acquired as Hon. Secretary of that excellent charity, the Friends' Relief Committee for the Famine.

That book, more than any other, stimulated me to look into this question of the transfer of land some thirty years ago. Once convinced of the evils of the system, I have never lost sight of an opportunity of helping to have those evils removed, whether by papers before this Society, evidence before committees or commissions, or in official reports. Mr. Pim's address has stirred me up to look into the question again; and I see in the great measure of 1875, which embodies the results of so many committees and commissions, and the thoughts of so many statesmen and law reformers, and which Lord Cairns has the credit of carrying, a more complete solution of the question than has ever been hitherto attempted. Under these circumstances I feel the strongest possible conviction that it requires only to state the case simply and clearly, to secure for Ireland, and at an early period too, the benefit of that great and wise reform.

III.—*Prize Essay on the Jurisdiction of the Local Courts in Ireland, Scotland, and England compared.* By William H. Dodd, Barrister-at-Law.

[Read Tuesday, 23rd January, 1877.]

THE Council of this Society have done me the honour of selecting me as essayist "On the difference of division of jurisdiction between Local and Central Courts in Ireland, Scotland, and England." I have inquired into the matters on which the Council have desired me to write, and I respectfully submit to the Society the result of my inquiry.

(1) *Origin and constitution of the present local courts.*

(*a*) *Scottish local courts.*

The local courts of Scotland are called Sheriffs' Courts; the local courts of England are called County Courts; the local courts of Ireland are called Civil Bill Courts. The difference of name indicates a difference in origin, and this difference in origin accounts for and explains many of the existing differences in the constitution and jurisdiction of these courts. The Scottish local courts were remodelled after the 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." They were designed to take the place of the hereditary jurisdictions, which it was then thought expedient to abolish. The head of the court is a judge, who is called sheriff, and who must be a member of the Bar. These sheriffs, being themselves allowed to practise at the Bar, were from their first appointment allowed to appoint substitutes, for whom they were to be responsible. The duties of the substitutes were, in the first

period of the office, merely ministerial; but naturally in the progress of time they became more and more judicial in their character, and Acts of Parliament were from time to time passed, enlarging the duties, and improving the position of the sheriff-substitute. The result is, that there is now in every county in Scotland a court presided over by the sheriff-substitute, which practically sits the whole year round, and an appellate court, presided over by the judge, called sheriff. From its first establishment, the Scottish local court had jurisdiction to try all questions of personal property without limitation as to value or amount. The judge of the local court in Scotland is also a criminal judge, and exercises jurisdiction as such within his sheriffdom. In the Scottish system writs and processes are under the control of officers or messengers of the courts, as in our Court of Bankruptcy. The sheriff, therefore, does not, except in a very few cases, execute writs; but he, with his sheriff-substitutes, discharges nearly all the other duties of a sheriff in England and Ireland; and in this way the cost of having a professional man to act as sub-sheriff, as in Ireland, is turned to account in Scotland by making the permanent sheriff-substitute a local judicial officer.

(*b*) *English local courts.*

The County Courts of England were established on their present basis in the year 1846, under an Act entitled "An Act for the more Easy Recovery of Small Debts and Demands." The first section of the Act recited that sundry Acts of Parliament had been passed from time to time, for the more easy and speedy recovery of small debts within certain towns, parishes, and places in England; and recited further, that it was expedient that one rule and manner of proceeding for the recovery of small debts and demands should prevail throughout England. This Act expressly states "that the County Court is a court of ancient jurisdiction, having cognizance of all personal actions to any amount, by virtue of a writ of justices issued in that behalf"; but the proceedings in that court of ancient jurisdiction were dilatory and expensive, and the County Courts which were created by the Act have so usurped the place of the court of ancient jurisdiction, that the name County Court is applied exclusively to them. The debts which were by this Act brought within the jurisdiction of the tribunal so created were, in truth, "small." No amount greater than £20 could be recovered; but this was soon changed, as will presently appear. The judges of these courts are not allowed to practise at the Bar. The courts sit practically in every month of the year, and the judge does not exercise a criminal jurisdiction in his district.

(*c*) *Irish local courts.*

The Civil Bill Courts in Ireland were established by the Irish Parliament in 1796, and are constituted at present under an Act of 1851, which consolidates previous statutes. The preamble of the Act recites that "the recovery of small debts by civil bill has been found beneficial to the Queen's subjects in Ireland." A perusal of the titles and preambles of the Acts repealed by this consolidating

statute, shows that the method of proceeding by civil bill is by no means of recent origin, but is nearly two hundred years old, and that civil bills have been the subject of express legislation in the reign of every monarch since William III., have found favour with governments both Whig and Tory, and have been solemnly declared by the Irish Parliament and the Imperial Parliament alike, to be "beneficial to the people of Ireland," and to "contribute much to the ease of the poor."

The judges of these courts are members of the Bar, who are permitted to practise, and who do practise in the superior courts. The courts sit four times in the year only, but continue sitting until the entire business for each sessions is disposed of. As the judge, in analogy to the high position which the sheriff in Scotland occupies in relation to the magistrates, is also chairman of the justices assembled at the Quarter Sessions for criminal proceedings, the courts are frequently and popularly called Quarter Sessions Courts, and the judge is called the chairman of the county.

(2) *Differences in jurisdiction in the local courts.*

(*a*) *Scottish local courts.*

Whether it sprung from a difference in the historic relations of the aristocracy to the crown in Scotland, or from a difference in the relations of the clergy to the aristocracy, the feudal law had a different development in Scotland from what it had in England. The consequence is that a large portion of what is known in England as Equity, forms an integral part of the Common Law of Scotland. In Scottish law books there is reference made to the inherent equitable jurisdiction of the Court of Session; but the details of this, when inquired into, disclose a very minute portion of what is called Equity proper. In the result, therefore, and as a general proposition, we may say that all questions of whatever nature touching personal property may be tried in the local courts in Scotland, no matter what the kind or amount of the debt. In addition to this jurisdiction, the local courts are also Courts of Bankruptcy and Courts of Admiralty; and the judge of the local court has power, either under his general jurisdiction or his consistorial jurisdiction, to try nearly every question that can arise in matters relating to wills. It would appear, therefore, that the local courts in Scotland have ample powers to do complete justice in law, in equity, in bankruptcy, and in probate matters.

(*b*) *English local courts.*

In England, again, a complete jurisdiction in bankruptcy has been conferred on one hundred and twenty of the local courts, so that on an average there are at least two Courts of Bankruptcy for each county; and this jurisdiction is not limited either in kind or in amount. It is also, to a large extent, an exclusive jurisdiction; and while the court in some cases can restrain proceedings in any other court, it is not itself liable to be restrained by other courts. But in Equity the jurisdiction is limited to the determination of questions affecting a fund not exceeding £500 in amount. A few of the

courts exercise an Admiralty jurisdiction up to £300, and all the local courts have a jurisdiction in contentious matters in Probate where the personal estate of the deceased does not exceed £200. The Common Law jurisdiction is still restricted to £50, no case involving a greater amount being within the ordinary jurisdiction of the court, unless by a written memorandum of agreement the suitors agree that it should be tried by the judge of that court.

It is expedient, for reasons which will hereafter appear, to inquire into the equity jurisdiction of the English courts somewhat more in detail. The distinction between Law and Equity in English jurisprudence arose mainly from an accident of history; but, in so far as it is founded on any scientific principle, it may be said to be based on these two particulars: First, the Common Law can only give relief when the question at issue is between one plaintiff and one defendant, or one set of plaintiffs and one set of defendants. Where the interests of third parties are involved in the litigation, the Common Law, unless where expressly aided by recent statutes, is powerless to do complete justice. And, second, the relief a Common Law court can give, unless in the action of ejectment, and in the cases in which a special power has been given it by statute, is restricted to judgment for a sum of money, by way of satisfaction for a debt or damages for a wrong. Thus the administration of the estates of deceased persons, by which the rights of the creditors, the legatees, the next of kin, and the heir of the deceased may be adjusted and settled, can only be attained by the aid of a court of Equity. Then again, the rights of persons interested in property vested in trustees being wholly ignored by the Common Law, can only be enforced by a court of Equity. To this court also must resort all persons under disability when any question touching property arises. All minors, and lunatics, and idiots, are under the special protection of the Lord Chancellor, and whatever independent existence a married woman enjoys in these countries, she enjoys by the favour of the Court of Chancery, as the Common Law considers her one and the same person as her husband. Persons who have taken or given mortgages on property, or have put themselves under penalties or forfeitures, persons who desire to wind up partnership accounts, find it expedient also to obtain the aid of the Court of Chancery. I do not profess to give an exhaustive category of the heads of even the exclusive jurisdiction of an Equity Court; but from those mentioned it will be obvious that any tribunal which is prevented from dealing with the numerous cases which might arise under one or other of the heads enumerated, must be far indeed from being in a position to do complete justice, and if its jurisdiction be not supplemented by some other court competent to deal with it, there will be some wrongs without a remedy.

Now since 1865 the English County Courts have exercised a tolerably complete Equity jurisdiction up to the limit of £500, which I have mentioned. It is worth while to enumerate the heads of the jurisdiction there given, as the extent of the interests affected by it will be thus more apparent.

1. Suits by creditors, legatees (whether specific, pecuniary, or residuary devisees, whether in trust or otherwise), heirs-at-law, or next of kin, against or for an account or administration of personal or real, or real and personal estate.
2. Suits for the execution of trusts.
3. Suits for foreclosure or redemption, or for enforcing any charge or lien.
4. Suits for specific performance or for the delivering up or cancelling any agreement for the sale or purchase of any property.
5. Proceedings under the Trustee Relief Acts or under the Trustee Acts.
6. Proceedings relating to the maintenance or advancement of infants.
7. Suits for the dissolution or winding up of partnerships.
8. Proceedings for orders in the nature of injunctions requisite for granting relief in the above matters, or for stay of proceedings at law, to recover any debt provable under a decree for the administration of an estate made by the court, to which the application for the order to stay proceedings is made.

(*c*) *Irish local courts.*

In Ireland there is a large jurisdiction of an equitable character conferred on the judges of the local courts by the Landlord and Tenant Act, 1870. The chairman is enabled to give compensation, under the provisions of that Act, to any amount; and in arriving at his decision he is enabled to take into consideration the equities between landlord and tenant. By the previous Land Acts of 1860, the chairman was made an Equity judge to confirm leases by limited owners. A contentious jurisdiction in Probate, where the personal estate of the deceased does not exceed £200, and the real estate is under £300, has also been for many years enjoyed by these courts. Again, a legatee can proceed in the Civil Bill Court for the amount of his legacy where the fund does not exceed £200. Legacies or annuities not exceeding £20, whether charged on real estate, or payable out of personal estate, can be recovered in the local courts, no matter how valuable the property, or how great in amount the assets may be on which these legacies and annuities are charged. And, in addition to this, every defendant is entitled, at the hearing of every civil bill, to every defence which he may have in Law or Equity. But notwithstanding the large powers thus in part given to these courts, they are still without any general Equity jurisdiction in the matters I have enumerated as being within the power of the English local courts; and one of the objects of that enumeration was to bring into contrast the absence of such power in the local courts in Ireland. In 1876 an Admiralty jurisdiction was conferred on two of the local courts—those of Belfast and Cork. This is rather *de jure* than *de facto* however, as though the Act came into operation in August last no rules have as yet been made under it.

While powers so extensive in some directions have been freely given to these courts, they have no jurisdiction to try an ordinary Common Law case where the amount in dispute exceeds £40. They have no general jurisdiction in Equity, and they can scarcely be said to have any Bankruptcy jurisdiction.

The only jurisdiction of that kind now possessed by the Irish local courts is that given by the Bankruptcy Act of 1872, which enables the Court of Bankruptcy to refer cases to the chairmen of Quarter Sessions, upon the application of any creditor, or of the debtor, and

the court below is thereupon to have all the power and authority with respect to the matter which the court above would have had. I cannot find, however, that a single application or order has been made under this Act. The court below has no machinery for carrying out the details of a Bankruptcy matter; the clerk of the peace is entrusted merely with the duty of returning the petition and orders to the court above, and the rules made by the court provide that the application is not to be made until after the choice of a creditors' assignee. It is questionable whether much would be saved, therefore, in the way of expense, and there would probably be a considerable loss in the matter of time, as the court sits only once every quarter of a year, and a Bankruptcy matter requires constant and steady supervision. The court, too, would be engaged on an unwonted task, and the professional men would be inexperienced in the practice. It is obvious no general advantage can be taken of the courts of the chairmen under such circumstances, and if Bankruptcy jurisdiction is to be conferred effectually, it must be by some provisions very different from those I have mentioned.

(d) Jurisdiction as to real estate.

Questions involving title to real estate have been jealously reserved for the superior courts in the three kingdoms alike. In Scotland, actions of heritable right, as they are called, cannot be tried in the Sheriff's Court. These actions, however, are to be distinguished from possessory actions, where the point of title is not directly involved, but only that of possession. The Scottish judges look on the local court as the proper court for this class of actions. They are brought for attaining possession, for maintaining it, or for recovering it, and for the payment of rents. When a person has been in possession for seven years without interruption, by a written title, he is entitled to judgment; but if the title be disputed, such dispute can only be tried in the Court of Session.

In Ireland a landlord may proceed by ejectment, or for the payment of rent, when the amount sought to be recovered does not exceed £100. Before the year 1874, whenever a *bona fide* question of title was raised in any matter before the chairman, his jurisdiction was ousted; but in that year an Act was passed empowering him to proceed where the annual value does not exceed £20.

This provision was copied from the English Act of 1867, which enabled the English County Courts to try questions where neither the value nor the rent of the property exceeds £20.

(e) Scottish local court—Small causes jurisdiction.

Notwithstanding the advantages of the local court in Scotland—which resembles the English and Irish superior courts in having formal pleadings, and necessarily considerable costs and some delay in its decrees—it was felt desirable to have a still more easy method of recovering small debts, and accordingly a Small Debts Court was created by the 1 Vic. c. 41. The jurisdiction is limited to debts under £12. No solicitors are allowed to appear, except by permission of the sheriff. No appeal is allowed, except for

corruption and malice, and the appeal is to the next circuit judge. This worked so well apparently, that in 1867, by the Debts Recovery Act of 30 & 31 Vic. c. 96, which recites the benefits conferred by the Small Debts Court, a similar benefit was extended to causes between £12 and £50 in actions for "house maills, men's ordinaries, servants' fees, merchants' accounts, and other the like debts," that is, for rent, use and occupation, and the money counts; and though parties may appear by solicitors, the procedure is simpler than in the ordinary Sheriff's Court, and the costs less—though they are higher considerably than in our Civil Bill Courts, a solicitor being allowed £4 for the "conduct of a cause" between £40 and £50 in value, whether for plaintiff or defendant. This fee is exclusive of the sheriff-clerk's, and sheriff-officers' fees, which may be considerable, and of the crier's fee, which is not considerable, being limited to one penny, and is also exclusive of the cost of executing the decree.

(*f*) *Special statutable jurisdiction in Scotland, England, and Ireland.*

There are certain jurisdictions conferred on the local courts in all the three kingdoms by various special enactments, which it is necessary to refer to in passing. In Ireland special powers are given to the chairman in various matters under the Grand Jury Acts, the Municipal Corporations Act, the Poor Relief Acts, the Town Commissioners Act, the Landed Property Act, the Landlord and Tenant Act, the Drainage Act, the Irish Land Act, the Local Government Acts, and other Acts. In some instances the amount which may be awarded is £50, in some £100, and under the Land Act no limit as to amount is fixed

In England proceedings may be taken in the County Court under the Nuisances Removal Act, the Metropolitan Building Acts, the Municipal Corporations Acts, the Married Women's Property Acts, the Merchant Shipping Act, the Charitable Trust Acts, the Friendly Societies, and other Acts.

In Scotland special jurisdictions are conferred upon the Sheriff's Court by certain local Acts—such as relate to canals, railways, and other similar undertakings, under the Savings Bank Acts, the Hawkers Act, the Road and Turnpike Act, and other Acts; and under the Small Debts Acts and Debts Recovery Acts a summary jurisdiction is given, to which I have already referred.

I would observe that the general policy of these various enactments in the three countries shows that, as new statutable causes of action were created, it was thought expedient, as well as natural and proper, that the special penalties and debts of a public character, and the compensations and awards of a local nature, in these statutes first provided for, should be recovered in the local courts, and in such cases the question as to the limit of the jurisdiction of the courts does not seem to have been regarded as one of primary importance, nor does any regard seem to have been paid to uniformity in that respect.

It would seem, therefore, that while England is inferior to Scot-

land in the breadth and extent of the power enjoyed by its local courts, Ireland is ten or twelve years behind England in similar matters.

It would seem, further, that while the Scottish system of local tribunals is characterised by symmetry and simplicity, the local tribunals of England and Ireland are not based on any uniform principle either as regards the nature of the cases within their jurisdiction, or the amount recoverable.

(3) *Recent reports and recommendations to local courts.*

The present inquiry would be incomplete if it did not include the suggestions made by high authorities as to the constitution and jurisdiction of the local courts. It so happens we have very full material for this portion of our inquiry. The Commissioners appointed to inquire into the Courts of Law in Scotland devoted their Fourth Report, presented to Parliament in 1870, to this subject. The Commissioners were the very highest legal authorities of England and Scotland. The English Judicature Commission, in their Second Report, presented to Parliament in 1872, consider the subject of the English County Courts. And in 1876 the present Government introduced two Bills dealing with the question of the Irish local courts—one for reform in the official staff, and another for giving the courts the same equitable jurisdiction that the English local courts have had since 1865. These bills contain, perhaps, the latest authoritative recommendations as to the reform of the Irish local courts.

(*a*) *As to the Scottish courts.*

The Scottish Commission, after giving a short historic review of the courts and of their officers and powers, say as follows :—

> "There has thus grown up in Scotland a system of local jurisdiction, peculiar in itself, and preserving some special features, which are unusual and important. In the sheriff the counties possess a judge and chief magistrate, having a certain stamp of legal knowledge and authority, thoroughly removed from local influence or prejudice, and conversant with the most recent aspect of the law, from being engaged in its practice in the supreme court. In the sheriff-substitute, the community have a resident judge, well educated in the profession, and administering the functions of the Sheriff's Court under forms which make it easy of access, economical, and satisfactory. However it may operate in practice, the theory of making the eminent lawyers of the Bar the medium of a cheap and available system of appeal from the resident judge, and of an efficient and salutary control, is one which has many elements of usefulness to recommend it. The most important general question in regard to the constitution of these courts which we had to consider, was a proposal, by no means new, to prohibit the sheriff from practising before the supreme courts, to compel him to reside in his county, and to deprive him of the power of appointing substitutes. On this and other proposed changes there was submitted to us a very large body of evidence, which we have considered very anxiously, along with the views of the Law Commission presided over by Sir Ilay Campbell, which reported in 1818, and also the report of the Law Commission in 1834."

After stating the conclusions of those Commissions in favour of the system as it existed, and referring to a similar conclusion arrived at by a select Committee of the House of Commons in 1853, the Commissioners go on to say :—

"We see no reason for disturbing the system thus deliberately and repeatedly approved of."

And add further on, as follows:—

"The two great evils of local jurisdiction are, on the one hand, the risk of being affected by local influence in provincial and remote districts of the country, and, on the other, the necessary absence of the means of superior legal information. The first of these is inherent, and has been felt in every jurisdiction which is purely local. Recent inquiries into the provincial Bankruptcy courts in England fully justify this remark. Indeed it is impossible that a resident judge, however learned or cultivated, without any external control, can be altogether free of the reality, or, at least, the suspicion of it. The thorough efficiency and purity of the existing Sheriff Courts show how successfully this difficulty has been overcome in the Scottish system; and that not only in the purely judicial functions of the office, but in the not less important department of executive administration. In difficult and trying times, and in matters which concern the public peace, it adds greatly to the independence and position of the resident judge, that he can fall back on the advice and authority of one wholly unconnected with the county by local ties; while, on the other hand, the office is thus protected from the reality or the appearance of being biassed by local associations or complications, from which no resident official can be altogether free."

The Scottish Commissioners recommended:—

1. That the office of sheriff-substitute should not be abolished;
2. So far from the jurisdiction being curtailed, that it should be extended to real estate;
3. And that the judge should still be permitted to practise at the Bar, and should not be compelled to reside in his county.

(*b*) *As to English local courts.*

The Judicature Commissioners, after referring to the establishment and constitution of the County Courts, say:—

"The cheapness and convenience of these courts, compared with the expense of suits in the superior courts, have attracted to them a large increase of business of a varied and anomalous character. During the last twenty-five years, Acts of Parliament have been passed by which their jurisdiction has been increased and extended, not only as regards the amount, but the subject matter of litigation.

"In the result, the County Court is a very different institution from what it was when first established under the Act of 1846. It is found in practice that some of its duties clash with others; that the smaller business is interfered with by the larger, and the larger by the smaller. There are other defects in the system to which we propose to call attention.

"Inconsistencies of various kinds in the enactments which have from time to time been passed with respect to the proceedings in the several jurisdictions exercised by the County Court, show that the existing system has been built up with little regard for simplicity or uniformity.

"In its Bankruptcy jurisdiction, the County Court is practically a local court of first instance, with very extensive powers, and its jurisdiction is exclusive. Over Common Law claims as the subject of an action, its jurisdiction is limited to £50, and the superior courts have concurrent jurisdiction in actions of contract, when the amount claimed exceeds £20; and in actions of tort when it is above £10. Indeed the superior courts still have jurisdiction in cases where the claims are below these limits; but practically the jurisdiction of the County Courts in such cases is made exclusive, by provisions which preclude a plaintiff from recovering costs if he sues in the superior courts. In Equity matters every suitor has the option, up to £500, of proceeding either in the superior or inferior court—

> the jurisdiction conferred on the County Court in Equity being in all cases only concurrent. These inconsistencies have led to anomalous results. For instance; in Bankruptcy, if, on the application to a County Court on a debtor's summons or on a petition for adjudication, the petitioning creditor's debt be disputed, and put in course of trial, such trial must be in a superior court of law, if it be a legal debt exceeding £50. But if the debt be an equitable debt, not exceeding £500, the County Court may determine it. Yet, when once a debtor has been made bankrupt, the County Court, as a local court of Bankruptcy, has power to try questions to any amount, and of any kind, between persons interested in the bankrupt's estate. Its jurisdiction is enforceable, not only against parties to the litigation before it, and persons who, though not parties, voluntarily come in and submit to it (which are the limits of the jurisdiction of the superior courts), but against all persons claiming adversely; and when once its jurisdiction has properly attached, no other court can prohibit or restrain its exercise."

After referring to other anomalies in the Admiralty jurisdiction, and to the provisions with regard to appeal, they add:—

> "It cannot be doubted that these inconsistencies call for alteration and correction. In considering what remedy is to be applied, we may safely lay down that it is neither possible nor desirable to revert to the state of things originally established by the Act of 1846. The convenience of the County Courts is too strongly felt, even as at present constituted, and with their present defects, to make this practicable;"

and they recommend

> "That the County Courts should be annexed to, and form constituent parts or branches of the proposed High Court of Justice," and "that these courts—as constituent parts or branches of the High Court of Justice—should, subject to the power of transfer hereinafter mentioned, have jurisdiction unlimited by the amount claimed, whatever be the nature of the case; and that thus, if the parties to the dispute are contented that it should be decided in the County Court, it may be dealt with accordingly. It is true that the existing limits of the jurisdiction of the County Court may be waived by consent; but practically this power is of little use for it is difficult to induce disputants to agree upon anything.
>
> "We propose that when the amount sought to be recovered exceeds the limit which we shall suggest, the defendant should be entitled, as of right, to transfer the cause into the superior branch of the court. When the defence involves a cross claim above the same limit, the plaintiff should have the like right. There may be cases below the limit which still ought, from their nature, to be tried in the superior branches of the court. In every case, upon the application of either party, there should be a power of transfer, by leave of a judge of the superior branch of the court sitting in chambers, upon his being satisfied that the case is a proper one to be so transferred, or that for some special reason it ought to be heard and disposed of by a superior tribunal."

The Judicature Commissioners recommend:—

1. That a plaintiff may bring his action, whether legal or equitable, in the local courts, no matter how great the amount involved may be.
2. That a defendant be entitled, as of right, to remove any action to a superior court, where the sum claimed in a Common Law action is more than £50.
3. That in all matters, by motion to the court, a cause might be transferred from the higher to the lower, or from the lower to the higher court, on proper cause shown.

4. That the Registrar should have jurisdiction to deal with the smaller class of cases.

The Judicature Commissioners thus substantially recommend for England the system which had been so successfully carried out in Scotland, and which had received the approval of the Scottish Commissioners.

(c) As to the Irish local courts.

The Bill introduced by Sir Michael Hicks-Beach and the Solicitor-General for Ireland in the last session was based not on the Scottish system nor the recommendations of the Scottish Commissioners of 1870, nor the recommendations of the English Judicature Commission of 1872, but only proposed to bring the Irish local courts, after eleven years, to the basis of the English local courts as settled in 1865, before either of these reports was made. The Bill of 1876, thus apparently drafted on the English Act of 1865, proposed to raise the limit of the civil bill courts to £50, and to confer an Equity jurisdiction to the amount of £500. The Bill proposed to give to the Chairmen of Counties power to determine:—

1. Administration suits.
2. Suits for the execution of trusts.
3. Suits for the sale or redemption of mortgaged estates.
4. Suits for specific performance and cancelling of deeds, where the annual value does not exceed £30.
5. Proceedings under the Married Women's Property Act.
6. Partnership suits.
7. Partition suits, where the annual value does not exceed £30.
8. Proceedings by landlord against tenant for waste.
9. Proceedings under the Trustee Relief Acts.
10. Proceedings relating to the maintenance and advancement of infants.
11. Proceedings in injunction.

The Bill contained other provisions of a desirable character, assimilating the law in England and Ireland; but it did not propose to confer a jurisdiction in Bankruptcy.

Now this Bill received much comment in the press, and was carefully considered by various committees. A Committee of the Bar of Ireland reported on it; but I think I may say the report was concerned chiefly with considerations showing that the limit of jurisdiction which was intended by the promoters of the Bill was not the limit which was actually accomplished by the Bill.

Various criticisms from solicitors and others I have read, the gist of which was that there was no machinery for carrying out the proposed reform; indeed the word revolution has been used in connexion with it more than once.

This Society has, I think I may say, given emphatic approbation to the principle of the Bill. Dr. Hancock has for many years called attention to the hardships which the tenant population of Ireland labour under from the want of such an equity jurisdiction in the local courts, and Mr. Molloy, in his proposed reform of the Irish Civil Bill Courts, has given a vivid account of the need of such a jurisdiction.

The Bill, however, did not become law. Dr. Hancock has to com-

plain that we are now, not ten but twelve years behind English legislation, and Mr. Molloy must still regret that the laudable object of the Irish Parliament, of contributing to the ease of the poor by affording them greater facilities of hearing and determining causes by civil bill, has not been more completely carried into effect by the Imperial Parliament.

With such a concurrence of authority in favour of conferring an Equity jurisdiction, it is unnecessary for me to discuss the expediency of it. I may only observe, what Dr. Hancock and Mr. Molloy have both pointed out, that one after another of the Equity judges in Ireland have once and again, in strong language, commented on the hardship to poor suitors of being obliged to resort to the expensive proceedings of the High Court of Chancery. I will not requote the observations already quoted by them.

But it is to be observed that there is one great gap in the proposed Bill. No Bankruptcy jurisdiction was proposed to be given. And why? Is it not as necessary that the insolvent estate of a living person should be as cheaply and expeditiously administered by a local court as the estate of a deceased person? This Bankruptcy jurisdiction of the English County Courts has been characterized by the Judicature Commission as the "most important of all," and if it were necessary to give instances of hardship in this particular also, I might show that as the Equity judges have given evidence of the injustice done to the poor by compelling them to go into the Court of Chancery, so the Bankruptcy judges have commented upon the hardships inflicted in their courts. Take the report of one very recent case before Judge Harrison, from *The Freeman's Journal* of the 26th December, 1876.

The bankrupt was described as a provision dealer, and Judge Harrison, in commenting upon the case, is reported to have said:—

> "This was one of those pauper bankruptcy cases which have been cropping up very frequently of late, and that he was at a loss to account in any way for the mode in which such were usually conducted. In the present instance this wretched man—wretched in the sense that he had no property—had been put into Bankruptcy without the slightest hope of any ultimate gain resulting." [In concluding he said] "He had dispensed with the further attendance of the bankrupt, who, when he appeared in court last week, presented a terrible picture of want and misery, He would now adjourn the matter generally; but hoped that an endeavour would be made to get the man, as well as the case, out of court as soon as possible."

Now, we are compelled to ask, where are the man and the case to go to? and is there any reason why the local courts should not be Bankruptcy courts?

There is, no doubt, a difficulty created by the extensive powers given to the courts of Bankruptcy to determine questions between the estate and third parties. It was the policy of the English Act of 1869, and the Irish Act of 1872, to give to the court jurisdiction to try within its own tribunal all matters affecting the creditors; and by a charge and discharge in Bankruptcy questions may be tried which would form special jury cases, or very important Chancery suits. It has power to restrain proceedings in other courts, and it

is protected from having its own proceedings stayed by other courts. But the reason for giving a local jurisdiction in Bankruptcy is the same as in Common Law and Equity. There are cases that will not bear any considerable expense for their decision; for these the tribunal must be local, and the proceeding must be simple. A farmer in Donegal gets into embarrassed circumstances; he is unable to pay all his creditors in full; he wishes, or he is forced, to pay their debts rateably. His creditors live in the next market town—some, possibly in Derry—one or two, possibly, in Belfast. The total of his debts is small; the total of his assets smaller. His farm may be mortgaged for nearly what it is worth; questions may arise as to the tenant-right, or questions otherwise bringing the landlord into privity with the matter. Must the farmer, the creditors, and all parties concerned, have recourse to a tribunal in Dublin to decide the questions involved? Can the estate reasonably bear the expense of the proceedings in the Dublin court? and is a tribunal which the legislature has pronounced competent to decide questions of tenant-right, and of compensation as between landlord and tenant, incompetent to adjudicate on proofs of debt, and to strike a dividend on monies realized? If there is one power more than another that chairmen should possess, it is the power to adjust the rights of creditors *inter se*—a power that would clearly be of benefit to the embarrassed debtor, and that would also be of benefit to his creditors, by enabling them to realize in a speedy and inexpensive way the estate of the debtor. And it is specially desirable that when a person becomes unable to pay his debts, facilities should be given for realizing his effects for creditors, before they are eaten into by the vain attempt on the part of some creditors to get judgment and execution in advance of others, and the vain attempt on the part of the debtor to obtain delay by contesting well-grounded actions or processes, and thereby adding to the costs. Probably the reason why no jurisdiction is conferred in Bankruptcy arises partly from the difficulty of fixing a limit—partly from the opinion that the powers of the Bankruptcy Court, which are deemed necessary to do complete justice, are too extensive to be entrusted to county chairmen—partly from the opinion that it would be anomalous to give an unlimited jurisdiction in Bankruptcy, while it is withheld in Common Law and Chancery—partly from the fact that there is no adequate machinery to carry out what must necessarily be the principal portion in all such matters—the realization and administration of the estate—partly because the principle on which the legislation for local courts should proceed is not yet fully agreed upon.

(4) *Differences of practice and procedure, and in the official staff of the courts, which affect the recovery of a debt.*

1. The first and most notable difference is as to the time of the sitting of the court. The English and Scottish local courts sit the whole year round: the Irish court sits once in every quarter of the year only. The result is that there may be great delay in recovering a small debt in these courts, and the consequence is, that many

actions for small amounts are brought in the superior courts on this account.

2. The next difference is in the staff of officials. In Ireland the work of the Civil Bill Court is done entirely by the chairman, the sub-sheriff, the clerk of the peace or his deputy, and the process-servers and bailiffs. In England there are, in addition to the judges, registrars, treasurers, high bailiffs, and assistant bailiffs. The offices of treasurer and of high bailiff are now, however, practically and prospectively abolished. In Scotland, in addition to the sheriff and the sheriff-substitute, there are sheriff-clerks and sheriff-officers. Local courts in Scotland have within themselves, and through their own officers, complete and ample machinery for service of proceedings, for hearing and recording cases, and for enforcing decrees. In other words, duties analogous to those discharged by the chairman of the county, by the clerk of the peace, by the district registrar of the court of probate, by the sub-sheriff, the process-servers, and the bailiffs in Ireland, are performed by the sheriff, the sheriff-substitute, the sheriff-clerks, and the sheriff-officers. The existing official machinery of the English courts has been practically condemned. It would appear, therefore, that the Scottish courts afford a sounder model for any reform in the Irish official staff; and when the Judicature Commissioners have, in effect, recommended the complete adoption of the Scottish model of local jurisdiction in England, it is obvious that the Scottish official staff, through which that jurisdiction has been easily and satisfactorily administered, is the true model to follow both in Ireland and England. And when it is said that reforms admittedly desirable in jurisdiction and in procedure cannot be effected because there is no adequate machinery to carry them out, we may point to the great number of officials already fully paid, and waiting only for some judicious reformer to find out for them constant and regular work to do.

3. An important part of the procedure relates to what is called judgment by default, or decree in absence. At present every civil bill, whether defended or undefended, must be proved before the chairman; and this is a great protection against abuse. It is strenuously urged, however, by some writers, that there should be judgment allowed by default, as in the superior courts, and as at present in England and Scotland. If the Irish court was constituted on the Scottish model, of having a professional officer always present to hear and determine the matter, the present system might be modified or altered; but I have been several times a witness of the advantage to the poor of having these matters formally heard before a judge. The duties may be slurred over occasionally; but the trained mind and eye of the lawyer are arrested by anything suspicious in the nature of the case at hearing, and he is at once on the alert to prevent imposition.

4. Another important matter is the nature of the pleadings. In the Scottish court they are formal and complicated. This seems to be one of the gravest defects in these admirable courts, and there are some recommendations of the Law Commissioners directed towards greater simplicity in procedure. In the English courts the Common

Law pleadings are comparatively simple; but the Equity pleadings, though less voluminous than the High Court pleadings, are still formidable enough. In this respect I venture to think the Irish procedure is the best. The most complicated questions may be raised by a simple civil bill. If there is a set-off on which the defendant relies notice of it must be given. Even in land cases, the whole matter turns on a simple claim and a simple dispute, and the whole of the evidence is taken orally before the judge. Now it is the remedy by civil bill that has been found advantageous to the poor in Ireland. Whatever breadth of jurisdiction be given, it should be still by civil bill that redress should be sought. I am aware that this is not universally approved of; but I offer two considerations in support of it. (1) The list of heads of Equity jurisdiction, which I have given before, is surely concise and clear. There could be no more difficulty in determining what was meant by a civil bill, framed under one or other of those heads, than under one of the ordinary causes of action at Common Law. There may be references for account; but these could be supported by oral testimony. I have heard the highest judge in Equity declare from the Bench that he would not suffer what he called the highly-artificial system of the court to interfere with substantial justice. (2) If any suitor is taken by surprise, an adjournment can be had at small expense, as the parties reside on the spot, and complete justice can thus in the end be more readily and more cheaply obtained than by scientific pleadings. Causes of any magnitude, where formal pleadings and written proofs are desirable, which can reasonably bear the expense of such a mode of trial, will continue to be instituted in the supreme court.

5. Closely connected with the character of the pleadings, is the mode and kind of appeal. In Scotland the appeal is really an appeal on the facts found. In England there are different modes of appeal in the different jurisdictions—this being one of the anomalies to which the Judicature Commission called attention. In Ireland the appeal is a re-hearing, and all evidence, new and old, can be gone into before the appeal judge. The appeal is to the next going judge of assize. Now this question of appeal has raised some warm discussion. The Equity appeal in England is direct to the court in London. The appeal contemplated by the recent Bill in Ireland was to be to the Equity courts in Dublin. It is clear these tribunals must, in Equity matters, be brought under the control of the Supreme Court of Equity; and it is because of the difficulty of appeal from the court where the evidence is taken orally to a court where it is taken by affidavit, that some advanced reformers have objected to the conferring of any Equity jurisdiction at all. But by the simple twofold course of a re-hearing where the facts are disputed—such a re-hearing being before the judge of assize—and a case stated, where the facts are not disputed, to the Court of Chancery, every substantial advantage of appeal would be obtained. The Committee of the Irish Bar, to which I have referred, recommend that the power of stating a case should be given to the chairman, in Common Law cases as well as in Equity cases. They suggest also that a short-hand writer should be attached to each court, as in Bankruptcy and Probate. While making it optional to any

suitor, at his own risk, to resort to such a method of preserving evidence, it does not seem desirable to make it compulsory on suitors to do so. The option is exercised in the Court of Bankruptcy, and the plan is found to work well.

A part of this question of appeal turns on whether an appeal should be given as of right, or whether an affidavit should be required from the attorney as at present. It seems expedient that it should be given as of right; but where the nature of the case demands it the chairman might have power in any case to order security to be given. If security be not given, it should still be open to any party to appeal, but the appeal should not operate as a stay upon the execution of the decree. This is practically the law of appeal from the superior courts to the Appellate Court, approved of and established by the Common Law Procedure Acts. The appeal is of right in Scotland and England.

6. Following upon the question of appeal is the question of costs. The Irish courts are by far the cheapest of the three tribunals. It appears from the evidence taken by the Commissioners already referred to, that the costs of a cause in the Sheriff's Court average, for one side, £12. In English County Courts they vary, rising as high as £12 in Common Law cases, and in Equity causes they may reach £70 or £100. In the Scottish Small Debts Court, when solicitors appear, the maximum cost is about £5. In Ireland, the courts are, in truth, what they are called, half-crown courts. The costs cannot reach more than £1 1s. a-side. It is by reason of the immense number of cases got through in a day, that the high-class attornies who practise in these courts are remunerated. There is, perhaps, too much temptation to over speed, where the judge is anxious to get back to his own professional work, and where the attornies are remunerated by reason of the expedition with which cases are got through. There is a provision that no new case is to be called on after five o'clock; but as the hour approaches short cases are often summarily disposed of, and a long case kept for the parting moment.

7. Another matter which has come under the observation of the Committee of the Irish Bar is the want of proper offices, and of proper records. It is desirable that these courts should be fully furnished both with officers and buildings; but, so far as regards the registration or preservation or proof of decrees, the book of the clerk of the peace is an admirable register and record, and needs only to be carefully preserved to be a complete record and chronicle of the court.

(5) *Remedies against the debtor.*

It is not enough that the court be able to give a decree; it must be able to give effectual relief by its decrees.

The amount of redress which the Scotch local court can give is much greater than can be given by the English County Court or the Irish Civil Bill Court; and the English County Court, in its turn, has more ample powers than the Irish local court.

The debtor's person is now free from arrest, except under special

provisions as to absconding debtors, and debtors who have means to pay and refuse to do so. The policy of recent legislation has been to free the honest debtor from needless imprisonment. But the abolition of arrest for debt involves the necessity of complete power and ample means of realizing for the creditor all the estate and effects of the debtor. The Scotch courts are a model in this respect. Not only can the court seize the goods, and the money and securities held by the debtor, but it can, even before final decree, arrest them, unless he find security to make them forthcoming to the amount of the debt and costs that may be decreed against him. All sums of money due to the debtor may be similarly attached; and the real estate of the debtor may also be arrested, both before and after final decree, though the order for sale of the real estate can only be obtained in the Court of Session.

In England the goods of the debtor can be seized and sold under a decree of the court, and a debtor's interest in a term of years can also be sold. Cheques, bills of exchange, and other securities for money of the debtor, may be seized and realized for the benefit of the creditor; and there are provisions for discovery of the debts due by a third person to the debtor, and these, when discovered, can be attached. In the ordinary or Common Law jurisdiction of the court there is no power to arrest the goods or attach the debts before final judgment. Under the Bankruptcy jurisdiction, the power is, however, very ample and complete.

In Ireland, on the other hand, there is no remedy except as against the goods of the debtor. There is no power of obtaining sums of money due to him. His interest in land, whether as tenant from year to year or in fee, is protected from seizure, and there is no power of preventing him from disposing of his property pending the proceedings. Unless there remain enough goods to satisfy the plaintiff's demands after decree made, the plaintiff's decree is to him valueless, and the proceedings in the Civil Bill Court useless.

There are two classes of cases in which a man defends proceedings at law. There is either some disputed question, whether of law or fact, to be determined, or he has not the means of paying the demand immediately or in full, and he avails himself of the machinery of the law for the purpose of delay. Now, as to the first of these classes, a sound system of laws should provide a competent tribunal to decide all matters in controversy. There are some of these cases that can reasonably bear the expense of a central tribunal and a trial before judges of the highest legal ability. It is desirable that these cases should be tried in such a tribunal, if on no other ground than on the benefit of having an authoritative exposition of the law, and clearness and certainty in the application of its principles. There are cases that cannot reasonably bear the expense of such a mode of trial. For these there should be a local tribunal and a simple procedure.

But as to the second of the two classes—where the object of defence is delay—it is desirable that the courts, whether central or local, should have full power to prevent the delay from injuring the creditor. The longer the struggle is kept up, the more costs and ex-

penses are added to the demand. If the debtor is really unable to pay, it is for his advantage, and it is for the interest of all parties, that his estate and effects should be at the earliest moment distributed rateably among his creditors. But the law as it at present stands encourages the creation of expense. It properly favours the creditor who is active in asserting his rights; but it deprives him of any benefit from that activity, unless he has proceeded to final judgment at considerable cost. The court should have power, while giving every facility to a creditor to pursue his remedy, to preserve the estate and effects for the benefit of creditors generally, if the creditors seek its aid. The only machinery, however, given to our local courts in Ireland, in ease of the debtor, is the power of making a decree payable by instalments. That very provision, however, admits the necessity and shows the expediency of giving to the local courts in Ireland full powers of arresting the goods and attaching the debts due to the debtor, and of doing complete justice as between the debtor, on the one hand, and all his debtors and creditors on the other—such full powers being already enjoyed by the local courts in Scotland, and more or less completely by the local courts in England, either under their Common Law, or under their Bankruptcy jurisdiction.

There are differences, again, as to the mode of executing the decrees of the courts. The court in Scotland takes the whole matter under its own supervision, and controls the seizure and sale, and the payment of the proceeds, and can hear and determine summarily any matter in connection therewith. In England, under what is known as the banking system, the court is the medium for the payment by the defendant to the plaintiff of the judgment debts.

In Ireland there is a power of ordering the decree to be paid by instalments, and there has been some contradictory legislation with reference to the execution of decrees by the bailiffs of the sheriff, or by special bailiffs of the suitor. We have returned now to the plan by which a judgment creditor may execute the decree by special bailiffs at his own risk, and that simply because the Scottish system of levying the decree under the court is not in force, and there was sometimes occasion for double proceedings—first, to get as much money into the hands of the sub-sheriff as would satisfy the debt, and then to get out of the sub-sheriff the proceeds so obtained. This latter was in practice sometimes found the harder of the two. There can be no doubt that the Scottish system is more conformable to a sound jurisprudence, and it is contrary to the spirit of our law to make the plaintiff the executioner of his own decree. We have reverted to the undesirable method in Ireland, to avoid evils occasioned by the want of proper jurisdiction, and a better system of official management in the local courts. In Scotland, the officers are permanent officers, giving their entire time to the duties. In Ireland, the sub-sheriff has a temporary appointment only.

It is in the mode of enforcing decrees against land that the local courts in the three countries are all most defective. This arises, partly from the complications of title and transfer handed down to us from the feudal law, partly from the jealousy with which questions of real estate have been reserved for the superior courts—and

this arises also out of the same feudal law, and partly from the unsatisfactory state of the registration and enforcement of judgments against land in the superior courts themselves.

The local courts have no power to sell real estate directly. The power of arresting goods, however, which the Scotch courts have, is supplemented by a power of "inhibiting" real estate. The "inhibition" is practically a "caution," as it is called in Lord Cairns's Land Transfer Act, which prevents the owner from disposing of the property without satisfying the decree. The adjudication of sale is, however, reserved for the supreme court.

In Ireland no civil bill decree below £20 can be charged upon land. A civil bill decree above £20 can be made a charge upon land. But this can only be done by removing the decree by certiorari to the superior court, and this again will only be done if the judge be satisfied on affidavit that there are no goods of the debtor against which execution can issue. When thus removed, it has all the force of a judgment of the superior courts, but no more. To make it a charge on land, the affidavit must be registered in the Registry of Deeds office as a judgment mortgage; and when thus, at considerable cost, registered as a judgment mortgage, the creditor must, if he wishes to benefit by it, either proceed by ejectment at Common Law (in which case, if he succeed, he will be in the pleasant position of a mortgagee in possession liable to account for the rents and profits—I say if he succeed, for there are many risks of failure). The judgment mortgage is only a charge on such estate as the debtor had at the time of the judgment, and the action may be defeated by a previous dealing with the property of which the creditor may have been ignorant, and which no search could disclose; and even if this be not the case, there are, as one of the judges recently remarked, a great many "nice points" in connexion with such judgment mortgages, and the necessary proof of title through them, and counsel who advise, and attorneys who prepare the proofs in such an action, need to be more than vigilant, and even the most wary sometimes tumble into unexpected pitfalls. If, on the other hand, the creditor elect to proceed by sale of the property, he must resort to the expensive proceedings of the Landed Estates Court, no matter how small the debt, or how extensive the property, and that court, in the exercise of the discretion conferred on it by statute, refuses to sell land held under a tenancy from year to year, no matter how valuable the tenant's tenant-right interest may be.

In England there is a provision made for the registration of the judgments of County Courts, and they have all the effect of judgments of the superior courts, and the further proceedings are the same as on judgments of the superior courts. The law of judgments in England and Ireland is so dissimilar that it is not easy to establish a comparison, nor is such a comparison at all practicable inside such an essay as this. I am saved the necessity of entering into such investigation, however, as the most recent legislation in this respect, in England, adopts a simple plan of land transfer, and of creating charges upon land, which has been approved of and dis-

cussed in this Society, and which it has been suggested should be extended to Ireland.

Where there are interests in land, which from the smallness of the debt, the shortness of the tenure, or from other reasons, it is too costly to transfer by elaborate conveyancing, or to sell in the higher courts, it would seem to be desirable that these interests should be subject to a charge, by way of caution, in respect of a decree of any local court, and that the local court should have the means within itself of enforcing the caution and realizing the estate. And it would seem desirable that such "caution" might be lodged, even before final decree, on the usual terms of cautionary notices, viz., payment of costs and damages, if the caution were not a fit and proper procedure under the circumstances, and that after decree such caution might be lodged without such terms. The decree would, in the simplest way, become a charge upon land, which, however, could be discharged at a minimum of expense by paying the amount of the judgments.

This would be greatly facilitated if the plan of land registries in connexion with the local courts were adopted, and if the system of registration which I have referred to were put in force in Ireland. It is, I think, an argument for the suggested reform in one particular of our jurisprudence, that it is in harmony with, and complementary of other reforms already made or approved of by the most eminent jurists of the day in other departments.

The Judicature Act of 1873 contains a section which gives legislative force to this principle in very apt words. I cannot sum up this part of my inquiry more properly than by quoting it. The section is the eighty-ninth :—

> "Every inferior court which now has, or which may, after the passing of this Act, have jurisdiction in equity, or at law and in Equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such court such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal, subject to the provision next hereinafter contained [viz.: a power of transfer to the Supreme Court], in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice."

(6) *Distribution of business between the local and central courts.*

It remains to consider how the legitimate work of the central and local courts can be best distributed between them. There is an apprehension that such an extension of jurisdiction in the local tribunals as I have glanced at would drive suitors away from the superior courts. There is implied in this statement a confession of imperfection in the judicial system of the supreme courts which it is dangerous to make. But, in truth, the apprehension is not well grounded. Time after time the judges in Dublin complain of cases being brought in the upper courts which should be brought in the lower courts, and of witnesses being dragged up to Dublin from Donegal or Kerry about some trifling dispute. Yet, notwithstanding the observations

of the judges, and notwithstanding the chance of having the case remitted, and notwithstanding the risk of being deprived of costs, country attornies continue to bring these cases in the superior court, and lay the venue in Dublin. The difficulty would appear to be, therefore, to keep unsuitable cases out of the central courts, rather than to keep suitable cases in them. But, further, the experience of Scotland shows that in what may be called a system of free-trade between the central and local courts there is a very proper and suitable division of labour. Mr. M'Neil Caird, the author of the *Essay on Local Government* in the Cobden Club series, in his evidence before the Commissioners, points to the fact that nine-tenths of the cases tried in the local courts in Scotland were under £50 in amount, and yet the jurisdiction in these courts is theoretically unlimited. And in our own country the Quarter Sessions criminal jurisdiction, though concurrent with the Assize jurisdiction, does not seriously conflict with it. But there can be no difficulty, from the matters already disclosed in the course of this inquiry, in arriving at an efficacious method of preserving the proper distribution of business.

It would appear that there are three kinds of business which are properly within the scope of local tribunals. (1) Cases which are principally administrative. (2) Cases in which there is no real defence on the merits, and the defendant resorts to law merely for the purpose of delay. (3) Cases requiring judicial decision, but which cannot reasonably bear the expense of a contest in the central courts.

Now, the sum which is, by a wonderful unanimity of opinion among jurists in Scotland, in England, and in Ireland, arrived at, as the one which indicates the limit between cases that can and cases that cannot reasonably bear the cost of a trial in the superior courts, is £50—that is, in the case of a demand of a legal character by one individual suitor. The limit of £500 in Equity is arrived at by a rough estimate as about the amount which, from the multitude of interests generally involved in Equity matters, would give relief to the same class of suitors as would be within the limit of £50 at Common Law.

Further, in the superior courts already there are powers somewhat anomalous, and in some cases needlessly encumbered with restrictions to remit cases to the local courts; and there are also provisions as to costs, which are intended to compel suitors to resort to the local tribunals.

A very slight extension of these powers, and a removal of the present restrictions, would accomplish a proper distribution of business in a much more satisfactory way than by the enactment of a hard-and-fast statutory limit.

The provisions might be of this nature:—

1. A plaintiff might sue in the inferior court for any amount or any kind of debt; but a defendant so sued in the inferior court for a sum exceeding £50, should be entitled, as of right, to transfer the cause to the superior courts.

2. A plaintiff who recovered in any action in the superior courts of Common Law a sum less than £50, whether in contract or for a wrong, and whether he resided in the same civil bill jurisdiction as the defendant or not, should not be entitled to any costs, unless the

judge at the trial certified that it was a fit cause to be brought in the superior courts.

3. Parties defendants in any suit in the lower court involving the administration of a fund exceeding £500, or involving the sale of property of a greater annual value than £50, should be entitled, as of right, but subject to such order as the court above at the hearing might make as to costs, to transfer such cause to the High Court of Chancery, the Central Court of Probate, the Central Court in Bankruptcy, or to the Landed Estates Court, as the nature of the case might require.

4. There should be a power to bring any matter, arising in the hearing of a cause in the local court, by way of reference or appeal, or case stated, for judicial decision and direction in the central courts; and interlocutory as well as final decrees should be the subject of review and decision.

5. Before trial, any of the superior courts should have power, on fit cause being shown upon motion, either to send a cause down to, or to bring a cause up from, the local court.

In the enactments already passed, in the recommendations of the Commissioners, and in the Bills of the present Government, there will be found authority or precedent for each of these suggestions. The result would be that cases in which there is a *bona fide* contest, and which could bear the cost, would be tried by the highest judicial ability. Cases of small amount would be tried in an inexpensive way on the spot. Debtors seeking to use legal processes for the purpose of delay would be baffled; and while a large portion of local administrative work would be done through local officers, there would be a simple andefficacious method of getting the decision of the highest legal ability on any question of difficulty that might arise.

(7) *Jurisdiction in small cases of petty sessions court.*

With reference to the inferior local tribunals, I may be permitted to observe, that side by side with the Sheriff's Courts in Scotland, a small debt jurisdiction, which is largely made use of, is exercised by justices of the peace in Scotland, and that the policy of extending the civil jurisdiction of Petty Sessions Courts in England and Ireland seems to have received the favourable consideration of Parliament. By Viscount Cardwell's Act of 1860, an equitable power of restraining tenants in small tenancies was given to justices at petty sessions in Ireland; and by the Imperial Act of 1875 with reference to employers and workmen, an equitable jurisdiction was conferred on justices for the purpose of settling trade disputes. The subject has come under consideration in connexion with the linen laws in the north of Ireland very recently; and it has been suggested, in a report lately presented to the Chief Secretary by Mr. John Hancock, that a general extension of the jurisdiction of the civil side of the court to a small limit—say £10—would prevent the criminal procedure in many instances from being resorted to. I may add that as in most districts there is a paid magistrate, and in all an efficient clerk, if jurisdiction up to £10 were given to these tribunals, the very

small cases of the poor would obtain a hearing, and the danger of their being unable to get fair play, if larger powers were given to the county chairman, which some appear to dread, would be thereby averted. But into this field of inquiry it is not necessary for me to enter in detail.

(8) *Advantages to be derived by Ireland from an application of the principles of the Scottish local courts.*

1. If a permanent officer, corresponding to the sheriff-substitute, were appointed, there would be easy and prompt means of recovering debts all the year round. This officer met with the approval of the Scottish Law Commissioners. The English Law Commissioners recommended that the registrar of the local court in England should discharge similar duties. If such an officer were appointed, the objections to conferring an Equity or Bankruptcy jurisdiction on local courts would vanish; for, in so far as these duties are ministerial or official, he could discharge them on the spot where the cause of action arose, at considerably less expense and less delay than they could be discharged by the chief clerk in Chancery in Dublin. The Committee of the Bar recommended an extension of the principle of the administration summons in Chancery; but I take the liberty of saying that for small country cases that mode of procedure does not provide an adequate remedy. To have accounts vouched by the clerk of the town agent of the country solicitor of the client, to have queries cleared up by correspondence between these individuals, and then verified by affidavit before the chief clerk, is not, I submit, a speedy or efficient way of taking the accounts, say of the executor of a tenant farmer residing in a remote country district. A quarter of an hour's examination of the man himself before a local officer would be much more satisfactory. Besides, the costs of one party in an ordinary administration summons, notwithstanding that it is so much better than the proceeding by bill, can hardly fall below £50 or £60; and as there may be two or three parties whose costs may come out of the estate, it is obvious that such a mode of administering estates would be costly, even to the exclusion of justice, in many of the smaller cases. It is owing to this simple reason that Scotland has for more than a century, and England has now for twelve years, enjoyed the benefit of local courts of administration.

2. I may further point out that there are two distinct matters often mingled together in the demand for a reform of local courts, both of which would be satisfactorily determined by the adoption of the Scottish plan. Business men in boroughs like Belfast and Cork, who have often much need of expedition in legal processes, complain of being obliged to resort to Dublin for the enforcement of their demands. But this question is quite distinct from the question of the general extension of local court jurisdiction. The extension and development of local courts in Belfast and Cork are advocated on the express grounds that these will compete with the superior courts in Dublin in certain matters, and prevent the merchants of these two communities from resorting needlessly

to the official machinery of the central courts. But throughout this paper I have had carefully in view that class of suitors who will be entirely without relief, if the only courts they can go to be the superior courts. The one reform is advocated on the ground of decentralization in the administration of justice; the other is advocated on the ground that no class of Her Majesty's subjects should be debarred from getting justice in Her Majesty's courts. And yet there is a class of reformers who think they are doing more than can reasonably be asked of them if they concede the expediency of giving some kind of enlarged jurisdiction to the courts at Cork and Belfast.

The merchants at Belfast and Cork do not complain of being obliged to come to Dublin for the Common Law and Equity cases, or indeed for any cases that require judicial decision. What they do wish for not unnaturally, and ask for strenuously, is that in administrative matters they may be able to have the work done in their own locality; and it is especially in Bankruptcy that they feel the hardship of being obliged to resort to a court in Dublin at every stage of the case. Creditors of a bankrupt believe that they could, in a few weeks, at a small cost, and on the spot, do substantial justice to all parties concerned in winding-up the estate of a bankrupt; but they experience a difficulty in winding it up through professional men in Dublin, and by means of an official machinery that is costly and dilatory. They would not, however, I think, be content with the decision of a local tribunal in any important question requiring judicial decision. This branch of the reform appears to me to be recommended by very important considerations. It would relieve the court in Dublin of a huge mass of purely ministerial work, which only hampers and clogs the other functions of the court. It would enable local solicitors to attend summarily and expeditiously to the questions of detail that are constantly arising, and enable the traders interested in the winding-up of an estate to watch it closely and assiduously. It would save considerable delay and cost; and as part of the proposed reform is to have an easy method of bringing any matter before the central court by way of case stated, or by motion, it would add dignity to the court in Dublin, and preserve for it the legitimate function of a superior court—that of hearing and determining the more important questions of law or fact. In many respects the court now resembles a Quarter Sessions Court more than a superior court; much of the business is necessarily done by solicitors, who are, as a rule, men of much skill, but who labour under the disadvantage of not being in ready personal communication with their country clients. It is evident that local solicitors could do this part of the work much better in a local court; and the class of business which is now conducted by counsel would still continue to be heard and determined by the chief judges in Bankruptcy, as a court of appeal and control over the local courts in Bankruptcy matters. And what is true of administrative matters in Bankruptcy is true also of administrative matters in Chancery.

Now the plan adopted in Scotland would, if adopted in Ireland, meet both these demands for the reform of local courts.

The Scottish plan of having the judge of the local court a member of the Bar in actual practice is so far modified in Edinburgh and Glasgow that he is made a permanent judge, sitting practically the whole year, and he is supported by a sufficient number of assistant-judges, or sheriff-substitutes, to enable him to accomplish the entire work. There are four substitutes in Glasgow, so that there is an official staff of five local judges for doing really local work, and if we include the county, there are seven local judges. The Scottish Commissioners thought there were not enough in Glasgow, and recommended an additional substitute to be transferred from the county to the town. We can hardly wonder, then, that the Belfast merchants and professional men complain that they have only one judge who, though one of the most diligent, as well as one of the most able of the Irish Bar, can hardly be expected to do as much as six or seven Scotchmen. While, therefore, the plan of giving an extended and symmetrical jurisdiction to all the local courts would, with certain modifications, meet and satisfy the reasonable demands of Cork and Belfast for increased local tribunals, the plan of giving an increased jurisdiction to these courts alone would not meet or satisfy the need for extended jurisdiction in all the courts generally; and in the larger counties, as well as in the larger towns, additional substitutes, where necessary, should be appointed.

3. The adoption of the Scottish plan would add simplicity and uniformity to the system of local judicature in Ireland. The jurisdiction of the judge of the local court in Ireland is anomalous in the extreme. He can give judgment in land cases to the amount of hundreds of pounds. He cannot hear a case about a horse, if the sum claimed for the animal exceeds £40. He can examine and decide upon leases by limited owners, but he cannot investigate the accounts of a trustee. He is permitted to consider every equity affecting a defendant, but he is prevented from considering any equity affecting the plaintiff. He may give a landlord a decree for possession, where the rent due amounts to £100, but he cannot decide a disputed mearing between tenants if the land is valued at more than £20. He can sentence a criminal to the severest penal servitude known to our law. He cannot adjudicate on an ordinary debtor's summons.

4. The adoption of the Scottish plan would involve an increase in the professional costs of solicitors practising at quarter sessions. A very high class of practitioners, no doubt, attend these courts at present; but these are only paid, as I have pointed out, by reason of the expedition with which the work is carried through at sessions. If this work were spread over a longer time, it would seem that the scale adopted in the Scotch Small Debts Recovery Act would be more suitable. Instead of small sums being allowed for details—the worst way, surely, a professional man can be remunerated, a system of remuneration, which, as Adam Smith pointed out, has corrupted the law language of Europe—a certain sum should be allowed for the "conduct of a cause." The sums allowed in that Act for the conduct of a cause are as nearly as possible about £8 per cent. on the amount recovered. This does not seem an undue reward for professional

skill, and it is in the interest of suitors that the fee should be sufficient to attract to the courts a high class of professional men.

(5) The adoption of the Scotch plan, modified as I have suggested, would, I think, also be a benefit to the Bar. At present it can scarcely be said that counsel attend the local courts. This is partly owing to the fact that the fee for instructing counsel, allowed to attornies, is wholly inadequate. It is partly owing to the fact that few cases of sufficient importance arise to justify the employment of counsel, and as it is not worth while to attend sessions specially for the few cases that may arise, it is rather unusual to have a quarter sessions circuit of barristers in Ireland. In the result, when a special case does arise, counsel has to be brought down on a special fee. But inasmuch as presumably only the more important cases will be tried at the hearing by the chief local judge at his stated courts, or a sufficiently great number to encourage the junior Bar to attend the court, it is rather to be expected that the Bar would attend. The advantage would be considerable to the suitor in being able to have counsel at a small fee of from one guinea to three guineas, instead of being obliged to pay a special fee of from ten to thirty guineas, as is generally the custom in land cases.

(6) But not only would the adoption of this plan be of advantage to the suitors and to the professional men, but by very reason thereof it would be beneficial to the community. The industry of Ireland is carried on by small capitalists. It has been abundantly proved that there is no want of capital in Ireland. But bankers, and other lenders of money, scruple to give loans to small farmers and traders, from the difficulties in recovering the loan, or in realizing charges upon the land, or in selling the goods of the debtor. If there were a local court competent to try all questions, and to give effectual relief in all small cases, supplemented by a cheap and easy system of transfer of land, and an easy method of realizing the charges thereon, the difficulty in the way of accommodating small farmers and small manufacturers with loans of money would be to a large extent removed, and such borrowers would be able, therefore, to obtain loans on more advantageous terms.

(9) *Conclusion.*

The model of a local court which is suggested by the foregoing facts and considerations, in analogy with what Scotland has had for more than a century and in accordance with the most recent suggestions of some of the most eminent jurists in the Three Kingdoms, seems to be :—

A court with ample power, within the limit of its own jurisdiction, to try all questions, whether of Law or Equity, and whether affecting real or personal estate.

It should have jurisdiction to consider and determine the rights of creditors among themselves, to decide disputed questions as to wills and probate matters, and to administer such estates and trusts as fall within its limits by the aid of competent local officers.

It should be composed of a permanent judicial officer, who should sit the whole year round, and of a chief judge, not connected with

the county, but in actual practice at the Bar, who should hold courts at stated periods.

It should have, within the limits of its jurisdiction, full powers to enforce its decrees by officers having permanent tenure, and under its immediate control, and to give as effectual relief, in the cases properly falling within its scope, as can be given by the central courts in the cases properly falling within their scope.

There should be a cheap and expeditious appeal from the decisions of this court, whether interlocutory or final, and that both on the facts and on the law, the appeals or re-hearings on facts being tried on circuit, and the appeals on law or arguments on case stated being heard by the central courts in Dublin.

There should be an easy and simple method of transferring fit causes to the superior courts, and having cases unfit for these courts remitted to the courts below.

The practice and procedure should be simple and free from scientific pleadings: causes should be tried by oral examination of witnesses, rather than by affidavit; and thus the "influence, benefit, and protection of the laws, and of the courts of justice," as contemplated when the Scottish local courts were first established, would be brought within the reach of the humblest suitor in the land.

IV.—*Report of the International Law Congress Committee on the Complaints of Foreign Consuls in Ireland of the want of a local court in each Irish port, with permanent judicial officers for the prompt determination of all questions between Foreign Captains and Irish Merchants.*

[Read Tuesday, 24th April, 1877.]

THE Council having named us as a committee

> "To consider the best means of making provision that the Society and those who take an interest in this subject in Ireland shall be adequately represented at the International Law Congress at Antwerp next autumn,"

we have held several meetings, and beg to submit the following report.

What an International Law Congress can effect in removing impediments to foreign trade.

One of the chief functions of an International Law Congress is to secure the introduction of simplicity and uniformity in the laws of all countries, as to the several questions that arise for legal adjustment between the citizens of different states in the course of international intercourse. As the questions of difference that can arise in the ordinary dealings of trade and commerce are, from their nature, uniform throughout the world, there is no reason why there might not be as great uniformity in the laws of different countries affecting these matters, as has been already secured, to a large extent, in the international relations as to letters, by means of Postal Conventions, and