

less, the drink craving should be treated as a form of insanity. The protection of children and of the wives of men repeatedly convicted of drunkenness, should, in analogy to the compulsory school enactments, commence at an earlier stage than at present, before we had to deal with aggravated assaults on women and children, and other more serious crime directly traceable to the depraved state of mind produced by unrestrained habitual drunkenness.

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X.—*On the substitution for the Three-fold Law of Succession resting on the accidents of Tenure, of a Three-fold Law for distinct classes of (1) Landed Gentry, (2) Manufacturers, and (3) Farmers, resting on the scientific basis of the Observed Usages of these different classes as to Wills and Settlements.* By W. Neilson Hancock, LL.D.\*

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

In the discussions which have taken place on the law of successions in the United Kingdom, it has been commonly assumed that there is a simple issue involved, and the only change recommended or discussed is to extend the law of succession of property other than land, to the succession of landed property.

In this way the true complication of the question is entirely overlooked, and few people are aware, or refer in their discussions, to the fact that there are in England three laws of succession to land, and that there was, so recently as 1856, three of succession to property other than land.

Property in land may be either fee-simple or freehold (that is, for a life or lives, whether renewable or not, or whether that is from year to year, or for a term of years). If fee-simple, it all goes to the eldest son and widow, the widow getting a third for her life; if freehold, it goes to the eldest son, and the widow gets nothing; if chattel, it goes to the widow and all the children, the widow getting a third—not for life but absolutely, and all children sharing equally. We have thus depending on the accidents of tenure three laws of succession, and the whole three may come into operation in the succession of the same person. Suppose in Ireland a tenant to have held his farm under three landlords, part under each. Under one he is a yearly tenant, or holds for twenty-one years; under another he holds for a life lease; from another he has bought out his holding in fee-simple under the Land Act of 1870. When he dies his eldest son will get two of the three parts, one subject to dower and the other not; the third part will go amongst the widow and children (she getting a third absolutely, and to all the children the other two-thirds), and the eldest son will get his share of this without being required to bring the other portion he gets entirely to himself into hotchpot.

We have thus, besides the question of equal division, the question how a widow should be provided for, and the question whether a

preferred child should be required to bring his preferred share into hotchpot.

In the disposal of personal property there were for two centuries before 1856 three laws, viz., the statute of distributions, the custom of the city of London, and the custom of the province of York; and the diversities turn upon the different provisions of widows and the difference as to a preferred child bringing his share into hotchpot.

According to the custom of the province of York, land as well as money constituted an advancement, and however small the value of the land inherited by the eldest son, it was an absolute bar to his sharing with the other children in the personality under the custom.

According to the custom of London, in the matter of advancement no regard was paid to a freehold estate; but chattel interests were deemed an advancement.

In the provision for widows there was a very slight difference between the custom of London and that of York. In London, before calculating her share, the widow was allowed the value of her apparel and the furniture of the bedchamber, which was called the widow's chamber. In York, in addition to these, she was allowed her coffer box, containing various ornaments of her person, as jewels, chains, and other articles of a like nature. Both these customs differed, however, in a very marked manner from the statute of distributions.

In these two considerable portions of England, if there was both widow and children, only a third of an intestate's assets, after deducting the value of the widow's chamber, apparel, etc., went according to the statute of distributions, the other two-thirds went according to custom—one to the widow and the other to the children.

It followed from this that the widow in the province of York and in London, besides her furniture and apparel, got four-ninths of the residue; whilst elsewhere in England and Wales and in Ireland, without any privilege of furniture or apparel, she got only three-ninths, or one-third of the whole.

If there were no children the difference was still more remarkable. In that case the widow in York and London got, besides her furniture and apparel, three-fourths of the residue, while elsewhere she got only a-half of the whole assets of the intestate, without any privilege.

I do not propose to enter into any consideration as to which of these different laws of succession, whether of real or of personal property, is the best in the abstract. I wish for the present only to direct attention to the fact that for two centuries we lived under three laws of succession to personal, and for many centuries under three laws of succession to real property. These laws, too, depend on no fixed and definite principle in human affairs, but on mere accident—the laws of real property depending on the accident of tenure, and those of personal property upon the accident of locality.

When these laws of succession are submitted to scientific investigation, the first question which is to be considered is—are any, and which of them, in accordance with the wishes of the classes which they severally affect? The test of this is to be found in the settlements and wills which are usually made. When these are examined it will be found that there are three distinct classes in the commu-

nity settling and disposing of their landed property on different principles. First, the peers and landed gentry give an eldest son priority, but settlement and wills almost invariably secure portions for younger children. Again, a jointure of a fixed annual amount is substituted for dower or thirds, and is usually much below that proportion of the income. This mode of disposition is so common and usual, that there are precedents for it in all books of conveyancing.

Bequests of personal property or settlements of personal property recognise the widow's paraphernalia and personal furniture, and so correspond more nearly to the old customs of London and York than to the statute of distributions. They differ, however, in a remarkable respect, from both the statute of distributions and from the customs of London and York: they give the widow a larger provision by way of life income, and a much less capital sum, and they keep up her authority over her children, and enable her to guard against natural inequalities and natural disadvantages amongst her children, by giving her a fair apportionment amongst them.

The wills and settlements of farmers (whether proprietors or tenants) differ from those of landed proprietors, in that when the children are minors, the widow has to be entrusted with the farm. She has, again, to be entrusted with the selection of the son that is to succeed, and if there be only daughters, with the selection of the daughter that is to succeed. To guard, however, against any abuse of these privileges, the provision for the widow is like the Saxon freebench, usually forfeited if she marry again. Where a son (not necessarily the eldest) has been selected by the father, and associated with him in the management of the farm, the provision for both the widow and children takes to a large extent the form of maintenance in the common home, or in a part of it. In rare cases is there any provision for the sale of the farm; and since education, and migration, and emigration have prevailed so much, there is not a strong tendency to subdivision, unless the farm has been made up by the father from the purchase or acquisition of a number of distinct holdings.

It will be seen at once that the ordinary settlement or will of a farmer does not correspond with any of the existing laws of succession. A manufacturer's will differs from a farmer's, as such business is commonly carried on in partnership; and as there may be dormant partners and active partners, the common object of their wills and settlements is to treat all sons exactly alike—the daughters very commonly getting only fixed portions, and often, if getting shares, getting only half the shares of their brothers. While the manufacturer's will, so far as the children is concerned, resembles the statute of distributions, in the provision for the widow it entirely departs from it.

The equality of the sons leads to the family mansion being commonly left to her as the home of the unmarried members of her family, and she is left no capital, but a large life income. From the same equality she has commonly no power of appointment amongst her sons, but as to the provision for the daughters and amongst them only.

The only class of wills that the statute of distributions really cor-

responds to, is that of professional men, and generally those living mainly by wages and not by the proceeds of capital. Amongst that class, however, the custom of the province of York, which is most favourable to widows, and which requires freehold property to be treated as an advancement, or in other words, most favourable to exact equality of all the children, would be found to be the one most generally followed.

Now, as a controversy has gone on for years as to what the law of succession should be, it has occurred to me that the solution of that controversy is not to be found in landed proprietors forcing upon farmers and manufacturers primogeniture and dower with no provision for younger children, especially when this is not the solution they themselves adopt in their wills and settlements. Neither, again, is the solution to be found in manufacturers forcing on landed proprietors perfectly equal division for all the children, with a share, not of the income, but of the capital value to the widow—an arrangement which would involve either the sale or subdivision of estates or farms, with difficulty of disposing of the family mansion, an arrangement which again they rarely adopt in all its parts. Why again should those who are in favour of giving a system of small or farmer proprietors a fair trial, embarrass themselves, and whilst they advocate the free-trade principle of perfect liberty, defeat all immediate attainment of their object, by joining with their principle of liberty a doctrinaire principle of attempted compulsion as to how people should dispose of their property at death. The statute of distributions, which is commonly put forward as this doctrinaire view of a general law of succession, would least of all suit the very class of farmer proprietors for whom it is recommended. In Scotland it is met by a most important modification, consequent on the law of legitim, which I do not here enter upon.

It has occurred to me, that as the disposal of property by will or settlement rests in England and in Ireland upon freedom of bequest and of settlement, subject only to the rule against perpetuities, it follows as a scientific consequence that when there is amongst large classes that can be easily marked out well-ascertained differences in the usual disposal of property at death—as amongst (1) peers and landed gentry, (2) manufacturers, (3) farmers (whether owners or tenants), and (4) professional men and those living upon wages—the true and scientific solution of the law of succession, in other words of the disposal of property at death in the absence of a will or settlement, is to make the succession of each class correspond to the ascertained usual disposition by will or settlement.

The effect of this would be to leave primogeniture amongst peers and landed proprietors undisturbed, but that the eldest son should take it charged with portions for younger children and jointure, but free of dower.

Amongst manufacturers and other capitalists, the mansion and grounds, and an income to maintain it, would go to the widow, subject to obligation of not marrying again and of providing a home for her unmarried children; the property, whether real or personal, would be divided so as to give for each son twice the portion of each

daughter—the son's shares to go equally and the daughter's shares to form a common fund subject to mother's appointment amongst daughters and their issue. With farmers, unless there be a son of age and designated by the father by having him joined with father in management of farm, farm to go to widow until youngest son attains twenty-one, then to the son that she shall select, or if there be only daughters, in like event to the daughter that she shall select. When widow thus displaced by child in such succession, to have her room, furniture thereof, and maintenance; and other children to have house-room and maintenance till twenty-one, and their portions.

In the case of professional men and all those living by salary and wages, the statute of distributions, as modified by the old custom of the province of York, would probably be found the most satisfactory.

Such is an outline of the solution of the question of succession which I would venture to submit. As wills are all registered and settlements are all prepared by professional men, it would not require any amount of research too large, having regard to the importance of the subject, to place beyond doubt the different facts necessary for legislation—what was in fact the usual disposition of the four classes I have pointed out—at what figure of annual value, whether £300, or more or less, the limit between farmer, proprietor, and landed gentry should be drawn—how to deal with the cases of persons partly capitalists, and partly professional men or living on salaries.

Again, the working of the law of legitim in Scotland should be carefully examined as a basis of an ultimate assimilation of the Scotch and English law of succession.

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XI.—On (1) *the Value of Adam Smith's "Wealth of Nations," as a text book at the present day; and (2) the History of his Life as an illustration of the importance of Endowments for Higher Education and for research.* By W. Neilson Hancock, LL.D.

[Read 25th June, 1878.]

As this Society took its origin in part from the section of Economic Science and Statistics of the British Association, it occurred to me that it would be fitting to close the session with an economic paper, showing that though Irishmen took no prominent part in the compliment so recently paid to Adam Smith, his writings are as thoroughly appreciated here as elsewhere.

The systematic teaching of economic science in Trinity College, in each of the Queen's Colleges, in the National Schools, and under the Barrington Lecture Trust, has produced a state of opinion highly favourable to progressive study of economic science.

As evidence of this, I need only refer to prizes in connexion with the Barrington lectures, amounting to £10, voluntarily raised by the Cork Literary and Scientific Society, the cost of gold medal, and £6