

BELFAST LEASES, LORD DONEGALL, AND THE INCUMBERED ESTATES ACT, 1849*

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Introduction

Lawyers, and in particular solicitors, have in the past been notoriously reluctant to part with or destroy deeds, documents, papers and files which 'might one day come in useful'. For this reason, they have been for centuries invaluable as preservers of archives, especially title-deeds, wills, probates, and court pleadings – more so as most such documents had for centuries been laboriously written out in ink by scribes on parchment or durable paper. Today, photocopiers, computers, faxes, and emails have generated such enormous problems of storage that practitioners now shred the majority of documents every few years.

When, in 1953, as a young solicitor aged twenty-five, I was taken into partnership in the family firm of L'Estrange & Brett by my father and grandfather, problems of storage had already reached uncomfortable proportions. I was the sixth generation; the firm had been founded (as Ramsay & Garrett) in the last years of the eighteenth century. The attics and roof-space (not to mention the narrow but capacious strong-room) of the offices at no. 9 Chichester Street, Belfast, which the firm had occupied since 1886, were packed with piles and boxes of old documents, leaving no room for more. I was told that there had been a mild tidy-up in 1917, for fear of zeppelin raids; and another in 1939, for fear of air raids; but nothing else.

To make matters worse still, next door, the basement of no. 7 Chichester Street, was stacked from floor to ceiling with the unsorted bundles of paper and parchment that had come from the Shaftesbury estates¹ office, and the offices of Torrens & Bristow. These had accompanied old John Bristow, the last surviving partner in that firm, when he amalgamated his practice with that of L'Estrange & Brett in 1943 in order to provide himself, and his two spinster sisters, with an annuity in lieu of a pension. He and his redoubtable secretary Miss Nina Murdoch, with their humble clerk and scrivener Robert Meek (who laboriously inscribed in long-hand on parchment deeds of enduring importance, a task inconceivable today) occupied the ground floor of no. 7, and there looked after the affairs of sundry landed gentry and other profitable clients, including Lord Shaftesbury and Lord Harborton. This involved enforcing the covenants in their leases and fee farm grants, collecting their ground rents (then, before inflation eroded their value, a very lucrative commodity), their leets and heriots, and the payments for fishery rights, shooting rights, mineral rights, quarries, and such other ancillary

* This article is a slightly edited extract from Sir Charles Brett's book, "Georgian Belfast", published in 2004, and is here reproduced by permission of the Royal Irish Academy, Dublin.

¹ In 1857, Harriet, daughter of the third marquess of Donegall, married Anthony, eighth earl of Shaftesbury; on her father's death in 1883, his estates had mostly passed to her and so the Donegall estates became the Shaftesbury estates.

rights and royalties as they could collect. In short, they acted more like Scottish factors than modern Irish solicitors.

By 1960, the situation had become desperate. So, with the reluctant approbation of my father and grandfather, I opened negotiations on the firm's behalf with young Mr Kenneth Darwin, the energetic and efficient individual recently appointed to the office of Deputy Keeper of the Public Record Office of Northern Ireland. He was very anxious to get his toe into the doorway of the profession; I was equally anxious to find a solution to our own problems. In the end, after much hesitation and dubiety on the part of my partners, we reached a deal: the Public Record Office would take into its care and custody all the records and documents that were overwhelming us. It would take away, sort, catalogue, and preserve them in their lorry-loads; it would provide us with calendars, or catalogues, of all that had been entrusted to it. The documents were to be regarded as on permanent deposit, subject to the two over-riding provisos, that if any client of the firm wanted his documents back or if the firm for any reason wanted any of the documents, they should be immediately returned. Also, copies of documents deposited were to be freely available. Over a lengthy period, the documents so deposited were sorted out and catalogued, very competently, I believe mostly by the youthful Mr Brian Trainor. The Public Record Office was then still housed, conveniently for me, in the law courts at the foot of Chichester Street, where I could easily go and make searches during my lunch-hours.

This arrangement has worked, so far as I am concerned, to perfection. There were one or two worrying moments, as when I discovered that, inadvertently, I had consigned to the Public Record Office a parcel of letters describing in gynaecological detail an affair with a dancing-girl in Budapest, before the first war, of a client still living. These, and a few other sensitive bundles of early divorce papers, were quickly retrieved. But, so far as I know, no client has ever objected to the arrangement, or demanded the return of his papers, and it has provided a model for arrangements with a number of other firms. In his report for 1960–65 the Deputy Keeper of the records commented 'A quite outstanding collection of solicitors' records was deposited by Messrs L'Estrange & Brett of Belfast . . . over 150,000 documents of all kinds have been transferred from the firm's store-rooms . . . the variety is staggering . . . the value of such transfers of complete archives lies not merely in the large number and quality of the individual documents deposited but in the comprehensive nature of the whole collection . . . this collection illustrates, as no amount of comment can, why such collections should be preserved and deposited in full'.²

It was not long, however, until I discovered that I had, in a sense, shot myself in the foot. By presenting all these documents to the Public Record Office I had deprived myself of personal and immediate access to numerous papers, which could be helpful in my researches into the subject-matter of the book, ultimately published in 1967, upon which I soon afterwards embarked, *Buildings of Belfast, 1700–1914*.

² *Report of the deputy keeper of records, 1960–65* (Belfast, 1968), pp.9–10.

My first step had been to perambulate, slowly, every street in central Belfast, pencil and notebook in hand. I still have, and treasure, that notebook; I see that I started work on 1 January 1959. It records my, then rather amateurish, impressions of a great many buildings that no longer exist – over the past fifty years, fallen to decay, or to wicked bombers, or to grasping developers – so that the character of the city is utterly changed. I could then note that at no. 56 Chichester Street, parlour of a veterinary surgeon, there lived still a goose, two guinea-fowl, and many hens; Forde's cattle yard at no. 13 Eliza Street a 'gate opens to disclose two long low sheds, whitewashed, v. picturesque and farmyardy, decorated with stuffed sheeps' and cows' heads'; no. 20 McAuley Street a '1830ish pleasant horse-dealer's yard tunnelled through and behind two storey house'; East Street, no number, a 'defunct poulterer's shop, D. Gilmour & Son, with attractive duck and hen in plasterwork (?) or carved wood (?) on signboard'; and many other, long since gone, rural remains. Indeed, I remember, though I did not record, meeting a nice old lady sharing a stable with a donkey up an entry just off Cromac Street. Alas, it is not only the rustic remains that have disappeared: the late Georgian, Regency, early Victorian, high Victorian, and Edwardian buildings that still lent Belfast its highly individual character in the 1960s have mostly gone too.

As I completed my peregrinations, I started the work of research. The subject was a completely novel one, and I had more or less to start from the beginning. My principal aims were to track down the date, and architect (if any) or builder, of every building then standing. Fortunately, I had inherited my great-grandfather's fine library of Irish books, and of course had also close at hand the excellent Linen Hall Library. I procured photocopies of every known map of Belfast, had them framed, and hung them in sequence on the walls of our office staircase. The only complete set in Northern Ireland of that excellent journal the *Irish Builder* had just, maddeningly, been destroyed as junk by the egregious and bad-tempered Captain Young of Young & Mackenzie, architects. Fortunately, Ken Darwin was a man who knew when and how to break all the rules, and on his regular visits to Dublin as a trustee of the National Library borrowed and brought me back half a dozen volumes at a time. I went through every volume up to 1914 meticulously, card-indexing every Belfast reference.

I was lucky indeed to have his enthusiastic support and help, for it next occurred to me that it might be possible to date a number of surviving buildings by the use of the building covenants in the Donegall estate leases, of which first John Bristow and then my own firm had handed over several hundred to the Public Record Office. Ken Darwin, stretching to its utmost limit the agreement governing the deposit, allowed me to take home in batches the original counterpart leases. I took home also, this time from our own office, the bound map-book of Belfast that had been prepared and printed for the purpose of the sales through the Incumbered Estates Court. There, working at home on the dining-room table in Coolavin, the big house on whose site Queen's University subsequently built its disagreeable halls of residence, I laboriously transferred in pencil the basic information contained in the leases onto the printed maps.

The Leases

The third earl of Donegall, proprietor of Belfast, was killed at the siege of Monjuich, outside Barcelona, in 1706. In 1708, Belfast Castle burned to the ground. From 1706 until 1757 the town belonged to the fourth earl, who was incapable of managing his affairs, which were looked after by trustees. Throughout this period, short leases and tenancies, providing no incentive to build or repair, were the rule. The fifth earl, who succeeded his uncle in 1757, and his advisers, adopted a much more constructive policy. A careful survey of the whole town was carried out and old leases were either surrendered as they fell in, or exchanged for new ones. So on 20 July 1767 new leases, of which the counterparts for no fewer than 258 survive in the Public Record Office, were granted for almost every holding in the town. It is probable that a good many more survive in the bundles of title-deeds relating to other properties in inner Belfast.

It is very remarkable that so many of these indentures have survived. An indenture is defined by the *Oxford English Dictionary* as ‘a deed between two or more parties with mutual covenants, executed in two or more copies, all having their tops or edges correspondingly indented or serrated for identification and security’. This was originally intended to assist the illiterate to identify their own documents, a procedure that lasted into my own young days in practice. But almost all such documents were superseded by the conveyances executed by the land judges under the Incumbered Estates Act or by private sales so that their retention was, in almost every case, altogether pointless. But, as has already been remarked, lawyers have – and have always had – an extreme disinclination to destroy or discard documents that might yet be needed.

A fairly typical example of a Belfast building lease of 10 July 1767 is that granted to Elizabeth Byrtt, widow (Fig. 6).³ ‘Byrtt’ is a not uncommon corruption of ‘Brett’; I have sometimes wondered if this lady was not a relation of mine; but my family tree affords her no perch. The plot granted to her was not in her own possession, but rented out by her to Elizabeth Banks, widow, her under-tenant. It comprised a plot, with a frontage to Castle Street (at the head of High Street) of 25 feet, extending backwards ‘towards’ Rosemary Lane 135 feet. The plan endorsed on the appropriate space on the printed lease shows an L-shaped house (i.e. with a return) on the Castle Street frontage, a modest yard, a large cow-house occupying the entire width of the plot, a small out-house presumably a privy, and a long crooked back yard where it is to be supposed that the cow (or cows) took the air. The plot is bounded on the east by premises of Samuel Hyde, on the west by premises of Widow Cadell and to the rear by premises of Widow Dalzell (see map 21, plot nos 2, 3, 4). Widows appear to have been plentiful in Belfast at this period and over thirty are listed in the directory of leaseholders in part III. There seems to have been no access or right of way at the rear to Rosemary Street. Presumably the cow (or cows) got to the yard either by a gate at the side of the house – though none is shown on the plan – or through the house itself, an arrangement by no means inconceivable at that date. Six

³ PRONI, D509/191.

houses in Rosemary Street had been ‘lately built’ in 1767 immediately to the rear of Mrs Byrnt’s plot.

The lease was expressed to be for the lives of Arthur, earl of Donegall, his wife Ann, countess of Donegall and the honorable John Chichester, brother to the said earl and then the residue of a term of ninety-nine years from 1 May last past. The rent was to be £6 13s plus 2s duties payable on the usual gale-days of 1 May and 1 November in each year, plus a heriot of 5s on the death of the tenant and leet-silver at courts-leet. Mrs Byrnt further covenanted within fourteen years to:

“take down the messuage or tenement now standing”,

and on the frontage to Castle Street:

“in the stead or place thereof, in a good and workman-like manner, and with good sound materials, erect, build and finish . . . on the whole front of the said ground . . . one good and substantial messuage or tenement of brick and lime, or stone and lime, and shall cause the front of the said messuage to be sashed, and the roof thereof to be well slated, and all the side-walls of the said messuage to be built twenty-eight feet high above the surface of the ground, and fourteen inches thick at least, and that all the girders, joists and roofing, and the other timbers which shall be used or put therein, shall be of good oak or fir, and of proper scantlings respectively.”

She was also required to pave the street outside with stones or pebbles out to the middle of the street, and to keep it “well swept and cleansed”. Moreover, should she, or any of her tenants “lay or put upon any part of the streets of the said town of Belfast, any ashes, dung, filth or dirt” and allow it to remain there for twenty-four hours, she was to be liable to a fine of a shilling a day. There were also the usual covenants for repair, due payment, and for the (compulsory) use of the manorial corn mill.

By way of parenthesis, it is relevant to note that this was part of the site of the old Ulster Club, a noble building erected to the designs of Charles Lanyon in 1863. The club fell on hard times; it was ingeniously suggested by the late Brian Rankin that the back quarters should be demolished to provide offices for the Law Society, the chartered accountants, and the Royal Society of Ulster Architects on three floors, the fine formal rooms on the frontage to be shared by the three bodies. Unhappily, this scheme proved to be impracticable because of the lack of any rear access. So it was sold to a developer, who deliberately allowed it to fall into disrepair. After it had been vacated by the clubmen, it suffered slight bomb damage, but enough to allow the weather and the pigeons to penetrate the roof and so permit an outbreak of irremediable dry rot. It was until lately the site of the architecturally ignominious central Post Office.

Twenty years later, a lease in a somewhat different (but still printed) format was granted on 6 June 1790 by Lord Donegall to James Cooper, of Belfast, publican, for a fixed term of ninety-nine years, over an irregularly-shaped plot of land at the top of Donegall Street, opposite the poor house, with frontages to Carrick Hill (otherwise called ‘the Carrickfergus Road’) and

Patrick Street, at a rent of £14 per annum.⁴ Mr Cooper covenanted to build, within two years, three or more good and substantial houses of three storeys and that “the cornices doors and windows thereof shall range in a line with the houses nearest the church of Belfast standing in the same street”. Needless to say, this was the parish church of St Ann, not the much later St Patrick’s Roman Catholic Church almost next door. I had at the time of writing my book assumed that the building covenant had been duly complied with since there was a stringent proviso for forfeiture in the case of non-compliance. But it seems that this was not so, for when in 1989 the Hearth Housing Association was restoring the houses next to the parochial house, assumed to have been of 1809, it was discovered that the parochial house was in fact older than its neighbours, which presumably, therefore, were not built until the 1820s or 1830s.

On 20 April 1786, Lord Donegall granted a lease of a substantial site on the west side of his fashionable new street, Linen Hall Street, now Donegall Place, to his faithful architect and developer, Roger Mulholland, with a covenant to build upon it three very grand houses. That lease has not survived in the Public Record Office but of the three counterpart sub-leases, that to the Reverend Edward Patterson, clerk, curate in the parish of Belfast, has survived. His neighbours were, on the one side, John Smith, a prosperous merchant and, on the other side, the redoubtable Dr James McDonnell of the Glens of Antrim.

Mr Patterson’s sub-lease is dated 2 May 1791.⁵ The lease was for the fixed term of twenty-one years from 1 November 1791 at the formidable rent of £34 2s 6d per annum. In fact, he seems to have assigned it to James Luke in 1800, after only nine years. The printed document was a crisp, concise and straightforward one. It contained no unusual covenants. But it did contain a hand-written proviso, after the usual landlord’s covenant for quiet possession, as follows:

“and also that he the said Roger Mulholland his executors administrators or assigns shall and will allow the said Edward Patterson his executors administrators or assigns a sum of £11 16s in payment of the last half years Rent that shall be due and payable at the expiration of this demise, being the one half of the expence of all locks grates chimney pieces and shelves in said messuage and tenement”.

This house, now encased in mid nineteenth-century stucco, appears to be that still standing at no. 25 Donegall Place, though certainly now almost unrecognisable.

On 5 June 1800, Lord Donegall (and his trustees) granted a lease to one John Taylor of Belfast, cooper, of building ground off ‘the Back Plantation’ (Corporation Street) for three lives (as usual, all members of the Chichester family) and ninety-nine years at a rent of £12 15s covenanting to build two or more two-storey houses, this time subject to the further covenant that there should not be permitted on the premises “the trade of a brewer butcher slaughterer tobacco pipe binner tallow chandler melter of tallow brazier glass

⁴ PRONI, D509/758.

⁵ PRONI, D509/805.

maker founderer or any noisome or offensive trade whatsoever without the consent of the said marquis” (see map 2, plot no. 124).⁶ It is surprising that the notoriously smelly trade of tanner was not included, for Belfast was full of tanneries.

I hope that these examples will serve to give the reader some flavour of the leases whose particulars have been summarised on the maps and that their arcane phraseology will not be too difficult for a lay reader, familiar and even common-place as they must seem to every lawyer who has ever had to read and parse an eighteenth-century title.

The Incumbered Estates Court

In consequence of his debts, Lord Donegall could not continue to live on the revenue from his rents without meeting the claims of his creditors and, under the new legislation, he was obliged (in the first instance, by reason of the petition for sale lodged by a Mr Turner) to offer his Belfast estate for sale through the Incumbered Estates Court. The Incumbered Estates Act of 1849 was one of the most brilliantly successful pieces of legislation ever passed. It is remarkable that it has attracted so little attention from legal historians. The two most useful accounts of it, very different indeed from each other though they are, were written quite soon after the court, established in 1849, was wound up ten years later having accomplished its initial task. It was succeeded by an act of 1868, which established a successor body, the Landed Estates Court, with greatly extended powers. Incidentally, the name is often spelled Encumbered; but Incumbered is the correct, parliamentary, spelling.

The first account of its work is contained in the very dry, statistical appendix six⁷ to Richard MacNevin’s book, *The practice of the Landed Estates Court in Ireland*, published in 1859, and contains a summary of the proceedings of its predecessor from 25 October 1849 until 25 October 1859. The second account, jovially facetious but none the less equally useful, by one Percy Fitzgerald, Esq., MRIA, made its first appearance in 1861 in Charles Dickens’s magazine *All the year round* and was subsequently published as a small hardback booklet in London in 1862.

Percy Fitzgerald (1834–1925) was an odd fish: writer, sculptor, painter, barrister and a friend of Dickens. Richard MacNevin was one of a large family of rather intellectual Dublin solicitors, all Jesuit-educated, some at Clongowes, he at Oscott. Other contributions, dealing with particular aspects of the act, are to be found in Dr Maguire’s case history of Lord Donegall in the *Economic History Review*, 1976;⁸ in Mary Cecelia Lyons’s book of 1993 on the illustrations to the rentals;⁹ and in Pdraig Lane’s account.¹⁰

⁶ PRONI, D509/1360.

⁷ R.C. MacNevin, *The practice of the Landed Estates Court in Ireland* (Dublin, 1859), pp.439–49.

⁸ W.A. Maguire, ‘Lord Donegall and the sale of Belfast’ pp.570–84.

⁹ M.C. Lyons, *Illustrated Incumbered Estates, Ireland, 1850–1905* (Whitegate, 1993).

¹⁰ P.G. Lane, ‘The Encumbered Estates Court, Ireland, 1848–9’, in *Economic and Social Review*, iii (1972), pp.413–53.

Irish land law has always been complex and difficult. The crown grants of the seventeenth century (comparable to those providing the basis for title on the eastern seaboard of America) had been superimposed on a version of Anglo-Norman feudal law, in turn superimposed on the much older traditional native Irish *brehon* law. Land law was interpreted and administered by the courts of chancery. Their procedures, in Ireland as in England, were inscrutable and interminable. Dickens's case of *Jarndyce v. Jarndyce* was wholly plausible, no exaggeration at all. Lord Mansfield, in the late eighteenth century, allowed himself to become an Irish mortgagee; his case in chancery for the recovery of his money was not concluded until 1853, sixty years later. But Ireland had none the less one great advantage over England. In the reign of Queen Anne, in 1707, parliament had created a Registry of Deeds. No dealing with land, intended to be effective for more than twenty-one years, was thereafter to be enforceable unless it had first been registered by means of a memorial summarising its terms. The Deeds Registry of Ireland still subsists, in Henrietta Street, Dublin, and there one may (not without both difficulty and dust) consult the memorials of every such transaction in land in Ireland for the past three centuries: as I have myself done, though few others, save law searchers and intrepid local historians, ever do so.

Dissolute landowners such as the earl of Donegall borrowed far beyond their means, 'incumbering' their lands with mortgages, often in favour of English lenders, by way of security for repayment. But many, quite innocent, smaller and more provident landowners had, in times of some degree of prosperity, 'incumbered' their lands by creating charges to secure widows' jointures, or annuities for younger children, or provision for spinster aunts, or, indeed, for the support of the charities they had founded. All this elaborate structure crashed when the Famine came in 1845. Nobody could pay rent to his landlord if he had no income; nobody could pay interest to his lender, or income to his auntie, if he had no income from his rents. The result was, as it is today called, negative equity: disaster all round.

The remedy was in the hands of the Westminster parliament and, largely at the instance of the ex-Prime Minister, Sir Robert Peel, the remedy was applied. True, the first attempt, in 1848, was ineffectual, for it made the grave error of placing reform in the hands of the chancery courts. But the act of 1849 was more successful. It took the whole business out of the hands of the chancery courts and confided it to three full-time Incumbered Estates Court commissioners, with quite extraordinary powers and with no right of appeal from their decisions.

Under the new procedure any creditor who could show that the interest on his debtor's incumbrances exceeded one-half of the income of the estate might present a petition for sale to the commissioners. The procedure to be followed against 'the incumbered nobleman' is nicely described by Percy Fitzgerald.¹¹ First, an order for sale was made, to which the nobleman was invited to object if he will. When he failed to do so, the petitioner's solicitors inquired as to the affairs of the estate.

¹¹ Percy Fitzgerald, *The story of the Incumbered Estates Court* (London, 1862), pp.21–43.

“By-and-by all these labours of the eminent firm result most unexpectedly in a handsome folio volume, elegantly printed and copiously illustrated with lithographic plans, vividly-coloured drawings, sections and elevations, together with tabulated columns showing the tenancies, rents, and acreage – in short, such a topographical picture in one volume – of his estate as must have astonished the incumbered nobleman himself”.

And that is just what we have, for Belfast, although it is divided into map-book and rental.

There were, of course, maps or plans of each plot already endorsed on the leases and their counterparts, but new maps showing the whole estate were none the less required. A sum of 3d per statute acre was allowed by the court for surveying and lithography. Although many of the other maps appear to have been copied and enlarged from the most recent Ordnance Survey plans, those for Belfast were produced specially by the Dublin booksellers, Hodges and Smith, in 1850.¹² The actual work would presumably have been carried out by a professional surveyor hired by that company, since the most detailed town plans then existing were the 1830s Ordnance Survey maps at a scale of 1:2376, whereas the majority of the Hodges and Smith plans are at larger scales, ranging from 1:800 to 1:5040.

The impending sale by auction is then advertised, and after two or three months, duly takes place, one of the three commissioners usually acting as auctioneer, announcing to the astonishment of those accustomed to the ways of the chancery courts:

“The purchaser can have his conveyance executed, sealed, and delivered this very day! . . . and it will be satisfactory for him to know that a very small box indeed will hold the conveyance! . . . A small box! . . .”

The printed form of conveyance barely fills twenty lines, or half a page of duodecimo print. By-and-by, it was expanded into a single skin of parchment, which even included a map. Fourteen days of grace was then allowed for the purchaser to lodge his money in the Bank of Ireland. The money is then distributed by the commissioner among the creditors in order of their priorities, with any balance left over remitted to the incumbered nobleman.¹³

So what was the outcome of all this endeavour? To quote Percy Fitzgerald once again, if a little selectively,

“nearly two millions of acres, or about one-seventh of the available surface of the country, has been disposed of by public auction . . . nearly four-and-twenty millions sterling have been paid into the hands of the unflinching triumvirs, who nicely weighed and determined conflicting claims, representing a sum of two-and-twenty millions. Nearly 4,000 petitions from creditors have been presented, praying for a

¹² J.H. Andrews, *Plantation acres* (Belfast, 1985), pp.400–01.

¹³ Fitzgerald, *op. cit.*, p.41.

sale; 8,000 estates have been brought to the hammer; and some 4,000 titles have been perused by the triumvirs themselves . . . each personally waded through those dirty waves of vellum and faded yellow paper on which the true title to an estate usually drifts down . . . The old-fashioned chancery dilly [i.e. diligence] . . . rumbled on at a slow walk, and was ten years distributing a million sterling. The new legislative engine dashes by, express, and scatters four-and-twenty millions within the same space”.

By the end of its life, the court’s task had been completed. Fitzgerald records that, in the last months of its existence, it had no more than seventeen cases to deal with, that is, about four-and-a-half to each judge.

“There was nothing left for it to sell; there were no more patient mortgagees, exasperated by long suffering, to petition. Everybody was paid. Nobody was incumbered of land.”¹⁴

The same facts are more prosaically presented in the ninth annual report of the commissioners:¹⁵

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|-----|--|-------------|
| 1. | Number of petitions presented | 4,413 |
| 2. | Number of absolute orders for sale | 3,547 |
| 3. | Number of matters in which owners presented petitions | 1,363 |
| 4. | Number of matters in which owners were bankrupt or insolvent | 365 |
| 5. | Number of conveyances executed by the commissioners | 8,364 |
| 6. | Number of estates sold by provincial auction | 409 |
| 7. | Number of lots sold | 11,024 |
| 8. | Number of boxes containing upwards of 300,000 documents and muniments of title, deposited in the Records Office | 2,986 |
| 9. | Number of cases which had been pending in the court of chancery before being brought into the Incumbered Estates Court | 1,298 |
| 10. | Number of Irish purchasers | 8,258 |
| 11. | Number of English, Scotch, and foreign purchasers | 324 |
| 12. | Amount of purchase money paid by English, Scotch, and foreign purchasers | £3,160,244 |
| 13. | Gross proceeds of sale to 31 August, 1858 | £23,161,093 |

(See *note* overleaf)

¹⁴ *ibid.*, p.68.

¹⁵ ‘Summary of the proceedings of the Incumbered Estates Court, from the filing of the first petition, viz., 25 October 1849 to 31 August 1858, being the termination of the last sitting of the commission’ in MacNevin, *op. cit.*, pp.441–4.

*Note: the acreage of the land sold is estimated at about 2,800,000, and the rental at about £1,500,000.*¹⁶

The three principal objectives of the legislation had been to facilitate the speedy sale and transfer of Irish land, to simplify the means of doing so, and to introduce new capital into Irish property and agriculture. In the first two objects, the results were spectacularly successful; in the third, not so, for English and other investors proved unexpectedly reluctant to purchase land in Ireland. This was not an unmixed blessing. Many sceptics had forecast a kind of new settlement, with English and Scottish landowners overwhelming the indigenous peasantry. Perhaps surprisingly, it turned out that there was already a sufficient middle and professional class in Ireland to acquire, and pay cash for, all this land newly thrown on the market. The new proprietors were not always kinder landlords than their predecessors. A not undesirable rationalisation of the management of land took place, no doubt leading to some hardship, but at least the land remained in Irish hands.

How did this happy result come about? Principally, I think, through the diligence and hard labour of the commissioners themselves. One commissioner, with his examiner and supporting staff, handled each case from beginning to end – the redoubtable Mountifort Longfield himself looked after Lord Donegall. Two commissioners stand out in particular. Mountifort Longfield, believed by some to have been the brains behind the whole scheme, was the son of a Co. Cork clergyman. He was called to the Irish bar at the age of 26, but did not practise. He became first professor of political economy, then regius professor of feudal and English law in Dublin. The *Dictionary of National Biography* says that “he was esteemed an especially learned real-property lawyer . . . an active liberal, and assisted to draft the Irish measures of the first and second Gladstone administrations”. He died, aged 82, in 1884.¹⁷ His colleague, Charles James Hargreave, was equally academic: an Englishman and a mathematician, as well as a barrister and professor of jurisprudence, who moved to Dublin in 1849 on his appointment as a commissioner. Of him, the *Dictionary of National Biography* says “his mathematical essays were numerous . . . want of rest brought on an exhaustion of the brain, from which he died at Bray, near Dublin, 23 April 1866” – at the early age of 46.¹⁸

The Irish practitioner of conveyancing, at any rate in my day, greeted the signature of either of these gentlemen with a welcoming recognition, for a deed signed by either of them was sure to constitute that paragon among muniments, ‘a good root of title’, parliament having conferred upon Incumbered Estates Court conveyances, as on their successors Landed Estates Court conveyances, the very rare privilege of indefeasibility, meaning that no challenge whatever could be mounted to their validity once safely sealed, signed, delivered, and registered in the Registry of Deeds.

As Lord Justice Christian put it in a case of 1869:

¹⁶ These statistics have been slightly summarised and abbreviated; take into account that all these figures are at mid-Victorian money values.

¹⁷ *Dictionary of national biography*, xxxiv, pp.119–20.

¹⁸ *ibid.* (1890), xxxiv, pp.379–80.

“by a sort of conveyancing magnetism [an Incumbered Estates Court conveyance] . . . would draw out, not merely from the owner whose estate was under sale, or from whatever persons might intervene as parties in the proceedings, but from the absent, the helpless, the infant, the married woman, the mentally imbecile, nay, even the unborn, every particle of estate and interest, legal or equitable, present and future, known or unknown, latent or patent, in the land expressed to be conveyed, and would concentrate the whole in the purchaser, freed from everything that the conveyance did not save”.¹⁹

This uncommon privilege was upheld by the court of appeal on several occasions. There were a few mistakes, mostly of mapping and a few equitable injustices. But they were not many, even those incumbered noblemen who had at the outset complained so passionately about ‘robbery and confiscation’ in the end became quite contentedly reconciled to the outcome of the legislation.

There were one or two other commissioners, of whom the only one whose name is remembered was William Carey Dobbs. Each commissioner received a salary of £2,500 per annum in 1858. He was assisted by an examiner, at £600; a chief clerk, at £300; a second clerk, at £200; and a junior clerk, at £150 per annum. They were supported by 7 registrars, 4 accountants, 6 clerks of records and keepers of deeds, a taxing officer and his assistant, a stationery clerk, 3 criers, and 3 tipstiffs. The aggregate cost of these, with pensions to retired officials of the court, amounted to £18,500.²⁰ And that was the total annual salary and pensions bill for a staff responsible for sales worth £24,000,000!

As Percy Fitzgerald remarked,

“what may be done with five-and-twenty millions may surely be done with ten times that sum. There is a huge superficities in Great Britain, already handsomely burdened; there are mortgagees hungering and thirsting after their proper moneys, and labouring through the protracted formalities of the English court of chancery, to recover it. The cumbrous engines of that establishment are too slow and old-fashioned for the work of the age, even after all alterations and remodellings. They should be taken down, and new machinery put up with all convenient speed”.²¹

But it was not to happen, for the short and simple reason that to extend the Incumbered Estates code to England was wholly impracticable by reason of the complete absence, in that jurisdiction, of any equivalent of the Registration of Deeds, Ireland, Act, 1707. So there existed no public record of the incumbrances affecting any parcel of land.

¹⁹ *Re Tottenham’s Estate* (1869), IR 3Eq 528 at 547. I am indebted to Lord Carswell for this apposite citation.

²⁰ MacNevin, *Practice of the Landed Estates Court*, pp.440–41.

²¹ Fitzgerald, *Story of the Incumbered Estates Court*, pp.69–70.

In one other, perhaps rather surprising, location, where there did exist a system for the registration of incumbrances, the experiment was tried again: the West Indies. The abolition of slavery had had consequences there almost as disastrous as those of the Great Famine in Ireland. To quote from the report presented to parliament in 1884,

“from a variety of external causes, over which the planters had no control, the price of sugar, which had averaged £60 a ton in the early part of this century, had in 1850 fallen to £25. Any concomitant decrease in the expenses of cultivation and manufacture had been more than neutralised by the complete disorganisation of the labour supply following on the emancipation of the slaves, for the liberal compensation given to the planters on that occasion did not provide any labour in substitution . . . in the early years of the century, when sugar was at such a high price, planters had provided liberally for all dependent on them by jointures, annuities, legacies, and so forth, all chargeable on the estates. Under the new conditions, the planters in order to carry on the cultivation at all, were forced to borrow heavily and to burden with fresh incumbrances their already overburdened properties. The sugar planting industry was completely demoralised and estate affairs were hopelessly complicated”.²²

Unfortunately, the legislation in the West Indies enjoyed only very limited success. True, 290 estates, valued in total at a mere £445,950, passed through the court, and were “furnished afresh with unimpeachable titles” and “cleared of complicated incumbrances”. But this did not remedy the fundamental underlying lack of labour to replace the slaves. Since there was no available source of labour, so there were few purchasers. Accordingly, the Incumbered Estates legislation pioneered in Ireland proved in the end not to be a commodity susceptible to export elsewhere.

One final afterword on this subject. The legislation greatly simplified the affairs of the marquess of Donegall and his family and it gave very considerable satisfaction to his very numerous creditors, though, most unfortunately, the detailed records of the commissioners for sales and receipts appear not to have survived and it is not possible to give a reliable summary of the outcome. Working from the Donegall estate records alone, Dr Maguire notes that “it is difficult to make any accurate estimate of the amount raised by the sales; the landlord himself found it difficult. Lord Donegall’s reckoning in November 1853 was that about £11,000 of the former rental of £28,000 had been sold, which should have provided “upwards of £300,000”. But Verner [Lord Donegall’s agent] seems to have disagreed with these figures. By the end of the following year the annual income remaining was said to be nearer £16,000 than £20,000”.²³

Nevertheless, it can be said that, as Dr Maguire has shown, contrary to the earlier views of many local historians (amongst whom I must include myself), Belfast was not converted almost overnight from a town of tenants

²² *Report . . . on the West Indian Incumbered Estates Court* (London, 1884), p.4.

²³ Maguire, ‘Lord Donegall and the sale of Belfast’, p.581.

with short leases to a town of freeholders. So far as freedom to build was concerned, the landlord's control had virtually ceased by 1830 with the granting of most of the town and its neighbourhood in perpetuities. The building development which one would have expected to follow actually took place in the later 1820s' and the 1830s', as evidenced by the many late Georgian building leases recorded in this book. Fortunately for the Donegall family, its fortunes were considerably restored when in 1857 the sister of the late earl of Belfast married the son and heir of the wealthy, philanthropic, and above all respectable earl of Shaftesbury.