

banks being paid by a per-centage, no expensive staff or patronage would be involved.

6. That this plan of local and cheap transfer is in accordance with Prussian and Belgian precedents for dealing with small owners.

7. That, as the adoption or trial of the plan could not interfere in any way with the arrangements for registration by large owners, there is no reason for postponing its consideration, adoption, and trial, until the proceedings of the Registry of Deeds Commission have resulted in legislation suited for large owners.

VII.—*Whether the Union or the County should be taken as the District for Local Registers of Land.* By *W. Neilson Hancock, LL.D.*

[Read 21st May, 1878.]

IN the discussions which have arisen from the suggestions I have made as to local registers for small holders of land, one of the questions raised is the suggestion of making the county the district for local registration, instead of the union, as I had ventured to suggest.

*Is the Union too small a District?*

The discussions with respect to the amalgamation of unions have raised a doubt in some minds as to whether unions were not too small, and as to whether they were likely to be permanent boundaries.

A commission has for some time been inquiring into the subject, and the result has been that very many of the Boards of Guardians which had passed resolutions in favour of amalgamation, have, on inquiry, reversed those resolutions; and this change has taken place mainly on account of the convenience of the poor on the one hand, and the Guardians on the other.

It was found that the unions had been conveniently arranged so that the centre was within driving distance from the extremity to the centre and back again in a day, but that if the amalgamation was made this obvious convenience would be lost, and the journey to be made by the poor and the guardians would be burdensome and inconvenient. If this principle is good for one set of local arrangements it is good for another, and for facile transfer of land and securities by one small holder to another a market town within driving distance, in very many cases the market town to which people ordinarily resort, would present many advantages. Mr. William P. O'Brien, in his very able Report on Local Government, points out how the union has been adopted more and more from year to year as the basis of local arrangements.

The preparation of electoral lists and jurors' lists have been transferred from the county officers to the union officers, and in the County Boards Bill introduced by the Government in the present

session it is proposed that county rates shall, subject to interests of barony cess collectors, be collected by union officers.

*Are the Counties small enough as the basis of a Local Register ?*

Those who advocate counties as the district for local registration do so on the analogy of the County Court.

It has, however, been for a long time perceived that it would be an extreme hardship to bring all suitors to the county towns, and accordingly the judges hold courts in a number of towns in each county. I have counted these towns, and I find they are 152 in number. This comes very near the 163 unions, and proves to demonstration that the thirty-two county towns would not suit the convenience of the people for registration any more than they do for ordinary suits.

*Is it necessary that the Local Register should be in charge of a Legal Registrar ?*

The proposed local register for land, which was adopted in England in 1875, is framed on the basis of the ships' register, and the ships' register in each port in Ireland is not in any case managed by a legal registrar.

In Ireland, where we have a Landed Estates Act conferring Parliamentary title, it is wholly unnecessary to copy the part of Lord Cairns' Land Transfer Act of 1875, which enables the registrar to investigate title.

Lord Cairns originally proposed to extend the principle of the Landed Estates Court to England.

The decision as to questions of provisional registration need not be given to the registrar in Ireland. It is quite possible to separate these questions also from the work of registration, and to entrust the granting of permission for provisional registration to the County Court Judge as well as to the Land Judges. When the business of registration is thus reduced to its two elements—the legal element and the business element—the legal element can be safely and properly entrusted to the County Courts, to be exercised in any one of the 152 towns where the courts are held, while the business of actual registration can be conducted in the 163 unions.

*As to the cheapest and best officers to employ for the purpose of local registration.*

This separation of the legal authority to have an estate entered upon the register, from the business part of managing all entries on the register after the first entry in each case, allows of the maximum of prudent economy in the organisation of the system. The business part of entries after the first is exactly like banker's business, and the business can be most conveniently and advantageously discharged by bankers. Bankers can thus take the business on commission, and guarantee the entries, exactly as the Bank of Ireland guarantees the transfer of government and India stock, and thus for a moderate figure afford a security that would require a very high salary to get from other local officers. On the other hand, the

granting of certificates to enable estates which have not parliamentary or official title to be placed for the first time on the register, is regular judicial business which county judges and land judges could readily exercise as part of their ordinary business. It is not requisite that they should perform this duty in one place, so that an ambulatory court, like the County Court, can exercise the jurisdiction in the country, and the Land Court in Dublin can have a concurrent jurisdiction.

*Would the Registrars of the County Judges suit as Registrars for Transfer of Land?*

As the registrars of the county judges are to travel with the judges to their several courts, they could not be constantly present at a central office in each county every day, to superintend transfers and other registry business, and so would not suit for local registrars.

*Is the office of Clerk of the Crown and Peace sufficiently reformed to suit for the business of the Registry of Local Transfers and dealings with Land?*

The creation of the office of registrar of the County Court Judges rests on the incomplete reform of the office of Clerk of the Crown and Peace. The existing officers are still allowed to discharge their duties by deputy, and officers holding one of the consolidated offices at the passing of the Act, even when appointed to the double office, and perfectly qualified, are allowed to follow their profession, and a number of the officers so appointed have elected to do so.

It will be, therefore, from twelve to twenty years before the reform of the office of Clerk of the Crown and Peace comes into complete operation, so as to have a trained solicitor devoting his entire time to the business of his office—and even then he would not be resident, as he would have to attend the county judge in his circuit through some of the 152 towns where the courts are held.

If the business of registration is not to be directly superintended by the Clerk of the Crown and Peace, but to be left to his clerks, the value of having a legal head of the office is gone.

Besides, if the Clerks of the Crown and Peace, as now constituted, are not thought competent for the equity business of the county courts, and the appointment of county judges' registrars became necessary, how can they be deemed competent for registrars of local transfer of land?

*Admission of the imperfect reform of the office of Clerk of the Crown and Peace involved in the Irish Local Bankruptcy Bill.*

In Scotland every county court has bankruptcy jurisdiction, and 77 per cent. of the cases are disposed of locally. In Ireland every county court had insolvency jurisdiction until the Debtors' Act of 1872. In England, at first district registrars in bankruptcy were created at Liverpool, Bristol, and other towns (seven in number), so far back as 1836. In 1861 the county court jurisdiction was substituted for district jurisdiction in bankruptcy; 131 county courts in England have local jurisdiction in bankruptcy, and 82 per cent.

of the arrangement cases are disposed of locally. Now in Ireland it is only proposed to give us the reform which was granted in England in 1836, but we are not to receive the more recent reform of 1861.

Now, the only reason that can be suggested for delaying this obvious extension of local jurisdiction on the English and Scotch models, is the incomplete reform of the office of Clerk of the Crown and Peace. But if it is so incompletely reformed as to be deemed unsuited for bankruptcy jurisdiction, how can it be suited for the jurisdiction of transfer of land?

In Scotland the staff of the county court is strengthened by having the sub-sheriff a permanent professional officer. The extension of the Scotch system to Ireland was recommended fifty years ago by a Royal Commission. We are, however, in this matter, still under the English system of temporary sub-sheriffs, though on a recent occasion Baron Bramwall had to complain very strongly of the manner that sub-sheriffs discharged their duties in England. This difference bears out what Mr. Rathbone, M.P. for Liverpool, told his fellow-townsmen of Scotch origin there, on last St. Andrew's Day, that in machinery of local government Scotland was fifty years in advance of England.

*Would the Clerk of the Crown and Peace, if the office was perfectly reformed, be the best arrangement for introducing the new system of facile registration for small interests in land?*

Even if the county offices were completely reformed, so that with a permanent sub-sheriff, added to the Clerk of the Crown and Peace, there always was a professional officer in constant attendance in the county offices in the county town. Still, the fact that these officers would in every case be solicitors is not to be overlooked.

The Registrar of Deeds reports that the solicitors are opposed to the use of the Ordnance Survey or indeed to any change in the system of the Registry of Deeds Office.

In such circumstances it would be unwise to entrust the purely business part of the new system of registry for small holders of land to solicitor officials alone.

As the experience of the ships' register for twenty years shows that for this part of the business they are not necessary, it would be an expensive machinery to employ them for it, and it would be unnecessarily entrusting the fate of the new system to officials either opposed to or taking no interest in its success. The contrast presented in the success of the Incumbered Estates Commission and Church Commission, where special new officials were temporarily employed, and Lord Romilly's Land Transfer Act, and the Bright clauses of the Land Act, and Lord Cairns's Land Transfer Act, where new officials were not employed, is so marked that it would be unwise, in a measure intended for the benefit of the small holders, to copy the part of the English system which has failed, and to copy two Irish precedents that have comparatively failed, instead of following two that have succeeded.

When measures are passed for the purpose of allaying discontent and strengthening the prestige of imperial government, it is of the

greatest importance that they should be not only well intended, but as perfectly conceived and carried out as possible. Acts of Parliament that through defective machinery become a dead letter are a serious calamity ; they delay useful reforms, and they have a tendency to bring Parliament and the machinery of government into disrepute.

*Importance of a prompt settlement of the question of Local  
Transfer of Land.*

In former papers I ventured to point out the extreme hardship and impolicy of creating some thousands of peasant proprietors, without creating at the same time the legal arrangements suitable for their successful continuance, on the model of the arrangements that have been found necessary in Belgium and France.

This question has, however, assumed a very grave importance since then, because the case of these peasant proprietors and some earlier holders of leasehold perpetuities in Ireland has been brought forward as an argument against any future encouragement being given to their creation.

This makes the delay in carrying the reform a very serious grievance. The Irish people are compared with the French and Belgians, whilst they are denied the means of successfully following in their footsteps.

The delay in carrying out the most obvious and concededly necessary reforms is thus turned into a reason for excluding very large numbers of people from benefits that have been conceded to them by Parliament.

Arguments that were used before the select committee of the House of Commons of 1865 against extension of leasing power are now used against the creation of peasant proprietors.

I may therefore repeat what I reported on this subject to Lord Carlingford, in 1866 :—

“There is only one topic in the evidence before the committee of 1865 on leasing power which requires to be noticed. Instances of neglect where long leases exist are sometimes brought forward, to show the inutility of tenure as a security for capital, and the strange economic theory is propounded that a precarious interest is more favourable for the investment of capital than a secure one. As well might the state of landed property in Ireland before the Incumbered Estates Act was established be adduced as an argument against property in land.

“The remedy, however, which the legislature applied to the encumbered estates of large proprietors was not to destroy property in land, but simply to secure its prompt, cheap, and effectual transfer to solvent hands.

“For tenants' interests under leases, where the value is small and where the interests have become complicated, the Landed Estates Court is too expensive, and so these interests remain often for years untransferred in the hands of some one who has a very limited, and often uncertain, interest in them.

“Such a leaseholder is deterred from making improvements by the state of the law, which deprives him of the entire value of his improvements if any one should disturb him under a prior charge or claim, however obscure or unknown, affecting his interest.”

The evil thus pointed out in 1866 was not met by the Land Act of 1870. Improvements of either peasant proprietors or leaseholders are not protected against claimants of the occupier's interest by title paramount.

Besides such protection, the other remedies required were clearly pointed out in 1866:—

“No remedy is proposed in the Irish members' Bill of 1866 for this class of cases. The remedy is to be found in an extension of the principle of the Record of Title Act to the local registry of small leasehold interests, and in the providing of the local sale of such interests in a cheap manner with an absolute title.”

Of these necessary reforms only one has been carried—the local sale of land under the County Officers and Courts Act. This has been done in the imperfect form of selling without absolute title, which prevailed on large estates in Ireland before 1849. The local registry is under consideration of a Royal Commission, but no Bill or inquiry has been proposed for the protection of improvements against title paramount. There are ample precedents for such legislation in the “betterment” statutes of the United States, and in the ancient Scotch law as to ruined houses in towns.

I suggested this latter reform to a select committee of the House of Commons two years ago. Though approved of by the town councils of Belfast and Dublin, no step has been taken to carry it into effect.

*Connexion of the law reforms suggested with the general state of Ireland.*

Under the custom of tenant-right which Parliament sanctioned in 1870, the landlord's office discharged the functions of a local register, a local court of bankruptcy and probate, and for the sale of land. The proposals of a local registry, local jurisdiction in bankruptcy, and for sale with absolute title, is therefore in accordance with an old and well-established Irish usage. Local bankruptcy jurisdiction is in accordance with Scotch and English precedents.

The constitution of consolidated county offices, including district probate registries and permanent sub-sheriff, is in accordance with Scotch models. These reforms, while involving some small immediate cost in compensations, would secure a reduction of expense in future in the consolidation of offices. They would rest, on the one hand, on the recognition of Irish local usages, and, on the other, on the assimilation of Irish administration with English and Scotch models. They would add to the prestige of Parliament, by presenting the machinery of state with which the poor are brought so much in contact in its most perfect form. The contentment which the prompt and systematic carrying out of the law reforms which are necessary to give small holders of land, in a way really suited, all the facilities and benefits which the rich enjoy, would lay the foundation of another economy, in saving some part of the £500,000 a year which the cost of police in Ireland is in excess of the cost of the similar force in an equal population in England and Wales.

*Summary of Conclusions.*

(1) That it would be much more convenient to the small holders of land to have 163 local registries of land, at each union centre in Ireland, instead of 32 only, at each county town.

(2) That on the plan of paying bankers a commission for managing the local registry, like the transfer of government stock, it would not cost more to have 163 registrars than 32.

(3) That the system of bank management of local registers of land, to the same extent that ships registries are managed by Custom House clerks, would not interfere with the conferring on the local courts, and land court, the jurisdictions of authorising first entry of estates on local registers, and determining legal questions connected with registration.

(4) That it is a serious evil that the incomplete reform of the office of Clerk of the Crown and Peace should prevent the localization of the bankruptcy jurisdiction, so as to confer it on each county court, in the way that has long prevailed in Scotland, that has prevailed in England since 1861, and prevailed in Ireland as to insolvency before the Debtor Act, 1872.

(5) That, for the complete reform of the county offices, it is desirable that the office of sub-sheriff should be made permanent, as in Scotland, and the district registrars of the Court of Probate united, as in Scotland, with the consolidated local offices in each county and riding.

---

VIII.—*The Cost of Adopting a Complete System of Public Prosecution in England, as illustrated by the results of the working of the Scotch and Irish Systems of Public Prosecution.* By W. Neilson Hancock, LL.D.\*

[Read at the Section of Economic Science and Statistics of the British Association, at Plymouth, August, 1877.]

THERE are many indications that the extension to England of the system of Public Prosecution which has so long existed both in Scotland and Ireland is only a question of time. This assimilation of the laws of the United Kingdom was recommended by a Royal Commission so far back as 1844; it was recommended by a Parliamentary Committee in 1856, and by another Committee in 1870. Bills were introduced on the subject in the sessions of 1870, 1871, and 1872, with different names on them in the several years, but including Mr. Walpole, Viscount Sandon, Mr. Russell Gurney, Mr. Vernon Harcourt, Mr. Rathbone, and Mr. Eykyn. In 1873 a Bill was introduced by the Government. As an indication of the strength of feeling entertained on the subject, I may quote a few words from Mr. Walpole's speech on the 19th of June, 1872:—

“It was really a disgrace—and he used the word advisedly—that England was the only country in the world where prosecutions for crime should be mostly left at the mercy of private individuals, who might or might not proceed with them as they thought fit.”

---

\* Printed at cost of author.