

~~deterioration in character and efficiency which comes to the labourer from such a hand to mouth existence. But it is one of those matters which require restraint in language and minute investigation of facts for useful treatment. Professor Nicholson has also treated the question in the *Economic Journal* for June, 1892. As I have not been able yet to get either of these essays in Dublin I prefer to leave the subject with these references.~~

~~Two practical considerations will suggest themselves. The higher scale of pay, which is appropriate for a fluctuating employment, affords no protection to the workman unless he has the foresight to save a part of his wages when in employment as a provision for the weeks during which he will be left without employment. The Trade Union benefit of out-of-work pay is something; and to many workmen, I suppose, their Trade Union is the only form of thrift that they practise. Even that little beginning of prudent foresight is absent from most, for the number who belong to Trade Unions is small. From this point of view, the work of Trade Unions as a development of self-help will merit the approval of all.~~

~~A further consideration is the very great importance of assisting the improvement of the *mobility* of labour. The mobility of capital has been increased enormously in modern times, and no daily newspaper can afford to cater for the public to-day which does not devote a great part of its news-space to the financial intelligence upon which the mobility of capital depends. We have seen that labour is more liable to suffer from fluctuations in employment than capital; yet, so backward is the mobility of labour, that no newspaper has yet seen its way to cater for the wants of labour as it does for capital. In some countries the Labour Bureau has already become a settled State department, whose express function is to assist the mobility of labour. But it is obvious that much remains to be done. I know no other direction in which workmen have such an immediate interest and so just a claim to look for State assistance. This is the clogged wheel that impedes the progress of our civilization. Until labour can acquire greater freedom of movement, from place to place and from avocation to avocation, the forces that ought to make for the progress of Society will expend the greater part of their strength in smashing the machinery that they were intended to keep moving.~~

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III.—*A Suggestion for the Removal of Taxes on Litigation in Ireland as a Condition of the Reduction of the Judicial Establishment.* By Arthur W. Samuels, Q.C.

[Read Friday, 7th February, 1896.]

THE rumour that the Treasury officials have determined to promote a Bill for the reduction of the judicial staff in Ireland has been gaining consistency. A general *claque* of approbation of the proposal has been raised by the English Press, and the Government is urged to auspicate its proceedings by depriving this country of an

expenditure of £20,000 a year for the benefit of the Imperial Exchequer.

I do not in this paper propose to argue the question of the expediency of the proposed reduction, nor to consider whether it is an opportune time for statesmen, apart from Treasury officials, to choose for the purpose of further curtailing the numbers of the Judiciary which was established, after prolonged debate and consideration in Parliament, in the year 1877. During the eighteen years since the Judicature Act, Ireland has experienced a social revolution, a deep commercial depression, and an agrarian war. Whether time ought to be given for confidence to revive, and business to recover, before her legal establishment is further docked, is not, however, a matter which I intend to now discuss. My object in writing this paper is to urge that, if the proposed reduction in the judicial staff is made, in obedience to the Little Ireland class of politicians, the Irish public should insist that what is called a legal reform by the Treasury shall be a legal reform in reality, and that if the Treasury demands that the administration of the law shall be cheapened, the public should demand that the law to be administered shall also be cheapened. I contend that if expenditure in Ireland is to be reduced by cutting down the number of the judges, taxation in Ireland shall also be reduced by cutting down the suitors' fees; and that if Irish litigants are to be exposed to delay on account of the diminution of the staff to hear their causes, they shall be compensated for it by the abolition of the Crown duties levied on those causes.

I also submit that the Irish suitors have been, for some years past, entitled to a reduction of the fees imposed upon Irish litigation, and that if a further reduction of the judicial staff to the rumoured extent takes place, they will be entitled to the total abolition of all taxes on litigation in the Superior Courts.

This abolition would be in conformity with what the greatest writers on the subject inculcate as one of the first canons of the principles of taxation. To enable the subject to appeal to Justice without having to pay fees to the Crown for doing so, is the ideal towards which the legislator should aim, and the Chancellor of the Exchequer who wishes to prove himself a real statesman will, if he is compelled to make a reduction in judicial expenditure, at once grasp at the opportunity of bringing about a corresponding reduction in the taxation upon litigation.

Exactly one hundred years ago Jeremy Bentham wrote as follows:—

“Taxes on law proceedings constitute in many and perhaps in all nations a part of the resources of the State. They do so in Great Britain. They do so in Ireland. In Great Britain an extension of them is to be found among the latest productions of the budget. In Ireland a further extension of them is among the measures of the day. It is this impending extension of them that calls for the publication of the present sheets the substance of which has lain upon the shelf for many years.”

The sheets referred to formed the famous pamphlet published in 1795, and entitled—*A protest against Law Taxes, showing the*

*peculiar mischievousness of all such Impositions as adding to the expense of an Appeal to Justice.*

His great indictment against the payment of any stamp duties to the Crown on legal proceedings was admitted by Pitt to be unanswerable, and it is stated that it was Pitt's intention to abolish all such taxes had he not been dismissed from power before he had the opportunity of carrying this reform. Bentham, in summarising the deductions from his argument, says that he has demonstrated—

“That a law tax is the worst of all taxes, actual or possible—that for the most part it is a denial of justice—that at the best it is a tax on distress—that it lays the burden not where it is most, but where it is least benefit—that it co-operates with every injury and with every crime—that the persons on whom it bears hardest are those on whom a burden of any kind lies heaviest, and that they compose the great majority of the people—that, so far from being a check, it is an encouragement to litigation, and that it operates in direct breach of *Magna Charta*, that venerable monument commonly regarded as the foundation of British liberty.

“The statesman,” he says, “who cares not what mischief he does so he does it without disturbance, may lay on law taxes without end. He who makes it a matter of conscience to abstain from mischief will abstain from them; he whose ambition is to extirpate mischief, will repeal them.”—*Bentham's Works*, Vol. II. p. 582 (Bowring's Edition).

The condemnation, by John Stuart Mill, of this species of imposition is no less emphatic:—

“In the enumeration,” he says, “of bad taxes a conspicuous place must be assigned to law taxes, which extract a revenue for the State from the various operations involved in an application to the tribunals. Like all needless expenses attached to law proceedings, they are a tax on redress, and therefore a premium on injury. Although such taxes have been abolished in this country as a general source of revenue, they still exist in the form of fees of court for defraying the expense of the courts of justice, under the idea apparently that those may fairly be required to bear the expenses of the administration of justice who reap the benefit of it. The fallacy of this doctrine was powerfully exposed by Bentham. As he remarked, those who are under the necessity of going to law, are those who benefit least and not most by the law and its administration. To them the protection which the law affords has not been complete since they have been obliged to resort to a court of justice to ascertain their rights, or maintain those rights against infringement: while the remainder of the community have enjoyed the immunity from injury conferred by the law and the tribunals without the inconvenience of an appeal to them.”—*Mill's Political Economy*, Book V., ch. V.

I quote another high authority—Professor Bastable states in his most able work on *State Finance* at page 516:—

“The taxation of law proceedings is a development of the fees charged for judicial services. . . . Certain classes of the community make greater use of the tribunals, and such taxation compels them to contribute a part of the expense incurred for their use. More careful consideration shows the error of applying the rule of particular interest in this way. The administration of justice is a general interest that affects rich and poor litigants and non-litigants alike. A tax on legal process is a hindrance to the use of the tribunals, *i.e.*, an obstacle to obtaining legal remedies. The arguments of Bentham on this point have never been refuted.”

Herbert Spencer's views on the subject are quite as emphatic as Bentham's.

Stamp duties on law proceedings were first imposed in England in a period remarkable for corruption in finance—the reign of Charles II., 22 & 23 ch. II., c. 9. They were at first imposed for temporary periods. They were renewed from time to time; extended to Ireland, and abolished in 1824 by Robinson, when Chancellor of the Exchequer, both in England and Ireland as being in effect a tax on redress, and therefore a premium on injury. The amount of the revenue then given up was calculated at £200,000, of which £180,000 was produced in England, and £20,000 in Ireland annually. Dowell's *History of Taxation*, Vol. III., 334. *Annual Register*, 1824, p. 88. These taxes have however been reimposed, and in Ireland now a revenue of about £42,000 per annum is raised by means of taxes on legal process in the Superior Courts, and the Court of Bankruptcy, and about £26,000 per annum in the County Courts.

A tax on law proceedings was one of the items in Grenville's momentous Stamp Act, 5 Geo. III., c. 52, which led to the revolt of the American Colonies. The attempt to impose these along with the other duties failed, and Bentham's ideal has been attained in the United States of America. There no fees, no duties, no State impositions exist to check the absolute right of the litigant to appeal freely to the protection or assistance of the law. In Ireland and England they still exist notwithstanding Bentham's protest. One hundred years have passed since then, and the Irish people on whose behalf that protest first was uttered, have to-day exceptional reasons, in addition to those urged by him, to contend that these taxes should be forthwith diminished, on account of the reductions already made in her judicial staff; and if any further reduction of the legal establishment is made, then to demand that these taxes shall be for the future altogether abolished.

By the operation of the Judicature (Ireland) Acts, 1877 and 1878, the following judicial reductions have been made:—

- (1) Two Common Law judgeships, at a salary of £3,800 per annum each, have been abolished.
- (2) One Land Judge, at a salary of £3,500, has been abolished.
- (3) The Judgeship of the Court of Admiralty, at a salary of £1,200 per annum, has been abolished.
- (4) The office of the Chief Justiceship of the Common Pleas has been abolished; and it is provided
- (5) That no successor shall be appointed to the office of Lord Chief Baron of the Exchequer.

In October, 1877, one of these Common Law judgeships fell vacant, and there has been a gain to the Treasury since that date to 1st January, 1896, of £3,800 a year, or a total of over £69,600.

On the 1st January, 1878, another of the abolished Common Law judgeships fell vacant, and there has been a gain to the Treasury since 1st January, 1878, to 1st January, 1896, of £3,800 for 18 years, or £68,400.

Since Michaelmas, 1885, there has been but one Land Judge of

the Chancery Division, and there has been (say from 1st January, 1886), a saving to the Treasury of £3,500 per annum on this account, amounting, to 1st January, 1896, to £30,500.

The abolition of the Lord Chief Justiceship of the Common Pleas has effected a saving of £800 per annum. Since Hilary Term, 1887, there has been a diminished expenditure of £800 per annum owing to the extinction, which then took place, of that office—(say 11 years' salary), at £800 per annum, or £8,800 in all, up to Hilary Term, 1896.

Since the 2nd February, 1893, when the Admiralty Judgeship ceased to exist, there has been a saving of £1,200 per annum, or £3,600 in all, to 2nd February, 1896.

A suspending power has also been exercised in reference to Irish Judgeships, and from 1890 until 1892, two years' salary of a Common Law Judgeship, amounting to £7,600, was retained by the Treasury.

At present a vacancy has been allowed to exist for nearly six months, and a saving of £1,900, or thereabouts, has been thus brought about.

If I am correct in these figures, there has been a gain to the Treasury, and a loss to expenditure in Ireland, of £159,900 since the year 1877.

There may, however, be set off against this sum the salary of the Judge of the Court of Land Commission, who is a Judge of the High Court and receives a salary of £3,500 per annum, or a total of, say, £22,500 since 1881.

If my calculations are correct, there has been thus a sum of £137,400, which would formerly have been spent in Ireland, devoted since 1877 to the fund for the extinction of the National Debt, or applied to other Treasury purposes.

If, in addition to the reduction in the number of the judges, we take into account the abolition of their staff, and of the several offices connected with them, it will be found that there has been probably a diversion of expenditure from Ireland amounting to £17,000 per annum. It would appear from the debates in Parliament, in reference to the Act of 1887, that the Treasury calculated there would be a gain of about that sum to the Consolidated Fund; but, of course, it is difficult to make an accurate estimate without having the exact figures before one.

The practical effect of the reduction in judges and non-reduction of court fees since the Judicature Act has been to throw on the Irish suitors a heavier proportion of the burden of supporting the Law Courts than they previously sustained. The Treasury officials probably think it the proper thing that Her Majesty's High Court of Justice in Ireland should be kept up entirely by the taxation of those that have recourse to it. The theories of Bentham and Mill on the subject are not received with favour, we may surmise, in the official mind. But even if the contention were theoretically valid that the suitors ought to pay the judicial salaries—why is it to be forgotten that the most important part of the business that occupies the judges is Crown and Criminal business—and why should that most constant and wealthy suitor, the State, take all the advantage of a saving in judicial expenditure and give none of it to the civil suitor?

Leaving out of calculation the salary of the Lord Chancellor, who is paid as high State official and member of the Government, and Land Commission judge whose duties are largely administrative, and the whose court is not a division of the High Court; the total amount of judicial salaries now payable in Ireland of all the Supreme Court judgeships, adding the two in Bankruptcy, is £67,000. About £42,000 per annum on an average is collected in Judicature and Bankruptcy fees, therefore the State pays towards judicial salaries of the Supreme Court, at present, £25,000. If these judicial salaries to the amount of £20,000, as rumoured, are to be cut off, and suitors fees are not diminished, £5,000 only will be paid by the Crown to the judges for the discharge of all the Crown and Criminal business in Ireland, and the Irish suitors in the Civil Courts will continue to pay their £42,000 per annum as heretofore. This may be termed an economy at Whitehall—but it looks like an exaction in Dublin. If a genuine consideration of the taxpayer animates the minds of those that urge the reduction, then the righteousness of their intentions can be best shown by relieving the real taxpayers, those on whom the burden presses directly—the Irish litigants—from the payment of stamp duties on litigation equivalent in amount to the estimated reduction. Notwithstanding this diminution in legal expenditure by the Government in Ireland since the passing of the Judicature Act in 1877, there has been no diminution in the amount of the fees exacted by the State from litigants in the Superior Courts. The whole gain has gone to the Treasury, not one penny of it to the suitors. Rules have been passed which have diminished solicitors' costs to such an extent that many of the leading men in the profession state that it does not pay them to bring a record in the Common Law Divisions, and that their emoluments in the Chancery Division have been seriously diminished. The effect of the new rules of 1891 has been to cut down to a very great extent the profits of the Bar. Solicitors' costs and barristers' fees have been reduced or abolished, but the duties to the Crown (these "taxes on redress") have remained unchanged since 1877.

After the passing of the Judicature Act I find from the annual judicial statistics that the Comptroller of Taxes returns the following sums as collected by Judicature Stamps, including Probate Court and Admiralty.

1880.	1881.	1882.	1883.	1884.	1885.	1886.	1887.
38,823	40,625	39,806	37,101	38,113	38,157	38,450	36,756
1888.	1889.	1890.	1891.	1892.	1893.	1894.	
36,219	37,062	36,601	36,132	39,850	37,917	37,441*	

\* There is some difference between these figures and those given in *Thom.* which I cannot explain; for instance, for 1887 these taxes are given as £38,192 and for 1893, £39,358 in *Thom.* In some cases the figures are smaller.

These returns show that, since the Judicature Act, from £37,000 to £39,000 is now collected each year by Judicature stamps in the Chancery, Common Law, Probate Divisions, and Admiralty.

These sums do not include those raised in Bankruptcy, Lunacy, the Judgment Office, Registry of Deeds, Land Commission, or County Courts, or certain other legal offices, which amount to very considerable sums.

I have been informed by leading solicitors that the duties paid in stamps on a Common Law record vary in amount from £2 to £5, according to the number of applications and proceedings that may take place. In a Chancery action the stamp duties, I believe, frequently amount to £10 or more. These are substantial sums for a litigant to have to pay for having his legal rights or liabilities determined in the Queen's Courts.

Surely, when the expense of keeping up these Courts was reduced, as it has been, the State should not have got all the benefit. The few thousand heavily-taxed Irish suitors should have been considered before the 38,000,000 general taxpayers of the United Kingdom.

Not only have Irish suitors not been relieved from any of "these most mischievous of all impositions," but the Irish public has got no benefit whatever from the policy pursued.

The reductions in judicial expenditure which have been already made have taken place without any compensating advantage being given to the Irish people. Almost the whole of the money paid to the judges and their staffs was spent in Ireland, and found its way, in one direction or another, into the pockets of Irish traders, merchants, and other members of the public. But there have also been great reductions effected in the offices connected with the Courts—perhaps justifiably—but the savings effected have not benefited the Irish suitor by any remission of fees to him.

These subtractions from expenditure in Ireland have increased the fund for the extinction of the National Debt, or have been devoted to other purposes not directly connected with Ireland. Yet, even had they been applied to general Irish purposes, I submit that the proper method of reform would have been to reduce or abolish the payment by Irish suitors of the taxes on litigation—"the worst of all forms of imposition," as Bentham terms them.

It must be remembered that these fees on litigation are not directly imposed by Parliament. Under the 84th section of the Judicature Act of 1877, they are imposed, reduced, or altered by rules of Court, made with the concurrence of the Treasury. The Treasury receive Court fees, by means of Judicature stamps, under rules made 18th December, 1877; but it is a remarkable fact that when the new rules of 1893, which made a sharp reduction in the amount of costs payable to solicitors, were passed, the Treasury never concurred in any reduction in the Court fees for the benefit of the suitor, at the expense of the Consolidated Fund.

By the rules of 1893 (Order LXV., p. 19) solicitors are allowed costs on the "Lower Scale" only, unless in exceptional cases; but

this does not apply to the Treasury. The Court fees are paid on the "Higher Scale," unless in exceptional cases. The consequence is that the solicitor, as a rule, gets paid costs at the lower rate, and the Treasury gets paid fees at the higher rate. The statistics I have quoted seem to show that, though business is supposed to have been falling off for some years back, the stamp duties have been bringing in an income that shows practically no diminution from year to year.

Let us now consider, in the interest of the litigant and creditor, the rumoured abolition of the two Bankruptcy judges. Their salaries amount to £2,000 per annum each. The fees paid to the Crown upon Bankruptcy proceedings appear from the *Judicial Statistics* to be as follows for the last nine years:—1886, £4,008; 1887, £2,465; 1888, £3,330; 1889, £2,863; 1890, £2,877; 1891, £2,980; 1892, £2,954; 1893, £3,397; 1894, £4,002. An average of between £3,000 and £4,000 per annum. The fees payable in Bankruptcy proceedings are heavy. £2 on a petition of Bankruptcy or arrangement; £1 on a debtor summons; on every account of the assignees or trustees 10s. on each £25 or fractional part of £25 of gross amount of assets realized up to £500, and over £500 5s. for each £100 or part of £100. Then on each £100 or fractional part of £100 of the gross amount produced by a sale 5s. is to be paid. There are many other charges; the rate of taxation may be imagined from the note to the schedule of fees which states that "the duty in any of the foregoing cases is not to exceed £50!" It certainly is a startling thing that a Bankrupt's estate should be possibly liable under any circumstances to pay £50 stamp duty to the Crown. But if the Bankruptcy judges are to be abolished, as is rumoured, then it seems to me that the Irish public will be completely befooled if they permit, without a protest, fees to be levied any longer from the creditors in bankruptcy matters for the purpose of swelling the funds for the reduction of the National Debt. It must be remembered also that the official assignees are not paid by the State, but are remunerated at the expense of the creditors by a percentage on the assets realised. If the Bankruptcy judges are to be abolished in obedience to the Treasury demand for economy, the proper persons to reap the benefit of this economy are the creditors, and the Treasury ought not to make one farthing out of any Irish Bankruptcy.

Take again the case of the Probate Division, the judicial expenses of which are far more than paid for by the fees levied. It is rumoured this judgship and Division is to be abolished. It appears from the statistics given in *Thom's Directory* that for 1890, £8,695; for 1891, £8,798; for 1892, £10,008; for 1893, £8,406; and for 1894, £8,983 fees were received in the Principal Registry in addition to the District Registry fees which exceed in each year these collected in the Principal Registries. In both registries about £20,000 per annum is thus collected annually. The salary of the President of the Division is £3,500 per annum. If the judgship is abolished, have not the suitors a right to demand, at least, a proportionate reduction in the amount of fees they have to pay in Probate matters?



If the change which it is alleged is intended in the Irish judiciary is proposed in Parliament, it appears to me to be the duty of the Irish representatives of all political shades to demand, as a condition of any further reduction, that court fees upon litigation shall be abolished in the Superior Courts in Ireland.

If it be objected that Irish suitors should continue to pay as English suitors do, it can be answered that the English public are entitled to have an increase made in the number of their judges, and not to be subjected any longer to the scandalous delay and denial of justice which there prevails owing to the insufficiency of the judicial staff. It can also be replied that two wrongs do not make a right, and that because a mischievous tax continues to be imposed in England it is no reason why it should be continued in Ireland. If it is said that there will be still a judicial staff to keep up in Ireland, and that fees should be paid by suitors to support it, it can be answered that as the amount of the reductions already made, and those proposed to be made is from £35,000 to £40,000 per annum, and the amount of the suitors' fees annually contributed in Ireland amounts to or exceeds those figures, the result of leaving the court fees unabolished will be to transfer from the State to that very limited body, the Irish litigants, practically the whole burden of keeping up the Irish Superior Court Judiciary. Thus, the general body of taxpayers will be relieved, while those who, according to Bentham and Mill, are least able to bear the burden must still submit to it, and the Crown and Criminal business of the country will be conducted by a staff of judges paid for by civil litigants. It is certainly a strange thing, or rather an unjust thing, that all the advantage that has hitherto been reaped from past reductions has gone to the Consolidated Fund and not one farthing to Irish suitors. This ought not to be allowed to continue. Let there be for the future no judicial reductions without remission of suitors' fees. If there is to be a cheap administration let there also be a cheap law.

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IV.—*Foreign Legislation on behalf of Destitute and Neglected Children.* By Miss Rosa M. Barrett.

[Read Tuesday, 25th February, 1896.]

In a paper which I had the honour of reading some time ago before this Society, I gave some details as to the laws of various countries (especially America) on behalf of destitute children. I feel that some apology is necessary for again taking up the same subject, but I trust that the urgent need of improved legislation in our own country may be a sufficient excuse. I propose this evening to speak (i.) of recent FRENCH legislation, (ii.) of that in force in some of our colonies, (iii.) in some of the American States, as well as to give a