Russia an enlightened despotism directs the fortunes of 80,000,000—a mighty nation—under an aristocracy magnificent in lineage, wealth, diplomacy, arts, and arms. In America, Democracy allows absolute freedom to the individual, and government is there conducted without a landed aristocracy, or a permanent standing army. Under both systems of government, the trade, commerce, manufactures, and agriculture of the people flourish. In the United Kingdom of Great Britain and Ireland, both systems of government are united. As Tacitus says, "Res olim dissociabiles principatum ac libertatem miscuerunt." We have united monarchy with liberty, things once incapable of being united. Let us hope that the three great nations of the world, the United Kingdom of Great Britain and Ireland, the United States of America, and the Empire of Russia, governing, under most different systems of political administration, gigantic masses of mankind, may continue to enjoy their present mutual goodwill and peace—the greatest happiness with which the Almighty can bless the human race.

IV.—*Report on the Differences in the Law of England and Ireland as regards the Protection of Women*: By William G. Brooke, M.A., Barrister-at Law.*

[Read Tuesday, 21st January, 1873.]

REPORT TO THE COUNCIL OF THE STATISTICAL AND SOCIAL INQUIRY OF IRELAND.

GENTLEMEN,—In the execution of the task you have intrusted to me—namely, to report on the difference in the Law of England and Ireland, as regards the Protection of Women—I shall endeavour to confine my remarks within the strict limits of the subject. It will not, therefore, lie within my province to enter upon any general examination of the laws relating to the position of women, nor to dwell upon any subjects, however interesting or prominent they may be, as to which the law in both countries presents no variety of feature. There is, therefore, necessarily excepted from my consideration all questions arising on the presumed imperfections of the law of seduction, and the law of married women's property; all questions either on the subject of the 40th section of the Mutiny Act, or on the subject of the Contagious Diseases Acts. With such enquiries, as I find one uniform law for both countries, I have nothing to do. My duty has a more limited sphere. It is to direct attention to that system of legislation which enforces one set of laws for England and another for Ireland—which confers rights, privileges, and immunities on the women of one country, refusing them to the other; and to show in what branches of the law the distinctions prevail which result in such unequal rights.

* This report has been made and paid for out of the donation of Alexander Thom, Esq., Vice-President, for "Reports on questions in Irish Jurisprudence."

I propose to deal with my subject under the following heads, and in the following order:

I. Maintenance of Illegitimate Children.
II. Rights of Married Women.
III. Jurisdiction of Courts of Chairmen of Counties.
IV. Education.
V. Municipal and other Franchises.
VI. Administration of Poor Relief.

I.—*Maintenance of Illegitimate Children.*

The English law of bastardy is more rigorous in its nature than the old Roman, or the more modern Canon Law. By the Roman law, a child might be continued a bastard, or made legitimate, at the option of the father or mother, by a marriage *ex post facto* (after birth). An attempt was made in the reign of Henry the VII, at the famous parliament of Merton, to engraft this Roman law on the constitutions of England, when the prelates endeavoured to procure an act declaring all bastards legitimate, in case their parents intermarried at any time afterwards; but all the earls and barons declared with one voice that they would not change the laws of England, which had hitherto been used and approved.

From that time forward, the law as to bastards has stood unaltered. They are declared to be *nullius filii*. They are incapable of being heirs. They are visited with civil incapacities and disadvantages, arising out of the general doctrine that they are *nullius filii* (children of no one). They can neither be heirs, nor have heirs except of their own body. If they die intestate, their estates escheat to the crown, and they cannot claim any share of personal estate under the statute of distributions as next of kin. Without father or mother in the eye of the law, without any legal right to his parent's name, unable to take property by the mere description of child of his reputed parent, the law, while it imposes these severe and perhaps justifiable disabilities, yet does take care that maintenance shall be provided for a bastard, and furnishes a method whereby, if the mother be unable to support her illegitimate child, the putative father may be rendered liable until the child attains sufficient years to make its own livelihood. But this obligation on the father arises under the statute law. At common law a father is not liable for the support of his child, unless he enters into some express or implied promise to become so (*Burn's Justice*, vol. I. p. 402).

Resting, then, on the statutes, the mode in which the liability of a reputed father is enforced, differs so materially in England and Ireland, and places the Irish mother at so supreme a disadvantage, that it is necessary to devote to it some little attention.* The root of the distinction is traceable to the Irish poor-law system, which takes the remedy out of the hands of the individual, and provides no

* In dealing with the law on this subject, there is necessarily excepted from consideration that class of cases in which, by an action in the superior or quarter sessions court, a woman may, by the intervention of her master (or one who stands to her in that relation), suing for his loss of her service, obtain damages against a seducer, so as to help her to maintain his bastard offspring.

remedy except through the medium of its own rather stringent machinery. In point of fact, a woman in Ireland can obtain no order for necessary maintenance, unless she enters the workhouse—in other words, unless she is reduced to the last extremity of want and distress. The Irish poor-law of 1838 declared that, for the purposes of that act, the mother of every bastard child was liable to maintain such child until it attained the age of fifteen years (1 & 2 Vic. c. 56, s. 53). It threw no responsibility whatever on the putative father; and this in the teeth of the prior English act of 1834, which empowered the Court of Quarter Sessions to make orders on such fathers, holding them accountable for the support of their illegitimate children, while such children were maintained by the rates.

It was not till the year 1863 that an Irish statute was passed, imposing any liability on putative fathers in respect to their bastard children. That act, and an act of the following session (25 & 26 Vic. c. 83, and 26 Vic. c. 21) empower boards of guardians, by civil bill process at their own suit, to recover the cost of maintenance of any illegitimate child, during the time that such child is in receipt of poor relief; or in other words, while mother and child are inmates of the workhouse—the relief being granted, not to the mother to enable her to maintain her child, but to the rates, to relieve the parish from the burden of doing so. Under this statute, which is the only one in force in Ireland, an Irish mother has no power to recover maintenance from the father of her illegitimate child. She cannot sue him in her own name. She can put no one in motion on her behalf, unless, by entering the workhouse, she throws herself for support on public charity; and when she leaves the workhouse, the liability to contribute on the part of the father, absolutely determines.

Under such a system as this, it is at once apparent that the better the condition of an Irish girl whose virtue yields to a seducer, the greater chance he has of complete immunity from any infliction, even of a small weekly pecuniary fine, for his most infamous offence. It is to be noted also, as further increasing the difficulty of imposing any liability on a putative father, that as it is only the most destitute women who seek the shelter of the workhouse, so it is women of this character who would find it impossible to furnish the corroborative evidence, in the absence of which the chairman cannot give a decree. Practically, then, in Ireland the law provides no machinery whereby a man can be rendered responsible, either in whole or in part, for the maintenance of his bastard child, unless that child is in receipt of poor relief. The mother who has already been obliged to bear all the shame and loss of character which attaches to her sin, is now called upon to face, unsupported, the cost and burden of maintaining her child, while her guilty partner, revelling in the security which the law throws round him, urges his quest in search of fresh victims. What wonder, then, if driven to desperation, with no outlook but the workhouse, or that social isolation which sins of this kind bring about, thoughts should stir within her, prompting her to destroy the young life that she has given birth to.

It is not meant to be urged here that a legal liability on the father would make very much difference, but it is considered it would create some. But be that as it may, the law is bound to say —for all law is defective or imperfect if it does not enforce by its sanctions the lessons which public justice and morality carry home with conviction to the minds of every man and women—the law is bound to say that a man shall be held responsible for the cost of maintenance of the illegitimate children which he is directly responsible for having brought into the world; and in England the law does say so.

I now consider the law on this subject as in force in England. The leading *English* statute is an act passed last session, entitled, "An Act to Amend the Bastardy Laws" (35 & 36 Vic. c. 65). It must not, however, be inferred that the principle of contribution by the putative father has only recently received authentication from parliament. This just principle dates back in England to the reign of Elizabeth, when an act of parliament (18 Eliz. c. 3) was passed, empowering two justices, by order of filiation, to compel a putative father or mother, or both, to pay a weekly sum for the maintenance of their illegitimate child. Additional powers were conferred on the justices by an act of Charles II. (13 & 14 Car. c. 12), whereby the overseers might seize the property of the putative father or mother, so as to render it available for the nurture and education of the child. Subsequently, the orders of the justices being defeated, and difficulty being experienced in obtaining sufficient provision for the support of bastards, an act of George III. (49 Geo. III. c. 60) gave jurisdiction to the magistrates to enforce their maintenance orders, at the pain of imprisonment with hard labour, for terms not exceeding three months. These enactments, which sanctioned the principle of joint parental responsibility, which exhibit a jealous care for the due support of hapless children, which fix responsibility where it ought to rest, received revision on the passing of "The Poor Law Amendment Act" of 1834 (4 & 5 Wm. IV. c. 76), which superseded all prior legislation respecting bastards born after that act became the law of the land.

The practical effect of this statute was to place the law upon the same footing as it now stands in Ireland, under the 1 & 2 Vic. c. 56; 25 & 26 Vic. c. 83, and 26 Vic. c. 21. In other words, the laws which enabled mothers to obtain filiation orders against putative fathers, were abrogated. No reputed father was to be apprehended or committed, or required to give security on any charge made by the mother; overseers or guardians, except when the child was in receipt of poor relief, could no longer make complaint before the magistrates so as to render any reputed father liable to punishment or contribution, nor could they any longer seize his goods or confiscate the profits of his lands for the maintenance of his bastard children. It was enacted that a bastard should follow the settlement of his mother, who should be bound to maintain him as a part of her family while she remained a widow, or unmarried, and until the child attained the age of sixteen years. This enactment was vigorously opposed in the House of Lords by the Bishop of Exeter, who eloquently dwelt on

the wrong done to the woman by throwing on her the whole burden of supporting the child, and he adduced many facts tending to show that female incontinency might be checked without resorting to such injustice; on the other hand, Lord Brougham, on the part of the government, denounced the law as it stood unreformed, as contrary to common sense, and fostering a crime only second to murder—wilful and corrupt perjury.*

The succeeding sections of this important English act give power to the Court of Quarter Sessions, in cases where the mother is unable to maintain her child, and, at the instance of the guardians of the union, to make orders on reputed fathers, so as to recoup the guardians for the cost of maintenance which otherwise would fall on the parish.†

These provisions complete the identity of the legislative picture presented by the law, as now in force in Ireland, and that laid down for England by "The Poor Law Amendment Act" of 1834. The law in Ireland on this subject is then, to all intents and purposes, that which was given to England as a restrictive measure in 1834—admittedly harsh in its character, because the old system had been abused to purposes of misrepresentation and falsehood.

I now consider the changes which have been made in the law for *England* since 1834.

The provisions of "The Poor Law Amendment Act." of 1834, exonerating the reputed father from punishment or contribution, unless recovered at the suit of the guardians of the poor, lasted only for ten years, when the general principle of liability on the part of the father in all cases of illegitimate birth, again received parliamentary sanction. Accordingly, by the statute 7 & 8 Vic. c. 101, s. 2, it is provided that any single woman with child, or who may be delivered of a bastard child, after the passing of the act, may apply for a summons against the man alleged by her to be the father; and the Justices, if the woman's evidence receives corroboration in material particulars, may make an order on the reputed father for a weekly payment to the *mother of the child,* and, in default of payment, may levy distress on his goods; and if no distress can be found within their jurisdiction, they may send him to prison.

This enactment, reversing the act of 1834, and fixing responsibility directly on the father, quite irrespective of the rank in life or circumstances of the mother, is distinctly re-affirmed by the consolidation statute of last session (35 & 36 Vic. c. 65). Directly, therefore, a bastard is born in England, and even while the woman is pregnant, the father's liability for its support springs into life. He may be summoned, and compelled on pain of imprisonment to pay five shillings for every week of the child's life, until it attains thirteen years of age—a term which the justices have a discretion of enlarging to sixteen years of age. The recent statute (1872), in

* W. Nassau Molesworth's *Hist. of England,* vol. i. p. 402.

† These powers were transferred from the Court of Quarter Sessions, and conferred on the justices at Petty Sessions, by statute 2 & 3 Vic. c. 84 (1839).

dealing with the question of maintenance money, is much more liberal than the act of 1844. By the act of 1844, the justices were limited to a decree for five shillings a-week for the first six weeks of the child's life, and two shillings and sixpence for every week thereafter, till the child attained thirteen years or died. The maintenance money also was to cease if the mother married. But now, by the act of last session, the weekly allowance is increased to five shillings, and the term during which liability may be fastened on the father, may be extended to sixteen instead of thirteen years.

Again, by the recent statute, the reputed father's liability is declared not to be dissolved by the marriage of the mother—it being plainly inequitable to call upon the husband she has acquired to support the child of another man, so long as it requires nurture and care. In one sense, however, the act of 1844, important as it was, as it revived the Elizabethan doctrine of the father's liability to contribute, must be regarded as a retrogressive measure, inasmuch as it repealed the enactment of 1834, under which guardians of the poor were allowed to apply for maintenance orders, in the case of children supported by the rates. It was alleged as a reason for this step, that the number of vexatious prosecutions at the suit of the guardians was excessive, and that great trouble and scandal was caused to many innocent persons—a result which is not very conceivable, as the justices were, by the act, estopped from making any order, unless a case were plainly made out, and the woman's evidence was supported by independent testimony (4 & 5 Wm. IV. c. 76, s. 71). Representations on the subject having been made to parliament, that, owing to the restrictions imposed upon the powers of guardians to make and enforce such applications, and that in consequence thereof, many mothers of bastard children were prevented, much against their will, from going again into respectable service, but were compelled to take refuge in workhouses, or to resort to prostitution for their daily bread, provision was made in the act of last session, whereby the right of the guardians to obtain an order was revived, and in such cases where, and so long as, the child is chargeable to the rates, the justices may decree, as against the reputed father, such weekly sum as they in their discretion may think proper (35 & 36 Vic. c. 65, s. 8).

This re-enactment of the law of 1834, while it extends the provision of the law of Ireland to England, under the different systems of poor relief, would practically produce a different result in the two countries. In Ireland, for instance, the guardians are the last assistance that the woman would be likely to invoke. In England, on the other hand, with its system of outdoor relief, such assistance would be most valuable—enabling the mother, if she so desired it, to engage in some respectable calling, and affording to her, what society is so anxious to withhold, that *locus pœnitentiæ*, which may eventually be the means of her moral salvation. But the great and important distinction between the law of the two countries is, that in England the law says firmly, reputed fathers must contribute to the support of their bastards, they may be sued by the mother, and they shall pay her money directly, and without the intervention

of third parties; in Ireland, reputed fathers are only liable at the suit of guardians, and in respect of destitute and pauper children.

II. *Rights of Married Women.*

Important distinctions exist between the laws of England and Ireland as regards the right of women to a dissolution of marriage, and judicial separation. By the former is understood what is still known in this country as a *divorce a vinculo matrimonii* (divorce from bond of marriage, so that parties may marry again); by the latter, a divorce *a mensa et toro* (from bed and board, so that they cannot be compelled to live together). A dissolution of marriage, which is now obtainable in England by an action in the Divorce Court, under the statute of 1857 (21 & 22 Vic. c. 108), cannot be had in Ireland except through the old tortuous method, ending in an act of parliament; for the English law of divorce does not apply to persons having an Irish domicile.* And it has been held that, for the purposes of the question of the jurisdiction of the court, Ireland is to be deemed a foreign country (*Yelverton* v. *Yelverton*, 1 S. and Tr. 574). That the framers of the statute, however, intended to render its provisions of relief applicable to this country, may be gathered from the following clause, which stood part of the bill :—"Any person, *wheresover resident or domiciled*, may present a petition to the Court of Divorce and Matrimonial Causes, praying that his or her marriage may be dissolved; who, before the passing of the said act, might have obtained from an ecclesiastical court in England or Ireland a divorce *a mensa et toro*, for any of the causes mentioned in section 27." This clause having been struck out, the act is, to all intents and purposes, an English act, establishing an English court, with a jurisdiction limited to England and Wales.

As to the new English court, it is material to remark that, in addition to the jurisdiction over such matters matrimonial, as formerly fell under the cognizance of the courts ecclesiastical, another jurisdiction of great importance has been bestowed on it since its establishment; for, by an act passed the following year (21 & 22 Vic. c. 93), or "The Legitimacy Declaration Act," 1858, persons domiciled in England or Ireland may apply to the Divorce Court for a declaration of the legitimacy or of the validity of the marriages of their fathers and their mothers, or of the grandfather or grandmother, or for a declaration of their own rights to be deemed natural born subjects. This jurisdiction, which is peculiar to the English Divorce Court, might very fairly have been conferred, in 1870, upon the Irish Court for matrimonial matters. As the law stands, a woman domiciled in Ireland, and seeking to obtain such a judicial declaration, must present her petition to the court sitting at Westminster, there being no tribunal in this country competent to entertain the question.

But to return :—to comprehend the comparative disability under which women labour in this country, and the character of the relief

* Mere residence in England, at the time of the institution of the suit, is not sufficient to found the jurisdiction of the court. The residence of the petitioner must be *bonâ fide*, and not casual, or as a traveller (*Manning* v. *Manning*, 2, Prob. and Mat. 223.)

afforded by law (if relief it may be called) to such women as are afflicted with brutal or faithless husbands, a brief consideration of the question from an historical point of view seems to be required.

Divorce in the early Christian Church was governed more by the Roman law than by the precepts of the Fathers, or any supposed injunctions of the Gospels. Under the Roman law, in the more prosperous times of the commonweath, a Roman husband was enabled to put away his wife for adultery, designs against his life, or the employment of false keys. A similar power was conferred on the wife in cases of great wrong. As each party was, therefore, invested with the right of divorce, it soon followed that mutual consent was deemed sufficient to dissolve the marriage tie, without any other cause. The perilous extent to which this liberty was exercised, we know from Juvenal and the other satirists under the empire. Justinian first imposed restrictions on the right of divorce ; which he did by abolishing mutual consent as one of the grounds, and by limiting it to certain grave causes. The early Fathers held divided opinions as to the lawfulness of a dissolution of marriage. Some of the early councils allowed it in case of adultery, as the Greek Church does to this day. St. Augustine was of a different opinion, and his views prevailed with the Council of Trent, which declared marriage to be a sacrament and indissoluble.

At the Reformation, the Protestants were clearly of opinion that marriage was not a sacrament, and that a dissolution of marriage was justifiable on scriptural and other grounds. In Ireland, to the present day, marriage, no doubt, is indissoluble by law, and hence the necessity of a private act of the legislature to dissolve the knot; but that such was not the doctrine at the Reformation is clearly proved by the *Reformatio Legum Ecclesiasticarum*, which recommended that in cases of adultery, malicious desertion, long absence, or capital enmities, the marriage should be dissolved, with liberty to the injured party to marry again, except in the case of capital enmities.* As King Edward, however, died before the reforms thus proposed in ecclesiastical law were sanctioned by parliament, the law, as administered in the English ecclesiastical courts, which retained jurisdiction over questions arising out of the marriage contract, stood precisely as it had stood in the Catholic ages. Marriage, consequently, was regarded as an indissoluble contract. Divorce from the bond of marriage was prohibited, and the only redress known for conjugal transgression was divorce from bed and board, which was granted in cases of adultery and cruelty only, and was unaccompanied by any liberty to enter into a fresh matrimonial union.

In consequence of this state of things, a practice grew up, from a species of necessity of appealing to the legislature for divorce *a vinculo*, when the parties aggrieved could afford the expense. This course was first adopted in 1669, when Lord Roos carried a bill for the purpose through both houses. Similar measures were adopted in the same century by Lord Macclesfield and the Duke of Norfolk. These cases being all that occurred up to 1700, were the foundation

* Cardwell's *Reformatio Legum*, De Adulteriis et Divortiis, cap.. 5, 8, 9, 10.

of the modern practice of dissolving marriage by special acts of parliament. Subsequently the number of marriages dissolved in this manner averaged about four in each year; the sole cause recognised by the legislature for enacting such a *privilegium* being adultery on the part of the wife, and adultery, accompanied with aggravating circumstances, on the part of the husband.

Previous to obtaining an act of parliament, the ordinary course was a civil action for damages by the husband against the adulterer in the common law courts, and a suit by the husband against the wife for a divorce *a mensa et toro* in the Ecclesiastical Court. In the case of an injured wife, the action at law was not brought. The Imperial Parliament was then applied to for a dissolving statute, and at the end of long, costly, and humiliating proceedings, a divorce *a vinculo* was at last obtained, which supplied a remedy for the rich, and left the humbler classes, who had no means of defraying the enormous cost of relief, without help or redress.

Such is still the position of the law in Ireland with regard to divorce *a vinculo*—with this difference, that for proceeding in the ecclesiastical courts, abolished by the Irish Church Act of 1869, there is subsituted, by the Matrimonial Act of 1870 (33 & 34 Vic. c. 110) proceedings before the judge of the Court of Probate, by that act constituted judge of the Court for Matrimonial Causes and Matters. To remedy the injustice of the English law, the Queen, in 1850, appointed a commission to enquire into the law of divorce, which reported in 1853 in favor of the establishment of a court with jurisdiction to decree dissolution of marriage; but it was not until 1857 that the fourth government divorce bill became law—its provisions of relief being limited, and confined, as I have said, to England and Wales. The act which bears the title an "Act to Amend the Law relating to Divorce and Matrimonial Causes in England" came into operation on the 1st of January, 1858. It at once silenced the doctrine that in England marriage was indissoluble. It established a court those doors are open to all, where the most humble may seek redress as well as the most exalted; it enables a wife to free herself from constrained cohabitation with a brutal or unfaithful husband, and it enables a wife, whose marriage has been dissolved, to marry again; but, adhering to the doctrine that adultery alone should be the ground for dissolution of marriage, it adopted the separtion *a mensa et toro* of the ecclesiastical court under the name of "judicial separation." Had it not done so, no redress could have been given, save where adultery had been committed.

Contrasting then the law as adminstered in England and Ireland, in relation to divorce *a vinculo*, we find the law in Ireland does not allow to a wife divorce *a vinculo matrimonii*, except she is able and willing to embark in a costly suit, and commands sufficient resources of her own to obtain a private act of parliament. Practically, therefore, in Ireland, no matter how infamous and disgusting may be the character and conduct of a husband, his wife can never free herself during her husband's life from the matrimonial obligation, and if she were to marry any other person, would be liable to a prosecution for bigamy.

In England, on the other hand, a women by a suit in the divorce court may obtain a decree dissolving her marriage; appurtenant to which is the power to form a new alliance, when the husband has, since the marriage, been guilty of any of the following crimes; (*a*) incestuous adultery (meaning thereby adultery with a woman, with whom, if his wife were dead, he could not marry by reason of her being within the prohibited degrees of consanguinity); (*b*) bigamy with adultery; (*c*) rape or unnatural offences; (*d*) adultery, coupled with such cruelty as, without adultery, would have entitled the wife to a divorce *a mensâ et toro*; (*e*) adultery, coupled with desertion without reasonable excuse for two years and upwards.

The statistics of the English Divorce Court have overthrown the presumption that was entertained that matrimonial infidelity would be seriously increased by its establishment. It would be natural to suppose that at first considerable numbers of suitors would apply for relief, and accordingly we find that in 1858 (the first year in which the court was open), there were presented 244 petitions for dissolution of marriage. Then the numbers steadily declined; in 1859, 211 petitions; in 1860, 210; in 1861, 187; then, having obtained their normal amount, they commenced to rise proportionally to the increase of the population; as in 1862, 200; in 1863, 255; in 1864, 232—a slight fall; in 1870, 264; in 1871, 298.*

Having thus considered the position of women in the eye of the law, as regards divorce *a vinculo*, it remains to notice briefly the position they occupy in either country as regards divorce *a mensâ et toro*, or, as it is called in England since 1857, "judicial separation."

It would appear, then, that in England a wife, by an action in the Divorce Court, may obtain a decree of judicial separation on the ground of adultery, cruelty, or desertion for two years without cause. As a remedy, this kind of relief is not much resorted to; the facts of the case generally laying grounds for the higher relief of dissolution of marriage, which, as it is more thorough, is much more popular. In Ireland a wife is entitled to the same relief, which is accompanied by the same legal results—namely, a divorce *a mensâ et toro*. This she can obtain by a suit in the Irish Court for Matrimonial Matters, when her husband has been guilty of adultery or

* It only remains to mention on this point, that divorce *a vinculo matrimonii* is almost universally allowed in America, not only for adultery but for many other causes. Originally there, since the matrimonial law of England was part of the common law of America, marriage was *primâ facie*, indissoluble—it could therefore, be set aside only by legislative enactments. This reform was effected by the various state legislatures, and the questions arising out of the marriage contract are disposed of by the ordinary tribunals of the county. In the Protestant provinces of Prussia, dissolution of marriage is sanctioned by the law, even for such apparently trivial causes, among many others, as great aversion, or *mutual* consent where there are no children. Finally, by the Code Napoleon, divorce *a vinculo* was legalized—incompatibility of temper and mutual consent being held to be sufficient grounds. The provisions of the civil Code of France, by which divorce was legalized, were, however, abrogated in 1816; and other remedies, partaking of the character of the English judicial separation, afforded by the French Law.

cruelty; but, inasmuch as the law in Ireland follows the old ecclesiastical law, the court in Ireland has no jurisdiction to grant a divorce *a mensâ et toro* for desertion alone. Here desertion should be coupled with cruelty to constitute a ground for divorce; and in this respect the law places the Irishwoman in a position of disability when contrasted with her English sister.*

Following the drift of modern opinion, which tends to soften the rigor of the common law in England as regards the rights *inter se* of husband and wife, important provisions were introduced into the English Divorce Act, which enacted that, in cases of judicial separation, the wife, subsequently to sentence, should be considered as a *feme sole* with respect to all property which she might thereafter acquire, with full power of disposition over such property. Further, there was conferred on her a power of entering into contracts and of suing and being sued independently of her husband.

To meet the numerous cases of legalised wrong, which enabled husbands to confiscate the honest earnings of wives whom they had deserted, and to which attention was so strongly and pathetically directed by Mr. Dickens, it was also enacted by the same statute that a wife, deserted by her husband, might obtain from the magistrates a protection order, protecting any money or property which she might acquire by her own industry, against a husband who had deserted her without reasonable cause, or his creditors, and declaring that such money or property belonged to her as a *feme sole*, which she might recover, as against her husband should he interfere with her lawful possession of it.

These important reforms, which served to show how the stream was setting, and which brought the law into rough and partial harmony with the claims of justice and morality, were by a short statute, *mutatis mutandis*, introduced into Ireland eight years afterwards, or in 1865 (28 & 29 Vic. c. 43). As the classes, however, affected by these reforms were very few in number, while the law, as affecting the rest of the community, remained unaltered—giving to the husband an absolute dominion over all property belonging to or devolving on his wife, or acquired by her industry—continued agitation on the subject led to the passing of the Married Women's Property Act in 1870 (33 & 34 Vic. c. 93), which, as it is a statute

* In the leading case of *Evans* v. *Evans* (1 Consist Rep. 120), Lord Stowell says:—"The remedy for desertion is *the remedy of restitution.* It would be absurd to suppose that the law which furnishes that remedy (restitution), furnished at the same time another remedy, which is totally the reverse of it (divorce), and totally inconsistent with it. To say that the court is to grant a separation, because the husband has thought fit to separate himself, would be to confirm the desertion, and to gratify the deserter. I can never, therefore, make desertion a ground of separation, though, in conjunction with acts of cruelty, it frequently is." This was the law in England, and is now still the law in Ireland; but in England, since 1857, desertion for two years is a new ground for judicial separation. In *Thompson* v. *Thompson* (1 Sw. & Tr., 233), decided in 1858, Sir C. Cresswell says:—"Desertion is a new authority conferred on this court, which takes a new jurisdiction created by the Divorce Act, not transferred from the old jurisdiction of the ecclesiastical courts. It must mean a wilful absenting by the husband; and that such absence and cessation of cohabitation must be in spite of the wish of the wife, she must not be a consenting party."

applicable in its provisions to both England and Ireland, I forbear to treat of. There is one distinction, however, observed by this statute between the two countries, which, though slight in its nature, merits a passing notice. The 9th section, in cases of dispute between husband and wife, as to property declared by the act to be the separate property of the wife, permits either party to apply by summons to the Court of Chancery in England or in Ireland, or in England (irrespective of the value of the property), to the judge of the County Court. Now in England and Wales, County Courts are held at five hundred and twenty-one different places—three hundred and eighty-one are held once a month; one hundred and forty, once in two months.* There may be said, therefore, to be almost a continuous sitting of the local courts, with cheap and expeditious machinery for the determination of cases within the act. The Court of Chancery—the tribunal appointed by the act for all cases in Ireland—is not likely, from the costly character of its proceedings, to be much resorted to in cases of this nature, for the most part occurring among the lower, middle, and artizan classes in the country.

In connection with this branch of my subject, I may allude to a not unimportant distinction arising under the English and Irish Acts for the "Abolition of Fines and Recoveries," in which the balance of privilege inclines on the side of the Irish law. The English act is 3 & 4 William IV. c. 74. The Irish act was passed in the following year, and is 4 & 5 William IV. c. 92. Under the English act, when read with 8 & 9 Vic. c. 106, s. 6, a married woman, not being tenant-in-tail (for which distinct provision was made by deed, acknowledged duly according to a prescribed form, and with the concurrence of her husband), might dispose of any interest which she might have in lands at law or in equity, whether vested or contingent; or of any charge or incumbrance affecting land, either in law or in equity, to which she might be entitled *in presenti*, as effectually as if she were a *feme sole;* but she could not deal with a contingent or future interest in any charge or incumbrance affecting land. When, however, we turn to the Irish act, we find that it contains no such restriction upon the alienation of a married woman's future or contingent interests.† This distinction between the leading acts of the two countries has been partially, but not altogether, removed by a subsequent statute, 20 & 21 Vic. c. 57, or an act to enable married women to dispose of reversionary interests in personal estate. By that act, which applies to both countries, a married woman observing the same formalities as are prescribed by the "Acts for the Abolition of Fines and Recoveries," might dispose of future or reversionary interests in personal estate, created by any instrument bearing date subsequently to 31st December, 1857; but, provided she was not restrained from alienation by the instrument under which she derived, and provided the interest was not settled to uses by a marriage settlement. This act, then,

* *English Judicial Statistics*, 1871.

† This distinction turns upon a careful comparison of the interpretation sections of the two acts: the word "estate" in the Irish act having a more enlarged signification than it has in the corresponding English statute.

while it confers on married women in England the power of dealing with contingent reversionary interests in personal estate, including trust money laid out on mortgage, does not enable her to exercise the power, when the instrument creating the interest bore date anterior to 31st December, 1857. From a consideration, however, of the interpretation section of the leading Irish act, 4 & 5 William IV. c. 92, it will appear that in Ireland, since that act became law, a married woman might deal with a reversionary or contingent interest in a charge affecting lands, irrespective of any limitation based on the date of the instrument creating the interest so to be affected. In this respect, therefore, the Irish law confers upon married women powers of disposition which have not yet been conceded by the laws affecting interests in land, the property of married women in England.*

III. *Jurisdiction of Chairmen of Counties.*

In the working out of a complicated social system, it is essential that the courts charged with the administration of the law should not only command the confidence of the public, be regulated by easily ascertainable and intelligible rules of procedure, but exist in sufficient numbers, and in convenient and accessible places. In Ireland such courts are to be found in the thirty-three local courts, known as the Assistant Barristers' Courts. These courts are held four times in each year in every county, and in such towns as are likely, from their situation and character, to afford the greatest convenience to the suitor. They are presided over by gentlemen well qualified to dispense justice, and who derive their jurisdiction from "The Civil Bill Consolidation Act" of 1851 (14 and 15 Vic. c. 57); but it is to be noticed these courts, so circumstanced, and especially being courts for the poor man, and bringing law, cheaply administered, almost, so to speak, to his door, while possessing an extensive jurisdiction in civil and criminal business, have no equitable jurisdiction, beyond a contracted one as regards the assets of deceased persons. The policy, nay even the necessity, of constituting these tribunals courts of equity for the poor has been frequently urged. What has been claimed is that the improvements which the growth of public opinion, and a wise experience, has enabled the legislature to make in the County Courts of England should be extended to their Irish analogues. The distinctions which exist in the jurisdiction and powers of these respective courts I propose briefly to indicate; but only so far as they relate to the subject of this report—the protection of women.

It may appear strange to the non-professional reader that the question of the limits of the jurisdiction of a court, or set of courts, should trench on the subject of the protection of woman; but such natural surprise will disappear when it is considered that one of the chief functions of equity is to mitigate the rigors of the common law, and to confer on women rights and privileges which they are

* The law, in the case of an unacknowledged deed, is discussed in *Beshall* v. *Bunbury*, 13 Ir. Ch. Rep. p. 549, S. C. on Appeal, same vol, p. 318; but the distinction taken above does not seem to have come before either the M. R. or the Appeal Court. See also *Mara* v. *Manning*, 8 Ir. Eq. 218, S. C. 2 J. & La 7, 311.

denied by that law. The equitable doctrine of trusts, the law as to the property of married women, inclusive of the wife's equity to a settlement, the law as to the administration of assets, and maintenance of infant children, belong exclusively to the province of equity, and vitally concern the rights of women and their due protection. To obtain, in this country, the equitable relief arising under these branches of the law, resort must be had to the Court of Chancery, whose doors are, in effect, closed when the property involved is small in amount. But small though it be, it is none the less valuable to its possessor, and none the less entitled to the protection of the law. We find, too, that provision is made in England whereby equitable relief is administered in a cheap and suitable manner by the local courts. In Ireland no such facilities are afforded to the suitor of humble rank and fortune.

The equitable jurisdiction exercised in England and Ireland by the County Court judges, respectively, is as follows:—

1—*Administration.* The court has jurisdiction to administer the estates of testators and intestates, where the assets do not exceed £500.

In Ireland the Assistant Barrister has similar jurisdiction in administration suits, where the assets do not exceed £200.

2—*Execution of Trusts.* The English County Court has the same jurisdiction as the Court of Chancery as regards the execution of trusts, wherever the trust estate does not exceed £500 in amount.

In Ireland the local court has no jurisdiction.

3—*Jurisdiction under Trustee Acts.* The branch of equitable jurisdiction conferred by the Trustee Acts of 1850 and 1852 (13 & 14 Vic. c. 60, and 15 & 16 Vic. c. 55) was applied to the County Courts of England by 28 & 29 Vic. c. 99, s. 1. The object of this jurisdiction was twofold:—(1) to remove the difficulty which often arises from the inability or omission of trustees to discharge the duties of their trust; and (2) to provide for the appointment of new trustees where necessary. To effect the first of these objects, power is given to the court to make a vesting order, vesting the estates of trustees and others in any other persons, releasing or vesting their contingent interests in certain cases—such as when a trustee is out of the jurisdiction, or when a trustee, after order of court, neglects to transfer stock, or such like cases. Secondly, the court has power under these acts, on the application of the *cestui que* trust, to make an order for the appointment of a new trustee, where it is found difficult or impracticable to do so without the aid of the court. But the jurisdiction is limited to cases in which the trust estate does not exceed £500 in amount.

No such powers, under the trustee acts, are exercisable by the local courts in Ireland; no matter how small the property the subject of the trust may be, relief must be had in the superior courts in Dublin, which amounts to a practical denial of relief in small cases.

4—*Maintenance of Infants.* The English County Court has the same jurisdiction as the Court of Chancery in all proceedings relating to the maintenance and advancement of infants, in which the property of the infant does not exceed £500 in amount.

In Ireland application must be made to the superior courts.

From this comparative statement it appears that, with the exception of a minimum of jurisdiction in administration suits, the chairmen in Ireland have no jurisdiction in equity. Equitable suits, therefore, in Ireland, involving sometimes the most bitter feelings, but insignificant as regards the amount of money in question, come before the superior court, when notwithstanding praiseworthy efforts to keep down expense, the inevitable result follows—the fund is eaten up with costs. A poor man or woman is told, than which nothing can be more disheartening, that because his case is one of equity, he can get no relief in the court peculiarly intended for him. He must file a bill, or present a petition to the Lord Chancellor. The remedy is worse than the disease, and practically the smaller cases, for which provision is made in England, never come before the court at all. They are sometimes arranged by the agent;* but more commonly remain unsettled, whereby the weak are oppressed, and bitter animosities are engendered often among members of the same family.

IV. *Education.*

In the "Endowed Schools Act" of 1869 (32 & 33 Vic. c. 56), a principle was laid down for England (since acted upon) whereby girls were admitted to a share in the educational endowments of the land. The preamble of that act affirms that it is expedient that various changes should be made in the government, management, and studies of such schools, and in the application of educational endowments, with the object of promoting their greater efficiency, by putting a liberal education within the reach of children of all classes. The act then provides for the appointment of commissioners, and power is given to them, by schemes which shall receive the sanction of parliament, to alter or add to existing trusts, or to frame new trusts in relation to any endowments. By section 12 (the important section for my purpose) it is enacted that in framing such schemes, provision should be made, so far as conveniently may be, for extending to girls the benefit of endowments. No such principle, in reference to Irish girls, has ever received the sanction of parliament. The act is an English act, and has no application in this country. I consider, briefly, the necessity for such a measure, and the desirability of such a measure in this country as a measure of relief.

The Report of the Schools' Inquiry Commissioners in England laid bare the necessity for some such provision as this. It represented that there were but 14 endowed schools in England for the secondary instruction of girls, with a total of 1,113 scholars; against a total of 820 endowed schools for boys, attended by 36,874 scholars —exclusive of the great schools. The net income possessed by these schools amounted to £212,000 a-year, while the yearly income for the education of girls fell short of £3,000. In carrying out the

* An agent told Mr. Senior, (August, 1862), "Half my time is spent in giving advice, in settling disputes; sometimes acting as a court of probate, arranging wills, and in reconciling or separating husband and wife."—*Journal*, vol. ii. p. 1.

provisions of the act, the Commissioners have considered the fair claims of girls to a participation in the endowments, which the munificence of former ages supplied for the furtherance of secondary education. Up to May last, twenty-seven new schemes had received parliamentary sanction, dealing with a total net income of £6,668. Fourteen of these schemes made funds applicable to the education of girls. The annual income allotted exclusively to girls was £387 a-year, of which sum only £60 a-year had been previously so applied.

Much, however, still remains to be done, even in England, to correct the obvious inequalities of a system under which the boys possess a virtual monopoly of the funds capable of being applied to educational uses; but at all events the principle has received parliamentary sanction, and re-adjustment is taking place—slowly, it is true, but, so far as we know, with an entire observance of the natural equities that govern the respective claims of both sexes. So long as facts did not contradict the theory that men were the sole bread-winners, the almost exclusive possession of educational advantages had a color of fairness; latterly, however, women have been called upon to bear their part in the work of the world, and it has been felt that to do that work with advantage they must receive a more solid, and in some respects more technical, education than they have hitherto enjoyed. Hence arises the claim to participation in the splendid endowments, many of which have been perverted from their original intention, others rendered useless by a slavish adherence to the letter of the founder's bequest, and more in a condition of somnulence and lassitude, resulting from the system under which they were administered.

The act to which I have referred, with its enlightened provision for the higher instruction of women, is peculiar to England. It has no legal force in this country, where the educational endowments are wholly in the hands of the boys. The endowed schools for boys in this country, exclusive of colleges, have a net income of £26,200 a-year, to which must be added the value of commodious buildings and offices The last report on the subject of these endowed schools was made in 1858. That elaborate document is silent as to the claims of girls to participation. It was drawn up before public attention had been aroused on the subject of the middle-class education of girls. Within the present year a Royal Commission has been issued in Scotland, to enquire into and report on the condition of endowed schools in that part of the United Kingdom, with a view to the introduction of a bill for the reconstruction of trusts, so as to apply the funds available for education, in a manner best adapted to advance the interests of the whole community.

No such Commission has yet been issued for Ireland, and the well-being of Irishwomen is seriously jeopardised by the denial to them of those educational privileges and opportunities, which the calmer atmosphere of public opinion in England has enabled the legislature to confer on that more fortunate land.*

* This whole subject is more fully treated in a paper which I had the honour of reading before the Statistical Society, May 28th, 1872, and to which I beg leave to refer.

V.—*Municipal and other Franchises.*

Statute 32 & 33 Vic. c. 55, "An Act to shorten the term required as a qualification for the Municipal Franchise," etc. establishes an important distinction between the women of England and Ireland in regard to municipal rights and privileges. By that act, the municipal borough franchise is freely conferred on all women who possess the necessary and statutable qualification. The 9th sec. runs to the following effect: "In this act, and the said recited act of 5 & 6 Wm. IV. c. 76, and the acts amending the same, wherever words occur which import the masculine gender, the same shall be held to include females, for all purposes connected with, and having reference to the right to vote in the election of councillors, auditors, and assessors." This act applies to over two hundred towns in England and Wales: it gives to women in all boroughs an influential voice in the choice of fitting representatives in the town councils, and in the application of the municipal funds to which they so largely contribute. In Ireland there is no such privilege. Women in boroughs, in occupation of premises rated to the relief of the poor, have no voice in the election of the council which imposes taxes on women, and dispenses the money which the law obliges them to pay. But it should be observed that this electoral disability rests more upon an adverse interpretation of the statutes than upon the statute law itself. The question was discussed in 1864 in the case of the *Queen* v. *Crosthwaite*, before the Court of Queen's Bench (17 Irish Com. Law Rep.), when it was held by the full court (Lefroy, C.J., O'Brien, Hayes, and Fitzgerald, J.J) that the 22nd sec. of the Towns Improvement Act (17 & 18 Vic. c. 103) read with the interpretation section of that act, gives females the right to vote at the election of town commissioners. The Court of Exchequer Chamber reversed that decision by a majority of one; Justices Keogh and Christian, with Barons Deasy and Fitzgerald, holding against C. J. Monaghan, C. B. Pigot, and Judge Ball, that women were not qualified by law to vote at municipal elections. It is, however, noteworthy that this decision of the majority of the Court of Exchequer Chamber was not founded on a strict construction of the statute according to the known rules of legal interpretation of deeds and enactments, but upon considerations of public policy and decorum—the mental inferiority of women, and their general unfitness to discharge responsible duties—considerations, the force of which we may venture to believe the course of the last eight years has to some extent shattered and destroyed.

School Board Franchise.—Another privilege, to the enjoyment of which women have been admitted in England, and which has no existence here, is the School Board franchise. The distinction, no doubt, attaches to the different mode which governs the administration of the educational systems in operation in the two countries; but it is important to refer to it, at least as an illustration of the amount of confidence reposed by the government in local boards, and the tendency to decentralize, of which we have very little practical example here. But not only are women admitted to vote in the election of school boards, but the law sanctions their right to sit as mem

bers of these educational councils. Unlike the municipal franchise for women, which is peculiar to boroughs, the School Board franchise may be had and exercised wherever a School Board has been constituted under "The Elementary Education Act of 1870" (33 & 34 Vic. c. 75). That act, which is limited to England and Wales, declares (sec. 29) that in boroughs the School Boards may be elected by all persons over twenty-one years of age, for one year in occupation of premises rated to the relief of the poor (32 & 33 Vic. c. 55, s. 1 & 9), and in rural and non-borough parishes by the ratepayers in both cases, the voters being indifferently of either sex. On the School Boards, established under this act, large and important powers were conferred—powers of patronage and management of schools, the administration of the government grants and parochial funds, and the maintenance of schools in a state of thorough efficiency. These duties, which touch so nearly the highest interests of society, which if duly performed, are big with momentous issues as regards the prevention of crime, the state of our prisons and reformatories, and the general well-being of the state, the law of England has allowed women to participate in. With a large stake in the success of educational effort, gifted with knowledge and experience peculiarly their own, the result of the legislative experiment which has given to women a share in the due maintenance of a sound educational system, and in the government and management of schools, must be viewed with the liveliest feelings of interest and hope.

It scarcely requires to be mentioned that no corresponding rights and duties belong to women in Ireland. The liberal and enlightened policy which the government have been able to carry out for England, has no place here. It is impossible to conceive of any subject with which women have so deep and intimate a connection as education, and it is impossible to name a question with which, in this country, they have absolutely so little to do.

VI. *Administration of Poor Relief.*

Abundant illustration of the different systems under which protection is afforded to women by the law, is to be gathered from a consideration of poor relief, as administered in England and Ireland. The English and Irish Poor-Law systems, based on the leading acts of 1834 and 1838, were originally intended to be worked on similar if not identical principles, and to some extent that intention has been fulfilled. They agree generally in refusing out-door relief to able bodied men, and in granting such relief to persons permanently disabled by reason of old age and infirmity, or to persons disabled by severe sickness, or serious accident,* and thereby deprived of the means of supplying themselves or their children. They agree also in conferring on guardians a discretion of relieving at their own homes,

* The epithets "severe" and "serious" which control the discretion of the Irish guardians, form no part of the English order. In England, sickness, etc., affecting an able bodied person, or any *member of his family*, gives ground to out-door relief. In Ireland it must be the head of the family that is sick, etc., and the sickness must be "severe," or the accident "serious" to justify the guardians granting out-door relief. These epithets are no part of the English order.

widows with two or more legitimate children depending on them. But here the agreement seems to end, and in the general treatment of widows and wives, serious distinctions are established and sanctioned by the law, greatly to the hurt and injury of Irishwomen. When, however, I say the law visits poor women in Ireland with injustice, I desire to be understood not so much in any absolute or abstract sense, but in a comparative one. If, for instance, the law gives certain rights and advantages to poor women in England, and denies these rights to the same class in Ireland, it would appear that a case of comparative injustice is sufficiently made out. When, then, it is understood that the rules of relief for destitute poor women in England is without the workhouse, and for the same class in Ireland within the workhouse, the opposing features of the two systems are presented in plain and even startling characters. Relief administered to a widow, or to the wife of a non-resident man, or of an absent soldier at her own dwelling in an English home, differs in its essential character from the relief which is afforded to a poor Irish widow within the walls of the workhouse. To compel an Irish widow and her child, as a condition of relief, to enter the workhouse, is to assume that the mother is by law charged with the responsibility of maintaining her family in independence, which attaches to the head of a family an obligation which the law should hesitate to cast on a woman, as long as it witholds the constitutional rights which belong to that position.

It is scarcely necessary, in order to bring out the contrast in this respect between the two systems, to do more than to mention in the same breath, the words "home" and "workhouse." But what does life within an Irish workhouse mean to a widow and her child, or to the wife of a felon, or of an absent soldier?—some of the classes for which outdoor relief is provided in England. It means the total disruption of family life, and the overthrow of family affection—the separation of those in whom nature has implanted a common interest, and bound together with a common love. It means that mothers are to be separated from children, and children are to be deprived of their mothers' care and protection. It means that all those duties and responsibilities which depend on the existence of a home, and sweeten while they occupy the hardest lot, are to suddenly collapse. To insist on indoor relief for an Irish widow, is to rob life of all that makes it endurable, and to surrender it over to a living death. If the family is the unit of the state, we behold in the life of a mother in a workhouse a picture of a state destroyed.

How the case stands as regards the treatment of these classes, on a comparative view of the relief as administered in England and Ireland, will more plainly appear from a few figures, before I trace the distinctions to their source in the statute book and orders of the

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The qualifications introduced into the Irish order, cut down the relief granted to the class of persons in Ireland to a very low figure. Thus, on the 1st of January, 1872, in England, 114,900 persons of this class were in receipt of out-door relief, or as one in every 197 of the whole population; while on 1st of February, 1872, of this class, 9,432 persons were relieved in Ireland, or as one in every 572 of the whole population.

poor-law boards. Thus, in England there were, on the 1st January, 1872, in receipt of outdoor relief, 60,274 widows, and 156,778 children dependent on them. In Ireland, on the 1st of February same year, there were 1,463 widows, and 4,884 persons dependent on them, in receipt of poor relief at their own dwellings. That is to say, the number of widows and persons dependent on them, receiving outdoor relief in England on the 1st day of this year, amounted to 215,052, or as 1 in every 104 of the whole population; while the number of such persons in receipt of such relief in Ireland comprised 6,347 persons, or as 1 in every 851 of the population of the country (census 1871). The destitute widows and children of Englishmen, relieved in their own homes under the more humane system of the English law, were therefore, according to the last returns, more than eight times as many as their less fortunate Irish fellow-countrymen.

For this rigor in the administration of relief, there is no doubt the guardians through the country are not mainly, if indeed at all, responsible. The statistics of Irish outdoor relief exhibit a steady increase in the number of widows relieved at their own homes. In 1857, for instance, only 34 widows received out-door relief. The number rose in 1862 to 283. In 1867, five years afterwards, there were of such recipients of out-door relief 920, and in 1872, 1,463. These numbers, of gradual and steady increase, testify to well-marked disposition among the guardians to administer relief out of doors to destitute widows. The reason that the numbers are not much larger, so as to bear a more favourable contrast with the English statistics on this point, is not, indeed, the fault of the guardians but of the law, which controls and limits their discretion.

But, passing from the class of widows, and children dependent on them, there are other classes of women relieved in England out of doors at the discretion of the guardians, for whom no provision for out-door relief is made in the Irish law, and who have no resource but to submit to the rigors of the in-door system. As regards these classes, as well as in the former case, I must guard myself against advocating any particular scheme; my business is to state distinctions, not to insist on changes.

Following out the distinctions observed by the poor-law as regards women in the two countries, so far as they appear as results in the shape of statistics, I find that on the 1st of January, 1872, there were in receipt of out-door relief in England 1,650 wives, and 4,915 children, of persons confined in gaol, or other safe place of custody. In Ireland no such person was relieved at her own dwelling. There were on the same day in England, in actual receipt of out-door relief, 518 wives of soldiers, sailors, and marines in Her Majesty's service, and 1,151 children of such persons. In Ireland no such person received out-door relief.

Continuing our inquiry, in the light of recent returns, I find that on the day named there were relieved out of doors in England, 4,996 wives, and 13,803 children, being resident families of men non-resident in the union. In Ireland no such person received relief except within the workhouse.

These figures, when added together, give a total of 242,086 women, and persons dependent on them, relieved out of doors in England, against a total of 6,565 so relieved in Ireland; or, to take a proportionate view, the number of women and children receiving out-door relief in England is as one in every 93 of the whole population, while the recipients of out-door relief in Ireland belonging to this class are as one in every 851 of the population. These figures, presenting so startling a diversity in the manner of affording relief to the helpless classes of the community, and suggesting in their case a more rigorous application in Ireland of the workhouse as a test of destitution, for which it is hard to invent or conceive any adequate grounds which would not apply equally in England, I proceed to trace the cause of this disproportion in the laws of the two countries, and the regulations of the respective boards charged with the administration of poor relief.

Till the time of Henry VIII., the poor of England and Ireland subsisted entirely on private benevolence. The monasteries were their chief resource; and among other bad effects of these institutions was this, that they supported a very numerous and idle poor, who gathered round the gates of these religious houses.*

On the dissolution of the monasteries steps were taken in England to provide for the relief of the poor.† King Edward VI. founded three royal hospitals; but these were far from sufficient for the care of the poor in the kingdom at large. Accordingly, after many fruitless experiments, the 43rd of Queen Elizabeth was passed, by which the right of relief was secured to the poor, and the principle of parochial assessment established. In Ireland, on the other hand, there was no general poor-law before 1838. From the dissolution of the monasteries to that year, a period of nearly two centuries and a-half, the right to a subsistence, one of the fixed maxims of the English law since the days of Elizabeth, and ranked by many legal writers among the natural rights of man and inseparable from his right to life and liberty, was denied to the Irish people. But the State which refused to fulfil its natural obligations towards the Irish people, insisted on their compliance with its laws. It placed the owners of the land under no responsibility to support all who were settled on it, and made no effort to proportion the population to the demand for labour, and to the permanent qualities of the land. Hence, as in revolutionary France, where the law has never recognized the right of a workman to relief, there arose discontent, crime, and rebellion, which contrasted strangely with the orderly and settled state of England; while the evil of a population whose strength was unchecked,

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* Hallam ridicules the idea that the alms of the monasteries maintained the indigent poor, and that the system of parochial relief was rendered necessary by the dissolution of these religious houses.—*Const. Hist.*, p. 10 (ed. 1871).

† The first act for the relief of the poor passed in 1535 (37 Hen. VIII. c. 25). By this act no alms were allowed to be given to beggars; but a collection was to be made in every parish. The compulsory collections properly began in 1572 (13 Eliz. c. 5); but by 1 Edw. VI. c. 3, the bishop was allowed to proceed in his court against such as refused to contribute, or dissuaded others from doing so.

produced vagrancy and beggary, finally culminating in the appalling distress of the famine years.

The statute 43rd Elizabeth, designed to make the indolent industrious, and to check vagrancy and mendicity, and quite capable, under proper administration, of effecting these results, had, in its actual working covered the land with able-bodied paupers and sturdy mendicants.* This is not the place to do more than refer to the abuses and extravagancies which grew up around the English poor-law, complicated with its law of settlement and removal, † and which resulted in the passing of "The Poor-Law Amendment Act" of 1834 (4 & 5 Wm. IV. c. 76). That act created for the first time‡ a central authority for the general control of the entire management of the poor throughout England and Wales. The board was authorised and instructed to make and issue rules and regulations for the management of the poor, on all matters connected therewith, as it should think proper; and by such rules "to declare to what extent, and for what period, the relief to be given to able-bodied persons or to their families, in any particular parish or union, may be administered out of the workhouse of such parish or union, by payments in money, or with food or clothing in kind, or partly in kind and partly in money; and in what proportions, to what persons or class of persons, at what times and places, on what conditions, and in what manner, such out-door relief may be afforded." The regulations which have been framed from time to time in pursuance of these powers, while they provide sufficient securities against fraud and abuse, are eminently liberal and considerate towards the poor. But even these regulations are not absolutely imperative, in cases where it appears inexpedient to the guardians to enforce them, for discretionary powers of out-door relief are conferred on the guardians, which by their elastic nature enable the English guardians to satisfy the demands of great or sudden emergencies.

The Irish poor-law of 1838 (1 & 2 Vic. c. 56) professed to be an extension to Ireland, not of the system of poor-law which then prevailed in England, which was a mixed system, partly in-door and partly out-door, but of the plan of exclusive workhouse relief, which the commissioners were, in 1838, attempting to carry out in England. Its fundamental maxims were to make the workhouse the test of destitution, and that relief must be so administered as to render the situation of its recipient less eligible than independence. This is laid down with great distinctness by Sir George Nichols, the author of the Irish poor-law, and one of the English Commissioners, in his well known reports of 1837, printed and circulated through Ireland as an authoritative exposition of the law. He says: —"There can be no doubt that the *intention* of the English Poor-Law Amendment Act of 1835 points to the workhouse *as the sole medium of relief eventually.* To establish out-door relief would, therefore, be to act in direct contradiction to English experience,

*Molesworth's *History*, vol. I. p. 392.
†*Blackstone*, Book I. chap. 9.
‡*Journal of Statistical Society*, vol. III. p 44.

and to the spirit of English law. It would be establishing different and opposing principles of action in the two countries; for out-door relief is at present only tolerated in England as an evil unavoidable for a time, and which is to be gotten rid of as speedily as possible."

The exclusive workhouse system was introduced into Ireland, therefore, not as a plan that had succeeded, but as a plan that had still to be established in England. But what is the result in England? The system of which Sir George Nichols was the exponent, has been completely overthrown in that country; the commission of which he was a member is abolished; and the management of the poor-laws has been vested in ministers wielding elastic powers, and directly responsible to the English parliament. Not so, however, in Ireland. Under the Irish Act of 1838, the only kind of relief authorised was that given within the workhouse, and no other was permitted by law until the enactment of 10 & 11 Vic. c. 31 (1847), commonly known as "The Irish Poor Relief Extension Act." The 1st and 2nd sections of this act authorise the guardians to relieve destitute poor persons, permanently disabled from labour through infirmity, sickness, or accident, and widows having two or more legitimate children depending on them, either in the workhouse or out of the workhouse, as to them shall appear fitting and expedient in each individual case; and further (sec. 2) empowers the commissioners, where, through want of room in any workhouse, relief cannot be afforded to poor persons other than those already enumerated, or when, by reason of infectious disease, the workhouse is unfit for their reception, to grant authority, by order under their seal, to the guardians to administer out-door relief to such destitute persons, for any time not exceeding two months, provided that all relief given out of the workhouse to able-bodied persons, under the authority of any such order, shall be given in food only.

This act, sanctioning, under severe restrictions, a limited amount of out-door relief, was passed to meet the emergency of the distress arising from the famine. The workhouses were then wholly unable to contain the applicants for relief. In 1848, when the famine was at its height, 600,000 persons were relieved in the poorhouses, while 1,433,000 received out-door relief under the recent act of parliament. These numbers gradually diminished, and changed sides as the pressure from pauperism was removed, and in 1852 all relief under the 2nd section of the act of 1847 may be said to have come to an end; for while 500,000 persons were relieved in the workhouses, only 14,000 obtained out-door relief. The fact that a large number of able-bodied persons received out-door relief during the famine years, misleads many persons to entertain the belief that the guardians have the power to grant such relief now; but no such general discretion arises until the workhouses are full, or, through the prevalence of an infectious disease, unfit for the reception of paupers.

Out-door relief in Ireland is practically reduced to those obtaining relief under the act of 1847 (10th Vic. c. 31, s. 1), namely:

1. Persons permanently disabled by reason of old age, infirmity, or bodily or mental defect.

2. Persons disabled by severe sickness or serious accident, and thereby deprived of the means of supporting themselves or their families.

3. Widows with two or more legitimate children.

Whether these classes get in-door or out-door relief, is a matter left entirely to the discretion of the guardians; but relief under this section may be taken to be gradually extending for some years past.

The slight sketch which I have given of the history and principles of the poor-law, seemed necessary for a fair comprehension of the differences which practically result to women under the law, as administered in England and Ireland.

These differences [I confine myself to such as bear on the subject], contrasting the Irish administration with the less favored districts in England, namely, those governed by the prohibitory order of 1844, may be thus summed up: *

1. In England the guardians may grant out-door relief to all widows during the first six months of their widowhood. †

In Ireland no such power exists.

2. In England out-door relief may be granted at any time to a widow having one legitimate child depending on her.

In Ireland the guardians cannot grant it to a widow, unless she have at least two legitimate children depending on her.

3. In England out-door relief may be granted to the family of any person confined in a gaol, or other place of safe custody (which latter phrase will include lunatic asylums). ‡

In Ireland there is no such power.

4. In England out-door relief may be granted to the wife and children of any soldier, sailor, or marine in Her Majesty's service. §

In Ireland (which furnishes no small proportion of such servants of the Crown) such relief cannot be given.

5. In England out-door relief may be allowed for the children of non-resident persons, when those children reside with their mothers within the union; and thus provision is made for families deserted by their natural heads. ‖

In Ireland the guardians have no such power.

But there are other distinctions with regard to the position and claims of women, arising on a comparative view of the poor-laws of England and Ireland, which I proceed briefly to refer to.

(*a*) By the 27th section of the "English Poor-Law Amendment Act," 1834, it is provided, "that it shall be lawful for any *two jus-*

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* *Journal of Statistical Society*, vol. III. p. 52.

† Of this class there were in England, on 1st January, 1872, in receipt of out-door relief, 60,274 widows, and 156,778 children dependent on them—Official Return, *Times*, Nov. 23, 1872.

‡ Of this class there were in England, on 1st January, 1872, in receipt of out-door relief, 1,650 wives, and 4,915 children.—*Ibid.*

§ Of this class there were in England, in the actual receipt of relief, on 1st January, 1872, 518 wives, and 1,151 children.—*Ibid.*

‖ Of this class, there were in England, in receipt of out-door relief, on 1st Jan. 1872, 4,996 wives, and 13,803 children, being resident families of non-resident men. In all there were, on the aforesaid dates, 367,401 able-bodied paupers receiving out-door relief in England on the 1st January, 1872.—*Ibid.*

tices of the peace, at their just and proper discretion, to direct by order that relief shall be given to any adult person, who shall, from old age or infirmity of body, be wholly unable to work, without requiring that such person shall reside in any workhouse, provided that one of such justices shall certify in such order, of his own knowledge, that such person is wholly unable to work as aforesaid." This power conferred on the magistrates is in addition to the powers of the guardians to grant relief.

No such power belongs to the justices in Ireland. The right to grant out-door relief to such aged and infirm persons is wholly within the discretion of the guardians, and from their decision there is no appeal.

(*b*) Again, it is enacted by 7 & 8 Vic. c. 101, s. 25, "That so long as it may appear that the husband of any woman is beyond the seas, or in the custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman, or to her child or children, shall, notwithstanding her coverture, be given to such woman in the same manner, and subject to the same conditions, as if she was a widow."

No such enactment exists for Ireland, and guardians are not at liberty, in this country, to extend out-door relief to women, however destitute and forlorn their position may be, under the circumstances detailed in the section.

(*c*) It is provided by 10 & 11 Vic. c. 109 (1847), sec. 23, that "When any two persons, being husband and wife, both of whom shall be above the age of 60 years, shall be received into any workhouse, . . such two persons shall not be compelled to live separate and apart from each other in such workhouse" Accordingly, it is directed by the consolidated order of the Poor-law Board, "That the guardians shall set apart for the exclusive use of every such couple a sleeping apartment separate from that of the other paupers.'

No such humane provision exists under the Irish law, and the rules for the classification of the inmates of an Irish workhouse make no arrangement to prevent the separation of aged married persons.

(*d*). In further illustration of the humane considerations which govern the law in England as to the welfare of children supported by public charity, it is enacted, by 25 & 26 Vic. c. 43, sec. 1, "That the guardians of any parish may send any poor child, being an orphan or deserted child, or one whose parents or parent shall so consent, to any certified school, supported wholly or partly by voluntary contributions, and may pay out of the funds in their possession the expenses incurred in the maintenance, clothing, and education of such child therein (not exceeding the total sum which would have been charged for the maintenance of such child if relieved in the workhouse during the same period)" etc. And in the 10th section it is provided that the "word school shall extend to any institution for the instruction of blind, deaf, dumb, lame, deformed, or idiotic persons."*

This statute has no application in Ireland, and the statutable pro-

* Amended by 29 & 30 Vic. c. 113, s. 14, so as to make provision for educating children in the religion to which they belong.

visions for the education of children away from the unwholesome atmosphere of the workhouse, are not marked by the same comprehensive character that distinguishes the law as in force in England. In England there is a general power given to the guardians to remit all children to a certified school or institution, there to be brought up. In Ireland the powers of the guardians are limited to a very few classes of children. Thus by 6 & 7 Vic. c. 92, guardians are empowered to send destitute poor *deaf and dumb or blind* children, under the age of 18, to institutions approved of by the commissioners. And by the 25 & 26 Vic. c. 83, s. 9 (1862), boards of guardians were authorised to send *orphan or deserted* children out of the workhouse, to be reared by families in the country, until the child attains five years of age, unless the guardians consider such out-door relief necessary for the maintenance of the child's health, in which case the term may be extended to eight years. This section has, however, been since repealed by 32 & 33 Vic. c. 25 (1869), which enacts, in lieu thereof that the guardians of any union in Ireland may place such orphan or deserted children out to nurse, according to their discretion, provided that no child shall continue to be so relieved after the age of *ten* years.

It remains to notice one other substantial difference between the English and Irish law to complete the formidable category of statutable distinctions. I allude to the law of poor removal, so far as its operation affects the position of women, with whom alone I have to do. In England, as we have seen, the Imperial Parliament has conferred on able-bodied paupers, by which term is understood men and women indifferently, the right of relief—a right denied to the Irish pauper. In England this right has led to a law of settlement to regulate its incidence. Under this law of settlement any person born in Ireland, and "not settled in England,* becoming chargeable to any parish in England by reason of relief given to himself or herself, or to his wife, or to any legitimate or bastard child, is liable to be removed to Ireland" (8 & 9 Vic. c. 117, s. 2), with certain exceptions, in the case of widows, children under sixteen years of age, and sick persons not permanently disabled (9 & 10 Vic. c. 66, s. 2, 3, 4). In virtue of these enactments, deportations of paupers are made under the most distressing circumstances from England to Ireland, while the Irish have not at home the right of relief which would alone justify their removal to this country; and it may here be incidentally mentioned, as illustrating the collapse of reciprocal rights, that owing to the absence of a law of settlement in Ireland, Irish guardians have no power of removing to England English poor persons becoming impoverished in Ireland.

I offer one or two remarks in concluding this branch of my subject. Whatever the original intention of the framers of the "Poor Law Amendment Act" of 1834 may have been, as to the manner in which relief should be afforded to women and children, it is apparent, from the figures which I have quoted, that out-door relief to such

* A settlement may now be obtained in England by a residence of one year (28 & 29 Vic. c. 79, s. 8). Compare 24 & 25 Vic. c. 55, s. 1; and 9 & 10 Vic. c. 66, s. 1.

classes has swelled into a fabric of gigantic proportions. Women in England, in the matter of poor relief, are not visited with the responsibility of maintaining themselves and their families in independence, but in Ireland women are treated as regular labourers for wages. They are classed as able-bodied, and the workhouse test is applied to them as rigorously as it is applied to able-bodied men. Before this law the distinction of sex is obliterated, except in the case of widows having two or more legitimate children depending on them. Wives of soldiers and sailors in England obtain out-door relief; and it is difficult to give a reason why they should be refused it in Ireland. Wives of felons or lunatics are treated in the same way. In England they receive relief at home ; in Ireland the law denies it to them. Aged married couples are separated in the workhouses in Ireland ; in England they are allowed to live together. These are some of the distinctions which a long line of amending statutes have introduced in the English Poor-Law code. Whether they are to be regarded as improvements or not, is a question that lies beyond my province. It is more pertinent to my purpose to remark that the changes which have been made in the law of England, proceed, without an exception, in one direction, and exhibit one prominent idea—namely, to soften the rigor of the act of 1834, and to grant large discretionary powers to boards of guardians, either to enable them to provide for sudden and sharp emergencies, or to render the condition of distressed widows, women, and children, as comfortable as possible, consistently with the claims of the independent portion of the community.

When we turn, however, to Ireland, we find the only law upon the Statute Book which mitigates the harshness of the act of 1838 is the amending act of 1847.* These two acts contain all the leading provisions of the Irish Poor-Law as now administered—the acts of 1838 and 1847. They were both passed at times of great and wide distress, under circumstances which demanded great care and even strictness in the adminstration of relief. The population had risen enormously, and destitution such as rarely happens, govern ed the land. It was natural, then, that the provisions of the poor-law should be kept as strict as possible ; but since then there has been a change in the condition of the case. Emigration has reduced the population, the poor-rates have fallen in amount, wages have risen and the time seems to have arrived, or it has long since arrived, when steps should be taken to introduce into Ireland the humane provisions of the English law, as regards the relief of poor women and children.

Concluding Remarks.

I have now traced, but in a manner which does not pretend to be exhaustive, the distinctions which pervade the laws of England and Ireland in connection with my subject. These distinctions emphatically exhibit that in England greater protection is thrown around

* There is one exception to this statement, namely, an act of 1866 (29 Vic. c. 30), enabling boards of guardians to provide coffins and shrouds for the burial of poor persons. This is the only act in favour of destitute persons in Ireland, which we have to show for twenty-five years of legislation (1847-72.)

women than is afforded by the law to women in Ireland. The disabilities which are thereby fastened on the women of this country, while they affect all classes, especially place the poor at a disadvantage, and add one more burden to the load with which fortune has weighted them. I have shown that, as regards mothers of illegitimate children, the law connives to render the putative father secure against any liability to contribute to the maintenance of his bastard; that, in the case of poor destitute widows and women, the law classifying them as able-bodied paupers visits them with the responibility of maintaining their families, to which requirement, if they prove unequal, they are forced to enter the workhouse, under the rigorous application of the workhouse test. I have further endeavoured to establish that oppression, expense, unequal application of the laws for the protection of the property of women, as between rich and poor, must prevail so long as our County Courts continue unreformed; and that in these several respects ample provision is made by the laws of England, whereby the rights of women are secured, and their social independence upheld. I have also shown that women in Ireland labour under disabilities which do not attach in England—that, as regards the law of divorce, they are less fortunately situated; while in respect of educational advantages, reforms in the English law, sanctioning the application of old endowments to the purposes of female education, have not been extended to this country; that, owing to a less advanced state of civilization, and the comparative absence among us of public-spirited women, privileges claimed and enjoyed in England in respect of municipal and other franchises have no legal validity here. Thus it would appear that in place of equal rights, as between the women of both countries, we are met with distinctions and partialities, that shade off, not too finely, into injury and injustice. On what principle these distinctions rest, and what arguments can be adduced in their support, I leave to others to examine. Assimilation of the laws of both countries—strenuously urged by many, and regarded by others as unphilosophical—might fairly be made in the laws which regard the protection of women, without encountering the difficulties and objections which a too sweeping and general advance in this direction might be expected to kindle into life. It cannot be but that to deny to women in this country what is freely given to women in England, is at once ungenerous and unfair—ungenerous, because as a class, women are powerless to insist on their rights, being politically without rights; unfair, because on any theory of an United Kingdom, the helpless class bound to yield obedience to the same laws, should be treated, as regards rights and privileges, on an equal and impartial footing.