

farmers might be applied, after the German model, for the alleviation of our own hardships. But we need a Schorlemer-Alst to initiate its application ; and a larger land-owning class to afford room for its extension.

II.—*A Suggestion for the Fusion of the two Branches of the Legal Profession.* By Joseph John Murphy, Esq.

[Read Wednesday, 20th January, 1892].

It scarcely needs proof that the distinction between the two branches of the legal profession—between barrister and solicitor—is purely artificial, and incapable of justification on principles of ordinary common sense. There is in the nature of things no imaginable reason why the man who is competent to draw up a brief containing all that is important in a case, should be held incompetent to address the court and to examine the witnesses in the same case ; and it is inevitable that such a distinction must often cause needless expense by requiring the employment of two men to do work which one man could do as well, and needless inconvenience by preventing the suitor from having direct verbal communication with the barrister who is to represent him before the judge, and conduct his case in court. I cannot add anything to what is familiar to most men on this subject ; I take all this as granted, and go on with a suggestion as to the best way of getting rid of this anomaly and inconvenience.

The easiest and completest way would be to enact, by statute, that every solicitor should be legally competent to undertake all the functions of a barrister, and similarly, that every barrister should be competent to undertake all the functions of a solicitor. This, however, or anything approaching to it, is inadmissible, as we shall see if we consider what are the difficulties of the problem. For in this case we are not at liberty to disregard vested interests. Legislation ought in general to disregard vested interests in abuses or in corruption ; but the degree of consideration which they ought to receive is a matter for separate and special consideration in every separate case as it arises ; the vested interests of the bar are free from any taint of corruption ; they have grown up in the development of British law and liberty ; and the legislature, in any re-arrangement of duties between the two branches of the legal profession, would have no more moral right to disregard the interests and the privileges of the bar, than it would have to set aside the claims of any established and professional branch of the service of the state. Now, it is obvious that an enactment simply conferring all the privileges of each of the two branches of the profession on the other, would be most unfavourable to the higher branch ; for every man knows his own solicitor, and brings business to him in the first instance ; so that if the employment of a barrister ceased to be obligatory, it is the solicitor and not the barrister to whom would come that large class of business which the solicitor would be, or would think himself to be,

competent to conduct in court. This is a reason not only against any proposal for amalgamating the two branches by any such rough and ready way as that which I have mentioned as possible ; it is, in its degree, a reason against any approach thereto ; against any nibbling, tentative legislation in the direction of enlarging the privileges of the solicitors, which will of necessity be done at the expense of the barristers.

In this case, we have also to consider something even more important than the maintenance of private rights. We have to consider the perpetuation of the traditions of legality and purity in that profession from which our judges are appointed, and which constantly and greatly assists in the administration of justice, by the influence, rather felt than seen, of its corporate opinion and feeling. These traditions and this state of feeling—all on the side of legality and purity—have grown up with the profession, which is itself contemporary with English history ; and if in our eagerness for the simplification of business we destroy the corporate feeling of that profession from which our judges are appointed, we shall do a mischief which a thousand years may not suffice to repair. I conclude, that although it is desirable to promote the amalgamation of the two branches of the legal profession, it is yet neither just nor safe to do so by direct enactment.

The purpose of this paper, however, is to suggest a way of turning the flank of the difficulty, by leaving the position of each of the two branches of the profession intact, and making their union purely optional in each individual case. I propose simply to remove all laws, and usages having the force of laws, which at present hinder anyone from being a member of both branches at once. If a solicitor wishes to become a barrister without ceasing to be a solicitor, let him be at liberty to do so ; and similarly with a barrister who wishes to become a solicitor. Of course, we should require all the existing conditions of entering and of continuing in either profession to be fulfilled, as in the case of one entering from the outside world.

I do not deny that this would be a very great and far-reaching change. It is meant to be so ; for, as I began by stating, I see no reason whatever in the nature of things, why the community—for which the professions were made, and not the community for the professions—why the community, I say, should forever be deprived of the great convenience of being able to employ the same person in the twofold function of solicitor and barrister. The defence of my proposal is that it would effect a great, a beneficial, and probably an inevitable change in a way that is not revolutionary, and with no interference with any vested interests. It would be gradual in its operation, and at least a generation would pass before the two branches of the profession had become completely fused. Its great benefit would be that it would not only spare the private interests involved, but would wound no corporate life, and violate and break through no traditions ;—a barrister who should be also a solicitor would be not the less, both in his own eyes and in those of the general community, a barrister, and an inheritor of all the traditions of the bar.

I am aware that such an enactment as I have suggested, merely abolishing all laws which prohibit the same person from belonging to both branches of the profession at once, would raise some important questions, for the settlement of which it would from the first be necessary to make legislative provision. This is because of the total difference, in theory at least, between the nature of the responsibility of the solicitor, and that of the barrister, to their clients. It would probably be necessary to enact that anyone serving a client in the capacities of solicitor and barrister at once, should be subject, in that joint capacity, to all a solicitor's obligations, and invested with all a solicitor's rights as to payment for his services. This would no doubt involve an abandonment of the theory under which the barrister's fee is an honorarium, and cannot be made a subject of bargain;—a theory which, though powerfully influencing practice, has probably been a conscious fiction ever since the word client exchanged its ancient meaning of dependent on a patron, for its modern sense of employer of a lawyer. I do not however pretend to enumerate all the subordinate changes which would of necessity follow in the train of so great a change as that which I propose, and it would probably not be necessary to make them all at once. Every important change brings others after it, and the remoter consequences are often beyond human foresight. If it be argued that we have no right to act unless we are able to foresee all the consequences of our actions, we may reply that it is equally impossible to foresee all the consequences of doing nothing and leaving matters alone.

I now proceed to submit my idea of what the clauses of an Act of Parliament should be for the purposes which I advocate;—premising that I do not suppose my verbiage to be technically accurate:—I am satisfied if it proves intelligible and unambiguous. The following are the clauses that I propose:—

“Whereas it is desirable to remove the hindrances which now exist to the same person being at the same time both barrister and solicitor;—be it enacted, etc., that from and after the passing of this Act the following shall be law:

“Subject to the following clauses of this Act, it shall be lawful for any solicitor to be or to become a barrister, with all the rights and privileges, and subject to all the duties and obligations, of a barrister, without ceasing to be a solicitor, or forfeiting any of the rights and privileges, or becoming exempt from any of the duties and obligations, of a solicitor.

“Subject to the following clauses of this Act, it shall be lawful for any barrister to be or to become a solicitor, with all the rights and privileges, and subject to all the duties and obligations, of a solicitor, without ceasing to be a barrister, or forfeiting any of the rights and privileges, or becoming exempt from any of the duties and obligations, of a barrister.

“Notwithstanding anything contained in the foregoing clauses, anyone acting for a client as at once barrister and solicitor shall be subject in both capacities to all the obligations of a solicitor to his client; and if he be impeached of violation or neglect of

duty to his client, whether by way of civil action or criminal prosecution, it shall not be a defence that such violation or neglect was committed in his capacity of barrister and not of solicitor.

“Notwithstanding anything contained in the foregoing clauses, anyone acting for a client as at once barrister and solicitor shall be entitled to make reasonable charge for his services as barrister; and such charge shall be subject to taxation like other costs, and shall be recoverable at law like other costs.

“For the purpose of this Act, a firm of solicitors shall be treated as an individual; so that anyone being both barrister and solicitor, who acts as barrister for a client while his partner acts as solicitor for the same client in the same case or business, shall be subject to the obligations, and shall enjoy the rights, of a solicitor, as provided in the foregoing clauses.

“All laws, statutes, bye-laws, usages, and regulations, in any way inconsistent with the foregoing, are hereby repealed and declared void and of no effect.”

I am not a lawyer, nor have I any special knowledge of the present subject; but its general bearings are known to all intelligent men, and in the existing dead-lock, as it may without much exaggeration be called, between the claims of public convenience and those of professional interests, I have thought it worth while to make a suggestion which has at least the merit of recognizing the difficulties of the subject, and proposing a solution which is thoroughgoing without being revolutionary, and aims at harmonizing order with progress, by providing for the satisfaction of a public want without interfering with any vested rights, or setting aside the traditions of a noble profession which has a history interwoven with that of legality, freedom, and the principles of constitutional government.

III.—*Legislation on behalf of Neglected Children in America and elsewhere.* By Miss Rosa M. Barrett.

[Read Tuesday, 16th February, 1892.]

“Existence carries with it the right to an opportunity for an unfolding of a child’s powers, and if parents fail to do their duty, the state must step in and protect the child. This is an even more sacred duty than the protection of property . . . *It is not an interference with the rights of the parent, but a protection of the rights of the child.*”

THESE words of a well-known legislator, few would hesitate to endorse, yet in English law, the fact that a child has any rights at all is only now beginning to be recognised. To lessen pauperism and crime—both of which are largely the result of heredity and association—it is necessary to go to the source of the evil, and prevent children, if possible, from being brought up in injurious surroundings.

Though it is obviously a parent’s *duty* to feed, clothe, and educate his child, it is only quite recently that a neglect of this duty has