Mr. MacNeel Caird's Essay, in "The Cobden Club Series," on Local Government and Taxation in Scotland, considered with reference to the Suggestions it affords upon the following questions: (1) Road Authorities in Scotland and Ireland; (2) Scotch and Irish Local Courts; (3) Union Rating; (4) The Scotch Law for securing Improvements in Town Holdings.—By W. Neilson Hancock, LL.D.

[Read Tuesday, 20th April, 1875.]

At the last meeting of Council of this Society, Mr. Jonathan Pim made a suggestion that the recently published series of essays obtained by the Cobden Club on Local Government and Local Taxation in England, Scotland, Ireland, and other countries, presented a great body of information, as to which it would be valuable to institute comparisons between the institutions and laws in force in Ireland, and in other countries.

In accordance with that suggestion, I have selected from the very able and comprehensive essay of Mr. MacNeel Caird, on Scotland, the following four points for comparing the results he has stated as to Scotland, with the corresponding questions as to Ireland: (1) Road Authorities in Scotland and Ireland; (2) Scotch and Irish Local Courts; (3) Union Rating; (4) The Scotch Law for securing improvements in Town Holdings.

(1) Road Authorities in Scotland and Ireland.

Mr. Caird gives the following account of the recent and progressive growth of road authorities in Scotland:

"It thus came that in various counties the burden of maintaining the highways was laid wholly or mainly on the tenants, while the proprietors alone had the administration. The dissatisfaction which naturally grew out of that system has led, in most, if not all, the local acts recently obtained, to the tax being divided equally between landlord and tenant, and the administration placed in the hands of a mixed body of trustees. These are composed of all proprietors of a certain annual rental, and of representatives elected by the ratepayers from each parish. So far as yet tried, this change seems to have worked smoothly and well."

We have here precisely the same question that arose in Ireland, and which has been partially solved by the Baronial Presentment Sessions, with ex-officio justices representing property and associated ratepayers to represent in some degree the occupiers. The fact that the Scotch solution has been gradually brought about by a number of distinct local acts, shows the strong feeling that must be in its favour, and how generally acceptable it must be.

The division of rates is completely carried out, just as is our poor rates, and for future lettings in our county cess. In Scotland this division is made the basis of a direct representation of the ratepayers of each parish, while all the proprietors of a certain annual rental have seats on the board in right of their property. This is a more direct representation of property than the ex-officio system with us. On the other hand, the representatives of the ratepayers are elected..."
in Scotland, and not nominated as in Baronial Sessions. The success which has attended the Scotch system of elected ratepayers, with direct representation of property on the basis of an equal division of rates, shows the great value of these principles for securing a fair representation of all parties interested in the expenditure of local rates.

While we have thus something to learn from the Scotch, on the other hand, in the matter of turnpikes, they have something to learn from us. All turnpike trusts have been completely abolished in Ireland so far back as 1857.

Mr. Caird speaks in strong terms against the system of turnpikes in Scotland, and at the same time discloses the small progress made towards their abolition. He says:

"In more than a third of the counties of Scotland the vexatious and expensive system of levying a tax by turnpikes has been abolished, and the cost provided by assessment."

It thus appears that in nearly two-thirds of the counties of Scotland turnpikes still continue. The insolvent state of many of these turnpike trusts is indicated by some other figures. The debt outstanding upon them is £1,105,000, whilst the interest unpaid is £654,000.

We see here the great sacrifice of private property which has resulted from delegating the public duty of making and maintaining roads to trustees, instead of constituting, as is now being done, local authorities, representing the ratepayers and owners of property, and so establishing an authority to whom can be entrusted the power of giving absolute security for necessary advances for the cost of local works.

(2) Scotch and Irish Local Courts.

Mr. Caird gives a very interesting account of the Scotch Local Courts which are established for each county in Scotland, and are called Sheriff's Courts. These courts were founded so far back as 1746, after the last Jacobite rebellion of 1745, "to extend the influence, benefit, and protection of the king's laws, and the courts of justice, to all his majesty's subjects in Scotland." He then adds:

"These local courts, after the experience of more than a century, have gained a firm hold of the confidence of the country."

The Judge of the Scotch County Court is called Sheriff, and in qualification and duties he corresponds to the Chairman of the County in Ireland.

In addition to the judge of the Scotch Sheriff's Court, there are assistants, who are called Substitute Sheriffs, who have to reside permanently within their jurisdiction, for all save six weeks in the year.

The sheriff's office in Scotland undertakes nearly all duties of the sheriff in Ireland—returning jurors according to the fixed and invariable rotation which has prevailed there since 1827, and executing process and writs (except the summonses and letters of diligence from the superior courts, which are entrusted to messengers-at-arms).
The Sheriff, with Substitutes from one to seven, according to the size of the county, and with other officers called Sheriff's Clerks, discharge the duties which in Ireland are discharged by the Chairman of the County, the Sub-Sheriff, the Clerk of the Peace, the Clerk of the Crown, and the District Registrar of the Court of Probate.

The officers all form part of one local court and office. Whilst the Sheriff is an advocate equivalent to a barrister with us, the Sheriff's Substitutes are trained legal professional men, with permanent tenure. In this way, a complete machinery is provided of local courts, with continuous sittings, through the constant attendance of the Substitute Sheriffs, capable of disposing of all the legal business of humble suitors, with the small exceptions now proposed to be removed. This satisfactory result is attained, not so much by having a smaller number of local officers in Scotland than in Ireland, but by a better constitution and organization of the local offices, giving better tenure, for instance, than our Sub-Sheriff, by having the office of Substitute Sheriff a permanent instead of an annual office.

Mr. Caird describes the extent of the large and varied jurisdiction of the Sheriff's Court, in addition to questions of debt, contract, and questions of all kinds relating to personal estate.

"They also try possessory questions as to lands, houses, roads, and servitudes, and generally as to the use and exercise of heritable rights (real estate). They judge of the right of heirs to succeed to heritage.” "They have a large equity jurisdiction, including interdict or injunction. They award bankruptcy, and dispose without limit of all questions competent to Courts of Bankruptcy and Insolvency. * * * As commissaries coming in place of the ancient ecclesiastical courts, they confirm wills and determine competitions for executorships, corresponding to the grant of probate and letters of administration in England.”

Mr. Caird describes the pending proposals as to these Sheriff's Courts in embracing an extension of the jurisdiction to all questions of heritable right and title.

The Law Courts' Commission report: "This skilled magistracy has been found so efficient that their jurisdiction, both judicial and magisterial, has been from time to time enlarged, and with so much success, that we have felt warranted in recommending its further extension.”

Mr. Caird adds: “Public opinion cordially supports these views.”

The contrast to all this presented by the want of jurisdiction of our local courts, is put in a strong way by the judgment of the Vice-Chancellor in the case of McGrath v. O'Brien, in last Hilary Term.

In 1855, a man of small means in the South of Ireland left a sum of £120 for the benefit of his daughter. At the end of twenty years, a question arose as to how far the representative of the original trustee was liable, and it was decided that he was liable to the extent of £70, with £4 15s. for interest.

The Vice-Chancellor was so struck with the hardship of giving poor people no means of enforcing trusts of a small amount, except in the Court of Chancery, that he felt bound to clear his court of the odium of consuming this small trust fund for a woman in the process of determining the breach of trust. He defended his court, however, by throwing the blame on the law. The Vice-Chancellor said:
"This case was an additional instance of the want of some cheap tribunal to deal with small cases in equity. Here the whole fund in question was £120, yet the parties had to resort to the Court of Chancery, at much expense, and incur a large outlay in bringing witnesses up to Dublin. "There was no remedy for the plaintiff but to do this."

When the judges condemn the law, an urgent case is made for legislation.

Let us for a moment estimate what this condemnation means with regard to the trusts affecting tenants' holdings in Ireland.

In 1872, the holdings in Ireland were divided into nine classes. The first four included holdings averaging 22 acres, 10 acres, 3 acres, and 2 roods; the last five classes were of holdings of average size of 40 acres, 73 acres, 150 acres, 340 acres, and 1,308 acres.

Now, the four classes where the average is 22 acres and under, included 436,000 holdings, or 75 per cent. of the entire number. The tenants' interest in any of these holdings would not ordinarily exceed £300. Yet for the common trusts as to all these holdings between members of the family of the tenant or his equitable creditors, there is no jurisdiction except the Court of Chancery. In other words, those 436,000 holdings are for practical purposes either outside the domain of the most important branches of equitable jurisdiction, or can only be brought within them at a cost ruinous to the suitor.

Until an equitable jurisdiction, to the extent of £300, is given to the Irish local courts, the spirit of the Scotch statute of extending "the influence, benefit, and protection of the Queen's laws and courts of justice to all her Majesty's subjects," will not be carried out in Ireland.

This urgent reform has been delayed, pending the reform of the superior courts, with fusion of law and equity, on the model of the Scotch Law.

It has thus happened that the discussion of the question, strangely enough, has turned more on the number of the staff required to discharge the business of the superior courts, than on the extension of the jurisdiction of the local courts in a cheap and complete form to secure perfect local jurisdiction for all, however humble their means or claims.

In the case of the Penny Postage, the increase of business from the reduction of cost exceeded all Sir Rowland Hill's estimates. In Ireland, in addition to the ordinary effect of reduction of charge, leading to an increase of business, there has been a large creation of small properties under the operation of the Church Act and the Land Act, and under the latter Act a very large legal recognition of tenants' interests in agricultural and pastoral holdings; there has been concurrently a steady growth in wealth, especially amongst the very poorest classes, bringing a much larger number into position of having some property, however small, to be protected and administered.

The increase of business to the Superior Courts, on circuit and in town, by way of appeal from the classes of cases to which I have referred, at present practically outside the domain of legal jurisdiction, it is difficult to estimate; it would, however, from the extra-
ordinary number of holdings below £300 in value in Ireland, be, as I have noticed, very large. The natural order of proceeding would seem to be that the extension of jurisdiction of the inferior courts should precede the regulation of the staff of the superior courts, and this order would, no doubt, have been followed, had not the reform of superior courts in England pressed forward the superior court question in Ireland, whilst the English local courts, having already had for some years an equitable jurisdiction up to £500, there is not there any question of extension of local jurisdiction pending, so urgent as the Irish question has become—especially since the estates and interests of small value which have grown into legal existence and cognizance under the Church and Land Acts.

(3) Union Rating.

Upon the very important subject of Union Rating the Scotch system occupies an intermediate position between Ireland and England. Union rating was carried for England and Wales in 1865, and the areas of charge are 647 in number, giving a population of 35,000 for each distinct area of rating.

In the metropolis there is even a consolidation of charges in different unions, and many charges are now common to all the metropolis.

The existing area of rating in Ireland for 3,438 divisions, gives only 1,600 persons for each area. In Scotland, the parishes are 887 in number. This gives an average population of only 3,600 in each parish. The areas of the districts of distinct rating are in England and Wales, 58,000 acres; in Ireland, 6,000 acres; in Scotland, 22,000 acres.

Mr. Caird expresses a very strong opinion against the size of the Scotch areas of poor-law rating for taxation and settlement.

"But other evils are small compared with the crushing influence on the labouring classes of the perpetual struggles to prevent settlements. The natural distribution of labour is thus seriously hindered.

"It operates mainly in the country districts, driving them into towns. In towns where proprietors are numerous, the letting of houses is usually governed by the ordinary rules of supply and demand, and thus the labourers who cannot find dwellings in the country are forced to crowd together to the towns. But even in a town I have seen exhibited in a court of law a mutual bond or agreement amongst proprietors put into the shape of a formal deed, to exclude poor people from getting houses in the parish, in order to avoid liabilities under the law of settlement.

"In such parishes where a few large proprietors regulate the policy pursued on this subject, this law works with special severity on the industrious poor. I have heard one of the most kind-hearted of men boast that in his parish matters were so arranged that no outsider could get a house in it. He had not the remotest suspicion that it could produce hardship. Let us take the case of a poor man who hires his labour in a country parish, but cannot get a house in it because this law gives fictitious interest to every owner and occupier to hinder the acquisition of settlements by residence; he has thus a heavy addition to his daily toil; his energies are overtaxed by travelling miles before he begins his work, and miles after he has done; in bad weather he has far to go for shelter; his mid-day meals must always be eaten cold; his hours of rest are diminished. If, again, he is so fortunate as to get a house in the parish, the whole parish has an unnatural interest that he should not remain for five years, which
would settle him there; and if there is any failure of health, any appearance of
or prospect of distress in his family, that unhappy kind of interest is too easily
awakened against him. Would it be wonderful if the sinews of the country
were to leave it, to reach other lands the freedom of labour which such an
ill-conceived law denies them in this?

Mr. Caird then refers to the Report of the Royal Commissioners on
the Employment of Women and Children in Agriculture; and as to
the County of Ayr the Commissioners say:

"In no county can the wants and comfort of the rural population in respect
to house accommodation be more disregarded. Not only are cottages not built,
but the old ones are permitted to fall into decay and ruin. In some extensive
parishes the cottages are not sufficient for one-tenth of the labouring population."

Mr. Caird then adds:

"One-tenth of the cold-hearted zeal which has been exerted by the law of set-
tlement, and employed in efforts thus to turn over the burden of the poor from
one parish to another, would have been sufficient if it had been directed to
vigilant management to prevent the abuses which have so increased the burden
of all."

The passages I have quoted from Mr. Caird's Essay corroborate
the strong views I expressed in my Essay for the Cobden Club, on
the importance of union rating for securing the welfare of the labour-
ing classes in Ireland. When the evils Mr. Caird points out occur
in parishes which give an area of charge of 22,000 acres, and a popu-
lation of 3,600, it would appear that the dispensary district solution
of rating in Ireland, with 29,000 acres, and a population of 7,000,
would not be a safe one to rely on.

Nothing short of complete union rating in Ireland, therefore, will
be at all likely to afford the labouring classes the security for proper
habitations not too far from their work.

In a paper I read before this Society in May, 1871, On the Law
of Poor Removals and Chargeability in England, Scotland, and Ire-
land, I pointed out the defect of the Scotch law making charge-
ability depend on five years' residence, and allowing it to produce a
settlement; and I showed that there was a complete conflict of laws
as to the period and effect of residence upon chargeability.

"In Scotland it is five years, and creates a settlement. In England it is only
one year, and creates no settlement. In Ireland it is in some cases two years out
of five, and in others thirty months out of three years, and in some cases three
years, but creates no settlement."

It thus appears that although nearly a century and three quar-
ters has elapsed since the Scotch Union, and three-quarters of a
century since the Irish Union, upon the most important subject of
human legislation—the relations to the state of those receiving pub-
lic relief, and of the large classes who are liable to the vicissitudes
of requiring such assistance—there are three distinct poor-laws, dif-
ferring to an extent that would, a priori, be thought impossible under
a common imperial legislature.

(4) Security for Improvements in Town Holdings.

Mr. Caird calls attention to a very ancient provision of the Scotch
law to meet the stoppage of improvements in towns caused by doubtful title:

"The Dean of Guild, one of the burgh magistrates, has a very special jurisdiction which has been overlooked by the law commissioners. "In order to prevent town buildings from falling into a state of dilapidation, a person whose title is doubtful or insecure may apply to the Guild Court to have them inspected, and for a warrant to execute such repairs and building operations as the Court shall sanction. After public notice, and notice to any persons who are supposed to have an interest, that they may be heard, the works are executed under due supervision, the cost is ascertained, and by a decree of the Court is made a charge on the property in case the applicant should ever be dispossessed. With a similar object, the burgh magistrates have an ancient statutory power to warn those who have a right to or interest in houses within the burgh which have for three years been 'waste or not inhabited' to build or repair 'in a decent way'

"Where the owners are not known, they are to be called by proclamations at the market cross or parish kirk, if out of the kingdom, they are to be called on sixty days notice at the market cross of Edinburgh and pier and shore of Leith, and if for a year and a day after the expiry of these notices the persons interested fail to comply, the magistrates are to have the property valued and sold, preserving the price for the owner."

After this description, Mr. Caird adds —

"These are useful powers in the public interest, and there has been no complaint of their having been abused. But the notices at the cross, kirk, and pier, would now have a better chance of reaching the parties for whom they are intended if published in the newspapers, and judicious magistrates are likely to require that this should be done."

The want of similar provisions in the Irish law is well known to those who have investigated the causes of ruined houses in towns in Ireland. Some years ago an investigation was made in an Irish town, largely built on leases dating from an early period of the past century, and in a very large proportion of cases some serious defect of title was discovered, such as a doubtful will, an absent heir, an unsettled bankruptcy.

It was at first thought that these difficulties might be got over by breaking the leases by ejectments, and so terminating the complication, on the terms however, of the actual occupiers getting new building leases for lengthened terms at the old rent. The law of graft however, presented an insuperable barrier, for the new lease would in law be deemed a graft on the old one, and subject to all the defects that had arisen to the tenant's title under the old lease. The outstanding claimant, if he recovered the tenant's interest, would recover at the same time the improvements of the tenant.

This defect in the law has in one special class of cases been met in Ireland and England by the Artizans' and Labourers' Dwellings Act, 1868.

Where premises are reported to be in a state dangerous to health, so as to be unfit for human habitation, the local authority may execute the necessary works for improving the premises, and for doing so obtain a charge upon the house improved, bearing interest at four per cent., having priority over all other estates, incumbrances, and interests whatsoever.

The owner, instead of effecting the improvements, may take the houses down; or if he executes the improvements, may obtain an
annuity of £6 for each £100 for thirty years, the charge to have priority over all existing and future estates, interests, and incumbrances, with the exception of quit rents and other charges incidental to tenure, tithe commutation rent-charge, and any charges created under any act authorizing advances of public money.

This act proceeds on the principle of the first part of the Scotch law noticed by Mr. Caird, recognizing that those who lay out money on doubtful title in improving house property, should be secured for their expenditure. But while the Scotch law is unlimited, and applies to all the cases that fall within the principle thus laid down, the Irish and English law is limited to the single case of artisans and labourers' dwellings in a state dangerous to health, so as to be unfit for human habitation.

The second branch of the Scotch law above referred to has no parallel in Irish law.

In 1871, when considering the subject in connexion with inquiries of the Friendly Societies Commission as to building societies, I suggested as an amendment of the law, what it now appears is the ancient law of Scotch towns. I may now repeat, as grounds for extending this valuable principle of Scotch law to the United Kingdom, the substance of the reasons I then gave for the suggestion (see Appendix to Report of Friendly Societies Commission).

The great cause of vacant and waste spaces in towns, and of ruined houses is defective title. Local authorities ought to be enabled to stop this defect which diminishes the property liable to local taxes, and increases the cost of all town arrangements by lengthening unnecessarily street pipes for water and gas. To effect this object let town authorities, after twelve months' notice, be enabled to sell such premises in local court—if sale be approved of by the court—a survey and photographs being taken of the existing state of the premises before sale, and the purchase-money invested. The complications of title might then be all transferred to the map, photographs, and the invested money—the unoccupied and ruined premises being sold with absolute title.

When out of 25,000 houses in Dublin, no less than 1,000 were uninhabited in 1871, some estimate may be formed of the loss of taxes that arises from a large proportion of this number of houses being uninhabited through defect of title.

There is curious evidence of the length of time this defect of the law has attracted attention in Ireland. When the town of Lisburn was destroyed by fire in 1707, the owner of the town, the Lord Conway of that day, had inadequate leasing powers, and the householders had to rebuild, without what they considered adequate legal security, trusting to the honour of the landlord, at the expiration of their short leases.

The circumstances under which a block of houses in the centre of the town was thus erected, is recorded in an inscription on a stone, which was replaced in the front of the principal house, on its being rebuilt a few years since:—
In the 93 years that elapsed from 1707 to the Union, the Irish Parliament did not deal with the builder's case. In the Imperial Parliament it received only the partial solution I have referred to in 1868; whilst during all that time the simple and complete solution of the question was part of the ancient law of Scotch towns. There cannot I think be a more perfect illustration than this single fact affords of the value of the investigation of the differences between the laws of England, Ireland, and Scotland, which Mr. Pim suggested to our Society this time twelve months, and which at a later period of the year was carried out by the committee of the Cobden Club in obtaining the essays on Local Government and Local Taxation.