

VI—*Report of Committee on Legislation by Provisional Orders in England, Scotland, and Ireland.*

[Read Tuesday, 20th February, 1877.]

IN pursuance of the reference of the Council, of the 21st November, 1876, "To consider and report on the system of legislation by Provisional Orders in England, Scotland, and Ireland," we beg to report as follows.

(1) *Principle of allowing provisions of a general Act of Parliament to be adopted locally by vote of meeting of ratepayers.*

The small extent to which the Provisional Order System of Legislation has been practically adopted in Ireland cannot be understood without noticing the system which preceded it—viz., that of allowing the inhabitants of towns, by a vote at a meeting of ratepayers, to adopt wholly or in part the provisions of a general Act previously passed by Parliament.

The oldest form of town government now in operation in Ireland rests on legislation of this character—viz., the Lighting, Cleansing, and Paving Act of 1828 (9 Geo. IV. c. 82). By that Act, the powers usually granted in local Acts in England for discharging such duties were embodied in a general Act, and upon the application of twenty-one inhabitants of any city or town the lighting of which was not provided for by any special Act of Parliament, the Lord Lieutenant might order the chief magistrate to convene a meeting, at which inhabitants of houses rated at £5 might vote.

If the meeting adopted the provisions for any one or more of the purposes of the Act, it was to be applied to such purposes only.

After these provisions had been for twelve years in operation, in 1840, under the Municipal Corporations Act of that year, the Town Councils of the principal boroughs were required to adopt the provisions of the Act of 1828 (9 Geo. IV. c. 82), as to lighting, in all parts of the borough not lighted under a local Act.

The success of this simple form of legislation is shown by the fact that sixty-six towns in Ireland availed themselves of its provisions. Though so successful as a plan for enabling towns to adopt a system of local government, it contained within itself no element of progress. Prosperous towns, therefore, in which a more fully developed system of town law had become necessary, were forced to fall back on the old and expensive system of local and personal Acts, in order to obtain more extended powers. Thus Kingstown, in 1834, gave up the provisions of the Act of 1828 for a local Act. Belfast obtained local Acts in 1845, 1846, and 1847. In the latter year the growth of the demand for local Acts had been met, to some extent, by the passing of the Towns Clauses Acts and the Commissioners Clauses Acts of 1847. In that year Rathmines obtained a local Act incorporating many of the provisions of these General Clauses Acts. Dublin, in like manner, obtained an Act in 1849; Cork, in 1852; and Limerick, in 1853.

Although the limited nature of the provisions of the Act of 1828 was manifest so early as 1834, when Kingstown abandoned its provisions for the more complete legislation that had become usual, and although the limited nature of these provisions was still more manifest in 1847, when the Towns Clauses Act and Commissioners Clauses Acts were passed, it was not until 1854, or twenty years after the Kingstown Act, and seven years after the Towns Clauses Act and Commissioners Clauses Act were passed, that the Irish towns that could not afford the cost of a local Act were enabled to adopt the modern legislation of 1847, as a substitute for the earlier legislation of 1828.

This was effected by the Towns Improvement (Ireland) Act of 1854. It gave Irish towns an opportunity of obtaining, without the cost of a local Act, very many of the powers of the Towns Clauses Act, 1847, and Commissioners Clauses Act, 1847, and some other powers. The machinery was very similar to the Act of 1828—an application to the Lord Lieutenant, and a town meeting to adopt the Act. There was, however, an essential difference. The Lord Lieutenant fixed the boundary of the town under the Act of 1854, while the town authority fixed the boundary under the Act of 1828.

Seventy-six towns are now governed by Commissioners, under the Act of 1854. Some of the Town Councils have adopted its provisions, and some towns formerly under it are now governed by local Acts. Of the sixty-six towns which adopted the provisions of the Act of 1828, there are only twelve which have not subsequently adopted the more modern provisions of the Act of 1854.

Of the nineteen towns that had Municipal Commissioners assigned to them, on the abolition of the old corporations, there is only one (Carrickfergus) which has not come under either the Act of 1828 or the Act of 1854.

The adoption of the Act of 1854, or of any of its provisions, depends upon the decision of a town meeting, whether the town has been previously under Lighting and Cleansing Commissioners or Municipal Commissioners, or has never previously been under local government.

(2) *Principle of allowing towns to be governed by vote of a town authority.*

The principle of allowing by-laws to be made by town authority, is sanctioned in the Irish Municipal Corporation Act of 1840, and these by-laws, when sanctioned by the central authority prescribed by the Act, have the force of law.

This principle was adopted in the Public Health Act for England of 1848, as also in other Acts of Parliament.

(3) *Principle of allowing provisions sanctioned by Parliament to be adopted by resolution of town authority.*

From allowing towns to be governed by by-laws, when properly sanctioned, the step was an easy one to allowing the general provisions sanctioned by Parliament to be adopted by a resolution of town authorities. This step was accordingly taken in England eighteen

years ago, in 1858, by the Local Government Act of that year (21 and 22 Vic. c. 98). The 12th section provides :—

“This Act may be adopted—

“(1) In Corporate Boroughs to which the Public Health Act, 1848, has not yet been applied, by a *resolution of the council* in a meeting of the council assembled, at a meeting held for that purpose.

“(2) In other places under the jurisdiction of a Board of Improvement Commissioners, when all or part of the commissioners are elected by the ratepayers, or by owners and ratepayers, by a *resolution of such Improvement Commissioners*, assented to at a meeting held for that purpose.

“(3) In all other places having a known and defined boundary, by a resolution of the owners and ratepayers.”

Then the 15th section provides for the adoption of the Act by Commissioners under a local Act :—

“Any corporation or body of commissioners, exercising powers for sanitary regulations under the provisions of *any local Act*, may adopt any part or parts of this Act by *resolution* of the council or commissioners, and such resolution shall in every case be passed and forwarded to one of Her Majesty's principal Secretaries of State, as provided in this Act, for the adoption thereof; and thereupon the part or parts of this Act named in such resolution shall be in force within a district comprised in such local Act, as fully and effectually as if such part or parts of this Act had been enacted in such local Act.”

Power of appeal is given to the Secretary of State against a resolution as to adoption of the Act, and the general provisions in relation to the confirmation of the adoption of Act are regulated by the 19th section :—

“Whenever a resolution adopting this Act has been passed in any place, notice thereof shall be given to one of Her Majesty's principal Secretaries of State by the following persons, that is to say :—

“In corporate boroughs, by the mayor.

“In other places under the jurisdiction of such Improvement Commissioners, as aforesaid, by the chairman of the Board of Commissioners.

“In other places by the summoning officer.”

“The notice so sent shall be in writing, under the hand of the officer hereby required to give the same; and it shall be the duty of said last-mentioned officer to publish a copy of said notice in the following manner, that is to say :—

“By advertisement for three successive weeks in some one or more of the newspapers circulated in the place.

“By causing a copy of such notice to be affixed to the principal doors of every church and chapel in such place to which notices are usually fixed; and when such notice has been so given, and the time for such appeal has expired, or such appeal has been dismissed, a notice shall be published in the *London Gazette* by one of Her Majesty's principal Secretaries of State, that this notice has been adopted within such place.

The principle thus sanctioned in England in 1858, of substituting the resolution of a constituted local authority for the resolution of a meeting of ratepayers, in adopting provisions already sanctioned by Parliament, admits of immediate application to Ireland; and its adoption would greatly lessen the present complication as respects town authorities. It is well known that the necessity for holding a meeting of ratepayers has prevented some towns from substituting the provisions of the Act of 1854 for the powers of municipal commissioners, or for the powers given under the Lighting and Cleansing Act of 1828.

Irish authorities should be enabled to adopt principles sanctioned for Scotland, as well as those sanctioned for England; for the Scotch law is in some respects in advance of both English and Irish law.

In the evidence before the Select Committee of the Commons on Local Government and Taxation of Towns in Ireland, a very satisfactory provision of the Scotch law as to ruined houses in towns is noticed. More detailed clauses for carrying this provision into effect are set forth in the Edinburgh Provisional Order Confirmation Act of 1867, sections 85-89. It appears from the evidence before the Select Committee, that in April, 1876, the Town Council of Belfast passed a resolution approving of the Scotch law as to ruined houses in towns being extended to Ireland.

In the month of June, 1876, the Town Council of Dublin adopted a similar resolution, and clauses were introduced into their Improvement Bill of the present session for carrying the resolution into effect, by incorporating the provisions of the Scotch law as to ruinous houses in towns. Unfortunately this Improvement Bill has been referred back, and may not pass standing orders, and the city of Dublin may consequently lose the opportunity of obtaining most useful powers which Scotch towns have enjoyed for two centuries.

The success of Dublin in its Bill would, however, have been of no advantage to Belfast or to any other town in Ireland. In order to obtain the benefit of this common-sense principle of legislation, which was sanctioned long ago by Parliament for all Scotch Royal Burghs, it will be necessary for each Irish town to incur individually the expense and risk of introducing a local Bill for the special purpose, or to incorporate the provisions in a local Bill whenever it may find it necessary to apply to Parliament for an increase of its powers.

Under these circumstances we recommend:—

1. That the principle of the Local Government Act of 1858, as to adopting the whole or part of general Town Acts, by resolution of town authority, subject to appeal, be extended to Ireland.

2. That Municipal Commissioners in Ireland should be enabled by resolution to adopt the Town Improvement (Ireland) Act, 1854, and any part or amendment thereof.

3. That Lighting and Cleansing Commissioners in Ireland should be enabled, by resolution, to adopt the Town Improvement (Ireland) Act, 1854, and any part or amendment thereof.

4. That the authority to hear appeals against such resolutions should be the Irish Local Government Board.

5. That (except in the case of police, which is specially provided for by general statutes) town authorities in Ireland should be enabled by resolution to adopt any power for improving the town, or more effectually carrying out their duties, that has been sanctioned in England or Scotland for a town having equal population as the town which proposes to exercise such powers and privileges. Such exercise of power to be subject to like appeal above suggested, and to be further subject to the restriction, that the Irish Local Government

Board may, if they think it right, require the matters so proposed to be carried out by resolution, to be carried out by provisional order.

(4) *Development of the English provisional order system for town legislation.*

The earliest case of legislation by provisional order confirmed by Parliament, appears to have been in 1845, as to inclosure acts. An Inclosure Clauses Consolidation Act was passed as far back as 1801. (40 Geo. III. c. 109.) Then in 1836 power was given to inclose without special Act, on consent of proprietors. In 1845, by 8 & 9 Vic. c. 118, Inclosure Commissioners were constituted, to carry out inclosures on report by provisional order confirmed by Parliament, and without a special Act; and between 1845 and 1872 no less than 923 of such provisional orders were confirmed.

Provisional orders for town government in England and Wales date so far back as the Public Health Act of 1848. Under its provisions provisional orders were to be made for the formation of public health districts by the Privy Council in England. In 1858, the more complete provisions of the Local Government Act of that year were substituted for those of 1848, and a Secretary of State substituted for the Privy Council as the authority to make the provisional order. In 1871, the powers and duties of the Secretary of State in this matter were transferred to the English Local Government Board by the Local Government Board Act, 1871 (34 & 35 Vic. c. 20). Of this class of provisional orders, no less than 332 were made and confirmed by Parliament between 1848 and 1867. Since that time the number has been 397, or 729 in all.

The system of provisional orders has been applied in England and Wales to other matters besides town government—notably to arrangements for reducing the rate of interest on turnpike loans, under the Turnpike Trust Arrangement Act of 1851 (14 & 15 Vic. c. 38). Of these, since 1852 no less than 194 have been made.

(5) *The General Police and Improvement Act (Scotland) 1862.*

The Scotch Police and Improvement Act, 1862, is more recent than the Irish Town Improvement Act of 1854, or the English Local Government Act of 1858, and it affords a very valuable precedent with a view to the amendment of the Irish Local Government Act of 1871.

The Scotch Act adopts to the fullest extent the principle of the English Act of 1858, already referred to, allowing town authorities to adopt its provisions, in whole or in part, by resolution. Section 15 provides:—

“This act may be adopted either in whole or in part; that is to say, in parts, sections, or clauses: (1) In royal or parliamentary burghs where there is no board of commissioners or trustees of police, under the provisions of any general or local Act of Parliament, other than the magistrates and council of such burghs, by a resolution of the magistrates and council of such royal or parliamentary burghs, etc., at a meeting held for that purpose: (2) In royal or parliamentary burghs, where there is such board of commissioners or trustees as aforesaid, by a resolution of the said commissioners or trustees, at a meeting held for that purpose.”

The adoption of the Act in whole or in part, has by section 18 the effect of repealing any general or local police Act, excepting so far as it may relate to matters not provided for in the part adopted.

By this simple provision, the Scotch, without the cost of either a local Act or even of a provisional order, repeal previous inconsistent enactments, and avoid the confusion of concurrent statutable provisions.

This wise provision of the Scotch Act of 1862 is in singular contrast with the provision of the English and Irish Public Health Act of 1866 (section 55):—

“All powers given by this Act shall be deemed to be *in addition to and not in derogation of any other powers* conferred on any local authority by Act of Parliament, law, or custom, and such authority may exercise such other powers in the same manner as if this Act had not passed.”

This provision has contributed in no small degree to the complication which has ever since prevailed in public health law in both England and Ireland.

Besides the ample and effective powers which town authorities in Scotland have, of adopting by resolution general provisions approved of by Parliament, they possess the most ample and unrestricted powers of progressive legislation by provisional order. Section 79 provides:—

“Whenever it appears desirable to magistrates and council or commissioners, etc., of any burgh, that provision should be made, in order (1) the better to apply and execute therein the provisions of this Act in whole or in part; (2) or for the future application or execution of any Acts in force therein, having relation to the purposes of this Act, or to the roads and streets within said burgh or populous place, or to any other matter or thing connected with the management and administration of the municipal or police affairs of such burgh or populous place; (3) or that any such Acts or any exemptions from rating therefrom derived, or that any provisional order or orders in council applying this Act, hereby authorised to be made, should be wholly or partially repealed or altered: (4) or whenever it appears desirable to the magistrates and council of any royal or parliamentary burgh where there is a board of commissioners of police separate from such magistrates and council, to unite the municipal and police government and jurisdiction of any such royal or parliamentary burgh in the magistrates and council thereof, to transfer to them all the powers and jurisdiction of police, paving, lighting, watching, and others, granted to the commissioners by any local Acts, and to extend same jurisdiction over the whole limits of such burgh; (5) or whenever it appears desirable to the magistrates and council, or the commissioners of police, of contiguous burghs, that provision should be made for executing any general conduits or main sewers, or other drainage works necessary for the more effectual draining of such contiguous burghs, the magistrates and council or commissioners, etc., may present a petition to a Secretary of State, “who may issue a provisional order in relation to the several matters in the said petition, either in accordance with the prayer thereof, or with such modifications or alterations as may appear to him to be necessary:” “provisional order not to be of effect till confirmed by Parliament.”

In addition to the simple means for the voluntary application of the Act, the Scotch Act contains some very valuable provisions for securing the compulsory adoption of its provisions when the mortality exceeds, on an average of five years, certain proportions, viz:—

20 in 1,000, where population	1,000
23 in 1,000, „ „	5,000
25 in 1,000, „ „	20,000
29 in 1,000, „ „	300,000 and upwards.

When that mortality occurs, the Lord President or Secretary of State, and two other Privy Councillors, may order the sheriff (Scotch County Court Judge) to make public inquiry and examine witnesses,

“As to the sewage, drainage, and supply of water, the state of the burial grounds, the number and sanitary condition of the inhabitants, and as to any Acts of Parliament in force within such burgh or populous place for paving, lighting, cleansing, watching, regulating, supplying with water, or improving the same; also as to the natural drainage areas, and to existing municipal, parochial and other local boundaries, and boundaries which may be most advantageously adopted for the purposes of the Act; and as to any other matters in respect whereof the said Lords Commissioners of Her Majesty's Privy Council may desire to be informed, for the purpose of enabling them to judge of the propriety of reporting to Her Majesty or making an Order in Council as hereinafter mentioned.

The Order in Council can do everything which a provisional order could do under the Act, and like it requires to be confirmed by Act of Parliament.

As the mortality of Dublin City in 1876, taken as an average year, with a population of 246,326, was between 27 and 28 per 1,000 of the population, the city is now in that state in which a compulsory Order in Council could be made if the principles of the Scotch Act applied to Ireland.

As respects the efficiency of the Scotch Act, its operation in the city of Edinburgh may be taken as an example. The Lord Provost and magistrates first adopted various clauses of the Act of 1862 by resolution; then in 1867 they petitioned for a provisional order, and a most elaborate order of 209 clauses, extending over 60 pages of the Statute Book in small type, was confirmed by statute (30 & 31 Vic. c. 58), which statute is published in the General Statutes.

The full scope of this Edinburgh Provisional Order may be judged of by the headings of the different parts into which it is divided.

ASSESSMENTS.—I. Assessments for police purposes. II. Assessments for sewers, and general and private improvements: (1) Sewers; (2) General improvements; (3) Private improvements.

ORDINARY POLICE PURPOSES.—I. Lighting. II. Cleansing streets. III. Paving and maintaining streets. IV. Improving streets and removing obstructions. V. Laying out new streets. VI. Public sewers. VII. Drainage of houses. VIII. Soil pipes and water-closets.

GENERAL POLICE REGULATIONS.—I. Precautions during repairs of old and ruinous tenements. II. Nuisances and obstructions in the streets. III. Prevention of fraud. IV. Carriages, omnibuses, etc. V. Brokers and pawnbrokers. VI. Articles found. VII. Suppression of vagrants. VIII. Places of public resort, and disorderly houses. IX. Clocks. X. Fires. XI. Ventilation and cleansing.

POWERS AND REMEDIES.—I. By-laws to be made. II. Borrowing of money. III. Purchase and acquisition of lands. IV. Execution of works by magistrates and council. V. Execution of works by owners. VI. Jurisdiction and recovery of penalties. VII. Promotion of the public health.

(6)—*Working of the provisional order system in Ireland, in the cases where it has been applied to Ireland alone.*

1. *Irish Tramways Act, 1860.*

The new Tramways Act of 1860, gave a power of sanctioning tramways to a grand jury, subject to appeal to the Lord Lieutenant in Council; and in every case, whether sanctioned originally by grand jury or on appeal by Order in Council, a confirmation of the order by public Act of Parliament was necessary. In 1861 this necessity of confirmation by Parliament was dispensed with when the grand jury assented, if no appeal was lodged against their approval.

An Act passed in 1876 (39 & 40 Vic. c. 65) to amend the Acts of 1860 & 1861, discloses a defect by which tramway companies have been embarrassed in availing themselves of the Act of 1860, as the following extract from the 5th section of the Act of 1876 will show:—

“Whereas, a certain Order made by the Lord Lieutenant in Council, bearing date the 11th March, 1867, authorizing the making and maintaining by the City of Dublin Tramway Company (Limited) of certain tramways, was made before any general rules were made in pursuance of the 37th section of Tramways (Ireland) Act, 1860, regulating the times at which notices should be given, deposits made, and other proceedings taken in the County of Dublin, and County of the City of Dublin, under the said Act; and said tramways have been, under and by virtue of the authority of said order, made and maintained, and are now being worked in the County of the City of Dublin, and doubts are entertained concerning the validity of said order, by reason of said order having been made before any such general rules as hereinbefore mentioned were made, and it is expedient to remove such doubts.”

It appears from this, that the general rules for the execution of the Act of 1860, which the Lord Lieutenant in Council was empowered to make, had not been made at the end of last session, and we are informed that no rules have yet been made; while two tramway companies are applying for local Acts in the present session, exactly as if the first Tramways Act of 1860 had never passed.

We recommend that the attention of the Clerk of the Privy Council be called to the defect disclosed by statute 39 & 40 Vic. c. 65, with a view to the necessary rules being made by the Privy Council to allow of the Irish Tramways Act of 1860 coming at once into full operation.

2. *Irish Land Drainage Act.*

Before the provisional order system of legislation was introduced in England in 1845, drainage districts in Ireland were, under an Act of 1842, formed by awards of drainage commissioners. After the provisional order system was applied to land drainage in England in

1861, a similar plan was in 1863 adopted in Ireland, and it appears to have worked most satisfactorily—37 provisional orders having been made and confirmed by statute under it.

### 3. *Local Government (Ireland) Act.*

Although this Act was passed long after the Local Government Act of England of 1858, and the Police and Improvement Act of Scotland of 1862, the narrow and defective manner in which it is drawn has given rise to great objection and complaint.

Although in 1847 Rathmines had obtained a local Act, giving it sole control over roads and streets, yet by the Towns Improvement (Ireland) Act, passed in 1854, no provision was made for enabling town authorities to terminate the divided authority between them and the county authorities as to their roads and streets. Accordingly, after 1854 this complete separation of towns from adjoining counties became one of the chief objects for which towns in Ireland incurred the expense of local Acts. For this purpose, Acts were obtained by Rathmines in 1847, Kingstown in 1861, Queens-town in 1862, Blackrock, Pembroke, and Dunganvaran in 1863, Londonderry in 1864, Belfast in 1865, Bray in 1868, Dalkey in 1868, New Kilmainham in 1868, Sligo in 1870, Enniskillen in 1870, Newry in 1871, and Kingstown again in 1874. To meet the great cost towns were thus put to was one of the objects for which the Irish Local Government Act, 1871, was passed. By it the Chief Secretary was enabled by provisional order to separate towns from counties. By the Local Government Board (Ireland) Act, 1872, this power was transferred from the Chief Secretary alone to the Irish Local Government Board, of which he is chairman, as was also transferred the power of sanctioning the adoption of the Act of 1854.

Since 1871, one town, Wexford, has been separated from the adjoining county by provisional order, but in a number of other cases the exercise of this power has been stopped by the absolute veto given to the grand jury.

Upon this restriction, the Irish Local Government Board, in their Report for 1874, say :—

“There is no likelihood, in the present state of the law, that any such application will be again made, and the question is asked why the consent of the grand jury was made a necessary preliminary, as it was most natural that the body which it was proposed to deprive of its jurisdiction and its power of taxation should object to the proposal, however desirable it might be to the parties residing in the district which petitioned to be disannexed.”

In support of the view thus taken by the Local Government Board, may be added the precedent of the Irish Tramways Act, 1860, by which, where a tramway is approved by a local authority, and disapproved of by a grand jury, an appeal is given to the Lord Lieutenant in Council against such disapproval.

Again, under the Scotch Act, one of the objects for which a provisional order can be obtained (without any veto to stay its course) is the having town affairs under a single town authority.

Under these circumstances, we think the recommendations of the Irish Local Government Board should be adopted, and

the section of the Act of 1871 giving the power of veto to the grand jury should be repealed.

In the three principal counties of cities and of towns—Dublin, Cork, and Limerick—the fiscal powers of the City Grand Jury have been transferred to the Town Council. There is great doubt whether under the Act of 1871, in the smaller counties of cities and towns—Waterford, Kilkenny, Drogheda, Galway, and Carrickfergus—this can be done by provisional order.

We recommend that, in accordance with the precedent of the Scotch Act, the power should be conferred of making this change by provisional order.

Another defect in the Irish Local Government Act of 1871 is that the repeal of provisions by a provisional order is by it limited to local Acts. This has led to two serious evils. When the city of Dublin, in 1874, applied for a provisional order, only a part of what it applied for could be granted, and the city was put to the expense in the same session of seeking a local Act for those provisions that modified the provisions of general Acts. Had the Irish Local Government Act of 1871 been passed on the same broad and intelligible basis as the Scotch Act of nine years before (1862), there would not have been the slightest difficulty in granting by provisional order all that the city of Dublin had to obtain by a local Act in 1874. So, again, there would have been no necessity for the city to incur the expense of seeking another local Act in 1876.

Another result of this narrow enactment is that the seventy-six towns which are under the Act of 1854, and the twelve under the Act of 1828, are all excluded by the provisions of the Local Government Act of 1871, as they cannot by provisional order modify any of the provisions of these Acts, which in the rapid progress of town legislation are to a considerable extent out of date.

Under these circumstances, we recommend that the Local Government (Ireland) Act, 1871, be amended by extending its provisions to all the purposes for which provisional orders may be made under the Scotch Police and Improvement Act of 1862.

#### 4. *Veto of canal owners and other authorities against the working of the Irish Land Drainage Act of 1863.*

Whilst the veto of the Grand Juries under the Act of 1871, in the case of the separation of towns from counties for the purposes of roads and streets, has been so strongly condemned, the veto under the Drainage Act of 1863, because it does not occur in the case of every district, has escaped notice, though it appears no less objectionable.

By the 68th section of the Drainage and Improvement of Land, (Ireland) Act, 1863, it is provided that,

“Without the consent of such corporation, company, commissioners, etc., therein mentioned, ‘nothing in this Act shall authorize any Drainage Board,’ etc.

“(1) To interfere with any works for the purpose of draining land,

under any public, local, or private Act of Parliament, so as to injuriously affect the same.

“(2) To interfere with any lake, river, or canal, where any corporation, company, or commissioners are, by virtue of any Act of Parliament or otherwise, entitled to navigate such lake, river, or canal,” etc.

There are similar vetoes reserved in the case of water used for the supply of a town, and in the case of harbours of inland navigation.

Now we think all these parties are in the same position as Grand Juries, and that they should not have an absolute veto, but should, like all other parties, be bound to attend before the Commissioners of Public Works and state their objections to the provisional order; but should not have power of stopping it by an absolute veto.

We recommend that the sections giving the power of veto of canal owners, wharfingers, owners of town water supply, and trustees under statute for drainage works, against provisional orders for the drainage and improvement of land under the statute 26 & 27 Vic. c. 88, should be repealed, and that they be placed in the same position as others who may consider their interests injuriously affected.

(7) *Progress of the system of provisional order legislation since its commencement in 1845.*

We annex a table showing the result of the provisional order system of legislation in the thirty years during which it has been in operation.

For England, commencing with inclosure of commons in 1845, it has been applied to public health districts, local government, turnpike trust arrangements, confirmation of charity schemes, land drainage districts, some special parts of railway constructions, metropolitan commons, poor-laws, and school-board sites. For England and Scotland alone it has been extended to oyster and mussel fisheries and tramways. For England and Ireland alone, to artizans' and labourers' dwellings. For Scotland alone, to police, and improvement of public health, and labourers' dwellings. For Ireland alone, to tramways, drainage of land, and town government; and to the United Kingdom, for harbours and piers, pilotage, and gas and water.

The orders for England alone have been,	...	1,938
For Scotland,	... ..	27
For Ireland,	... ..	55
Total for one portion of United Kingdom,	...	2,020
For United Kingdom,	... ..	287
For England and Scotland,	... ..	45
For England and Ireland,	... ..	2
Total for two or three parts of United Kingdom,		334
Total provisional orders sanctioned by Parliament since 1845,	... ..	2,354

The popularity of the provisional order system in England and Scotland has arisen from the extent of direct responsibility to Parliament, both for the general principles and details of legislation.

The orders in England relating to commons and land drainage are entrusted to commissioners not represented in Parliament, just as the Irish Land Drainage Orders are entrusted to Public Works Commissioners not represented in Parliament; but when the provisional order system was applied to public health and town government, and other very important matters, it was carried out by departments represented in Parliament by a cabinet minister as to general principles, and by a parliamentary subordinate as to details. Thus, in the case of provisional orders by the Home Secretary in England, the Home Secretary is responsible for the general principles, and the Parliamentary Under-Secretary at the Home Office for details.

For the orders made by the Board of Trade, the president and parliamentary secretary occupy similar relative positions. Local Government Board orders are in charge of the president and parliamentary secretary of that board; Privy Council orders as to education, in charge of the president and vice-president of the council.

As respects Scotland, the Lord Advocate, who is almost always in Parliament, has a permanent office in London and in Edinburgh, and thus discharges to a large extent the duties of Under-Secretary of State for Scotland. The Scotch provisional orders are thus in the hands of the Home Secretary as to general principles, and in that of the Lord Advocate as to details.

The Chief Secretary for Ireland, though frequently, but not invariably a cabinet minister, has been made responsible for both principles and details; but he has not the opportunity of becoming as practically acquainted with the details as the Parliamentary Under-Secretary of the Home Office, the Parliamentary Secretaries of the Board of Trade and English Local Government Board, or the Vice-President of the Council, as respects English provisional orders, or as the Lord Advocate as to Scotch provisional orders. This is especially the case when, like Lord Mayo, Lord Carlingford, Lord Hartington, and Sir Michael Hicks Beach, the Chief Secretary is a cabinet minister. To the double work thus thrown on the Chief Secretary in recent years the slow growth of the Irish provisional order system may be possibly in some part ascribed.

#### (8) *Summary of Recommendations.*

In conclusion, the following is a summary of the suggestions we have to make:—

##### (i.) *Adoption of sanctioned legislation by resolution.*

1. That the principle of the Local Government Act of 1858, as to adopting the whole or part of general town Acts, by resolution of town authority, subject to appeal, be extended to Ireland.
2. That Municipal Commissioners in Ireland should be enabled by resolution to adopt the Towns Improvement (Ireland) Act, 1854, and any part or amendment thereof.
3. That Lighting and Cleansing Commissioners in Ireland should be enabled by resolution to adopt the Town Improvement (Ireland) Act, 1854, and any part or amendment thereof.

4. That the authority to hear appeals against such resolutions should be the Irish Local Government Board.

5. That (except in the case of police, which is specially provided for by statute) town authorities in Ireland should be enabled by resolution to adopt any power for improving the town, or more effectually carrying out their duties, that has been sanctioned in England or Scotland for a town having equal population as the town which proposes to exercise such powers and privileges. Such exercise of power to be subject to like appeal above suggested, and to be further subject to the restriction, that the Irish Local Government Board may require the matters so proposed to be carried out by resolution to be carried out by provisional order.

(ii.) *As to Irish Tramways Act (1860).*

That the attention of the Clerk of the Privy Council be called to the defect disclosed by statute 39 & 40 Vic. c. 65, Tramways (Ireland) Act Amendment, Dublin, with a view to the necessary rules being made by the Privy Council to allow of the Irish Tramways Act of 1860 coming at once into full operation.

(iii.) *As to provisional orders.*

1. That the Local Government (Ireland) Act, 1871, be amended by extending its provisions to all the purposes for which provisional orders may be made under the Scotch General Police and Improvement Act of 1862.

2. That Town Councils and Commissioners in Waterford, Kilkenny, Drogheda, Galway, and Carrickfergus, should be enabled to carry out by provisional order a transfer of fiscal powers from the county of city, or of the town grand juries, after the model of the statutes passed a quarter of a century ago for Dublin, Cork, and Limerick.

3. That the recommendations of the Irish Local Government Board should be adopted, and that the section of the Act of 1871, giving the power of veto to a grand jury, in the case of town authorities seeking undivided control over their roads and streets, should be repealed.

4. That the powers of canal owners, wharfingers, owners of town water supply, and trustees under statute for drainage purposes, to put a veto upon provisional orders under the Irish Land Drainage Act of 1863, be repealed.

(9) *Conclusion.*

As a measure of the benefit to be derived from the adoption of our suggestions for the general substitution of provisional orders for local Bills, we may refer to the following published facts. The cost of an unopposed provisional order for separating Wexford from the county under the Irish Local Government Act, is stated to have

been only £40. Mr. John Norwood\* states the parliamentary fees or taxation on an unopposed private Bill at £257. The lowest returned total cost of a town local Acts, the Rathmines Act of 1866, was £469. The Pembroke Township Act, 1863, cost £1,245; the Bray Township Act, 1869, £1,950; the Kingstown Township Act, 1869, £5,989; and the Sligo Borough Improvement Act, £14,000.

Our recommendations would, if adopted, relieve the inhabitants of Ireland of the grievous burdens of the local bill system of legislation, and would have the no less important result of securing a more general harmony in the local jurisdiction and in the local legislation of the different portions of the United Kingdom.

JONATHAN PIM, *Chairman of Committee.*  
W. NEILSON HANCOCK, } *Hon. Secretaries of Committee.*  
JOSEPH T. PIM, }

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\* Paper on "Private Bill Legislation," p. 430, vol. VI.

THE PROGRESS OF THE SYSTEM OF PROVISIONAL ORDER LEGISLATION.—(1845-1876)

Date when power conferred, and Statute by which conferred.	Purpose for which Orders made.	Authority by which Orders preferred.	Number confirmed by Statute.
<i>I.—For England only.</i>			
1845 .. 8 & 9 Vic. c. 118.	Inclosure of Commons.	Inclosure Commissioners.	923
1848 ... ..	Public Health Districts.	Privy Council.	—
1858 ... ..	Local Government.	Secretary of State.	—
1871 ... 34 & 35 Vic. c. 70.	" "	Local Government Board.	729
1851 ... 14 & 15 Vic. c. 38.	Turnpike Trust Arrangement.	Secretary of State.	194
1853 ... 16 & 17 Vic. c. 137.	Confirmation of Charity Schemes.	Charity Commissioners.	26
1861 ... 24 & 25 Vic. c. 133.	Land Drainage Districts.	Inclosure Commissioners.	30
1864 ... Railway Construction Act.	Railways.	Board of Trade.	1
1866 ... 29 & 30 Vic. c. 122.	Metropolitan Commons.	Inclosure Commissioners.	4
1867 ... 30 & 31 Vic. c. 106.	Poor Law.	Local Government Board.	14
1870 .. Eng. Education Act.	School Board Sites.	Education Department, P. C.	17
			<hr/>
For England alone,			1,938
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<i>II.—For England and Scotland.</i>			
1868 ... 31 & 32 Vic. c. 45.	Oyster and Mussel Fisheries.	Board of Trade.	3
1870 ... 33 & 34 Vic. c. 78.	Tramways.	" "	42
			<hr/>
For England and Scotland, ...			45
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<i>III.—For England and Ireland.</i>			
1875 ... 38 & 39 Vic. c. 36.	Artizans and Labourers Dwellings.	Local Government Board, Irish Local Government Board, and Secretary of State. ...	2
			<hr/>
For England and Ireland, ..			2

THE PROGRESS OF THE SYSTEM OF PROVISIONAL ORDER LEGISLATION.—*Continued.*

Date when power conferred, and Statute by which conferred.	Purpose for which Orders made.	Authority by which Orders preferred.	Number confirmed by Statute.
<i>IV.—For United Kingdom.</i>			
1861 ... 24 & 25 Vic. c. 45.	Harbours and Piers.	Board of Trade.	160
1862 ... 25 & 26 Vic. c. 63.	Pilotage	" "	4
1870 .. 33 & 34 Vic. c. 70.	Gas and Water.	" "	123
<i>V.—For Scotland alone.</i>			
1862 ... 25 & 26 Vic. c. 107.	Police and Improvement.	For United Kingdom,	287
1867 .. 30 & 31 Vic. c. 101.	Public Health.	Secretary of State.	16
1875 . . 38 & 39 Vic. c. 49.	Artizans and Labourers Dwellings.	" "	11
<i>VI.—For Ireland alone.</i>			
1860 . . . 23 & 24 Vic. c. 152.	Tramways.	For Scotland alone,	27
1863 . . . 26 & 27 Vic. c. 88.	Drainage of Land.	Privy Council, Ireland.	—
1872	Town Government.	Public Works Commissioners.	37
Irish Local Government Board			18
For Ireland alone,			55
Total Provisional Orders sanctioned by Statute up to end of 1876,			2,354