

IV.—*An Account of the Progress that has been made in describing the differences between the Laws in force in England and those in force in Ireland ; with some of the leading points not already noticed, and Suggestions for the most convenient division of the subject.* By W. Neilson Hancock, LL.D.

[Read Tuesday, 26th May, 1874.]

IN pursuance of the suggestion in the report of the committee of the council, I have prepared the following outline :

An investigation of the differences between the laws in England and those in Ireland, divided into eight heads, may be arranged as follows :

Three heads, devoted to the differences in the structure of the law itself, under the great divisions of (1) Civil Procedure, and the branches of law connected therewith ; (2) The law of Real Property ; (3) Criminal Law.

Two heads devoted to differences in the machinery of government : (1) Differences in Local Government and Local Taxation ; (2) Differences in Imperial Taxation and in the application of Imperial taxes.

Two heads devoted to differences in matters that devolve partly on the central and partly on the local government : (1) Education ; and (2) Laws relating to family and social matters, such as the marriage laws and poor laws.

And lastly, one head relating to the difference in the operation in the machinery for legislation, by provisional orders, private acts of parliament, local and personal acts, and general statutes.

(1) *Differences in Civil Procedure, and the branches of law connected therewith.*

The main subject under this head is the law of procedure. So far as the superior courts are concerned, a very close approximation to perfect assimilation in procedure will be effected if the Irish Judicature Bill should pass, as it is founded on the lines of the English Judicature Act of last session.

In matters of procedure the Irish local courts, for nearly half a century, were in advance of the English local courts, but have now fallen far behind.

On this branch of the subject, Scotch analogies would be very valuable, as the fusion of law and equity, only now proposed to be adopted in England and Ireland, has long prevailed there.

A considerable amount of information as to the differences of the procedure in local courts is to be found in Mr. Molloy's report on the application of the principles recommended by the Judicature Commission to the Irish county courts, read at the January meeting of this Society.

In referring to the Judicature Bill, I must notice a most important recognition of the importance of law reform, contained in the constitution of permanent machinery for securing the progressive amendment of the law. It is a great truth in social science, that nearly all voluntary co-operative efforts for the public good, are the commence-

ment of state functions. So it has happened that the exertions of the Law Amendment Society in England, and of the National Association for the promoting of Social Science, with which it is amalgamated, and of our Society, as following their example, have resulted in the formation in England, and proposed formation in Ireland, of a council of the judges, who are to be required to meet once at least in each year,

“For the purpose of considering the operation of the Judicature Act, and of the rules of court, for the time being in force; and also the working of the several offices, and the arrangements relative to the duties of the officers of the said courts respectively; and of inquiring and examining into any defects which may appear to exist in the system of procedure, or the administration of the law in the said High Court of Justice, or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court, or any Judge thereof, or of the Court of Appeal.

“And they shall report annually to the Chief Secretary to the Lord Lieutenant of Ireland, what, if any, amendments or alterations it would, in their judgment, be expedient to make in the Judicature Act, or otherwise relating to the administration of justice; and what other provisions, if any, which cannot be carried into effect without the authority of Parliament, it would be expedient to make for the better administration of justice.”

This clause, constituting a permanent commission for the amendment of the law, is so important, that I have quoted it in full.

(2) *The Law of Real Property.*

In the law of landlord and tenant, Ireland is now far in advance of England; but if Lord Cairns' bill should pass, Ireland will be behind England in many branches of the law as to the transfer of land.

Bearing in mind how closely Lord Cairns' bill follows the lines of Lord Selborne's bill of last session, Professor Donnell's report on “The best means of facilitating Land Transfer by means of a Local Registry,” read at the December meeting of this Society, notices a large number of the differences between the proposed English and the existing Irish systems of registration.

Under this head can be conveniently treated the differences between the Irish and English law of judgments, a very complete account of which was drawn up for the English and Irish Law and Chancery Commissioners, by Mr. J. H. Monahan, Q.C., which is annexed to their second report, presented to Parliament in 1866.

The observations of these Commissioners on the law of judgments are worth referring to: (1) As affording a good account of differences between the law in England and Ireland on this one branch; (2) With reference to the origin of the differences; and (3) With reference to the strong recommendation for assimilation made eight years ago by such an influential commission, including, as it did, Lord Cairns, Lord Selborne, Lord Hatherly, Lord Romilly, Lord O'Hagan, Mr. Brewster, Sir Joseph Napier, and Mr. Justice Lawson.

In 1866, they reported that "they found the law of judgments of the superior Courts of Common Law in Ireland, and the practice, process, and procedure therein, to be in a very complicated and unsatisfactory state, and to differ in some material respects from the law of England on that subject." They trace this difference in the law back to the reign of Queen Anne, from the operation of the Penal Act of stat. 2 Anne, c. 6 (Irish), passed in 1703, and the Act for the Registration of Deeds, 6 Anne (Irish), c. 2 (1707). They state as the result of their inquiries "that it appears that, while in England the tendency of the whole course of legislation down to and inclusive of the Act of 1864 (27 and 28 Vict., c. 112), has been to reduce a judgment to a step in the course of procedure for the recovery of a debt, in Ireland, on the other hand, the legislation, down to and inclusive of the Record of Title Act, 1865, has been in the opposite direction, and judgments affect land in Ireland prior to and entirely independent of execution."

They further state that "as the difference between the laws of the two countries as regards judgments is not one of mere practice and procedure, but extends to the law of Bankruptcy, the jurisdiction of the Landed Estates Court, the Registry of Deeds, the law of Debtor and Creditor, and generally to the law of Property in Land, the question of the simplification and amendment of the law of Judgments in Ireland could only be satisfactorily disposed of by a Parliamentary Committee, or by a commission specially constituted for the purpose, with full powers to enter upon all the inquiries necessary for its solution."

(3) *Differences in Criminal Law.*

Ever since Sir Robert Peel's consolidation of the Criminal Statutes, the Irish law and English law as to crimes have in their main provisions been identical.

A number of minute differences have, however, been allowed to grow up, connected, in part, with differences in the raising and application of local taxes, and differences in the Poor Law. These occur in such branches as the laws as to Criminal Lunatics and Dangerous Lunatics charged with an intent to commit a crime, Reformatory Schools, and Industrial Schools.

Mr. Lentaigne, our Vice-President, in his last Report on Reformatory and Industrial Schools, notices the differences as to laws.

He observes, "In England and Scotland powers are conferred on local public bodies to contribute out of the rates towards the purchase of land required for an existing certified school or for the site of an intended school, the establishment of a building intended to be certified, and the alteration, enlargement, or rebuilding, of a certified school, as well as towards the support of the inmates and its management, and likewise towards the ultimate disposal of the children after leaving the school." In a subsequent passage he refers to other differences in the laws.

The legislative provisions as to criminal lunatics, children committed to reformatories, and children committed to industrial schools, resting as they do on the latest application of enlightened humanity

in dealing with crime, would appear to be subjects on which it would be possible by a very slight effort to secure perfect identity in legislation in the two countries.

(4) *Differences in Local Government and Local Taxes.*

A good deal of information on this subject has been collected in the introductory reports to the returns of local taxation of Ireland from 1865 to 1872; and further information in Mr. Mulholland's report on the best means of reducing the town law of Ireland to a code, read before this Society this time twelve months.

As the improvements in the machinery of local government and in the collection of local taxes are likely to occupy the attention of Parliament at an early period, it is important that the exact differences between the Irish and English arrangements should be traced, if Ireland is to share at an early period in the reforms of the powers of local authorities which may be introduced in England.

(5) *Differences in Imperial Taxation and in the Application of Imperial Taxes.*

The differences in imperial taxation from the Union up to 1864, were very fully detailed in a report to the Irish government in 1864, on the state of public accounts between Great Britain and Ireland. The several branches of the question was very fully investigated by a Select Committee of the House of Commons on the taxation of Ireland, which sat in 1864 and in 1865, and made a detailed report in the latter year. In the session of 1873, returns were moved for in Parliament by Mr. McLaren as to the second branch of the question.

In the recent budget, some of the taxes peculiar to England were abolished, and the contributions from imperial taxes to local rates for police in England and Scotland were increased, so that the differences of rates on this subject, between the scale of contribution from imperial taxes for police in Ireland and in England and Wales, has been diminished.

(6) *Differences in the Laws as to Education.*

I am not aware of any detailed account of the differences in the laws as to (a) Universities, (b) Endowed Schools, and (c) Primary Schools; and yet the education question in Ireland will be, until solved, one of the most difficult questions in Irish politics, so that any information as to the exact differences between the laws on the subject in England and Ireland will be of extreme value.

(7) *Differences in the Laws relating to Family and social matters.*

Part of this subject was treated in Mr. Brookes' report on the Differences in the Law of England and Ireland as regards the Protection of Women.

The difference in the marriage laws of the three kingdoms was the subject of inquiry by a Royal Commission in 1866.

The differences in the poor laws was the subject of a paper in this Society by Dr. Ingram in 1864.

One of the measures promised to be considered before next session, is the proposal to carry out one great step in poor law assimilation, by extending, in a more or less modified form, the principle of union rating, which has been for some years in operation in England.

(8) *Difference in detail Machinery for Legislation.*

In modern times great facilities and improvements in legislation have been introduced, by the system of a department preparing provisional orders which are afterwards confirmed by public statute.

This system has been, however, imperfectly developed in Ireland, as compared with that prevailing in England and Wales; and the detailed arrangements have been more centralized in some branches of legislation than in others.

Some papers have been read before the Society advocating the extension of the provisional order system of legislation to Ireland, in which some account of the system is given; but an exact account of the whole system, and the difference of its operations in England and Ireland would be very valuable.

These differences have arisen in part from the greater subdivision of government departments in England, and their necessarily greater concentration in Ireland.

Some account of the effect of this different distribution of business, in delaying the extension of all improvements in legislation to Ireland, is naturally connected with the account of the differences in legislation by provisional order.

In Scotland the preparation of legislation is, like the Irish, largely concentrated in a single office—that of the Lord Advocate—so that some of the differences between the way in which Scotch and English bills are prepared would be valuable as illustrations on this branch of the inquiry.

Such are the eight branches into which the inquiry suggested by Mr. Pim can, I think, be most conveniently and advantageously divided.

Conclusion.

In conclusion, I will give an illustration of the importance of the subject to which Mr. Pim has directed our attention.

The modern reforms in the law of real property date from the reports of the Real Property Commissioners appointed in 1828.

The first Act founded on these reports was the "Act for Shortening the Time of Prescriptions in certain cases," passed in 1832.

That act was not extended to Ireland until 1858. The other acts of real property reform were passed in 1833. Of these, the first act for the limitation of actions and suits was at once extended to Ireland, except a few clauses as to advowsons, and they were extended to Ireland in 1843.

The principles of the second act, that for the abolition of fines and recoveries, passed in 1833, were extended to Ireland by a distinct act in 1834.

The third act amending the law of dower, and the fourth, amending to law of inheritance, applied to Ireland at once.

Now, if the care applied to the four acts for real property reform of 1833 had been applied to the one act of 1832, its extension to Ireland need not have been delayed for twenty-six years.

In the present session, of Lord Cairns' three Real Property Bills, one was at once applied to Ireland—the second was applied by a clause introduced in committee, its provisions depending on the Judicature Bill, which had not been introduced when it was read a first time.

The third act for facilitating the transfer of land does not extend to Ireland the, existence of the Landed Estates Court, Record of Title Office, and Registry of Deeds, applicable to the whole country, present sufficient reasons for its extension not being attempted in the same session.

V.—*Report of Committee on Suggestions for Diminishing the Excessive Summoning of Jurors in the County and City of Dublin.*

[Read Tuesday, 23rd June, 1874.]

THE Committee met at Messrs. Pim's, 22, William-street, on Friday the 12th June, Alderman Campbell, J.P., in the chair; also present, Mr. Frederic W. Pim, Mr. Richard W. Kelly, Mr. Joseph T. Pim, Mr. Thomas Edmondson, and Dr. Hancock; and after investigating the subject referred to them by the Council of the Society, adopted the following report:

1.—*Sir Colman O'Loughlen's Reform as to Queen's Bench Grand Juries.*

In 1873 there were about 3,300 jurors summoned in the County of Dublin, and 4,500 in the City of Dublin, or nearly 8,000 in both.

This number will be diminished in future years by Sir Colman O'Loughlen's Act of 1873, to regulate the summoning of Grand Juries in the Queen's Bench.

Until Michaelmas Term, 1873, there were four Grand Juries for the County of Dublin, and four Grand Juries for the City, summoned each year to attend in the Queen's Bench. The ordinary criminal business of these grand juries was taken from them in 1729, nearly one hundred and fifty years ago, and transferred to the Commission Court now held at Green-street. The fiscal business of the County Grand Juries was in 1786 confined to two of the four Term Grand Juries in the year, and in 1844 was confined to the single Term Grand Jury for Easter Term. The fiscal business of the four City Grand Juries was transferred to the Town Council in 1850. These juries, except the Easter Term Grand Jury for the County, had consequently no ordinary business to do. In the rare case of a trial at bar or indictment, or in the case of appointing the officers of city prisons which (by an oversight) had not been transferred to the Town Council, there was some duty to be discharged. It appears, therefore, that with these exceptions, for fifty-eight years, from 1786 to 1846, it may be estimated that 60 county jurors were annually