

JOURNAL  
OF THE  
STATISTICAL AND SOCIAL INQUIRY SOCIETY  
OF IRELAND.

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PART LXXIX.

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I.—*Irish Private Bill Legislation.—A Tribunal.*

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[Read Tuesday, 22nd November, 1898.]

THE demands which the Irish Local Government Bill made upon the time of Parliament last session rendered it impossible to expect that the Government could introduce the bill for the reform of Irish Private Bill Legislation, which was mentioned in the Queen's Speech for the year 1897. This reform has been advocated by the Irish Press of all politics, and has been constantly and urgently demanded for now nearly half a century by the Irish public. It is one of the most crying of our needs. The industrial progress of Ireland has been blasted by the present system. Municipal improvement has been retarded and prevented. Thousands and thousands of pounds that might have been expended on sanitation, or the beautifying and improving of cities and towns, have been wasted by this deplorable and preventable expenditure. If the extravagant costs that the Corporation of Dublin has had to pay for this London conducted litigation had been expended on the encouragement of art, we might have had a Municipal Art Gallery to rival the Walker Gallery of Liverpool, or the splendid collections of Manchester, instead of submitting to the disgrace of never contributing a farthing to the encouragement of art in any shape or form. The present Government is pledged to further the material interests of the country. It was prepared, had time permitted, to legislate on the subject two years ago. The time has now come when the public should insist that their pledges on this subject be fulfilled, and that the system which has drained away millions of money from Ireland, and which, from year to year, is not only depleting their capital but is barring new avenues to industrial progress, shall at last be put an end to, and that a simpler, and cheaper, and more satisfactory system shall be introduced. Preliminary

procedure can take place in Ireland, and the inquiries can be held locally. A thoroughly competent tribunal can be created, and Parliamentary control can still be maintained. All this can be and ought to be accomplished. I ventured in December, 1896, in an article in the *New Ireland Review*, and in a paper read before this Society, to suggest that the difficulty of obtaining a good tribunal, which has always been relied upon as insurmountable by the opponents of Reform, could be met by providing that the inquiries should be held before a judge of the Supreme Court, selected from the Election Petition Rota, sitting together with two or more lay Commissioners of high capacity, to be selected for each case from a panel to be periodically re-formed. This panel, it was suggested, could be constituted partially by nomination by the Lord Lieutenant and partially by nomination by the various public bodies in Ireland, while in certain exceptional cases inquiries could be held locally by committees consisting of members of Parliament. The necessity of having a tribunal which shall embody the continuity afforded by judicial training with the elasticity imparted by a lay element, has been always strongly insisted on, and apparently a fixed tribunal will not satisfy the public demand. The danger of stereotyping decision must be avoided, and the tribunal should, as far as possible, represent a Parliamentary Committee, which is more likely to reflect prevailing opinion, than a fixed body, such as the Railway Commissioners. Since this suggestion of a panel was made two Bills have been introduced into Parliament to reform Private Bill Legislation for Scotland, and in them the system of selection from a panel was adopted. In 1897 a Bill was introduced by Lord Balfour of Burleigh, Secretary for Scotland, which passed a Select Committee of the House of Lords; in 1898 a Bill somewhat similar, but broader in its lines, and undoubtedly improved, was introduced into the Commons by the Lord Advocate and Mr. Balfour, who has always been an earnest advocate of the reform of the present system. The latter Bill was referred to a Select Committee, and was amended, and in its amended shape recommended for acceptance by their report on 20th July, 1898. The Bill of 1898, as amended, appears to me to afford an excellent solution of the difficulties of forming a tribunal. It would simplify procedure and cheapen it, and, with the necessary verbal alterations, it ought, in my opinion, to be extended to Ireland. If so extended, I believe it would be accepted with acclamation by the Irish public. This Private Bill Procedure Scotland Bill of 1898 is materially different from, and is a distinct advance upon, any previous measure brought forward on the subject. The leading provisions of the Bill of 1898 were:—

1. The substitution of the lodgment of a draft Provisional Order with the Secretary of Scotland for the deposit of a Private Bill.

2. For the purpose of maintaining uniformity of practice with Parliamentary procedure, and to prevent any powers inconsistent with such practice being granted, copies of the Provisional Order sought for were also to be deposited at the Private Bill Office of both Houses of Parliament, so that the Chairmen of the Committees of either House should have an opportunity of considering the proposed Order and communicating with the Secretary of Scotland.

3. If either of the Chairmen should be of opinion that the powers sought were of such magnitude or character that they ought to be determined on by Parliament only, they could direct that the proposal should come before Parliament as a private Bill, but all the notices published and plans deposited for the purposes of the intended Provisional Order should, in that event, be available for the purposes of the private Bill.

4. If, however, the Provisional Order proceeded in the ordinary course, a hearing would be directed before a tribunal of three Commissioners, who were to hold a local inquiry, and report the evidence and their recommendations on it.

5. The tribunal was to be formed by a Sheriff (a Scotch County Court Judge), and two lay Commissioners to be taken from a panel of twenty periodically formed.

6. If the Commission reported in favour of the Provisional Order, it was to become law within a specified time, unless a Memorial was presented against it.

7. If such a Memorial were presented, then (unless the Chairmen of the Committees and the Secretary of Scotland should concur in holding such an inquiry to be unnecessary), the Secretary of Scotland should introduce a Confirmation Bill in Parliament, which should be heard before a Joint-Committee of both Houses, and whose decision, once given, would be final, and have the effect of that of a Select Committee in each House successively; and this Joint-Committee should have power to award costs.

The Bill thus provided :—

1. A local inquiry before a competent but not permanent tribunal.

2. Parliamentary powers could be obtained without going to Westminster, but safeguards were introduced to prevent the introduction of provisions inconsistent with the practice of Parliament or the public interest.

3. It preserved to an opponent the right, subject to liability for costs and a veto of the Secretary of Scotland and Chairmen of Committees, to demand a Parliamentary enquiry.

4. If such further inquiry was granted, it should be a single one before a Joint-Committee of both Houses.

The proposal for the formation of the tribunal was one which was approved of, with some slight amendment, by the Select

Committee of the two Houses to which the Bill was referred. The *panel* was to be formed of persons *qualified by experience of affairs* to act as Commissioners under the Act, and was to be selected as follows:—Each Chairman of the County Councils (or Convener of Committees, as they are termed in Scotland) was, by voting papers, to nominate two Conveners to represent them, and in the same way each Lord Provost, or Provost of burghs having a population of 15,000, was to nominate two of their number to represent them. These four representatives were to meet under the presidency of the Secretary of Scotland, and with him to nominate a panel of twenty persons, “qualified by experience of affairs,” to act as Commissioners under the Act, and to be placed on the lay panel. Ten additional persons, similarly qualified, were to be nominated to supply any casual vacancies. This panel should remain in force for five years, and at the expiration of that period it should be re-formed.

When an inquiry should be directed the Secretary of Scotland was to select two members from the lay panel, with due regard to the character and magnitude of the proposed Order, to act as Commissioners (who should be paid such remuneration as might be fixed), and the Lord President of the Court of Session should nominate one of the Sheriffs of Counties in Scotland to act with them. The opinion of the Sheriff to prevail upon any question of law which might arise at the hearing.

The Commissioners should hold the inquiries in such locality as seemed most suitable, and sit from day to day, and should have power to determine questions of *locus standi*. The Commissioners could report in favour of the Provisional Order, or recommend its modification, and after their report steps could be taken to have the Order—if no memorial was presented against it—made final, having the effect of an Act of Parliament. If a memorial should be presented against it, then, as above mentioned, the matter could (if the Chairman of Committees and the Secretary of Scotland thought it a proper case for further inquiry) be brought before a joint committee of the two houses of Parliament, at the peril of costs to the person presenting the memorial. The Bill contained provisions for the appointment of Examiners and other officers, and for settling the scale of fees to be paid by promoters.

The Select Committee to which the consideration of the Bill was referred examined all Bills brought forward since 1888 for referring procedure on private Bills, and reported that the scheme of this Bill was preferable to any scheme before brought forward. An alternative proposal was suggested by a minority of the Committee, that the tribunal, though sitting locally, might be still composed of Members of Parliament, but the practical difficulty of manning the tribunals during the Session or Recess seemed too great to permit the recommendation of such a system as satisfactory. The following alternative proposals were made

and put forward by the minority of the Committee to form a tribunal composed of Members of the two Houses:—

“A. 1. (1.) At the beginning of each Session of Parliament there shall be formed a panel (hereinafter referred to as ‘the panel’), from which shall be appointed from time to time Commissioners to act under this Act.

“(2.) The panel shall be formed in manner following (that is to say):—

“(a.) The Committee of Selection in the House of Lords shall place upon the panel six Members of that House willing to serve as Commissioners under this Act, and may supply any vacancy occurring in that number.

“(b.) The Committee of Selection in the House of Commons shall place upon the panel six Members of that House willing as aforesaid, and may supply any vacancy occurring in that number.

“2.—(1.) When the Secretary for Scotland determines that Commissioners shall be appointed for the purpose of inquiring as to the propriety of issuing a Provisional Order under this Act, he shall, with due regard to the character and magnitude of the provisions in the proposed Order, select from the panel two Members of the House of Lords and two Members of the House of Commons to act as Commissioners, and shall nominate one of such Members of either House as Chairman of the Commissioners.

“(2.) If any Member of either House, selected or nominated as hereinbefore provided, is unable to serve, the Chairman may select or nominate from the panel a Member of the House of Lords or of the House of Commons, as the case may be, to act as a Commissioner or as Chairman of the Commissioners in place of the Member who is so unable to serve.

“(3.) The persons nominated as Commissioners shall have no personal or local interest in the matter of the proposed Order.

“B. (1.) As soon as may be in each Parliamentary Session there shall be formed, in such manner as shall be prescribed under general orders, in each of the Houses of Parliament, two panels, one of which shall consist of members qualified to serve as ordinary members of Committees of local inquiry.

“(2.) When it is required for the purposes of this Act to form a Committee of local inquiry, a Joint Committee of Selection, formed of an equal number of Members of each House of Parliament, as prescribed under general orders, shall select from the aforesaid panels four Members, who shall consist of either—

“(a.) Two Members of the House of Lords and two Members of the House of Commons, provided that one of these four shall be qualified to act as Chairman; or

“(b.) Three Members from one of the Houses of Parliament and one Member from the other House; provided that the Member of that House from which only one is selected shall be qualified to act as Chairman, and shall so act subject to the provisions of general orders.”

It occurs to me that the alternative of appointing for cases of special and unusual importance such a Parliamentary Committee and enabling it to sit locally if in the judgment of the Chairmen of Committees it might be desirable, could be imported into the Bill. The necessity of using a Parliamentary tribunal would be exceptional and occasional only, and the power of resorting to such a Committee, if necessity arose, would be possibly in certain cases of great advantage. The amended Bill is a thoroughly workable and valuable measure. If it were applied to Ireland with certain

modifications it would remove this long standing and crushing grievance. In Ireland, however, the legal member of the Commission should be one of the judges of the High Court, and not a County Court judge. If the Examiner reports that General Orders have not been complied with, any application to dispense with them a preliminary question of *locus standi* should come before the judicial Rota for Election Petitions and not before the Local Government Board as is proposed for Scotland. The Irish Local Government Board will be overwhelmed for some time to come with the Local Government Act and its working. The original Bill for Scotland proposed that these questions should come before the Lord Ordinary. Power should be given in the event of the Chairmen of Committees of both Houses (or of a Parliamentary Standing Committee which might be substituted for them) considering that the proposed measure was one of such character or magnitude, that it should be heard before a joint Committee to direct that the measure should proceed as a Provisional Order and not as a Private Bill, but that the hearing of it should take place before a joint Committee of both Houses, (constituted as proposed in the Select Committee's report) which should, if it were deemed convenient, sit whether during the Session or the recess, and take the evidence locally.

A meeting convened in the manner above indicated and presided over by the Chief Secretary or Lord Lieutenant would have but little difficulty in selecting men of high position and knowledge of affairs who would form a panel in which the public would have confidence. Rules could be framed under which Chambers of Commerce or other great public bodies could suggest names of fully qualified persons for consideration, and names of authorities on Engineering, Sanitary, Railway, Municipal and other subjects could be thus enlisted for the services of the Tribunal.

The funds set apart under the Irish Judicature Act of 1897 should be ample to pay all the expenses of the proposed tribunal in Ireland and to permit of a very great reduction in the fees which will have to be paid for the future in Ireland by those promoting such Private and Local Legislation. Not the least scandalous feature of the present scandalous system is the extravagance of the tax upon industry imposed by the present scale of House fees. As the Select Committee reports—"the annual sum of the fees of the two Houses shown in 1888 was on an average about £60,000, whilst the expense of the two Houses in relation to private business was at that time estimated at from £15,000 to £20,000 a year. In 1897 the fees of both Houses were £54,176, while the expenses of both Houses were for Private business in 1897 only £21,680, showing a profit of £32,496. The Committee strongly recommended that those who are responsible for fixing the fees should materially reduce them. There are few persons interested in the industrial progress of Ireland, who will not endorse the recommendation of this Committee.