

STATISTICAL AND SOCIAL INQUIRY SOCIETY OF IRELAND.

RECENT SOCIAL LEGISLATION IN ENGLAND.

By SIR THOMAS MOLONY.

Read on Wednesday, 19th January, 1938.

Shortly after I was called to the Bar and went on the Leinster Circuit, a very old member of the Circuit advised me in fatherly terms never to neglect to read the Statutes of the year because, as he said, you may be excused for not knowing a case, but you ought not to be excused for not knowing a Statute when they are brought out each year for a few shillings, and even if you hadn't the shillings you can still read them in the library or borrow them from a friend. Well, young as I was I recognised the soundness of the advice, but its value was borne in on me very strongly some years ago on reading the Report of a Scotch case in the House of Lords, where it appeared that the case was fought in the Scotch Courts and in the House of Lords, without the distinguished Scotch and English Counsel being aware of the Statute which decided the point, and it remained to be discovered by the Irish Lord of Appeal, Lord Atkinson, who no doubt in his young days had received and benefited by the same advice that I had got.

From the 6th December, 1922, when I swore in my old friend Timothy Michael Healy as Governor-General of the Irish Free State, the Statutes of the Imperial Parliament ceased to apply to the Free State, and it was natural that divergencies should arise in the laws affecting the two countries, and all I propose to do in the present Paper is to sketch the course of legislation in England on certain matters of social reform, without pausing to inquire at any length on their respective merits or defects, which may well be left to our members to discuss.

In 1923 by the Intoxicating Liquor (Sale to persons under 18 Act), persons under 18 are not allowed to consume an intoxicating drink on licensed premises, but a person over 16 can have beer, porter, cider or perry with a meal on such portion of the premises as is usually set apart for the service of meals.

The Guardianship of Infants Act, 1925, contains several useful provisions including one under which an infant cannot marry without the consent of his or her parents (unless the consent cannot be obtained by reason of the absence or inaccessibility of the parent,) and if a parent refuses consent the infant may apply to the Justices at Petty Sessions, who are empowered to give the required consent if they think fit. Such applications are quite common in England and cast on the Justices the unenviable task of finding out if the intending husband is in a position to support a wife or if on any other grounds the consent of the parents is reasonably refused. A further restriction is imposed by Age of Marriage

Act, 1929, which declares that a marriage between persons either of whom is under the age of 16 shall be void.

I have, already, in papers read before the Society dealt with the changes made in the law of Real Property by the Law of Property Act, 1925 (15 Geo. V. c. 20), and the succession to a person dying intestate by the Administration of Estates Act, 1925 (15 Geo. V. c. 23). After ten years' experience the changes have found general acceptance in England, and subject to certain modifications would appear to be equally applicable to the position in Ireland.

In Ireland legislation has not provided for the adoption of children, but by the Adoption of Children Act, 1926, elaborate provisions have been made to carry out that object in England and Wales. It is necessary to obtain an Order of Court and the Order when made puts the child adopted in the same position as a child born to the adopter in lawful wedlock in all matters of custody, education and maintenance. The applicant must be over 25 years of age and must not be less than 21 years older than the infant, and the order when made does not affect the child's rights in property of his real parents or give the child rights in respect of the adopter's property. A similar Statute was passed for Scotland in 1930. In Ireland I think people have enough to do to look after their own children without adopting others, but the Statute is often availed of in England, and there is a National Adoption Association which facilitates adoptions under proper safeguards.

In Ireland if a child is born out of wedlock there is no means by which it can be legitimated, and this was also the case in England until the passing of the Legitimacy Act, 1926, which came into force on January 1st, 1927. Under that Act where the parents of an illegitimate person have married before or after that date the marriage (if the father is domiciled in England or Wales), renders the person legitimate as from 1st January, 1927, or from the date of the marriage whichever last happens. The Act does not, however, apply where the father or mother was married to a third person at the time when the illegitimate person was born. When a person is legitimated under the Statute he may take property under an intestacy occurring after the date of legitimation or under any disposition such as a Will coming into operation after such date as if he had been legitimate. He has, in fact, all the rights of a person born legitimately, except that he is not capable of succeeding to or transmitting a right to any dignity or title. This has long been the law of Scotland and many people consider it would be just to assimilate the law of the three countries.

In England it was not unusual for a dealer (defined as a person who attends sales of auction for the purpose of purchasing goods with a view to re-selling them) to give money or other considerations to a person, not to bid against him, but by the Auctions (Biddings Agreement) Act, 1927, such an agreement was declared illegal and the dealer made liable to fine of £100 or 6 months' imprisonment or both.

The law as regards persons you may marry was the same in England and Ireland until 1931, as the permission to marry a deceased wife's sister given in 1907, and a deceased brother's widow given in 1921 applied to both countries, but in 1931 permission was given in addition to marry—

1. Deceased wife's brother's daughter.
2. Deceased wife's sister's daughter.
3. Father's deceased brother's widow.

4. Mother's deceased brother's widow.
5. Deceased wife's father's sister.
6. Deceased wife's mother's sister.
7. Brother's deceased son's widow.
8. Sister's deceased son's widow.

I am not able to say to what extent advantage has been taken of these relaxations in England, but I do not think there is any popular demand for their extension to Ireland.

I am not sure that I fully sympathize with the Barbers Shops (Sunday Closing Act), 1930, which makes it unlawful for one to get a shave on Sunday morning, but as the Act was carried through Parliament by a popular member who had been himself a barber it must have had the general support of that very useful trade.

I have read a paper before the Society on the recommendations of the Home Office Committee, over which I presided, on the treatment of young offenders and I am glad to say that practically all the recommendations have been given effect to in the Children and Young Persons Act, 1933, with one notable exception. The Treasury were unable to sanction the expenditure we recommended on the establishment of Observation Centres for border line cases, but I am hopeful that with the return of better times the expenditure will be incurred and the benefit we hoped for reaped. The Act of 1933 is a very important Act and brings within the compass of a single Statute almost all the enactments relating to persons under 18 years of age. As it contains 109 Sections and 6 Schedules and covers 101 pages of the volume of the Statutes it is impossible to deal with its provisions even in outline, but it seeks to preserve young persons from cruelty and moral and physical danger, arranges for their employment and guards them against the dangers incident thereto, establishes Special Courts for the trial of young persons, increases the age of criminal responsibility, provides for Approved Schools and Remand Homes and in proper cases boarding out and probation. As a statute it will repay perusal of everyone who is interested in the problems, many and serious, of juvenile delinquency. Section 25 which deals with employment abroad may have a special significance for Ireland at the present time. The object of this section is to prevent young persons under 18 being taken out of the United Kingdom with a view to singing, playing or performing for profit, without very strict safeguards. In view of the large number of young persons who are now coming to England from Ireland to seek employment, but who have not been trained for domestic or any other employment, and who have no relations and friends in England able and willing to assist them, it may well be considered whether some restriction should not be placed on such immigration which in so many cases has led to disastrous results.

The Shops (Sunday Trading Restriction) Act, 1936, is a well thought out and comprehensive measure, but its provisions are too many and too complicated for shop-keeping as we understand it in Ireland, and I think you may well be content to leave things as they are, without imposing further obligations on a respectable and long-suffering class.

A few amendments in the criminal law may be noted. They all tend to mercy.

Under Section 9 of the Children Act, 1933, it is to be conclusively presumed that no child under the age of 8 years can be guilty of any offence. The previous limit was 7.

Under the Sentence of Death (Expectant Mothers) Act, 1931, sentence of death cannot be passed on a pregnant woman and penal servitude is substituted for it.

Under the Vagrancy Act, 1935, it is not enough to convict a person as a "rogue and a vagabond." That he is found wandering abroad and lodging in any barn or outhouse, unless he has just been directed to a reasonably accessible place of shelter and failed to apply for or refused accommodation there, or persistently wanders abroad, notwithstanding that a place of shelter is reasonably accessible.

Last year was signalized by two important Measures of Social legislation which deserve a special notice. The Pensions (Voluntary Contributions) Act extends facilities for widows, orphans and old-age pensions to a great body of independent workers who are outside the existing Contributing Pensions Scheme, and it is estimated that two million men and women will be eligible to insure under the new scheme. The scheme came into operation on January 3rd, and applies to all those whose income did not exceed £400 for a man or £250 for a woman for the year ending 5th April, 1937. Applicants before 3rd January, 1939, must be under the age of 55 years on 3rd January, 1938, but after that date no person who is of the age of 40 or more will be able to be insured under the scheme. If a man is in employment which provides equivalent old-age pensions, but not widows or orphans pensions, he may insure under the new scheme for widows and orphans pensions. Married women are for the first time enabled to become voluntary contributors for pension purposes. Male initial entrants, that is those who enter up to 2nd January, 1939, will pay 1/3 a week (10d. if insured for widows and orphans pensions only), 6d. for a woman. For these small contributions the benefits coming to a man are : Widows pensions, 10/- a week, 5/- a week for the first or only child and 3/- for each other child, orphans pensions for each orphan child of 7/6, and old age pensions at 65 of 10/- a week for himself. Similarly a woman has an old age pension of 10/- and orphans pensions of 7/6. If actuarial calculations presented by Sir Kingsley Wood, Minister of Health, are correct, these benefits far exceed the old story of 9d. for 4d., because, he says, a man of 54 who joins the scheme in the first year gets pensions rights which would otherwise cost him at least 15/-, and 13/9 is found by the British Treasury, and a woman in similar circumstances would get for 6d. a week what otherwise would cost her 8/-, the difference being also met by the Treasury. Ten years' previous residence in Great Britain is necessary. Provision is made for the case of a long illness or falling into arrears and on the whole one must be impressed by the value of this Measure. ,

An Act of less importance but still of much public interest is the Summary Procedure Domestic Proceedings Act, in which for the first time cases dealing with matrimonial disputes including separation maintenance and guardianship of infants are brought under a special procedure which prevents undue publicity, and affords opportunities for conciliation. A probation officer will be the person usually selected to try and effect a conciliation, and if the religious persuasions of both parties is the same the probation officer must, if available, be of the same persuasion.

So far for 1937. Sir Samuel Hoare, Home Secretary, has two problems to solve in 1938. He has to consider the Report of the Departmental Committee on Social Services in Courts of Summary Jurisdiction which, contains recommendations of a far-reaching character, some of which are dissented from in the report of a committee appointed by the Catholic

hierarchy of England and Wales of which I am Chairman. I am hopeful, however, that agreement will be found and social services regulated with a due regard to the religious welfare of the people. The other problem is penal reform which is very near the heart of Sir Samuel Hoare, as he is the great-great-nephew of Elizabeth Fry. He has, as he states in his New Year's message to his constituents in Chelsea, three great objectives: "First to keep the young out of prison, secondly to have a better system for protecting the persistent offender from himself and for protecting society from the hardened criminal, and thirdly to develop the reforming side of prison life." With these objectives I am sure you are all in agreement and will watch with sympathetic interest the Measures intended to give them effect. Ireland put some of Elizabeth Fry's ideas into operation when they were still unthought of in England, and in their application to modern conditions you will, I am sure, appreciate the work of Sir Samuel Hoare.

And now I come to the end of my remarks, prepared under the pressure of other obligations which I had to discharge. I have spoken almost exclusively of the lessons which Ireland might learn from the study of English legislation, but I have not forgotten there is another side of the question, and I have in fact in preparation an address on what England can learn from Ireland which I hope soon to deliver to an English audience. Ireland can learn much from England. England can learn much from Ireland, and if we are prepared to learn from each other it will, I am sure, increase the happiness of both and bring about that atmosphere of peace and goodwill for which we all so ardently wish.

DISCUSSION.

Mr. G. Shanahan, proposing a vote of thanks to Sir Thomas Molony, said that Sir Thomas had been associated with the Society for a long time, during which he held the office of President for four years. They were very pleased to have him once more in their midst and they hoped on other occasions to be able to avail of his courtesy and kindness in travelling from London to address them. They were exceedingly interested to hear from the paper, which Sir Thomas had read that night, of the legislation passed for Britain since Eire became dissociated with that country in the making of laws.

It struck one at once that some of the Acts to which reference was made in the paper could be applied with advantage to Ireland. The provisions of the Intoxicating Liquor (Sale to persons under eighteen) Act were excellent and he (speaker) did not think they should hesitate for one moment in considering they would be an advantage in this country, as anything which would diminish the excessive consumption of intoxicating liquor should be welcomed by all. It did not follow, of course, that because certain legislation was beneficial in England it would be beneficial in Ireland; but, generally speaking, the conditions in both countries were not dissimilar.

They had to offer their congratulations to Sir Thomas on the successful results which attended the deliberations of the Home Office Committee of which he was Chairman, as practically all the recommendations made by the Committee were given effect to in the Children and Young Persons Act of 1933.

It was a matter for regret that in the Parliament of Éire consideration had not been given to legislation similar to the Pensions (Voluntary Contributions) Act, which had just come into operation in England. It would be undoubtedly a great advantage, and he had no doubt that it was one of the matters that their own Government were considering, because it was so obvious a benefit to the general community that he did not think any responsible Government would refuse to consider favourably such a measure. He therefore hoped it would be one of the matters dealt with in future legislation. As regards co-operation between the two countries and the lessons which both could learn from one another they had that week the heads of the two Governments and their Ministers engaged in an effort to hammer out a measure of general agreement between the two countries, which would ensure their prosperity.

Mr. Justice Meredith, seconding the vote of thanks, said that Sir Thomas Molony had given continuous evidence of his interest in the Society and this country, and he was always anxious to show that his heart was in this country. His paper on that night was an extremely interesting one, but it was a peculiarly difficult one to speak on. Sir Thomas had given

them a list of the recent legislation enacted in England, and each of the enactments to which he referred would require an evening's discussion. Nearly all the matters dealt with were deserving of the fullest consideration. He did not propose to go through each of them, but it occurred to him that it would be a great idea if some permanent committee or commission could be set up to make reports from time to time on the progress of legislation in England and other countries and as to whether it would not be desirable to consider the application of those laws to Ireland. He believed that such a committee had existed for some time in France. There were a great many statutes that were repugnant to their Constitution, and he thought it was a great pity that there could not be some Irish law revision which would sweep away those statutes enacted prior to the passing of their Constitution and were entirely repugnant to the Constitution.

As regards social legislation there was no doubt that their company law was sorely in need of being brought up to the advanced state it was in England, and it was deplorable they were now operating under an Act which was very much out of date across the water. They had a very anomalous position in regard to land legislation and he considered it would be very easy to assimilate the systems under which registered land and unpurchased land were being dealt with. He would be glad to have Sir Thomas Molony's views on this point. In his opinion a great deal more should be done to prevent matrimonial cases coming into court. With great advantage something could be done by intervention. It seemed to him a terrible state of the law that a man who might not be on good terms with his wife, had obligations towards his wife and children, could at the end of his life will away all his property.

Mr. L. J. Duffy, supporting the vote of thanks, said the Society was deeply indebted to Sir Thomas Molony. A double purpose would be served by the paper. Firstly it would stimulate interest in social legislation in this country, and secondly it would bring to the notice of the Society and of the public the tendency of social legislation in Great Britain. It was generally believed at one time that any legislation enacted in Great Britain was unsuited to this country and certain interests for selfish reasons availed of that belief in former years to oppose the application of legislation like the Trade Boards Act and the Old Age Pensions Act.

Social legislation in Éire had fallen behind that of Great Britain, and one notable example was that of imprisonment for debt. Within the last seven years 740 persons in Éire were imprisoned under the Emergency Courts Order Act, 1926. The practice of sending people to prison because they were poor was discountenanced in Scotland sixty years ago, and last year the practice was modified in England with the result that very few people were sent to jail now in Great Britain merely because they were unable to pay small debts.

Meanwhile some of the legislation of Éire was superior to that in Great Britain. For instance 27,000 widows were receiving pensions, who would not be entitled to a widow's pension under the British law.

The Workmen's Compensation Act was decidedly better than the corresponding Act in Great Britain, and the provisions of the Conditions of Employment Act were infinitely superior to any of the provisions in British legislation relating to conditions in industry. Under the Act of Éire an employer may not lawfully permit a young person to work more than forty hours a week, and it was not lawful for any workman in industry to work any more than forty-eight hours a week. These provisions are unknown in Great Britain. Their most recent Act, relating to factory conditions, places no limitation on the number of hours in which a male worker may be employed in industry.

The Unemployment Assistance Act covers a wider class than the corresponding legislation in Great Britain. It is calculated that forty thousand farmers and farmers' sons were entitled to receive unemployment assistance under our law, whereas in Great Britain benefit is only given to the classes insured under the Unemployment Insurance Acts. So far as shops legislation is concerned Great Britain was in front of Éire, but when two Bills now before Dáil Eireann became law the conditions under which shop assistants will be employed in Ireland will not be inferior, in any respect, to the conditions of employment in Britain.

In another respect they had also improved on British standards. They had inserted in a number of Acts such as the Railways Act, the Cereals Act, the Tobacco Act, the Housing Act and in some others a provision requiring an employer to observe in relation to any workman employed by him, conditions of employment, rates of wages not less favourable to the workman than those recognised by trades unions in the district. The conclusion which one is disposed to draw from a comparison of social legislation with that in Great Britain is that in the latter country there is a tendency towards sympathy and compassion for the poor and the neglected, while in Éire it is less evident. But, on the other hand, legislation in Éire displays healthy solicitude for workers who were able by their own efforts to enforce their demands on industry.

Miss Stafford drew attention to that type of social legislation of which Mr. Duffy had spoken, viz., the law affecting the conditions of employment of workers. So far as workers in industry were concerned the same law—the veteran Factory and Workshop Act, 1901—was the main governing legislation in both countries up to 1936. In that year those sections of our inherited legislation relating to hours were replaced by the Conditions of Employment Act, 1936, and last year in Great Britain they were replaced by the Factories Act, 1937. Our law now governed the hours of work of men as well as of women and young persons, and made provision for one week of annual leave with pay and six public holidays with pay for all industrial workers. The British Act did not apply to the hours of work of adult men and made no provision for annual leave with pay for either men or women. Miss Stafford also referred to the Apprenticeship Act, 1931, which had no British counterpart.

The President, conveying the vote of thanks, said he joined with those who proposed and seconded the motion and those who supported it. Apart from the subject matter of the paper it was a great pleasure to

the members of the Society to hear Sir Thomas Molony as a former President and a distinguished member of their body.

Sir Thomas Molony, replying to the vote of thanks, expressed his gratitude for the manner in which it was carried. He had been given in the course of the discussion that night a great deal of information which he would embody in the address that he was preparing to deliver to an English audience. As regards the points raised by Mr. Justice Meredith, there was no committee for the purpose of reporting on legislation in other countries as far as he knew, but a committee was appointed by the Lord Chancellor some years ago to consider questions of law submitted to them, with a view, if necessary, to their amendment. In a report which he prepared he had an opportunity of discussing with the Home Office the matter of legislation dealing with probation and its extension. The old probation scheme was not being worked in a way quite consistent with the religious principles of Catholics. No one was to blame for that because there was no machinery in existence. That objection was being met by the suggestion to have in each diocese a Catholic Probation Committee in close touch with Catholic judges. Each diocese would have a representative on the National Probation Council, which would meet under the auspices of the Cardinal-Archbishop and would also report to the Home Office. As regards the Law of Property Act, there was no doubt that the law in Ireland, as it applied to registered land, was a very simple code. In any application of the English Statutes there was no doubt that the effect of the legislation dealing with registered land must be taken into consideration. In regard to unregistered land it would be of considerable advantage to have the law consolidated. It was a matter which should engage the attention of the Legislature.

As regards imprisonment for debts, to which Mr. Duffy referred, he (Sir Thomas Molony) believed that Mr. Duffy was confusing this with imprisonment for fines. The law regarding small debts was not so much for not paying, but for not paying when in a position to do so, which was regarded as contempt of Court. The rules had been tightened up in England as regards sentencing a person who was in default under a judgment summons for small fines.