

and to the conclusion of all the experience of Europe, that it is only when combined with ownership of the soil, that small farming can be expected to achieve good results.

I beg you will thank the members of the Statistical Society for their kind reception of me at their Council meeting, and at the meeting of the Society.

I am, yours faithfully,

G. SHAW LEFEVRE.

VI.—*Prize Essay on the Differences in the Organization of Local Courts in Ireland, Scotland, and England, for the discharge of the duties of Judges and Officers, suggesting such changes as would be expedient in case of an Assimilation of Jurisdiction in the Local Courts of the Three Kingdoms.* By William H. Dodd, A.M., Barrister-at-Law.

[Read 11th January, 1878.]

LAST session I had the honour of submitting to this Society an essay containing the result of some inquiries into the constitution of the local courts in the Three Kingdoms, and containing also some suggestions as to the modification of our Irish local courts. I ventured to advocate for the local courts a jurisdiction complete and comprehensive, within whatever money limits it might be thought desirable to fix. The Council of the Society have done me the further honour of asking me to supplement that paper by another. They commissioned me to ascertain by a comparison between the official staff in the local courts in the Three Kingdoms, what officers should be supplied to the local tribunals in Ireland, so as to give complete effect to the proposed extended jurisdiction.

Since I received that commission, however, I am glad to say most of the reforms which were contended for by members of this Society have been carried into effect, by the County Officers and Courts (Ireland) Act, which was passed almost at the close of the last session of Parliament. That Act makes provision for the officers of the court as well as for the extension of the jurisdiction. But there are important matters in connexion with an efficient system of local tribunals, which it leaves untouched. I take the liberty of congratulating the Society on the passing of that Act, and I think I can best discharge the duty laid upon me by accepting, as not needing further investigation, the reforms already adopted, and by dwelling, with some minuteness of detail, on those reforms which a comparison of the official staff in the local courts of the Three Kingdoms shows to be still urgently needed.

The officers required for a complete system of local administration of justice may be conveniently classified under three heads:—

(1) the Judicial ; (2) the Ministerial ; and (3) the Executive. There must be a judge to try matters in dispute. There must be a clerk or registrar, with a sufficient number of assistants to reduce into writing the decrees or judgments, to keep an official record of the proceedings of the court, to take accounts when such are rendered necessary, and to do generally what may be classed under the head of office work. And there must, in addition to this, be officials to serve the processes, and orders, and summonses of the court, and to execute the decrees, warrants, and orders. If we exclude the criers, and court-keepers, and those who are rather attendants than officers of the court, we will find that the three classes I have mentioned are practically exhaustive.

I.—*The Judges.*

Of these three classes, the first, that is the judicial proper, does not need much comment at present. There are in each of the three countries now local judges appointed by the Crown, at definite salaries, and holding office by a permanent tenure. Some differences are still perpetuated. The courts of Scotland sit practically the whole year round. English County Court judges sit, on an average, 134 days each year, or nearly three days a week. The courts in Ireland sit every quarter of a year only. I do not see how this is quite consistent with an effective equity jurisdiction in Ireland. Accounts must be taken and inquiries made, and a final decree cannot well be pronounced in any equity case at the first hearing, and it must wait over at least three months for final settlement. It may be said there is as much delay now in the High Court of Chancery ; but when to the necessary delay of Chancery proceedings is added the unnecessary delay arising out of a court not sitting continuously, the suitor, I fear, will often find it weary work waiting. Another difference, also, that is perpetuated is the difference in the law in each of the three countries as to local judges practising in the supreme court. In Scotland, up till quite recently, the local judges, there called sheriffs, were compelled to be in attendance as practising barristers at the court of session. That compulsion is now removed ; but they are still allowed to practise. In England the judges are not allowed to practise. And in this particular the Irish Act, in the provisions affecting the chairmen to be hereafter appointed, has followed the English and not the Scotch precedent. I do not know whether I am altogether within the scope of my present inquiry, but perhaps I may be permitted to say that it is, in my opinion, a mistake to prevent chairmen from practising. In the first place, as regards the chairman himself, he is likely to be both a sounder lawyer and a more patient judge, if he is brought into contact with other members of his profession, than if he is left to the isolation of his own court. And, in the second place, as regards the suitors, it is especially desirable that they should still continue to regard the judge as the barrister from Dublin, who will lend a patient ear to their cases, and not as one of the local gentry, identified with the county magistrates in feelings, and sympathies, and antipathies.

There is another difference also between Scotland, on the one hand, and England and Ireland on the other. Scotland has managed to keep the chief advantages of both the systems. It has a local judge sitting the whole year round. And it has also a practising lawyer coming down from Edinburgh on stated occasions. This double judicial strength in Scotland has called forth much debate of late years, but the Scottish people do not seem willing to give up their present system for any other. There are in all, exclusive of Glasgow and Edinburgh, sixteen sheriffs, or local judges, holding courts at stated periods, whose salaries vary from £500 to £1,000, or, on an average, about £800 for each judge; and there are also forty-four sheriff-substitutes, or permanent local judges, exclusive of those in Edinburgh, and Glasgow, and Aberdeen, whose salaries vary from £500 to £800. The number of causes disposed of by the sheriffs in the year 1875 was 2,875, and the number disposed of by the sheriff-substitutes was 75,910. In Ireland it would seem that if the chairmen are to be prevented from practising, there is no reason why the courts should not be held more frequently. The object accomplished in Scotland by the sheriff revising the decrees of the sheriff-substitute, will now be accomplished in Ireland, most probably, by the more frequent holding of assizes. If there be a winter assize, as well as a spring and summer assize, the necessity for two judicial officers in the county courts will, no doubt, in one way, be largely obviated. The county court judge will, therefore, specially since he is prevented from practising at the Bar, become more analagous to the sheriff-substitute than to the sheriff. He will probably reside in the county, and the future development of business in the courts will probably make it necessary to have the courts open more frequently than once a quarter. The salaries contemplated as payable to the chairmen in Ireland, by the recent Act, are about £1,400 or £1,500 a year—in some cases £2,000; and from a comparison of the salaries and duties of the English County Court judges, it would not seem to be exacting too much, to require the Irish local judges to sit as frequently as the English judges sit. It is worthy of observation, however, that the salaries of the sheriff and the sheriff-substitute added together, are not, except in cases where the sheriffs do not practise, as in Glasgow and Edinburgh, in excess of the salary paid to the single judge in England and Ireland. I am strongly of opinion that it would be easier to get a good judge for £1,000 a year, if he were allowed to practise, than to get a barrister in good practice to abandon his practice for the sake of £1,400 a year. The act of last year seems to preclude further discussion on this at present; but when I consider how important it is to have the very best men for local judges; when I consider, further, how in an agricultural country like Ireland so many of the matters to be determined by the judge will touch on the relation between landlord and tenant, and how important it is therefore that the judge should be not only above class feelings and prejudices, but above even the suspicion of them, I cannot but express my regret

that the precedent followed in this matter was the English and not the Scotch.

II.—*The Ministerial Officers.*

The recent act provides for the Irish Local Courts officers analogous to the registrars of the English County Courts, and it does so in accordance with what are recognised now as sound principles of reform. Instead of new officers and salaries being created, advantage is taken of existing officials, whose duties have almost vanished, while their salaries remain; and out of these officials, at a diminished cost, an efficient staff is provided. At the same time a second sound principle has been followed, which, however, will delay the complete effect of the measure for a time, and that is that public servants must not be forced to discharge duties different from those they contracted for, without sufficient compensation, or the option of a change. And, lastly, the measure is elastic in its character, and the proposed official staff can be increased by the Lord Chancellor and the Treasury, as the development of the business may require. The officers whose duties are thus enlarged, are the clerks of the crown and the clerks of the peace. These offices are amalgamated for the future, and for the one holder of the office fresh duties are prescribed, and exact limits laid down. A considerable saving is thus effected. The total emoluments, for example, of the clerks of the crown in Ireland in 1875 amounted to £13,567 12s. The total emoluments of the clerks of the peace in the same year amounted to £25,718 12s. 2d., and the sum total of the emoluments of both amounted to £39,286 4s. 2d. By the County Officers and Courts Act, the total amount of the salaries of the clerks of the crown and peace, when the Act comes into complete effect, will be £26,100, so there will be a saving of one-third in the entire cost, and a further saving by increased efficiency. It may not be out of place to compare these figures with the figures in the Scottish courts. In the year 1875 the entire of the salaries and other emoluments of the sheriff-clerks and commissary-clerks in Scotland amounted to £25,615 19s. 5d., and, in addition to this, there was a sum of £8,954 3s. 5d. for staff and other office expenditure, where these are separated from the salaries and emoluments.

In England the salaries and emoluments of the registrars and clerks for the year 1867 amounted to £178,511 4s. 8d. for the entire fifty-nine county courts. A comparison of the amount proposed to be spent on the Irish official staff, with the amount for the corresponding staff in England and Scotland, shows that the proposed sum is not excessive, and it is satisfactory that the funds are obtained without adding to the national burden of taxation. The framers of the act, however, have taken care that the saving of money to the state shall not be a loss to the suitors.

It is provided that every person appointed to any office under the act shall discharge the duties of his office in person, and not by deputy, except in case of illness or other temporary and exceptional circumstance. No person holding the office of clerk of the crown and peace shall practice as an attorney or solicitor, nor shall he act

in the commission of the peace. Every clerk of the crown and peace shall be deemed to be an officer serving in the permanent civil service of the state, and shall be bound to devote his whole time to the duties of his office. It is further provided that every such clerk of the crown and peace shall keep an office in the assize town open every day except the usual holidays and vacations. On this part of the subject I may be permitted to express a hope that the time will come when the Lord Chancellor and the Treasury will find it incumbent to appoint an officer, not for every assize town, but for every quarter sessions town, and to have an office open in every such town. It is not in harmony with the spirit of the Act, which is devoted exclusively to local courts, to make the assize town the only town in which suitors in the local courts can find an office open. And I may also express a hope that just as the tendency in England seems to be to permit the registrar to deal with the simpler cases that arise, so the fact of the office being open all the year round, and an efficient officer always in attendance, may lead gradually to the clerk of the crown and peace becoming a kind of quasi-judicial officer, taking accounts, making enquiries, deciding on smaller cases, and becoming in time something of a permanent judicial officer. Such a development is not unknown in the High Court of Chancery itself. The Master of the Rolls is a high judicial functionary; but the name indicates what history informs us was the fact, that the original holders of the office were but keepers of the records of the court, and a similar tendency to develop a ministerial officer into a judicial one has been seen and noted often of late. The natural tendency thus shown for the higher ministerial officers to become quasi-judicial officers will be greatly increased when you have a fit and trained lawyer, as the clerk of the crown and peace must be, always on the spot, and have the judge only available every quarter of the year. And if the result be that an officer akin to the sheriff substitute in Scotland will thus spring up, such result will not be, I think, one to be regretted or deplored.

In one other respect a distinct improvement is made by the recent act. Payment by fees is practically abolished, and the officers are to be remunerated by salaries. This is in advance on even the latest improvements in Scotland or England. In each of the other two countries payment by fees in part still continues in force, though it is gradually forming a smaller portion of the entire emolument. In England the registrars at first were paid by fees; subsequently it was enacted that they were to be paid by salaries, but the salaries were to be regulated according to the number of complaints issued. But the act of 1865, which conferred an equity jurisdiction, and the act of 1866, which prospectively abolished the office of high-bailiffs, and gave to the registrar the powers and authorities of the high bailiff, and the act of 1867, which amended and extended the jurisdiction, again admitted the principle of payment in the shape of fees for duties discharged under those acts. As part of the benefits of the local courts is shared by the community in general, the very existence of the courts being sufficient to prevent persons from breaking contracts or committing wrongs, it is right that the general

public should bear part of the burden. And as part of the benefits is specially given to those suitors who resort to the courts, it is right that a part of the expense should come from fees. But it is an admitted principle, I think, that public officers should be paid fixed salaries, independently of fees, and that the fees received by them should be accounted for to the state, and the arguments for this are so well known and so cogent that it is not necessary to refer to them in detail. The reason why the payment by fees is resorted to so often, I think, is from the trouble of fixing a scale of remuneration by salaries where the duties are not equally onerous in each individual case.

I do not think it necessary to advert in detail to the position and duties of the registrar, so called in the Irish act. This official, so far as he is a different person from the clerk of the crown and peace, is but a temporary officer, and owes his existence, I fancy, to the necessity on the part of statesmen of yielding in some matters for the sake of carrying a desirable reform. There is much discussion in the press and elsewhere as to the duties and salary of this official. The truth is no such officer is needed, and when the reform is completely established he will cease to exist.

There is one important branch with reference to the local administration of justice, adverted to in the former essay, that I again respectfully call attention to, that is, the civil jurisdiction exercised by magistrates at petty sessions. It has been suggested that this jurisdiction should be extended, and it has been shown that many of the criminal cases that are tried, are, and continue to be criminal cases, solely from the want of a really effective jurisdiction at petty sessions, within the small limits at which the jurisdiction of those courts is fixed. That the remedy for a breach of contract between master and workman should be by a criminal action, was stoutly and successfully resisted in England. The Judicature Commissioners in England had as their model of a perfect system of judicature, one court ramifying down through subordinate courts, to the most remote place, and the humblest case. Each local court they recommended to be a constituent part of the High Court of Justice. If this principle be carried out to its logical conclusion, the petty sessions courts should be made constituent parts of the county courts. To compel suitors to resort to the county town for all matters in connection with the winding up of an estate or the taking of accounts will sometimes be a hardship, as great in kind, though not in degree, as the former system of compelling them to come to Dublin. Now there is really an officer in each district not, as a rule, overworked, and as a rule competent to work out the local details of an order of court. I refer to the petty sessions clerk. The duties and responsibilities of these officers are increasing in all the three countries. In England it is contemplated that the justices' clerks shall, for the future, be solicitors. Into the mode of payment of these officers it is not necessary to enter in detail, for this Society has already called attention to the matter, and has in the report of the Charity Organisation Committee recommended an assimilation to the English system.

The result of that report may be briefly said to be, that the salary of the clerks should be fixed ; and that it should be lawful for the Lord Lieutenant to increase or reduce the scale of petty sessions stamps accordingly. This is adopting the principle of the English Justices Clerks Bill of 1877. The Law Commissioners in Scotland found, side by side with the very effective local sheriffs' or county courts, an effective system of magistrates' courts, and recommended their continuance. In England the status of the justices' clerks is being improved, and the mode of payment, as we have seen, established on a sounder system. In Ireland the petty sessions clerks are called upon to discharge very important duties in criminal matters, and it is essential even for this purpose that the persons to be appointed should be trained professional men, and they might be made an efficient adjunct to the administration of justice in civil matters as well. They were selected by the late Court of Queen's Bench, in preference to other candidates, as commissioners for the taking of affidavits for the superior courts of common law. For such duties they were paid by fees and not by salary. The advantage to the community of having in each petty sessions district a trained professional person to take affidavits, or accounts, or make inquiries under the direction of a proper court, can hardly be overestimated ; and if the petty sessions clerk could, while discharging the duties proper to his general office, become, in addition, such an officer for both the county court and the high court as I have pointed out, the administration of justice would be at once more complete and less costly. The defect in having only one office for the county, already adverted to, would be cured ; and an efficient ministerial and executive officer be provided within easy reach of the humblest suitor in the most remote district.

The benefits, then, of the act as regards ministerial officers may be put briefly thus :

- (1) It provides a competent officer at a fair and reasonable salary in every county in Ireland.
- (2) It does so in a way most economical for the general public.
- (3) It provides for one office being open all the year round in each county.
- (4) It enables the Lord Chancellor and the Treasury to supply a proper staff of clerks as occasion may show to be necessary.

The chief defects as regards ministerial officers are these :

- (1) It provides only one office for each county, instead of having an office for each civil bill division.
- (2) By reason of the judge sitting only once a quarter, the benefit of having a local officer of a ministerial character is greatly diminished.
- (3) It does not make the petty sessions courts constituent parts of the county courts, nor enable the county courts to utilize the officers of the lower courts for local purposes.

III.—*The Executive Officers.*

It is not enough that there be judges to try cases in dispute

between suitors, and officers to record decrees and judgments, to take accounts, and conduct inquiries. It is also necessary that the court be brought into direct connection with persons against whom relief is sought, or against whom a decree is made. The process of the court must be served, and the decree, when made, must be executed. In Ireland the service of the summons is at present accomplished through process-servers, and the warrant or decree is executed by the sub-sheriff. The recent act does not in any way alter the position of either, and yet the present arrangements are in nearly every respect defective.

(1) As regards the process-servers. The average remuneration received by each process-server is very small. It is made up in part of a salary of £10 per annum, which is paid by the Collector of Excise on the production of a certificate signed by the Chairman of Quarter Sessions, and in part by a small fee, not exceeding a shilling, for the service of each process. The anomalous position of these officers is very forcibly stated by Mr. Ussher, solicitor, of Lurgan, who, in a circular dated the 5th of April, 1877, draws attention to the matter. I take the liberty of quoting his observations. He says:—

“The duties which the civil bill officers have to discharge are of a trying and laborious character. When engaged in serving civil bills they undergo great hardships, being constantly obliged to travel long distances through districts many miles in extent, and very frequently in inclement weather. They must also endorse on each original civil bill the time when, the manner and place where, and the person on whom the service has been made, and enter in a book, to be kept by them for that purpose, the particulars of all services effected by them; and they are further required, without remuneration, to attend personally at the Quarter Sessions Courts, so long as they continue, for the purpose of giving proof on oath of the service in any cases in which such proof should be required.

“On an average the sum realized by each civil bill officer in respect of fees, after deducting car-hire and other necessary expenses, does not exceed £12 per annum, which, added to the salary, makes an average annual income of £22. This sum is manifestly insufficient remuneration for the services he renders, especially when it is taken into account that the nature of his duties prevents him from engaging in any settled occupation at which he might earn a livelihood. Nor is this all. It is clear that a man in receipt of such an income could not possibly make any provision for his support in case he should be rendered incapable of performing his duties through an accident or bodily infirmity. Consequently, as there is no power to grant him a pension, although he may for twenty, thirty, or forty years have discharged his duties faithfully and honestly, he has nothing to look forward to in the evening of his days but the work-house.

“This state of things has, in many instances, led to evil results, for, as the calling is looked upon by many as degrading, trustworthy men are reluctant to engage in it when they know that they will be so poorly rewarded for their labours. It has therefore been found that unworthy persons are frequently appointed to the posts which reliable men would otherwise occupy, and the former, by disreputable and dishonest practices, endeavour to supplement their scanty incomes.”

In England the duties of these officers are discharged by the high bailiff and his assistants, but the office of high bailiff for the future is to be amalgamated with that of the registrar. The bailiff, like the registrar, was appointed by the judge, subject to the approval

of the Lord Chancellor; and though the registrar is now to discharge both sets of duties, it is convenient for the present, for the sake of comparison with the Irish system, to keep the executive, as distinguished from the ministerial duties of the registrar, distinct. The high bailiff then, or the registrar in his capacity of high bailiff, must attend every sitting of the court when required by the judge, and he must serve all summonses and orders, and execute all warrants, precepts, and writs. There are minute regulations prescribed for the proper discharge of the duties; and the bailiff is responsible for the acts of his assistants, just as the sheriff is responsible. The high bailiff is paid partly by salary and partly by fees, and the scale of fees, as compared with those receivable by process-servers in Ireland, is very remarkable. If the subject matter of the dispute does not exceed £100, he gets 2s. for calling the cause, 2s. 6d. for serving a summons or order, if within a mile of the court-house, and 6d. a mile for every mile beyond that; for the service of a summons in a foreign district, 5s., and if the service be required to be personal, an additional fee of 3s. 6d.; for an affidavit of service, when required, 2s.; and for the execution of a warrant, if in the home district, 5s., with an allowance of 1s. a mile for mileage; if in a foreign district 10s.; and for keeping possession, each day, 6s. He gets, in addition, £2 on the first £50, and £1 on each succeeding £50, for attending sales.

From this enumeration it will be seen that these officers in England discharge duties analogous, in part, to those of process-servers in Ireland, and in part to those of the sub-sheriff. The total remuneration of the bailiffs and their assistants in England in 1869 amounted to £110,285. That was for fifty-nine county courts, giving an average of £1,869 for each court. In order to make the comparison complete, it would be necessary to add in Ireland the total gains of the process-server to the total gains of the sub-sheriff. But what the sub-sheriff's remuneration actually is I have no means of ascertaining.

There is this important difference, therefore, between the executive officers in Ireland and England. In England the entire executive is under one properly-paid, permanent officer, amenable to the courts, and responsible to the suitor. In Ireland one portion of the duty is done by the process-servers, who labour under the disadvantages I have mentioned. The other portion of it is done by the sub-sheriff, whose office is not permanent, who is paid chiefly by fees, and who, in the execution of the decrees, is not under the direct control or guidance of the court, and who, for the most part, delegates the execution of the decrees to bailiffs theoretically responsible to the sheriff, but not directly amenable to any discipline, save when conduct more than usually outrageous brings them into the dock, in which I have sometimes seen them.

By the English County Court Rules the high bailiff is required to state in his book what he has done under each warrant; and every bailiff levying or receiving money by virtue of any process issuing out of the court of which he is bailiff, shall, within twenty-four hours of the receipt thereof, lodge the same in court; and he

is bound at all reasonable times to give to a suitor every information that he may reasonably require on what has been done under a warrant. In Ireland in order to avoid worse evils a suitor is permitted, by special bailiffs at his own risk, to execute his own decrees. It is very undesirable that a private person should be allowed to become the officer of the law; and it is rather suggestive of an uncivilized state of society when an injured person is obliged to redress his own wrong. But in practice it was so difficult to get the proceeds of the decree from the sub-sheriff, that the execution of the decree in this way was allowed. I cannot in this part of the inquiry, as I should like to do, and as I have endeavoured to do in the other parts of the inquiry, refer to official sources of information for facts. I think the most recent report on the subject is the Report of the Royal Commission of 1826. That Commission, to whose report attention was called by Dr. Hancock, in a paper read before this Society on the 22nd of June, 1875, condemned the then existing system, and recommended that it should be altered in analogy to the Scotch system, to which I have already referred—"That the greater part of the executive and judicial duties connected with the office of sheriff, should be transferred to an officer to be especially appointed, with due qualifications, at a suitable salary." The system then condemned is the system still in operation; and, in the absence of any more recent condemnation of it by official persons, I have sought to gather as many opinions as I could on the matter. With the permission of the Council of this Society, at the request of some gentlemen in Newry, I read to a public meeting my former essay, in which allusion was made to the defects I am now considering. Several solicitors spoke on the paper, and this allusion was made the special subject of comment, and instances of the defective system were cited. And one gentleman, a merchant conducting an extensive business concern, in the course of his observations, said that, as the result of his experience in the matter, he preferred to abandon small debts altogether. During the summer assizes and the long vacation, I have taken occasion to make further inquiry, both from attorneys and merchants, and all who had experience in the matter, strongly expressed their dissatisfaction with the present system of levying decrees.

When we look to Scotland and England for guidance, we find that in both countries the executive officer is a permanent officer under the court, and it has been ascertained that the duties of the chief ministerial officer and the duties of the chief executive officer can be efficiently discharged by the same individual. In Scotland the warrants are executed by sheriff-officers under the sheriff-substitute, and in England warrants are executed by bailiffs under the registrar. It is not necessary to go through the transition state in this country also. We may benefit by the experience of the other countries. I would suggest, therefore, that as advantage has been taken of the clerks of the crown and peace to form a good chief ministerial officer, so advantage should be taken of the sub-sheriff to form a good chief executive officer. The high-sheriff in his traditional

prestige and with his ceremonial duties need not be touched. But instead of making him responsible for the acts of men whom he never sees, and of whose proceedings he is utterly ignorant, and against whose defaults he is indemnified, it would be well that the sub-sheriff should be appointed by the crown, as a responsible officer at a fixed salary, and with clearly defined duties. And just as the duties which the clerk of the crown and peace will have to discharge in relation to the Supreme Court do not prevent him from being a good county court officer, so the duties which the sub-sheriff will have to discharge in executing the writs of the High Court or of the state need not prevent him also from becoming a good county court officer. And as the change in the one case has been effected without a change of name, so should the change in the other. But as experience of the other countries shows that the duties of both as regards county courts can be done by the same individual, I would suggest that both should exercise all the powers and functions of each as regards the county courts, and thus you will have in each county, or in each group of counties as grouped by the recent act, two officers of position and standing, to divide the county between them in such detailed methods as may be found expedient in each case—one having jurisdiction in one or two civil bill divisions, and the other in other one or two civil bill divisions, each being at the head of the ministerial and executive staff in his district, and being responsible directly to and attending the sittings of the court, and each lodging in court to the credit of the cause, within twenty-four hours, all moneys realized by any sale under the court. The assistant clerks and assistant bailiffs, to use the English phraseology, or the sheriffs clerks and sheriff officers to use the Scotch phraseology, would be under their direct control, and thus the question of the process-servers and the question of the sub-sheriff would be solved together.

Whether in this exact method or in some other it appears clear:—

- (1) That the sub-sheriff should become a permanent officer.
- (2) That he should be paid entirely by salary and not by fees.
- (3) That he should be compelled to keep an account of the execution of all decrees and warrants as the English high bailiff does, and be under the direct control of the court.
- (4) That he should be compelled to lodge in court, in such method and within such time after realization as should be prescribed, the result of all sales made by the authority or under the order of the court.

And in this instance, as in the instance of the clerk of the crown and peace, I may be allowed to say that if in the process of time he became a quasi-judicial as well as an executive and ministerial officer, the result would not be, in my opinion, one to be deplored.

This reference to lodging money in court suggests another set of considerations which it is not well to lose sight of. There are provisions in the recent act, dealing with moneys remaining in the hands of the sheriff after satisfying one decree. It is provided that these may be taken in execution by another creditor. And it is further provided that cross decrees may be set off by the chairman. There

is also a power already possessed of ordering a decree to be paid by instalments. Now these three rather scanty powers are in fact an admission, so far, of the desirability and necessity of giving a jurisdiction to adjust the rights of creditors and the debtor under a complete system. And a complete system can only be had by a bankruptcy jurisdiction. It is not within the scope of this paper to enter fully into this matter. I referred to it at great length in my former essay. But I regret to find, not only that no bankruptcy jurisdiction is given by the act, but in one of the sections of it there is a distinct suggestion or declaration that it is not intended by the framers of that act to give a bankruptcy jurisdiction to the local courts generally. It is hinted that certain *recorders* may get such a jurisdiction, and it is provided that in that event their salaries are not to be increased. But no mention is made of chairmen in a similar connection. I again, therefore, most respectfully call the attention of the Society to this matter, and beg to reiterate the statements as to the great importance of enabling a man who cannot pay all his creditors in full, to pay them rateably, by a cheap and speedy procedure in a local court.

Certain Officers of the Supreme Court.

There are two local officers or sets of officers of the supreme court that a logical system would bring within the scope and power of the local court. One of these is the district registrars of the Court of Probate. Even before the recent act, the chairman had power in certain cases to grant probate or administration, and by the recent act his jurisdiction in contentious probate matters is extended, and he has further power to grant limited administration in certain cases. Now the ministerial part of these functions must be carried into effect by the clerk of the crown and peace. Why then should he not be a local registrar for probate matters, as well as for the other matters now embraced in divisions of the High Court of Justice? The commissary clerks in Scotland, who correspond to the district registrars, have been amalgamated with the sheriff-clerks, and there seems no sufficient reason for keeping up an independent officer for that duty alone, especially as the districts are not numerous, and persons seeking probate must often go a considerable distance. In this way again, funds would be let free which would go to form a fund for the complete manning of the local courts.

The other set of officers I refer to are the commissioners for taking affidavits for the supreme court. The anomalies in the mode of appointing these officers will be removed by the Judicature Act; but the anomaly in their mode of payment still continues. They earn a precarious remuneration for hearing affidavits sworn, and for initialing and attesting exhibits. I would venture to suggest that any officer of any local court should be capable of taking an affidavit for the supreme court, and I would include with those the clerks of petty sessions courts, whose fitness for the duty may be gathered from the fact already mentioned that the court of Queen's Bench, in appointing a commissioner, generally gave a preference to the petty sessions clerk, and as the mode of remuneration by fees

is in this matter also open to objection, the salaries of these officials should be increased to pay them for the additional labour. This consideration tends to strengthen the opinion I have thrown out as to the desirability of the incorporation of the petty sessions courts with the county courts for the purposes of the local administration of justice.

While I have at the close of my paper, as at the beginning, to congratulate this Society on the extended jurisdiction of the local courts in equity and common law, and on the efficient method in which local ministerial officers for these courts are provided, I have to state as the result of my inquiry, that it is not in my opinion a desirable thing to prevent chairmen from practising in the supreme court, and at the same time I have to regret that permanent local judicial officers, after the model of the English registrars and Scottish sheriff-substitutes, have not been appointed. I have further to state, that the executive officers of the court are not appointed in the most desirable way, that their tenure is precarious, and the general system of executing decrees unsatisfactory. I suggest that the office of sub-sheriff should be reformed, by making his tenure permanent, by making his remuneration depend entirely upon salary and not upon fees, and by bringing him under the control of the court in the execution of the decrees. I think that the office of district registrar of the Court of Probate might be judiciously united to the office of the clerk of the crown and peace, and that officers of the local courts, including petty sessions clerks, should be officers of the supreme court for local purposes; and I regret that a bankruptcy jurisdiction has not been conferred upon the local courts, and that it is not likely to be conferred by the wise and thoughtful framers of an act which, notwithstanding the defects I have ventured to mention, will be a great and permanent boon to a great portion of Her Majesty's subjects in this island.

VII.—*The Preliminary Proceedings in Criminal Cases in England, Ireland, and Scotland, compared.* By William H. Dodd, A. M., Barrister-at-Law.

[Read 29th May, 1877.]

READERS of newspapers who favour the law intelligence with a cursory glance, will occasionally see the report of an application to the Court of Queen's Bench for a writ of *habeas corpus*, to bring before a coroner's inquest a person already in custody for a supposed crime in connexion with the death, into the cause of which the coroner is investigating. Such applications reveal a struggle which has been going on now for some years between two different methods of conducting the preliminary investigation into crime. On the part of the coroner, it may be said, indeed, to be a struggle for existence. It is contended, on the one hand, that two independent investigations