

III.—*On the Grand Jury Question in Ireland, considered with reference to the latest English analogies.* By W. Neilson Hancock, LL.D.

[Read Tuesday, 14th February, 1871.]

As all our institutions for local government and administration are founded more or less on English precedents, it is useful, in collecting the information necessary for any important change, to combine a sketch of the institution with a study of the modifications of similar institutions in England. Before entering on the English view of the question, there are one or two local matters to explain.

The first step towards the abolition of the fiscal powers of grand juries was taken in the city of Dublin, by the Dublin Improvement Act, 1849. By that act, the powers of taxation of the city of Dublin Grand Jury were transferred to the Town Council, and after twenty years' experience the transfer has given great satisfaction. It led to the consolidated collection of rates under the Collector-General; and when a select committee of the House of Commons was last session making inquiry into local taxation, the Dublin system was found to be as advanced as the best-managed district of England, and the plan thus at work in Dublin for twenty years, is now recommended for general adoption throughout the United Kingdom.

In the act in which the transfer of the fiscal power of the Grand Jury of the city of Dublin was carried out, there was one prominent defect—apparently a slip in legislation. Whilst all other powers were taken from the City Grand Jury, the duty of appointing to some offices connected with the city prisons was still left in their hands: this defect was disclosed in a litigation which arose some years since, but no Irish member has since proposed a bill to remedy the defect.

The extinction of the fiscal powers of the Grand Jury of the city of Dublin was followed in 1852 and 1853 by the transfer of the similar powers from the grand juries of the cities of Cork and Limerick to the town councils of those cities, and along with the fiscal powers, the patronage of the city prisons was also transferred.

The most obvious extension of the principles thus laid down by parliament, would be the transfer of fiscal jurisdiction from the grand juries of the other counties of cities and towns in Ireland to the respective town councils or town commissioners. It is a great anomaly to have in Waterford, Kilkenny, Drogheda, Galway, and Carrickfergus a double machinery, with a double set of officers, for managing the local affairs of the town, when in the larger cities of Dublin, Cork, and Limerick this has been dispensed with.

The impediment to the extension to those towns of legislation on the model of the acts for Dublin, Cork, and Limerick, is simply the cost of a local act of parliament; for although the Dublin act was a public one, the acts for Cork and Limerick were both local; and if the reform which Mr. Malley proposed some years ago, and Mr. Heron has so ably reduced to a practical form, had been passed for Ireland in 1858, when the local government act was passed for Eng-

land, or in 1862, when the police and local management act was passed for Scotland, this defective state of Irish local arrangements would not be in existence.

The next step towards the transfer of the fiscal powers of grand juries occurs in counties at large, and this arises from towns which are not counties in themselves trying to secure for the town authorities the transfer from the grand jury of the charge of roads and bridges within their boundaries.

This transfer of authority as to roads has taken place from the grand juries of the counties of Antrim, Cork, Down, Dublin, Fermanagh, Londonderry, and Wicklow.

There was an optional clause to this effect in the Londonderry Improvement Act of 1848; but the transfer was first effectually carried out in the Kingstown Improvement Act of 1861. Somewhat similar transfers were made to the Town Commissioners of Queenstown, and the Rathmines Township Commissioners in 1862, to the Pembroke Township Commissioners in 1863, the Blackrock Township Commissioners in the same year, and to the Town Council of the City of Londonderry in 1864. In 1865 the important town of Belfast was separated from the county of Antrim for certain purposes, which involved a large transfer of jurisdiction from the grand jury to the town council. In 1866 the principle of separation as to county rate was carried out in Bray. In 1867 the Dalkey township was separated from the county of Dublin as to roads. In 1868 the part of the borough of Belfast which is in the county of Down, was separated from the county in like manner as the county Antrim part had been separated from Antrim in 1865. In 1868 the district of Kilmainham was separated for road purposes from the county of Dublin. In 1870 the town of Enniskillen secured exemption from a share of the salary of the county surveyor, and of the cost of revision of the tenement valuation, and of the registration of voters, except so far as relates to the borough, and it is provided that the levying of county cess within the borough is to cease.

All these changes have been brought about by local acts of parliament, obtained at considerable cost. The smaller towns desire to have power to have the same change extended to them by provisional order, and a resolution to that effect was passed at the meeting of town commissioners of Ireland, held at Belfast, on the 9th of December last.

It appears from what has been said, that for the solution of the town part of the grand jury question, so far as fiscal business is concerned, we only want the free means of using the English provisional order system of legislation, to enable the precedents of the larger Irish towns to be extended without expense to all Irish towns.

When we come to the rural part of the Irish counties, the first analogy we find, is the county from which the greater number of towns have been withdrawn as to road management—the county of Dublin. The act for regulating the grand jury system in Dublin was passed in 1843, after the Poor Law had been introduced in 1838, and the value of having permanent boards for local management was thoroughly established.

The result was, that the county of Dublin established a permanent committee to act throughout the year. This system has worked with reasonable success. Now, why should not each county have the opportunity of adopting by provisional order this Dublin precedent, if it desires to do so? It might suit counties of the same size, and not suit every county; and why should not the counties be in the same position as is proposed for the towns, as to an option of adopting the Dublin plan, without the expense of a local act?

The precedent has been sanctioned by Parliament, and has worked well, and why should there be delay till Parliament has time to settle the details of a bill that will meet every possible case?

When we get beyond the precedents I have referred to, there is nothing to guide the future, and in England they are worse off for county government than we are. The management of the county roads is there discharged either by magistrates, without any representative element whatever, or by turnpike trustees.

A Select Committee of the House of Commons which sat last session, inquiring into the state of local taxation and the divisions of rating between owner and occupier, came to strong resolutions condemning the English system. They recommend that no one should sit on a financial board in an *ex-officio* character, that the rate should be divided between owner and occupier, and that property should be fairly represented on the Board. They did not, however, sketch out a plan.

It is plain, however, that the subject of county financial boards is on the point of receiving an early solution in England, and that solution must be adapted to Boards of Guardians of the poor and to the arrangements of town government which exist in England. As our poor law boards and town boards are all formed on English models, the new county boards will form most valuable precedents for consideration, in devising a plan suited to all the arrangements that have grown up round the present grand jury system, which have been in existence so long.

There is, however, one part of the grand jury system that appears to admit of an earlier solution. The court of baronial cess-payers admits of having applied to it the principle laid down by the committee of last session. Let the court consist of two parts—one half elected by rated occupiers in lieu of cess-payers, and one half by the immediate lessors, in lieu of magistrates sitting *ex-officio* in each barony; let the elections be conducted just as poor law elections are now conducted; give the body so elected the same power as the Dublin Grand Jury have of appointing a permanent barony committee, if they so desire it; and this would secure an immediate *bona fide* representation, and carry out the latest principles recommended by the select committee of the House of Commons, with least disturbance to existing arrangements.

There is one part of the fiscal grand jury system which has been happily preserved in the Dublin act transferring the fiscal powers to the Town Council, that is, the practice of submitting the estimates to judicial fiat of a judge of the Queen's Bench. This has many advantages. It secures the publicity of the estimates; it secures to the

Town Council judicial advice on all difficult points of law. On the other hand it protects the Town Council on this part of their expenditure from vexatious litigation—such as the Chancery suits in which the corporations of Belfast and Kingstown have been involved regarding the management of their funds.

Having said so much of the fiscal powers of grand juries, it remains to notice their criminal jurisdiction. As to this, there might be considerable saving of time and consolidation carried out.

Now that the fiscal powers of the term Grand Jury of the city of Dublin is taken away, if their patronage was also taken away, as has been done in Cork and Limerick, they would have, except in the rare case of a prosecution before the Court of Queen's Bench, nothing to do. Yet the time of wealthy citizens is wasted. In November, 1869, in the Court of Queen's Bench, Mr. O'Reilly Dease, M.P., stated, in the presence of Mr. Justice O'Brien, that he had attended there one hundred days of his life doing nothing, thirty-four years at three times each year. His lordship said "I wish, as I have frequently said before, some legislative act were passed to dispense with the necessity of convening gentlemen here, time after time, when it is only necessary they should attend one time in the year, April, when there is any business to be done."

The county grand jury is summoned four times a-year, when it need only be summoned once, or in the presenting terms. This, again, is a sad waste of public time.

In counties of cities and towns, if the fiscal powers of grand juries were, as I have suggested, transferred to the town authorities, the criminal functions might be advantageously consolidated with the counties at large, and so the attendance of twenty-three gentlemen, for a very small number of indictments, would be dispensed with. At the Commission Court in Green Street, the plan suggested by Mr. Molloy many years ago might be carried out, of having only one commission court, as in London, for both county and city of Dublin, and only one grand jury.

For the larger question of the total abolition of grand juries in criminal cases, if we look to England, we find the only place where that proposal has been strongly made, is in the metropolitan district, where the preliminary trial is conducted before magistrates, who act as judges only, and are in no respect prosecutors; and the only place in Ireland in a similar position is the Dublin Metropolitan Police district.

In Ireland it might be supposed that the existence of a system of a public prosecutor would enable the institution to be more readily dispensed with than in England, where the system of private prosecution prevails; but the fact that in Ireland the magistrate, especially the stipendiary magistrate, is in most indictable offences a prosecutor as well as a judge, and as the preliminary inquiry may be and often is held in private, and as at the quarter sessions the prosecuting magistrate sits as a judge, a grand jury seems to be still required in Ireland as much as in England, and it would seem desirable to wait the solution of the question in England.

In conclusion, the suggestions I venture to submit are the following :—

First.—That the transfer of all powers, other than criminal, from the City Grand Jury to the Town Council of Dublin, should be made complete, as was done in the Cork and Limerick cases in 1852 and 1853.

Second.—That the counties of the cities and towns of Waterford, Kilkenny, Galway, Drogheda, and Carrickfergus, should be enabled to obtain, by provisional order, a transfer of fiscal powers from the grand juries to the town authorities, on the plan that has succeeded for so many years in Dublin, Cork, and Limerick.

Third.—That all towns in Ireland under town authorities should be enabled, by provisional order, to obtain a transfer of the control of roads and bridges within their boundaries from the grand juries of the counties, on the plan which has been carried out in Belfast, Queenstown, Enniskillen, Londonderry, Bray, and the several townships and towns in the county of Dublin.

Fourth.—That the grand juries of counties at large in Ireland should be enabled, by provisional order, to adopt the plan of permanent committees, which has worked satisfactorily in the county of Dublin.

Fifth.—That, for the construction of a county financial board to discharge the fiscal functions now discharged by grand juries, we should wait the solution of the county financial board question in England.

Sixth.\*—That the principle recommended by the Select Committee of the House of Commons of last session should be applied to the presentment sessions, and the cess-payers, instead of being nominated by the grand jury, should be elected by the rated occupiers, and an equal number of representatives of property be associated with them, elected by owners in fee and immediate lessors, and the attendance of magistrates be dispensed with.

Seventh.—That the Dublin system of having estimates of city presentments submitted to judicial fiat should be extended to all expenditure of town authorities, the chairman and recorders being the judges to fiat in the smaller towns.

Eighth.—That the term grand juries in the Queen's Bench should only attend when there is business to transact.

Ninth.—That whenever the fiscal business of the grand jury of a county of a city or town is transferred to a town authority, the criminal business should be consolidated with the county at large, so as to have only one commission and one grand jury for both city and county.

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\* In the discussion, Mr. John Hancock, of Lurgan, made a suggestion that boards of guardians should have power, by provisional order, to arrange with grand juries for transfer of roads and bridges, and matters done at presentment sessions, to such board, and on a plan similar to the transfer which has taken place in the case of towns.

Tenth.—That Mr. Molloy's suggestion, made many years since, to have this done at the Dublin Commission Court, should be carried out.

Eleventh.\*—That with regard to dispensing with the criminal functions of grand juries, it would be desirable to wait for the solution of that question in England.

IV.—*A Comparison of the Law of Poor Removals and Chargeability in England, Scotland, and Ireland, with suggestions of a Plan of Assimilation, and a Remedy for hardships now caused by Removals.*  
By W. Neilson Hancock, LL.D.

[Read Tuesday, 23rd May, 1871.]

THE law of poor removals had its origin in what was properly called the law of settlement. It is now a part of the law of chargeability of districts to support their own poor, and is in fact part of the machinery by which such chargeability is enforced.

*Law of Settlement properly so called.*

The ancient law of settlement which allowed people of humble rank to be removed to the place of their birth or settlement, for fear they might become a charge on the rates of the district they came to, was introduced into England and Wales in the reign of King Charles II., and its main provisions continued in force until 1795, and in one class of cases until 1834.

The law of chargeability of districts to support their own poor has existed in Scotland since 1579; in England and Wales since 1596; and in Ireland since 1838. The difference of this law in different portions of the United Kingdom forms an important element of the present poor removal question.

The abolition of the law of settlement was much accelerated by the strong condemnation of the system by Adam Smith, in his celebrated treatise on *The Wealth of Nations*. It is important to refer to the views he puts forward, as they explain very clearly what the law of settlement was, and point out the evils which arose from it. A thorough understanding of his views will prevent them being referred to, as they sometimes are, as an authority against any law

\* With regard to criminal functions of Grand Juries, Mr. John Hancock suggested, that, as prisoners are allowed in certain cases to dispense with trial by petit jury and have their cases disposed of by magistrates, they should be allowed to dispense with a trial by Grand Jury, and indictments should only be sent up where prisoner or person bailed required it, or where the prosecutor obtained leave of the court to send up an indictment.

As to the extent to which bills are ignored, Dr. Hancock stated that, in 1869, of 4,151 persons for trial at assizes, quarter sessions, and Dublin commission court, 1,682 were discharged or acquitted; of these 409 were discharged by direction of the Attorney-General or other cause of want of prosecution, 413 were discharged by grand jury, and 860 were found not guilty by petit juries.