

and use of the tenant, the owner is still to retain power over both land and tenant. It is otherwise in the case of sale—no continuing relation is to exist between the two parties, and the seller has no other concern except to obtain the best possible price; and therefore in the case of sales alone are prices regulated wholly and only by competition.

---

X.—*On the Law Reforms which have been successfully advocated by the Trades Union Congress, and the further Law Reforms which they now seek.* By W. Neilson Hancock, LL.D. Q.C.

[Read 25th May, 1880.]

WHEN I learned that the Trades Union Congress, which has held twelve annual meetings, had fixed its next meeting to be held in Dublin, in September—thus visiting Ireland for the first time, I made some inquiries as to their proceedings and publications. One of the most recent of these is a letter from the Parliamentary Committee of the Congress, to the late Home Secretary, referring with satisfaction to the action of Parliament in passing the Summary Jurisdiction Act of 1879 for England and Wales. The Committee refer to this measure as of immense value in improving the administration of justice and in securing the liberty of Englishmen.

*Policy of Uniform Laws for Working Men in England, Ireland, and Scotland.*

Having achieved so much for themselves, the Congress meeting in Scotland naturally asked to have the principles of the Act extended to Scotland; they did this, not in a doctrinaire and dictatorial manner, but on the wise plan of asking for suggestions from Scotland.

The Parliamentary Committee say:—

“So great did the advantages and benefits of the Act appear to the Congress, that the predominant feeling of the moment (the Congress being in Scotland), was that the Act ought to apply to Scotland.

“We therefore ask you\* next session to bring in a Bill which will so apply the Act to the Scotch procedure and law that the people of Scotland may have the possession of similar advantages.

“We hope that our Scotch friends will be able to assist you by laying before you their views of the way this should be done.”

As to Ireland the Parliamentary Committee say:—

“While urging this upon your attention, we cannot refrain from saying that we know of no reason why similar privileges should not be conferred upon the Irish people.

“We beg to inform you that our next Trades Union Congress in September, 1880, will be held in Dublin, and to express our belief that nothing can be calculated more to promote content among the Irish workmen than the voluntary extension of liberties to Ireland similar to those we enjoy.”

---

\* The late Home Secretary, to whom the letter was addressed.

They then add an expectation which the break up of the session by the General Election has prevented being carried out:—

“We should be extremely glad to be able to announce to our Irish brethren the fact that the Government intended to carry through a similar reform for Ireland.”

This was a spontaneous offer on the part of the Congress of good will towards Irish workmen, for I do not find that there was a single Irish delegate present.

The principle thus contended for, of having uniform laws for the United Kingdom, especially in matters that affect the poor and working men, is one which many of us have contended for in this Society for some years.

*The Summary Jurisdiction, England, Act of 1879.*

The Committee in giving credit to the Government Bill, which passed with amendments, point out the main points of Mr. Hopwood's Bill, brought in at their request, which were substantially given effect to in the Government Bill:—

“1. To give the right of appeal in every case where imprisonment is inflicted without the option of fine.

“2. To give right to the accused, where the justices had power by law to inflict three months' imprisonment, to demand trial by a jury.

“3. To improve the procedure on appeal.

“4. To diminish the too great frequency of imprisonment, by allowing the convicted to pay their fines by instalments.

“5. To give power to justices to fine instead of committing to prison where they had not the alternative previously.

“6. To enable justices to exercise clemency by discharging, even after conviction, if punishment appeared unnecessary.

“7. To provide for taking of recognizances out of court, so as to prevent unnecessary detention and imprisonment of defendants.

“8. To abolish payment of court fees, and require that justices' clerks should be paid by salary.

“9. To forbid cumulative sentences exceeding six months.

“10. To enable justices to inquire as to persons committed for default of sureties, and release them.”

Mr. Henry Crompton, in speaking at the Congress in Edinburgh, on the English Summary Jurisdiction Act, said:—

“There was an express statement that that scale should not be obligatory or compulsory on the magistrates. It limited them as to the amount of imprisonment which they could impose in lieu of fines, but gave them full liberty to impose as much less as they thought proper. That was a concession of the very highest importance; because if there was injustice in the future, the responsibility and the odium of injustice must fall not so much on the law as on the individuals who administered it. The Act was a complete code of procedure at petty sessions, and it might be said that the object kept in view throughout the whole Bill was that of keeping men out of gaol [by the system of fines]. . . . There were two great constitutional laws that had been created by this Act. The first was, that whenever a man was charged with an offence for which he was liable to more than three months' imprisonment, he had a right to a trial by jury. If he wished the case to be disposed of at once, he could take his trial, and have it settled there at once. . . . The second point to which he thought the Congress should devote attention was, that whenever any man was sentenced to imprisonment he had the right of appeal. The Bill contained another reform which he (Mr. Crompton) had for many years advocated—it drew a distinct

line between the civil and criminal procedure at petty sessions; and this could not have been better done. This, so far as it went, was a complete reform, but there remained a great work for the Government to do—namely, to re-consider and codify the whole of the laws administered at petty sessions. The Government had undertaken the task to codify the whole of the laws relative to indictable offences, and the work had so far progressed, that if proper influence should be brought to bear upon Parliament or the Government, that code ought to pass into law next year. But the Government had not undertaken to codify the laws relating to summary crime. In regard to this subject they had it upon the highest authority in England, that so far as the real criminal offences were concerned, the work was a very easy one to be done. The Lord Chief-Justice in a remarkable letter which he wrote to the Attorney-General, says :—“ It is all-important to those who have to administer the penal law in its subordinate departments to have the law before them as an entire and unbroken whole. The present code does that for them, when as magistrates they are called upon to take the information against a party accused. Why should it not do so when they are called upon to deal with offences summarily as judges in a judicial capacity? ”

Now, what makes it particularly hard that Irish workmen should be deprived of the benefit of this Summary Jurisdiction Act, even for a year, is that it was in part by the exertions of Irish members that the English Bill passed. The Parliamentary Committee of the Congress in their report say :—

“ Mr. Hopwood assisted the Government to pass their Bill, by securing approval for it on his own side of the House, and *amongst Irish members*, inasmuch as it carried into effect clauses of his own Bill.”

The non-extension cannot arise from any real difficulty, but from the absence of all legislative organization for the systematic and prompt extension of amendments in the law to Ireland. For I find that the two important Acts which the Congress were successful in carrying in 1875—the Conspiracy and Protection of Property Act, and the Employers and Workmen's Act—were both extended to Ireland in the same session, by additional clauses in the Acts themselves.

*English, Irish, and Scotch Employers and Workmen's Act, 1875.*

Mr. Henry Crompton's description of this Act shows that it was in its way as important as the Summary Jurisdiction Act.

“ The Employers and Workmen's Act is substituted for the Master and Servant's Act. It carries out the principle that breach of contract shall not be a criminal offence, as it was under the ninth and fourteenth sections of that statute. It does so by referring the disputes between employers and employed to the county courts, and by giving these courts powers similar to some of those conferred on magistrates by the Master and Servant's Act. It gives similar and concurrent powers to justices of the peace, when the damages claimed do not exceed £10. As in the former Act, either employer and employed can sue for damages in respect of breach of contract, debt, etc., but no sentence of fine or imprisonment can be imposed. The suit and tribunal is civil, and in no sense criminal. Imprisonment can only be used to enforce payment of damages, as it is used in the civil process of the county courts. It is by section three that the powers are conferred on the county courts; by section four on the justices of the peace—that is on courts of summary jurisdiction. Upon reference to the third section, it will be seen that the court has power to adjust and set off the various claims upon the one side and upon the other, and to rescind any contract upon just terms. There are the neces-

sary powers for speedy and equitable settlement of disputed claims. Lastly, a power is given by sub-section three, enabling the judge on the trial—where damages can be awarded for breach of contract, with the plaintiff's consent, and if the defendant be willing to find security—to order the performance of the contract. The defendant and his surety then become liable for a specified sum, which of course has to be paid, if the order is disobeyed. This provision has been wisely substituted for the power of compelling specific performance by imprisonment. Many of the workmen's contracts could certainly have been thus enforced. The difficulty of so doing is rather legal than practical. The real objection to the power of compelling specific performance was that it is so liable to abuse. It would be extremely difficult for workmen to ask to be exempted from such a process. Too much praise can hardly be given to Mr. Cross for his conduct on this point, which was firm, wise, and generous.

"Sections five, six, and seven relate to apprentices, and give jurisdiction over apprenticeship disputes to courts of summary jurisdiction."

Whilst we feel indebted to the Congress for having advocated successfully such just principles, and to Parliament for having extended them to Ireland in the same session in which they were adopted for England, it only makes the anomaly of the non-extension of the Act of 1879 the more remarkable.

*Attempt in 1876 and 1878 to make perpetual the Irish law for making Linen Weavers criminally liable for breach of contract.*

The absence of fixed principle in legislation, which the non-extension of the Act of 1879 discloses, was illustrated by the attempt in 1876, and again in 1878, to make perpetual the Linen and Hempen Manufactures, Ireland, Acts, which are only kept alive by the Expiring Laws Continuance Act, from year to year. The Irish Linen Acts, dating from the year 1835, subject linen weavers to a criminal proceeding for breach of contract, and so are at variance with the principles sanctioned by Parliament in the Employers and Workmen's Act of 1875. The Bill to make the old law perpetual in Ireland was nevertheless introduced in 1876, a year after the Act described by Mr. Crompton had been extended to Ireland, and again in 1878; and we find the linen weavers had in 1876 to rely on this Act in resisting, and successfully resisting, legislation on an opposite principle.

The report of committee appointed at Lurgan on the linen trade say:—

"The weavers, on the other hand, opposed all special legislation, and were anxious to have the benefit of the Employers and Workmen's Act of 1875, 38 & 39 Vic. c. 90."

Now, one advantage of the principle of codification which the Trades Union Congress contend for, is that once a reform has been carried by Parliament, it would be the duty of the Codification Department to submit to Parliament next session the extension of the principle to all similar cases, so as not to have a separate battle for each particular trade. It might be supposed that the non-extension to Ireland in 1879 of the Summary Jurisdiction Act, was for want of its bearing on Irish workmen's interests having been thought out; but that is not the case; in the report of the Lurgan Linen Trade Committee, published in January, 1877, relating to the largest

manufacturing industry in Ireland, and published two years previously to 1879, we find the whole question of extended local jurisdiction for working men very clearly and fully stated:—

“The object of all the special legislation is to protect the employer when he has no security,

“First, *against breaches of trust*;

“Second, *against embezzlement*.

“Again, property so entrusted to weavers has an exemption from distress from rent, and from seizure for the weaver’s debts and liabilities. There is, however, a risk of complicated litigation, if a doubt should arise as to how far the property used in the manufacture belongs to the weaver or to the manufacturer.

“Now, the whole of this special legislation might be obviated by a few generalizations and improvements in the law.

“(1)—*Want of Petty Sessions Jurisdiction as to Sureties*.

“Under the Employers and Workmen’s Act, 1875, the Petty Sessions Court has power to enforce up to £10 payment by sureties, when the surety has been ordered by the court in lieu of damages.

“It can, too, deal with a contract between a weaver and manufacturer up to that amount; but has no jurisdiction against a voluntary surety entered into before trial. As the policy of the Act of 1875 was to encourage sureties in substitution for damages and penalties, it is most unwise to limit it to a single case, and the court should have jurisdiction as to all sureties up to £10.

“(2)—*Want of Petty Sessions Jurisdiction as to Trusts between Weaver and Manufacturer*.

“So far back as 1860 (by sec. 35 & 36, 23 & 24 Victoria, c. 154), a very important equitable jurisdiction was entrusted to magistrates in Ireland, of granting precepts to prevent the removal, injury, or waste of property by tenants. There is no reason why this principle should not be generalized, and the court of petty sessions be endowed with complete power to issue precepts, and protect any property entrusted by one person to another, when the value did not exceed £10, and within like limits to exercise all other equitable jurisdiction connected with the enforcement of such trusts.

“In the case of breaches of trust which fall under the Consolidated Criminal Statutes as embezzlement (sec. 80, 24 & 25 Victoria, c. 98), it is provided that when any civil proceedings shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceedings, shall commence any prosecution under this section without the sanction of the court, ‘or judge before whom such civil proceeding shall have been had, or shall be pending.’

“Under this section, when breaches of trust are large enough to bear the costs of Chancery proceedings to redress them, the parties are protected against criminal process, except in flagrant cases.

“But the withholding equitable jurisdiction from local courts by practically making all equitable proceedings for small breaches of trust impossible, leaves these cases to be dealt with by criminal proceedings only—and this is precisely what the labouring classes complain of.

“The true remedy is to give complete jurisdiction to the Petty Sessions Court in all matters whatsoever connected with trusts and equitable contracts up to £10; then the law of embezzlement can be made equal for all persons entrusted with property.”

“(3)—*Amendment of the law of Embezzlement so as to dispense with special legislation as to Embezzlement in the case of the Linen Manufacture*.

“As it appears that the weaver is really a trustee for the manufacturer as to matters entrusted to him, it is only necessary to define ‘trustee’

in the Consolidated Criminal Statutes of 1861, to include, if it does not do so already, all persons entrusted with instruments or materials for any manufacture (Sec. 80, 24 & 25 Vic. c. 96), and then to qualify the provision in Sec. 87 as to prosecutions for such offences being at assizes only, by adopting the principle of the Act of 1868 (31 & 32 Vic. c. 16) which allows embezzlement by clerks or servants to be prosecuted before justices under the Criminal Justice Act of 1855 (18 & 19 Vic. c. 126). Let all embezzlements, when the value so far as ascertained does not exceed £10, be capable of being tried before justices under the Criminal Justice Act of 1855, and between £10 and £100 at quarter sessions.

“(4)—*Advantage of giving Petty Sessions Courts universal jurisdiction up to £10.*

“The property of the manufacturer entrusted to the weaver is, according to the theory of the law, protected against distress for rent and execution for the weaver’s debts; but if a question should arise whether the implements of manufacture were truly the weaver’s or manufacturer’s, then, when the amount did not exceed £10, an interpleader suit as to this could be determined at once in petty sessions.

“So again, the contracts of weavers and persons in that rank of life would be more valuable as securities if, when involved to the extent of £10, their simple affairs could be settled in the petty sessions court instead of, as is now the case, being subject to a single central Court of Bankruptcy, which amounts to a denial of justice.

“If these simple reforms were carried, they would benefit a number of industries, and the wideness of their application would prevent there being anything invidious in their enforcement.

“The policy of the Judicature Act adopted for England and for Ireland is to have one supreme court with universal jurisdiction of every kind.”

I have quoted the above report at such length, because it shows how much our chief Irish manufacturing industry is dependent upon the prompt application of the class of law reform that the Trades Union Congress has in part carried for England; and it shows that the whole subject has for Ireland been worked out and thought out, and it only requires such a stimulus as the meeting of the Trades Union Congress in Dublin next September, to have the reforms necessary for the benefit of the Irish linen trade, now happily in a state of partial revival of activity, promptly adopted.

*Hopeful spirit in which the Congress works.*

As to the cheerful and hopeful spirit in which the Trades Union Congress work, I may quote the following passage from their observations on the Summary Jurisdiction Bill:—

“The committee have dwelt at greater length on this question than is usual to do:—1st. Because the passage of such a measure is an achievement of which the Congress and its friends may well be proud. 2nd. Because it fairly illustrates the difficulties to be overcome in legislation on subjects which have no other influences to urge them forward than considerations of social and political equity. 3rd. As a lesson of encouragement to our constituents never to despair, but always to renew their efforts in any cause which has right and truth at its base.”

*The success of the Congress in its efforts for the Codification of the Law.*

As to the position the Congress has achieved by its twelve years work in England, I will only refer to one other point:—

"At the Newcastle Congress in 1876, a paper on 'Codification of the Law' was read from Mr. Henry Crompton, following up the discussion at the Liverpool Congress in 1878, and after a good debate the following resolution was carried unanimously:— 'That this Congress is of opinion that the advice lately given by the Lord Chief Justice of England on the subject of the codification of the laws ought to receive immediate attention at the hands of the Government; the present position of the criminal laws of the country is very unsatisfactory, and the time is come when it is the duty of the Government to undertake the consideration of a new penal code which will simplify the law and improve the administration of criminal justice.' In order to give practical effect to the resolution, the Secretary of the Parliamentary Committee entered into a correspondence on the question with Sir James Fitz-James Stephen, now Mr. Justice Stephen, and, at the earnest solicitation of the committee, that gentleman consented to deliver a lecture on 'A Criminal Code.' The lecture was delivered to a crowded meeting of working men in the Lecture Hall of the Society of Arts, on 6th February, 1877, the Right Honourable Lord Coleridge presiding, supported by the Right Honourable Lord Fortescue, Lord Justice Bramwell, A. J. Mundella, Esq. M.P., John Holmes, Esq. M.P., John Hinde Palmer, Esq. Q.C., Henry Crompton, Esq., F. Harrison, Esq., R. S. Wright, Esq., Rear-Admiral Maxse, and a number of other influential gentlemen.

"The Parliamentary Committee of the Trades Union Congress, in publishing Sir James Stephen's Address, add that the question of Codification of the Law would be brought before the House of Commons, during the session of 1877, by Mr. Farrer Herschell, Q.C. M.P.

"The Committee further add, that on behalf of the organized trades of the United Kingdom, it is deeply grateful to the learned gentlemen who have so freely given their time and labour to this movement, which, when successfully carried out, will confer upon the labouring classes of this country a benefit the value of which few are able to estimate.

"On 14th May, 1878, the Attorney-General introduced to Parliament 'A Code of Indictable-Offences.' The Bill is a large one, occupying 236 foolscap pages, and contains 425 sections, in addition to the schedules.

"The measure proposes to codify nearly the whole of the Criminal Law relating to indictable offences, in which is embodied the right of public assembly, and discussion on all political and social questions, and many of the most valued rights and privileges we possess. Thus the Bill assumes an importance which the great mass of the people might fairly be excused for not fully estimating."

As first introduced, Ireland and Scotland were both excluded from the Bill. When a commission was appointed to consider the Bill, an Irish judge was added to represent Ireland, with regard to the extension of the Bill to Ireland.

In 1879—

"The Criminal Code Bill, as revised by the Royal Commission, which sat throughout the winter months, was introduced on April 3rd, and read a second time early in May, and recommitted in order to insert some amendments accepted by common consent. As early as July 3rd, the Attorney-General announced that he saw no chance of passing the Bill, and consequently the measure was dropped for that session."

The revised Bill included Ireland, but no attempt has been made to extend it to Scotland.

Two other reforms advocated by the Trades Union Congress should be noticed, for they have both occupied the attention of this Society.

*Mode of payment of Petty Sessions Clerks' Salaries.*

This was altered in England in 1877, so as to secure that the clerks should have no interest in the amount of fees or result of proceedings; thus applying to England the principle which has long been applied to the superior courts—to those of Ireland, so far back as 1821.

The importance of a similar reform in Ireland was pointed out by a report of a committee of this Society, in 1877, shortly after the passing of the English Act.

*"Application of English Justices' Clerks Act (1877) to Ireland.*

"A very important question is thus raised as to how Irish magistrates' clerks are circumstanced.

"They at present derive their chief income from salary; but their salaries being charged on neither the local nor the general taxes are not fixed, as the fund out of which their salaries are paid arises from the aggregate of the produce of the petty sessions stamps, and of the fines, which the crown is, under various Acts of Parliament, entitled to in Ireland. . . . The way in which petty sessions clerks' salaries are regulated in Ireland, gives them a direct interest, not only in the fee charged as in England, but in a very large number of cases in the amount of fines imposed.

"As the principle of the English Justices' Clerks Act, 1877, is in advance of, and meets some of the defects of the Irish law, it is of importance that the principle involved in it should be extended to Ireland."

*Patent Laws.*

Another subject the Trades Union Congress have directed special attention to—reduction of cost and extension of the terms of Letters Patent for Inventions. Now, so far back as 1850 a paper was published in the Journal of this Society on the Cost of Patents of Invention in different countries, which had the effect of reducing the cost of Irish Patents, which was then £135, and for the three Kingdoms, £376, to its present more moderate amount of £40 for first three years for the United Kingdom.

Our Social Inquiry Society shortly afterwards devoted part of their funds towards securing a report on the Patent Laws, by Mr. Lawson, now Mr. Justice Lawson. This was a very able production, and contributed in no small degree to the reform which then took place.

On this important subject of Patent Law Reform the Congress are co-operating with the British Association for the Advancement of Science, which for several years have appointed committees on the subject.

The superiority the United States of America has acquired in the making of tools and machinery has arisen in no small degree from their admirable Patent Laws; and the Congress are proceeding in the wisest possible direction for the benefit of British workmen, in asking to have the cheapness and certainty of the American Patent Laws extended to the United Kingdom.

*Summary of Conclusions.*

As the Trades Union Congress has fixed their next meeting in Dublin, it is right to notice the great services of the Congress in past years to the cause of law reform.



Of the four reforms they have achieved for the benefit of the working classes, and improved administration of justice in local courts—(1) The Employer and Workmen's Act, 1875: (2) Conspiracy and Protection to Property Act, 1875: (3) The Justices' Clerks Act, 1877: and (4) The Summary Jurisdiction Act, 1879—the first two only have been extended to Ireland.

The extension of the principle of Justices' Clerks Act to Ireland has been recommended by a committee of the Dublin Statistical Society.

The extension of some of the principles of the Summary Jurisdiction Act of 1879 was asked for on behalf of workmen in the linen trade in Ireland so far back as 1877.

To the Trades Union Congress of Liverpool and Newcastle, and the subsequent co-operation with the Congress of Sir James Stephen (now Mr. Justice Stephen), and Lord Coleridge, we are mainly indebted for the Criminal Code Bill in which Ireland is included. The suggestion of the Congress that codification should be extended to summary jurisdiction is a most valuable one.

The spirit in which the Parliamentary Committee of the Congress has asked to have the reforms they have achieved for themselves in England promptly extended to Ireland, entitles their suggestions for amendment of the laws affecting the working classes to the respectful consideration of Irish law reformers.

Their desire to have Scotland also included, so as to have, as far as practicable, a uniform law for the whole United Kingdom in all that affects working men, is in strict accordance with what has been for some years advocated in papers and reports in this Society.

To attempt to describe at greater length all that the Trades Union Congress has achieved, or the measures they propose, or are now advocating, would be to anticipate the work of the approaching meeting in September. I have only selected a few of the chief subjects which are connected with law reforms that have been considered by, or that directly fall within the province of, this Society, and which are fair samples of the proceedings of the Congress. They appear to entitle their proceedings to the attentive and respectful consideration of this Society and the Irish public.

XI.—*On the Scotch Branch of the Poor Removal Question.* By W. Neilson Hancock, LL.D. Q.C.

[Read, 6th July, 1880.]

IN the report of the Select Committee on Poor Removal of 1879 there is a very marked difference in the way in which the Scotch and English branch of the question was dealt with. As to England, the report is:—

“Your Committee having given due weight to the various arguments and opinions that have been placed before them, recommend that in England the law of removal should be abolished, and that for the purpose of poor relief settlement should be disregarded, with the exceptions