

V.—*Suggestions for the Extension of the Jurisdiction of the Civil Bill and Quarter Sessions Courts in Ireland.* By George Orme Malley, Q.C.

[Read 20th February, 1872.]

IN bringing this important question again under the notice of the members of this Society, and through them of the public, I should consider it necessary to apologise for its re-introduction, were it not that every class in the community, especially in the rural districts, look forward to the long promised legislation on the subject with expectations which cannot be much longer delayed or disregarded. The nature of the question and the extent to which the amendments I am about to recommend have already been sanctioned in England, and the precedents which exist for carrying them into practice, renders it unnecessary and unadvisable for me to adopt the plan lately recommended by influential members of this Society, of drafting a bill on the subject. Such a task would be more fatiguing on the hand than on the head, as it would, to a great extent, consist of transcribing existing statutes, with such modifications as would be suited to this country and the circumstances of the people, and a few important innovations, the details of which are capable of being easily supplied.

The urgent necessity for the extension of the jurisdiction of the Civil Bill Courts in this country, is now admitted on all hands, and the unanimity of the public feeling on the subject renders it unnecessary for me to adduce any arguments in its favour. So long ago as 1859 the subject was prominently brought under the notice of the legislature by Dr. Hancock, in his able Report on the Landlord and Tenant question, in which he strongly advocated the necessity for making the Irish County Courts a complete Court of Equity for the poor; and again, in his Report of 1866, he urges the same question with equal zeal and impressiveness. Mr. Constantine Molloy, in a short but comprehensive paper read before this Society in June, 1870, strongly urged the necessity of giving the Irish County Courts jurisdiction in equity, questions of title, bankruptcy, minor and lunacy matters.

The same questions have also been ably advocated by Mr. Lloyd, Q.C., the Chairman for Waterford, in a pamphlet published by him in the year 1871. In his preface he says: "At every sessions cases occur to show the necessity for a limited jurisdiction in Equity. Thus, when a tenant-farmer dies, if he leaves no children, a contest almost always ensues between the widow and her friends and the relatives of her husband, frequently resulting in a breach of the peace; and even when there are children, it is found that one member of the family usually takes possession of the farm and stock, and does out to the other members such small sums as he may think proper to give. The grossest injustice is often committed in this way, while the injured parties, knowing that they can have no relief except through the expensive machinery of a Chancery suit, prefer to submit to any compromise, however unjust, rather than have the entire

fund exhausted in Chancery expenses, and perhaps be left in addition to pay a solicitor's bill of costs. . . . In fact, nothing is more incomprehensible—nothing more disheartening—to the poor man than to be told, because his case is *one of equity*, he can get no redress in the court peculiarly intended for him, but if he wants relief he must put in motion the machinery of the Court of Chancery, at an expense which it is well known he is totally unable to bear.

. . . . Small cases are very seldom carried up to the Court of Chancery, and now that the interest of the tenant-farmers in their holdings has been so much enhanced by the passing of the recent Land Act, such interest often producing prices equal to the fee-simple value of the holding, although the tenure be only from year to year, subject to a rack-rent, some legislation in the direction pointed out becomes more than ever necessary." Public opinion in England has also been attracted to this subject. In an able article in *The Times*, of the 4th of January last, the merits of the English and Irish jurisdictions are reviewed. After detailing the growth of business in the English County Courts, and the extent to which they had supplanted their more imposing and costly rivals, the superior Courts at Westminster, it proceeds to recommend the assimilation of the respective jurisdictions in equity, questions of title, and unlimited power of trying actions of any amount by consent. It bears testimony to the better system of appeals to Judges of Assize on the spot, rather than to the more remote Judges sitting at Westminster, which the English system authorizes, and the propriety of giving a larger power to review decisions than that which now exists in England, viz., of hearing appeals on points of law only, or on the improper admission or rejection of evidence by the judge. Although the article shows great ability and an intimate acquaintance with the subject, still it is rather indecisive, and is more useful for the exposition it gives of the growth of public opinion in England on this subject than for any suggestions it contains; but still it leads to the conclusion that an assimilation of practice and procedure on many important points would be highly beneficial to the county courts in both countries.

It cannot but occur to the mind of every person observant of the growth of events, that the two countries—England and Ireland—are daily approximating socially and politically, and that in spite of the anxiety of a section of the community to establish local and representative tribunals. This is not the place or time to canvass the merits or demerits of the suggestions of political agitators, or to point out which of the prescribed remedies would be most likely to satisfy the desires of the advocates for Home Rule. The remedies for private bill legislation, suggested by me and Mr. Heron from this place in 1869 and 1871, and the plans suggested by others outside this Society, must stand or fall on their respective merits; but, nevertheless, it is plain that the facilities for intercommunication between the two countries, and the vast increase within the last few years of mercantile and agricultural dealings between their respective inhabitants, render it essentially necessary that the nomenclature of the legal tribunals and their mode of procedure in both countries should,

with a view to their mutual good understanding, be assimilated as closely as possible. I think it a matter of great importance that the manufacturer of Sheffield or Manchester, the agriculturalist of Lancashire or Yorkshire, or the merchant of London, Liverpool, or Bristol, should be able to form an estimate of the duties and liabilities of the officers of our County Courts by the knowledge he already possesses of the official position they respectively fill in his own, and that he should not be mystified by the incomprehensible appellations of Chairman of Quarter Sessions, Clerk of the Peace in civil cases, or those official titles which have no existence in the English County Court codes. We all know that the name which is applied to a public officer conveys at once, by an association of ideas, a correct, or at least, a proximate appreciation of the duties which he has to discharge, and a familiarity with the remedies by which, and the official personages through whom, an English creditor can enforce his rights, is calculated to create a feeling of confidence in the tribunals of the country, capable of inducing him to enter into negotiations which the apprehension of not understanding the administration of our laws would deter him from entertaining. The effect would be mutual, and the Irish trader would have the advantage of knowing, by the working of our local courts, how his rights would be guarded or enforced in the similar tribunals of the sister country. The broad view of the expediency of national assimilation in all great measures proposed for the two countries, recommends itself on wider and stronger grounds.

We have followed the example of England in respect of our Chancery system. The Chancery (Ireland) Act, 1867, had its origin in the Report of a Commission comprising many of the most distinguished members of the bar and bench in this country, who recommended that the diversities of practice between the Courts of Chancery in England and in Ireland, introduced by Lord Romilly's Act, "The Chancery Regulation Act, 1850," should cease, and that an uniformity of practice and procedure between the two courts should be established. The General Orders framed under this Act have preserved that uniformity throughout their whole extent, with few unimportant, though beneficial, exceptions; and the old tribunals of Masters in Chancery, with their attendant officials, have been swept ruthlessly away, to make room for the existing chief clerks and their subordinates. There is very little doubt that ere long our present Common Law Procedure Act will be repealed, and our summons and plaint, special defences, and voluminous issues, will be superseded by the simpler and more effective pleadings and proceedings established by the English Act.

If, then, we adopt the principle of assimilation in our superior Courts, why should we not extend it to our inferior on the first occasion that offers? If we tinker our old Civil Bill and Quarter Sessions code, maintaining the old system in name and spirit while extending the jurisdiction, we will only do things by halves, and not keep pace with the spirit of the age. For these reasons I have come to the conclusion that the precedent set by our English brethren may be beneficially adopted by us in this as in the other instances, and that the English County Courts' Acts afford a safe and

suitable foundation on which, with certain modifications, we may safely construct our new system.

The English County Courts were established in the year 1845, and from that time to the present the system has been maturing, and nine successive statutes now exemplify the improvements which wisdom, strengthened by experience, has from time to time suggested. If all the provisions capable of being extended to this country which are contained in this series of statutes were codified, and new enactments, calculated to supply their admitted defects, were introduced, a Procedure Act for our County Courts would be framed which ought to give universal satisfaction.

The jurisdiction of the English County Courts has been greatly increased from time to time by the several amending statutes to which I have referred. With a few exceptions—such as libel and slander—they have power now to try all actions at common law where the claim is not more than £50, and they have a larger jurisdiction in equity, as they are empowered to try suits to the extent of £500. By consent of the litigants, they have authority to try all suits at common law to an unlimited amount, but as yet they have not that power on the equity side of the court. They have jurisdiction in Probate, Admiralty, and Bankruptcy matters, and considerable jurisdiction under several special acts of Parliament, and practically they have exclusive jurisdiction over petty actions, as the prohibitory enactments in regard to costs effectually deter suitors from having recourse to the superior tribunals in all actions under £20, and £10 in actions of contract and tort respectively. In partnership accounts, where the unliquidated balance does not exceed £50, in winding up local societies and their registration, and in the control of industrial and provident societies, their jurisdiction is also extensive and useful.

The officers entrusted with the administration of County Court Jurisdiction in England are the Judge, Treasurer, Registrar, and High Bailiff and Assistant Bailiffs.

The Judge must be a barrister of seven years' standing at the least. No special qualification is necessary for the Treasurer. The Registrar must be an attorney. No special qualification is required for the office of High Bailiff. The powers and duties of the Judge are similar to those of our chairman—his decisions being subject to appeal to the superior courts on questions of law or the improper admission or rejection of evidence. He must give up practice at the bar. The Treasurer is appointed by the Commissioners of Her Majesty's Treasury, and his duties are to manage the financial affairs of the court, keep its accounts, duly transmit the monies collected for fees, etc., and comply with directions of the Treasury as specified in certain rules regulating the office, for all of which he must give security; but his office has been found to be a comparative sinecure, and by the act 29 and 30 Vic., c. 14, it is to cease with its present occupiers. The Registrar or Chief Clerk of the county court is appointed by the Judge, subject to the approval of the Lord Chancellor, and he has power to appoint his own Deputy or Assistant-Registrar; and he is obliged to reside within the district of the

court or courts for which he shall be appointed. The Registrar has the care of the court-house and offices of the court, and may appoint and dismiss the servants in charge of them. He is to keep an office at each place where the court is holden, and to have it open every day from ten o'clock in the morning until four in the afternoon, except the several holidays, such as Sunday, Christmas day, etc., and Saturday after one o'clock. He is to supply searches, make lists and accounts of moneys lodged in or paid out of court, issue all processes, as also warrants to the bailiffs, and when a summons is to be served in a foreign district, to transmit same through the post in manner prescribed, to keep the Court books, send notices and enter same, keep minutes of the proceedings and enter orders, and make and supply certified copies, tax costs of affidavits, replevins, services, and other matters of small detail, and frame forms not provided by the statutes, and keep certain accounts of expenditure prescribed by the act. The High Bailiff is appointed by the Judge and removable by the Lord Chancellor, but as his office is to cease also under the act before referred to, it is only necessary for me to say that his duties are analogous to those discharged by Sheriff's bailiffs, viz., the execution of decrees and their return.

Having thus referred as concisely as possible to the jurisdiction and officials of the county courts of England, I think it advisable to give a short outline also of the Sheriffs' courts of Scotland, which are the county courts of that country, with a view to certain suggestions hereinafter contained.

The constitution of the Scotch county courts differs materially from the English in most important particulars. They were established so long ago as 1745, on the abolition of the old hereditary or chieftain's sheriffs' courts, and form the basis of our old civil bill courts. The Judge of the court is called the *sheriff* or *sheriff depute*, and by the act of 1838, appointing the present sheriffs' habitual attendance on the court of session, which is the superior court in Edinburgh, and continuing in practice at the bar, are made essential conditions, with the exception of the two counties of Lanark and Edinburgh. The salaries vary from £500 to £2,000 a-year. Their duties are to sit periodically from 10 to 4, and keep their Court open throughout the year under the management of their chief clerks, called *sheriff's substitutes*, hereinafter referred to. The Sheriff is more a Judge of appeal from the decisions of his substitutes who generally hear the cases first, but he may hear important cases in the first instance if he pleases, but practically he only reviews the decisions of his substitutes. He sometimes tries criminal cases with a jury, but his substitutes mostly discharge that duty, and when they do so, there is no appeal from the verdict and judgment so taken and pronounced. His civil jurisdiction is practically unlimited in amount and is not ousted by questions of title; his criminal jurisdiction is both judicial and executive. In his judicial capacity he can try all crimes except treason, murder, rape, and robbery; but he is debarred from inflicting penal servitude, which, in effect, excludes from his jurisdiction crimes of a serious character whatever their nature. In his executive capacity he can investigate all cases

of crimes in his county, either personally or through the instrumentality of his substitutes and the public prosecutor of his court—known as the Prosecutor Fiscal, and whose duties are analogous to those of crown solicitor. The Sheriff is responsible for the peace of his county. He is the chief executive magistrate, and the Home-Office and Lord Advocate look to him for the preservation of order on all occasions of popular ferment, trade or political disturbances. Such an anomaly as that of a colonel in the army or a military stipendiary magistrate mis-interpreting constitutional questions affecting the liberty of the subject, such as we have lately seen in our own country, cannot, under this wholesome regime, occur in Scotland, and all difficult questions of that nature are therefore determined and acted upon by eminent practising lawyers trained in the law, and acquainted with its spirit and proper application.

The *Sheriff's Substitutes* are subordinate judges whose qualifications are previous practice at the bar, or the profession of solicitors. They vary from one to four in each county, and are bound to reside within its precincts and sit continually throughout the year for the purpose of hearing all cases of a less important character, and whose duties are analogous to those of a chief clerk and registrar. Their decisions are subject to review by the Sheriff for the small expense of a few shillings, and they are bound to supply him with notes of evidence and the minutes of their decisions.

The Scotch system has been the subject of examination before a commission appointed in the year 1868, for the purpose of examining into the constitution of the courts of law in Scotland, with a view to their alteration and improvement, if such should appear necessary or advisable; and a large quantity of evidence was taken on the subject, in which were discussed many of the questions mooted at present in respect of our courts of quarter sessions in this country, to some of which I shall have to refer. The report of the commissioners, presided over by Lord Colonsay, and of which Sir Roundell Palmer, Lord Hatherly, and other great jurists were members, recommended by a large majority the continuation of the present system of sheriffs' courts, subject to a revision of their territorial jurisdiction, the increase of remuneration to the sheriffs and substitutes, and a trifling reduction in their number.

Considering the constitution of our present Courts of Quarter Sessions, and the distinctive characters and duties of our high and sub-sheriffs, and the machinery by which our laws have been hitherto administered, and bearing in mind the expediency of an assimilation of our laws and nomenclature with those of England already adverted to, I do not consider it advisable to recommend a reconstruction of our county courts on a plan similar to that which prevails in Scotland, and which has received the sanction of the majority of the commissioners. It will, therefore, now be my duty to refer to the leading features of the alterations and improvements, which the exigencies of modern times require should be introduced into our county courts, their jurisdiction, constitution, and procedure.

The first and most important topic is the qualification of the judges or County Chairmen. Opinions of persons most competent to form

a correct judgment on the subject, are strangely at variance on the point as to whether they should be permitted to continue practising at the bar after their appointment to the judicial bench. The proposition has been decided in the negative by the people of England, with consequences of a doubtful and indecisive nature. In some instances the prohibition has not worked well, and complaints are already heard of its effects upon the character, qualifications, and independence of the judges of some of the county courts. But there are many high personages, and amongst them some of the commissioners referred to, who strongly advocate the necessity of it. Lord Ardmillan, one of the witnesses, says in reference to it, in page 367 of the evidence : " A gentleman chosen from the bar, who keeps up his connection with the legal profession by attendance and practice in the courts, maturing his mind by laying up stores of legal knowledge, by work as well as by reading, is infinitely preferable to one who has retired from the active duties of his profession." While three of the commissioners, in their reasons for dissenting from the report, urge strongly the necessity of a resident sheriff, and condemn as obsolete the antiquated prejudice as to his being affected by local influences, and assign but little weight to the alleged advantage of requiring the sheriff to continue practising at the bar. They refer to the fact that the sheriffs in Edinburgh and Glasgow, the two most important inferior judges in Scotland, are not practising advocates, but, on the contrary, debarred from private practice, and bound to reside at the seats of their respective courts ; and it has never been said that their services were on that account less satisfactory than those of their brethren. As to the non-resident sheriffs, some of them never had any considerable amount of practice at the bar, others have long ceased to enjoy it, and the number of those in practice is small.

These latter observations may, I think, to some extent be applied to the body of chairmen at present existing in this country. Few of them are in large practice, and the majority have little or none. It may be considered a fair test of the extent of a barrister's practice by ascertaining, whether or not he subscribes to our only authorized Irish Reports. The legal practitioner cannot successfully argue or advise cases, without having in his study the latest decisions on every point which arises in the course of his daily experience, and which the exigencies of the following day may require him to master, when perhaps he has received his brief late in the preceding evening. When not in actual practice, he requires to note the decisions on important points so as to be ready at a moment's notice to call upon his memory or his note-book. This he cannot well do in the turmoil of the Four Courts' library ; and everyone knows the necessity of quietude to master the principles contained in decisions, and record them from time to time. But in looking at the number of subscribers to our current Reports, as yet only fourteen out of thirty-three chairmen of counties have subscribed for the present year. If this be a fair test, it proves incontestibly the fact that a continuation of practice is not an essential qualification, as more than that proportion are admittedly most efficient and learned chairmen. There are many reasons why practice at the bar should be discontinued.

I may notice some of those mentioned in the *London Times*. The inexpediency of allowing chairmen to be addressed by solicitors, who may be in the habit of giving them business, and the influence which private relations of that kind must necessarily produce on the judicial mind, to the disadvantage of those who are not similarly circumstanced; and the unseemliness of a judge deciding a cause one way, and within a few weeks, perhaps, proceeding to denounce his decision as an advocate. "We can conceive," the article thus proceeds, "instances in which this practice, especially in important questions under the Land Act, might not fail to make a proverbially suspicious peasantry look with distrust at the administration of justice. Should, however, the county court judges of Ireland be forbidden to follow their profession at the bar, they ought to be given the option to retire, and their present salaries should be reconsidered; and if we mistake not this last matter was made the subject of a kind of pledge when the Land Act was passing through Parliament."

It would be presumptuous to say that this question is not beset with much difficulty—a great deal can be said on both sides; but I think the opinion preponderates amongst the lay portion of the public, that the judge should be a judge and nothing else. If that be the right view, and I should be slow to say it is not, the Irish Chairman should be established on the plan of the English County Court Judge with an increased salary, and, in some instances, an increased area. At present there are thirty-three Chairmen in Ireland. I think this number could be reduced to twenty-six in a manner highly beneficial to the public, and not injurious to the Chairmen themselves or the profession. I have selected the following counties from the statistical returns as having the least quantity of business, judging by the civil bills actually entered and criminal cases tried, appeals from magistrates, spirit licenses, &c. In some instances the proportion is not one fifth of the larger counties. These, I think, are proper for consideration. In Leinster: Kildare, King's County, Longford, Louth, Meath, Queen's County, Westmeath, and Wicklow. In Ulster: Cavan, Fermanagh, and Monaghan. In Connaught: Roscommon and Sligo.

I do not think any of the Munster counties should be consolidated, as they all seem to have sufficient business to occupy a Chairman for a considerable portion of the year, if the jurisdiction should be extended as proposed. The effect of this would be to reduce the number of Chairmen to twenty-six. It happens that, as a matter of choice, the Chairmen in practice prefer these small convenient Leinster counties, although the salary is less, and when they have the option are disinclined to accept promotion, apprehending the effect which an increase of business and prolonged sittings would produce in their professional practice. The majority of these fourteen Chairmen are in good practice, and either in the front ranks of the profession or rapidly advancing to them. It would be unjust towards them to say, You must either resign or take £1,200 or £1,500 a year. It would be virtually dismissing from office, without compensation, the most meritorious public servants, and dismissing them because of being the most meritorious. The man in no practice will gain by increas-

ing his salary, and forbidding him to practice in future. The man in full practice will be obliged to resign without compensation, as the loss of his practice and the acceptance of a post which offers no stimulus to ambition, will not be compensated either in money or value by five or six hundred a year fixed increase of salary for the remainder of his life. These considerations, combined with the pledge given by the government at the passing of the Land Act, and alluded to by *The Times*, make it imperative that these gentlemen should have the option of continuing or retiring on full salary; and on an examination of the position of these fourteen gentlemen, and what would be manifestly the real interests of the individuals occupying these Chairmanships, a compromise can easily be effected among them, by which the desired result may be achieved with advantage to them all.

In making these latter suggestions, I wish it to be distinctly understood that I do not consider the reduction of the number to twenty-six as the utmost limit that should be observed. I think it is possible to have the judicial business of the country well administered by a lesser number, say twenty-two or twenty, but I merely instance these particular cases as exemplifications of the manner in which the proposed reduction may be effectively and beneficially carried out.

The next office requiring revision is that of the principal officer of the County courts—the Clerk of the Peace—who fills a situation combining the duties of Treasurer and Registrar in the English courts. He is nominated by the custos of the county, and does not require any professional qualification. He may be an officer in the army—an absentee—almost a myth, and it has been solemnly decided that he may be an infant, notwithstanding that his duties have been increased by successive Acts of Parliament to an extent which, if diligently and effectually discharged, would occupy every moment of his time (but with the increase which any beneficial amendment of the Acts will produce, must be more than any single officer can discharge, unless he resides permanently in his district, and is enabled to employ efficient assistants). I propose that the inappropriate appellation of Clerk of the Peace shall be modified by associating the name of Registrar, so as to represent his civil as well as his criminal duties, and that he be called the Registrar and Clerk of the Peace for the county, and that his duties be assimilated to those of Registrar and Treasurer as they exist in the English County Courts. If stamps be substituted for fees in all proceedings, civil and criminal, a simple and effective mode of collecting the revenue of the court will be established, and the facilities given by the system of post-office savings' banks and branch banks of issue in every town in which lodgments may be made, on the plan sanctioned by the Landlord and Tenant Act, 1870, will render it unnecessary to appoint a Treasurer. The Registrar should be a barrister or solicitor of three years' standing at the least, and be appointed by the judge, subject to the approval of the Lord Chancellor. It is absurd that the principal officer of a court of justice should be selected by any outsider, however influential, who has no interest in the propriety of the selection, who has no knowledge of the requisite capabilities, no responsibility for the

consequences of the improper exercise of patronage, and no participation in the beneficial results of an unobjectionable appointment. All these objections are inapplicable to the judge, who has the deepest interest in being served by an efficient subordinate, and should have also the power of removing him for neglect or misconduct, subject to similar control. The Registrar should reside permanently in the county or district, like the sheriff's substitute in Scotland, and keep his office permanently open for the transaction of business of all kinds connected with his office. He should also be empowered to hear small debts cases in the first instance, beyond the present jurisdiction of the petty sessions courts, viz., over £2 in amount and under £20; and any other cases within the jurisdiction, on consent of the litigants, subject to review by the judge, on similar terms to those in Scotland. If the equity jurisdiction be conceded, he should fill the office of Chief Clerk, take accounts, receive claims, and decide all questions of an official character, subject to adjournment into court whenever any difficulty arises. His office should, as hitherto, be the depository of all local records, subject to an uniform fee for search in the shape of a stamped requisition, and he should be empowered, with the sanction of the judge, to employ one or more deputies, at fixed salaries, according to the exigencies and extent of the business in the district. The varied and responsible duties thus imposed will represent those now discharged by some of the most important officers of the Superior Court of Chancery, such as the Chief Clerks and the Accountant-General, and will require the appointment of persons skilled in equity practice, and equal to the due comprehension of the increased responsibilities thus cast upon them. As a matter of course, the present salaries should all be revised, and increased salaries given to the newly-elected officers—the old to be allowed to retire on salaries to be ascertained, on the usual basis, and the new to be selected from the most efficient and best qualified among the existing Clerks of the Peace, with such new additional appointments as the judge, with the approval of the Lord Chancellor, should deem advisable. The Clerkship of the Crown should, as an office, be abolished, and amalgamated with the Clerkship of the Peace, on similar arrangements as to salary and re-appointment to the office. In connection with this recommendation I should also strongly advise the propriety of discontinuing grand juries at the sessions or sittings of the County courts, for the reasons explained last year by me in a paper I read on the subject (which adverted, amongst other things, to the inutility of a further investigation before that tribunal, of offences returned by magistrates, after the searching investigation which all such cases undergo when informations are being taken, as well as afterwards in the open court of petty sessions; and the corruption and partiality which sometimes exist in the secluded precincts of the quarter sessions grand jury room, among the friends or relatives of the prosecutors or accused). The Clerk of the Peace at present discharges the duty of Clerk of the Crown in the criminal Court of Quarter Sessions; and he and his deputies could easily perform the same office at assizes, both in the appeal and crown court, more especially if the duty of preparing the indictments was

transferred to the Sessional Crown Solicitor, who is assuredly the proper officer to undertake it; and as the business of the court will necessarily be greatly increased, and the presence of the junior bar thereby ensured, it would be advisable to authorize the employment of counsel to aid the solicitor in the direction of proofs and the preparation of the indictment, as the manifold duties of the Crown Solicitor, who is generally in large private business, will necessarily interfere with his official responsibilities.

The execution of decrees being an important feature in the exercise of the jurisdiction of the court, should be entrusted to the ordinary sheriffs' bailiffs, and the special bailiffs of the plaintiffs, pursuant to the act of last session; but I think it extremely important that a provision should be added compelling the return by the sheriff or his bailiffs, or the plaintiffs, as the case may be, of all decrees within a certain time to the Registrar, who should record same, and give information to all parties in reference thereto, on searches to be paid for by prescribed stamps, so as to ensure the speedy and effective execution of all decrees, and prevent fraud or collusion. The County courts should have the ordinary powers of the Court of Chancery in all suits affecting personal and real estate, in suits for specific performance, suits relating to the property of married women, the maintenance and care of infants, partnership accounts, suits for the dissolution and winding up of companies of a local character, injunctions and powers to stay proceedings at law; and their jurisdiction should be limited to the sum of £300, with power to the Court of Chancery to order the transfer of any proceedings to the Superior Courts of Chancery, and *vice versa*, and a like power of appeal to be given as in cases of law. The powers of the Landed Estates Court for the sale of small estates, ancillary to this jurisdiction as well as independent, should also be conferred. Probate jurisdiction to the same amount, say £300, with power to the Registrar to grant probates, except in contentious cases, which should be adjourned into court before the judge.

All fees to be collected by stamps. The Registrar to take affidavits as commissioners in Chancery. The jurisdiction of the County Court judges in actions at law should be extended to £50 in tort and £100 in contract, and I see no sufficient reason why actions of libel and slander should not be tried before them, as well as actions involving questions of title. The middle and poorer classes attach as much value to their character as the upper. It is of equal if not more importance to them to maintain an unsullied name as it is to their more independent fellow-citizens. It is an anomaly, that while "restraint of that evil member, the tongue" is enforced by the dread of costs and damages among the higher classes, the lower orders should be enabled to indulge in scurrility and abuse, without that wholesome check which a dread of an inroad on the pocket always produces.

I therefore think that the objection so often heard, that courts of justice should not be occupied with the investigation of every pot-house brawl, is easily met by the advantages which its control would impose on the conduct and demeanour of the lower orders;

and if the frequenters of pot-houses and such disreputable localities should appeal to the courts for redress, the nature of the case would quickly appear, and a few dismisses on the merits with costs, would be a caution to all such undeserving litigants. Questions of title, when the value of the land does not exceed £20 a-year, or a greater amount on consent, should be triable in actions of trespass and ejectment, and all actions remitted to the County Courts by the superior courts under the recent statute, should be within their jurisdiction, whatever the amount sued for or recovered ultimately may be.

In undefended actions, additional facilities should be given for obtaining decrees *pro confesso*. Any plaintiff in England or Scotland should be entitled to present an affidavit of debt to the Registrar or Sheriff Substitute, in those countries respectively, on an ascertained stamp, and have it transmitted through him by post to the Registrar of the County Court of the country in which the defendant resides, who should send by return a settled form of receipt, and issue a notice or summons to defendant twelve clear days, and if no defence in ten clear days, and before the day named in summons for decree; then an ex-parte decree to issue. If defence entered, notice thereof to be given by the registrar to plaintiff by post, and notice given of the case being adjourned into court for next sessions on day named for that purpose, when plaintiff to prove his demand in the usual way, by himself, his attorney, and witnesses.

A similar course may be adopted in regard to plaintiffs residing within the jurisdiction, except that the case may be heard before the registrar himself and shorter periods prescribed for the services. In all these cases the services of the notices should be duly ascertained from the returns of the process-servers, to prevent the issuing of decrees behind the backs of defendants, and opportunity should be given to defendant to set aside such decrees, and enter defences, in case the judge should be satisfied that a case of surprise or non-service was made out, and on such terms as to costs, etc., as he should think advisable.

Decrees for sums of £10 and upwards, should be convertible into judgments of the superior courts, with the same efficacy, by order of the Chairman at the close of each session, unless cause within fourteen days, to be shown before Registrar.

In actions of £20 and upwards, the High Sheriff to summon a jury of not more than six persons, who should be entitled to a fee of 2s. 6d. each in every case tried by them.

The Chairman should hold separate courts for law, equity, land cases, crown and bankruptcy business, of which due notice should be given, and the courts should be held six times in the year at least, with power to the Lord Lieutenant and Privy Council to alter districts, and increase or diminish the times of sittings of the several courts.

The mode of procedure should also be assimilated. At present any number of civil bills processes can be served out of court. No entry made of them, their existence never disclosed, and may be either arranged or abandoned if not entered for decree or dismiss. I do not think any good effects are produced by this out-of-court practise,

and it is possible to use it for the purposes of extortion or intimidation. The plant, and subsequent summons used in England, is a simple and concise narrative of the cause of action. The indorsement on the form of summons, etc. appears rather prolix, although its meaning is plain ; if it could be abbreviated it would be better ; and the proceedings to obtain judgment by default, appear unnecessarily dilatory. The plant note, which is issued by the registrar to every plaintiff on entering the plaint in the book, and which contains a short account of the fees paid, the day of entering hearing, etc., and is the first step in the proceedings, appears to be an unnecessary and troublesome process, and capable of being dispensed with, by substituting stamps on the document for fees payable to the officer. Another form of summons is given when it is supposed the plaintiff may obtain judgment by default ; but I think both may be improved by adopting the concise form of our Civil Bill process but assimilating it to the English procedure by giving it the appellation of summons. The defence may still be entered in the general form, and I do not see any reason why a defendant should be bound to give notice to the Registrar of any special defence, such as infancy, coverture, statute of limitations, or the like, although notice of set-off may and should be served as required at present in our Civil Bill practice. I consider it a matter of great importance that the judge should be empowered in suitable cases to issue a subpoena to compel the attendance of witnesses living in England or Scotland out of the jurisdiction, especially as "The Sham Actions Statute" has been defeated in cases in which it was alleged the exigency for this jurisdiction was likely to arise.

The salaries of the officers and practitioners in the courts thus instituted, should form an important feature in any future legislation. One of the principal defects in all modern legislation, has been that which may be characterized in popular language as the cheese-paring system. If you wish any measure to be effective, you must give adequate compensation to the officers you supersede, and you must also give sufficient remuneration to the new officers, and also to the practitioners to whom the conduct of the proceedings under the remedial measure is to be committed. The Landlord and Tenant Act is peculiarly faulty in this particular. Under the rules and orders framed in accordance with its provisions, the solicitors have been treated with little consideration, if not with actual injustice, and it is not surprising that claims have been compromised to an extent perhaps injurious to the interest of the claimants and the public, in consequence of the disinclination of solicitors to involve their clients in the well-known liability of costs between solicitor and client, which the miserable allowances of the orders would entitle them to charge. An omnibus may be constructed in the most comfortable and convenient manner, it may run smoothly on the best constructed tramway, and in districts most requiring its accommodation ; but if you don't supply it with good horses and feed them well, it will assuredly come to "a stand still." Such has been the experience of several well-intended statutes regulating real property and conveyancing, and such will be the fate of any measure which overlooks or

ignores the just claims of the practitioners, who have spent their lives and money in acquiring faculties and knowledge suited for the discharge of their duties. A liberal schedule of fees will, therefore, be essential—framed on a basis not extortionate, but still sufficiently remunerative to ensure to the public an efficient discharge of professional duty.

In the English system, the salary of the Registrar is by a recent statute proportionable to the amount of fees receivable on business actually transacted in his court. In other words, the system of payment by results is adopted, which, irrespective of other objections, is in my judgment faulty, as giving the resident official an interest in the increase of litigation in his district. The same system regulates the salaries of the clerks of the petty sessions courts in this country, and for similar reasons is in my opinion objectionable. But that principle cannot well be applied to the Registrar in this country, as his duties will combine those of the Registrar in England and the Clerk of the Peace in this country, which include a vast variety of obligations of a most arduous and extensive character under a number of statutes, including those imposed by the Land Act, the enumeration of which would make this paper, already too lengthy, intolerably tedious.

The expenses of advertisements in the newspapers, in important cases, should be diminished by substituting posting on the residences of parties and transmission by post; and in all cases not requiring personal service or posting, or when same should in the opinion of the court or Registrar be dispensed with, service through the Post-office should be authorized.

In the foregoing suggestions, I have only incidentally referred to the criminal side of the court, viz.,—the court of Quarter Sessions. I have done so advisedly, as, with the exceptions noted, I think no material change is called for in their present jurisdiction, constitution, or mode of procedure. In England the court of Quarter Sessions is independent of the County Court, and is composed of the assembled magistrates, one of whom acts as chairman. I think this system objectionable, as the presence of a skilled lawyer—as a sort of assessor—is of great value to the due administration of criminal justice. I am, therefore, of opinion that our present system in that respect should be retained, and engrafted on the English system, by which means a court entitled to win the confidence and respect of the public, and eminently calculated to dispense justice cheaply, speedily, and efficiently, will, I confidently anticipate, be at length secured.
