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I.—*The Acts for taking the Census in England, Scotland, and Ireland, of 1881.* By Charles Eason, Jun., Esq.

[Read Tuesday, 25th January, 1881.]

In the last session of Parliament three Acts were passed for taking the Census of the United Kingdom during the present year. The English Act is 43 & 44 Vic. c. 37. The Scotch Act, c. 38, and the Irish Act, c. 28. Inasmuch as information substantially the same is collected in all parts of the United Kingdom, we naturally ask whether three Acts were really required. The common presumption is that three Acts would not have been passed if one would have sufficed; and such would not have been the case if before allowing three Acts to be passed inquiry had been made to ascertain whether one Act could not be made applicable generally to the whole United Kingdom. A comparison of the three Census Acts shows that no such enquiry was made in their case, and that uniformity was not aimed at in drawing them. Hence we shall be justified in suspecting that in the case of more important Acts this preliminary enquiry has also been neglected.

We now proceed to examine the Census Acts—comparing the sections dealing with—(1) The particulars to be ascertained by the census enumerators, both as regards persons and houses: (2) The territorial divisions the enumerators are instructed to distinguish; (3) The preparation of abstracts of the returns: (4) The appointment of the heads of public institutions as enumerators of the inmates thereof: (5) The appointment of enumerators, etc.: (6) The householders' schedules: (7) The verification of the census books: (8) The enumeration of the houseless population: (9) The power given to enumerators to ask questions necessary for obtaining correct information: (10) The offences for which punishments are provided: (11) The payment of the expenses of taking the census.

(1) *Particulars to be ascertained by the census enumerators as to persons and houses.*

All three Acts direct sex, age, and birthplace to be ascertained ; but the Irish Act (sec. 3) has the word "occupation" where the other Acts have the words "rank, profession, or occupation." Further—the Scotch Act (sec. 5) mentions, as one of the particulars, "condition"; the English Act (sec. 4) has "condition as to marriage"; the Irish Act does not specify this particular at all, but it contains (sec. 3) general words which authorize the enumerators to take an account of "all such further particulars as they may be directed to enquire into." These general words of the Irish Act also cover the facts described in the other Acts as "relation to head of family," and whether "blind, or deaf and dumb, or imbecile or lunatic."

These differences of phraseology are clearly unnecessary, since the facts ascertained are the same in each country. They are allowed to exist because it is nobody's duty to require that Acts of Parliament shall be uniform as far as possible. The defects of the present method of drawing Acts is further shown by comparing the Acts of last year with those of 1870. As regards the above mentioned particulars the only difference is that the word "condition" in the English Act of 1870 has been changed to "condition as to marriage" in the Act of 1880. No doubt the drawer of the Act recognized the need to add to condition the explanatory words "as to marriage"; but how is it that the same change was not made in the Scotch Act?

The Irish Act directs the religious profession of every person to be ascertained ; but this single difference of fact would not prevent the drawing of a section equally applicable to the whole of the United Kingdom.

As to houses, the English and Scotch Acts (secs. 6 and 7) direct the enumerators to take an account of "the occupied houses," the "houses then building and therefore uninhabited," and "all other uninhabited houses." The Irish Act (sec. 3) uses the terms "inhabited houses," "uninhabited houses," and "houses then building." Occupied and inhabited have the same meaning; the same descriptions might have been employed in each Act. The Scotch Act goes on to direct that the number of rooms having a window or windows shall be stated. Similar details are obtained in Ireland under the authority of the general words already mentioned. These details might safely be left, as in the Irish Act, to the discretion of the authority appointed to superintend the taking of the Census in each country.

(2) *Territorial divisions to be distinguished by enumerators.*

The English Act (sec. 6) directs the enumerators to distinguish civil parishes, and civil parishes within the limits of any parliamentary borough or incorporated borough, or urban sanitary district, or rural sanitary district, or ecclesiastical district, or any area prescribed by their instructions. The Scotch Act (sec. 7) only mentions three or four of these divisions: it adds school board districts; but does not contain the general words "any area prescribed in their instructions."

The Irish Act (sec. 3) specifies only parishes and places within the limits of parliamentary boroughs; but it gives discretionary power to the census authority to have other divisions distinguished. These differences are practically inoperative. The enumerators are bound to conform to the direction of the census authority, and the instructions they receive practically determine the divisions which they have to distinguish. The matter is one of detail, which properly belongs to the census authority. Such details are superfluous in the Census Acts.

(3) *The preparation of abstracts of the census returns.*

Preliminary abstracts of the Census of 1871 were issued for each country in June, 1871; and detailed abstracts and general reports were published in the years following. But though the results were practically identical, the sections of the Acts dealing with the preparation of abstracts vary surprisingly. The English Act of 1880 (sec. 9) directs the preparation of a detailed and of a preliminary abstract. The Irish and Scotch Acts (secs. 10 and 11) only mention one abstract, and that the preliminary one.

Turning to the Acts of 1870, we find the Irish and Scotch sections unaltered; but the section of the English Act of 1870 (sec. 9) is identical with those of the Scotch Acts of 1870 and 1880. Here again the English Act of 1880 has been improved, while the Scotch Act has been left unamended. The Irish Act is not so imperfect as the Scotch, because it contains (sec. 10) a direction, "that the returns shall be digested and reduced into order," and those words would cover any publication sanctioned by the census authority. There are further differences in the sections relating to these abstracts. The English abstract is to be laid before Parliament within three months of 1st June, 1881; the Scotch abstract, within twelve months of the same date; the Irish abstract, within twelve months of 3rd April, 1881. There is no reason for these differences.

(4) *The appointment of the heads of public institutions to act as enumerators of the inmates thereof.*

The English Act (sec. 10) specifies "the master or keeper of every gaol, prison, or house of correction, workhouse, hospital, or lunatic asylum, and of every public or charitable institution" which shall be determined upon by the Registrar-General. The Scotch Act (sec. 12) has the word "governor" before the words "master or keeper," and has "poorhouse" instead of "workhouse." The Irish Act (sec. 4) also has the word "governor," and in addition has the term "every barrack-master." The Registrar-General determines what institutions are sufficiently large to justify their having separate enumerators, and the differences are hence of no importance. The sections of the Irish and English Acts are identical with the Acts of 1870; but the word "governor" is an addition in the Scotch Act of 1880. Here, again, we find a change in one Act without corresponding change in another.

(5) *The appointment of enumerators, etc.*

The English and Scotch Acts (secs. 3 and 4) contain detailed directions as to the appointment of enumerators, and the divisions to be assigned to them. The Irish Act (sec. 3) directs the Lord-Lieutenant to appoint enumerators, and the Chief or Under-Secretary to assign divisions to them. But these sections practically are worked out in much the same way. The divisions are mapped out, and the enumerators selected by the subordinate officials, such as registrars and superintendent registrars, under the direction of the Registrar-General, and the ultimate sanction of the census authority. Similar differences exist in the sections relating to the appointment of Census Commissioners. The Irish Act (sec. 10) directs the Lord-Lieutenant to have the returns reduced into order by the Registrar-General, and such other person or persons as the Lord-Lieutenant shall appoint for that purpose. There are no corresponding directions in the other Acts. These merely direct in England (sec. 9) the Local Government Board, and in Scotland (sec. 11) one of her Majesty's Principal Secretaries of State, to cause an abstract to be made of the returns.

(6) *The householders' schedules.*

The English and Scotch Acts (secs. 4 and 5) contain directions as to the printing, the leaving, and the collecting of these schedules. The Irish Act (sec. 3) says that the enumerators shall take an account in writing of certain particulars according to such instructions as may be given them. Of course practically the information is obtained in substantially the same way in each country. It is worth considering how it comes that forms of words so essentially different have in practice the same results. The explanation is that certain persons are authorized to carry out a certain work, and their appointment carries with it the authority to do all acts necessary for the carrying out of that work. The similarity of that work renders the method of executing it substantially the same in each country, and it is superfluous to further authorize or direct these persons to do certain things which are part of the carrying out of their appointed task. The detailed directions are not necessary in order to determine the duties of the various officials engaged in the work; for these officials are not independent, but are bound to obey their superior officers. For example, the enumerators being bound to ascertain certain facts according to instructions given to them by the census authority, it is unnecessary to insert in the Census Act that they shall leave and collect the schedules at such and such times. Many details in the English and Scotch Acts are quite unnecessary, and are in fact wanting in the Irish Act.

(7) *Verification of the census books.*

As a further example, take the directions for the verification of the enumerators' books by the local authorities of Scotland. Section 9 of the Scotch Act contains the following detailed directions. The sheriff is to appoint a time and place for the registrars to attend with their books; the sheriff is to inform the registrars of the time

and place appointed; the sheriff is then to receive the books from the registrars; to examine the registrars about anything they find to require explanation; to correct as far as possible any inaccuracies, and to direct the sheriff clerk to indorse the books with certain particulars. And having thus directed the verification to be done in this way, the Act goes on to give the sheriff liberty to direct the registrar to verify the books before any justice of the peace, and to transmit the books to the sheriff in any convenient manner. The object of this section is to secure the proper performance by the registrars of their duty of checking the work of the enumerators. It is twenty-six lines long; while the English Act disposes of the matter in four lines, by directing that the "superintendent registrar shall examine all the books which shall be delivered to him, and shall satisfy himself how far the registrars have duly performed the duties required of them by this Act; and shall cause any inaccuracies which he shall discover in such books to be corrected as far as may be possible." The Irish Act (sec. 10) is equally concise.

(8) *The enumeration of the houseless population.*

The English and Scotch Acts (secs. 12 and 14) direct census authorities to obtain the usual information in regard to all persons not abiding in any house on the census night, in whatever way they may think best. The Irish Act contains no corresponding provision. The information on this head in Ireland is obtained under the authority of the general words (of sec. 3) already several times referred to, viz.—"The enumerators shall take an account of all such further particulars as by such instructions they may be directed to inquire into."

(9) *Power given to enumerators to ask questions necessary for obtaining correct information.*

The English and Scotch Acts (secs. 17 and 19) authorize the enumerators to ask all such questions as shall be directed in any instructions to be prepared by or under the direction of the census authority, which shall be necessary for obtaining the information required. The Irish Act makes the enumerator the judge of the necessity of the questions to be asked; it provides (sec. 8) that the enumerators are hereby authorised and empowered to ask all such questions of all persons within their respective districts respecting themselves or the persons constituting their respective families; and of all such further particulars as shall be necessary for the purpose of taking the said accounts. Practically both sections are effective, and there seems no reason why they should not be identical in their terms.

(10) *The offences for which punishments are provided by the Census Acts.*

These relate to the filling up of the householders' schedules, the answering questions put by the enumerators, and the performance of their duties by the enumerators and others engaged in taking the census. The English and Scotch Acts (secs. 4 and 5, and secs. 17 and 19) provide for the following possible offences on the part of persons required to fill up householders' schedules, viz.—(1)

The wilful refusal, or neglecting without lawful excuse to fill up, sign, or deliver the schedules: (2) The wilful making, signing, or delivering, or causing to be made, signed, or delivered, any false return of any matter specified in the schedules: (3) The refusing to answer, or wilfully giving a false answer, to any question the enumerator is authorised to ask: and for any of these offences these Acts impose a fine of not more than £5, nor less than £1. The Irish Act does not, as we have already seen, make any reference to schedules, and accordingly it does not specify any offence relating to them. It provides, however (sec. 7), for the offence of refusing to answer, or wilfully giving a false answer to any questions put by the enumerator in the discharge of his duties. Any offence committed in regard to the schedules would be brought under this section. In addition, the Irish Act provides for an offence not referred to in the other Acts—viz: that of wilfully obstructing the census officers in the discharge of their duties. As to the punishment for these offences, the Irish Act fixes a maximum fine of £5, but does not lay down any minimum fine.

As to neglect of duty, or any other offence committed by census officers, we must first notice that the English and Scotch Acts (sec. 6 and 7) require each enumerator to sign a declaration to the effect that he has done his work accurately; and the Irish Act requires each enumerator to sign and certify his papers, and to make a solemn affirmation before a justice of the peace that he has done his work accurately.

The offences recognised in the English and Scotch Acts (secs. 16 and 18) are—(1) The making wilful default in the doing of anything required by the Act; and (2) the making any wilfully false declaration. The punishment annexed to these offences is a fine of not more than £5, nor less than £2. The offences recognised in the Irish Act (sec. 8) are substantially the same, but the words “neglect, default, and falsification” are used in place of the one word “default” of the other Acts. The punishments annexed are somewhat different. For wilful default, the punishment prescribed is a fine, as in England or Scotland; but (sec. 11) the person making a false declaration is to be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful perjury are subject. The Irish Act (sec. 9) contains rather minute directions about the mode of taking legal proceedings under the Act. The other Acts are more concise on this head; for example, section 18 of the English Act runs thus—“All penalties imposed by this Act shall be recovered in a summary manner before two justices of the peace having jurisdiction in the place where the offence is committed, in the manner prescribed by law in this behalf.” The Irish Act would seem to be unnecessarily full in this respect.

(11) *The payment of the expenses of taking the census.*

Each Act provides, in substantially the same words, for the payment, out of moneys provided by Parliament for that purpose, of all expenses incurred by the direction of the census authority, with the sanction of the Treasury. The Irish Act makes no further

reference to the question of expense, but the English and Scotch Acts contain some directions on the following points:—(1) the preparation of a table of allowances to be made to the persons employed in taking the census. (2) The ascertaining of the amounts that become due to the persons who shall have taken the census. (3) The manner of making the payments, when ascertained.

The differences of procedure in each country in this matter are not merely formal, but arise from difference of circumstances. Yet, they do not render necessary separate statutes, for they might be omitted altogether, as is the case in the Irish Act. The object is to secure that the census shall be taken with due regard to economy, and that the money spent shall be properly applied. These ends are really obtained, not by the clauses of the Census Acts, but by the control exercised by the Treasury and the census authorities.

In conclusion, we may notice some sections present in one or more of the Acts, but absent from the others. Thus, the English and Scotch Acts each have, while the Irish Act wants, a section giving the title of the Act, *e.g.*, this Act may be cited as the "Census Act, 1880." The Scotch Act contains a section directing that a printed copy of the Act shall be sent to the sheriff of every county, and the chief magistrate of certain burghs. The Irish Act contains a section which directs that "an account of the population of Ireland shall be taken at the time and in the manner hereinafter directed."

The consideration of these Acts suggests two leading principles which should regulate the construction of Acts of Parliament—first, that every public Act should extend to the whole of the United Kingdom, unless it can be proved that some part of the United Kingdom should be excluded from its operation; and, second, that corresponding Acts should agree, as far as possible, in form and terminology, so that identity of form and terminology would indicate identity of circumstances, and diversity of these would suggest and imply diversity of circumstances. The recognition of these principles would simplify the work of legislation, make the law plainer and more comprehensible, and facilitate its ultimate codification.

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II.—*Irish Linen Laws and proposed Amendments thereof.* By Arthur Henry Bates, Esq. Barrister-at-Law.

[Read Tuesday, 25th January, 1881.]

THE custom, largely adopted in many manufacturing districts, particularly in the north of Ireland, of manufacturers in the linen and damask trade giving out to weavers the materials for webs to be woven by them in their own homes, has been the origin of a small code of laws. The fact that property, representing a very large amount of capital, is entrusted during a considerable time to men generally poor, and is left during that time under their complete control, in danger of being lost or injured, not only by their dis-