JOURNAL

OF THE

STATISTICAL AND SOCIAL INQUIRY SOCIETY OF IRELAND.

PART XLIII., *April*, 1873.

I.—*President's Address at the Opening of the Twenty-sixth Session.* By the Right Hon. Mr. Justice Lawson.

[Read Tuesday, 19th November, 1872.]

THE duty again devolves upon me of delivering the Address at the opening of this the twenty-sixth Session of your Society. It was hoped that one of our Vice-Presidents would have undertaken this task to which he had been invited; but in consequence of his inability to do so, I have been required upon rather short notice to occupy the position. When I mention that the gentleman whose place I occupy is Mr. Alexander Thom, I think you will agree with me that I have named a man who has done more, perhaps, than any of our members to diffuse widely correct statistical information, and to make known the facts connected with the social condition of Ireland. After an acquaintance of many years, it affords me sincere pleasure to pay my humble tribute to his sterling qualities, and his labours in the cause of social science. As an atonement for his non-appearance here this evening, he has, with his accustomed liberality, paid a handsome fine, which is to be applied, as you have heard from the Report, in promoting the cause he has always held so dear.

My address last year was devoted to a review of the progress made by this country in wealth, and a comparison of her present condition with her past, based upon reliable statistical information: the conclusion at which I arrived was in all respects a very favourable one. I showed that we could perceive clear indications of rapid growth in material prosperity and general social improvement. During the past year nothing has occurred to alter that condition of things, and it would therefore be unprofitable to travel now over the same ground. It is, indeed, unfortunately the case that the past season has been to us, who sit near "the melancholy ocean," unpropitious as to climate,

as it has been over many parts of Europe—giving us ground to apprehend that the approaching winter may bring with it a larger amount of distress and poverty than we have seen for some years back. We can only hope that the abundance of past seasons may have led to the accumulation of reserves, which may be now to some considerable extent available to meet this emergency.

I propose, therefore, this evening to make a few observations upon the other department which it is the purpose of our Society to cultivate, namely—Jurisprudence and the Amendment of the Law.

It is peculiarly fitting that I should do so on the present occasion, because, reviewing the papers which have been read during the past Session, I find that the greater number of them belong to this department, indicating that the attention of our members has been principally turned in that direction. It has been always our aim in this Society, not only to point out defects in our system of law, and suggest remedies, but also to note the changes made in England, and endeavour, as far as possible, to keep the laws of the two countries as nearly identical as circumstances will permit. In England there are at present very clear indications that the subject of Law Reform is likely to occupy a considerable share of public notice, and we are looking forward to the approaching session of Parliament as likely to inaugurate a new era in Jurisprudence. Let us not, however, be too sanguine in our anticipations. The path is thorny, and beset with many obstacles, and it is only by patience and perseverance that these difficulties can be overcome.

I now propose to direct your attention to two or three subjects which may probably come forward, and on which, therefore, it is desirable that we should have clear views as to what is the object to be attained.

The first subject which I desire to bring under your notice is that of the Codification of our Law. Having read a paper upon this subject at the January meeting of the present year, I shall avoid entering into details which there found a fitter place, and only lay before you some general views upon the subject.

This subject has indeed passed from the stage at which it is necessary to advance arguments in favor of codification. It seems to be now generally conceded that it is a reproach to English jurisprudence that its unwritten or judge-made law is only to be found scattered through more than twelve hundred volumes of reports of decided cases, and that there is no authoritative code, stating in clear propositions, and in regular order, the results of these decisions. Such a compilation is now admitted to be desirable, not only for the purpose of assisting professional persons in their task of finding out the law, but also to render accessible to the public generally some knowledge of the principles of our law—not that we can expect to make the people their own lawyers, but certainly, in a country where ignorance of the law excuses no one, it is inexcusable to shroud the law in greater mystery than its own nature requires. The example of other countries shows that there is no great or insuperable difficulty in codifying various branches of the law. In India it was peculiarly necessary to prepare a code, because the laws there must of neces-

sity be administered by local judges and magistrates, who have not had much professional training. I shall have occasion presently to call your attention to the codes of that country.

I think I scarcely ever remember a subject which has so rapidly advanced in public estimation. Codification was, until very recently, considered rather a matter for speculation than for action on the part of public men; even during this year it has made great strides. Sir J. Coleridge made it the subject of his address, and promised to deal with the subject. Mr. Fitzjames Stephen, the person of all others most competent to speak upon this subject, has made it the subject of an address to the Social Science Association, published in *The Times* of this day week, and a leading article in the same journal shows very clearly what progress has been made in public opinion upon this subject.

These considerations induce me to omit entirely abstract arguments in favor of a code; but treating it as a matter which may soon be actually put in hands, I desire to submit a few thoughts as to the mode in which the work should be approached. Its preparation will, I doubt not, be entrusted to very able hands, but as notions are sometimes started that a code is to be a mere compilation of existing decisions, I desire to say that such is not my idea of its proper function, and I think those to whom the task will be entrusted should have a very large discretion and very ample powers of dealing with the existing law.

In my judgment a code, if properly framed, must inevitably tend to simplify and purify our unwritten law. It should not be a servile compilation or digest of decisions good and bad, but a rational and intelligible system of law, based upon the well-established and approved doctrines of our courts, but rejecting all that is technical and unreasonable, unsound in principle, or faulty in practice. To digest all the cases and indiscriminately to embody them into the propositions of a code, would be indeed to perpetuate mistake and to stereotype error. The construction of a code should involve a process of selection and purgation, a clearing of doubts, and even occasionally a judicious introduction of improvements from other systems of law which have been tested by experience and found to work well, and a weeding out of unsound rules which have crept into our law and which experience has condemned, while rules originally good, but now overlaid with subtle refined distinctions, ought to be restored to their original simplicity. Such at least is the conception I form of a code, and unless it be undertaken in that spirit, I think we shall find ourselves disappointed at the result of our labours.

It is idle, indeed, to hope that we can make our laws so simple as that every unlearned person can understand and apply them—neither, perhaps, can we hope by such simplification very much to diminish litigation. The complexity of human transactions, the new relations springing up daily with the advance of civilization, the ambiguities of language as a vehicle for intention—the chicanery of some and the obstinacy of others—all these in the very nature of things are and will ever remain fruitful sources of litigation. It is our part as jurists to frame our laws, so as not to give rise to discussions unnecessary for de-

ciding the real rights of parties, and to lay down principles sufficiently clear to enable the legal adviser with reasonable certainty to tell the client who consults him what his rights are. How many hundreds of cases are there in our books decided upon the meaning of arbitrary and technical rules which had no bearing whatever upon the real matters in controversy between the suitors? Who can count the number of victims who have lost fortune and life in such purposeless conflicts? Surely it is a noble object to devise a system of law which will at the smallest expense and in the shortest time discover what are the questions really in issue between contending parties, and put them in train for a speedy adjustment, with a ready appeal to a final court to correct the imperfection of the first tribunal.

Sir John Coleridge, in his address, says he does not doubt that men would be found competent to undertake the work. I quite concur with him. But it will be also necessary that both Houses of Parliament should be willing to delegate to them the duty of thus amending and simplifying the law, and to sanction the code when framed. I rather think, so far as the technical rules of law are concerned, they would be disposed to do so; but when any question arose involving political or large social considerations, it could scarcely be expected. Take, for instance, the law of real property. To reduce that law, as it at present stands, to the form of a code, would, indeed, be to make manifest its absurdity. To state in formal propositions the rules of law about contingent remainders, and conditional limitations, the rule in Shelly's case, and such like, and make them sensible and intelligible, would baffle the ingenuity of any codifier. As long as they lurk unseen and comparatively unknown in the recesses of our reports, they escape criticism; but to write them out in the form of a code to be approved of by the legislature, would at once ensure their condemnation. They could not be tolerated in that shape by the common sense of mankind. The first step towards framing a rational code of succession to property, would be to abolish the distinction between real and personal property, and put an end to estates tail, with all their consequent subtle refinements. This change, involving as it does large political considerations, could only be effected by Parliament, and until that is done, we may abandon all hope of having a sensible code of succession. Most other branches of the law, however, admit of being at once dealt with.

The Law of Evidence, which Sir J. Coleridge proposes to deal with, is the one which I selected last year as a specimen of how such work might be done. It is the easiest, it is the one which is most urgently required, and which would confer the greatest amount of benefit in the administration of justice.

Mr. Fitzjames Stephen's Indian code of evidence is admirably framed, short, and yet comprehensive; and he declares, and I believe with perfect truth, that the 167 sections of his code supply all that is contained in the two volumes of *Taylor on Evidence.* Our distinguished fellow-citizen, Mr. Whitley Stokes, has been the author of several of the Indian codes. I have received from him much valuable information as to these codes. He has edited the Code of Succession, which regulates intestate and testamentary succession in the

cases of Christians and Jews all over India. He tells me it has worked admirably, and given rise to hardly a single case since it came into force. It was drafted by Mr. Wm. Macpherson. It consists of 331 clauses, and contains all that we must look for in *Williams on Executors, Jarman on Wills*, and *Roper on Legacies*. Mr. Stokes says in his preface to this code:—"In preparing this code, the law of England has been used as a basis, but the Commission have deviated from that law in some instances. First, the distinction between the devolution of moveable and immoveable property is abolished. All rights, as under the Roman law, will devolve *ab intestato*, agreeably to an uniform and coherent scheme; and thus we get rid of the needless distinction between realty and personalty, which, as Mr. Austin observes, is one prolific source of the intricacy of the system of the law of England."

Here is a peaceful revolution effected by a stroke of the pen:

"Again, no person acquires by marriage any interest in the property of the person whom he or she marries, or becomes incapable of doing any act in respect of his or her own property which he or she could have done if unmarried. This abolishes at once courtesy and dower. As to the wife's property, it has the effect of a settlement of it to her separate use without restraint on anticipation. The married woman can make a will and dispose of her property like any other person."

The advocates of woman's rights will, I hope, approve of this code. I could refer in like manner to the Indian Contract Code, the Penal Code, the Limitation Code (of which Mr. Stokes is the author), and others, to illustrate what I mean when I point to the simplification of the existing law as one of the great merits in a code. In our law there are many rules which, established in early times, have become too deeply rooted to be torn up; but, being entirely unsuited to modern exigencies, the judges have engrafted upon them exception after exception, until the cases establishing the exceptions far outnumber those establishing the rule, and the rule itself still remains with its substance thoroughly gone, like one of those worn out shells we meet upon the shore, eaten out externally, and which crumbles into dust when pressed. Surely common sense suggests in such a case to repeal the rule, and the exception then disappears. The doctrine of satisfaction is an illustration. The rule and its exceptions, with the decisions upon them, now fill a volume. It was contrary to common sense to make a presumption that a man intended a thing when he did not say he intended it; and we should at once declare that no intention to satisfy shall be presumed, it must be expressed. The law of election is another instance. A devise of what does not belong to the testator should be merely void, and entail no other consequences. This is the rule in the Code Napoleon.

Again, take the law of contracts: our law divides them into simple contracts and contracts under seal. Contracts in writing fall under the first class. Then there are rules that a contract under seal cannot be varied at law by a writing not under seal. All this, and the

distinctions founded upon it, ought to be abolished, and contracts should be classified—as parol contracts, contracts in writing, and contracts requiring attestation. Many other instances will present themselves to the mind of every lawyer, and I believe the extent to which our law might be abridged and simplified by codifying upon this principle, can scarcely be appreciated.

The abolition of the distinction between law and equity must before long take place ; but it cannot be done by a clause in an act of Parliament saying that legal and equitable rights should be the same. The only mode of effectually doing it is by establishing a code of civil procedure, as in India, which applies to all cases ; and when the questions involved in them have been eliminated, the mode of trying them will be fixed in each according to the nature of the issues. One result of this will be a limitation of the class of cases to be tried by juries. Now the time of juries is taken up listening to questions of contract or of title, as to which they are generally directed by the judge, and have really nothing to do. Cases involving questions of damages, or conflicting testimony as to facts, would still be submitted to juries; but I think there is no magic in the number twelve, and six would be a better tribunal.

A code of criminal procedure could be easily framed, and would also be found to clear up many doubts and remove some anomalies in our criminal law, and produce greater certainty and uniformity.

As I pointed out in my former paper, this work of codification must be taken up by applying it to distinct branches of law. This is a great advantage, as there is not the usual excuse that the work must be done as a whole, and that it is too vast to be undertaken.

Again, there is the greatest safety in this process, because, according to the mode adopted in India, the codes are subject to periodical revision, whereby defects may be removed, and errors arising from the ambiguity of language corrected.

The next subject on which I wish to make a few observations is that of Legal Education, upon which Mr. O'Shaughnessy read a very comprehensive paper. I think I am justified in saying that the growth of public opinion upon that subject has been very remarkable. Until recently there was, properly speaking, no legal education. Men obtained the degree of Barrister who never read a law book—it being thought that the public would discriminate between competent and incompetent practitioners. It is quite true they generally did so ; but the absence of any proper teaching of law as a science, was calculated to lower the character of our jurisprudence. We had good advocates and clever practitioners, but the scientific lawyer and enlightened jurist was rarely produced under such a system. It is therefore now condemned, and henceforth no person will be admitted to the Bar who has not passed through a regular course of legal studies, and proved his competency by passing examinations. Lord Selborne last year brought forward in the House of Commons his motion as to founding a great Legal University, and although he did not command the assent of the house to that proposal, the result has been that the Inns of Court are now compelled to take such action as will test whether they are competent to administer the

work of legal education. I do not myself see the necessity of a distinct law university. I think the Inns of Court are well adapted to enforce an efficient system of teaching.

In this country we have had for some years two Professors of Law in the King's Inns, while the students of Trinity College and the Queen's Colleges have had their professors of law. By combining these, the Benchers have endeavoured as far as their means would allow to provide an efficient staff of lecturers. We are about to appoint a third Professor of Equity, Jurisprudence, and International Law. The education committee has just made a report which has been approved of by the Benchers, and will apply to all future students. By these rules we require, as a condition of being admitted as a barrister, that three years should be passed in legal studies. The three years may be passed in attending the lectures of the professors at the King's Inns, passing the yearly examinations in each course, and passing a final examination before call, or we allow one year to be spent in attending law lectures in any of the universities, or at the Inns of Court in London, or in chambers in London. We have been unable to concur in Mr. O'Shaughnessy's suggestion that the rule as to keeping terms in London should be dispensed with; but our rules are so framed as to encourage the student not to be content with merely keeping his terms in London, but to take a year's study there. I should be glad to see that substituted for the form of keeping terms; but I think that some knowledge of the mode in which the work is done in the legal schools of the great metropolis may fairly be required of the student before he is called to the Irish Bar.

It may be urged that the changes which are now being made in our law render it very difficult for the student to acquire a knowledge of it, for as soon as he has mastered a branch of law, it may be entirely altered or swept away. Those who were trained in the science of special pleading, have been obliged to conform to the simpler regulations of our new procedure; still, such knowledge is never acquired in vain, and the obvious remedy is to devote more time to teaching the general principles of law.

While we thus anticipate coming reforms in our law, we must not forget that much has been done within the last twenty years. Our statute book is a faithful record of the amendments which have taken place. All of them have been in the right direction, though often halting and imperfect. One of the last relics of barbarism—imprisonment for debt—is not, I am sorry to say, dead, but is condemned to die at the end of seven years, whatever may have been the reason for that mysterious prolongation of its term.

Of recent changes, so far as this country is concerned, the measure whose working is regarded with the greatest interest is the Land Act. Last year its working was closely inquired into by a Committee of the House of Lords. Although then recently born, it was considered by some that it already exhibited such vicious tendencies that it ought to be either strangled in the cradle or at least put under restraint. It was alleged that the decisions under it were unjust and conflicting—that the tribunal appointed to administer it

was quite incompetent to do so. I am happy to say, however, that, after a full inquiry, it escaped unscathed from that ordeal, and that no changes of any importance were suggested by the report of the committee. The competency of the tribunal of the Chairmen was fully established, and I believe it would be difficult to find in any country a body of men who more faithfully discharge the very difficult duties imposed upon them, and whose decisions more fully command the confidence of the public. It is impossible to say the Land Act is free from blemishes; and I have no doubt in some instances it presses hardly upon the indulgent landlord; but, considering the difficulty of the problem it had to solve, it has worked satisfactorily on the whole.

Dr. Hancock's volume of Judicial Statistics supplies us with some valuable information as to its working:

"It appears that there were, in the last quarter of 1870 and the whole of the year 1871, 526 cases at land sessions; giving an average for all Ireland of 1 case in every 1,000 holdings subject to the Act.

"There were, against 292 decrees and dismisses at land sessions, only 52 appeals lodged; of these only 33 were heard. In four cases the appeals were reversed, in 13 they were varied, in 13 affirmed, and in 3 cases judgments have been held over.

"The total sum adjudged in decrees was £13,644; and, deducting £2,207 allowed for default of tenants, etc., the net sum adjudged was £11,456. Allowing the same proportion for claims disposed of out of court, the direct protection to tenants in all the cases may be estimated at £26,500.

"The gross amount decreed, without deducting allowances for set-off to landlord for dilapidation, rent, etc., gives an average for Ireland of £69 in each case. In Ulster it reached £81; in Munster, £64; in Leinster, £49; and in Connaught, £33. It appears from these figures that, except a rare case of a claim to register improvements, the holdings in respect of which cases have been decided by land sessions are a very small class.

"Of the gross amount adjudged at land sessions (£13,664), £5,621, or 41 per cent., was for loss on quitting holding and improvement together; £4,558, or 33 per cent., was for Ulster tenant-right; £1,908, or 14 per cent., for loss on quitting holding alone; and £1,577, or 12 per cent., for improvement alone."

I mentioned in my address last year that a necessary complement of that measure was to confer upon the Chairmen equitable jurisdiction, so that they might be able to administer in cases of dispute the compensation awarded, and to deal with the assets of persons not above a certain amount, say £500. The landlord or agent who used roughly to administer those equities and other family and land disputes, under the sanction of a threat of eviction of those who would not act justly, is now deprived of that power, and it is necessary to fill this void. The absurd restriction as to title to land not being within the chairman's jurisdiction should be repealed. I trust that Parliament may find time to make this amendment of the law in the approaching session.

One more reform urgently needed is the establishment of a tribunal for the passing of private bills. The notices of application to Parliament, which now fill the columns of the newspapers, are calculated to bring the subject to our notice. It is at present felt to be a great grievance that a town requiring a local act must go to the expense of a Parliamentary enquiry in London, before committees successively of Lords and Commons. The expense deters persons from carrying many useful local measures. A local bill for Newry cost, I think, £7,000. What is the remedy for this state of things? Parliament seems naturally reluctant to give up this jurisdiction, and I do not think it is necessary that they should do so. An efficient tribunal might be constituted jointly of Peers and Members of the House of Commons, who would be empowered to send a competent person to hold an enquiry at the place in case the bill was opposed, to take evidence, and report to the tribunal in London, who might adopt or modify his report.

Many localities are debarred from making useful improvements by the fear of the legal expenses to be incurred in applying for a bill to Parliament. This is, indeed, a pressing matter, and which I hope may be very soon effectually dealt with, and a general system introduced applicable to the whole kingdom, for Scotland and the country parts of England are interested in this matter, as well as the legislature itself, who are now prevented, by the pressure of such business, from giving their undivided attention to legislation proper.

I have always held that our interests are best advanced by an assimilation of our laws with those of England, a complete identification of the interests of every part with the whole, and a drawing closer of the bonds which unite the two countries. The Scotch understand the advantage of being identified with and forming an integral part of the greatest nation in the world, and avail themselves of that advantage in every way. Our people also are not slow to perceive this, and our sons have the ability to obtain their fair share of those great prizes to be won in the vast field which the British Empire throws open to them.

II.—*Report of the Council at the opening of the Twenty-sixth Session of the Society.*

[Read Tuesday, 19th November, 1872.]

THE Council have much pleasure in submitting the following report to the members.

During the past session some important papers were read on Jurisprudence. The President read a paper on the "Practicability of Codifying English Law, with a specimen Code." Two of our Vice-Presidents, Mr. Heron and Mr. Pim, introduced the code prepared by Judge Lawson as a bill in Parliament.

At the recent Social Science Congress at Plymouth, the Attorney-