

VI.—*The Irish County Courts.*—By Constantine Molloy, Esq.,
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[Read Tuesday, 14th June, 1870.]

THE course of legislation during the present session of parliament indicates very clearly what the future of the County Courts of Ireland will be. They will be the courts in which all the proceedings with respect to the property of the class above the mere labourer, and below the proprietary, professional, and business classes, will be disposed of. As this change appears to be inevitable, what is of immediate importance is, that the further steps for the necessary extension of the jurisdiction of the court, and for the proper organization of the staff of the court, should be taken as promptly as possible; and we have a right to ask that all the principles which have been sanctioned by the most recent authorities in England on similar subjects should be promptly applied.

One of the principles recognized by the Judicature Commission in England is that each court should, as far as possible, be able to give complete justice upon any case that comes before it; and one of the most obvious violations of this principle occurs when the jurisdiction of the local court is excluded by a matter of title arising, however small in value the right may be. And although, for the purpose of the act, it is only necessary to determine the matter between persons having the most temporary occupation of land, and although the result of the litigation would not in the least bind persons not parties to the suit—in all such cases of title, when the matter in dispute will not admit of, or the parties are unable to bear, the cost of proceedings in Chancery or the Superior Courts of Common Law, there is a partial denial of justice, which brings the law into contempt, and leaves rights to be maintained by force, instead of being determined by law, and therefrom have resulted crimes which bring discredit on the country.

The next branch of the question is the extension of equitable jurisdiction. The principles of law recognized in Courts of Equity are wise and just modifications of the Common Law. The Common Law Courts, as stated by the Judicature Commissioners in their reports, were confined by their system of procedure in most actions, and the remedy which the Common Law Courts were able to afford has been found to be, in very many instances, totally insufficient for the adjustment of the complicated disputes of modern society. Large classes of rights, altogether ignored by the Courts of Common Law, were protected and enforced by the Court of Chancery, and recourse was had to the Court of Chancery for the purpose of obtaining a more adequate protection against the violation of Common Law rights than the Courts of Common Law were competent to afford. It follows from this, that any omission to extend to the humbler classes any branch of equitable jurisdiction is a serious denial of justice to them. This point was noticed by Dr. Hancock two years ago, in his Reports on the Landlord and Tenant Question which have been recently presented to Parliament. "According to the theory

of our law," he says, at p. 44, "all men have equal rights to its advantages, but it happens in practice that arrangements are often allowed to grow up, which in fact exclude large classes from all benefit of some of the best parts of our laws." After giving illustrations of this, he adds: "I entertain a strong opinion that the Assistant Barristers' Courts should be entitled to exercise, with regard to the less wealthy classes of the community, all the jurisdiction which the Court of Chancery does with regard to the rich. The Assistant Barristers' Court is now a court of equity for the defendant. It ought, I think, to be also a court of equity for the plaintiff." He refers to the same subject in his Report of 1866, when he says, p. 70, "A suggestion which I made in 1859 about the Irish County Courts being made a complete Court of Equity for the poor, was in 1865 carried out in England by statute 28 and 29 Vict., ch. 99., entitled 'An Act to confer on County Courts a limited jurisdiction in equity.' This act deals with the case of minors having small properties. The law of contracts amongst the rich rests as much upon the jurisdiction of courts of equity to enforce them as upon that of courts of law, and it is proper that those who desire that the dealings of poor tenants should rest on contract, should see that they have access to cheap equitable as well as cheap legal redress."

The Land Bill of the present session rests the decision of the disputes between landlord and tenant upon the equities clause, and in the fullest manner fuses law and equity in the decision of the different questions that will arise between them. All that is wanted is to complete this jurisdiction, by giving to the Irish County Courts an equitable jurisdiction equal to that of the English County Courts, not in landlord and tenant questions alone, but in all questions, and amongst all classes, to the limits stated.

The next question is the staff of the court. As the question of the regulation of the judges of the Irish County Courts, consequent upon the increased jurisdiction given to them in the case of landlord and tenant, will come before Parliament next session, it would be very advantageous if the whole of the increased jurisdiction which will be probably conferred on those courts within the next few years could be given to them at once, as the office could then be regulated on a basis likely to be somewhat permanent. The staff of the court could also be better regulated if the entire of the new jurisdiction were conferred at once. For this purpose it would be necessary to convert the office of Clerk of the Peace into an office like that of Chief Clerk in Chancery. This would, however, involve a change in the constitution, pay, and arrangement of the office. The existing arrangements as to the patronage of the office, and as to the officer's discharging his duty by deputy, has been condemned by a select committee of the House of Commons, in their report on Grand Jury Presentments. This officer is paid partly by fees and partly by salary, and there is no provision for superannuation. The office should be paid entirely by salary. Provision should be made for superannuation, and the fees should be converted into stamps. For future appointments a professional qualification should be required, and for the security of all lodgments of money it would be only

necessary that the bank selected in each county as the treasurer of the county should be also the treasurer of the County Court.

The Land Bill recognizes the necessity of a guardian *ad litem* being appointed in the cases of minors and lunatics, but provides only for such appointment to the extent of the litigation under the bill. But the permanent protection of the interests of tenants under leases and tenant right usages requires a cheap machinery for appointing guardians of minors and lunatics, and for making such guardians account.

In respect of lunatics the Irish jurisdiction is singularly defective. There are 16,000 lunatics in Ireland, and of these only 150 have any legal protection as to their property. The main cause of this is the cost of commissions in lunacy. This arises from the judges in lunacy being paid by fees, and from a jury being necessary in every case, and from the jurors and sheriff being also paid fees. In England both these matters have been remedied. The judges are paid by salary, and a jury is only necessary if demanded in the case. In Ireland the present Commissioners in Lunacy are both county chairmen, and there is no reason why all the county chairmen should not be capable of exercising the same jurisdiction, or why a jury should be necessary in any cases except those where it is required in England, that is, where the parties demand it.

The Report on the complaint of the foreign traders, as to the defective jurisdiction of our local courts, shows that the English County Courts have the jurisdiction which is wanted to meet the grievance in Ireland. By the Bankruptcy Act of 1869, in England the County Courts are made the local bankruptcy courts all over England; in Ireland, the County Courts have jurisdiction in insolvency, but not in bankruptcy. If the exigencies of foreign trade required that the jurisdiction as to foreign shipping should be the same in Irish as in English ports, the exigency of home trade requires that the Bankruptcy law should be identical in Ireland and in England.

To sum up, the Irish County Court requires to be a court of equity for the plaintiff to the same extent as in England—to have jurisdiction in title, in bankruptcy, in minor, and lunacy matters.

The cause of law and government in Ireland has suffered great loss of prestige, from the delay that has occurred in the extension to Ireland of the most obvious reforms till long after they have been introduced in England; and one of the most effectual means of restoring that prestige and imparting confidence in the law, would be found in the prompt carrying out of practical legal reforms in which large classes of the people are deeply interested.
