estates. Other notable petitioners included the earl of Harrington at Elvaston Castle in Derbyshire who petitioned the estate of James Crofton on 7 May 1851 for debts of £3,414, the chief justice of the Queen's Bench, Lord Campbell who petitioned Myles Cohen on 11 April 1853 and Lord and Lady Somerset brought proceedings against Edward Synge on 23 June 1850 for £25,511.⁴²

The estates of nobles tended to be incumbered to a greater extent than the average estate. An examination of the 100 petitions with the highest levels of stated incumbrances (see appendix 2) shows thirteen petitions presented against titled persons, a proportionately high number considering they represented just ninety sales or six per cent of the overall 1,448 sales which took place between 1849 and 1855. The earl of Aldborough's estate came before the Commissioners on the 24 November 1849. His sizeable estate of 12,279 acres spread across Carlow, Tipperary, Wicklow

⁴² Information taken from database created by the author.

and Limerick generated a rental income of more than £7,700. The estate was heavily incumbered by debts of £151,479 almost twenty times the estate's annual rental income. The petition included Slaney House and three properties on St. Stephen's Green, Dublin. Viscount Gort's estates in county Cork were presented on 6 December 1851, consisting of more than 3,900 acres which generated a rental of £3,000. Included on this petition were Rindfin Cottage and the impressive Lough Cutra Castle.⁴³ This estate was also heavily incumbered by more than twenty-six times its annual rental income with debts standing at £79,829. The earl of Portarlington's estate which came before the Court for the payment £700,000 was the highest amount presented to the Court, however, at twenty-one times the annual rental this was only slightly above the average figure of between fifteen and twenty times the annual income. Perhaps paling in comparison to this, the Sligo estate of Sir Richard Gethim which included Percymount House earned a rental income of £1,908 and was indebted to fourteen times its annual rental income at £27,191. Similarly the knight of Kerry's estate centred at Glanglem House carried a debt of £59,300 on a rental income of £2,950 and was petitioned on 20 June 1853.

While contemporary accounts suggest that many landlords feared losing their estates through the Court, on the other hand, many utilised the legislation to consolidate or expand their estates. Take the Bunburys of Lisnavagh for example- William McClintock Bunbury purchased thirteen lots across Carlow and Kilkenny totalling 4,148 acres. His total purchase exceeded 2,648 acres and represented 33 per cent of the overall acreage sold in county Carlow sold during the initial period of the Court. His purchases cost more than £25,415. This considerable outlay coincided with a

⁴³ Lough Cutra Castle is frequently referred to as Loughcooter Castle in reports of the sale.

substantial expansion of the family seat at Lisnavagh.⁴⁴ Meanwhile Henry Bunbury, of the same family, sold his Russellstown Park estate through the Court on 11 May 1852. In this instance the estate was purchased by William Duckett, a neighbouring landlord, resident at Duckett's Grove which was constructed in the 1830s.⁴⁵ In the case of the Langford Rowley estate at Summerhill, the owners in addition to securing the house, purchased a substantial portion of the estate despite their precarious financial position. The Langford family were not only able to purchase six lots of Summerhill for a total of £39,650 but also an additional £14,450 to acquire 971 acres of the neighbouring estate of Dame Annetta Maria Hesketh. The earl of Clancarty expanded his Roscommon holding, purchasing 800 acres of Hercules Brabazon's estate in addition to the 500 acres of the Wilton estate in County Galway. Clancarty's expansion is interesting when one considers the evidence presented in Padraig Lane's examination of Galway and Mayo estates which highlights the difficulty experienced by landlords in the region collecting rents as recently as 1849.⁴⁶ Brabazon himself petitioned for the sale of his Roscommon estates and a portion of his Mayo estates between October 1852 and January 1853. However, in November 1853, he acquired 1,700 acres of Rev. William Jackson's Mayo estate suggesting that efforts were being made to expand and consolidate his holding in the west of Ireland. In the precarious position of encumbered landlords, Brabazon risked his estate being petitioned and sold. However, by petitioning for the sale of his own

⁴⁴ Bence-Jones, *A guide to Irish country houses*, p. 187. A large and rambling Tudor-Revival house in grey stone, built in 1847, for William McClintock Bunbury MP, brother of First Lord Rathdonnell, to the design of John McCurdy. The house was greatly reduced in *ca* 1953 by the Fourth Lord Rathdonnell; that part of which contained the principal rooms being demolished, and the service wing being adapted to provide all required accommodation.

⁴⁵ *Ibid.*, p. 113. A square house of 2 and 3 storeys, transformed into a spectacular castellated Gothic fantasy by Thomas A. Cobden, of Carlow, for J. D. Duckett, 1830.

⁴⁶ Padraig G. Lane, 'Impact of the Encumbered Estates Court upon landlords in Galway and Mayo' in *Journal of the Galway Archaeological and Historical Society*, xxxviii (1981) p. 46.

estate, Brabazon was able to manipulate the legislation to control the specific land which came before the Court and secure parliamentary title to the land which he acquired. Lord Ashbrook's purchase of the L'Estrange estate in King's County considerably increased his holding in the midlands. While more than 7,500 acres of the earl of Mornington's Queen's County estate was purchased on behalf of Sir Charles Henry Coote of Ballyfin at a cost of more than £36,825. Further evidence of consolidating or reducing estates can be found in cases like that of the earl of Bantry, who retained Bantry House but divested himself of his outlying estates, including Bere Island, Garnish Island, the western forts and 12,825 acres described as the 1-3rd and 1-21st parts of Cummer and Cumholo. He retained Bantry House which had been extensively remodelled during the Famine.⁴⁷ In total the earl of Bantry sold 37,539 acres with a rental income of just £4,169. The total proceeds of the sale were £85,310. Significantly for the future prosperity of the estate, the earl cleared £169,327 of debt by petitioning for the sale of his own estate, once again allowing the owner to control what land was brought before the Court. Others simply acquired extensive holdings. Throughout parliamentary debate concerns had been expressed that it would facilitate the establishment of a peasant proprietorship. The earl of Glengall feared that purchasers under the Court would consist solely of the resident tenant 'paying for the home of his fathers and the birthplace of his children'.⁴⁸ However, despite these predictions, it was uncommon for persons identified as a tenant to purchase

⁴⁷ Bence-Jones, *A guide to Irish country houses*, pp 30-1. A mansion which the nucleus is a square 3-storey 5 bay house of ca 1740. The house was greatly enlarged and remodelled in 1845 by Richard White, Viscount Berehaven, and afterwards East of Bantry. The second earl travelled extensively in Europe building up an art collection for which the house is famous; and in enlarging the house, which he probably did of his own design, his object seems to have been to give it the air of a palace of the Baroque period from the continent in the mid-late eighteenth century.

⁴⁸ *Freeman's Journal*, 22 Feb. 1850.

lots under the Court. While it may be the case that many tenants made significant purchases under the act, the absence of estate records makes it difficult to ascertain with a degree of certainty if this was the case. In total just fourteen tenants or lessees were identified as the purchasers under the Incumbered Estates Court. These included a Mr Rawson who acquired 51 acres in Baltinglass, County Wicklow on the earl of Aldborough's estate for £275 and Denis Mahony who purchased 115 acres on the earl of Kingston's estate at Ballylanders for £1,750. This confirmed Jonathan Pim's assumption that if there was no assistance or special provision made for tenant purchasers, as would be the case in later legislation, small tenants would find it difficult to secure funds for such a purchase. In his detailed examination of purchasers of land in Galway and Mayo under the act, Padraig Lane suggests that the majority of tenant purchasers were either farmers, graziers of a sizeable nature, or landowners purchasing the fee of a leasehold interest; however this is generally difficult to prove.⁴⁹ One of the more unusual tenant purchases made under the Court was that of the earl of Listowel. Listowel acquired Convamore House through the machinery of the Incumbered Estates Court in July 1853. Although the earl was recorded living in Convamore as early as 1814, the land was held on lease from the Callaghans of Lotabeg. Advertisements for the sale indicate that lot five, which included the mansion house and demesne of Convamore, produced an annual rental of £263 and was held on a lease of lives renewable forever.⁵⁰ Listowel acquired

⁴⁹ Padraig Lane, 'Purchasers of land in Counties Galway and Mayo in the Encumbered Estates Court, 1849-1858' in *Journal of the Galway Archaeological and Historical Society*, lxxiv (1991), p. 102.

⁵⁰ *Freeman's Journal*, 9 July 1853.

Convamore, the 157 acre demesne and two adjoining lots, both of which were previously leased by the earl, for a total of £14,585.⁵¹

While the Incumbered Estates Court provided many in the society with an opportunity to acquire land and consolidate their estate, for many Protestant clergymen the legislation was a final nail in the coffin. The leading positions held by the clergy of the Established Church before the grant of Catholic Emancipation had dwindled significantly by the 1850s. There was a significant rise in hostilities associated with the Famine and unrest associated with the revolutionary period following the tithe war of the 1830s. As a result, Church of Ireland clergy were already under financial strain. Although measures such as the Tithe Rent Charge Act of 1838 had been introduced to facilitate the collection of arrears, none proved vastly successful and a continued sharp decline brought many clerics to an unsustainable level of debt.⁵² Landlords were first appeased in the payment of the rent-charge by a bonus, but arrears soon began to amass and these grew ominously during the Famine, forcing many members of the clergy into an even more precarious financial position. In addition, other factors cannot be overlooked such as poor estate management by the clergy and subletting which also played a significant part in their financial demise.⁵³ W.G. Neely in his examination of the role played by the Church of Ireland laity in Irish society between 1830 and 1900, highlighted the profound impact of the Famine on the less well-off body of the Church. With landlords unable or unwilling to pay poor law rates the burden of tax 'fell hard' on the clergy who had, as Neely

⁵¹ Ibid.

⁵² Alvin Jackson, *Ireland 1798-1998: war, peace and beyond* (2nd ed, New Jersey, 2010), p. 42; Jacqueline Hill, 'The laity and the public sphere, 1740-1869', in Raymond Gillespie and W.G. Neely (eds), *The laity and the Church of Ireland, 1000-2000* (Dublin, 2002), p. 165.

⁵³ Hill, 'The laity and the public sphere, 1740-1869', p. 165.

notes, 'lost all income', and been forced to rely on the charitable donations of the laity and members of the Church of England.⁵⁴ The Incumbered Estates Court facilitated the sale of the often considerable landed estates of the Protestant clergy such as those of Rev. Richard Horman in County Westmeath consisting of almost 900 acres; Rev. Thomas Browne Brady's 1,700 acre estate in County Clare which included Raheen House; and Rev. Frederick Cavendish's estate which included Leixlip Castle and more than 1,000 acres. In total, forty-one estates owned by landlord clergy of the Church of Ireland were petitioned through the Court. A total of forty-four petitions were brought forward by members of the Established Church and a total of approximately 190 lots were purchased by members of the clergy. There is no record of any Roman Catholic clergymen purchasing or petitioning for the sale of an estate.

The Incumbered Estates Court revolutionised Irish women's relationship with land and property. Prior to the introduction of the Incumbered Estates Act, land ownership in Ireland was androcentric in so far as it was dominated almost exclusively by the male interest. Custom and tradition had until then upheld a number of principles which clearly defined the role of women in society, in marriage and in land ownership; however the Incumbered Estates legislation provided a degree of freedom and interaction with property which would have previously been impossible. The treatment of women by the Court was innovative for its time. It allowed them to take an active role in the future and management of their estates, and enabled them to sell, to petition for sale and to purchase land and property.

⁵⁴ W.G. Neely, 'The laity in a changing society, 1830-1900' in Gillespie & Neely (eds), *The laity and the Church of Ireland*, p. 198.

Historically, the role of women in relation to their estates had been determined by a strict system of legal settlement constructed to ensure the future of the family estate. By the eighteenth century, the impact of many of these settlements seemed almost exclusively used to circumvent bankruptcy law.⁵⁵ R. D. Urlin estimated that five-sixths of the land in Ireland was subject to such settlements.⁵⁶ As a result many Irish estates held by women were before the introduction of the Incumbered Estates Act, unproductively tied up. Women of means were unable to acquire property in their own right or were forced to maintain unprofitable properties subject to the will of others.

Sir William Blackstone, an English judge and Conservative politician, noted that in legal proceedings and property ownership the doctrine of coverture applied under which 'the husband and wife are one person in the law... legal existence of the woman is suspended during marriage'.⁵⁷ As a result a woman was left wholly dependent on the goodwill of her spouse for her financial needs. In total eleven cases were brought to the Court by a joint husband and wife pairing. One such example is the case of William Cooper Crawford and his wife, Sophia, whose estate was petitioned by Mr George Jackson and sold on 22 October 1850. An estate under the ownership of Crawford would simply have been petitioned under his name; the inclusion of Sophia indicates that the estate was her property. In this instance Jackson the petitioner was declared purchaser of all lots which included Rapla House.

⁵⁵ Deborah Wilson, *Women, marriage and property in wealthy landed families in Ireland, 1750-1850* (Manchester, 2009), p. 43.

⁵⁶ Urlin, 'The history and statistics of the Irish Incumbered Estates Court', p. 204.

⁵⁷ William Blackstone, *The Commentaries of Sir William Blackstone, Knt., on the laws and constitution of England*, foreword by Richard J. Goldstone (Chicago, 2009), p. 58.

When the 3,800 acre estate of Denis and Elizabeth Bingham in County Kilkenny was petitioned in November 1849 debts exceeded £3,900. The estate sold for £6,625, almost fifteen and a half times the annual rental. In this case Bingham himself acted as solicitor having carriage of the sale which, although uncommon, was permitted by the legislation. It was commonplace by the early nineteenth century to circumvent the system of coverture by establishing a trust in equity. This process secured a woman's separate right to property for the duration of her marriage and guaranteed independent access to an income.⁵⁸ Such estates presented a unique set of problems for husbands' intent on securing capital through the sale of their wives' interest. The case of the Bermingham sisters in Rosshill provides an excellent example of a trust in equity estate. The sisters inherited the 22,000 acre estate at the 'extremity of Connaught' on the death of their father William in 1798.⁵⁹ Evidence suggests that their spouses Lords Leitrim and Charlemont were intent on selling their wives interest soon after it had been acquired. In correspondence dated 1807, the dowager, Mary Bermingham, wrote to her son-in-law:

I agree that the joint property is generally attended with many inconveniences and disadvantages... however, as to the sale of Rosshill, if Mary and her sister... after mature consideration have made up their minds to do it, it shall not meet opposition from me.⁶⁰

Consent played a significant role in the case of Rosshill. In 1808, Leitrim and Charlemont obtained a private act of parliament to permit the sale of Rosshill for the purpose of acquiring land in their respective counties with no mention of outstanding

⁵⁸ Wilson, *Women marriage and property in wealthy landed families*, p. 127.

⁵⁹ Malcomson, *Virtues of a wicked earl*, p. 48.

⁶⁰ Correspondence between Mrs Bermingham, Clifton, to Lord Leitrim, 20 Dec. 1807 (NLI, Killadoon Papers, MS 36,032/1).

debt or insolvency.⁶¹ Correspondence in 1812 suggests that the proposed sale had been postponed in order to provide ‘piece (sic) of mind of dear Lady C’.⁶² As absentee landlords, Malcomson noted that the house at Rosshill was used ‘very occasionally’ and that by October 1852 ‘the roof of the drawing room had suddenly fallen in’ as a result of intentional mismanagement and neglect.⁶³

In late 1840 following the death of Lady Leitrim, Lady Charlemont wrote to her brother-in-law in relation to raising a mortgage on Rosshill, admitting that ‘Lord C’ had ‘shattered nerves’ and alluded to issues with their ‘pecuniary matters’.⁶⁴ The Incumbered Estates legislation passed nine years later provided a direct means for the Charlemonts to divest themselves of the estate and Lord Charlemont declared that he intended to sell his wife’s portion of the estate.⁶⁵ Having staved off the process for more than fifty years, the Incumbered Estates Court allowed for the Rosshill estate to be sold without the need for either sister to consent. Petitioned in July 1856, the estate sold through the Landed Estates Court on 28 June 1860, pursuant on the petition of the Honourable Charles Sydney Clements, who would become known as the ‘wicked earl’. It had an incumbrance of £11,227.⁶⁶ The third

⁶¹ An act of vesting for the real, freehold and chattel estates and lands, which formerly belonged to William Bermingham, late of Rosshill, in the county of Galway, Esquire, deceased, in trustees, to be sold for the payment of his debts and legacies, and for laying out the surplus of the monies arising from the sale or sales, after payment of such debts and legacies, in the purchase of lands, tenements, and hereditaments, in Ireland, to be limited and settled to the several uses, and upon the trusts therein mentioned, 1807 (48 Geo. III, c. lxix).

⁶² Correspondence between Lord Charlemont and brother-in-law Lord Leitrim, 20 Mar. 1812 (NLI, Killadoon Papers, MS 36,032/11).

⁶³ Malcomson, *Virtues of wicked earl*, p. 286.

⁶⁴ Lady Charlemont to her brother-in-law Lord Leitrim, 30 October [1840?] (NLI, Killadoon Papers, MS 36,032/10).

⁶⁵ Malcomson, *Virtues of a wicked earl*, p. 286.

⁶⁶ Landed Estates Rental, 29 June 1860; *Allnutts's Irish Land Schedule*, 1 Nov. 1856.

Lord Leitrim, William Sydney Clements, purchased eight of the fifteen lots brought forward for sale, consisting of 16,862 acres at a cost of £36,575.⁶⁷

At a time in Irish society when women independently purchasing property was almost unknown, the Incumbered Estates Court granted women the same rights to purchase as a man. In total approximately 116 female purchasers were identified acquiring property under the Incumbered Estates Court; twenty-seven of these were outright purchases acquiring land in their own name, the remaining eight-nine were purchased by a trust or party on their behalf. The size and scale of purchases made by female purchasers differed greatly ranging from the 4,289 acres in Clonbally, County Cork acquired for Susan E. Carroll by Mr R. Grubb at £2,260, to the single acre purchased by Maria Reakes near Rathgar, County Dublin at just £50.

One of the most notable characteristics of the Incumbered Estates Court was the apparent pre-occupation of parties with preserving the family home. Under the act women took on an influential role in assisting in the preservation of their families' interest. In twenty-one cases a female purchaser shared a surname with the owner, strongly suggesting that they were members of the same family. These included Mary McLoughlin who acquired nineteen acres of the self-petitioned estate of John and Dominic McLoughlin in county Mayo. In total the estate was divided into eight lots for the sale, of this six were purchased by members of the McLoughlin family. Three of the early lots consisting of 9,202 acres was purchased by a Peter McLoughlin; lot six on the Aran Islands consisting of 1,226 acres, of which 1,010 were described as untenanted, were purchased by the owner and petitioner Dominic

⁶⁷ *Evening Freeman*, 29 June 1860.

McLoughlin. Mary McLoughlin successfully bid £900 for 196 acres in Gotwaile, otherwise known as Knockmullen located between Newtownpratt and Westport. In the rental and particulars for this estate names of twenty tenants were given and in a grim reminder of the impact of the Famine it was recorded that ‘the entire of whom either died or emigrated last year (1849) and this lot is at present untenanted’ and further noted there was ‘potential to double the annual rental’.⁶⁸ The McLoughlin estate is by no means an isolated case. The estate of Sir James Cotter in County Cork, petitioned by Catherine Cotter, was brought forward for sale in June 1850. Following ‘competition’ between two solicitors, Murdock Green and a Mr Shaw, the latter, successfully purchased 2,130 acres for Caroline Cotter for £4,400.⁶⁹ Other notable examples include the Leitrim estate of William O’Brien purchased by W. Crozier, solicitor for Jane O’Brien described as widow; the purchase of 305 acres of Edward Wellington Bond’s Armagh estate by Mr W. W. Bond for Mrs Eliza Bond; and in Dublin, Anne Maria Moulds acquired 8 acres of George Frederick Moulds estate in 1853.⁷⁰ A further examination of the Moulds’ estate indicated that the petition was presented against Hercules Pexton, the assignee of George Frederick Moulds, an insolvent debtor, and Anne Maria Moulds, a spinster. This suggests that the Anne Marie who became purchaser was the sister of the insolvent George. As a purchaser through the Court, Anne Maria safeguarded herself by securing title to the Dublin estate and prevented creditors from further petitioning for its sale.⁷¹

⁶⁸ *Incumbered Estates Commission Rentals*, 26 March 1850, NLI, Burke Collection, vol. 2.

⁶⁹ *Freeman’s Journal*, 5 June 1850.

⁷⁰ *Ibid.*, 1 May 1851; *Ulster Gazette*, 22 May 1852; *Freeman’s Journal*, 20 May 1853.

⁷¹ *Freeman’s Journal*, 20 May 1853.

It was not uncommon for women to utilise the machinery of the Court for the benefit of their family, particularly in the case of a widow or female trustee. One such example is the case of Ellen Alleyn and others which sold through the Court on 29 November 1853. Ellen Alleyn purchased the whole estate which was incumbered by £2,831 for £6,360, thus indicating that Allyn had access to sufficient capital to settle the incumbrances on the estate.⁷² However, the *Advocate* in June 1853 referred to Ellen as a widow and named the 'other' parties of the petition as Mary Alleyn, Westropp Davies Alleyn, Charles Alleyn and Joseph Alleyn, the latter two both being minors.⁷³ The purchase price of £6,360 far exceeded the debt of £2,831 leaving a surplus of £3,529. By purchasing the estate through the Incumbered Estates Court rather than simply clearing the estate of incumbrances. Ellen was guaranteed a secure title to her estate, a secure inheritance for her children and the additional surplus purchase money was paid back to the Alleyn family in July 1854.⁷⁴

It was not uncommon for a female petitioner to become the purchaser of the estate. In the case of Richard Beverly Usher's Dublin estate, the petitioner, Margaret Sachwell, became purchaser of 18 Wood Quay in Dublin City as part of this sale.⁷⁵ Similarly in the case of Nicholas C. Maher the assignee of Walter Otway Herbert, an insolvent, the petitioner Catherine Morris was declared purchaser of the whole estate at just ten years' purchase.⁷⁶ There is also significant evidence that women were themselves building substantial estates in their own right. In the case of John Ormsby's estate in County Mayo estate which was petitioned by Rev. Horatio

⁷² *Southern Reporter and Cork Commercial Courier*, 29 Nov. 1853.

⁷³ *The Advocate: or Irish Industrial Journal*, 8 June 1853.

⁷⁴ *Allnut's Irish Land Schedule*, 1 Aug. 1854.

⁷⁵ *Cork Examiner*, 3 Nov. 1851.

⁷⁶ *Freeman's Journal*, 2 Mar. 1852.

Ormsby, the whole of the 5,833 acre estate sold to the clergyman in trust for Ms Anne Maria James at 12 years' purchase.⁷⁷ An additional lot was purchased by Louisa Ormsby, described as tenant on the lot.

Perhaps the most significant failing of the Incumbered Estates Court was its failure to attract outside investment. This was one of its primary intentions when established. Despite assurances that British and Scotch purchasers would be induced to purchase land in Ireland by the certainty provided by the Court, the legislation failed in this respect. However, there is a significant amount of information to be gleaned from an examination of the parties outside of Ireland who did choose to invest in land sold at public auction. Despite reports that there were 'more English & Scotch purchasers' as the Court progressed, by December 1854, just over 5 per cent of the overall investments made under the Court were made by persons outside of Ireland. (fig. 3.10).

Amount paid by purchasers	£
By Irish purchasers	11,686,858
By British & other purchasers	2,265,770

Fig. 3.10 - Amount paid by purchasers under the Court, 21 Oct. 1849- 31 Dec. 1854.
Source: Locke, *Ireland's Recovery*, p. 77.

Although the names of purchasers at public auctions were recorded for each sale, it was not until June 1851 that a distinction was made between Irish resident purchasers and others in the returns of the Court. Even the definition of a foreign purchaser is problematic. For example a single purchaser is identified as American, but it was later stated later that he was, in fact, an Irish emigrant who had returned home. British purchasers came from a variety of locations (see Appendix 3), these included

⁷⁷ *Connaught Watchman*, 15 Oct. 1851.

Yorkshire, Devonshire and Lincolnshire, but the majority of the British investment came from London, which accounted for more than £977,433 of the total £1.78 million spent by outside investors.

Under the terms of the Court in order to be deemed a 'foreign' purchaser, a party was simply required to be resident outside of Ireland.⁷⁸ Although these parties were not resident in Ireland, many had a significant interest in the Irish estates they acquired. One such example was W. H. Poe a resident of Calcutta, India. The estate in question, the property of John Poe, came before the Court on 18 November 1852. The County Tipperary estate consisted of 950 acres and included Solosborough House, it yielded an annual rental of just £532. The sale of the Poe estate was a family affair. John Poe, brother of the eventual purchaser, was appointed solicitor with carriage of the sale.⁷⁹ Lot four of the estate, which consisted of 148 acres and included Solosborough House, was purchased by P. Molloy for W. H. Poe for £4,000 which represented twenty-seven years' purchase. This was an exceptional price for land on the estate. The preceding three lots on the estate sold for between fourteen and seventeen years' purchase. Retaining the family seat no doubt played a significant role in the price achieved.

The quantity of land purchased and the price paid varied significantly amongst British and Scottish purchasers. Some show evidence of investment, while others were speculative purchases. Richard T. Douglas, with an address on the Isle of Man, paid a total of £280 for a commercial property at no. 22 Upper Dorset Street. The duke of Bedford invested £88,550 in the purchase of the Kirwan estate which spread

⁷⁸ McNevin, *The practice of the Incumbered Estates Court in Ireland*, p. 387.

⁷⁹ *Allnut's Land Schedule*, 1 Nov. 1852.

across Galway and Mayo. This estate appears to have been speculative as the property was acquired for Lady de Clifford the wife of Bedford's first cousin. By 1852, there were 114 investors recorded from outside of Ireland.⁸⁰ They came from a variety of social backgrounds. By March 1853 this number had increased by forty-five, the most substantial increases being in the gentry and merchant classes. In approximately 40 per cent of the cases identified, the purchaser was a member of the gentry.⁸¹ (Fig. 3.11)

Classification of investors from outside of Ireland	July 1852	March 1853
Gentry	52	68
Manufacturers and merchants	36	54
Insurance and Land Companies	6	7
Farmers	20	30
Total	114	159

Fig. 3.11- Classification of purchasers through the Incumbered Estates Court from outside Ireland, July. 1852 and Mar. 1853.

Source: Tuam Herald, 13 Nov. 1852.

These investors included Lord Charles Clinton MP for Sandwich, younger brother of the fifth duke of Newcastle-under-Lyne who purchased 10,105 acres of the earl of Bantry's Cork estates, including Bere Island for £43,050 on 25 November 1853. It is clear that Clinton was endeavouring to establish a Cork estate having purchased twenty-three lots of the earl of Shannon's Cork estate in July 1852. In total Clinton invested more than £36,840 in the creation of a significant estate of more than 13,000 acres in Cork.⁸² At the sale of John, Arthur and Lawrence Knox's Mayo estate on 24 November 1853, Adam Scott of Glasgow, Henry Callender from Edinburgh,

⁸⁰ *Tuam Herald*, 13 Nov. 1852. The figures contained in this reported are dated 1 July 1852.

⁸¹ Incumbered Estates Court, Ireland, summary of proceedings from the filing of the first petition, Oct. 21, 1849 – Mar. 31, 1853, inclusive compiled by the appointed officer of the court (N.L.I., EPH E17).

⁸² See Appendix 1 for further examples.

Zachery Mudge of Devon and John Ross Ford of Rochester were amongst its purchasers (Appendix 3).

In January 1852, William Foster, an ironmaster from Stourbridge acquired the earl of Mountnorris's Wexford estate centred at Camolin Park. Following the death of the estate's legitimate heir in 1841, a James Foster was appointed trustee of the Annesley estate. James Foster was the uncle of William Foster.⁸³ The appointment of James as trustee indicates that the connection between the Fosters and the Camolin estate pre-dates the sale through the Incumbered Estates Court. The estate was petitioned by James Foster and came before the Court on 15 January 1852. The County Wexford estate, which consisted of more than 9,800 acres, was divided into 122 lots. However, the commissioners of the Court sought to sell the estate as one lot which was purchased in trust for William Foster for £55,200.⁸⁴ When James Foster died in 1853, the property passed to William. Camolin was Foster's first Irish acquisition. A considerable number of properties had been acquired by him in Britain, including Madley Court in Shropshire and the manor of Wrixall in Somerset. All three properties were, at some point, connected with mining.⁸⁵ By petitioning for the sale of the estate through the Incumbered Estates Court and purchasing the estate, Foster went from managing the trust to owning the property. Utilising the machinery of the Court, he gained secure title and the rights over all outputs from the estate.

⁸³ James Foster negotiations for the acquisition of the Annesley family's Camolin Park (Shropshire Archives, Apley Park Papers, MS 5586/2/19/8b&8c).

⁸⁴ *Freeman's Journal*, 16 Jan. 1852.

⁸⁵ For more on mining see Desmond Gillmor, 'Land and people, c. 1926' in J.P. Hill (ed.), *A new history of Ireland, vii, Ireland, 1921-84* (Oxford, 2010), pp 62-79; Thomas P. Power, *Ministers and mines: religious conflict in an Irish mining community, 1847-1858* (Inidana, 2014); Michael Shaw, *The lead, copper & barytes mines of Shropshire* (Hereford, 2009); Francis A. Knight & Louie M. Dutton, *Somerset* (Cambridge, 1909).

Foster was not the only party to utilise the legislation to gain control of an estate with which he was connected, many other used the revolutionary legislation to serve their own interest. In total 106 estates were purchased by the party who petitioned for its sale. In the case of Lord Gort's estate in Galway, Vicissimus Knox, the petitioner, acquired ten properties in Galway city, Gort Poor House, a flour mill, tolls and customs and 1,750 acres when the estate came before the Court. In the case of Lord Oranmore and Browne's estates, twenty lots, amounting to 7,000 acres, were purchased by the petitioners Sir Moses Haim Montefiore and Samuel Gurney for £31,480. Montefiore was a financier and Jewish community leader. In 1824 he founded Alliance Assurance and was instrumental in establishing the Provincial Bank of Ireland in 1825.⁸⁶ Samuel Gurney was a banker, Quaker and philanthropist born at Earlham Hall in Norwich. He established a bill-broking partnership firm known as Richardson and Overend in 1807 by 1820 it was the largest bill-broking concern in London.⁸⁷

In advocating for the introduction of the Court, Jonathan Pim had warned that a significant portion of the petitions which would be brought forward would come from persons aiming to purchase their own estates. It should be noted there was no safeguard in the legislation to prevent this from occurring. All parties capable of paying the purchase price for an estate were eligible to bid on it. In the case of William Austin's County Cork estate, where £8,477 worth of incumbrances were brought before the Court, Austin himself was both owner and petitioner. On 17 June

⁸⁶ Geoffrey Alderman, 'Sir Moses Haim Montefiore (1784-1862)', *Oxford Dictionary of National Biography online edition*, available online at <http://www.oxforddnb.com/view/article/19042> (accessed 17 Jan. 2017).

⁸⁷ Richard Davenport-Hines, 'Gurney, Samuel (1816-1882)', *Oxford Dictionary of National Biography online edition*, available online at <http://www.oxforddnb.com/view/article/37498> (accessed 17 Jan. 2017).

1851, Austin was declared purchaser of the estate for £2,540, leaving more than £5,900 unpaid to creditors.⁸⁸ In petitioning and purchasing his own estate, Austin not only secured his estate from the threat of creditors but also gained parliamentary title. The case of Francis Gore's County Clare estate followed a similar pattern. Gore was owner, petitioner and purchaser, however, in this case the purchase price £11,510 exceeded the incumbrances of £8,328 charged on the estate.⁸⁹ Although Gore's payment was considerably more than the incumbrances of the estate, it was still significantly undervalued. Amounting to 1,093 acres in total, the Gore estate had an annual rental income of £1,217, the estate sold at just over nine years' purchase. More significantly, the surplus balance of £3,182, less any additional expenses, would be paid forward to Gore as the Act directed the payment of any surplus to the former owner. While uncommon in the early days of the Court, in later years transactions with links between owners, petitioners and/or purchasers became commonplace. Robert French's Galway was incumbered by £4,150 when it came before the Court in January 1852. The estate sold to French on 8 November 1853 for £7,170, a total of £3,000 more than the incumbrances French owed upon the estate. Similarly the estate of Hendy Sandys Mecredy's in County Louth, which was incumbered by £500 when brought forward for sale in December 1854, sold to Mecredy for £1,650. While some landlords, such as Austin, utilised the legislation of the Incumbered Estates Court to clear their estate of charges which they were unable to afford, others, such as Mecredy and Gore, with adequate funding to

⁸⁸ *Freeman's Journal*, 20 June 1851.

⁸⁹ Information taken from database created by the author.

purchase the estate, chose the machinery in order to secure their estates with the indefeasible title offered by the Court.

Of the 5,389 individual lots sold at public auction, only 127, less than 2 per cent, were subject to a resale by order of the Commissioners. Re-sales occurred for a number of reasons. The primary reason for a re-sale was the failure of a purchaser to lodge payments promptly. The first payment required of a purchaser was the deposit. The general orders of the Court required that this deposit be lodged immediately and that the amount of the deposit was at the discretion of the commissioners. Failure to make this payment promptly resulted in the property being sent back to auction. The 22nd general rule of the Court set a maximum of fourteen days for the payment of purchase money.⁹⁰ In 'rare instances' where the Commissioners deemed it appropriate, interest at the rate of 5 per cent could be applied to the purchase price and only payment of the interest in addition to the principle was sufficient to prevent the property going for a re-sale.⁹¹ It was suggested that the Commissioners adopted an 'almost inflexible manner' to their contracts with purchasers.⁹² In cases where purchasers made initial payment but subsequently defaulted, the property would also be ordered for re-sale. In cases where a second sale took place, the first purchaser was obliged to pay costs and any shortfall in the price achieved at re-sale.⁹³ In cases where the second price exceeded the first, the balance was paid to the original owner of the estate.

⁹⁰ James O'Dowd, *The law and practice relating to the sale and transfer of Incumbered Estates in Ireland, as regulated by statute 12 & 13 Vict. c. 77, (the Incumbered Estates Act), with introduction, explanatory notes, the act, new general rules, forms, and directions for regulating proceedings for sale of incumbered estates and a very copious index* (London, 1849), p. xxvi.

⁹¹ McNevin, *The practice of the Incumbered Estates Court in Ireland*, p. 185.

⁹² *Ibid.*, p. 182.

⁹³ *Ibid.*, p. 184.

A significant variance between the prices achieved at first and second sale was not uncommon. On the earl of Kingston's Limerick estate, sixteen lots were re-sold with increases of between £120 and £1,040 per lot (fig. 3.12). In this case the previous purchaser had 'failed to make good on his purchase' and the estate was once again brought forward for sale.⁹⁴

Area	Amount achieved at 1 st sale (£)	Amount achieved at 2 nd sale (£)	Variance (£)
Ballyfrootamore	7,450	8,400	950
Ballyfrootamore	1,850	2,600	750
Spittle	1,600	1,900	300
Ballylanders	3,000	4,040	1,040
Ballyfasken	1,500	1,620	120
Ballyduff	2,550	2,860	310
Upper Cullane	2,100	2,700	600
Upper Cullane	1,750	2,020	270
Middle Cullane	2,755	3,700	945
Middle Cullane	1,885	2,350	465
Cullane South	2,200	3,040	840
Cullane South	3,310	4,200	890
Total	31,950	39,430	7,480

Fig. 3.12 – Lots subject to re-sale on the Kingston estate through the Incumbered Estates Court, June 1852.

Source: Information taken from database created by the author.

In the case of Thomas Scott's County Down estate, there was a considerable reduction in the amount achieved for the estate. In June 1852 the estate was purchased in trust for Lord Annesley for a total of £17,000. At the second sale in November 1852, the estate achieved £12,425, a loss of £4,575 which became the responsibility of Lord Annesley.⁹⁵ The estate was subject to a further third sale in July 1853 when the first lot was resold at a loss of a further £425.

⁹⁴ *Irish Examiner*, 23 June 1852.

⁹⁵ *Freeman's Journal*, 20 Nov. 1852.

A re-sale under the court did not necessarily bring about a change of ownership. The Galway estate of Sophia Ireland first came before the Court in March 1851 for the discharge of incumbrances of £16,271. At auction Sophia Ireland herself was declared purchaser in trust of two lots totalling 232 acres. However, Ireland was unable to deposit the £1,080 purchase price and the Commissioners of the Court ordered the re-sale of the estate. The following month, John Ireland was declared purchaser for a reduced figure of £870. Similarly the Mayo estate of John Bolingbroke was petitioned through the Court in November 1851, the debt on the estate totalled £9,345. The following year at the auction of the estate, John Graham was declared purchaser in trust for the owner John Bolingbroke at a total cost of £6,000. This purchase was unsuccessful. In July 1853, Bolingbroke was again declared purchaser at £7,530, an increase of £1,530 on the previous price.⁹⁶

The Incumbered Estates Court made land in Ireland a commodity which could be bought and sold for quick profit. Although the five-year span of this study allows for only a limited examination, there is evidence of a propensity among a small number of new owners to acquire land to sell for profit. In the case of Britfieldstown House in Cork, the property passed through the court on two separate occasions in a three year period. The estate was first sold on 13 June 1851 on behalf of Samuel Sturgis the assignee of Sir Thomas H. Roberts, the owner. Lots one and two consisting of 523 acres with Britfieldstown House were purchased by Mr Luke J. Shea for £6,260. On 17 September 1852, Shea petitioned for the sale of Britfieldstown and 402 acres for the payment of incumbrances of £11,566. The property was once again sold on

⁹⁶ Information in database created by the author.

16 March 1854 when it was purchased for James Delacour of Lombardstown House for £11,000.⁹⁷

It was uncommon for appeals to be brought forward under the Incumbered Estates Court. As a Court of Record, an appeal against a decision of the Incumbered Estates Court was heard by the Privy Council. It was within the power of the Commissioners to refuse any appeal proposed.⁹⁸ In their evaluation of the Court in 1854, the inquiry into the Incumbered Estates Court noted the stark difference between the English and Irish appeals system. Under English law, if property was sold on evidence which was flawed there was recourse to pursue a remedy to have property returned to its rightful owner. However, in Ireland, once a property was sold through the Incumbered Estates Court and the conveyance executed to the purchasers, there was no recourse. The 1854 report noted a total of sixty-seven appeals taken against the Commissioners before the privy council. Of these appeals twenty-six had their order for sale reversed, thirty-seven were dismissed, two were partly reversed, one was referred back to the commissioners and one final case was still being heard. In the case of John Thomas Jessop's estate in Longford, which sold through the Court on July 1850, the purchaser of lot six, which included Mount Jessop, Mr Thomas Pemberton brought an appeal to the Privy Council. Pemberton claimed that the lot which he had purchased was misrepresented in the rental and particulars provided for the sale. Pemberton asked to be discharged from his purchase on these grounds. Described as an English gentleman by the Court, Pemberton purchased the 'portion of the estate' on which the house and demesne were situated. However, it transpired

⁹⁷ Ibid.

⁹⁸ *Incumbered Estates inquiry report*, p. xiv.

on his arrival at the estate that the avenue, entrance-gate and the twelve acres of the estate immediately beside the house and demesne were not included in the lot for which he had paid £8,500. As a result the approach to the house was cut off and access was 'through a bog' which was 'quite unsuited to the character of the mansion'.⁹⁹ It was said that the intention of the rental was to lead the purchaser to assume that the avenue was included in the purchase and had failed to indicate that it was in fact the property of another. However, the council found that the rental and particulars for the estate indicated that the lawn at the front of the house was leased by the Jessop family and formed no portion of the estate being sold. Pemberton had visited the property shortly after it was acquired but had failed to present an objection until the conditional order had been pronounced on the sale. In their statement the judges of the council criticised Pemberton for failing to make sufficient enquiries before he purchased the property. It was concluded that the grounds for appeal were speculative, the purchase was upheld and Pemberton's appeal was dismissed.¹⁰⁰

Although it was not the proper process, on occasion appeals were presented directly to the House of Lords. On 25 February 1850, Lord Beaumont presented a petition from Lady Jervis White complaining that the estate of her husband, from whom she had separated, with an income of £3,470 per annum was to be sold through the Incumbered Estates Court.¹⁰¹ Beaumont stated that the property was incumbered by £29,000 and the petition had been presented by a creditor whose claim on the estate amounted to just £1,000. Lady Jervis had appealed to the commissioners of the Incumbered Estates Court seeking half the sale proceeds, but having no legal interest

⁹⁹ *Freeman's Journal*, 1 Apr. 1851.

¹⁰⁰ *Ibid.*

¹⁰¹ *Hansard 3 (Lords)*, iii, col. 3 (25 Feb. 1850).

in the estate, her appeal was denied. As a result she was not permitted to progress her appeal to the Privy Council. As her husband was unwilling to contest the sale through the Incumbered Estates Court, Lady Jervis resorted to petitioning parliament. Lord Beaumont utilised this opportunity to criticise the commissioners of the Incumbered Estates Court suggesting that they seemed content to ‘see the whole of the land of Ireland sold up, and the country entirely revolutionised’.¹⁰² Lord Campbell, chief justice of Ireland, declared Lady Jervis’ appeal an insult to the commissioners and the privy council as the terms of the Incumbered Estates Act permitted any estate incumbered by more than half of its annual income to be brought before the Court for sale. The Jervis estate met this criteria for sale. A continuing opponent to the legislation, the earl of Glengall declared the Incumbered Estates Court ‘unconstitutional’. He stated that the measure solely intended to ‘destroy the gentry of Ireland’.¹⁰³ Despite the House’s refusal to hear the full petition, the Jervis estate was not brought forward for public auction. It is unclear in total how many appeals were brought before the House of Lords. However, in protecting the independence of the Incumbered Estates Court, parliament upheld the legislation which it had established.

Conclusion

Notwithstanding the negative opinions of members of the House, sales of land under the Incumbered Estates Court were conducted with relative ease. Prominent critics of the measure, such as the earl of Glengall, would later follow the trend of utilising

¹⁰² *Ibid.*

¹⁰³ *Ibid.* col. 4.

the measure to extricate themselves from precarious financial position.¹⁰⁴ The introduction of more than 5,000 new landowners changed the landholding system of Ireland, and created the new class of proprietors which Jonathan Pim had advocated for just a few years earlier. The tensions which parliament perceived to have increased in Ireland, culminating in the abortive 1848 rebellion, seemed to dissipate, if only temporarily. This was attributed by members of the House of Commons to the success of the Incumbered Estates Court. During the parliamentary debate on the first continuance of the act in 1852 and again in 1853, the majority who opposed did so on the grounds that the court was taking on the characteristics of a permanent tribunal. In 1854, Sir John Romilly declared the experiment a success stating that it had been established to ‘supply an urgent want’ and that the ‘results of the experiment demonstrated the wisdom and sagacity of those with whom it originated’.¹⁰⁵

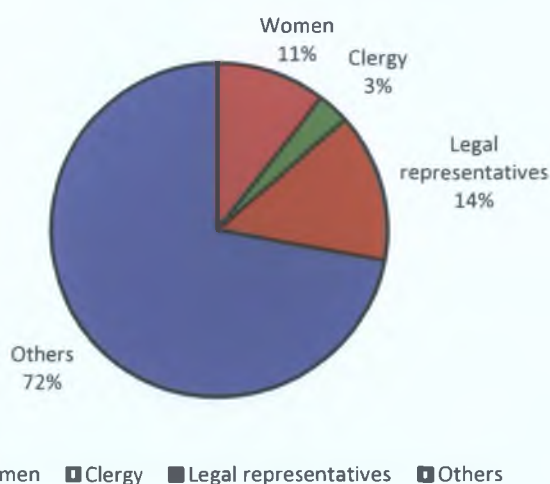


Fig. 3.13- Number of petitions between 1849 and 1855 resulting in sales, divided by sub-group.

Source: Information extracted from database in authors possession.

¹⁰⁴ The earl of Glengal sold more than 30,000 acres through the Incumbered Estates Court in November 1853. Included in the 130 lots which came before the Court were Kilcommon House and Redhill House in Tipperary. The sale included thirty-six properties in the town of Cahir.

¹⁰⁵ *Hansard 3 (Lords)*, cxxxv, cols 952-4 (31 July 1854); *Incumbered Estates inquiry report*, p. ix.

An examination of fig. 3.13 illustrates the changing structure of Irish society in the post-Famine period. Almost a third of the landed estates which came before the Court under the management of women, the Protestant clergymen and legal representatives. As a result the privileged position of the Irish landlord was already considerably weakened. The social revolution which Westminster facilitated between 1849 and 1855 further diminished this position. However, this change did not take the form which Westminster had envisaged with just 1 per cent of the overall investment coming from British and Scottish purchasers. The number of female purchasers under the Court accounted for almost the same percentage. Certain trends emerge through an examination of purchasers. There was a clear propensity among titled persons to reacquire their mansion house. The Langford estate Summerhill and the Portarlington estate at Emo Court are just two examples of the willingness of the landed elite to sacrifice a large part of their estate in favour of retaining their country seat. Far from being victims of the Court, many landlords utilised the legislation for strategic reasons. Landlords, such as Thomas Spinner, petitioned for the sale of their own estate in order to gain clear parliamentary title to a property free of incumbrances. Others utilised the measure to relieve themselves of outlying estates. Others, such as Lord Leitrim, sought to divest themselves of unprofitable or unwanted properties. Equally, neighbouring landlords, such as the Carlow-based Bunburys and the Ducketts, took advantage of the legislation to expand or extend their holdings. Others, such as the earl of Listowel, utilised the measure to gain ownership of property which they had previously held on lease. A number of the primary objections to the introduction of the Court were proven unfounded when it came into operation. A peasant proprietorship was not created as the number of

tenants purchasing their holdings was small. Fears that land prices would collapse were similarly proven incorrect, despite the economic downturn in the wake of the Famine an average of £6.73 was paid per acre between August 1849 and January 1855. While a number of significant trends emerge, the majority of purchases made under the Incumbered Estates Court were made by persons of moderate means acquiring a modest holding. The average lot acquired through the Court was 308 acres and the purchase price approximately £2,000. This irreversibly changed the social structure of rural Ireland. The Court had facilitated the establishment of a new type of Irish landowner, motivated by profit and efficiency.

Chapter 4

Remedies for the revolution

During the five years of the experiment, the Incumbered Estates Act was subject to amendments, reforms and the introduction of additional measures. The nature of these amendments is an indication of the challenges which had been presented by the operation of the Court. The nature of the additional measures introduced to confirm the extent to which parliament had invested in the creation of a middleclass proprietor in Ireland and the ultimate goal of attracting capital to the failing Irish agricultural system.

As the first Incumbered Estates Act progressed rapidly through the houses of parliament in 1848, a second piece of legislation was introduced to a similarly muted response among elected representatives. The Farmers' Estates Society Act sought to revolutionise how land ownership in Ireland was facilitated not only by government but also by the emerging middle class. Land ownership required regulation. At its core this proposal complemented the stated intentions of the Incumbered Estates Act, boosting investment opportunities for potential stakeholders in Irish land and providing them with a degree of financial security. In addition to this function there was also a distinct philanthropic dimension to the legislation. The measure provided an opportunity for investment and return, while also giving the ill-fated tenant class an opportunity to be self-sufficient. Passed on 21 August 1848, just seven days after the first Incumbered Estates Act, the legislation established a group known as the Farmers' Estates Society which aimed to create a permanent independent body of farmers with holdings of no less than thirty acres in Ireland. The proposal contained a blueprint for a structured land purchase scheme which included not only a specific

size for the parcel of land which was deemed economically viable, but also provided a facility for tenants to finance their land purchases. This was a new concept to Ireland but would become an essential element to be incorporated in later land purchase schemes including the 1870 and 1881 Land Acts.

Campaigning for the introduction of the Farmers' Estate Society measure began in early 1848. On 8 February a letter, which was subsequently published, was sent to Sir Robert Peel, then leader of the opposition, requesting his 'consideration and support' for the prospectus of the Farmers' Estates Society.¹ In his introduction to the prospectus, Henry Maunsell, an Irish solicitor, commented on the revolutionary fever which gripped Europe and the social unrest in Ireland. He argued that the introduction and establishment of the Farmers' Estate Society was necessary for the 'enrolment of a large number of people on the side of order' and in 'opposition to anarchy and pauperism'.² Maunsell suggested that when tenants were 'destitute of the strongest incentive to industry, they become indolent, reckless and desperate', and he identified this as the cause of much of the civil unrest in the preceding decades.³ Included in his evidence was an exhaustive list of radical groupings associated with agrarian 'insurrections' beginning with the Levellers in Munster in 1760, the Heart of Oak, Hearts of Steel and Peep-o'-Day boys from 1763 to 1775, the rebellion of 1798, the Emmett rebellion of 1803 up to the Terry-Alts and Lady Clare's Men in 1832.⁴ The Farmers' Estate Society was not the first measure of this

¹ Matthew Barrington, *Letter of Matthew Barrington, Bart. to the Right Hon. Sir Robert Peel, Bart [Detailing a plan for improving the condition of the agricultural population of Ireland. With an appendix: "Prospectus. The Farmers' Estates Society, Ireland]* (Dublin, 1852), attached letter unpaginated.

² *Ibid.*

³ *Ibid.*, p. 5.

⁴ *Ibid.*, pp 6-12.

sort to have been proposed. Barrington stated that a similar proposal had been set before Lord Morpeth for his consideration in his role as chief secretary of Ireland in 1839 and Lord Eliot, when he held the same position in 1842.

The key argument in favour of the establishment of the society was the precedent which had been set by similar measures adopted elsewhere. Once again the Prussian edicts were put forward as an example of the 'boldest and most successful experiment' in land redistribution that had been attempted. The suggestion was that the Farmers' Estates Society would have a similar effect.⁵ This example was of course before the Prussian Revolution of 1848 which caused the system to crumble when agitation hit fever pitch in May 1848.⁶ The cases of Guernsey and Sark, in the Channel Islands, both Crown dependencies, where minor reforms had been undertaken, were also presented as examples of land reform within the empire.⁷ In the case of Sark, land was divided into forty acre holdings with the stipulation that the size of the farm could never change, and that holders were limited in terms of disposing of their property by a clause which stated 'he may sell, but he must sell all'.⁸ The chief argument in favour of replicating this legislation in Ireland was that when a 'peasant has interest in his toil, he lays aside his turbulent character and becomes industrious, peaceable and respectable- in a word perfectly civilised'.⁹

⁵ For more on Prussian Edicts see Chapter 1.

⁶ For more on the Prussian Revolution see Matthew Levinger, *Enlightened nationalism: the transformation of Prussian political culture, 1806-1848* (Oxford, 2000) and Hans J. Hahn, *The 1848 revolutions in German-speaking Europe* (New York, 2001).

⁷ For more see Jesse Collings, *Land reform: occupying ownership, peasant proprietary and rural education* (Michigan, 1906).

⁸ Barrington, *Prospectus for the Farmers' Estates Society*, p. 23. A copyhold possession is another term for freehold possession.

⁹ *Ibid.*, p. 23.

Paralleling introduction of the Incumbered Estates legislation, a proposal for the establishment of the Farmers' Estate Society gained significant support.

The prospectus of the society promoted a socially aware and politically conscious agenda when it suggested that establishment of this society would improve Ireland's rural class in a number of different ways including: fulfilling the Irish desire to possess land, assisting in agricultural improvement, pacifying disturbed regions, creating the equivalent of an unpaid police force of landowners with a vested interest in the land, improving the social order, rectifying the deficiency of a middle-class, diminishing absenteeism and expanding the electorate.¹⁰ Matthew Barrington, a Limerick landlord and Crown solicitor, was unapologetic in his declaration that investment in the society should be by English financiers and that those purchasing from the society should be Irish with a preference that the resident tenant on the land should be the buyer.¹¹ No mention was made of clearances or evictions which might have occurred as a result of the proposal. Despite the presentation of the proposal and its popularity, the subject did not come before the house until later in the year.

The proposal presented by Barrington to Sir Robert Peel included a list of the members of the provisional committee. This included the names of many noted members of parliament such as the marquis of Sligo and earl of Courtown. Both later petitioned for the sale of their own estates under the Incumbered Estates Court. In the case of the earl of Courtown's County Kilkenny estate which passed through the court in November 1852, Matthew Barrington the author of the piece acted as solicitor in the case. In 1848 advocating for Peel's support, the marquis of Sligo was

¹⁰ Barrington, *Prospectus for the Farmers' Estates Society*, pp 26-31.

¹¹ *Ibid.*, p. 23.

quoted as saying that the scheme was the ‘best of all the schemes’ he had seen for the improvement of Ireland.¹²

Five months after the publication of Barrington’s communication a Bill came before the houses of parliament. The Farmers’ Estates Court Bill was introduced to a committee on 28 July 1848 by William Gladstone, who had recently vacated the office of secretary of war and the colonies in favour of Earl Grey. The Farmers’ Estates proposal was one of the first demonstrations of Gladstone’s concern with Irish tenant rights which would become a defining characteristic of his later terms as prime minister.¹³ Representatives on the parliamentary committee were asked to consider two major aspects of this legislation. First, they were to contemplate whether the incorporation of a company specifically for the purchase of Irish land was a significant deviation from the existing Joint Stock Company legislation of 1844. The previous measure had defined a joint stock company as a commercial partnership of more than twenty-five members, the majority of whom were silent partners, with capital divided into freely transferable shares. Companies were required to register, adhere to strict rules for the transaction of business and there was mandatory convening of an annual general meeting.¹⁴ Secondly, parties were asked to consider whether sufficient provisions were made in the Bill to prevent subdivision of land holdings, which had been highlighted by the Devon Commission as endemic in Ireland and the cause of significant disorder.¹⁵ In highlighting these key

¹² *Ibid.*, p. 37.

¹³ For more on Gladstone see David George Boyce & Alan O’Day (eds), *Gladstone and Ireland: politics, religion and nationality in the Victorian age* (London, 2011).

¹⁴ Barrington, *Prospectus for the Farmers’ Estates Society*, pp 46-7.

¹⁵ *Hansard 3 (Commons)*, c, col. 978-9 (28 July 1848). For more on Joint Stock Companies see M. S. Rix, ‘Company Law: 1844 and to-day’ in *The Economic Journal*, lv (1945) pp 242-260; Josephine Maltby, ‘UK joint companies legislation 1844-1900: accounting publicity and mercantile caution’ in *Accounting History*, iii (1998) pp 9-32.

aspects for discussion the select committee provided a considerable insight into the factors motivating the legislation's introduction.

In total six people presented evidence to the committee, all of whom had a considerable interest in Irish land and agriculture. These included Lord Sligo, Clancarty, Desart, the Bishop of Orthosia, the Bishop of Raphoe, Samuel Nicholson an eminent land valuator, W. Prittie and Charles Cobbe of Newbridge House.¹⁶ This also included the earl of Devon who had chaired the commission bearing his name from 1843 to 1845.¹⁷ The evidence he provided to the committee drew heavily on both his experience of Ireland and the findings of the Devon report. Others who presented evidence included George Alexander Hamilton, an Irish-born MP, who had successfully defeated Daniel O'Connell for a parliamentary seat in 1835, and played a leading role in establishing the Lay Association for the Protection of Church Property.¹⁸ William Monsell, Whig MP for Limerick, later became first Baron Emly. His biographers described him as a resident and conciliatory landlord, owing largely to his promotion of agricultural reform throughout his time in the House of Commons.¹⁹

¹⁶ Barrington, *Prospectus for the Farmers' Estates Society*, pp 37-9.

¹⁷ For more on this see Chapter 1.

¹⁸ G.C. Boase, 'Hamilton, George Alexander (1802-1871)', rev. David W. Miller, *Oxford Dictionary of National Biography online edition*, available at <http://www.oxforddnb.com/view/article/12071> (accessed 17 Jan. 2017).

¹⁹ W.P. Courtney, 'Monsell, William, first Baron Emly', rev. H.C.G. Matthew, *Oxford Dictionary of National Biography online edition*, available at <http://www.oxforddnb.com/view/article/18983> (accessed 17 Jan. 2017).

Names of directors
Earl of Devon
Earl of Courtown
Baron Monteagle
James Stopford, commonly Viscount Stopford
William Maunsell
James Fagan
John Edward Redmond
Francis Goold
Robert Owens
Henry Maunsell
George William Fielding
William Barrington

Fig. 4.1- List of the first directors of the Farmers' Estate Society (Ireland), Aug. 1848.
Source: *Cork Examiner*, 6 Aug. 1848.

With his extensive experience and understanding of Irish land questions, the earl of Devon was perhaps uniquely qualified to comment on the proposal and present evidence to the parliamentary committee. Devon testified that it was imperative they 'grow up a class of smaller proprietors' as a means of bringing about social improvement in Ireland. He stated that there was a large body of persons resident in Ireland in possession of sufficient capital to invest in acquiring small portions of land if it were available to them. This belief would be echoed in later calls for reform and support of the tenant classes such as the Landlord and Tenant Act of 1870 and Gladstone's later land acts. Referring specifically to the stipulation that no lots consisting of below thirty acres should be sold, Devon supported the clause stating his belief that a 'freeholder holding from thirty to fifty acres would be able to bear the pressure of the times as any other person', allowing for the 'misfortune of the previous years'.²⁰ This is one of the first examples of the concept of sustainability as

²⁰ The acres to which the gentlemen were referring were clarified as statute acres during the course of this discussion. *Report from the Select Committee of the Farmers' Estate Society (Ireland) Bill*;

a consideration in relation to the sale of Irish landholdings. This practical consideration is something which was echoed by many of those presenting evidence to the committee. There is little explanation as to how the figure of thirty acres was decided upon but the idea of a minimum freehold can be seen as a template for similar legislation that would follow in the nineteenth and twentieth centuries.²¹

The Select Committee report of the Farmers' Estate Society Bill was presented to the House of Commons on 20 July 1848. Patrick David Jeffers, who took a significant role in this early discussion and was amongst the first to present evidence to the Committee. He later became solicitor for the Society. Jeffers evidence drew extensively from the prospectus document which Matthew Barrington had presented to Peel, quoting at length from the correspondence in the appendix. The first piece of testimony presented to the Select Committee was written by Lord Sligo in March 1848. He stated his belief that the proposal united all the 'desirable qualities of being a first-rate and safe investment speculation, and a scheme certain to produce immense advantages to Ireland'. He went so far as to propose himself as a suitable candidate for taking a role in its business, although not clarifying exactly what this role might be.²² He also included Lord Clancarty's declaration that it would be impossible to deny how important it was to the future welfare of Ireland to create a body of farmers such as that which the legislation proposed. Clancarty would himself become a purchaser of more than 500 acres under the Incumbered Estates Court in 1851, although this purchase was not through the Farmers' Estates Society. Jeffers

together with the minutes of evidence taken before them. H.C. 1847-8 (535), xvii, 359. (hereinafter *Select Committee of the Farmers' Estates Society*).

²¹ For more see Terence Dooley, *The land for the people: the land question in independent Ireland* (Dublin, 2004); Terence Dooley, *The decline of the big house in Ireland: a study of Irish landed families, 1860-1960* (Dublin, 2001).

²² *Select Committee of the Farmers' Estates Society*, p. 33.

recalled the testimony of the bishop of Derry who declared the legislation as ‘devised for the amelioration of the condition of the Irish peasantry, and for the promotion of the tranquillity of Ireland’.²³ A number of things are made clear in the evidence: first, that the legislation was widely supported, and secondly, that it had the significant backing from within the landed gentry who welcomed the admission of a middle-class of proprietor into the Irish landholding system.

The restriction of holdings to a minimum of thirty acres and the fundamental practicalities of this were very much a preoccupation of the committee. It is interesting to note that the Incumbered Estates Bill did not include a stipulation regarding minimum lot size. Nor was there any regulation regarding the minimum number of acres which could be brought forward for auction under either the 1848 or 1849 acts. Despite this, both the Farmers’ Estates Society and Incumbered Estates legislation were seen as working ‘very much in assisting each other’.²⁴ The operation of the Farmers’ Estates Society Bill was contingent on the passing of the Incumbered Estates legislation in order to grant security of title.²⁵ The Incumbered Estates Act, however, could stand alone. Throughout the discussion both reforms were described and viewed as experiments.

When the Farmers’ Estate Society Bill was presented to the House of Lords on 18 August 1848, it polarised opinion. The introduction of the legislation was immediately preceded by an extensive debate on the ‘revolutionary crisis’ in France and the impact which it had on both Austria and Italy. This debate included a discussion of preventative measure and decisive actions which could be taken in

²³ *Ibid.*, p. 33.

²⁴ *Ibid.*

²⁵ *Ibid.*, p. 15.

Britain to prevent similar discontent amongst the lower orders. The threat which such movement presented to the elite may in part explain opposition to the Farmers' Estates measure in the Lords compared with the general support the Bill had received in the House of Commons. Following his evidence to the committee, the earl of Devon opened the Commons debate and remarked that the introduction of such a progressive Bill was 'essential for the welfare of the country... for the improvement of the agriculture of Ireland'.²⁶ He was quick to highlight that while the proposed legislation would not increase the number of small holdings in Ireland significantly, it would regulate the size of the 'portions'. His stance on the matter was best illustrated by the simple example he provided; Devon stated that under the Incumbered Estates legislation, it was possible for him to purchase a lot of 100 acres and then sell it on in one acre lots to 100 different people.²⁷ Although such transactions were discouraged by the establishment, there were no legal structures or frameworks in place to prohibit them. While Devon's point was valid it was equally flawed, as the restriction of thirty acres and above as the optimum size of holdings only applied to land purchased by the Company formed under the act and not to all purchases made through the Incumbered Estates Court. The average size of a lot sold under the Incumbered Estates Court was considerably greater than the suggested thirty acres, standing at just over 300 acres. The size of a lot did vary significantly from sale to sale, ranging from a couple of square feet in urban areas, to the largest lot belonging to the Ballinahinch estate which consisted of 63,477 acres. Devon's primary argument for the introduction of the Farmers' Estates legislation remained that it aimed to facilitate persons hoping to profit from transactions under the

²⁶ *Hansard 3 (Lords)*, ci, col. 255 (18 Aug. 1848).

²⁷ *Ibid.*, col. 256.

Incumbered Estates Court legislation which Barrington had suggested would play a role in securing stability in the country. This statement was perhaps given more traction by the preceding debate on the ongoing revolutions throughout Europe.

Lord Beaumont of Carlton Hall, Selby in north Yorkshire, voiced his opposition to the Bill; he was quick to draw comparisons between the proposed Bill and the National Land Company established by the Chartist leader Fergus O'Connor. The worrying but ultimately uneventful Chartist meeting on Kennington Common was still no doubt fresh in the minds of those present, although the threat of a revolution by the Chartists had significantly subsided. Referring to the European matters which had just been debated, Beaumont accused the House of attempting to introduce and pass a measure on the 'excuse of' disorder in Ireland.²⁸ The marquis of Lansdowne, the first Irish representative to contribute to the debate, highlighted that the measure was intended to complement the Incumbered Estates Act, by facilitating a certain number of individuals gaining access to the land which would be brought to the market.²⁹ There was some further opposition to the proposal, which centred largely on social concerns, in particular representatives warning of the possibility that new owners could resort to evictions following the acquisition of a property. Lansdowne also expressed apprehension at the level of power which would be given to companies created under the legislation.³⁰ In a closing comment before the vote took place Lord Glengall, drew the attention of the House to the clauses relating to

²⁸ Fergus O'Connor was a repeal MP for Co Cork from 1832-5, until he was expelled for failing to meet the property qualification for members. He established the *Northern Star* in 1837 and began to emerge as a leader of the Chartist Movement. His 'Chartist land plan' launched in 1845 and proposed to purchase significant estates and sell them in 3-4 acre lots.

²⁹ *Hansard 3 (Lords)*, ci, col. 257 (18 Aug. 1848).

³⁰ *Ibid.*, col. 255-8. Lord Monteagle stated his support but also his intention to propose amendments, Lord Rodesdale questioned the annual limitations and Lord Clanricarde raised the issue of cruel evictions.

subdivision. He believed that despite any efforts proposed by parliament it would prove impossible to halt the sub-division of Irish estates. Glengall argued that he himself had taken every possible precaution to prevent sub-division on his Tipperary estate but the practice had continued on an extensive scale. Glengall likened the attention required to prevent subdivision and to police the measure to 'a cat watching a mouse' and declared it utterly impractical.³¹

Little more was written about the Society until November 1849 when the first general meeting of shareholders took place. The impetus for the society appears to have been revived as discontent amongst the lower classes came to the fore of proceedings. The *Irish Examiner* reported the Farmers' Estates Societies intention was to create a body 'whose interest it shall be to maintain tranquillity and order', but warned that the condition of Ireland could not be altered with a simple 'stroke of a wand'.³² It continued that any improvement in condition would be as a result of the general and gradual advancement of Ireland. The business which the Company intended to undertake in the work of the society was a step in the right direction.³³

By 1850 the purpose of the Farmers' Estates Society had continued to shift or at least the public's perception of it had and reports of its business had taken a far more radical tone. The *Leinster Express* stated that:

When any particular class of men find themselves as if conspired against by the powers that rule them, their calamities mocked, and their applications for timely aid mocked, mere natural instinct teaches them that there is but one course left, and that to seek in their own energies and association that help which is utterly denied to them... they were obliged to put up with the promulgation of frothy theories and delusive advices.³⁴

³¹ *Hansard 3 (Lords)*, ci, col. 258 (18 Aug. 1848).

³² *Irish Examiner*, 6 Nov. 1849.

³³ *Ibid.*

³⁴ *Leinster Express*, 7 Dec. 1850.

It is here we first learn that the Farmers' Estates legislation had come close to becoming a 'dead letter'.³⁵ Reports stated that the society had only been resurrected in the public conscience when a series of purchases were made by the society's solicitor, Mr Jeffers, on behalf of the group. The purchase was heralded in the press as an example of the advantageous facilities afforded by the Incumbered Estates Act. The role such purchases would play in the improvement of society was particularly emphasised. It is unclear exactly which specific purchase this piece refers to but as illustrated in Fig 4.2 four significant purchases were made within a four month period.

Owner of estate	Date	Location	County	Acres	Rent	Purchase	Year's % rent
John James Bodkin	3 Dec. 1850	Gortaleam	Galway	309	£147	£1,550	10
Earl of Aldborough	29 Nov. 1850	Tullemaine	Tipperary	96	£30	£450	15
Arthur F. Crowe	3 Aug. 1850	Knockafantane	Clare	92	£44	£350	8
Arthur F. Crowe	3 Aug. 1850	Rosslevan	Clare	78	£32	£200	6
William Kelly Wilton	30 May 1851	Cahernamona	Galway	24	£31	£315	10
Total				599	£284	£2,865	10

Fig. 4.2- Location of purchases made by Patrick Jeffers on behalf of the Farmers' Estate Society, Aug. 1850 –May 1851.

Source: *Leinster Express*, 7 Dec. 1850.

The largest of the properties acquired by the Society was in the townland of Gortaleam, County Galway on the estate of John James Bodkin. Patrick Jeffers, was declared purchaser of 309 statute acres which included an unoccupied farm situated in part of the Ragoon House demesne with a rental valuation of £147 per annum.

³⁵ Ibid.

Jeffers was declared purchaser at £1,550 or ten years' purchase.³⁶ In the closing remarks of the day's business, Incumbered Estates Commissioner Longfield remarked that purchases made by bodies such as the Farmers' Estates Society were 'very desirable'.³⁷ However, the purchase at Gortaleam did not go smoothly for the society. On the 14 April 1851, the lot was once again brought forward for sale, the *Freeman's Journal* indicated that the lot was 'adjourned, only 1,500l having been offered for it' which suggests that either the society was unable to complete the purchase due to a financial problem or the purchase price achieved at the sale was later deemed insufficient by a judge of the court. The lot was brought forward for a second time. Jeffers did not compete for the lot. Thomas Bermingham was declared purchaser at just £1,400, a reduction of £150 on Jeffers' original price which the society would have been liable to pay.³⁸

All other lots purchased by the society were significantly smaller. For example, those purchased on the estate of Arthur Cecil Fleming Crowe in County Clare. The first acquisition on this estate consisted of ninety-two statute acres and formed part of the lands known as Glaneen. Once again the price paid for the land was extremely low. With an annual rental of £42, bidding on the estate began at just £200. Jeffers was declared purchaser at £350, which represented a mere eight years' purchase.³⁹ The second acquisition was lot sixteen which consisted of seventy-eight statute acres and had a stated rental income of £31. In this instance the bidding began at £100 and rose

³⁶ *Tuam Herald*, 7 Dec. 1850.

³⁷ *Ibid.*

³⁸ *Freeman's Journal*, 16 Apr. 1850. The figure of £1,500 published is incorrect.

³⁹ *Irish Examiner*, 9 Dec. 1850.

to just £200. Jeffers once again purchased at a bargain price acquiring, the lot at a mere six years' purchase.⁴⁰

On 9 January 1851, the *Evening Freeman* carried a letter sent from Dunmore in County Galway dated just days earlier which discussed the Farmers' Estates Society's purchase of the Bodkin lands at Gortaleam during a 'recent' Incumbered Estates sale.⁴¹ While the sale would later fall through, the letter outlined the processes adopted by the company in relation to advertising for tenants and the financial arrangements which were available to interested parties. Considering the enlightened nature of the legislation, the exercise of the process was in fact extremely restricted. Placards were used to advertise the availability of land and to call for tenders which were received by an agent. The letter suggested that the investments attracted significant attention with tenders received for all of the ten available divisions and advised that a sufficient profit was likely.⁴² However, the proposed financial arrangements, were found to be unaccommodating to the 'impoverished circumstances' of the country and parliament's insistence that half the purchase price of the division be paid down as a deposit by a potential purchaser 'would seriously embarrass any very extensive operations that might be attempted'.⁴³ Despite these advertisements and the collection of tenders, the Gortaleam land was not divided as just over three months later it once again passed through the Court.

All of the purchases detailed in fig. 4.2 were made throughout 1850 but sources suggest that the company was at this point already in a state of decline. On 9

⁴⁰ Ibid.

⁴¹ *Evening Freeman*, 9 Jan. 1851.

⁴² Ibid.

⁴³ Ibid.

December 1850, the *Clare Journal* wrote that a committee composed of ‘spirited and influential’ men had been engaged in ‘working out the objects’ for which the Farmers’ Estate Society had created a detailed prospectus for publication in order to increase public support.⁴⁴ A clear move toward more radical policy can be identified at this point in the society’s history; the *Evening Mail* said that:

Three years ago the land of Ireland, as of England now, was so fast bound in the fetters of the law, that much of it had become nearly useless to the owners and the public. They proposed to carry out their plan... to divide and resell estates in fee to an occupying yeomanry, taking a moiety of the price in deferred instalments. These facilities were offered by the Legislature, though with a niggard hand.⁴⁵

Throughout the lifetime of the society none of the lots purchased exceeded one hundred acres and all were based exclusively in the west of the country. It is unclear whether or not lower cost and less high profile lots were specifically targeted by the Farmers’ Estate Society; however, the concentration of purchases in the west of Ireland could be seen to indicate a concerted effort to keep expenditure low. Jeffers purchased approximately 600 acres for the society through the Incumbered Estates Court for a total of £2,865. The average purchase price of these lots was ten years’ purchase while the national average during this period was approximately twelve.

By this point the Farmers’ Estate Society was struggling to attract investors. The society was dealt a further blow in August 1851 when the failure and bankruptcy of Fergus O’Connor’s National Land Company was made public. This organisation, also known as the Chartists Co-operative Land Society, was founded in 1846 to help the working class satisfy the landholding requirement necessary to qualify to vote in county seats. Regarded by many in parliament as the model upon which the Farmers’

⁴⁴ *Clare Journal and Ennis Advertiser*, 9 Dec. 1850.

⁴⁵ *Ibid.*

Estate Society was based, the declaration of bankruptcy and accusations of corruption within the Chartist Society acted as a warning to potential investors in the Irish equivalent. In a letter addressed to his 'brother shareholder', C. Willis thanked members for the many sacrifices they had made in 'subscribing their hard earnings for the elevation of your enslaved brethren'.⁴⁶ He apologised that they were defrauded by 'designing men and pettyfogging lawyers'.⁴⁷ Referring to O'Connorville, the Chartist land settlement in Hertfordshire, Wallis conceded that while much good had been achieved the scheme had ultimately proved to be a failure. In the high profile events which followed, investors were left without payment. This would not be the only instance where the society was linked to a fraud.

In March 1852, the long awaited revised prospectus of the Farmers' Estates Society was published. This attempt to attract fresh investment was clearly influenced by events which had transpired subsequent to the legislation's enactment. It echoed the revolutionary roots of the scheme but an attempt was made to differentiate itself from previous failed societies such as the National Land Company. The projected income and expenditure for the first year proposed that a nett profit of £10,650 would be achieved in the first year.⁴⁸

The prospectus highlighted that the ideal on which the Farmers' Estate Society was based was not a new idea but, was the same ideal as those which had long occupied the minds of:

⁴⁶ *Northern Star and Leeds General Advertiser*, 9 Aug. 1850

⁴⁷ *Ibid.*

⁴⁸ *Farmer's Gazette*, 27 Mar. 1852. These calculations were based on the anticipation of a quarter of the subscribed capital being paid in the first year producing £125,000 at sixteen years' purchase buying £7,800 per annum. If this was resold at eighteen years' purchase or two years profit the gross profit would be £15,600 with interest of £5,90. Expenses were estimated at £5,000 and an additional £5,320 was deducted for sundry contingencies. This left the nett profit at £10,660.

far seeing men, who desired that the security of property and the foundations of social order and domestic peace should be made to rest on a broader basis than they have heretofore enjoyed, by conferring on a larger number of the population the means of acquiring such an interest in the well-being and order of society, as would render each and every possessor an interested guardian of the general weal.⁴⁹

The committee acknowledged in the prospectus that the vision of how this could be achieved had changed from time to time over the preceding years and that there had been a number of failures. However, they now claimed to be confident that they possessed the means to not only solve a significant social problem but to combine that with advantageous and large commercial profits.⁵⁰ This confidence, it was suggested, came about as a result of the improved calibre of their board of directors which now included some of the leading figures in Dublin commerce. This step allowed the company to establish itself as a business-led investment company with a distinctly Irish identity, distancing itself from failed movements such as the Chartists. This represented a shift from the sphere of British investment to the leading figures of Irish commerce.

⁴⁹ *Weekly Freeman's Journal*, 20 Mar. 1852.

⁵⁰ *Ibid.*

Name of director	Public positions held
Benjamin Lee Guinness	Late Lord Mayor of Dublin, Chairman
Edward O'Donnel	Chairman of Great Southern & Western Railway, Deputy-Chairman
Francis Codd	Honorary Secretary of Chamber of Commerce, Managing Director
Right Hon. John D'arcy	Lord Mayor of Dublin
Sir John Dombrain	
Wyndham Goold, Esq.	Member of Parliament
John Pennefather, Esq.	
Thomas Hutton, Esq.	Solicitor
Lord George Hill	
William Maunsell, Esq.	Member of Parliament
William Dargan, Esq.	
Henry Birch, Esq.	
James Power, Esq.	Solicitor

Fig. 4.3 - Directors of the Farmers Estate Society (Ireland), March 1852.
Source: *Advocate*, 24 Mar. 1852.

Of note amongst the new committee members were Benjamin Lee Guinness of the Guinness brewing dynasty and Edward O'Donnell the chairman of the Great Southern and Western Railway Company, both of whom were significant figures in business and commercial circles.⁵¹ The inclusion of William Dargan was highlighted as dispelling any doubt about the feasibility of the project, as it was suggested that his 'highest ambition was to elevate the humble classes'.⁵² Dargan was an Irish-born roadbuilder who from the 1830s was responsible for building of much of Ireland's early railway system, including those at Dublin and Kingston. He was later responsible for the Dublin Exhibition in 1853. Fergus Mulligan notes Dargan as a key influence in the economy of nineteenth-century Ireland.⁵³ With the singular exception of William Maunsell, none of the original committee members remained. The inclusion of some of the highest profile businessmen in Dublin served as an assurance to potential investors to join them.

⁵¹ *Irish Examiner*, 17 Mar. 1852.

⁵² *Weekly Freeman's Journal*, 20 Mar. 1852.

⁵³ Fergus Mulligan, 'William Dargan' in James McGuire & James Quinn (eds), *Dictionary of Irish Biography*, available online at <http://dib.cambridge.org/viewReadPage.do?articleId=a2407> (accessed 17 Jan. 2017).

The publication of this revised prospectus was not without a degree of controversy. Although the matter was never the subject of parliamentary debate, significant discussion took place in the press. On 15 April the *Londonderry Standard* compared the measure to the Peasant Proprietors Society proposed by Charles Gavan Duffy. This society had failed as many, including John Sadleir MP, felt that 'Mr Duffy's name, as a manager, would be fatal to its success, on account of the events of 1848'.⁵⁴ A number of aspects of the new prospectus were, however, commended. The deposit required for a potential purchase was reduced to one-third of the overall price, with the remainder being repaid by instalments. The society's role in laying the foundations for a class of 'small proprietors' was also highlighted.

The significance of measures such as the Farmers' Estates Society have long been overlooked. While the Farmers' Estates Company was the first joint stock company established to take advantage of the facilities offered by the Incumbered Estates Court, a number similar societies followed. While the Farmers' Estates Society was primarily motivated by profit it was also socially well-meaning and politically astute. Ultimately it was another missed opportunity, undermined by a lack of direct government financial support. The *Advocate* had predicted in March 1852 that while the experiment proposed to do much good in theory, in practice it was unlikely to succeed as a result of serious difficulties in the practical working of the system.⁵⁵ Certainly the continued failure of such societies to attract sufficient investment indicates a degree of truth in this observation.

⁵⁴ *Londonderry Standard*, 15 Apr. 1852.

⁵⁵ *Advocate*, 24 Mar. 1852.

However, despite this a significant number of similar groups were established. These included The Anglo-Hibernian Land Assurance Company, the Small Proprietors' Society, the Irish Freehold Land Investment Society and West Irish Land Company and the Irish Land Company. Each was created with a specific aim. The Irish Freehold Land Investment Society was established with the express intention of taking advantage of the peculiar benefits to the industrial classes presented by the Incumbered Estates Court.⁵⁶ This society was linked with the National Freehold Land Society established in England years earlier under the presidency of Sir Joshua Walmsley a liberal MP, Joseph Hume, former Liberal MP for Kilkenny, and his party colleague, Richard Cobden, a leading English manufacturer who sought to facilitate the acquisition of small plots of land by a wider demographic of people and thus extend enfranchisement. The West of Ireland Land Company was established in March 1852 with a specific focus on acquiring waste land in Connaught. Citing Mr William Digby Seymour's publication *How to employ capital in Western Ireland*, it was suggested that the West of Ireland presented a number of particular advantages for the investment of capital. These benefits were identified as social, industrial and geographical.⁵⁷ Seymour had stated that the people of western Ireland were intelligent, docile, active and peaceable. He championed the reclamation of waste land as the most profitable source of investment and that land in the West of Ireland provided the cheapest opportunity to do so. He illustrated this through a comparison of the cost per acres of waste land throughout the empire. (see Fig. 4.4)

⁵⁶ *Dublin Weekly Nation*, 16 Nov. 1850.

⁵⁷ William Digby Seymour, *How to employ capital in western Ireland: being answers to a few practical questions upon the manufacture of beet-sugar, flax, chicory, in connexion with a land investment in the west of Ireland* (3rd ed, Dublin, 1851), p. 213

Country of location	Cost per acre
West Canada	8s
East Canada	6s
New Brunswick	5-10s
Prince Edward's Island	10-14s
Australian colonies	30s
Falkland Islands	8s
Ceylon	20s

Fig. 4.4- Price per acre of waste land in the British Empire, 1851.⁵⁸

The Incumbered Estates Court afforded the society an opportunity to acquire land quickly and with clear title. Despite this clear mission statement the West of Ireland Land Company did not flourish.

A more successful example was that of the Irish Land Company. While the target of the Farmers' Estates Company had changed from attracting foreign investors to seducing Irish merchants, this newer incarnation sought solely to attract shareholders from England and Scotland. Incorporated by Royal Charter on 25 March 1852, the Irish Land Company was established with capital of £500,000, in 20,000 shares at £25. In its prospectus the company stated its intention:

The Irish Land Company is established for the purpose of purchasing property which is daily offered for sale in large quantities in the Encumbered Estates Court; and for improving, by the expenditure of a portion of its fund, the property purchased; and disposing of it, in its improved condition, in such quantities as can be advantageously resold either for occupation or investment.... To drain, construct, or repair, farm roads,- to build farm-houses and out-buildings... and generally make all the improvements necessary to give it a marketable value.⁵⁹

As with the Farmers' Estates Society it intended to offer tenants wishing to purchase estates the opportunity to do so. However, unlike the earlier body, the Irish Land Company established a payment scheme which allowed the total purchase to be

⁵⁸ Ibid., pp 226-7.

⁵⁹ *Manchester Times*, 16 June 1852.

repaid in instalments over an extended period of time.⁶⁰ This provided an additional incentive for tenant purchasers and made capital available for improvements to the holding. Those who marketed the company were quick to promote it as a ‘secure... profitable and safe return for capitalists’; while highlighting that it would also prove a great social advantage to the areas in which it invested, echoing the rhetoric already established by the Farmers’ Estates Society.⁶¹ The composition and directors of the Irish Land Company in 1852, differed significantly from those of the Farmers’ Estates. There were initially seventeen directors, drawn not just from the political sphere, but from the world of business and investment. When advertising shares in the English media the company included the occupation of each of its directors and also their addresses (see fig. 4.5). It was highlighted that men such as Vincent Scully, with a prestigious address at Merrion Square in Dublin, not only lived in a prestigious area of the capital but was also an MP and banker which served to make him a credible and appropriate investor.⁶² Where possible the name of a country seat was included such as Kirklees Hall in West Yorkshire whose owner Henry W. Wickham of the Lancashire and Yorkshire Railway was an investor in the Irish Land Company.

⁶⁰ Ibid.

⁶¹ *Stamford Mercury*, 4 June 1852.

⁶² Vincent Scully was a barrister, landowner, banker and politician born in County Tipperary. He was a supporter of agrarian reform and was first elected to the House of Commons in March 1852. Scully was a director of the Tipperary Bank from 1848-1852. For more chapter 5.

Name of director	Location	Occupation
George Anderton, Esq.	Cleckheaton, near Bradford	Managing Director of Lancashire and Yorkshire Railway
William Bradford, Esq.	Manchester	
Alexander Brogden, Esq.	Edgbaston, Birmingham	Railway contractor, South Staffordshire Line.
John Brearly Payn, Esq.	Birmingham	Director of Leicester and Birmingham Railway
Nathaniel Buckley, Esq.	Ryecroft, Ashton-under-Lyne	Mayor of Ryecroft
William Firth, Esq.	Leeds	Mining & Engineering
Right Hon Thomas Milner Gibson MP	London	Former Vice-President of the Board of Trade
John Hawkshaw, Esq	London	Civil Engineer
Herbert Ingham, Esq.	Loudwater, Rickmansworth, Herts	Founder of the Illustrated London News
T. W. Kinder, Esq.	Monkstown	
William Rawson, Esq.	Wilton Polygon, Manchester	Director of London North Western Railway
Thomas Roberts, Esq.	Holly Bank, Cheadle, Cheshire	Master shipwright of Devonport Dockyard
Henry Rawson, Esq.	Halliwell-Lane, Manchester	Cloth merchant
Vincent Scully, Esq, MP.	Merrion Square, Dublin	Banker and MP
John Sadleir, Esq. MP	Albany, London	Banker And MP
George Wilson, Esq.	Cheetwood Lodge, Manchester	Printers and Newspaper proprietors
E. Walters, Esq.	Cooper Street, Manchester	Architect
H. W. Wickham, Esq.	Kirklees Hall, Mirfield	Lancashire & Yorkshire Railway

Fig. 4.5- Names of investors in Irish Land Company, June 1852.
Source: *Manchester Times*, 16 June 1852; *Stanford Mercury*, 4 June 1852.

Based in Manchester, the Irish Land Company later became known as the Irish Land Company of Exchange Arcade in the City of Manchester.⁶³ In August 1853, in advance of the first annual meeting of the company the names and locations of the company's directors were published once again. Following the pattern seen in the case of the Farmer's Estates Society, the majority of investors were still identified as English but the names had changed significantly.

⁶³ *Tipperary Vindicator*, 6 May 1859.

Having developed a reputation as an astute businessman whose name ‘guaranteed the soundness of a scheme’, John Sadleir had taken a more significant role, moving to the top of the list of directors.⁶⁴ In addition to embodying the type of investor which the Incumbered Estates Court hoped to attract, Sadleir was also a prime investor for the Irish Land Company (fig. 4.6).

Name of director	Location
Mr George Wilson	Manchester
John Sadleir, MP	London
John Brogden	Manchester
William Bradford	Manchester
John Brearly Payn	Birmingham
Alexander Brogden	Birmingham
Nathaniel Buckley	Ashton-under-Lyne
Thomas Roberts	Manchester
Henry Rawson	Manchester
F. Swanwick Whittington	Rochdale
J. Howard	Rochdale
Peter Whitehead	Rawtenstall
Peter Smiles	Not stated

Fig. 4.6 -Directors of the Irish Land Company at first general meeting in August 1853.
Source: *Dundalk Democrat*, 18 July 1891.⁶⁵

At the first annual meeting a report was presented which detailed the name, location and extent of the estates which had been purchased in the previous year. These estates were all acquired on behalf of the company by John Sadleir.

Location of the estate	County	Acres	Purchase paid
Kingston Estates	Tipperary, Limerick & Cork	20,834	
Lane & Cooke estate	Tipperary & Kilkenny	5,713	
Thunder estate	Wexford	304	
Oranmore estate	Galway	355	
Total		27,206	£115, 634 1s 8d.

Table 4 7- Purchases made by Irish Land Company up to August 1853.
Source: *Farmers Gazette*, 27 Aug. 1853.

⁶⁴ *Dundalk Democrat*, 18 July 1891.

⁶⁵ *Farmers Gazette*, 27 Aug. 1853.

Newspaper reports show that at this point the Irish Land Company was a success, with an interest payment of 4 per cent being paid to shareholders and a balance of £1,623 being placed to the credit of the company. Furthermore, a healthy profit was expected following the completion of a 'thorough drainage scheme' on 850 of the acres acquired.⁶⁶ Months earlier, in March 1853, the Dublin City Steam Packet Company was reported to have brought the 'first portion of a selected herd of young cattle' and ten work horses across from Liverpool for the Irish Land Company.⁶⁷ This stock was moved to the Lanespark and Poynstown properties in south Tipperary, purchased by the Company and reports suggested that a further significant delivery was expected for the 20,000 acres which had been purchased on the Kingston estate in County Cork. This pattern of prosperity continued. In August 1854 at the annual general meeting it was reported that more than £4,000 had been expended on drainage and approximately £7,500 had been spent on farming operations.⁶⁸ However, this apparent success was not to last and in November 1855 the Company advertised the sale of 934 acres including Fairfield House.⁶⁹ It was stated in this advertisement that 'nearly the whole' of this estate was in the hands of the owners and that a considerable sum had been expended on drainage, fencing and other valuable improvements. A further sale of 2,000 acres in Ballylanders and Kilbeheny county Limerick took place in November 1855. This estate was broken-down into eight lots, comprising of between ninety-eight and 500 acres which were described as capable of 'considerable improvement'.⁷⁰ An additional eighty-two

⁶⁶ Ibid.

⁶⁷ *Irish Examiner*, 2 Mar. 1853.

⁶⁸ *Freeman's Journal*, 19 Aug. 1854.

⁶⁹ Ibid., 9 Nov. 1855.

⁷⁰ *Freeman's Journal*, 12 Nov. 1855.

acres in county Kilkenny, including a dwelling house and other buildings, were advertised for sale in December 1855.⁷¹ No explanation for either sale was given but there was a suggestion in the advertisement that a large portion of the bog land included in the sale could be 'reclaimed for a trifling expense'.⁷²

The Irish Land Company collapsed after the death of John Sadleir in 1856.⁷³ Sadleir was found to have swindled the Incumbered Estates Court and the Tipperary Bank, amongst others, out of thousands of pounds through a number of fraudulent land transactions. As was the case with the Tipperary Bank and his dealings with the Incumbered Estates Court, Sadleir's involvement with that Irish Land Company led many of its transactions to be called into question. In May 1857, the judges of the Incumbered Estates Court heard a case pertaining to the Poynstown estate. The property had been petitioned through the Court in 1849. Shortly after this John Sadleir presented a proposal for the private purchase of the estate in the name of another undisclosed party for the amount of £14,000. This sum was paid in October 1852. As would later be the case with the Castle Hyde estate in Cork, Sadleir utilised a complex system of 'imaginary' investors in the negotiations and proposed to sell the estate to William Francis Eyre, the brother of Thomas Joseph Eyre under whose name Sadleir defrauded the Incumbered Estates Court. William Eyre made payment of £16,000 for the property and was presented with a deed forged by Sadleir. It was not until after the death of Sadleir that the authenticity of the document was questioned and it came to light that subsequent to receiving Eyre's payment, Sadleir had proposed to the Irish Land Company that the purchase of the Poynstown and

⁷¹ Ibid., 12 Dec. 1855.

⁷² Ibid., 14 Nov. 1855.

⁷³ For more detailed analysis of the Sadleir frauds see chapter 5.

Lanespark estates would be a 'judicious' investment for the company. A sum of £49,225 was paid to Sadleir who was responsible for its distribution.⁷⁴ The case concerned, therefore, whether it was the Land Company or Eyre that had been defrauded. Commissioner Hargreave stated that in May 1855 the purchase money had been lodged with the Incumbered Estates Court and the properties conveyed to the Irish Land Company. It was the decision of the court that Eyre was not the rightful owner. The Court concluded that as a result of the fraud the company was entitled to an absolute credit against John Sadleir's purchase money amounting to £14,840.⁷⁵

This case was widely reported by the press and the Company, although not found to be at fault, were implicated by their association with Sadleir. Following this highly publicised hearing the company went into rapid decline and began to liquidate their assets. In January 1858, the Irish Land Company 'in anticipation of the re-sale of Lanespark' directed the sale of their 'highly-bred' stock of approximately 188 fat bullocks, 288 breeding ewes in lamb, 277 rams, eleven brood mares in foal and eighteen fine colts. In addition, farm machinery, nine ton of unground bone, 70,000 bricks, 250 barrels of oats and barley, ninety ton of mangolds, forty barrels of potatoes and twenty-two acres of Swedish turnips were also sold.⁷⁶ The re-sale took place on 15 June 1858.⁷⁷ The Irish Land Company was a speculative and risk based venture which did not seek to offer land to tenants and establish a stable new landowning class. Like most companies it was set up primarily for the enrichment of its investors. However, from the view of the Incumbered Estates Court and land

⁷⁴ *Freeman's Journal*, 8 May 1857.

⁷⁵ *Nation*, 23 May 1857.

⁷⁶ *Freeman's Journal*, 16 Jan. 1858.

⁷⁷ *Ibid.*, 9 Apr. 1858.

investment, the Irish Land Company was committed to the improvement of Irish land, drainage and agricultural reform, all of which were a significant part of the government's reform plans for Ireland. The creation of land companies such as the Farmers' Estate Society and the Irish Land Company, had they proved more successful, would have minimised the need for further government intervention in two distinct parts of the Irish land question: the prospect of facilitating tenant ownership, and the financing of further schemes for drainage and agricultural reforms.

The establishment of the Farmers' Estates Society was the first of a number of measures introduced to facilitate the acquisition of land. On the 25 March 1850, just days before the Easter recess, the solicitor general, John Romilly, rose to explain the provisions of the Security for Advances Bill which he had designed to provide 'ample and effectual' securities to lenders and purchasers wishing to arrange loans to buy land being sold under the Incumbered Estates Act. He did so in the hope that the legislation would be printed and circulated during the recess. In essence Romilly's scheme proposed that purchasers under the Court could borrow half of the purchase money by raising a charge on their newly-acquired estate. This would permit the prompt payment of amounts due to some of the estates' incumbrancers, secure the purchase, and as a fixed term was set for the repayment it allowed the new purchaser to retain some capital to invest in improvements on the property.⁷⁸ Defending the measure, which many argued disencumbered an estate only to immediately incumber it again, Romilly argued that it was not within the government's power to stop a party borrowing to purchase under the Incumbered

⁷⁸ *Hansard 3 (Commons)*, cx, col. 114 (9 Apr. 1850).

Estates Act. He stated that under the system which he proposed, borrowing levels could be regulated to some degree.⁷⁹ By bringing forward this measure Romilly was acknowledging that the investment which had been expected had not materialised. It had become clear by 1850 that the British and Scottish capital which the Court had hoped to attract was not forthcoming to the extent which was required. It was widely recognised that alternative purchasers were needed if the re-anglicising element of the Court's role was to prove a successful experiment.

On 9 April 1850, John Romilly again rose to bring forward the bill to provide for simple and effective securities for advances to purchasers under the Incumbered Estates Court.⁸⁰ Romilly stated that the creation of a large class of English purchasers in Ireland was only possible through the introduction of this additional measure. He recommended the introduction of a further inducement for English capitalists to advance money on the security of purchases soon to be made in Ireland to persons already resident in the country.⁸¹ Under the terms of Romilly's Bill to provide for advances to purchasers through the Irish Court. The Commissioners of the Court were permitted to charge land purchased with advanced money in favour of the person advancing part of the purchase money.⁸² As with the Farmers' Estates legislation, Romilly acknowledged that while it was unlikely that English capital would be invested in the acquisition of extensive Irish estates there was a significant benefit in supplying capital to assist those who were willing to acquire property under the act. Romilly's proposal was clear: the amount borrowed could be no more

⁷⁹ *Ibid.*, col. 115.

⁸⁰ *Ibid.*, col. 100.

⁸¹ *Ibid.*, col. 102.

⁸² *Securities for advances (Ireland). A bill to provide more simple and effectual securities for advances to purchasers of incumbered estates in Ireland*, p. 1, H.C. 1850 (207), viii, 49.

than half the value of the land being purchased. The measure provided security for the investor including a signed legal document of title and a stipulation that if three months arrears accumulated, the property was subject to re-sale.⁸³ In cases where all payments were made by the purchaser the estate was transferred subject to the charges created by the new measure.⁸⁴ Romilly suggested that the introduction of this act would particularly facilitate those residing in remote parts of Ireland, who having 'saved a little money and borrowed as much more' intended to purchase a small estate and develop it. The bill allowed for the discharge of all incumbrances and expenses while ultimately allowing the new owner to 'live many years in the perfect enjoyment of an unincumbered property'.⁸⁵ In acknowledging that the proposal was open to manipulation by existing landowners who were already incumbered, it was highlighted that there was no means of preventing this under or outside of the legislation. Lucius O'Brien, brother of William Smith O'Brien and MP for Clare, who had been an ardent supporter of the Incumbered Estates Act, suggested that while ministers were legislating in the spirit of kindness towards Irish proprietors, it was unlikely that Baron Richards and his colleagues in the commission would support the introduction of this supplementary measure that would considerably increase their workload.⁸⁶ Joseph Napier, MP for Dublin University, advocated for the introduction of the bill in order to stimulate discussion on the effects of trying the 'experiment'.⁸⁷ John Sadleir, unsurprisingly, supported the principle of the measure arguing that the advances proposed by the legislation should

⁸³ *Hansard 3 (Commons)*, cx, col. 102 (9 Apr. 1850).

⁸⁴ *Ibid.*, col. 103.

⁸⁵ *Ibid.*, col. 104.

⁸⁶ *Ibid.*, col. 110.

⁸⁷ *Ibid.*, col. 112.

be made through the Bank of Ireland or the insurance companies in Ireland. Sadleir suggested the simplification of the means of borrowing money on land was a 'matter of the highest consequence'.⁸⁸

It was during the introduction of this measure that certain weaknesses of the Incumbered Estates Act were acknowledged. Augustus Stafford, MP for Northamptonshire, noted his great sadness that 'government had given up all hope of witnessing the investment of English capital in Irish property'.⁸⁹ Stafford was quick to assign blame, arguing that this failure was due to the manner in which the landed class of Ireland had been portrayed, suggesting that to outside observers there was more 'blame and obloquy' thrown on them than any other body. He continued that by representing them as a 'doomed class' the government had provided little inducement for others to join their ranks.⁹⁰ On 25 April 1850, Lord Naas moved that a second reading of the bill be postponed for six months as he considered the measure a step in the 'wrong direction'. His argument rested on three points. The first was that the legislation was a significant infringement on the Incumbered Estates legislation; secondly that the provisions were not likely to effect the end in view; and thirdly that it was fraught with injustice to the existing proprietors of land in Ireland.⁹¹ Fitzstephen French, Liberal MP for Roscommon, noted that the proposal before the house defeated the intentions of the Incumbered Estates Act and rather than inspiring potential landed proprietors with confidence, it would only serve to spread alarm. Citing the success of the Incumbered Estates to an 'extent which can

⁸⁸ *Ibid.*, col. 113.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*, col. 114.

⁹¹ *Hansard 3 (Commons)*, cx, col. 806-811 (25 Apr. 1850).

hardly be contemplated', others suggested that a measure which encouraged competition was a necessary corollary.⁹² The general case made by those in opposition to the bill was that the measure had been calculated to sacrifice the interests of the embarrassed landowners of Ireland to the profit of English speculators.⁹³

Here the parliamentary progress of the bill appeared to halt. On 31 May 1850, the *London Daily News* reported that John Romilly had made up his mind 'not to extend' the bill further and, as per Sadleir's suggestion, the Bank of Ireland would be empowered to make advances on the security of estates a privilege which it had not previously enjoyed.⁹⁴ On 27 June 1850, the bill was included in the orders of the day, which suggested that it had been sent to committee.⁹⁵ Just days later, on 4 July, Lord John Russell announced that the Securities for Advances (Ireland) Bill was to be postponed. In explaining his motivations, Russell stated that there had been significant opposition which could not be adequately dealt with in the remaining period of the session.⁹⁶ A subject of securities for advancements under the Incumbered Estates Court did not reappear until February 1851 when Sadleir questioned whether Romilly intended to reintroduce the Bill, in addition to a further bill to amend the Incumbered Estates Act before the Easter recess. In response the solicitor general stated it was his intention to introduce a measure at some time but he did not confirm when.⁹⁷ Sadleir raised this question again in May and again in

⁹² *Western Courier*, 2 May 1850.

⁹³ *Dorset County Chronicle*, 2 May 1850.

⁹⁴ *London Daily News*, 31 May 1850.

⁹⁵ *Morning Post*, 27 June 1850.

⁹⁶ *Hansard 3 (Commons)*, cxii, col. 900 (4 July 1850); Despite the Bill's postponement the Lord committed the measure *pro forma* following a lengthy discussion; *Kentish Independent*, 10 Aug. 1850.

⁹⁷ *Waterford Mail*, 12 Feb. 1851.

June when there were calls for the measure to be re-introduced.⁹⁸ The legislation did not reappear. Reflecting on the measure in February 1852, the *Catholic Telegraph* noted the intention of the bill had been to assist in limiting the heavy fall in the value of land in Ireland by permitting purchasers to raise half the value in transferable land debentures. It was suggested that Irish landowners had petitioned for the introduction of the measure which would enable any landowner to raise money.⁹⁹ It was suggested that this was the real reason for the proposal's demise.

The extent to which the measure would have encouraged or aided investment under the Incumbered Estates Court is difficult to ascertain. Certainly the ready availability of funds would have eased the perceived pressure on investors; however, as had been noted in the parliamentary debate, there were alternative avenues to secure investment. Romilly's desire to introduce straight forward access to funding which could have been secured on the lands being purchased would have widened the base of yeoman farmers in Ireland to act as a bastion against unrest and rebellion. Romilly's efforts were not a success; however, they laid the foundation for similar measures which were introduced later in the century to restructure Irish land ownership.¹⁰⁰

The Securities for Advances and the Farmers' Estate Society Bills were designed with the express intention of taking advantage of the facilities provided by the

⁹⁸ *Dundalk Democrat*, 31 May 1851; *Bell's Weekly Messenger*, 14 June 1851.

⁹⁹ *Catholic Telegraph*, 14 Feb. 1852.

¹⁰⁰ For more see D.C. Heron, 'On the landlord and tenant (Ireland) Act, 1870 in *Journal of the Statistical and Social Inquiry Society of Ireland*, vi (1871), pp 64-73; J.H. Edge, 'The purchase of land (Ireland) Act, 1885, generally known as Lord Ashbourne's Act' in *Journal for the Statistical and Social Inquiry Society of Ireland*, iv (1886/7), pp 126-136; Patrick Cosgrave, 'The Wyndham Land Act, 1903: the final solution to the Irish land question' (PhD thesis, Maynooth University, 2008);

Incumbered Estates Court. The Securities for Advances Bill was designed to provide funding for parties to make purchases; this provision was incorporated into later bills designed specifically to facilitate tenants acquiring estates from landlords. The failure of the Securities for Advances Bill proved that, for effective provisions to be made to tenants to acquire land under the Act, they should have been incorporated into it. The Farmers' Estates Society failed in its philanthropic endeavours. Later companies modelled on the basis also failed. It became clear that in the Irish context, the drive and motivation of the individual investors triumphed over the intent of such investment companies.

Throughout the lifetime of the Court there were many calls for reform to the act itself. However, these calls were generally ineffective. The first Incumbered Estates Act amendment was introduced in June 1850 by the marquis of Westmeath. Describing the 1849 Act as a 'system of confiscation' under which land could be sold at a significantly deflated value, he questioned 'were experiments of this kind fit to be tried in Ireland?'.¹⁰¹ The bill which he presented called for a number of amendments. The most noteworthy of these was to set minimum sale value for land which was sold through the Court. The marquis proposed that this figure be set at no less than fifteen years' purchase. He contended that failing to accede to this request would indicate that the government intention was confiscation and 'nothing else'.¹⁰² At a third reading of the bill in the House of Lords on 18 June 1850, the earl of Carlisle, later lord Lieutenant of Ireland, noted that to include such a stipulation on the sale of incumbered estates in Ireland would render the legislation redundant as

¹⁰¹ *Hansard 3 (Lords)*, cxi, col. 932 (10 June 1850).

¹⁰² *Ibid.*, col. 933.

no sale could possibly be effected. Carlisle observed that there was an infinite variety of circumstances which brought estates before the Incumbered Estates Court and properties came to the commissioners in significantly varying conditions. Although the introduction of a minimum purchase price could be considered for estates which were well cultivated; for properties which were tenanted by paupers and the unproductive it was an outrageous expectation. He further suggested that the rental figure had to be considered, noting that rents which the Court quoted were those which were set as opposed to those which were received. He cited the example of a Galway estate which sold for £4,650. This price, Carlisle stated, was ten years' purchase on the amount of the rent at which it was nominally let, but it was forty years' purchase on the amount of rent which was actually received.¹⁰³ Similar points were made in the Commons where it was noted by Romilly that the rentals of estates were frequently set at a considerably larger sum than the actual rent which was received.¹⁰⁴ As George Moore, MP for Mayo, warned those citing the benefits of the amendment they were 'pronouncing funeral orations' over a bill which was dead.¹⁰⁵ The bill was then withdrawn.

There was no amendment proposed to the Incumbered Estates Act in 1851.¹⁰⁶ On 17 May 1852 the Incumbered Estates (Ireland) Act was introduced into the public minutes of the House of Commons. Under this amendment the period of the Court

¹⁰³ *Hansard 3 (Lords)*, cxii, col. 3-4 (18 June 1850).

¹⁰⁴ *Incumbered Estates (Ireland) Act amendment. A bill intituled an act to amend an act of the last session of Parliament, intituled "an act further to facilitate the sale and transfer of incumbered estates in Ireland"*. H.C. 1850 (528), iii, 351; *Hansard 3 (Commons)*, cxiii, col. 913 (7 Aug. 1850).

¹⁰⁵ *Hansard 3 (Commons)*, cxiii, col. 926 (7 Aug. 1850).

¹⁰⁶ Although no amendment was introduced to the legislation, a proposal was brought forward to encourage the granting of leases on incumbered estates, *Incumbered estates leases (Ireland). A bill to encourage and facilitate the granting of leases on incumbered estates in Ireland*. H.C. 1851 (109), iii, 563. For more see Chapter 3.

was extended for a further four years.¹⁰⁷ During debate on the Bill in June 1852, Fitzstephen French, MP for Roscommon, criticised the Tory party for bringing forward a measure which they had vehemently opposed before coming into power. French who had supported the 1850 amendment questioned why the House was not content with having ‘swept away half the gentry, and almost depopulated the entire country’. He warned that granting the continuance was the first step to creating a permanent court.¹⁰⁸ Isaac Butt, MP for Youghal, and later founder of the Irish Home Government Association, noted that Ireland was in an unexampled depression and criticised government for passing a law which placed such a quantity of property on the market. He continued:

the operation of this Court has produced more individual misery and more individual wrong than any revolution that has ever taken place in any civilised country.¹⁰⁹

The marquis of Landsdowne argued that the commission had made an important impact on the state of Ireland but had only accomplished a ‘small proportion of the good which it was intended to confer’.¹¹⁰ Despite such shortcomings the Act was extended for a period of up to four years.

In 1853, the Incumbered Estates Act was again modified. The amendment called for the act to be extended to allow for the presentation of petitions for a further two years. Again, this was strongly opposed by a number of Irish members led by Butt, who reiterated his belief that the Court was a ‘grievous wrong’ and had inflicted

¹⁰⁷ *Incumbered Estates (Ireland). A bill to continue the powers of applying for a sale of lands under the act for facilitating the sale and transfer of incumbered estates in Ireland.* H.C. 1852 (366), ii, 433. *Hansard 3 (Commons)*, cxxi, col. 683 (17 May 1852); Incumbered Estates (Ireland) Act, 1852 (15 & 16 Vict. c. lxxvii).

¹⁰⁸ *Hansard 3 (Commons)*, cxxii, col. 984 (18 June 1852).

¹⁰⁹ *Ibid.*, col. 991.

¹¹⁰ *Hansard 3 (Lords)*, cxx, col. 172-3 (26 Mar. 1852).

'great evil'.¹¹¹ It was feared that granting an additional continuance was the first step towards establishing the Commission as a permanent body.¹¹² Joseph Napier warned that if the proposed amendment was not passed, the value of land would drop significantly and land could return to the same position as it had held before the measure. Napier noted that despite the earlier promises of the Russell administration, no significant changes had been made to the processes of the Court of Chancery.¹¹³ The question of unincumbered estates was also raised, with Lord Monteagle questioning why an owner who had not incumbered his estate and practiced good management should be forced to sell at a grievous disadvantage.¹¹⁴ These recommendations were overlooked. However, the suggestions of the Commissioners that the rights of tenants should be more adequately considered were addressed by the measure. These amendments called for the redress of the clauses relating to tenant right, rents and leases. Equally, while protecting the rights of tenants, it also undermined them by permitting commissioners to include arrears of the rent in the sale of an estate. The 1853 continuance measure, which extended the operation of the act, significantly amended the claims of the former owner over the estate.¹¹⁵

During initial debate on the future of the Irish Incumbered Estates Court in July 1854, it was suggested that the Court should be made a permanent body and a select committee was set up to enquire into the best process for facilitating the future sale

¹¹¹ *Hansard 3 (Commons)*, cxxix, col. 691 (22 July 1853).

¹¹² *Hansard 3 (Commons)*, cxxii, col. 984 (18 June 1852).

¹¹³ *Ibid.*, cols 985-6.

¹¹⁴ *Hansard 3 (Lords)*, cxxviii, col. 504 (21 June 1853).

¹¹⁵ *Incumbered Estates (Ireland) Act continuance. A bill intituled an act for continuing and amending the act for facilitating the sale and transfer of incumbered estates in Ireland*, H.C. 1852-3 (731), iii, 735; *An Act for continuing and amending the Act for facilitating the Sale and Transfer of Incumbered Estates in Ireland*. (16 & 17 Vict., c. lxiv). For more on amendments in relation to tenancies and landholding see Chapter 5.

of landed estates.¹¹⁶ The completion of Romilly's exhaustive report in 1855, to ascertain the results of the experiment, recommended the establishment of a permanent court equivalent to the Incumbered Estates Court but with a jurisdiction not simply confined to indebted estates.¹¹⁷ In order to permit sufficient time for the recommendations of the committee to be considered, the Incumbered Estates Bill was extended for an additional period of not more than two years and no significant amendments were made.¹¹⁸ The Incumbered Estates Court was never intended to be a permanent body, its function was solely remedial. Amidst growing criticism of the continued existence of both the Incumbered Estates Court and the Court of Chancery, effectively two tribunals with overlapping jurisdiction, government set about creating a measure to incorporate the former under the authority of the latter. Between 1855 and 1857, the Incumbered Estates Commission existed in a state of limbo.

Conclusion

The abolition of the Incumbered Estates Court had been prevented by the continued failure to reform the practices and procedures of the Court of Chancery. To many in parliament, amalgamating the two bodies would confer the benefits of speed and economy offered by the Incumbered Estates to proceedings under the Court of

¹¹⁶ *Hansard 3 (Lords)*, cxxxv, cols 952-4 (31 July 1854); *Incumbered Estates Inquiry Commission, Ireland. Report of Her Majesty's commissioners appointed to inquire into the Incumbered Estates Court, and into the continuing of it, or transferring its power to the Court of Chancery; together with an appendix, containing evidence and returns*, [C. 1938], H.C. 1854-55, xix, 527.

¹¹⁷ *Incumbered Estates inquiry report*, p. ix.

¹¹⁸ *Hansard 3 (Lords)*, cxxxix, col. 796 (12 July 1855); An Act to extend the period for applying for a sale under the Acts for facilitating the sale and transfer of incumbered estates in Ireland, 1855 (18 & 19 Vict., c. lxxiii).

Chancery. In 1855, James Whiteside, Ireland's attorney general, had introduced a series of reforms designed to reform the Chancery, one of which would transfer the power to sell incumbered estates under its jurisdiction.¹¹⁹ This series of measures was again introduced in the following year.¹²⁰ Whiteside proposed to establish a Landed Estates Court which would effectively restore the court it was designed to replace.¹²¹ The Landed Estates Court, unlike its predecessor, was funded by a charge on the purchase money raised on the sales of estates. It remained a court of record and even retained Commissioners Hargreave, Longfield and Henry Martley, who had replaced Baron Richards in 1857, as judges of the Court. Its jurisdiction was greatly increased. It was no longer solely concerned with the sale and transfer of incumbered estates, but could administer all questions connected with settlement of title to land. This included the sale of unincumbered estates.¹²² The power to grant parliamentary title was retained and extended to situations where no sale took place but where the owner wanted their title declared in Court.¹²³ The new body was also charged with the sale of settled estates under the provisions of the Settled Estates Act 1856 and all sales of land pursuant in the Courts of Equity were transferred to the Landed Estates Court.¹²⁴ The functions of the Court grew considerably between 1858 and 1877 when it was replaced by the Land Judges Court. Despite the enlargement of the Court's jurisdiction, the primary business of the Landed Estates Court remained the sale and transfer of incumbered estates (fig. 4.8). J.A. Dowling noted

¹¹⁹ *Hansard 3 (Commons)*, cxxxviii, col. 68 (3 May 1855).

¹²⁰ *Court of Chancery (Ireland) procedure.. A bill to amend the practice and course of proceeding in the High Court of Chancery in Ireland*. H.C. 1856 (12), ii, 283.

¹²¹ J. A. Dowling, 'Landed Estates Court, Ireland' in *Journal of Legal History*, xxvi, (2005), p. 152.

¹²² An Act to facilitate the sale and transfer of land in Ireland, 1858 (21 & 22 Vict. c. lxxii).

¹²³ Dowling, 'Landed Estates Court, Ireland', p. 154.

¹²⁴ An Act to facilitate leases and sales of settled estates. (19 & 20 Vict. c. cxx).

that at least one third of the petitions presented were removed after initial proceedings. Government's commitment to preserving the Incumbered Estates legislation as it was first established indicated their commitment to the experiment, utilising Ireland as a laboratory. Amendments were only made to curb social unrest and pacify the interests of the emerging Tenant Right Movement.

Year	Petitions for sale of incumbered estates	Petitions of the sale of unincumbered estates	Petitions for sale of settled estates
1858	38	2	
1859	289	27	
1860	327	22	
1861	410	42	
1862	42	4	
1863	456	50	5
1864	429	43	1
1865	432	49	1
1866	404	46	0
1867	401	34	1
1868	343	35	2
1869	297	31	0
1870	328	25	0
1871	321	31	0
1872	291	32	1
1873	311	31	1
1874	315	34	0
1875	329	37	0
1876	267	35	0
1877	273	19	1
Total	6303	629	13

Fig. 4.8 - Sales of incumbered, unincumbered and settled estates in Ireland under the Landed Estates Court, 1858-77.

Source: Dowling, 'Landed Estates Court, Ireland', p. 166.

Chapter 5

Unforeseen effects of the revolution

In designing the revolutionary legislation which governed the processes of the Incumbered Estates Court a great number of factors were considered. What was the best means of attracting significant investment from outside of Ireland? What would be the most efficient means of progressing to the sale of an estate? How incumbered should an estate be before a sale could be effected? How would a sale be advertised? While these aspects of the legislation attracted significant attention, a number of other factors were overlooked, specifically the impact a sale would have on the tenantry, the rights of the former owner and the potential for fraud under the act. While it is perhaps disingenuous to say that the evictions, violence and fraud which occurred as a result of sales through Incumbered Estates Court were unforeseen, the adverse effects were certainly not anticipated. As both the 1848 and 1849 measures progressed through the Houses of Parliament a number of warnings were given in relation to the potential adverse effects of large scale land transfers on the tenantry, rural society and the landed class. However, these calls for caution were disregarded by the government in favour of an efficient measure and the necessary safeguards to avoid evictions were not introduced.

Reflecting in 1871, A.M. Sullivan referred to the Incumbered Estates Acts as one of the greatest 'legislative boons' ever conferred on Ireland and suggested that its actual results varied considerably providing 'good and evil, hurt and service, cause for satisfaction and cause for regret'.¹ He noted that the greatest impact was on the lower

¹ A.M. Sullivan, *New Ireland*, vol. 1 (3rd ed., London, 1877), p. 283.

classes of Irish society who were neither capable of taking advantage of the Court nor were they protected by it. Sullivan, of course, had the value of hindsight; however, contemporary observers made similar observations. In an early assessment of the Incumbered Estates Commission the *York Herald* in November 1850 claimed that the Court was likely to effect a 'complete social revolution' by opening channels of investments and introducing new energy to Ireland's flagging agricultural system.² It was understood that this change would bring about a significant change to Irish rural society. Eighteen months later the *Nation* reported that 'the country's lifeblood is circulating healthy again, and the old vigour of the patient returned' suggesting that the condition of rural Ireland had significantly improved by 1852.³

The sale and transfer of land was perhaps the simplest aspect of the government's revolution. Sullivan suggested that the Incumbered Estates measure was designed to allow 'the dream of Elizabeth and James and Charles... to be accomplished in the reign of Victoria'. This implied that the legislation created by Romilly and Coulson was solely concerned with the conservative re-plantation of Ireland with a new class of British and Scottish capitalists.⁴ This aspect of the legislation as already noted, enjoyed limited success, failing to attract a significant degree of outside investment with the majority of purchasers being Irish residents. Furthermore, it was argued by the *York Herald* that the Incumbered Estates Act compounded the growing set of 'class hatreds' which existed in Victorian Ireland and more worryingly for the establishment increased the 'atrocities to which they are known to give birth'.⁵ While

² *York Herald*, 9 Nov. 1850.

³ *Nation*, 8 May 1852.

⁴ Sullivan, *New Ireland*, p. 286; 'Sir Robert Peel on confiscation' in *Dublin University Magazine*, xxxiii (1849), p. 509.

⁵ *York Herald*, 9 Nov. 1850.

some suggested that the Incumbered Estates Act was the State's means of declaring, 'you have too long neglected your duty... you shall cease to carry into effect your cruel and tyrannical evictions', later historians, such as L.M. Cullen, have suggested that the Court created a 'more mercenary landlordism' in Ireland that was increasingly detrimental to society at large.⁶

'Forced' into operation while the effects of the Great Famine continued to ravage the countryside, the Court operated with 'the minimum of benefit with the maximum of suffering and sacrifice' for the first five years of its existence.⁷ This sacrifice altered all levels of Irish society to some degree. Fashionable society in Ireland after the Act of Union was much depleted. Many of the leading figures had left Dublin in favour of London and while there were still high society gatherings, they were not the exclusive gatherings they once were. The earl of Portarlington, who acquired a significant portion of his own estate through the Incumbered Estates Court and had lost his lands in England to finance, continued to participate in Irish high society with considerable enthusiasm. In 1856 the *Freeman's Journal* recorded a ball held at Emo Court, attended by the lord lieutenant, marquis and marchioness of Kildare, Viscount Dungannon, Viscount Powerscourt and other noted members of the aristocracy. No less than '250 of the elite' were present.⁸ In 1858 the earl and countess attended the Viceregal Court at Dublin Castle with the cream of Irish society.⁹ Lord Mountcashel had been vocal in criticism of the Incumbered Estates Court during the sale of Antrim property in 1850. At the public auction he affirmed

⁶ L. M. Cullen, *An economic history of Ireland since 1660* (2nd ed, London, 1987), p. 138.

⁷ Sullivan, *New Ireland*, p. 295.

⁸ *Freeman's Journal*, 15 Sept. 1856.

⁹ *Ibid.*, 30 Jan. 1858.

his disdain for the commissioners declaring that it was more than he could endure to have his 'confiscated' estate 'sold up by a dwarf in a garret' in reference to Commissioner Hargreave who conducted the sale.¹⁰ However, despite losing the majority of his Irish estates, Mountcashel, attended the viceregal Court in May 1853 and was noted visiting his 'extensive estates' in Canada in September 1853.¹¹ Lord Glengall in advance of petitioning for the sale of his estate in February 1852 held a lavish ball attended by the duke of Wellington, the duke of Beaufort, the marquis of Winchester and the marquis of Salisbury amongst others.¹² The fate of others such as Hyacinth D'Arcy was less glamorous. The former owner of Clifden Castle and an extensive Galway estate of more than 12,000 acres was reported to have been glad to 'accept an appointment as Inspector of Schools, under a Protestant Society in Dublin, who afford him a salary of £100 a year'.¹³

While the landed gentry may have feared the sale of their estates, it was the tenants remaining on the estates who were most grievously affected by the business of the Court. The sale of 1.8 million acres of land and the introduction of 5,000 new landowners most significantly altered the character of rural society. Although it had been suggested the sale of land would improve the lot of the poor, their rights as the resident tenantry of an estate transferring through the Court were completely overlooked by the legislation. W.T.H., in his closing remarks to the *Daily News*, after a lengthy examination of the early days of the Court noted that it was 'imperatively necessary' to its success that a 'new tenantry' should be created.¹⁴ This would

¹⁰ Sullivan, *New Ireland*, p. 297; *Freeman's Journal*, 17 May 1853 & 20 Sept. 1853.

¹¹ *Ibid.*

¹² *Nenagh Guardian*, 16 Apr. 1851.

¹³ W.T.H., *The Encumbered Estates of Ireland* [By W.T.H. reprinted from the *Daily News*] (London, 1850), p. 92.

¹⁴ *Ibid.*

cultivate a feeling of confidence in the new body of proprietors and place the law of landlord and tenant on a better footing.¹⁵ It is this increasing complex relationship between landlord and tenant which would become the defining feature most readily associated with the Incumbered Estates Court. The destruction of the Court's records in 1922 make an overarching and comprehensive examination of this aspect of the Court challenging. However, newspaper and parliamentary reports provide an insight into some of the more controversial and calamitous cases brought before it. By examining instances of social unrest and violence we can gather some indication of the reception which new landlords received on their new estates, and the extent to which the proposed counter revolutionary objective of the legislation was achieved. Reflecting on the 'five year experiment' in 1856 it was noted that despite the Court's many successes the 'cry of eviction' had frequently been heard.¹⁶ Tracing evictions during this period presents a significant problem that is best summed up by the *Connaught Telegraph* when it reported: 'in these days, when the evicted are reckoned by thousands, the hundred are unworthy of notice'.¹⁷ The process of land clearance was not a new policy. W. E. Vaughan in his examination of landlords and tenants in the 1840s noted that the Famine and its aftermath was the worst period for evictions in the nineteenth century. He suggested that of the 70,000 evictions which took place in the eight years between 1845 and 1853, at least half of these were as part of a clearance policy.¹⁸ Despite noting that threats of eviction far exceeded evictions, he stated that the social landscape of Ireland was transformed by the

¹⁵ *London Daily News*, 27 Sept. 1850.

¹⁶ *Evening Freeman*, 10 Oct. 1856.

¹⁷ *Connaught Telegraph*, 26 Sept. 1849

¹⁸ W. E. Vaughan, *Landlords and tenants in mid-Victorian Ireland* (Oxford, 1994), pp 25-6.

policy. J.L. Hammond noted a distinct shift had occurred in the attitude of landlords at this time, suggesting that 'the right policy was, not to try and make the peasant efficient but to abolish him. The magic word was clearance'.¹⁹ In October 1866, John Bright, MP for Rochdale, reflected that in the 1840s Ireland 'has been the land of evictions', while Gladstone, later prime minister, regretfully stated that a notice to quit was for many Irish peasants a 'sentence of death'.²⁰ Returning to the subject of the Famine and evictions in later life he lamented that 'we had made ejectments cheap and easy, and notices to quit descended upon the people like snowflakes'.²¹ Despite being a meticulously crafted piece of legislation in relation to the rights of the new owners and creditors, the Incumbered Estates Act contained few safeguards for the tenantry and for the former owner.

The general rules of the Court required a landlord to lodge all documents which related to the title of the estate, all leases and agreements made upon it that affected its ownership. In its 1845 report, the Devon Commission had criticised Irish landowners for the continued mismanagement of their estates, suggesting that they were unfamiliar with tenancies and agreements. In framing the general rules of the Court, the commissioners included certain safeguards in the orders of the court. The thirteenth general rule of the Incumbered Estates Court provided for the issuing of preliminary notices, which sought to clarify tenantry agreements on the estates and were to be served on the tenants of each townland subject to proceedings. Under the terms of these notices all particulars were to be communicated directly to the commissioners. Noting the widespread illiteracy of the tenant and agricultural class,

¹⁹ Michael Winstanley, *Ireland and the land question, 1800-1902* (London, 1984), p. 33.

²⁰ Daniel Crilly, *The Irish question. Irish evictions* (London, 1887), p. 3.

²¹ *Ibid.*, p. 8.

the general orders directed that copies of preliminary notices should also be lodged with the prominent local Protestant and Catholic clergymen as well as the principal tenants of the estate in question.²² One of the great contradictions within the Incumbered Estates legislation was that despite recognising the general mismanagement of estates that came under its control, it failed to understand the true extent of the problem. In cases where the owner himself was the person who petitioned for the sale of an estate the Court dictated that no preliminary notices should be issued to the tenantry as it was assumed that the landlord was sufficiently familiar with rental agreements and the particulars of leases on his estate to render this step unnecessary. In the cases where the owner was the petitioner, it then became the responsibility of each individual tenant to communicate the particulars and proof of their tenancy to the court upon seeing the published notice relating to the sale. If their claim was upheld, the costs of legal counsel and notices were added to the list of incumbrances.

Any sale that was made under the Court was subject to the continuation of all declared tenancies, leases and under-leases granted by the owner of the estate. It was said that 'too much care cannot be taken to save the honest, though perhaps ignorant, tenant from being deprived of his lease', but it also stated that once the conveyance was carried out the rights of the new owner superseded those of any tenant with an undeclared interest in the property and these people were to be 'turned out'.²³ As a self-regulating body the commissioners were free to alter general rules as the

²² Richard McNevin, *The practice of the Incumbered Estates Court in Ireland, from the presentation of the petition, to the distribution of the funds, with notes of all practice cases, the authorised forms, precedents of conveyances, the acts, general rules, schedule of fees and situation of the court* (Dublin, 1854), p. 105.

²³ *Ibid.*, p. 107.

business of the court required. An early example of this came in March 1850 when the commissioners warned that where satisfactory evidence was not provided by a tenant for their claim on the estate they 'must lose their lease'.²⁴ Year-to-year tenants and those without a written lease were in a particularly vulnerable position, as were those whose plot of land was let not by the landlord but by a middleman. Their lease, if indeed one existed, was not eligible for consideration. Although the commissioners reserved the right to order a survey of the estate to ascertain tenancies, these preliminary notices contained only the names of those tenants whose rent was paid directly to the landlord or his immediate agent. All other inhabitants of the estate were categorised as occupiers resident without a lease. Many of the leases produced were negated by the Subletting Act 1828, which prohibited the excessive subdivision of estates; it was claimed these leases were held against an owner's interest.²⁵

Between eviction, emigration and the Incumbered Estates Court, *The Times* of London suggested that the government intended to populate the island of Ireland with a new race to the extent that 'a Celtic Irishman will be as rare in Connemara as is the Red Indian on the shores of Manhattan'.²⁶ Referred to as the 'extermination in Connaught', the eviction strategy of the Law Life Assurance Company illustrated this policy. The company's history had been interwoven with that of the Incumbered Estates Act since the Company had derailed the first Incumbered Estates proposal in 1847. While the reformed legislation was still proceeding through the houses of parliament in 1849 the company sought to effect the sale of Ballinahinch Castle and estate by public auction at the Mart in London. This sale was unsuccessful. Questions

²⁴ *Ibid.*, p. 112

²⁵ *Ibid.*, p. 143.

²⁶ Sullivan, *New Ireland*, p. 286.

were asked in relation to the rights of an English creditor to effect the sale of an Irish estate outside of the system of the Irish Courts. Furthermore, the inability of the Law Life Assurance Company to grant a secure title to the estate and the high reserve prices which it set, deterred potential investors.²⁷ By 1851 the company was ‘in virtual possession’ of Thomas B. Martin’s entire Connemara estate, including Ballinahinch Castle, on which it was the primary creditor.²⁸

The former owners of the estate were recognised as benevolent and generous. The late Richard Martin was described as the ‘soul of humanity, benevolence, and kindness; the friend of the afflicted, whether eloquent or dumb; the perfection of generosity in human nature, and a bright example of the virtues of mankind’.²⁹ Although there had been suggestions in the media that the new owners of Ballinahinch would extensively improve the estate, the stark reality quickly became clear. The company were salvage creditors, intent on gaining the maximum possible return from the crumbling estate. Only improvements that were guaranteed to substantially enhance the value of the estate and capable of aiding the repayment of the ‘enormous’ debt owed were considered.³⁰ By October 1851 it was clear that ‘unpeopling’ the estate was a substantial part of the company’s plans with reports suggesting evictions were being carried out at an ‘unprecedented rate... unprecedented even for Ireland’.³¹ In the space of a fortnight it was reported that no less than 531 persons were turned out in the Union of Oughterard and it was speculated that more than one thousand would be evicted by the end of the month

²⁷ W.T.H., *The Encumbered Estates of Ireland*, p. 83.

²⁸ *Ibid.*, p. 83.

²⁹ *Ibid.*, p. 81

³⁰ *Ibid.*, p. 83.

³¹ *Freeman’s Journal*, 2 Oct. 1851.

with an additional six thousand in Clifden.³² Ballinahinch soon became a focal point for those opposed to clearances in anticipation of sales generated through the Incumbered Estates Court. The *Freeman's Journal* noted:

There is something still more intrepid and more cruel than landlordism. We thought the summit of oppression had been reached in the native records of violence to the native occupier- but there is a point beyond this extreme point, and we regret to say that Englishmen have attained it... The Ballinahinch tenantry... to their great grief they found the new far worse than the old... The conscienceless society proved far more cruel. Without a soul.³³

Despite the large wholesale clearance of tenants off the estate, the Law Life Assurance Company did not appear convinced that the estate would fetch a fair price when sold. In order to prevent the sale of the estate at a cut-rate price the Company acquired Ballinahinch by private contract in June 1852.³⁴ In doing so the Company was provided with parliamentary title to the lands. In addition, as the largest creditor of the estate the Company was entitled to an absolute credit as payment from the estate, submitting a proposal of £180,000.

The purchase of the Ballinahinch estate came in the wake of another significant clearance on the estate. It was claimed that the 'shrieks of the last Connemara clearance had not yet died away' when the sale took place.³⁵ Donnelly noted a caveat in the prospectus for the sale of Ballinahinch which stated that 'many changes advantageous to the purchaser have since taken place, and that the same tenants by name and in number will not be found on the land'.³⁶ In defence of their clearance policy, the company stated that all those evicted were not leaseholders of the estate

³² *Ibid.*

³³ *Freeman's Journal*, 29 Nov. 1851.

³⁴ *Ibid.*, 25 June 1852.

³⁵ *Evening Freeman*, 1 Apr. 1852.

³⁶ James S. Donnelly, *The great Irish Famine* (Stroud, 2001), pp 158-9.

but the tenants of middlemen and as such were not entitled to remain on the land. This explanation was denounced as the 'middlemen plea' what had been seen as common justification for Famine time evictions. However, to some degree it can be argued that in transforming the estates from an overpopulated unprofitable enterprise and consequently improving the value of the estate significantly, the company were following the objectives and aspirations set out by government under the Incumbered Estates Act. These clearances did not result in significant unrest but were widely criticised.

The problem of surplus tenants or tenants who were not leaseholders of the owner of the estate was also a problem for Allan Pollok who purchased lands between July 1853 and July 1858. Pollok was the model candidate for the government's proposed plantation of Ireland as envisaged by the legislation. A successful Scottish timber merchant, he invested more than £212,460 in 25,234 acres in County Galway, previously the properties of John Beatty West, Julia M. Burke, Christian St. George, William Bissett, John Eyre, Edmund Dowell, Thomas Hackett and Richard Gore Daly.³⁷ Daniel Crilly, a nationalist writer for both the *United Irishman* and the *Nation*, suggested in 1887 that Pollok's opinion of his inherited tenantry was less than kind: 'the human beings on this property he looked upon as mere encumbrances, and he drove them off without mercy. Solvency was not a safeguard'.³⁸

³⁷Quoted in Padraig Lane, 'The social impact of the Incumbered Estates Court on counties Galway and Mayo; 1849-1858' (M.A. thesis, University College Dublin, 1969), p. 305-6. Figures taken from Index of Incumbered Estates Court Conveyances (PRONI: microfilm, N.L.I, n.5484-6), 1853/p. 203- no. 4078; 1854/p. 83- no. 4689; 1854/p. 84- no. 4690; 1854/p. 173- no. 5152; 1855/p. 217- no. 6489; 1855/p. 181- no. 6302; 1856/p. 8- no. 6596; 1858/p. 156- no. 8860.

³⁸ Crilly, *The Irish question*, p. 11.

Pollok's purchase under the Court was made on the 'strength of the estate's potential rental rather than on the rental then in force'.³⁹ In his effort to reform his property he proposed to divide the land into extensive farms to accommodate tenants with capital. Writing to the *Evening Post* in 1855, Pollok stated that the rental and particular for the sale of the Burke estate identified eighty-three tenants holding leases but he discovered upon visiting the estate that it had 'nearly six hundred tenants and a population approaching nearly three thousand'.⁴⁰ He continued that this tenantry 'neither possessed the capital nor the skill to suit me as tenants' and he therefore set about clearing the estate.⁴¹

Allan Pollok utilised the terms of the Incumbered Estates to great effect, taking advantage of two particular aspects of the act. In the first instance, he demonstrated a clear predilection for acquiring estates which had been transferred from the Court of Chancery and secondly for purchasing estates by private contract rather than at public auction. A total of 18,414 acres of his purchases were estates, or parts thereof, which had previously been under the management of the Court of Chancery. The Burke estate at Glinsk of which Pollok acquired 7,414 acres in November 1853 had been under the management of a receiver for more than ten years, first coming under the Chancery in November 1841.⁴² The second estate, that of Felicia West, had been

³⁹ Pdraig Lane, 'The social impact of the Incumbered Estates Court on counties Galway and Mayo; 1849-1858' (M.A. thesis, University College Dublin, 1969), p. 308.

⁴⁰ *Ibid.*, p. 309.

⁴¹ *Dublin Evening Packet*, 5&7 Apr. 1855.

⁴² *A return of the petitions filed in the Court of the Commissioners for the sale of Incumbered Estates in Ireland, for the sale of estates in respect of which proceedings had theretofore been had in the Courts of Chancery and Equity Exchequer, setting forth, so far as same are stated in such petitions, the respective dates of filing of the original bill and of any supplemental bill or bill of receiver in each case; the dates of the decrees to account and final decrees, and the period during which a receiver had been in the receipt of the rents in each case respectively*, p. 4, H.C. 1852-3 (614) xciv, 577. (hereinafter *A return of the petitions filed 1852*)

subject to a receiver for six years when it was acquired by Pollok in 1853.⁴³ Despite the widespread mismanagement and neglect of estates by representative of the Chancery, the letting terms of the court were favourable to those intent on introducing reform and improvement. Tenancies granted by the Court of Chancery, automatically terminated with the sale of the estate. This meant that the purchaser of a receiver-managed estate, not only reaped the benefit of parliamentary title under the terms of the Incumbered Estates Court but the property was, at least in theory, tenant free once the hammer fell at the auction.⁴⁴ A total of 1,633 estates were transferred from the Courts of Equity to the Incumbered Estates Court, representing nearly half the total number which came before the new court between 1849 and 1855. Of this overall number of estates a total of 307 had passed through the court by 1855.⁴⁵

In September 1853, it was estimated that 126 families were evicted from the former West estate, a total of 597 persons. Pollok allowed those upon whom he served eviction notices to remain in their cabins for the short term or until such time as the improvements he envisaged to the property could be completed.⁴⁶ As these evictions were carried out relatively quietly, very little information was recorded. However, Pollok's later clearance of the former Burke estate did not pass so peacefully. Despite significant passive resistance from the tenantry, including the presentation of a

⁴³ *A return of the petitions filed 1852*, p. 10.

⁴⁴ *Freeman's Journal*, 1 Nov. 1856.

⁴⁵ *Incumbered Estates enquiry commission, Ireland. Report of Her Majesty's commissioners appointed to inquire into the Incumbered Estates Court, and into the expediency of continuing it, or transferring its powers to the Court of Chancery; together with an appendix, containing evidence and returns*, p. xiii [C. 1938], H.C. 1854-55 xix, 527.

⁴⁶ Pauline Scott, 'Rural radicals or mercenary men? Resistance to eviction on the Glinsk/Creggs estate of Allan Pollok' in Brain Casey (ed.), *Defying the law of the land: agrarian radicals in Irish History* (Dublin, 2013), p. 66.

petition to parliament, Pollok cleared the estate, once again allowing the tenants to remain in their cabins but depriving them of their land, turning them from tenant farmers to landless labourers. Pollok's situation highlighted a number of difficulties that faced purchasers under the Incumbered Estates Court. The first was an inherent flaw in the rentals and particulars used by the Court, as in this case he had been induced to purchase land on the basis that the estates were chiefly occupied by yearly tenants on Chancery leases which would facilitate quick possession.⁴⁷ Pollok criticised tenants of his newly acquired estates as mistaken in the belief that occupancy gave them the right to an ongoing tenancy. However, there were other factors at play owing to the complexities of Irish land. The letter of the law supported the opinions of the tenantry, presuming that a yearly tenancy would continue unchanged from year to year and a tenant was not required to vacate the property unless the arrangement was ended by legal agreement or action. W.E. Vaughan suggests that if leases did not end with certainty at a particular date, landlords were forced to use the law or take part in public wrangling, such as those undertaken by Pollok. These legal proceedings often has an uncertain outcome.⁴⁸

The Pollok story is one of significant contradictions. In 1856 the *Liverpool Daily Post* reported that the tenantry of Pollok's other estates at Glinsk and Creggs intent on paying their rent and renewing their year-to-year leases met Mr Algie, agent for Pollok, in order to make payment. Under instruction, Algie refused to accept payment unless tenants agreed to sign an agreement to deliver peaceable possession to Pollok the following year.⁴⁹ Rents were not accepted without the signing of the

⁴⁷ Vaughan, *Landlords and tenants in Ireland*, p. 11.

⁴⁸ *Ibid.*

⁴⁹ *Liverpool Daily Post*, 26 July 1856.

agreement and eviction proceedings were taken against those who refused.⁵⁰ In defence of his policy, Pollok noted that the evictions which he had undertaken were a 'legal depopulation' stating that despite the evidence presented by Patrick McMahon MP for Wexford to the House of Commons, there was no agreement in existence with the tenants that they would not be evicted. He contended that he did not depopulate his estates; rather, he argued, the number of tenants increased from 1,219 to 1,512 and not a single person had been sent to the workhouse by him.⁵¹ A petition brought before the House of Commons by the tenantry in this regard was cited and Pollok's declaration of generosity regarding the eviction was in fact an 'extraordinary hallucination'.⁵² In the absence of estate records, the truth of the matter is difficult to ascertain, however, popular opinion suggested that Pollok undertook a large scale clearance of the estate.

W.E. Vaughan observed that what made the Pollok evictions so controversial was the challenge that it presented to the traditional notions of Irish estate management that is the decline of the paternal landlord.⁵³ The Pollok estate highlighted what would become one of the great criticisms of the Court, that a buyer was induced to purchase the estate by the rentals and particulars which incorrectly claimed that the majority of tenants were on year to year leases and that the number of tenants in possession of holdings as recorded in the rentals was significantly lower than the reality. The mistaken assumption by many tenants that occupancy meant a right to tenancy was also a challenge when evicting. There was a presumption on Irish estates

⁵⁰ *Southern Reporter and Cork Commercial Courier*, 19 July 1856.

⁵¹ *Freemans Journal*, 29 May 1856.

⁵² *Dublin Weekly Nation*, 31 May 1856.

⁵³ Vaughan, *Landlords and tenants in Ireland*, p. 11.

that tenancies would continue from year to year unchanged and an expectation that properties could only be vacated with legal notice. While this was not a requirement by law, the belief that it was the legal position of a tenant, often meant landlords were forced to engage in public wrangling for an uncertain outcome.⁵⁴

On both the Law Life Assurance Company and the Pollok estates the upheaval in rural society was clearly significant. This was not, however, the only negative result of these clearance policies. Reaction to the new management and ownership of the estate varied greatly. It is by examining the decline of the paternal landlord in Ireland that one of the most significant results of the Incumbered Estates Court is evident. Reflecting on the violence which broke out in Ireland in 1793, Thomas Bartlett noted that they were not attacks on 'landlordism' nor were they 'nationalist' in motivation, rather they were protests against the introduction of practices which were held to be non-customary innovations which caused the lower class to mobilise in defence of their traditional rights.⁵⁵ Bartlett reflected that moral economy – an economy based on the principles of fairness and precedent – was always established on a set of mutual obligations and shared responsibilities. The established system of paternalism in Ireland was rewarded with deference based on the strong feudal attachment which existed between the largely Protestant landlord and the generally Catholic tenantry.⁵⁶ His argument that the stability and the maintenance of this moral economy in Ireland was dependant on easy-going farming practices of *laissez-faire*, long leases, low rents and tolerance of arrears. In fact, this narrative summarises the condition of

⁵⁴ Vaughan, *Landlords and tenants in Ireland*, p. 11.

⁵⁵ Thomas Bartlett, 'An end to moral economy: The Irish militia disturbances of 1793' in *Past & Present*, xcix (1983), p. 42.

⁵⁶ Bartlett, 'An end to moral economy', p. 62.

many tenants in Ireland in the 1840s. E.P Thompson argued that the only way in which this 'balanced subsistence society' might break down was through the 'meddlesome' interference of the state.⁵⁷ By facilitating the introduction of a new mercenary landowning class the Incumbered Estates Court displaced these relaxed practices and proposed to replace them with more profit-orientated arrangements such as short-leases, rent drives and enclosure.⁵⁸ Famine, Thompson argued, could place the whole social order on the rack and the rulers were tested by their response to it. He warned that if it was perceived landlords had not responded appropriately it could lead the lower classes to violently assert their right to subsistence.⁵⁹ Violence and mass agitation were often felt by the poorer classes to be the best recourse.⁶⁰ While there is evidence of this structural sea change in Irish rural society in the opposition witnessed on the Pollok estates, the decline of moral economy is best illustrated on estates where this opposition was more pronounced.

The estate of Vere Dawson Hunt in Tipperary was petitioned by the owner on 3 May 1850 with incumbrances of £11,750. The seven lots brought forward for sale in the Court on 5 November 1852 included the three properties of Cappagh House, High Park House and Cooleeny Lodge. For a total of £14,590 Thomas Beale Browne was declared purchaser of six of the seven lots sold. Hunt himself purchased High Park House. Browne, was a noted agriculturalist who was proposed for membership of the Royal Agricultural Society of Ireland in January 1853, shortly after acquiring Cappagh and by 1857 he had built a notable reputation as a sheep breeder.⁶¹

⁵⁷ E.P. Thompson, *Customs in common* (New York, 1991), pp 202-3.

⁵⁸ Bartlett, 'An end to moral economy', p. 62.

⁵⁹ Thompson, *Customs in common*, p. 348.

⁶⁰ *Ibid.*, p. 233.

⁶¹ *Dublin Evening Mail*, 10 Jan. 1853; *Cheltenham Chronicle*, 28 July 1857.

Tension soon grew on the Beale Browne estate grew quickly. Tenants began to question the security of their tenancies. In June 1855 the *Tralee Chronicle* reported the attempted murder of Mr Sprong, the agent on the Beale Browne's estate. It was reported that Sprong was returning to his residence accompanied by his wife at four in the afternoon when a man 'in disguise' fired 'two shots from a double barrel shotgun'.⁶² The victim escaped without injury having fired four shots in his defence and taking shelter in a nearby cottage. Although no fatalities were reported, the motive behind the murder attempt was extensively discussed. It was speculated that the attack was prompted by persistent rumours that Browne intended to evict a portion of his tenantry; up to then clearances such as this were 'not so rare in this wild and remote district'.⁶³ The *Irish Examiner* suggested that the anxiety amongst the tenantry at Cappagh was by no means uncommon. From the early days of the Incumbered Estates Court such eviction rumours frequently spread from townland to townland and followed a very similar pattern of reported incidents including 'the clearance of all its human incumbrances' and the levelling of tenant properties. Such reports brought 'sheer terror' into the hearts of tenants who had survived the Famine and this terror the *Tralee Chronicle* suggested knew 'no bowels of compassion'.⁶⁴ The *Nation* similarly reported that the 'prolonged ring of the auctioneer's hammer in the Incumbered Estates Court' resulted in 'agrarian murders in both Louth and Queen's County leaving the roads crowded with flying people'.⁶⁵

⁶² *Tralee Chronicle*, 15 June 1855.

⁶³ *Ibid.*

⁶⁴ *Irish Examiner*, 9 Oct. 1850.

⁶⁵ *Nation*, 20 Sept. 1851.

As illustrated by events on Thomas Beale Browne's estate, the introduction of a new owner had created instability in the structure of paternal landlord-tenant relationship. However, even in cases where the ownership of an estate did not change following court proceedings, there was no guarantee of stability or social order. On 30 August 1850 the estate of Ralph Hind, an infant, was petitioned by Miss Charlotte Hind. Neither the extent of the estate nor the value of incumbrances were recorded but the lands which came before the court were situated in the baronies of Deece, County Meath and Tullyhunco and Tullyhaw in County Cavan.⁶⁶ A later advertisement for the sale of part of the property under the Landed Estates Court in March 1864 indicated the Cavan portion of the estate consisted of more than 320 acres with an annual rental of £291. Under the Incumbered Estates Court, the estate did not go to public auction, rather it was purchased by Charlotte Hind by private contract for £1,400 on 11 December 1851. Hind had been granted an absolute credit by the Commissioners of the Court on 19 July 1851 and a second for £400 was given in December 1852.⁶⁷ Clause twenty-six of the Incumbered Estates Act 1849 permitted any creditor of the estate to bid in open court or by private application for the purchase of an estate as though they were unconnected to it. They enjoyed the same rights as any other interested party. The amount of their incumbrance would be paid as an absolute credit subsequent to or on the basis of acquiring the property. In the case of the Hind estate, the total credit and the purchase price were the same value and she acquired the estate with no financial outlay.

⁶⁶ *Allnut's Irish Land Schedule*, 1 July 1852.

⁶⁷ *Ibid.*, 1 Mar. 1854.

In placing her family estate under the jurisdiction of the Incumbered Estates Court Charlotte Hind acquired a debt free land holding with indefeasible title to the property and in the process cleared the estate of any outstanding incumbrances. Despite the continuity of ownership there is evidence of the breakdown of moral economy on the Hind estate and the landlady fell afoul of her tenantry. Once in legal possession of the estate Hind set about 'daring to exercise her rights'.⁶⁸ Reports claimed that this discontent was as a result of Hind evicting tenants for non-payment of rent and taking land into her own use. On 13 October 1855 Hind was the victim of an act of 'atrocious and barbarity' unlike anything in 'the annals of assassination and ribbonism'.⁶⁹ Her murder came just eighteen months after she had been granted a police escort following a letter which threatened her life. Returning home at four on a Friday afternoon, Miss Hind was set upon by 'two demons in human form', beaten repeatedly with sticks fracturing her skull and breaking her fingers and wrists. Three pistols were pointed at her and the contents 'lodged in her head and face' with the final shot being 'fired down into the head' through the top of her skull.⁷⁰ The extent and nature of this violence supports Thompson and Bartlett's theory that Irish violence centred on land issues and in defence of moral economy tended to be extreme. The authorities utilised a similar level of violence in punishment of the crime.⁷¹

The attack occurred at Corran Wood, a 'thickly inhabited' area with many resident tenants where the 'blood-stained code of Ribbon society' had paralysed the law.

⁶⁸ *Liverpool Daily Post*, 17 Oct. 1855.

⁶⁹ *Dublin Evening Mail*, 15 Oct. 1855

⁷⁰ *Newry Telegraph*, 20 Oct. 1855.

⁷¹ Bartlett, 'An end to moral economy', p. 41.

Within days, Thomas Larcom, under-secretary to the lord lieutenant, wrote from Dublin Castle that a £100 reward would be paid for information that resulted in an arrest.⁷² A short time later Henry Grattan Junior, former MP for Meath, and neighbouring landlords, offered an additional £100 as an incentive for persons to come forward with information. Grattan intervened for a second time stating that the £1,000 in forgiveness of rent which he had agreed during the Famine would be withdrawn if information on the murder was not forthcoming, and further warned that persons unable to pay their rent would be evicted. Having previously pledged his allegiance to the Irish Independent Opposition Party and in turn the Tenant League, he called the assistance of his political fellows in enforcing both his property rights and the law of the land in the 'nucleus of Ribbonism'.⁷³ Although the influence of the Tenant League had significantly waned after 1855, this threat and offer of a reward appears to have been sufficient. By 17 January 1856 a total of seven people were being held for the murder, all but one of whom were tenants of the estate. The trial began in April 1856. James Murphy, aged 37, the only non-resident was charged with the murder. Thomas Dunne, aged 31 a tenant was charged as a co-conspirator. Two other men, Felix Prior and John Logan, were also charged and tried for conspiring to commit the offence. What followed in the press was a series of lengthy and detailed accounts, which spoke of a woman despised by her tenantry who had plotted her demise. Miss Hind, survived for three days after the attack and on her deathbed, testified that 'Red Pat Bannon' and another had attacked her and were responsible for her death.⁷⁴ A witness account was provided by Terence Bannon, an

⁷² *Dublin Evening Mail*, 31 Oct. 1855.

⁷³ *Lloyds Weekly newspaper*, 28 Oct. 1855.

⁷⁴ *Armagh Guardian*, 11 Apr. 1856.

approver and accomplice to the crime who had admitted his guilt in return for leniency. Bannon admitted to having played a significant role in the organisation of the attack, and having transported the perpetrators, but he denied any part in the assault. He testified that Thomas Dunne was the ringleader of the plot having been 'at foes' with Hind and her agent for a period of time. It was put forward that Dunne had collected 'a fund' of £12 from tenants of the estate in order to finance the assassins, namely Murphy and Pat Bannon.⁷⁵ Murphy was found guilty of murder and Dunne of 'counselling, advising and exhorting'. Both men were sentenced to death by hanging. Following the pronouncement Murphy made no comment and Dunne professed his innocence. In the weeks that followed Dunne petitioned both Houses of Parliament for clemency but these petitions were rejected. Both men were executed on 17 May 1856.⁷⁶

While the Hind and Beale Browne cases were perhaps extreme examples of outrage on estates following the introduction of a new landlord subsequent to a sale through the Incumbered Estates Court, they are not isolated. An earlier example was the murder of William R. Manifold in King's County in 1852. The previous year, on 26 June 1851, the estate of Elizabeth Morris came before the Court. Charged with incumbrances of £11,202 on a rental of just over £800 the estate was in debt to the extent of fourteen times its annual income. Not unlike the Hind estate, the property remained with the family when Captain Morris purchased. Reports suggest that he was the brother-in-law of the previous owner Elizabeth Morris.⁷⁷ Mr William R. Manifold, who had previously acted as agent to Elizabeth, was retained in this

⁷⁵ *Freemans Journal*, 12 Apr. 1856; *Liverpool Mercury*, 19 Apr. 1856.

⁷⁶ *Dublin Evening Post*, 13 May 1856; *Cork Constitution*, 20 May 1856.

⁷⁷ *Leinster Express*, 23 Oct. 1852.

capacity under the 'new' ownership, giving further weight to the argument that the purchase was a strategic move on behalf of the family. Manifold set about evicting under-tenants from the estate. On the 10 October that year it was recorded that 'two persons named Lamb' had pleaded guilty and been convicted of assaulting Manifold and his assistants and were subsequently sentenced to six months imprisonment.⁷⁸ The *Leinster Express* later determined that this resulted in his 'massive unpopularity' and this unfortunately led to his 'subsequent melancholy death'.⁷⁹ The *King's County Chronicle* argued that the reports featured in the *Leinster Express* were not accurate but were designed to 'lessen the public horror and indignation at this abominable murder', declaring that they had in their possession details of the measures and proceedings taken by the new owners to induce tenants to recognise the purchaser of the property under the Incumbered Estates Court. It was stated that Elizabeth Morris had been kind and liberal to the tenantry but that they 'intended to pay no rent at all; and Manifold's savage murder is one of their modes of sustaining this tenant-league resolution'.⁸⁰ In correspondence to the editor of the *Leinster Express* it was stated that the murder of Mr Manifold had occurred as a result of evictions carried out under an 'injunction of the Encumbered Estates Court', as the tenantry refused to acknowledge the new proprietor.⁸¹ The letter continued that the former owner had relinquished any claim she had on the rent but in her role as trustee for the purchaser she retained legal rights over the tenantry. It was suggested by William O'Connor Morris, a member of the immediate family, that no attempt had been made to redeem the old arrears which had accrued prior to the sale which 'amount to nearly two years

⁷⁸ *Cork Examiner*, 3 Nov. 1852.

⁷⁹ *Leinster Express*, 23 Oct. 1852.

⁸⁰ *King's County Chronicle*, 27 Oct. 1852.

⁸¹ Quoted in *Kings County Chronicle*, 27 Oct. 1852.

rent'.⁸² The nephew of Captain Morris and son of Elizabeth later wrote that the evictions which were carried out by Manifold were undertaken as the tenants had failed to confess a 'liability to rent' but all had subsequently been readmitted.⁸³

Thomas McCormick was eventually charged with the Manifold murder. Like the Hind case, the evidence presented suggested that the murder was a 'conspiracy amongst several of the tenants'.⁸⁴ The evidence against McCormick included a witness who could place him at the scene of the murder. He was found in possession of a gun moments after the shooting and there was evidence to suggest that shortly before the crime, he had been informed by Manifold that he was to be evicted. Upon hearing of his imminent ejection, McCormick threatened that the deceased 'might not be there to require this' and that 'he might fall before then'.⁸⁵

The Incumbered Estates measures were introduced to bring new investment into the stagnant Irish property market and ease the burden on debt-ridden owners. Crucially, it also sought to combat the nascent Irish revolutionary tendencies which had been encouraged by events in mainland Europe. Unfortunately, either through haste or lack of foresight in its preparation, the absence of proper consideration in the legislation for the welfare of the tenant class on properties sold resulted in the collapse of the principle of moral economy in the landlord tenant relationship, and gave rise to reformist organisations which morphed into the very revolutionary groups the Incumbered Estates legislation had been designed to pre-empt or neutralise.

⁸² *Kings County Chronicle*, 27 Oct. 1852.

⁸³ *Ibid.*, 30 Mar. 1853.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*, 9 Mar. 1853.

The case of Lord Bantry's estates is another example of the breakdown of moral economy. Petitioned by the Lord Bantry himself, the estate was incumbered by £86,977. It was the first of two petitions which Bantry would bring before the Court against his own interests. When the Bere Island portion of the estate came before the Court on the 23 November 1853 Lord Charles Pelham Clinton, a younger son of the fourth duke of Newcastle, acquired the land for £27,550 or just over sixteen years' purchase.⁸⁶ In a pamphlet condemning the later action of Lord Bantry, Clinton's agent, John P. Prendergast, suggested that the new owner was 'considered to have made a dear purchase' but this was justified in his eyes by the 'clear title' and 'estate free of incumbrance'.⁸⁷ His first visit to his newly-acquired estates lasted only a couple of days, during which Prendergast suggests he was greeted with 'warmth' by the inhabitants who indicated 'as much joy at getting rid of the old landlord as at becoming the tenants of a new one'.⁸⁸ Shortly before Clinton returned to England he received a message from Lord Bantry's agent notifying Clinton that he should collect all arrears of rent due to Lord Bantry from the estate. It was stated that should he fail to do so, Lord Bantry would set about recovering the arrears himself. These arrears were estimated to be in the region of £1,800.⁸⁹ Prendergast stated that he was willing to allow time for the collection of arrears, however, within a week Lord Bantry had sent bailiffs to the island to 'carry off everything that was not too hot or too heavy'. Cattle were also driven off the land to recoup arrears. According to Prendergast this 'lawless Irish doing' had long been a policy on Bantry's estates.⁹⁰ It was never

⁸⁶ Database in author's possession.

⁸⁷ Prendergast, *Letter to the Earl of Bantry*, p. 5.

⁸⁸ *Ibid.*, pp 5-6.

⁸⁹ Richard S. Harrison, *Béara and Bantry Bay: History of Rossmacowen* (Cork, 1990), p. 17; Ted O'Sullivan, *Bere Island: a short history* (Cork, 1992), p. 19.

⁹⁰ Prendergast, *Letter to the Earl of Bantry*, p. 6 & 11.

Bantry's agents' practice to issue receipts for rent paid, and he would seize animals anywhere he could get them in lieu of rent, regardless of ownership. On 9 September 1854, Lord Bantry sent his agent, a number of bailiffs, a team of drivers and 'a large armed force of police' to the island to collect £1,800 arrears of rent and serve 200 civil bill decrees. He did this almost one year after Clinton had purchased the estate. During the raid many of the islanders had to take to the hills with whatever property they could bring with them or face ruin and starvation in the approaching winter. Many slept out of doors for as long as a week. The islanders suffered severely at the hands of Bantry's bailiffs and agents at the time.⁹¹

A further flaw in the Incumbered Estates legislation, was its failure to prevent manipulation and fraud. Perhaps the best example is the case of John Sadleir also notorious for his involvement in the fall of the Tipperary Bank which Sullivan notes as a 'revolutionary conspiracy' impacted 'thousands- ay tons of thousands'.⁹² Often referred to as the 'Prince of the Swindlers', Sadleir was the son of a large tenant farmer on the earl of Portarlington's estate in south Tipperary. He was educated at Clongowes Wood College in Kildare. R.D. Collison notes that there was little indication in his youth that he would later become the 'romantically sinister financier' that bankrupted the Tipperary Bank.⁹³ Through his elitist Catholic education Sadleir built considerable connections with a number of influential Irish figures and with contemporaries including the sons of Daniel O'Connell. He

⁹¹ O'Sullivan, *Bere Island*, p. 19.

⁹² Sullivan, *New Ireland*, p. 379.

⁹³ R. D. Collison Black, *Economic thought and the Irish question, 1817-1879* (London, 1960), p. 41.

qualified as a solicitor in 1837 but quickly turned his attention to the world of finance.⁹⁴

The Tipperary Joint Stock Bank, a venture between the Sadleir and Scully families (his cousins), opened its doors in August 1838. By October of that year the Tipperary Joint Stock Bank, through an agreement with the Bank of Ireland, had begun to issue bank notes and draw letters of credit. This in essence made this regional bank a branch of the Bank of Ireland and drew many wealthy investors including five MPs, bankers and merchants (see Appendix 6). The Tipperary Bank expanded rapidly, opening branches in Carrick-on-Suir, Nenagh, Thurles and Thomastown by 1841 and further additional offices in Carlow and Athy by 1845. Although it is unclear exactly what Sadleir's role was in the day-to-day running of the bank, as a director he was permitted almost unsupervised access to funds at the bank's disposal. However, Sadleir was not satisfied with a quiet life in regional banking.

The ambitious young man quickly ingratiated himself with the leaders of London's financial district of Lombard Street. He advanced to become a chairman of the London and County Joint Stock Bank.⁹⁵ Reflecting on Sadleir's early commercial success it was said that

Whatever he took into hand succeeded; whatever he touched turned to gold. He was, everyone said, one of your eminently practical politicians; no mere agitator, but a man of sagacity and prudence, whose name alone guaranteed the soundness of a scheme or the wisdom of a suggestion.⁹⁶

⁹⁴ Prior to 1860 there was no set examination to practice as a solicitor in Ireland it merely required the completion of a five year apprenticeship. Following the introduction of the Solicitors Act 1860 a three tier examination was introduced. For more see An act to amend the laws relating to Attorneys, Solicitors, Proctors and certified conveyancers (23 & 24 Vict, c. cxxvii).

⁹⁵ *Dundalk Democrat*, 1 Aug. 1891.

⁹⁶ *Ibid.*, 18 July 1891.

He established himself in a number of lucrative railway schemes, including the Royal Swedish and the East Kent Railway Companies, but for Sadleir the key to commercial success lay in gaining political power. John O'Shea, in his biography of Sadleir, noted that by the 1840s men from the business sector had established a strong foothold in the Westminster parliament alongside the wealthy landowning classes and were slowly becoming the real masters of political office.⁹⁷ Sadleir turned to Ireland to secure a seat in the House of Commons. In 1847 he was elected for the small county borough of Carlow. By 1852 he had been joined in parliament by his brother James and his cousins Frank Scully, Robert Keating and Vincent Scully. These five Irish MPs formed the nucleus of the Papal or Irish Brigade, better known as 'the Pope's brass band' to its opponents. These five MPs were all members of the Irish Independent Opposition Party and soon they became the 'front rank' of the Catholic defence and tenant right movement.⁹⁸

Although Sadleir had not been elected to parliament when the 1847 Incumbered Estates Bill came before the house, he was quick to make his presence and opinions known during debate on its 1848 reform. On 11 July 1848, he joined William Smith O'Brien in objecting to the prospect of introducing legislation exclusively for Ireland. He suggested that it would be remiss of the government to limit the operation of a piece of legislation to just one country when such a measure would prove advantageous throughout the empire. Sadleir warned against the establishment of a peasant proprietorship which many 'dreamed of' in Ireland, stating that he would 'support the principal of the Bill, but he objected to its machinery'.⁹⁹ Ever

⁹⁷ John O'Shea, *Prince of the Swindlers: John Sadleir MP, 1813-1856* (Dublin, 1999), p. 54.

⁹⁸ *Ibid.*, 18 July 1891.

⁹⁹ *Hansard 3 (Commons)*, c, cols 385-6 (11 July 1848).

inconsistent in his behaviour, Sadleir's later role in the Irish Land Company contradicted this early stance.¹⁰⁰

As the bill continued to progress through the house, the Carlow MP moved his focus from the possible impact of the measure to the potential abuse of it. Central to Sadleir's opposition, rather ironically, was the lack of 'required rigours' to prevent fraud. He argued that the equity courts of Ireland had a well-established and exceedingly intricate means of preventing dishonest transactions and urged the government to consider whether their current proposed Incumbered Estates legislation contained sufficient safeguards against fraud. He went on to suggest that Ireland simply required a reform of its existing foreclosure system and that the implementation of an amending measure to allow creditors to instigate the sale of a property would provide a sufficient solution to the problem.¹⁰¹

Following the failure of the 1848 measure and the introduction of an amended proposal in 1849, John Sadleir quickly identified himself as a leading figure in opposition to the bill. In February 1849, he questioned whether it was 'statesmanlike' to introduce legislation which had knowingly placed a further burden on an already overstrained Court of Chancery.¹⁰² Highlighting it as a fundamental flaw in the legislation, Sadleir stated that the proceedings of the Chancery were not suited to the conduct of an auction and were in fact the opposite of what would be seen as practical by a prudent or sensible auctioneer.¹⁰³ However, Sadleir reserved his most scathing criticism for those who framed the act. Having previously suggested that 'practical

¹⁰⁰ For more see Chapter 4.

¹⁰¹ *Hansard 3 (Commons)*, c, col. 588 (20 July 1848).

¹⁰² *Ibid.*, cii, col. 502 (9 Feb. 1849).

¹⁰³ *Ibid.*, civ, col. 385 (17 Apr. 1849).

men' should have been consulted in designing the legislation, he stated that the failure to do so had resulted in the measure's inevitable failure. Although he acknowledged the value of Romilly's 'late additions' to the bill, they failed to provide, in his estimation, sufficient safeguards for suitable investors or opportunities to entice capitalists.¹⁰⁴ Following a recommendation that the Incumbered Estates legislation should function outside of the constraints of the Chancery, he quickly returned to the subject of fraud. In this respect he suggested that the legislators had introduced too much reform and the proposal was now 'clogged with so many safeguards against possible frauds, and so many formalities to complete a title, as to be practically inoperative'. Sadleir concluded that unless the matter was amended it would once again prove to be a 'dead letter'.¹⁰⁵

The introduction of the independent commission to administer the work of the Incumbered Estates Court, outside the control of the Chancery, quickly turned the Carlow MP in favour of the measure. He later defended the decision to appoint the three independent judges, contradicting those who suggested the Commissioners had been granted too much power arguing that they would hold no greater power than the judges of the Exchequer or Equity courts. He advocated the transfer of estates already under the control of the Chancery to the new body and called for the addition of clauses to encourage 'professional absentee proprietors' to divest themselves of estates.¹⁰⁶ In qualifying this statement, Sadleir gave the example of a barony in Kerry which consisted of 100,000 acres, 92,000 of which were in the possession of absentees, with only 8,000 in the hands of resident landlords, half of whom were

¹⁰⁴ *Ibid.*, col. 386.

¹⁰⁵ *Ibid.*, col. 390.

¹⁰⁶ *Ibid.*, cv, col. 1102 (4 June 1849).

occasionally absentee.¹⁰⁷ Fuelling his own interest, Sadleir stated that the legislation could not effect sales unless the land being sold was divided into large parcels and the purchase of land holdings by joint stock companies was facilitated, thus preventing persons of merely 'moderate means' investing in land. He further suggested that the facilities of the court should be afforded to unincumbered landowners also.¹⁰⁸ The MP suggested that the most inherent flaw of the legislation was that it appeared to encourage landlords to encumber their estates in order to enjoy the benefits and advantages afforded by the legislation.

Exploiting his respected position in parliament, the Incumbered Estates Court provided John Sadleir with ample opportunity to undertake one of the Victorian period's most infamous frauds. In 1853 Sadleir had accepted the position of Lord of the Treasury under the Aberdeen administration, which earned him the title of 'judas pet of the murderous Whigs' because in doing so he was breaking an agreement made with the Independent Irish Party to reject posts which compromised the party's objectivity.¹⁰⁹ In 1854, Sadleir was forced to resign his position in the cabinet when he was found guilty of falsely imprisoning Edward Dowling, a customer of the Tipperary Joint Stock Bank, who had stated his intention to vote against Sadleir in the general election.¹¹⁰ From this point on his political career was plagued by investigations into allegations of political corruption and as a result his myriad of financial schemes slowly began to unravel. In 1856, it became apparent that the Tipperary Bank was insolvent when its bank drafts were dishonoured by Glyn & Co,

¹⁰⁷ *Ibid.*, col. 1103.

¹⁰⁸ *Ibid.*, cols 771-2 (21 May 1849).

¹⁰⁹ *Tablet*, 9 July 1853.

¹¹⁰ *Irish Examiner*, 15 Mar. 1854.

a London financial institution on which the drafts were drawn. This was despite a contradictory circular issued by the Bank which declared it was 'in a thoroughly solvent and satisfactory state'.¹¹¹ Sadleir's creative book-keeping was outlined in a letter to his brother, James, in December 1856, which stated

I know many of the English joint-stock banks, in order to give a good appearance to their balance, have constantly trebled the amount of their balance, &c, by making a series of entries, whereby they appeared to have assets and liabilities to four times the amount they really possessed or had. This has always been kept very quiet, and what at first was a kind of fiction came gradually to be bona fide.¹¹²

John O'Shea details the measures which Sadleir took to initially hide his deceit. He first attempted to bolster the bank using an overdraft from the London and County Bank but this action failed. His next step was the purchase of the Newcastle-upon-Tyne Bank using worthless Tipperary Bank drafts. Following this he sold 20,000 forged shares in the Royal Swedish Railway Company to Thomas Joseph Eyre. His final effort to secure the bank and cover his fraudulent transactions was to raise money from false land deeds which he fixed with a genuine seal of the Incumbered Estates Court. How Sadleir acquired this seal was never determined. On 16 February 1856 he took his own life on Hampstead Heath by Jack Straw's Castle pub. Writing to his brother he said

To what infamy have I come step by step, heaping crime upon crime- and now I find myself the author of numberless crimes of a diabolical character and the cause of ruin and misery and disgrace to thousands- ay of tens of thousands.¹¹³

In the aftermath of his death, the true extent of his frauds were unearthed.

¹¹¹ Sullivan, *New Ireland*, p. 374; *Kerry Evening Post*, 15 Mar. 1856.

¹¹² George Robb, *White collar crime in modern England, financial fraud and business morality, 1845-1929* (Cambridge, 1992), p. 62.

¹¹³ Sullivan, *New Ireland*, pp 185-6.

Sadleir had purchased lands through the court under a number of different guises. He purchased some properties under his own name; others he bought for members of his family; and a significant quantity of land was acquired in trust for Joseph Thomas Eyre, the bachelor uncle of Vincent Scully. Included in the lots he acquired were a number of prominent country houses such as Castle Hyde, Kilcommon House, Cahir Castle and Upper Court Manor. In total more than 22,000 acres were purchased at a cost of almost £250,000 (see Appendix 5).¹¹⁴ While Sadleir did make some legitimate purchases through the court, the majority of holdings acquired were not paid for. His dealings with the Incumbered Estates Court cast a shadow on the integrity of the Court. This scandal hastened the decline of the Incumbered Estates Court as an independent Commission.

A parliamentary return dated April 1856 included details of four printed orders extending the time allowed for the lodgement of purchase money in cases relating to Sadleir, specifically those made on the earl of Glengall's estate.¹¹⁵ At the sale of this estate on 11 November 1853, Sadleir purchased a total of twenty-two lots in trust for £68,000.¹¹⁶ Under the terms of the Incumbered Estates Act, purchase money had to be lodged with the Bank of Ireland within fourteen days of the sale taking place. In the event that purchase money was not forthcoming the commissioners were permitted to re-sell the property with any shortfall becoming the responsibility of the

¹¹⁴ *Incumbered Estates Court (Ireland). Return of the several purchases made in the Incumbered Estates Court by the John Sadleir, or in trust for hi; of the number of declarations of trust made by or to said John Sadleir appearing the books or documents in the said court; of the orders made by the commissioners, extending the time for the lodgement of the purchase money by said John Sadleir; a number of conveyances executed by the commissioners to the said John Sadleir, or in trust for him*, H.C. 1856 (187), liii, 411. (hereinafter *Return of purchase made by Sadleir*).

¹¹⁵ *Ibid.*, p. 2.

¹¹⁶ *Nenagh Guardian*, 12 Nov. 1853.

unsuccessful purchaser.¹¹⁷ However, in the case of Sadleir, these strict guidelines were not followed. On 20 December 1853, more than thirty-nine days after the original date of sale of the Glengall estate, Commissioner Hargreave made an order to 'compel lodgement of purchase money' from John Sadleir. The payment requested was just £10,000 effectively as a deposit in order to allow proceedings to progress.¹¹⁸ On 18 January 1854, sixty-eight days after the auction, a second order by Hargreave indicated that a proposal by Sadleir had been accepted.¹¹⁹ This proposal directed that payments would be made in the following manner; £10,000 in January, and £10,000 each month during February, March and April, with the residue to be lodged in May. By 11 February, it appears Sadleir had reneged on his agreement, vowing instead to lodge £2,000 within a week and the residue as set out in the earlier proposal provided he was given the immediate conveyance of the 'manor of Cahir'.¹²⁰ Nearly three months after the auction on 9 March 1854 an order was issued by the court demanding prompt payment. This order indicated that Sadleir had applied for a provisional credit, on the basis of his payment due to him as an incumbrancer, this application had been refused. Following this, Sadleir then agreed to lodge £2,000 of the remaining £67,970 which he owed the court. However, despite multiple warnings there is no indication that Sadleir made any payment for this estate to the court.¹²¹

It is perhaps easiest to illustrate the complexities of the Sadleir frauds through an examination of the transactions relating to the Castle Hyde estate. Vincent Scully, Sadleir's cousin, placed £10,000 on deposit with the Tipperary Bank in 1849. In

¹¹⁷ James O'Dowd, *The law and practice relating the sale and transfer of Incumbered Estates*, p.xxvi.

¹¹⁸ *Return of purchases made by Sadleir*, p. 2.

¹¹⁹ *Ibid.*, p. 3.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

addition to this he provided Sadleir with a personal loan amounting to £9,000. This brought the total amount of Scully's funds in the hands of John Sadleir to £19,000. With such considerable funds at his disposal, Scully sought to take advantage of the favourable terms of the Incumbered Estates Court. On 5 December 1851, Sadleir and Scully attended the court at Henrietta Street together and purchased two lots of the Castle Hyde in county Cork for £19,425 (see Appendix 7). The estate was entered into the purchase books of the court under the name of Thomas Joseph Eyre, an elderly uncle of Scully with an address in England. Scully would later testify that placing the property under Eyre's name was Sadleir's suggestion as he believed more favourable terms of re-sale could be effected if the owner was resident in England.¹²² However, believing himself to be the purchaser of the estates, it was Scully who lodged the £1,000 deposit to secure the property on 22 December.

In February 1853, with the sale still not completed, Scully pressed for the repayment of his £9,000 personal loan to Sadleir. He was duly informed by Sadleir that an interested party had been found to purchase Castle Hyde estate for a reasonable profit of £600.¹²³ Sadleir identified this interested party as Herbert Ingram, the proprietor of the *Illustrated London News*. When Ingram lodged the purchase money for Castle Hyde, Scully would be reimbursed. Ingram was a colourful character. In addition to his dealings with Sadleir, Ingram was also involved in a sexual harassment dispute within his own family and numerous other accusations of fraud and physical violence.¹²⁴ A draft of the terms of sale were sent to Scully on 23 February. Under

¹²² *The Times*, 10 Dec. 1858.

¹²³ *Dundalk Democrat*, 18 July 1891.

¹²⁴ For more see Isabel Bailey, *Herbert Ingram esq., MP of Boston: founder of The Illustrated London News, 1842* (Boston, 1996).

the scheme, which Sadleir devised, Ingram would pay the purchase money for the estates but the £9,000 of his personal loan owed to Scully would remain outstanding.¹²⁵

As the proposed sale of Castle Hyde was being finalised, Maurice Power, MP for Cork, resigned his seat. Sadleir was instrumental in securing this seat for Scully. Following his election Scully again sought to acquire a foothold in the county which he represented. He approached Sadleir to make enquiries with a view to reacquiring Castle Hyde. Sadleir informed the newly elected MP that Ingram was willing to sell Castle Hyde for £22,000, an increase of almost £2,000 on his investment. Shortly afterwards Sadleir informed Scully this price had increased to £25,000. Unable to reach an agreement through Sadleir, a frustrated Vincent Scully travelled to London with a view to brokering an agreement with Ingram. At Ingram's home at Rickmansworth the two reached, what Scully believed, was an agreement for the purchase of Castle Hyde. However, during a later meeting at the Reform Club in London, Ingram suggested that his wife had become attached to the property and wished to retain it and that the figure of £25,000 was insufficient for them to part with the property. Scully returned to Ireland and made no further efforts to acquire the property.¹²⁶

In the months following Sadleir's death, it was discovered that he had mortgaged the Castle Hyde estate to the Albion Insurance Company, London and County Bank and Messrs Blackhouse of Darlington. Furthermore, it became clear that the property had never actually been sold to Ingram, nor did he possess any legal interest in it. Ingram

¹²⁵ *Ibid.*

¹²⁶ *The Times*, 10 Dec. 1858.

had simply agreed to participate in the deceit of Scully on the understanding that he would receive a portion of the £5,000 profit which Sadleir hoped to achieve from the fraudulent transaction.¹²⁷

Lord Campbell in the Court of the Queen's Bench heard the case of Scully v. Ingram in late November 1858.¹²⁸ It came to light that Ingram and Sadleir had been involved in a number of speculative transactions associated with the Boston and Midland County Railways and the Irish Land Company. Scully later admitted to the court that it was in fact his idea to register the Castle Hyde estate in the purchase book of the court under the name of his elderly uncle Thomas J. Eyre. The defendant's counsel would later deem this the first fraudulent action of the case. Eyre, by all accounts, was unaware of his role in any of the transactions conducted in his name. In his defence Ingram, admitted suggesting to Scully that he intended to view Castle Hyde and discussed a purchase, but denied that he ever owned the property. The jury in the case returned a verdict for the plaintiff and awarded damages of just £300 to Scully. This sum was considerably less than the £75,000 which Scully had originally sought.¹²⁹

All of the properties purchased by Sadleir were subsequently re-sold through the Landed Estates Court. Although petitioned as early as 1856, the ongoing legal wrangling in relation to the ownership of the estates meant that proceedings did not get underway until 1860. In December 1858, the *Belfast Morning Chronicle* reported a judgement case on the Landed Estates Court, the Incumbered Estate's successor body. The case was heard by Commissioner Longfield, who determined that the

¹²⁷ *Kerry Evening Post*, 15 Mar. 1856.

¹²⁸ *The Times*, 10 Dec. 1858.

¹²⁹ *Ibid.*

London and County Bank, to whom Sadleir had mortgaged the properties he acquired under the Court, including Castle Hyde, were entitled to the proceeds of the sale of Sadleir's estate. The bank had advanced £112,308 to Sadleir. It was proposed to sell the estates in order to repay the bank and the remainder would be applied to the payment of Sadleir's other creditors including investors in the Tipperary Bank.¹³⁰ The estates were officially placed under the management of John William Burmester, James Sadleir and J. Hall all of whom were representatives of the London and County Bank. Castle Hyde was sold at auction on 21 December 1861, almost exactly ten years after it first passed through the Incumbered Estates court.¹³¹ The two lots originally purchased by Sadleir were divided into six lots. The first lot which included the Castle and over 700 acres, sold to the Sir Henry Becher for £23,000 by private contract on 4 November 1861. The Coolnamuck estate purchased by Sadleir in trust for his brother James, passed through the Court on 29 May 1860.¹³² The earl of Kingston's estate came up for sale on 26 June 1860.¹³³

The *Nation* noted in March 1856 that, regarding Sadleir, it would likely prove impossible to arrive at 'any approximation to an estimate of the ruin he had accumulated wherever his influence extended'.¹³⁴ It was estimated that in London he had 'swindled to the extent of £100,000', issued over 50,000 shares in the Swedish Railway Company with an approximate value of £200-300,000; defrauded the Tipperary Bank of between £170-400,000 and the East Kent Railway of in the region of £4,000. Others believed to have lost included the Roman Railway Company, the

¹³⁰ *Belfast Morning News*, 9 Dec. 1858.

¹³¹ *Allnut's Irish land schedule*, 1 Nov. 1861.

¹³² *ibid.*, 1 May 1860.

¹³³ *Ibid.*, 1 June 1860.

¹³⁴ *Nation*, 1 Mar. 1856.

London and County Bank, individuals upon whose estates he had acted as receiver, and some he dealt with during his brief time as Lord of the Treasury. His family was however the worst affected, his brother James Sadleir most of all.

In the wake of his brother's suicide in 1856, James Sadleir wrote to the press stating that he had played no role in the frauds which had come to light in the days preceding John's death. He suggested this his own fault lay in placing greater confidence in 'the energy, the talents, the genius and the resources of another, than in my own'. He continued that he was not alone in doing so and a number of the 'ablest, greatest and shrewdest men' in business in London had made a similar error. He denied having any role in land speculation or railways with his brother and concluded that bankruptcy had devastated his family.¹³⁵ James was subsequently expelled from the House of Commons, his estate at Coolnamuck in Tipperary seized and he was exiled to Switzerland.¹³⁶

Conclusion

The impact of the Incumbered Estates Court was not limited simply to the transfer of land ownership. Tenants on the land were not only adversely affected by the arrival of a new owner but also by the continuation of the impact of the former owner of an estate. Evictions were a feature of Irish rural life in the years preceding, during and after the Great Famine. The Incumbered Estates Act successfully served to make

¹³⁵ Un-catalogued papers of the Grene family, Coolnamuck House, access facilitated by Dr. Ciaran Reilly at the Centre for the Study of Historic Houses and Estates, Maynooth University.

¹³⁶ *Mr James Sadleir. Copies of the informations and warrant against Mr James Sadleir, and of the bills of indictment, if any, found against him, and of the names of the witnesses and findings of the grand jury thereon.* H.C. 1856 (394-I), 1, 587/599.

the process easier as the Subletting Act had endeavoured to do years earlier. The Sadleir frauds illustrate that the middleclass and the aristocracy were no more immune from distress as a result of the actions of the court. The decline of the Tipperary Bank devastated not only the Scully and Sadleir families but deprived hundreds of their savings leaving them in dire financial straits. In both the case of tenant rights and fraud no amendments were made to the legislation and no effort was made by Government to rectify either situation. The primary focus of the Incumbered Estates Act remained to divest incumbered landlords of their bankrupt holdings in an effort to settle creditors and grant parliamentary title to those acquiring land through the court.

Chapter 6

Exporting the revolution

The experiment of the Irish Incumbered Estates Act was, from its very conception, an experiment in social reform trialled by the British Government and, therefore, it had significant colonial implications and applications. For the government of Victorian Britain, Ireland was just one problematic corner of a vast empire upon which the sun never set. Although the Incumbered Estates 'experiment' was first tested in Ireland, the flexible revolutionary legislative template could be utilised in the farthest reaches of Britain's diverse and far-reaching colonies. The legislation was not only tried in the immediate aftermath of its Irish success, similar measures were utilised for a further seventy-seven years, with the last Incumbered Estates Commission terminating in 1925 in the provinces of Bihar and Orissa part of the Bengal in East India. Although altered to varying degrees, the purpose of the measures remained the same in each case. An Incumbered Estates Act was introduced in response to actual or potential revolutionary unrest or some other calamitous event which threatened British rule. Government and colonial administrations took advantage of the fear such upheavals created to pave the way for radical land reform. In each case the measure was designed to bolster the authority of Britain by reinforcing colonial power. While each of the Acts which will be outlined are worthy of thorough examination, this study aims to give an overview of applications of the Incumbered Estates experiment and open the avenue for further study.

Polarised societies, where the social order was deeply divided, were a common result of the process of colonisation and presented a significant challenge to the British

administration in the mid-nineteenth century.¹ Deep divides between the upper and lower classes continued to prove problematic. Lord Monteagle noted during debate on the abortive 1847 Irish Incumbered Estates Bill that:

There was no one who knew anything about the condition of Ireland who did not grieve to think of its condition from the absence of the middle class of proprietors; one that should stand between the larger class and the lower, or cottiers. Such a middle class formed the strength of a country.²

Generally the aristocracy and gentry held property and, therefore, monopolised political power. What middle class existed held little power other than economic and social. This class was comprised of merchants, bankers, lawyers, publishers and agents. Their progress in society was greatly hampered by the sacrosanct position of the gentry and aristocracy and, despite possessing significant capital, they were unable to gain a foothold in property. It was a fundamental flaw of the colonial model that it failed to provide a remedy for the poorer or lower classes who continued to live in poverty. The problems of such polarised societies were very prominent in the areas where an Incumbered Estates Act was brought into operation: landlord and tenant in Ireland, master and slave in the West Indies and the taluqdar and tenant relationships in the Oudh province. The Irish Incumbered Estates Act became a template for modifying these relationships. By reforming the social order and facilitating the change in ownership of land, the measure altered the ruling class by legislative means, replacing it with what was perceived to be an ideal model. In addition it was hoped that by extricating estates from the crippling burden of debt and enabling investment, the various colonial Incumbered Estates Acts would lead

¹ For more see W.R. Runciman, 'Towards a theory of social stratification' in Frank Parkin (ed.), *The social analysis of class structure* (London, 1974), pp 55-102.

² *Hansard 3 (Lords)*, xcii, col. 6 (27 Apr. 1847).

to significant improvement in agricultural efficiency and employment for the lower classes in these predominantly rural societies.

In July 1848 during debate on the Irish Incumbered Estates measure, Sir Lucius Smith-O'Brien, Conservative MP for Clare and brother of William Smith O'Brien leader of the abortive rebellion, had called on government to extend the operation of the proposed bill to include England and Scotland. This call was based on his belief that Ireland should be treated as an integral part of the empire and that there should be perfect unity between the laws and institutions of all countries within the United Kingdom.³ This proposal was immediately dismissed since it was understood that the introduction of this remedial legislation for Ireland had been as a result of circumstances peculiar to Ireland not present in England, Scotland or Wales. A considerable time elapsed before the subject of reformed land insolvency legislation was tentatively broached in the houses of parliament again. A significant restructuring measure was proposed in 1859 by Sir Hugh Cairns, solicitor general and MP for Belfast, who called for an overhaul of Britain's system of land registration. On 11 February, Cairns brought forward the Titles to Landed Estates Bill in the House of Commons. Guided by the legislation and practice of the Irish Incumbered Estates Court and its successor body the Landed Estates Courts, Cairns argued to establish a court for the exclusive purpose of investigating the titles of British estates. Under the proposal judges presiding over the court would require extensive experience in either conveyancing or have acted as a commissioner in the

³ *Hansard 3 (Commons)*, c, cols 88-9 (4 July 1848).

Irish Incumbered Estates Court. Cairns attested that the value of land in England had significantly depreciated due to the inability of parties to secure a title comparable to that granted by the Irish commission.⁴ It was suggested that offering security of title would increase the value of land by up to three years' purchase and that much larger investments would follow if the proper guarantees were given.⁵ As a result of these suggested financial benefits, the bill was relatively well received in the Commons with Sir Richard Bethell, MP for Wolverhampton, declaring it 'good sense' and Christopher Griffith, the Liberal representative for Devizes, noting there was 'great merit' in such a proposal.⁶ However, despite this early positive reception in the Commons, the proposal met with significant opposition in the Lords. This was led by Lord St. Leonard who warned that legislation of such radical significance could not be so 'rashly and wantonly confirmed' and argued that a determined struggle with local registries would no doubt follow.⁷ This mixed reaction to the bill was quickly rendered immaterial when the measure's progress was halted by the abrupt termination of Lord Derby's government in June of that year.

There was no further discussion of similar legislation until 1862 when a new measure was brought forward for the consideration of the government. The proposal reflected the success of elements of the Incumbered Estates Act. In February of that year a bill entitled the Registry of Landed Estates Bill was introduced to the House of Lords.⁸ The proposal, which was introduced by Lord Westbury, the lord chancellor under

⁴ *Hansard 3 (Commons)*, clii, col. 279 (11 Feb. 1859).

⁵ *Ibid.*, cols 280-2.

⁶ *Ibid.*, col. 309.

⁷ *Hansard 3 (Lords)*, clii, col. 685 (22 Feb. 1859).

⁸ *Report of the Select Committee of the House of Lords on the Declaration of Title Bill [H.L.], Security of Purchasers Bill [H.L.], Transfer of Land Bill [H.L.], Title of Landed Estates Bill [H.L.], Registry of Landed Estates Bill [H.L.], Real Property (Title of Purchasers) Bill [H.L.]; with the proceedings of the committee.* H.C. 1862 (320), xvi, 581.

Palmerstown's Liberal government, included many aspects of Cairns' earlier proposal. Principally, it featured the establishment of a registry for British land titles consisting of two parts: the first recorded indefeasible parliamentary title, and the second was reserved for titles which were not indefeasible. However, Westbury's measure, unlike Cairns', did not propose to establish a new court for investigation of title, rather it was to function as part of the existing machinery of the Court of Chancery. The bill did garner considerable opposition in both of the houses of parliament, but supporters defended the measure suggesting that if they were to wait for a 'perfect act' to be introduced, they would have no act at all, and contended that the issue had been in front of parliament for almost 'two hundred years'.⁹ The measure was passed by parliament. While the act was based on the Irish Incumbered Estates Act, and more specifically its clauses relating to the land registry, it had a much wider scope. The Court which it established lacked the independent characteristics of its Irish predecessor, instead it emulated the structure of the newer Landed Estates Court which was primarily concerned with the facilitating the transfer of land. The Registry Act was just one of many attempts to replicate the success of the radical Irish Incumbered Estates Court.

The Incumbered Estates template was first exported to the West Indies. On 29 August 1833, a 'blow fell' on plantation owners when the Abolition of Slavery Act received royal assent. Slavery was abolished in the West Indies in 1834 and when the apprenticeship system came to an end 1838 all slaves were declared free men.¹⁰

⁹ *Transfer of land. A bill [as amended in committee] intituled an act to facilitate the proof of title to, and the conveyance of, real estates.* H.C 1862 (176), v, 419.

¹⁰ For more see Claudius K. Fergus, *Revolutionary Emancipation: slavery and abolitionism in the British West Indies* (Louisiana, 2013).

The cost of this freedom to plantation owners was economically devastating. However, under the Emancipation Act a considerable allowance was set aside for the payment of compensation to those who lost property, in this case slaves. This compensation was adjudicated by the Slavery Compensation Committee. Parliament allocated £20,000,000 from government funds for the payment of this recompense and in total £16,500,000 was paid. (Fig. 6.1)

Location	Number of slaves	Compensation (£)
Jamaica	311,070	6,149,955
British Guiana	82,824	4,295,989
Barbados	83,150	1,719,980
Trinidad	20,657	1,033,992
Grenada	23,638	616,255
St Vincent	22,266	616,255
Antigua	29,121	425,547
St Lucia	13,291	334,495
St Kitts	19,780	329,393
Dominica	14,175	275,547
Tobago	11,589	233,875
Nevis	8,815	151,006
Bahamas	10,086	128,296
Montserrat	6,401	103,556
British Honduras	1,901	101,399
Virgin Islands	5,135	72,638
Bermuda	4,026	50,409
Total	667,925	16,638,587

Fig. 6.1- The number of slaves for whom compensation was paid and the approximate amount in each colony, 1836-51.

Source: Alan Burns, *History of the British West Indies*, p. 629

This payment was based on a ratio of the quantity of exports to the industrial value of the slave, and was determined by factors such as gender, age, type of work and level of skill.¹¹ The bulk of the money paid was used to liquidate mortgages and the other debts of planters. Reginald John Cust noted in his *Treatise on the West Indian Incumbered Estates Acts* that despite these sizeable payments the ‘palmy days of

¹¹ Alan Burns, *History of the British West Indies* (2nd ed., London, 1965), p. 628.

slavery' and the 'magnificent revenue' these former estate owners had grown accustomed to could not be replicated. He suggested that at best, with good management and practice, estates could yield only a reasonable profit. He condemned estates of a 'few hundred acres' to absolute ruin.¹² This corresponded with a considerable rise in discontent. The newly-emancipated slaves grew more and more dissatisfied and riots broke out across the West Indies, with rebellions resulting in considerable death and destruction.¹³ The escalation of violence in the post-emancipation period highlighted the precarious stability of West Indian society. As early as 1839 it was recognised that a radical measure was required to rectify the situation. Peter Harris Abbott, former secretary of the British, Irish and colonial silk company who was declared bankrupt on a number of occasions, published a pamphlet entitled *On public debt, with a plan for its final extinction* which suggested that

He who hopes to produce great good without hazarding some evil is not the person from whom, in a situation of difficult, much advantage is to be expected. All that is left is a choice of evils. He who talks rationally will rejoice if he can discover a remedy, with a mixture of evil, will be able to overcome the mortality of the disease.¹⁴

Abbott called for reforms to the system of banking and payment of debt. He questioned whether the system of merchant loans and repayment scheme was in any

¹² Reginald John Cust, *A treatise on the West Indian Incumbered Estates Acts, 17 and 18 Vict., C. 117-21 and 22 Vict., C. 45-27 and 28 Vict., C. 108. With an appendix, containing the Acts, general rules, forms, and directions, additional forms, local acts, tables and feed, solicitors fees and charges. And reports of cases (heard before Henry Stoner, Esq., Chief Commissioner)* (2nd ed., London, 1865), p. 11.

¹³ For more see Gad Heuman, 'Riots and resistance in the West Indian at the moment of freedom' in Howard Temperley (ed.), *After slavery: emancipation and its discontents* (London, 2000), pp 135-149.

¹⁴ Peter Harris Abbott, *On public debt, with a plan for its final extinction* (London, 1839), p. i.

way efficient and suggested reforms. However, he stopped short of recommending the introduction of a measure for the sale of estates.¹⁵

Despite Abbott's reluctance to call for a land reform measure, the challenge of poor estate management and the question of social unease soon became a problem worthy of significant attention in the West Indies. With landlords struggling to meet wages and turn a profit, it became clear that in order to improve agriculture, maintain exports and provide employment for the poorer classes, a measure was required to tackle the problem of land insolvency. By the 1850s comparisons were drawn with the post-Famine situation in Ireland. Reginald John Cust would later argue that the condition of estates in the West Indies resembled the 'ancient condition of Irish estates' and that it was not unreasonable to hope that a measure which had proved so successful in Ireland would have similar benefits for the West Indian islands.¹⁶ The feasibility of the measure was the subject of extensive discourse between government and the Queen's representatives on the islands. In March 1854, W.M.G. Colebrooke, colonial administrator in New Brunswick in the West Indies, wrote to the duke of Newcastle, the secretary of state for war and the colonies, calling for the introduction of insolvency legislation in order to 'relieve the colony of the injurious effect of irresponsible management'.¹⁷ Earlier in February 1854, Richard Graves MacDonnell, an Anglo-Irish solicitor who held successive administrative posts in the West Indies, had similarly urged the government to introduce a measure to

¹⁵ For more on merchant loans see, H. R. Machiraju, *Merchant banking, principles and practice* (3rd ed., New Delhi, 2004).

¹⁶ Cust, *A treatise on the West Indian Incumbered Estates Acts*, p. 9.

¹⁷ *West Indies. Copy of correspondence, since January 1854, by or between the governors or lieutenant-governors of and of the West India colonies, the Treasury, the Colonial Office, or the Commissioners for the West India Islands relief fund, relative to estates in the West Indies indebted to government for advances made to them by reason of losses sustained in the hurricanes of 1831-32*, H.C 1854-5 (159), xxxvii, 469-523. (hereinafter *Correspondence of the West Indian colonies*).

facilitate the sale of estates held under nominal ownership by bankrupt landlords, as nothing short of this could 'save' West Indian property. He called for the introduction of an Incumbered Estates measure modelled on that which had proved 'so beneficial in Ireland', commending that the Irish legislation had shown a 'rational way' of facilitating the transfer and improvement of land.¹⁸ Indicating that a draft proposal for the measure had already been circulated, MacDonnell was quick to warn that such a radical measure would not pass through the legislative council of many of the colonies in its present form. In response Colebrooke defended the measure suggesting that it was the only way to rid the West Indies of the evils of mismanagement and facilitate the transfer of property to solvent owners who would in turn secure 'the well-being and contentment of the labouring class' and the good government of the island.¹⁹ These were also the arguments used to alleviate the concerns of parliament, and were clearly reminiscent of the arguments used as the Irish Incumbered Estates measure passed through the houses of parliament.

As had been the case with Ireland, parliament at Westminster deemed it essential to the prosperity of the empire that the West Indies be maintained in a state of agricultural cultivation rather than be industrialised. Incumbered Estates legislation was exclusively concerned with agricultural reform and the reintroduction of wealth and stability into the landholding classes across the colonies. In doing so, the colony remained subservient to the industrial power of England. Parliament maintained the necessary reform could only be achieved by relieving the islands of insolvent proprietors and releasing estates from the debts and charges which rendered any

¹⁸ *Correspondence of the West Indian colonies* p. 17

¹⁹ *Ibid.*, p. 21.

agricultural improvements impossible. The guarantee of an unimpeachable title was seen as the best means of attracting significant investment to ‘comparatively cheap’ land.²⁰ For government, the introduction of an Incumbered Estates Act eliminated the need to remedy the complex, ongoing, legislative problems in relation to land sales in the West Indies. In addition, the legislation provided a comprehensive solution rather than necessitating lengthy reform specific to each of the islands. As had been the case with Irish landowners and the impact from the Great Famine, the loss of the profits of former slave owners was identified as the tipping point which led estates to fall quickly from profitability to insolvency. As had been the case in Ireland, the Court of Chancery in the West Indies was quickly overwhelmed by the number of estates coming under its control.²¹

As with Irish estates, the complex financial entanglement of West Indian estates makes it difficult to ascertain the origins of estates with certainty. However, a report into the business of the West Indian Court suggested that a significant portion of the charges and borrowings on estates were a result of the unprofitability of estates. This problem was compounded by the sudden loss of their ‘handsome surplus’ from free labour, which led to the appointment of receivers. On many estates the cost of this litigation swallowed what little profit could be extracted. Cust noted that the same impediments existed in the West Indies as had existed on Irish estates. Following emancipation owners had grown indifferent to their estates and took no steps to

²⁰ *West Indies. Report by Colonel Crossman, C.M.G., R.E., and George Baden-Powell, Esq., M.A., on the West Indian Incumbered Estates Court, with letter from the West India Incumbered Estate Commission commenting thereon.* [C. 3982], HC. 1884, lv, 835. (hereafter cited as *Crossman report of West India Incumbered Estates Court*)

²¹ For more on post-Emancipation debt see W. Neilson Hancock, *The abolition of slavery considered, with reference to the state of the West Indies since Emancipation. A paper read before the Statistical Section of the British Association at Belfast, September 2nd, 1852* (Dublin, 1852).

improve properties which was unproductive. Similarly, with numerous extensive charges and complicated accounts, incumbancers had given up hope of realising their security. The system which persisted was ruinous to owners and unjust to incumbancers. Cust argued that by 1854 their cries had become 'too great to be neglected'.²²

The Incumbered Estates (West Indies) Bill was introduced to the House of Lords on 30 May 1854. The bill's initial progress was slow. On 22 June during initial debate on the measure, the duke of Newcastle noted the proposal contained no 'new principle' and government was simply applying a measure which had been operating with considerable success for some years in 'another portion of the empire'.²³ He continued that before the abolition of slavery, property in the West Indies had been of 'immense value' to its owners and the majority of proprietors had been in possession of thriving estates. However, that had encouraged the creation of charges which had now become incumbrances that could no longer be met. Further economic factors were brought into consideration. The sugar industry had been devastated with the price per tonne dropping by more than 50 per cent from £60 to just £25. Furthermore, with the emancipation of slaves the cost of labour increased and its supply was disorganised.²⁴ Newcastle suggested that this rapid economic decline had left many estates 'inextricably incumbered'.²⁵ Colebrooke estimated that in Jamaica up to nine tenths of estates on the island were incumbered to an unmanageable degree.

²² Cust, *A treatise on the West Indian Incumbered Estates Acts*, pp 12-3

²³ *Hansard 3 (Lords)*, cxxxiv, col. 488 (22 June 1854).

²⁴ *Crossman report of West India Incumbered Estates Court*, p. 4.

²⁵ *Hansard 3 (Lords)*, cxxxiv, col. 490 (22 June 1854).

The bill presented to the House was, as Newcastle stated, not a original creation. It merged elements of two pre-existing measures: the Irish Incumbered Estates Act and the Slave Compensation Act. As had been the case when debating the Irish measure, the model of the Compensation Committee was used to illustrate the benefits of creating an independent self-regulating body.²⁶ While the principal provisions of the bill followed the Irish measure, there were many significant differences. Firstly, there was a vast difference between a plantation in the West Indies and an agricultural estate in Ireland or England. There were different tenurial arrangements in the two colonies which Newcastle highlighted. While absenteeism was regrettably common in Ireland, West Indian landowners were almost exclusively resident in England and made little or no effort to visit or manage their holdings.²⁷ As a result West Indian estates were not generally maintained in the same manner as an English estate. Instead they were treated as a trading concern, like a mine. These concerns were reflected in the legislation. With regard to Ireland, the government had felt its purpose was best served by establishing a court in Dublin for the adjudication of cases. This, as has been shown, allowed interested parties easy access to the court and facilitated ease of purchase for interested parties. On the other hand, the proposal for the West Indian Court sought to establish a commission in London for the conduct of business. A chief commissioner was appointed in the London court with two assistant commissioners maintained in two locations on the islands.²⁸ No. 8 Park Street, Westminster was selected as a location for the London Court. The decision to base the court in London disregarded the interests of local investors in the West

²⁶ See Chapter 1.

²⁷ *Hansard 3 (Lords)*, cxxxiv, col. 491 (22 June 1854).

²⁸ *Ibid.*, col. 492.

Indies and facilitated English investors under the Court. A London location had been utilised by the Slave Compensation Committee, which had also been based in England. While under the Irish measure it was hoped the new owners would be resident landlords, a similar hope does not appear to have existed in relation to the West Indian islands. Recognising that each of the ten islands which came under the Act had an independent legislature and legal system, the bill not only acknowledged the differences in landholding on each but also permitted the commissioners to amend or substitute provisions within the act to accommodate the laws and customs of each colony.²⁹

As debate on the measure continued, the earl of Derby offered a cautionary note. He praised the Irish measure as an ‘exceptional piece of legislation’ but he noted that any good which had been accomplished by the measure was at the expense of a great number of individuals, referring to both the landlords and tenants who lost property as a result of the operation of the Irish Court.³⁰ Derby objected to a number of clauses in the measure proposed for the West Indies. He stated that under the Irish legislation estates could be brought onto the market and sold in one lot or in a number of smaller lots, if it were deemed more advantageous by the commissioners. He argued that in the case of the West Indies where enormous amounts of land were at best waste land, to subdivide them into smaller fractions, as had been the practice in Ireland, would eliminate any value which the estate had.³¹ Lord St Leonards could not foresee a single plantation owner in the West Indies who would willingly submit to the sale of his property in England. He questioned the practicality of introducing a blanket

²⁹ *Ibid.*, col. 493.

³⁰ *Ibid.*, col. 498.

³¹ *Ibid.*

measure applicable to all of the islands, rather than a specific measure adapted for each and serving its peculiar circumstances. He declared the measure before the House was 'like firing a random shot at a hedge without knowing what you might hit'.³² St Leonards questioned whether there was a sufficient demand for property in the West Indies to ensure that the prices achieved were not 'utterly ruinous to the seller'. He warned against the precedent which he felt had been set by the Irish Court where the first estates were sacrificed for a small sum. Though he acknowledged that prices did gradually improve, he warned that this 'mischief' should not be allowed to happen under the West Indian Court.³³ Lord Brougham, who had been a dedicated opponent of the passing of the Irish Incumbered Estates Act, felt bound to acknowledge the great good which had been produced by that act and he felt compelled to recommend the measure for the West Indies as he envisaged similar relief as a result.

By 6 July 1854 the measure had passed through the Lords, It was brought to the Commons where a second reading took place on 10 July 1854. By 7 August the bill had progressed to committee. Sir John Pakington, Conservative MP for Droitwich, noted that a significant portion of the incumbrances on West Indian estates had arisen from the loans granted by parliament in 1832 as part of the hurricane loan scheme.³⁴ This West Indian Relief Commission was set up in 1832 following insurrections in Jamaica and hurricanes in Barbados, St Lucia, St Vincent, British Guiana and Trinidad. Money was made available to colonial governments to relieve affected

³² Ibid., col. 499.

³³ Ibid.

³⁴ For more see Matthew Malachy, *Hurricanes and society in the British greater West Indian, 1624-1783* (Baltimore, 2006).

persons and as loans to individual estate owners to rebuild their plantations. The loans were secured by the mortgage of the estates to the Crown. Under this system parliament made £500,000 available for the purpose of ‘restoring the buildings and works on estates’. This money was a loan on which colonists paid no interest for the first three years and a rate of just 4 per cent thereafter.³⁵ The property damage which had been caused in this instance was estimated to be as high as £1,154,589.³⁶ Pakington compared the introduction of the Incumbered Estates measure under these circumstances to Shakespeare’s ‘Shylock and the pound of flesh’.³⁷ He continued that it was nothing short of cruel to confiscate estates which were worth much less than the value of incumbrances charged upon them. Pakington stated that the value of the estates in St Vincent’s was now 90 per cent less than their when the ‘hurricane loans’ were extended.³⁸ This argument mirrored the debate that which had taken place in relation to the Irish Incumbered Estates Court, which centred on the collapsed land prices in Ireland as a result of the Famine. Edward Ellice, an eminent merchant and MP for St Andrews, argued that the prosperity previously experienced in the West Indies was founded on the artificial principles of slavery and protection which could not be emulated. He criticised the government for ‘scolding its victims once the fabric which they depended upon had fallen’, rather than taking the blame themselves.³⁹ Sir George Grey, Liberal MP for Morpeth, argued that the measure before the House would do more to benefit the West Indies than any previously brought before the House and suggested that it would raise the value of property to

³⁵ Malachy, *Hurricanes and society*, p. 193.

³⁶ Mary Turner, *Slaves and missionaries: the disintegration of Jamaican Slave society, 1787-1834* (Illinois, 1982), p. 173.

³⁷ *Hansard 3 (Commons)*, cxxxv, col. 1377 (7 Aug. 1854).

³⁸ *Ibid.*, col. 1378.

³⁹ *Ibid.*, col. 1380.

the highest price possible, and was conducive to the interests of the owners of West India properties.⁴⁰

Thomson Hankey, Liberal MP for Peterborough, claiming to represent the West Indian interest in the House, echoed the argument made during the debate on the Irish measure in 1849 which declared that pressing the sale of West Indian estates at their deflated value was equivalent to complete confiscation.⁴¹ Vincent Scully, in support of the measure, criticised government for twice ruining the beautiful islands, first by encouraging slavery and then by abolishing it. Citing issues and problems with the Irish legislative template, he begged the government to introduce a means of preventing speculators from purchasing an estate for £5,000 and after a period re-selling it for £20,000.⁴² The third reading of the bill took place without debate and the bill was passed. On 11 August the measure was given royal assent.

The 1854 Act was soon found to be 'ambiguous and defective'.⁴³ While the Act provided for the creation of a London Commission, it also established a Court in each of the islands. Under the 1854 measure a local commissioner was appointed and this representative was to be remunerated out of the colonies funds rather than from Government funds, as had been the case in Ireland. Reginald Cust in his treatise on the Court suggested that this was the primary cause of delay in the legislations implementation.⁴⁴ The first supplementary measure was introduced in 1858. The Act was further amended in 1862 and 1864. The first West Indian Incumbered Estates Act shared the objectives of the Irish measure. However, Cust notes that neither the

⁴⁰ *Ibid.*, col. 1383.

⁴¹ *Ibid.*, col. 1384.

⁴² *Ibid.*, col. 1385.

⁴³ Cust, *A treatise on the West Indian Incumbered Estates Acts*, p. 14.

⁴⁴ *Ibid.*, p. 13.

wording nor the framework of the 1849 Irish act were followed. The 1858 supplementary measure altered the make-up of the Court. A chief commissioner was appointed to the London Court and his salary was paid from a parliamentary provision. An additional grant was provided for two assistant commissioners. Under the terms of the 1862 Act these costs were defrayed from the purchase money of land sold through the Court. This change brought the West Indian Incumbered Estates Court in line with the Irish Landed Estates Court from 1858. As with the Irish Court, the West Indian equivalent was a Court of Record and not subject to the authority of any Court of law.⁴⁵ Some of the amendments required were simply technical such as the extension of the term 'estate' to include plantations, while others, such as those relating to transfer of property, were much more complex. Prior to 1858 a purchaser who agreed to buy an estate in a situation where the 'person applying for the sale' possessed or had an incumbrance upon the property, the new purchaser was required to investigate title as strictly as though the Incumbered Estates measure had never been passed. Under the 1858 act the conveyance passed would be a fee simple interest unless a lessor interest was expressly stated. The 1862 amendments enabled the West Indian Court to appoint receivers during the interval between the commencement and sale of the estate and the 1864 revision authorised the appointment of a receiver from the making of the conditional order.⁴⁶

The West Indian Incumbered Estates Acts included a proviso that each of the individual legislatures had the power to determine whether the measure would take effect on their island. This clause significantly hampered the effectiveness of the

⁴⁵ *Ibid.*, pp 26-7.

⁴⁶ *Ibid.*, p. 34.

legislation. Some of the islands councils were slow to concede power to administer bankrupt estates to a court based outside of their jurisdiction. In total four islands deemed it inexpedient to place themselves under the legislation considering that the local practices in place were already sufficient. Barbados, St Lucia, Trinidad and British Guiana all declined the introduction of the Incumbered Estates Act deeming it to be injurious to their interests. It would be three years from the passing of the legislation before the first of the islands utilised the facilities of the Court and a sale took place (see Fig. 6.2).

Name of colony	Year of introduction
St. Vincent	1857
Tobago	1858
Virgin Islands	1860
St Kitt's	1860
Jamaica	1861
Antigua	1864
Montserrat	1865
Grenada	1866
Dominica	1867
Nevis	1867

Fig. 6.2- Name and date of colonies placing themselves under the Incumbered Estates Act.
Source: Crossman report of West India Incumbered Estates Court, p. 3.

The legislation and the judicial committee of the West Indian Incumbered Estates Court, was modelled, as far as circumstances would permit, on the Irish model. A total of three commissioners were appointed to the court, one chief commissioner and two assistants. The first chief commissioner appointed to the court was Sir Edward Phipps, third son of first earl of Mulgrave, an eminent lawyer who wrote on both economic and currency matters. He died in 1857. In February 1858, Henry James Stonor was appointed to the post. Although two assistant commissioners were recommended under the legislation only one was ever appointed, Sir Frederick

Rogers. Little is known about either individual.⁴⁷ However, unlike the Irish Court, those serving in the London-based West Indian Court, were required to have at least ten years' experience at the bar and had to be resident in England. Local commissioners were also appointed in each colony under the act. The new court was a court of record which retained the right to prosecute cases of partition, exchange, allotment and division. Any appeals arising from the court were undertaken in the privy council. Key aspects of the Irish legislation were retained, including the requirement that an estate should be incumbered by no less than 50 per cent of the annual value of the estate and the right of a married woman to act as a *femme sole* on an estate where she had separate use of the property for her lifetime. For all the similarities there were a greater number of differences. The requirement that the fees for the sale be paid from the purchase money as a first priority had a significant impact on the amounts available for the discharge of incumbrances. One significant change made to the West Indian court by the commissioners was a limited recognition of the rights of year to year tenants granting two options, the first that the estate would be sold subject to their interest and the second that they would be compensated as an incumbrancer for the loss of their produce.⁴⁸

In Liberal MP Colonel William Crossman's report on the West Indian Incumbered Estates Court undertaken in 1884, it was stated that a total of 290 estates were sold by the Commissioners through the Court. Among Crossman's many criticisms of the Court was the expense associated with a sale. He deemed the establishment of the court in England as unjust to the poorer classes. Crossman reasoned that the

⁴⁷ *Ibid.*, p. 6.

⁴⁸ An Act to facilitate the Sale and Transfer of Incumbered Estates in the West Indies (17 & 18 Vict. c. cxvii).

practicalities of putting an estate through the London Commission made it the monopoly of the rich.⁴⁹ This, he maintained, circumvented the intention of the legislation. It would later be suggested that 'many of the islands' imposed additional duties for processes undertaken there.⁵⁰ As a result there was a clear preference for the English Court. This further precluded the poorer classes from bidding on estates at auction as a result of the distance and expense involved. Appearing in person was a requirement under the West Indian measure but this had not been the case under the Irish legislation. Crossman's reports stated that estates were frequently sold for significantly less money than would satisfy the claims made upon them. By 1884 it was concluded that the court had survived its period of usefulness and achieved the purpose for which it was instituted. Land in West India sold for significantly less per acre than its Irish equivalent, although this is not a like-for like comparison. Within the West Indian Islands themselves there was a considerable difference in the price of land which varied from £.144 per acre in Jamaica to £14.94 on St. Christopher's Island.⁵¹

⁴⁹ *Crossman report of West India Incumbered Estates Court*, p. 28

⁵⁰ *Ibid.*, p. 5.

⁵¹ For average cost of Irish land see Appendix 5.

Colony	Estates sold	Acres	Purchase paid (£)	Price per acre (£)
St. Vincent	22	8,128	50,740	6.24
Tobago	30	11,257	21,580	1.91
St Christopher (Virgin Islands)	10	2,971	44,390	14.94
Jamaica	124	122,616	177,490	1.44
Antigua	56	17,209	92,960	5.40
Montserrat	11	2,283	5,330	2.33
Grenada	28	12,859	38,330	2.98
Dominica	6	3,656	10,900	2.98
Nevis	3	344	4,500	13.08
Total	290	181,323	446,220	5.7

Fig. 6.3- Statement of estates sold by the Incumbered Estates Court in London up to 1 March 1884.

Source: *Crossman report of West India Incumbered Estates Court*, p. 28

A sale under the West Indian Court was broken into three parts: petition, sale and distribution. The petition could be presented to the London or local commission. This decision was at the behest of the petitioning party, but once presented the petition could not be transferred to the other. Cust suggests this decision was influenced by a number of factors but most specifically by the court itself in London. The location of incumbrancers was also a significant factor in choice as the cost and expenses of incumbrancers were added to the incumbrance and deducted from the final purchase money. Due to the level of absenteeism on West Indian estates, it follows that the majority of creditors were resident in England. While under the Irish Incumbered Estates Court the costs of a sale were met by the exchequer, under the West Indian model costs were defrayed as a percentage on the gross amount of the purchase money.⁵² Neither the London Court nor the local courts were supported from the public purse, a system which was adopted by the Irish Landed Estates Court when it was established in 1858. The swearing of affidavits as a general practice and the payment of fees for a petition were also introduced, differing from the practice of the

⁵² *Crossman report of West India Incumbered Estates Court*, p. 25.

Irish Court. The advertisement for sale remained relatively unchanged. Advertisements were placed in *The Times* and a colonial or local newspaper as had been the practice in Ireland. Auctioneers' catalogues in the form of rentals and particulars were not drafted for sales in the West Indies. Estates in the West Indies were generally not let to the same extent as those in Ireland. However, if an estate was set with sugar, it was frequently made a stipulation in the sale agreement that the cultivation was to be continued until the delivery of possession to the purchaser and the cultivator was permitted to either receive compensation for the crop or to retain use of the land until it was harvested. Many of the abuses of the Irish Court, which had not been remedied, were regulated under the West Indian model. While it was generally the rule that the highest bidder should be declared the purchaser, in cases where it was deemed more advantageous to all parties by the chief commissioner a lower offer could be accepted.⁵³ The specific details of this were unclear. Dates were appointed by the commissioner for the payment of purchase monies and in cases where these were not paid the purchaser could be held in contempt of court and liable to be imprisoned.⁵⁴

In August 1861, the first conditional order for a sale was made on a Jamaican estate. The Worthy Park estate, described as one of the 'finest on the island', was petitioned by the executors of Lord Dunsany, an Irish peer.⁵⁵ An indication of the extent of business undertaken by the Court emerged when, in April 1864, a parliamentary return was brought forward indicating the extent of land which had been sold and the purchase monies administered from 17 July 1862. (See fig. 6.4) Nineteen estates

⁵³ Cust, *A treatise on the West Indian Incumbered Estates Acts*, p. 54.

⁵⁴ *Ibid.*, p. 55.

⁵⁵ *Leicestershire Mercury*, 3 Aug. 1861.

had been sold but payments had not yet been made and an additional thirty estates had been petitioned. The pace at which auctions took place and sale proceeds were distributed is clearly significantly slower than under the Irish Court. In 1863, the *Liverpool Mercury* brought the business of the court to the attention of the mercantile community of the town. It was suggested that the slow pace at which the ailing legislation had been reformed demonstrated the government's 'wholesale dread' of applying what was deemed by the press to be 'super-legislation' to colonies which maintained an independent legislature.⁵⁶

The Act of Union had disestablished the independent Irish legislature and with its MPs sitting in the parliament at Westminster there was limited opportunity for formal objection. However, in the case of the West Indies, the proviso which permitted individual colonies to opt in or out of the measure lessened the legislation's effectiveness there and permitted individual councils to refuse the application of the act. It was rightly suggested that had the introduction of the Irish Incumbered Estates Acts been left to the discretion of a local Irish parliament, despite the depressed state of Irish land, there would have been little chance of the measure being introduced.

⁵⁶ *Liverpool Mercury*, 23 Jan. 1863.

Name of estate	Acreage	Colony	Date of sale	Purchase monies
Round Hill	100	Jamaica	10 Feb. 1863	£100
Mexico	1,444	Jamaica	22 Dec. 1862	£650
Sally Hall	290	Jamaica	22 Dec. 1862	£200
Santa Crus Park	387	Jamaica	22 Dec. 1862	£120
Drax Hall	2,388	Jamaica	14 Apr. 1863	£4,500
Mocho	361	Jamaica	14 Apr. 1863	£100
Sunbury	1,130	Jamaica	14 Apr. 1863	£100
Up Park Pea	652	Jamaica	23 June 1863	£1,500
Swanswick	1,162	Jamaica	23 June 1863	£2,300
Total	7,914			£9,570

Fig. 6.4- Return of name, acres, location, date & purchase price of completed sales between July 1863 & April 1864.

Source: *Return of number of estates sold under West India Incumbered Estates Act, 1862-4*, p.2, H.C. 1864 (205) xli, 629.

The West Indian Incumbered Estates Court was subject to significant criticism. In July 1864, a series of letters was published criticising the Court's location within London. In July 1863, a group of nineteen solicitors wrote to the Treasury requesting the removal of the court from Park Street in Westminster to a location in the district of Lincoln's Inn. As with the Irish measure the accommodation afforded to the court was described as 'insufficient and inconvenient' and the only means of accessing the auction room was 'up a narrow stone back staircase three stories high'.⁵⁷ Lincoln's Inn and the Chancery were promoted as more convenient locations. However, the business of the court was not transferred. In April 1864, Henry James Stonor wrote to the duke of Newcastle from the West Indian Incumbered Estates Court at Park Street detailing the state of the commission's business. He maintained that in order

⁵⁷ *West India Incumbered Estates Acts. Copies of circular despatch of Sir George Cornwall Lewis, in the year 1860, to the governors of the West Indian colonies, on the subject of the West India Incumbered Estates Acts; of names of the West Indian colonies into which the above acts have been introduced, with the dates of the orders introducing the same; of a memorial to the Treasury, in the year 1863, from solicitors practicing in London, applying for a removal of the offices of the West India Incumbered Estates Commission; and, of correspondence between the Colonial Office and the Treasury, during the present year, on the subject of the continuance of the above acts; &c.* p. 4, H.C. 1864 (478), xli, 633. (hereinafter *Circular dispatches of the Incumbered Estates Court*).

to wind up the business of the Court a period of no less than five years would be required, as those petitions which had already been presented to the house was at a considerable cost to the parties.⁵⁸

The West Indies Incumbered Estates Act was passed with the intention of providing a cheap and easy method of disposing of estates in the West Indies which were heavily in debt. Unlike the Irish Act, the measure was not forced on the people, it was left to each colonial government to decide whether or not it should be applicable in its territory. Unlike the Irish measure, the West Indian Court attracted merchant capital from the United Kingdom. While this satisfied government, others were critical of the old 'West Indian families' being swept away.⁵⁹ C. S. Salmon, who held 'high office' in the West Indies criticised the scheme:

For thirty years and more this court operated in these unfortunate islands, driving away capital and enterprise... These merchants, having thus the game in their hands, had the proprietors at their mercy.⁶⁰

Unlike the Irish Incumbered Estates Court which was heralded as a great success, the Royal Commission which recommended the repeal of the West Indian Act expressed the view that its 'results have been disastrous'.⁶¹ The new landowners appointed were, once again, almost exclusively absentee, and had immediately set about appointing agents to manage their estate. The Court remained in place until 1886 when it was abolished by parliamentary act. The West Indian Court did not enjoy the same degree of success that the Irish Court had. Proceedings in Ireland led

⁵⁸ *Circular dispatches of the Incumbered Estates Court*, pp 8-9.

⁵⁹ Alan Burns, *History of the British West Indies* (2nd ed., London, 1965), p. 660.

⁶⁰ C. S. Salmon quoted in Alan Burns, *History of the British West Indies* (2nd ed., London, 1965), p. 661.

⁶¹ *West Indies. Report of the Royal Commission appointed in December 1882, to inquire into the public revenues, expenditures, debts, and liabilities of the islands of Jamaica, Grenada, St Vincent, Tobago and St Lucia, and the Leeward Islands; with a dispatch thereon from Secretary of State to Governor Sir Henry Norman, K.C.B., C.I.E. Part I (With map)*, p. 86 [C. 3840], H.C. 1884, xlvi, 1.

to the transfer of almost 1.7 million acres of land. The West Indian equivalent transferred just 181,323 acres which was just 5.5 per cent of the overall acreage of the islands brought under the act.

The Incumbered Estates Act in India differed from that in Ireland and the West Indies. Although motivated by violence and revolt, the legislation did not intend to create a new agrarian structure and system or to establish a new landed class. Instead, it was designed to reintroduce and reinforce a structure and system which had previously been removed. India was by far the largest of the English colonies. As with Ireland and the West Indies, it presented a unique set of challenges to a British government intent on maintaining control of the vast subcontinent. By the mid-nineteenth century, Indian society was marked by a sharp disjunction between the small alien ruling class, British in culture, and the quarter of a billion Indians whom the British effectively controlled.⁶² Angus Madden noted that the Indian ruling class lived an 'extravagant life-style' surpassing that of the European aristocracy and that the standard of living for the ordinary people was lower than that of European peasants.⁶³ The caste system, a form of social stratification characterised by the inheritance of exclusive privileges, lifestyle and status, allowed this system to remain intact. This delicate social balance was the model utilised by the Mughal Empire. Following its gradual decline, the 'quasi-departmental' arm of the British state, the East India Company, also respected the caste system.⁶⁴ As in Ireland, the native land

⁶² Bernard S. Cohn, 'Representing authority in Victorian India' in Eric Hobsbawn & Terence Ranger (eds), *The invention of tradition* (Cambridge, 2012), p. 165.

⁶³ Angus Maddison, *Class structure and growth: India and Pakistan since the Moghuls* (London, 1971), p. 15.

⁶⁴ For more on the Mughal Empire see Andrea Hintze, *The Mughal Empire and its decline* (London, 1997); East India Company see chapter 3, Barbara D. Metcalf & Thomas R. Metcalf, *A concise history of India* (Cambridge, 2001).

system of India conferred on land owners varying elements of status defined only by custom, and therefore, were by no means precisely defined. R.D. Collison Black, noted that 'the British mind found incomprehensible a society based on an unwritten custom and on government by personal discretion'.⁶⁵ However, when Britain set about establishing its own direct rule in India in 1857, attempts were made to amend this native land system. In the case of India, rather than gradually reforming the administrative system they replaced the 'wasteful warlord aristocracy' with a 'bureaucratic military establishment' that had been carefully designed by 'utilitarian technocrats' as an efficient means of maintaining law and order.⁶⁶ The implementation of these changes culminated in the outbreak of the Indian Mutiny in 1857.⁶⁷

On 6 February 1856 the province of Oudh, in Northern India, passed into the hands of the British government following the demise of the East India Company. Before the mutiny British land policy had applied for almost fifty years and was dominated by the idea of peasant proprietorship. The policies applied in the early 1800s by the influential governor, Sir Thomas Munro, were motivated by a paternalist sentiment driven by a desire to protect the peasant and preserve his interests. Similarly, the ideals of John Stuart Mill outlined in his work *Principals of political economy* reiterated that it was only through peasant proprietorship that agrarian society could ever progress.⁶⁸ During the annexation of Oudh by Britain in 1856, the governor

⁶⁵ R.D. Collison Black, 'Economic policy in Ireland and India in the time of J.S. Mill', in *The Economic History Review*, 2nd series, xxi (1968), p. 323.

⁶⁶ Maddison, *Class structure and growth*, p. 35.

⁶⁷ For more on the Indian Mutiny see Christopher Herbert, *War of no pity: the Indian mutiny and Victorian trauma* (Oxford, 2008).

⁶⁸ Thomas R. Metcalf, 'The influence of the Mutiny of 1857 on land policy in India' in *The Historical Journal*, iv (1961), p. 153.

general, Lord Dalhousie, ordered the institution of a system of peasant settlement without even a cursory investigation of the nature of land tenure in the region. Dalhousie wrongly assumed that the systems of tenure in Oudh were the same as those in the north-western provinces and instructed that the system of village settlements utilised in the north-west be adopted in Oudh.⁶⁹ As a result the taluqdars, the landholders, were cast aside and the rights of peasants were confirmed. Thomas Metcalf notes that this 'self-confident reforming enthusiasm' was shattered by the outbreak of Mutiny in May 1857 which forced the British to rapidly reassess their policies in Oudh.

E.P. Thompson's argument that the breakdown of a balanced society was brought about by the 'meddlesome' interference of the state is clearly evident in this breakdown of order.⁷⁰ At first British officials insisted that the rising was exclusively militarily linked and did not have deeper roots. However, it quickly became clear the disaffection had deeper roots. In the province of Oudh the struggle was observed as nothing less than a 'bitter and protracted war' in which the mutineers were joined by the taluqdar and peasantry against their new British masters.⁷¹ When the British were confined to a garrison at Lucknow, Oudh reverted to its traditional system with the peasants renewing their allegiance to the taluqdars.⁷² Despite having been granted greater property rights under the British administration, it was noted that

⁶⁹ Metcalf, 'The influence of the Mutiny of 1857', p. 154.

⁷⁰ E.P. Thompson, *Customs in common* (New York, 1991), pp 202-3.

⁷¹ Metcalf, 'The influence of the Mutiny of 1857', p. 154.

⁷² Jagdish Raj, 'The revenue system of the Nawabs of Oudh', in *Journal of the economic and social history of the orient*, ii (1959), pp 92-3.

They [the taluqdar] have most of them quietly resumed the villages they had at the time of annexation. The villagers except in rare instances don't seem to have made a struggle even against it.⁷³

This brought an end to the British policy of establishing a peasant proprietorship in India and instead it shifted to a market forces led *laissez faire* policy.

In recognising that Indian society, not unlike Ireland, was tradition based, it was hoped that by reintroducing the familiar landed gentry and traditional social order that Britain could manage and control the region.⁷⁴ The taluqdar were quickly identified as the most effective means of regaining control of the Oudh province. Christopher Herbert noted that in a complete reversal in policy, the great campaign of land reform which was undertaken to end the 'tyranny' of the taluqdar was abandoned in the interest of consolidating their loyalty to ensure a future for British rule.⁷⁵ Almost a year after Cawnpore, the bloodiest incident of the Indian mutiny, Major Lousada Barrow was appointed special commissioner of revenue and opened negotiations with the taluqdar.⁷⁶ Barrow's post was created for the purpose of establishing an administrative structure for the region of Oudh. During the negotiation process it was deemed best to revert to 'the order of things in Oudh as regards possession of land at the time the annexation'.⁷⁷ In return for their adherence to British rule, the taluqdar were to reassume their 'historic position' in possession of all lands which they had forfeited prior to the mutiny. The transition took place with relative ease. The taluqdars reclaimed their estates and to the bewilderment of

⁷³ Thomas R. Metcalf, 'The influence of the Mutiny of 1857', p. 155.

⁷⁴ Thomas R. Metcalf, 'Estates management and estate records in Oudh in *The Indian Economic and Social History Review*, iv (1967), pp 99-108.

⁷⁵ Christopher Herbert, *War of no pity: the Indian mutiny and Victorian trauma*. (Oxford, 2008), p. 291.

⁷⁶ For more on the Cawnpore massacre see V.A. Stuart, *Massacre at Cawnpore* (New York, 2002); Chhanda Chattopadhyay, *Punjab and Awadh, 1857-1887: ideology, the rural power structure and imperial rule* (Bengal, 2009), pp 126-7.

⁷⁷ Rajkumar Sarvadhikari, *The taluqdari settlement in Oudh* (Calcutta, 1882), p. 16.

the British administration received the immediate allegiance of their former tenants. By 1858 Lord Canning, governor general of India, had established a system of mutual dependence between the taluqdar and the British administration.⁷⁸

While the initial reintroduction of the taluqdar brought stability and relative peace to the troubled region, it was not without significant problems. C. W. McMinn in his introduction to the *Oudh Gazetteer* insisted that Canning's plan was fundamentally flawed as in the longer term the taluqdar could not manage their estates efficiently, had no idea of agricultural improvement and regarded their tenants as subjects for exploitation.⁷⁹ This echoed the criticisms levelled at Irish landlords less than a decade earlier in relation to their estate management and role in Famine relief. McMinn suggested that the basic difficulty in Oudh arose from the fact that the taluqdar had been turned into landlords but their power had been compromised. While in some ways their power was as absolute as ever, in other ways it was constricted into narrower channels and dependent on the British administration for legitimacy.⁸⁰

In the years following the mutiny, the British administration focused their efforts in rural India on the collection of revenue, the maintenance of law and order, and 'dampening' of social conflict within established patterns of agrarian relations. As had been the case in Ireland, this centred on the creation of a landed aristocracy. The Oudh taluqdar were a remnant of the Rajput lineages and it is from these princely kin they derived their socio-political power.⁸¹ While the disestablishment of the

⁷⁸ Metcalf, 'The struggle over land tenure', p. 303.

⁷⁹ Thomas R. Metcalf, *Land, landlords and the British Raj* (London, 1979), p. 195.

⁸⁰ Cohn, 'Comments on land tenure', pp 177-9.

⁸¹ *Ibid.*, p. 179.

taluqdar was thought to have brought about considerable unrest, in restoring this class, it was hoped, that a social group, comparable to the British landed gentry could be created. Bernard S. Cohn noted that British viewed the taluqdar as a class of landlords, along the English model, and that legislation, including the Taluqdar Incumbered Estates Act, was framed with this as its end.⁸² The argument for reinforcing the position of the taluqdar was grounded in political necessity. It was claimed that the landlord class formed a necessary part of the 'social constitution' of the province and this played a vital role in establishing loyalty and political stability.⁸³ It gradually became clear that it was not sufficient to simply restore the former lands to the taluqdar.⁸⁴

There were many problems inherent to the taluqdars landholding practices. For example the practice of inheritance: under Hindu law an estate was divided among 'all the heirs' of a family.⁸⁵ Over time this practice significantly decreased the size of a holding. As had been the case in Ireland, landowners, no matter how financially challenged, were not immune to the temptations of extravagance and estates quickly became mired in debt. It quickly became clear that if the taluqdar were to be turned into a prosperous landed gentry based on the English model some form of special assistance was required. The administration was reluctant to resort to 'special nursing measures' of any sort for the taluqdar to protect them from the consequence of their own extravagance.⁸⁶ Metcalf has argued that this was not as a result of an

⁸² Bernard S. Cohn, 'Comments on papers on land tenure' in *The Indian Economic and Social History Review*, i (1963), p. 178.

⁸³ Thomas R. Metcalf, 'The struggle over land tenure in India, 1860-1868' in *The Journal of Asian Studies*, xxi (1962), p. 296.

⁸⁴ Thomas R. Metcalf, *The aftermath of revolt, India, 1857-70* (London, 1965), p. 157.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, p.159.

unwillingness to assist the struggling class, but rather was a measure of defence against critics of the reintroduction of the taluqdar system, who had argued that in the longer term it was too weak to stand independently. Many feared that without a remedial measure the property of the taluqdar, upon which stability had been built, would soon be broken into fragments and sold for debt.

In 1865 the taluqdars petitioned the Commissioner of Faizabad, the capital of Oudh, F. O. Mayne, asking him to take over the management of their estates in order to restore solvency and pay off their creditors. While Mayne encouraged government to consider the taluqdars proposal suggesting that they would 'soon collapse and the Talookdaree (sic) Settlement be imperilled'.⁸⁷ Thus, a number of remedial measures were introduced between 1860 and 1869, but they were largely unsuccessful as they failed to address the fundamental problem of estate management.⁸⁸ In 1869 the Oudh Government revived Mayne's original proposal and a draft Incumbered Estates Act was introduced to the Government of India.⁸⁹ The Irish peer, Lord Mayo, viceroy of India until his murder in 1872, reluctantly accepted that such a measure was necessary. Metcalf noted that there was no general fondness for the principles of the act. John Strachey, chief commissioner of Oudh, noted that the introduction of the measure was 'purely political' and it was designed to save from destruction the 'great experiment being tried in Oudh'. In essence the colonial administration chose to utilise the template created by the Irish Incumbered Estates to prevent the failure of

⁸⁷ Ibid., p. 158.

⁸⁸ Thacker Spink, *A compendium of the law specially relating to the taluqdats of Oudh: being the Oudh Estates Act (I) of 1869, an Act to amend the Oudh Estate Act, 1869 (Act X of 1885), the Oudh Subletting Act (XXVI) of 1866, the Oudh Taluqdar's Relief Act (XXIV) of 1870, and parts of the Oudh Rent Act (XIX) of 1868, and the Oudh Land Revenue Act ((XVII) of 1876* (London, 1866).

⁸⁹ Metcalf, *The aftermath of revolt*, pp 158-9.

their taluqdar experiment.⁹⁰ Although based on the tenets and procedures of the Irish Court, the legislation proposed for Oudh was materially different. It was not designed to replace indebted landlords by facilitating the sale of an estate; rather it was designed to preserve the existing landlords and appease their creditors. The Oudh Taluqdar Act created a court appointed official who took over the management of the estate. This system was similar to the role of a receiver under the Court of Chancery. The Act was not designed to create a new landed class but for the reinstatement and preservation of the class which held it. Coupled with the settlement which ended the mutiny, the Incumbered Estates Act assisted in re-instating the ruling class which had been removed when lands were annexed during the governments 'experiment' in 1856.

Four years later taluqdari indebtedness stood at thirty-seven lakhs or 3,700,000 rupees on just seventy one estates. It became clear that in order for the system to succeed the owners should be given a 'fair start' on holdings free from debt. Contemporary political economy clearly dictated that the problem of indebtedness be tackled under the Irish Incumbered Estates Act of 1849. One officer noted that 'all the suggested remedies involve the anomaly of declaring that what is the highest wisdom in Ireland (a country in many respects resembling India) is the highest folly of India'.⁹¹ In 1870 a 'reluctant' Lord Mayo, the viceroy, brought forward a general measure of relief, the Taluqdar Incumbered Estates Act. Under the provisions of the measure a taluqdar could on petition vest the management of his estate in the government for a period of no more than twenty years. During this period, the

⁹⁰ *Ibid.*, p. 160.

⁹¹ *Ibid.*, p. 212.

property would be secure from sale. All revenue generated by the estate during this time, beyond the government dues, a fixed maintenance charge and an allowance for the taluqdar his family, was used to discharge debts on the estate. Once the property was cleared of charges, it was restored to its owner. As with the Irish measure the act was introduced for a limited time. The Irish Incumbered Estates measure was first introduced for two years, the Taluqdar act which was 'avowedly of an exceptional character' accepted petitions for just one year.⁹² Those who neglected to place their estate within this short specified time, Metcalf noted, would have 'no right to expect that government would again interfere to save him from the consequences of his own folly'.⁹³

Some fifty taluqdar with debts of over thirty-three lakhs handed their estates over to the government. Many hoped the act would free their estates from 'the incubus of the host of hangers-on whom they have not themselves the moral courage to get rid of'.⁹⁴ The administration was ruthless in its management of estates. In 1870 when Rampal Singh's Dharupur first came under the government management, the payments to his old retainers were halved, and he was obliged to accept a 15 per cent reduction in his annual allowance. Under the terms of the act, the administration reserved the right to consolidate debt and refinance borrowings at a lower figure. With Oudh having in place a more sophisticated financial system than Ireland this proved an effective measure. In addition a significant loan was also granted for the payment of creditors. As had been the case in Ireland, tenants on the taluqdars' estates were subject to ruthless treatment. Metcalf notes that those who resisted the

⁹² Metcalf, *Land, landlords and the British Raj*, p. 230.

⁹³ *Ibid.*, p. 231.

⁹⁴ *Ibid.*

new management and those who failed to make payments, even some with payments due dating back to before the estate came under the management of the court, were simply thrown in jail. This policy was effective providing 'every prospect of excellent results in getting in balances'.⁹⁵ In addition to raising rents, attempts were made to raise the standard of agriculture on estates under government control.

While the legislation enjoyed a degree of success, the taluqdar who were impatient to regain control of their estates and exasperated at the limited maintenance payment they received once again began to encumber their estates with varying degrees of debt. In one case an impatient owner took a loan to pay off the remaining debts on his estate and regain management of his property. Although this step disregarded the spirit of the act, it did not contravene the measure. Despite complaints amongst high ranking official, Lord Ripon, viceroy of India since 1880, refused to legislate 'for the protection of the talukdars against the consequences of their own acts'.⁹⁶ From 1890, when the twenty year management scheme was due to come to an end, the act was scaled back with 'almost no' estates under the management of the government. It became clear, as with the Irish landlords at the turn of the twentieth century, that the estates were once again extensively burdened by debt.⁹⁷ Calls were again made for the introduction of a remedial measure to preserve the class from complete ruin. A formal request was made in 1894 by the British Indian Association for an additional Incumbered Estates measure to be introduced. What followed was a series of extensive investigations into land transfer and indebtedness in northern India. The result of this detailed investigation was not the requested re-introduction of an

⁹⁵ *Ibid.*, p. 232.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.* p. 234.

Incumbered Estates measure but the Punjab Land Alienation Act of 1900 which was 'highly restrictive'.⁹⁸

Conciliation of the landlord class was by no means confined to Oudh. The province of Sind had a complex history. Ruled by the Mughal dynasty until 1700 and subsequently by the East India Company, the region was annexed to the British Empire following a conquest in 1843. The imposition of British rule led to the introduction of new institutions in the Sindhi countryside intended by the authorities to help their system of political control to function more effectively.⁹⁹ As MacDonagh noted in Ireland, the alteration of the administrative system allowed the government to intrude on aspects of life which they had previously been unable to touch and as had been the case in Ireland and the West Indies, the sacrosanct position of the ruling landed class was one such area. In Sind, measures to protect the zamindars and waderos, the landlord class, combined with the British legal system provided new avenues for the Sindhi elite to pursue their interests.¹⁰⁰ Power in the rural Sind was exercised by the landholding class known as the zamindar. As with the taluqdar this position was hereditary and their land was held directly from the government.¹⁰¹ In Sind, as was the case throughout India, rural indebtedness was a 'bugbear' of nineteenth-century administrators.¹⁰² As had been the case in Ireland and the West Indies, the administration's concerns related to the consequences

⁹⁸ Ibid.

⁹⁹ Hamido Khuhro, *The making of modern Sindh: British policy and social change in the nineteenth century* (Oxford, 1999), pp 32-4.

¹⁰⁰ Sarah F.D. Ansari, *Sufi Saints and State Power: The pirs of Sind, 1843-1947* (Cambridge, 1992), p. 53.

¹⁰¹ A variety of terms were used for landholders in Sind including waderos, banias and jagirdar. The term zamindar is a all-embracing.

¹⁰² David Cheesman, 'The omnipresent bania: Rural moneylenders in nineteenth century Sind', in *Modern Asia Studies*, xvi (1982), p. 445.

indebtedness might have on the ruling class. Specifically, these concerns in Sind centred on the incumbrances of the zamindar class, many of whom were the owners of their estates in name only due to the critical level of their incumbrances.¹⁰³ These landed elites had become integrated into the local fabric and structure of British authority and the administration of the province without them appeared an unthinkable prospect. In line with the legislation introduced in Oudh, the Incumbered Estates Act was introduced in Sind in 1876. As with the three previous examples, the legislation was intended as a temporary measure to protect the indebted interests of the zamindars, but Ansari noted that its social and political repercussions proved so effective that the legislation was repeatedly extended in 1881, 1884 and 1896.¹⁰⁴ In bringing forward the Incumbered Estates proposal to the Government of India, the Bombay administration responsible for Sind, who presented the bill, declared that

The Jagirdars and Zemindars, the nobles, gentry, and yeomen of that province are overwhelmed with debt, and there is absolutely no hope of relieving them unless special action be taken. If matters are allowed to drift on as they have done hitherto, the result can but be a social revolution of a grave character. The land will pass out of the hands of hereditary owners, who... will feel they have a distinct grievance against the British government.¹⁰⁵

The legislation functioned in the same manner as the Taluqdar Relief Act had in Oudh. Those who wished to take advantage of the Act applied to the Manager of the Incumbered Estates Department. If the application was approved, this office then took responsibility for the financially embarrassed holdings, and commenced managing crop cultivation and accounts while using the surplus to discharge the debts on the estate. The estate remained under the manager's control until such time

¹⁰³ David Cheesman, *Landlord power and rural indebtedness in colonial Sind, 1865-1901* (Surrey, 1997), p. 189.

¹⁰⁴ Ansari, *Sufi Saints and State Power*, p. 54.

¹⁰⁵ Cheesman, *Landlord power and rural indebtedness*, p. 193.

as all the liabilities were cleared. Following this they were returned to the zamindar, financially solvent.¹⁰⁶ Learning from their experience in Oudh, Sir Philip Woodhouse, governor of Bombay, insisted on the inclusion of two additional provisions. The first being that no creditor could sue for the recovery of any debt incurred by the owner while the estate was under the management of the Incumbered Estates Office. This was to prevent new debts from accumulating on the holding while the estate was in the process of being released from existing incumbrances. The second specified that estates could not be taken under the management of the Court unless the incumbrances were verified, 'lest it were found to be hopelessly involved', and would, thus, prove too great a burden on the resources of the Department.¹⁰⁷

Conclusion

The Indians were found to prefer traditional feudal order and the rule of their local gentry. Theories of *laissez faire* gave a further measure of support to the new landlord policy. Although the concept of the 'invisible hand' had little influence on Indian land policy before the mutiny, in the years which followed it gained importance. Ireland and India differed significantly in this respect. The theories of *laissez faire* was exercised unchallenged in Ireland from 1815 but it did not find support in India until the 1860s. As in Ireland, the forces of landlordism were strengthened by this policy, according to political economists, a capitalist landlord

¹⁰⁶ Ansari, *Sufi Saints and State Power*, p. 54.

¹⁰⁷ Cheesman, *Landlord power and rural indebtedness*, p. 193.

class was essential to agricultural prosperity.¹⁰⁸ Incumbered Estates measures were later introduced in the provinces of Chota Nagpur in the east in 1876, the Jhansi Act passed in 1882, Bundelkhand in the central region in 1903 and Bihar and Orissa in the east of the country in 1911.¹⁰⁹ From its first application in Ireland in 1849, the court's procedure was significantly altered to suit the needs and wants of government and of the colony to which it was being applied. Remaining a court of record, the business of the tribunal changed significantly. The legislation evolved from the original Dublin based Irish three judge tribunal, to the London based Court for the West Indies and finally to the management offices established throughout the Indian sub-continent. Throughout the late nineteenth and early twentieth century, the Irish Incumbered Estates Act was cited as a successful experiment, despite its failure to transform Irish society. Although the application and processes varied considerably throughout the empire, from facilitating sales in Ireland to estate management in the provinces of India, the intention of the Incumbered Estates Act remained the same. The legislation in each case came about as a result of significant civil and social unrest and was intended to maintain order, whether that was by introducing a new class of British landlords or extricating the existing class of proprietors from crippling debt, the Incumbered Estates legislation acted as a template for the use of legislation as a vehicle for the preservation of social order and British rule.

¹⁰⁸ Metcalf, *The aftermath of revolt*, p. 171.

¹⁰⁹ For more on Incumbered Estates Court in Sind, see David Chessman, *Landlord power and rural indebtedness in colonial Sind* (Oxford, 2013), Chota Nagpur see Francis Bradley-Pitt, *Chota Nagpur, a little known province of the empire* (Chota Nagpur, 1903) and Bundelkhand, see Gregory C. Kozlowski, *Muslim endowments and society in British India* (Cambridge, 1985).

Conclusion

The Irish Incumbered Estates Court was established as an experiment in social reform. It was an administrative revolution brought about to prevent an all-out rebellion in Ireland. Although the measure had been proposed as early as 1846, it was only with the outbreak of unrest throughout Europe and the abortive uprising at Ballinacorney in July 1848 that the reforming measure gained significant momentum. The initial phase of the experiment lasted a total of five years, two months and ten days. In this period 3,405 petitions were presented to the Commissioners and in total 5,952 purchasers were declared between public and private sales. The measure was designed to replant Ireland with a new class of English and Scottish landowners. It was envisaged that this trial in the 'laboratory' of the British Empire would form a template for similar reform throughout the empire.¹ It was envisaged that these new proprietors would improve agriculture, provide employment, bolster the Union, influence others with their allegiance to the Queen and amend the system of Irish administration. The legislation endeavoured to provide a means for insolvent landowners to divest themselves of disproportionately incumbered properties and allow their creditors to apply for the repayment of debts. At the same time the Act strove to free up the paralyzed Irish land market. In doing so the legislation hoped to solve the Irish land question and end calls for repeal of the Act of Union.

The rapid progress of the legislation through the Houses of Parliament has long been overlooked in favour of the simplified explanation provided by the Great Famine. This study has countered this argument, proving not only the significance of the 1848 revolutions in the introduction of the Incumbered Estates measure but also the minor

¹ Declan Kiberd, *Inventing Ireland: The literature of a modern nation* (London, 1996), p. 24.

role which the Famine took in the Acts progress. While debate on the introduction of the measure was extensive, the Great Famine and its devastating impact played only a minor role in this discourse. While the negative impact of the Famine on estate incomes is undeniable, an examination of the incumbrances brought before the Court shows it was just one of a multitude of factors. It is clear that an unsurmountable problem existed on many estates before the arrival of the blight. Debt on the earl of Portarlington's estate exceeded his rental income by more than twenty-one years and the earl of Glengall's estate was incumbered by more than nineteen years its annual income. On average an which came before the Court was incumbered by between fifteen and twenty times its annual rental income. Incumbrances to this extent could not simply be explained by arrears resulting from the Famine. While a total of 3,405 estates were petitioned through the Court, a total of 1,633 estates came from the Court of Chancery the majority of which had been subject to proceedings before the outbreak of the Famine in 1845. While little light has been shed on the origin of this debt and the general absence of records presents a significant challenge to such a study, simply recognising the extent to which estates were incumbered leading up to the Famine paves the way for further examinations.

The Incumbered Estates Court transferred more than 2.3 million acres of land from insolvent to solvent landowners. While the legislation was designed with the hope of attracting British and Scottish purchasers, the majority of land acquired through the Court was by Irish investors. The average lot acquired through the Court was 308 acres and the purchase price was approximately £2,000. This irreversibly changed the social structure of rural Ireland. While the Incumbered Estates Court did not dissolve the existing landed aristocracy it significantly diluted it. Later changes such

as electoral reform through the Irish Franchise Act 1850, the Reform Act of 1868 and the Ballot Act of 1872 gnawed further at the gentry's already shaky political authority.² In the aftermath of the Incumbered Estates Court a new Irish revolutionary elite emerged.³ This social and political change was greatly facilitated by land sales through the Commission. While the old Irish legislature was landed and exclusively Protestant, the Home Rule movement recruited Catholics farmers and professionals whose rise was greatly facilitated by the opportunities provided by the Incumbered Estates Court. In disestablishing the old regime, the legislation began the process of liberating Irish society from the constraints of the former landed class. The Incumbered Estates Court created a comparatively wealthy rural population dominated by the farming caste. The changing politics of the new landowning classes contributed to the foundation of the revolutionary secret society, the Irish Republican Brotherhood or the Fenian movement in 1858.⁴ This movement would later sustain the tradition established by the 1641, 1798 and 1848 rebellions, and gave impetus to the failed revolt in 1867, and in turn the 1916 rising.

By the end of the 'five year experiment' the Irish Incumbered Estates Act had proven successful. As a result it became a template for land reform through the British Empire in the latter half of the nineteenth century. It had not only been utilised for the transfer of land, but also to subvert a revolution. The passing of the Incumbered Estates legislation would become inextricably linked to the outbreaks of violence or the threat of all out revolution. In Ireland the 1848 rebellion and devastation caused

² Alvin Jackson, *Home Rule: an Irish history, 1800-2000* (London, 2003), p. 22.

³ For more see R.V. Comerford, *The Fenians in context: Irish politics and society, 1848-82* (Dublin, 1985).

⁴ Jackson, *Home Rule*, p. 18.

by the Great Famine paved the way for the introduction of a radical measure. In the West Indies, the creation of an Incumbered Estates Court allowed for the transfer of insolvent land holdings following the slave revolts and the prolonged social unrest associated with slave emancipation. Throughout the provinces of India, similar issues to those experienced in Ireland began to emerge. The various administrative structures of the country began to crumble. The administration found themselves, in the aftermath of the of the *sepoy* mutiny, dependant on a fickle gentry for the preservation of order. More worryingly for the British, this unstable Indian administration had unquestionable loyalties. In this instance the Incumbered Estates Act, rather than creating a new landed class, was utilised to insure the loyalty of the re-introduced taluqdar class in Oudh and the zamindar in Sind. In these varied situations the legislation proved itself pliable to the will and interests of the government. These examples have not only shown how the template was utilised throughout the empire, but has also opened the door for further comparative studies between Ireland and the furthest reaches of the British Empire.

While the measure had significant colonial applications, elements of the legislation also formed the basis of later Irish land legislation. The creation of independent remedial courts in Ireland for the purpose of transferring land became a common practice. While the Landed Estates Court which followed the Incumbered Estates Court was simply an evolution of the preceding measure, later Act also borrow from this radical reform. The Landlord and Tenant (Ireland) Act 1870, was introduced in the wake of the Fenian rebellion in an effort to resolve the Irish land question. The 'Bright Clauses' encouraged tenants purchase their holdings, allowing them to borrow two thirds of the cost from the government. These clauses bore more than a

passing resemblance to both the failed Farmers' Estates Society and the deferred Securities for Advances Bill. Providing a means for tenant and local investment, modelled on the remedial measures introduced for the Incumbered Estates Court, was enshrined in later land reform. The Land Law (Ireland) Act 1881, provided up to three quarters of purchase money. The Wyndham Land (Purchase) Act 1903 created a body to mediate between the landlords and tenants, similar to that which had been created between landlords and creditors by the 1849 Court. More recently the independent land court system was utilised in the creation of the National Asset Management Agency in 2009. This body, as with the Incumbered Estates Court, was created in response to a financial crisis. NAMA was designed with the same intention of the 1849 Court, to realise value through land and property sale in order to provide payment to creditors.

The Incumbered Estates Court brought about a fundamental change in the Irish Court of Chancery. Although reform of the Chancery was called for throughout the period during which the Incumbered Estates Court operated, these reforms were insufficient. By 1858 it had become clear that replacing or reforming the Chancery would no longer prove sufficient. The creation of the Landed Estates Court, and later the Land Judges Court, permanently established certain elements of the Incumbered Estates Act as part of the Irish system of land sale. The continuation of the grant parliamentary title under the Landed Estates Court, for example, recognised the continued need for security and the problems presented by complex financial

arrangements on Irish estates. The Landed Estates Court came to be viewed as ‘a kind of cure for titles’.⁵

Despite the many successes of the Incumbered Estate Court, there were also significant downfalls. Although the gradual breakdown of moral economy as the proceedings of the Court continued was not unforeseen, the British government was ill prepared to address the social problems which manifested as a result. While land clearances were common in the immediate aftermath of the Great Famine, there was a higher propensity towards extreme violence on properties acquired through the Incumbered Estates Court, as illustrated by the Beale Brown and Hind estates. Despite similar warnings that the legislation lacked clauses to prevent fraud, the measure was not amended. John Sadleir’s extensive frauds under the Court significantly tarnished the reputation of the Court. The failure of the Commissioners to prevent Sadleir’s manipulations and accusations of preferential treatment brought the independent nature of the Commission into question. The Incumbered Estates Act was one of the last landlord-centred pieces of legislation introduced for Ireland. The rise of the Tenant Right Movement and its successor bodies, meant that later measures introduced by government included clauses to protect or improve the lot of the tenantry.

The most significant impact of the Incumbered Estates experiment was the creation of a practical template for administrative and social revolution driven by legislative action. While Ireland was the laboratory in which the test was run, the experiment was replicated elsewhere with similar success. While this study provides only an

⁵ J.A. Dowling, ‘The Landed Estates Court, Ireland’ in *Journal of Legal History*, xxvi (2005), p. 144.

insight into the colonial applications of the measure, a number of significant conclusions can be drawn. Despite the failing of Government to amend the Irish measure, the lessons which were learned from the Irish experiment were taken into consideration when the legislation was drafted for the West Indies and regions of India. For example, when the Incumbered Estates legislation was introduced for the West Indies, crops and the rights of outgoing tenants were taken into consideration. The West Indian Court was based in London which in effect eliminated the opportunity for local investment and created a captive market for British and Scottish investors. The measure was significantly altered when applied to the problematic provinces of India. Rather than providing a means for the sale of land, the act provided a system of management for bankrupt estates. Under this system once an estate was solvent it was returned, debt-free, to the rightful owner. This system, although ultimately successful, bore a greater resemblance to the Irish receiver system established under the Court of Chancery than to the Incumbered Estates Court.

Examining the colonial applications of the Incumbered Estates Court raises a number of questions. Although the working of the court in the West Indies is widely documented there has been little comparison between the business of the Irish and West Indian Courts. This study provides only an overview of the legislations introduction and establishment. The technical business of the Court is worthy of significant examination. Similarly the Indian Courts have escaped comparative study. As with the Irish Court, to this point, examinations of the Incumbered Estates Court in India are conducted as part of local histories which tend to be limited regional studies conducted in the regional language. This presents a further

challenge. This study provides only a brief insight into the significant of the measure throughout the British Empire.

Significant areas of study still remain to be examined in relation to the Irish Incumbered Estates Court. The measure was designed to facilitate the sale of land in Ireland. This included urban and commercial properties. There is evidence to suggest that the Incumbered Estates Court played a role in the rise of tenement housing in Dublin. Henrietta Street itself where the Court was based became one of Dublin's most infamous tenements. Other examples include a considerable number of properties in the Monto region of the city, twenty-five properties on Bishop's Street, properties on Riddle's Row, Anglesea Market and Camden Street. Commercial properties, including mills, also transferred through the Court present a unique opportunity for an examination of the Irish economic situation in the post-Famine period. The business of the Court between 1855 and 1858 requires significant examination. As the Court faced an uncertain future the business which it conducted shifted focus considerably. This study has looked at national statistics and countrywide sales, however, each individual estate which transferred through the Court presents an opportunity for further study. Questions such as the origins of debt on estates and the management of estates acquired through the Court are perhaps best answered through the study of individual estates.

The Commission was part of a wider and deliberate attempt by government to create a template for the replantation of rural societies. Overall the success of the Court is difficult to ascertain. While it largely failed to attract wealthy British and Scottish investors, a new landed class was created in Ireland. This class was composed of Irish investors whose financial background is unknown. While some certainly came

from a merchant background, others were almost certainly rural. This study set out to examine the result of the Incumbered Estates experiment in Ireland. This experiment saw the creation of a practical template for an administrative and social revolution in Ireland which could be utilised throughout the empire. The Court was created not simply to assist indebted landlords in the aftermath of the Great Famine. In summing up the Court in 1857, John Locke noted that the Incumbered Estates Act had effected the most 'extensive and salutary revolution which had ever occurred in Ireland' and that this had been accomplished without exciting angry international feeling. The Incumbered Estates measure had permitted the liberation of real property from unnecessary long delays and restrictions, and created a facility for the sale and transfer of land not only in Ireland but in the British dependencies. In doing so, it at least temporarily, ensured the both the security and prosperity of the British Empire.⁶ Although the legacy of the Incumbered Estates Court has often been overlooked, it is hoped this study a basis from which to rectify this.

⁶ The land revolution in Ireland: abstract of a paper communicated by Mr Locke, Locke Papers, NLI, Add. EPH D193.

Appendix 1- List of petitions presented by date October 1849 – December 1854.

Source: Incumbered Estates inquiry report.

1849	October	17	1852	June	54
	November	137		July	33
	December	119		August	28
1850	January	129		September	22
	February	126		October	39
	March	126		November	38
	April	99		December	64
	May	135	1853	January	39
	June	115		February	43
	July	82		March	30
	August	106		April	54
	September	64		May	33
	October	73		June	55
	November	82		July	44
	December	63		August	8
1851	January	68		September	20
	February	59		October	27
	March	78		November	63
	April	53		December	37
	May	74	1854	January	34
	June	39		February	50
	July	42		March	32
	August	43		April	40
	September	28		May	41
	October	47		June	31
	November	54		July	30
	December	42		August	12
1852	January	33		September	19
	February	51		October	33
	March	36		November	24
	April	32		December	26
	May	50		Total	3405

Appendix 2- The 100 landlords with the highest incumbrance, 1849-55. (R = D = years rental which debt equals).

Source: *Incumbered Estates inquiry report.*

Rank	Owner	Petitioned	Rent(R)	Debt(D)	R=D
1	Charles St Cromie	28 Nov 1853	28	77,492	2768
2	Assignee Robert McNeale	22 Aug 1854	45	47,421	1054
3	Lord Oranmore	15 Jan 1850	353	177,496	503
4	Edward Lindsay	25 Nov 1853	85	37,225	438
5	Thomas Phillips	9 Nov 1849	125	37,836	303
6	Lord Oranmore	15 Jan 1850	595	178,131	299
7	William Kelly	18 Oct 1852	104	29,752	286
8	Rt Hon J A Wynne	16 June 1854	134	35,343	264
9	Lord Oranmore	15 Jan 1850	496	128,305	259
10	Denis Clarke	28 May 1853	93	21,194	228
11	Assignee of R S Guinness	13 June 1853	349	77,777	223
12	Horatio Wallace & Another	18 Jan 1854	229	48,003	210
13	George Thomas De Massey	22 Feb 1853	310	60,202	194
14	Massy Hutchinson Warren	10 Nov 1851	393	75,086	191
15	Earl of Mountcashel	23 Jan 1854	544	103,230	190
16	Assignee Sir A Chichester	5 May 1853	777	140,379	181
17	Clayton B. Savage	30 Mar 1850	387	62,907	163
18	Earl of Carrick	1 July 1852	214	31,283	146
19	John Claudius Beresford	1 May 1852	157	21,704	138
20	Marquis of Sligo	27 July 1853	702	96,930	138
21	John B Scott	21 Dec 1850	446	55,787	125
22	Assignee R McIntyre & Another	16 Aug 1854	495	60,989	123
23	Clayton Savage	9 Aug 1852	423	50,343	119
24	Trustees Lord Farnham & Others	10 May 1852	842	93,155	111
25	Joshua Kell & Others	14 July 1852	556	59,498	107
26	Geo W Vesey & Others	23 Apr 1851	657	59,856	91
27	Julia Taaffe & Another	7 Dec 1852	436	36,926	85
28	Edward Blake	2 Jan 1850	1,053	77,683	74
29	Assignees of Thos Dwyer	3 Feb 1852	413	30,164	73
30	Denis Clarke	18 Oct 1850	293	21,194	72
31	Francis Evans	21 Mar 1850	347	24,227	70
32	Sir R.B. St. George, Bart	6 Dec 1849	860	55,724	65
33	Assignee of Rev C Fitzgerald	13 Nov 1850	339	20,462	60
34	James Cuffe	1 Mar 1850	1,033	61,817	60
35	W Keane O Sullivan	29 Oct 1851	402	23,763	59

Rank	Owner	Petitioned	Rent(R)	Debt(D)	R=D
36	John Grace	30 Dec 1850	748	43,200	58
37	Earl of Aldborough	24 Nov 1849	2,629	151,478	58
38	Lord Fitzgerald & Vesey	9 March 1852	1,049	56,513	54
39	James Hammond	2 June 1851	775	41,747	54
40	George Rutledge	19 Nov 1849	1,286	68,031	53
41	Henry Smith	22 Feb 1850	394	20,098	51
43	Samuel Lane	30 Jan 1854	1,080	47,780	44
44	Francis Edward Gwyn	30 Sept 1851	557	23,585	42
45	William Samuel Hyde	17 Nov 1849	639	26,384	41
46	Lord Oranmore and Brown	20 Nov 1849	4,900	201,623	41
47	Sir Robert A Ferguson Bart	14 June 1853	1,681	68,176	41
48	Rev Edward Hassard	26 Apr 1852	648	26,184	40
49	William Henry Carter	22 May 1852	1,544	62,379	40
50	William H Magan	2 Dec 1850	2,098	81,646	39
51	John Grace	3 Feb 1853	1,142	43,200	38
52	Henry Currie & Others	8 Aug 1850	1,321	48,306	37
53	John Cochrane	7 May 1851	909	33,077	36
54	Sir A. Chichester	9 Nov 1849	2,213	80,352	36
55	Dominick A Brown	3 Jan 1853	634	21,885	35
56	John Lee	7 Jan 1852	665	22,804	34
57	Catherine Jane Barron	21 Jan 1850	591	20,143	34
58	Frederick M. Callaghan	22 Dec 1849	3,419	114,612	34
59	Pierce Power	5 Dec 1849	985	32,559	33
60	Michael Warren & Another	24 July 1854	924	30,427	33
61	Frances Power	4 July 1851	2,667	86,975	33
62	Miles McDonnell	19 Oct 1850	687	22,182	32
63	Viscount Gort	6 Dec 1851	2,554	79,829	31
64	Robert Marshall Leeson	31 July 1852	2,927	91,446	31
65	Francis Nesbitt	23 Mar 1850	1,902	58,842	31
66	John Michael Aylward	1 Nov 1851	908	27,432	30
67	John H Peyton	5 May 1851	718	21,492	30
68	Daniel Todd	4 Mar 1850	880	26,332	30
69	James Brown & Another	31 Dec 1852	2,525	75,540	30
70	Nicholas D.Crommelin	11 Mar 1850	2,544	75,458	30
71	Thomas P. Firman	26 Feb 1850	726	20,553	28
72	John Joseph Whyte	2 Dec 1853	1,096	30,366	28
73	George Wyse & Others	27 Apr 1850	918	25,106	27
74	Samuel Scott	15 June 1853	799	21,818	27
75	Rebecca Hartford	6 Aug 1851	762	48,109	27
76	Assignee A Robinson	8 July 1850	807	21,795	27
77	Assignee of T.A. Roberts	6 Feb 1850	1,064	27,860	26

Rank	Owner	Petitioned	Rent(R)	Debt(D)	R=D
78	William Armstrong	1 June 1854	2,650	69,000	26
79	Walter Blake	27 Feb 1850	1,081	27,830	26
80	Michael J Browne	29 May 1852	2,627	64,619	25
81	Thomas Cuthbert & Another	23 Dec 1853	2,924	71,234	24
82	Lord Oranmore	4 Nov 1850	4,281	104,092	24
83	W. Morris or De Montmorency	16 Nov 1849	2,117	51,198	24
84	Sir Samuel O'Malley	2 Mar 1850	2,601	62,792	24
85	Assignee Rich Blackwood	5 Oct 1852	1,185	28,057	24
86	Assignee of Richard Roe	2 Aug 1851	916	20,985	23
87	Rev John L Irwin	21 July 1851	1,815	41,518	23
88	Rev Thomas Kelly	29 Sept 1853	1,358	30,942	23
89	Henry M.F. Goold	17 Nov 1849	2,279	51,537	23
90	Cairncross Thomas Cullen	8 Apr 1850	1,478	33,251	22
91	Hamilton White	9 Feb 1850	1,323	29,595	22
92	Herbert B Praed	1 Nov 1852	1,739	38,566	22
93	Edmond Taaffe	7 Mar 1850	2,236	49,460	22
94	Anne Dopping & Others	9 July 1852	1,439	31,797	22
95	Pierce Morton	15 Feb 1850	2,588	56,285	22
96	Nicholas Whiting & Others	6 Oct 1852	964	20,884	22
97	Cornelius O Brien	6 June 1851	1,003	21,625	22
98	Earl of Portarlington	14 Nov 1849	33,000	700,000	21
99	J Sutherland Law	2 Oct 1852	1,391	29,480	21
100	Jerome Tisdell	27 Apr 1850	1,280	27,000	21

Appendix 3- British and Scottish purchasers divided by locality, Nov. 1852 & Mar. 1853..

Source: Locke, 'On Irish emigration', p. 343; McNevin, *Practice of the Incumbered Estates Court*, p. 387.

Locality	31 Nov. 1852		31 Mar. 1853	
	No. of lots	Value £'s	No. of lots	Value £'s
Buckinghamshire	1	1,220	1	1,220
Cheshire	4	53,205	4	53,205
Derbyshire	1	2,525	3	6,705
Devonshire	5	14,445	9	24,470
Durham	1	7,750	1	7,750
Gloucestershire	1	11,830	3	16,920
Hampshire	2	24,400	3	31,160
Hertfordshire	1	11,000	1	11,000
Kent	0	0	1	1,700
London	58	720,641	73	977,433
Lincolnshire	3	5,490	3	5,490
Lancashire(incl. Liverpool & Birkenhead)	11	56,526	27	236,366
Norfolk	1	16,500	1	16,500
Oxfordshire	1	6,280	1	6,280
Pembrokeshire	1	3,820	3	15,145
Suffolk	1	5,750	2	69,350
Sussex	1	7,610	1	7,610
Shropshire	1	7,690	2	8,840
Staffordshire	3	5,450	3	5,450
Somersetshire	1	2,550	1	2,550
Warwickshire	1	5,750	4	14,900
Yorkshire	2	3,517	5	10,942
Scotland	8	46,220	21	204,645
Calcutta	1	24,250	3	40,250
Isle of Man	3	1,406	3	1,406
America	1	2,320	1	2,320
Total	114	1,048,145	181	1,779,608

Appendix 4- Sample of purchases made by British and Scotch investors in the Incumbered Estates Court (1849-55)

Source: Database in authors possession.

Sale date	Owner	Location	Lot number	Acres	Amount paid	Purchaser	Resident
6 May 1851	Assignee of Robert Reid	City of Dublin	Lot 2		£280	Richard T. Douglas	Isle of Man
3 Mar. 1852	Hercules Robsinson	Westmeath	Lot 1 & 6	1,031	£16,500	W. Lyons for Lord Vaux	Northhamshire
9 July 1852	John Augustus O'Neill	Galway	Lot 5	1,032	£1,800	William Foreman	Wigan
13 July 1852	Earl of Shannon	Cork	Lot 2-24	3,246	£36,840	G. P. White for Lord C. P. Clinton	Nottinghamshire
16 July 1852	William Graydon	Kildare	Lot 7	46	£1,370	Sir R. Eustace	Pall Mall, London
3 Aug. 1852	H. M. F. Goold	Tipperary	Lot 2 & 3	683	£4,930	T. Miller for Rev C. Anderson	Huddersfield, Yorkshire
6 Oct. 1852	Hercules B. Brabazon	Mayo	Lot 1-4, 6, 7, 9-13, 15, 16, 18 & 20	4,392	£20,450	William Lewis for H. Higgins	London
12 Oct. 1852	Cairncross Thomas Cullen	Leitrim	Lot 2&3&5	1,285	£4,985	John Armstrong M. D.	Gravesend, Kent

Sale date	Owner	Location	Lot number	Acres	Amount paid	Purchaser	Resident
12 Oct. 1852	Edward Blake	Galway	Lot 5	177	£1,645	William Ogilvie	Hawick, Scotland
18 Oct. 1852	John Poe	Tipperary	Lot 4	148	£4,000	P. Molloy for W. H. Poe	Calcutta
23 Oct. 1852	Arthur Willoughby Cole Hamilton	Tyrone	Lot 1&20	1,697	£2,880	D. Battley United Service Club	UK
23 Oct. 1852	Arthur Willoughby Cole Hamilton	Tyrone	Lot 6, 10, 11, 15, 16 & 19	10,895	£23,570	K. Hallows for W, Hope	Liverpool
20 June 1853	Arthur Willoughby Cole Hamilton	Tyrone	Lot 1&2	1,830	£9,000	B. Humphrey for William Hope	Liverpool
10 Dec. 1852	George Wyse	Waterford	Lot 1	1,422	£13,100	J. Donnell for J. Hargreave	Southport
14 Jan. 1853	Charles William Blakeney	Roscommon	Lot 18	1681	£12,800	John Goodall	Edinburgh
22 Feb. 1853	Earl of Belmore	Tyrone	Lot 51	531	£3,800	Charles Deazeley	Milford, Pembrokeshire

Sale date	Owner	Location	Lot number	Acres	Amount paid	Purchaser	Resident
10 Mar. 1853	John Knox	Mayo	Lot 19,20, 22-26 & 35&36	2,511	£10,620	W. Neilson for E. Baxter	Dundee
10 Mar. 1853	John Knox	Mayo	Lot 29 & 30	347	£2,305	George Batley	Sussex
17 Nov. 1852	Patrick Kirwan & Thomas Spencer Lindsay	Mayo & Galway	Lot 1-17	12,294	£88,550	Charles Joly for Lady de Clifford, the duke of Bedford and her trustees	Woburn
24 Nov. 1853	John Knox, Arthur Knox and Laurence Knox	Mayo	Lot 5	101	£570	Adam Scott	Bell Street, Glasgow
24 Nov. 1853	John Knox, Arthur Knox and Laurence Knox	Mayo	Lot 20	367	£2050	Henry Callender	Edinburgh
24 Nov. 1853	John Knox, Arthur Knox and Laurence Knox	Mayo	Lot 26, 27 & 30	3,634	£2,490	Zachery Mudge	Plympton, Devon
24 Nov. 1853	John Knox, Arthur Knox and Laurence Knox	Mayo	Lot 32	757	£1,555	John Ross Ford	Rochester
25 Nov. 1853	Right Hon. Richard earl of Bantry	Cork	Lot 1-12 & 35-38	10,105	£43,050	George P. White for Lord Charles Clinton MP	Nottinghamshire

Appendix 5- County statistics including overall sales, lots unsold, average price per acre and average price per lot (1849-55).

Source: Database in authors possession.

County	Overall sales	Lots unsold	Acres sold	Produce of sales £	Price per acre £	Price per lot £	Acres sold (excluding Dublin City)	Produce of sales £ (excluding Dublin City)	Price per acre £ (excluding Dublin City)	Price per lot £ (excluding Dublin City)
Antrim & Belfast city	133	89	50,829	340,944	6.71	2,563.49	50,829	340,944	6.71	2,563.49
Armagh	75	16	21,139	159,229	7.53	2,123.05	21,139	159,229	7.53	2,123.05
Carlow	48	9	8,065	84,345	10.46	1,757.19	8,065	84,345	10.46	1,757.19
Cavan	117	20	25,665	234,014	9.12	2,000.12	25,665	234,014	9.12	2,000.12
Cork & Cork city	840	194	24,0478.3	1,390,662.76	5.78	1,536.64	240,478.3	1,390,662.76	5.78	1,536.64
City of Dublin	267	47	2,068.8	178,462	86.26	668.40				
Clare	142	65	40,033	215,140	5.37	1,515.07	40,033	215,140	5.37	1,515.07
Donegal	34	5	11,343	54,895	4.84	1,614.56	11,343	54,895	4.84	1,614.56
Down	88	27	21,316	207,897	9.75	2,362.47	21,316	207,897	9.75	2,362.47
Dublin	190	37	12,502	282,999.9	22.64	1,489.47	12,502	282,999.9	22.64	1,489.47
Fermanagh	95	5	26,179	142,222.66	5.43	1,497.08	26,179	142,222.66	5.43	1,497.08
Galway	522	314	184,701	995,680.55	5.39	1,765.39	184,701	995,680.55	5.39	1,765.39
Kerry	133	41	58,109	253,629.35	4.36	1,906.99	58,109	253,629.35	4.36	1,906.99
Kildare	56	12	14,338	139,350	9.72	2,488.39	14,338	139,350	9.72	2,488.39
Kilkenny & Kilkenny city	146	44	41,935	373,811	8.91	2,560.35	41,935	373,811	8.91	2,560.35
King's County	103	74	32,926	226,671	6.88	2,200.69	32,926	226,671	6.88	2,200.69
Leitrim	73	13	25,158	131,830	5.24	1,805.89	25,158	131,830	5.24	1,805.89
Limerick & Limerick city	377	86	85,062.2	714,718	8.40	1,895.80	85,062.2	714,718	8.40	1,895.80
Londonderry	9	7	3,276	27,840	8.50	3,093.33	3,276	27,840	8.50	3,093.33
Longford	55	8	23,193	113,290	4.88	2,059.82	23,193	113,290	4.88	2,059.82
Louth	70	28	12,223	158,465	12.96	2,263.79	12,223	158,465	12.96	2,263.79

County	Overall sales	Lots unsold	Acres sold	Produce of sales £	Price per acre £	Price per lot £	Acres sold (excluding Dublin City)	Produce of sales £ (excluding Dublin City)	Price per acre £ (excluding Dublin City)	Price per lot £ (excluding Dublin City)
Mayo	421	68	216,262	784,893	3.63	1,864.35	216,262	784,893	3.63	1,864.35
Meath	131	19	34,861	444,734.7	12.76	3,394.92	34,861	444,734.7	12.76	3,394.92
Monaghan	45	30	7,557	86,227	11.41	1,916.16	7,557	86,227	11.41	1,916.16
Queen's County	105	10	39,647	239,950	6.05	2,285.24	39,647	239,950	6.05	2,285.24
Roscommon	156	34	57,178	297,200	5.20	1,905.13	57,178	297,200	5.20	1,905.13
Sligo	96	17	30,613	177,220	5.79	1,846.04	30,613	177,220	5.79	1,846.04
Tipperary	505	248	154,986	1,146,961.35	7.40	2,271.21	154,986	1,146,961.35	7.40	2,271.21
Tyrone	132	45	65,678	347,950	5.30	2,635.98	65,678	347,950	5.30	2,635.98
Waterford	126	24	31,258	334,275	10.69	2,652.98	31,258	334,275	10.69	2,652.98
Westmeath	106	63	31,955	316,386	9.90	2,984.77	31,955	316,386	9.90	2,984.77
Wexford	204	18	33,553.7	235,766	7.03	1,155.72	33,553.7	235,766	7.03	1,155.72
Wicklow	85	6	20,101	147,877.35	7.36	1,739.73	20,101	147,877.35	7.36	1,739.73
Totals	5,685	1,723	1,664,189	10,985,536.62	341.31	67,683.07	1,315,943.9	10,807,075	215.45	57,034.18

Appendix 6- List of investors in the Tipperary Bank from the private papers of James Sadleir (undated)

Source: Grenepark estate paper in private possession.

<u>Surname</u>	<u>Forename</u>	<u>Sex</u>	<u>Occupation</u>	<u>Address</u>	<u>County</u>	<u>Co unt ry</u>
Armstrong	Simon	m	Merchant	not stated	Tipperary	Ire
Bennett	John	m	Esq	Riverstown, Nenagh	Tipperary	Ire
Barry	John	m	Farmer	Gurticlona	Limerick	Ire
Burrell	George Augustus	m	Merchant Banker	not stated	Oxford	Eng
Baker	William Fucy	m	Captain	Hellingdon	Middlesex	Eng
Boyes	William	m	Draper	Stoney Stratford	Buckinghamshire	Eng
Barnard	John	m	Farmer	High Easten, Waltham	Essex	Eng
Bodger	William James	m	Gentleman	Tring	Bedfordshire	Eng
Biggs	Edward	m	Farmer	Burcott	Bedfordshire	Eng
Buckmaster	Charles	m	Miller	Fotternhoe	Bedfordshire	Eng
Bird	Henry	m	Medical Doctor	Chelmosford	Essex	Eng
Cleary	John	m	Gentleman	Caherwillahon, Golden	Tipperary	Ire
Cleary	William	m	Farmer	Caherwillahon, Golden	Tipperary	Ire
Cleary	Patrick	m	Farmer	Thomastown, Golden	Tipperary	Ire
Condon	William	m	not stated	Ballinamassoug h	Tipperary	Ire
Child	Wiliam Coles	m	Gentleman	Hamstead Mount, Fitchell	Essex	Eng
Cooke	John	m	Farmer	Steppingby	Bedfordshire	Eng
Cook	Sarah	f	Spinster	Heasborn, Granby	Bedfordshire	Eng
Candy	Thomas Henry Sidney	m	not stated	Supes College	Cambridge	Eng
Cooke	John	m	Farmer	Steppingby	Bedfordshire	Eng
Dwyer	Henry	m	Colonel, JP	Ballyquirk Castle, Borriskane	Tipperary	Ire
Dockers	Edmond	m	Clerk	Foxfield	Hampshire	Eng
Edwards	Thomas	m	Esq	2 Margaret Place	Dublin	Ire
Elliot	John	m	Gentleman	Rickmansworth	Hertfordshire	Eng
Ferrall	Austen	m	Esq	London	London	Eng
Flesman	John	m	Merchant	Watford	Hertfordshire	Eng

<u>Surname</u>	<u>Forename</u>	<u>Sex</u>	<u>Occupation</u>	<u>Address</u>	<u>County</u>	<u>Co unt ry</u>
Flint	Mrs Frank	f	not stated	Leighton Buzzard	Bedfordshire	Eng
Gardner	Richard	m	Gentleman	Islington Villa, Torquat	Devon	Eng
Goode	Charles	m	not stated	15 Lower Belgarve Place, Pimlico	London	Eng
Goodyear	Fredrick	m	Merchant	52 Old Change	London	Eng
Gouger	John	m	Farmer	Fields End Heard	Hampestead	Eng
Gardner	William	m	not stated	Wharf Hapton	Buckinghamshire	Eng
Gadsden	Caroline	f	Spinster	Hapton	Buckinghamshire	Eng
Gregory	Robert	m	Farmer	Tring	Hertfordshire	Eng
Gerling	George L.	m	Surgeon	St. Ives	Hampshire	Eng
Gregory	Henry	m	Farmer	Mead Tring	Hertfordshire	Eng
Ginger	Thomas	m	Farmer	Haton	Buckinghamshire	Eng
Gadsden	William	m	Wharfinger	Hapton	Buckinghamshire	Eng
Hammersley	James	m	Farmer	Grange	Tipperary	Ire
Horne	John	m	Gentleman	Wymondly Priory	Hertfordshire	Eng
Hardneys	James	m	Gentleman	St. Albans	Hertfordshire	Eng
Horne	George	m	Merchant	Tillsworth	Bedforshire	Eng
Holland	Henry	m	Gentleman	Street Mann	Hampshire	Eng
Keating	Robert	m	MP	Gairanlea, Cashel	Tipperary	Ire
Kennedy	Wilson	m	Esq	Clonmel	Tipperary	Ire
Keating	Leonard	m	Esq	Gairanlea, Cashel	Tipperary	Ire
Kennedy	Thomas Jackson	m	Esq	Dublin	Dublin	Ire
Kennedy	James B.	m	Esq	Dublin	Dublin	Ire
Levermore	Clarissa Annie	f	Spinster	Little Badden	Essex	Eng
Linton	John	m	Gentleman	not stated	Exebridge	Eng
Langstone	Stephen	m	Clerk	South Borrough and Tumbridge Wells	Kent	Eng
Law Turmery	John	m	Banker	14 Mansfield Street, Cavandish Square	London	Eng
Lacy	Henry	m	Banker	Petersfield	Hampshire	Eng
Ludlow	J.B	m	Clerk	Hapton	Buckinghamshire	Eng
Lunnall	not stated	m	Farmer	Milltown Bryant	Bedforshire	Eng
Mahony	Thomas	m	JP	Templebraden, Pallasgreen	Tipperary	Ire

<u>Surname</u>	<u>Forename</u>	<u>Sex</u>	<u>Occupation</u>	<u>Address</u>	<u>County</u>	<u>Co unt ry</u>
Murnane	Thomas	m	Farmer	Knockarding	Tipperary	Ire
Mc Key	Bernard	m	Merchant	Carrick on Suir	Tipperary	Ire
Edwards	Major Mark	m	Gentleman	Hampstead Hall	Essex	Ire
Osborn	John	m	Farmer	Ricksmanswort h	Hertfordshire	Eng
Pattinson	William D	m	Gentleman	Geoshell	Kings County	Ire
Pepper	John	m	Gentleman	Lismore House, Toomevara	Tipperary	Ire
Proctor	John	m	Farmer	Rickmansworth	Hertfordshire	Eng
Proctor	Thomas	m	Gentleman	Rickmansworth	Hertfordshire	Eng
Price	Thomas	m	Gentleman	Lindsdale	Buckinghamshire	Eng
Parnell	Stephen	m	Gentleman	Haslemere	Surrey	Eng
Patmore	William	m	Farmer	Quendon, Saffron Walden	Essex	Eng
Pierson	Thomas Graham	m	Banker	Hitchen	Hertfordshire	Eng
Quillinan	Henry	m	Gentleman	Ballywoe	Tipperary	Ire
Ryan	John	m	Esq, JP	Scarteen, Bruff	Limerick	Ire
Ryan	Partick	m	Farmer	Kilross	Tipperary	Ire
Ryan	Patrick	m	Farmer	Moherough	Tipperary	Ire
Rodwell	William	m	Banker	13 Bleinham Terrace, St. John's Wood	London	Eng
Redder	E.J. Strattan	m	Banker	Sandwich	Kent	Eng
Scully	Vincent	m	MP	2C Merrion Square	Dublin	Ire
Scully	Francis	m	MP	Reform Club	London	Eng
Scully	James	m	JP	Athassel, Golden	Tipperary	Ire
Scully	John	m	Senior Magistrate	Outerard	Galway	Ire
Sadleir	James	m	MP	Clonacoddy, Clonmel	Tipperary	Ire
Sadleir	John	m	MP	5 Great Denmark Street	Dublin	Ire
Sausse	Matthew Robert	m	Esq	2c Hume Street	Dublin	Ire
Sampson	Robert	m	Farmer	Cairnbrooke	Tipperary	Ire
Scully	Richard	m	Merchant	not stated	Tipperary	Ire
Stormer	Thomas	m	Trader	Lorton	Bedforshire	Eng
Sear	Robert	m	Farmer	Montmore	Buckinghamshire	Eng
Swannell	Owen	m	Gentleman	Rickmansworth	Hertfordshire	Eng
Smith	Henry	m	Farmer	Hasborne, Cromsby	Bedfordshire	Eng
Smith	Caleb	m	Gentleman	Eaton Bray	Bedfordshire	Eng
Thorp	Walter	m	Gentleman	Dawson Street	Dublin	Ire

<u>Surname</u>	<u>Forename</u>	<u>Sex</u>	<u>Occupation</u>	<u>Address</u>	<u>County</u>	<u>Co unt ry</u>
Times	Charles	m	Solicitor	Hutchin	Hertfordshire	Eng
Travener	Samuel	m	Gentleman	Lindsdale	Buckinghamshire	Eng
Tyler	Christopher	m	Gentleman	Rickmansworth	Hertfordshire	Eng
Tyler	Christopher	m	Merchant	Hilford	Essex	Eng
Whitley	John	m	Doctor of Divinity	19 Warrington Place	Dublin	Ire
Waugh	Hugh	m	Esq.	Scion Hill, Dronmore	Down	Ire
White	John	m	Farmer	Rickmansworth	Hertfordshire	Eng
Waldron	Stephen	m	Esq	Hungerford	Bedfordshire	Eng
Wilson	Stephen	m	Gentleman	Ickleton Grange	Essex	Eng
Willis	Elizabeth	f	Spinster	Saffron Waldron	Essex	Eng
Wood	Susan	f	Spinster	Walton Hall Kelso	Roxburghshire	Eng

Appendix 7- List of purchases made in trust or by John Sadleir

Source: Incumbered Estates Court (Ireland). Return of the several purchases made in the Incumbered Estates Court by the late John Sadleir, or in trust for him; of the number of declarations of trust made by or to said John Sadleir of trust made by or to said John Sadleir appearing in the books or documents in the said court; of the orders made by the commissioners, extending the time for the lodgement of the purchase money by the said John Sadleir; and number of conveyances executed by the commissioners to the said John Sadleir, or in the trust for him. H.C. 1856 (187), liii, 431.

Owner	Petitioner	Lot no.	Acres	Paid	Properties	Name of purchaser
James William Wall	Thomas Joseph Eyre	Lot 1	323	8,500	Coolnamuck House	John Sadleir for James Sadleir
		Lot 2	179	3,700		John Sadleir for James Sadleir
		Lot 3	203	7,000		John Sadleir for James Sadleir
		Lot 5	148	2,300		John Sadleir MP
		Lot 10	143	2,000		John Sadleir MP
		Lot 11	129	4,100		John Sadleir MP
		Lot 12	763	8,400		John Sadleir MP
Earl of Glengall	Earl of Glengall	Lot 1		700	Cahir Castle	John Sadleir in trust
		Lot 2		900		John Sadleir in trust
		Lot 9		1,350		John Sadleir in trust
		Lot 10		330		John Sadleir in trust
		Lot 11		1,250		John Sadleir in trust

Owner	Petitioner	Lot no.	Acres	Paid	Properties	Name of purchaser
		Lot 13		370		John Sadleir in trust
		Lot 15		550		John Sadleir in trust
		Lot 1	779	30,000	Kilcommon House	John Sadleir in trust
		Lot 5	130	1,900		John Sadleir in trust
		Lot 2	139	1,900		John Sadleir in trust
		Lot 3	206	3,000		John Sadleir in trust
		Lot 4	230	3,600		John Sadleir in trust
		Lot 6	73	1,300		John Sadleir in trust
		Lot 7	118	1,400		John Sadleir in trust
		Lot 8	119	1,800		John Sadleir in trust
		Lot 9	110	1,350		John Sadleir in trust
		Lot 10	245	3,750		John Sadleir in trust
		Lot 11	1380	3,000		John Sadleir in trust
		Lot 12	881	2,600		John Sadleir in trust
		Lot 13	455	3,300		John Sadleir in trust
		Lot 14	231	3,650		John Sadleir in trust
Earl of Kingston	Eliza Hoops	Lot 60	322	1,250		John Sadleir MP

Owner	Petitioner	Lot no.	Acres	Paid	Properties	Name of purchaser
		Lot 5	76	975		John Sadleir MP
		Lot 12	171	2,975		John Sadleir MP
		Lot 14	241	3,000		John Sadleir MP
		Lot 32	517	2,350		John Sadleir MP
		Lot 33	248	2,450		John Sadleir MP
		Lot 48	329	1,830		John Sadleir MP
		Lot 45	1571	800		John Sadleir MP
		Lot 54	1754	700		John Sadleir MP
		Lot 55	602	1,600		John Sadleir MP
		Lot 56	2982	1,000		John Sadleir MP
Matthew Cooke	James F. Armstrong	Lot 1-3, 5-7		24,000		John Sadleir MP
		Lot 4		3,000		John Sadleir MP
Lorenzo Clatterback	Lorenzo Clatterback			6,500		Private purchase
Trustees of Sir George Goold	Jane Atkinson	Lot 17	150	580		John Sadleir MP
Hyacinth Darcy	Coote Carroll	Lot 9	397	3,750		in trust by John Sadleir
		Lot 10	278	1,425		in trust by John Sadleir

Owner	Petitioner	Lot no.	Acres	Paid	Properties	Name of purchaser
		Lot 12	387	770		in trust by John Sadleir
		Lot 13	148	550		in trust by John Sadleir
		Lot 14	312	4,000		in trust by John Sadleir
		Lot 2	345	2,500		in trust by John Sadleir
		Lot 3	310	1,000		in trust by John Sadleir
		Lot 8	1000	900		in trust by John Sadleir
John Hyde	John Hyde	Lot 16	2549	17,725	Castle Hyde	John Sadleir in trust for Thomas J. Eyre
		Lot 24	190	2,675		John Sadleir in trust for Thomas J. Eyre
William De Montmorency	William De Montmorency	Lot 1	285	30,100	Upper Court Manor	John Sadleir MP
Earl of Portarlington	James Delany	Lot 39		10,000		Private purchase
		Lot 5	245	1,830		John Sadleir MP

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Mr James Sadleir. Copies of the information's and warrant against Mr James Sadleir, and of the bills of indictment, if any, found against him, and of the names of the witnesses and findings of the grand jury thereon. H.C. 1856 (394-I), 1, 587/599.

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