

able and earnest advocates of the double standard; nor would I deny the possibility of its effective working under certain conditions. I cannot, however, escape the conviction that its upholders under-rate the difficulties of their proposal quite as much as they over-rate its advantages, and that both on theoretic and practical grounds adherence by this country to the tried and well-attested monetary policy of the last hundred years is the right and proper course.

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III.—*Magistrates' Law and Suggested Increase of Jurisdiction and Powers.* By Fletcher Moore, Esq., J.P.

[Read Monday, 1st May, 1893.]

WHEN undertaking to write a paper on this subject for your Society, I had little idea of how it would develop upon paper in its progress, or of the difficulty there would be in condensing the subject, and, at the same time, eliminating technical phrases so as to popularize the subject, whilst bringing it within the limits of a paper suitable to the Society. It is necessary for these reasons to cut out many details which, though comprehensible to the legal members, would yet appear stupid and monotonous to others. I content myself with pointing out these difficulties and asking my audience for their kind indulgence if I fail in my efforts.

Few but those who have frequented the magistrates' courts in Ireland, commonly known as the petty courts (numbering over 600) can have any idea of the vast amount of work that is quietly and steadily gone through during each year by magistrates who gratuitously give their time and labour to the state. And no light task this is, when thoroughly and conscientiously carried out—the magistrates having to wade through and puzzle out the meaning of numerous and oftentimes involved Acts of Parliament without receiving any assistance in their task from the executive government. In days gone by, such assistance was given by the legal Adviser to the Castle, from whom the magistrates, if in doubt about a case, could obtain an opinion and advice about some knotty legal point; but of late years economy seems to have prevailed, and the Castle Adviser-ship is defunct. This is certainly a subject of regret, as it greatly weakens the advantage to the public of these most useful courts by placing the magistrates sometimes in a dubious position, desirous to do their duty, but hampered by the difficulty of ascertaining the true meaning of a doubtful clause of some statute which, probably, should be construed by the light of some later legal decision of the superior court, that the magistrates very likely never have heard of, for the executive government takes no steps to communicate these legal decisions to petty sessions courts.

If the magistrates determine to deal with the case under their summary jurisdiction, they may have their order set aside by the superior court as not being within the scope of that jurisdiction; whilst if they send it on for trial, it may turn out that they should

have dealt with it under their summary jurisdiction ; thus costs may be placed upon the complainant, upon the defendant, and upon the county to an extent that would have gone some way towards paying the fees of a castle adviser.

Having had some years experience in the workings of these courts and of observing where and by what methods they might be made more useful to the suitors and to the public generally, I purpose to set out these in this paper in as plain and concise a manner as may be possible, consistent with dealing with so extended and difficult a subject.

The jurisdiction of magistrates has at present a very wide range—from settling a dispute at a fair or market about the price of a cow or a pig, to committing a prisoner for trial for murder, and, perhaps (in the absence of the coroner), holding an inquest on his victim ; and from sending a man to jail, with hard labour, to hearing a case of a few shillings wages claimed as due to some poor labouring man by his employer. Magistrates can fine up to £100, as in excise cases, and in some cases can commit to prison for twelve months, with hard labour ; but they have no power to try a case of a small debt, amounting to £2, nor any question of title, no matter how trivial it may be, nor can they order the restoration of, say a wheelbarrow or a plough, to its owner from whom it has been detained ; they may also hear claims for wages up to £10, disputes as to trespass and repairs of fences, and charges of drunkenness, and can order fine or imprisonment, and in some cases can order compensation to the injured party ; but by far the most beneficial power a good bench of magistrates can exercise is settling disputes amongst neighbours, and calming down passions which, if left unrestrained, might culminate in bloodshed ; and I may here remark that the power of putting a vicious or bad-tempered person under what is known as a “rule of bail,” as described hereafter under head B, is, if judiciously and carefully exercised, about the most valuable aid in preserving the peace of a district.

It is rather a difficult task to divide the jurisdiction of magistrates into any very specific classification but, broadly, it may be done as follows :—

#### *Criminal Jurisdiction.*

- (A) Only ministerial and preliminary to trial before assize or quarter sessions.
- (B) Putting accused under a rule of bail to be of good behaviour and keep the peace
- (C) Summary, where magistrates have full power to hear and convict.

#### *Quasi Criminal.*

- (D) Where amount mulcted is given to complainant as compensation for damage done, as, for instance, in trespass to crops.

#### *Civil.*

- (E) As in cases of claims for wages, small debts, cottier rents, county and poor rates.

*Equitable.*

(F) As in settling disputes in fairs and markets, dividing fences, and ordering repairs to them.

There are various other powers, but all may be classified under one or other of the above heads.

*A.—Criminal Jurisdiction.*

Where the magistrates have no power to try the case, but should take informations and send the case for trial before a superior court : all the evidence must be taken down in writing, and the case prepared for trial at the next assize or quarter sessions court (as the case may be), and to which the magistrates should commit the prisoner for trial, taking bail for his attendance there, or if in their opinion the gravity of the case or the crime alleged demands it, refusing it, and leaving the question of bail to the discretion of the Court of Queen's Bench.

This is, perhaps, the most onerous and tiresome of all the duties magistrates have to perform, as they must hear the whole question from beginning to end, and have all the important evidence reduced to writing, and at the same time must exercise constant attention to the details, so as to prevent any mistakes creeping into the evidence, or any error into the proceedings. Yet all the time, the case may have been of such trivial importance that it might well have been dealt with by the magistrates—who have already heard it—if they had only been given jurisdiction to deal with it.

*B.—Ordering an accused party to find bail to keep the peace.*

This is the most ancient jurisdiction that magistrates have, dating as it does from the time of Edward III. It is not punitive, but preventative, and is to be exercised by the magistrates carefully and discreetly, when they have good evidence of some intended crime being likely to be committed. Then in such case they can order the person who is accused of being likely to commit such crime to find bail, either on his own surety, or with one or two other substantial bails added, that he will keep the peace towards the person on whom the crime was likely to have been committed, and to the public generally, or in default of giving such bail they can then order him to be put in prison for some reasonable specified period, unless he shall sooner give such bail. Here the rod is, as it were, held "*in terrorem*" over the evildoer, innocuous so long as he behaves well, but ready to descend at any moment if he breaks his promise of good behaviour, for if he does, his bail can be forfeited, and the amount levied by distress off his goods, whilst if one or more other good sureties have been joined with him in the bail then they will find it to be their interest to watch over him, and to restrain his bad temper, and thus, for their own sakes, they will try to keep him quiet and peaceable. For these reasons it is, as I stated above, one of the best means for keeping a district quiet, provided the power be used with caution and discretion.

## C.—Criminal Jurisdiction.—Summary Jurisdiction.

Where the magistrates can at once deal with the case, and can punish either by fining or by imprisoning, and in a few cases by also giving compensation to the injured party. Under this head they can, as stated before, fine up to £100, as in the Excise Acts, and can imprison up to twelve months with hard labour, as under the Malicious Injuries Act, sec. 41, for a second offence, and the legislature having given them such extensive powers of punishment, it seems rather extraordinary that so many offences should still remain excluded from their jurisdiction, especially when such offences may happen to be of a minor character in their own particular class; for instance, assaults causing actual bodily harm, malicious injuries where the damage done is over £5, larcenies from the person over 5s., larcenies in houses, small burglaries, assaults with intent, obtaining goods under false pretences, with many others, are outside the jurisdiction of magistrates, no matter how trivial the actual offence may be, although the magistrate's powers for punishment may be more than ample to meet the offence. The border-line, too, between the cases which magistrates can deal with summarily and those they must send on for trial runs often very fine, for instance, in malicious injuries to property, say damaging trees, if the damage be only £5 magistrates can try it, but if one shilling over £5 they must send it on for trial, whilst if the tree were in a park or pleasure ground, and the damage only over £1, the cases go on for trial. So also in cases of simple larceny, if the value of the property does not exceed 5s., or in an attempted larceny from the person, under the 18 and 19 Vict., cap. 126 (Criminal Justice Act), the magistrates may try it unless the prisoner declines to be tried by them, but if the prisoner *elects* to be tried summarily by them, then, after going through a long and tedious process of writing out the charge and reading it out to the prisoner, they can try the case, but if the value of the property be over 5s., or the case be one of a completed larceny from the person of a few shillings, they cannot deal with the case unless the prisoner actually pleads guilty—see section 3. So also under the Larceny Act of 1861, 24 and 25 Vict., cap. 96, sect. 32, magistrates cannot try a case of stealing a tree or shrub in a pleasure ground if the value exceed £1, though they might, under section 36, try a case of stealing plants out of a hothouse or conservatory in that same pleasure-ground, even if the plants happened to be, say orchids, which might be worth £40 to £50 a-piece. Again, as another instance of how narrow the distinction is, and how hard to decide whether to hear a case summarily or to send it on for trial, I may point out a nice question which once arose under the Malicious Injuries Act, 24 and 25 Victoria, chapter 97, sections 40 and 41. The offence named under sect. 40 is maliciously killing, maiming, or wounding any *cattle*, and is indictable and triable before the superior courts. Under section 41 the offence named is the same, killing, maiming, or wounding any dog, bird, *beast*, or *other animal not being cattle*, and this *is* triable before magistrates. In the case I allude to a horse was stabbed, and the question arose under which section the offence

came, was a horse included in the term *cattle* under the 40th section or was it an *animal not being cattle*, under the 41st? Of course the crucial point was, had the magistrate jurisdiction to deal with the case or not. The case collapsed for want of sufficient evidence, but the question remains, and if any of my hearers would like to elucidate the point I will give some other sections of acts of parliament to increase their difficulty. The summary jurisdiction of magistrates, 14 and 15 Vict., cap. 92, sect. 10, uses the words any *horse or cattle*, thus distinguishing between them, and the 12 and 13 Vict., cap. 92, sect. 29, where the word *animal* is construed to mean a *horse or any other domestic animal*. And, again, under the Contagious Diseases Animals Act, 1878, sec. 5, *cattle* means bulls, cows, oxen, heifers, and calves, but omits mention of horses. A barrister friend has informed me that it has been solemnly decided that a horse does come under the head of *cattle*, and would therefore be under the 40th section, and such a case could not, of course, be tried by the magistrates. Another friend has told me that an ass would not come under the head of *cattle*, and the case would therefore be under 41st section, and so might be tried before the magistrates. Now, if both these opinions be correct, the further extremely interesting question arises, under which section does the mule, the intermediate cross between the horse and the ass, come?

These instances are brought forward to show how very indistinct and unsettled the line between the two jurisdictions is sometimes, and what necessity exists that it should be cleared up. Now, as a simple and most effective method of avoiding these nice questions, and of preventing the cost to the parties and to the country, and the loss of time to the superior courts, it is suggested to increase the jurisdiction generally of magistrates, so as to *include all the minor offences of every crime*. Thus, small felonies might be tried where a misdemeanour could be, but this increased jurisdiction ought, perhaps, to be safeguarded as follows.—The Crown, as represented by the constabulary, if it thought advisable, might be given a right to call on the magistrates to send the case on for trial. The magistrates themselves, if they considered the case more suitable to be tried in the superior courts, should have the power to send it on, as they have now in certain cases under the Criminal Justice Act of 1855, section 1; and the accused party might be given the right to call on them to send him on for trial before a jury, as he can now do, in cases under the Conspiracy and Protection to Property Act, 38th and 39th Vict., cap. 86, section 9. This is also done in a converse manner in larcenies, where the prisoner *may elect* to be tried before the magistrates, but this method is clumsy, and it would be far better to give the magistrates the jurisdiction *prima facie* to try all these minor cases, leaving it to the accused person to *elect* to avoid the summary jurisdiction, and to be sent on for trial by a jury if he desired. I have so frequently seen trivial cases brought to the assizes, with all the formality of a grand jury to find the bills, and a judge sitting to try these cases with a petit jury, whilst the case might easily have been disposed of months before, and a trifling cost by the petty sessions court, that had already heard all the evi-

dence when committing him for trial, and that had ample power to have given the same punishment to which the judge of assize afterwards in his discretion sentences the prisoner to undergo. If this suggested increase of jurisdiction be given, I think it might be well to consider whether it would not be advisable to place a general limit *in all cases* to the powers of punishment that magistrates now have, and to reduce the limit of imprisonment to, say, three or four months, with or without hard labour; their power of fining to, say £10, and power of compensation to, say, £20, so as to cover personal injuries or damage done to horses and cattle, or to house or haggards. The outside limit of jurisdiction of punishment being thus well defined, magistrates would be then less uncertain as to what punishments they might award, and offenders knowing the outside limit of their punishment might be more inclined to submit to the magistrates' jurisdiction; on the other hand, the magistrates should, in every case which they may think of sufficient importance from its nature or surroundings, have power to send it on for trial before a superior court. This may, perhaps, seem an unnecessary request, but there are at present certain cases where the jurisdiction to try them appears to lie solely with the magistrates, no matter how serious an aspect they may on investigation turn out to assume.

As a further manifest improvement, power should be given in all cases, wherever any injury has been sustained, to order a reasonable amount of compensation to be paid to the injured party, and to take such compensation into consideration in awarding the punishment.

This can now be done in some cases, but in others it has to be accomplished by the clumsy expedient of holding the case over until the compensation promised has been paid. Some of the great advantages of this course would be that the injured party could receive compensation in a cheap and expeditious manner without being driven to the more roundabout and costly trial before a civil bill court, or to an action before the superior court, to take place *after* the criminal prosecution had terminated. The evidence of the injured party and his friends would be more willingly given at the criminal proceeding than it is at present; and last, though not least, the enmity between the parties would be sooner calmed down than if the sore were kept open until the trial of the action for damages were heard and decided.

Whilst on this subject I may point out one great change in the law which many would be glad to see carried out, namely to enable the accused party, *where he desires it*, to be sworn and examined on oath in his own defence. We all know that there are some people who feel great difficulty on this subject, thinking it would be likely to increase perjury, but let us remember that the legislature has already, by the Licensing Act of 1872, allowed a drunken man to be sworn and examined on oath to prove that he was perfectly sober (and every one must admit that no person can be less capable of proving such a thing). The law also permits a man accused of a certain class of serious assaults, under the Criminal Law Amendment Act, 1885, to be sworn and examined on oath to prove his innocence, and so also under the Conspiracy and Protection of Property Act,

1875, he can be examined if he desires. The legislature having gone so far in such cases, does it not seem absurd that a man accused of not paying a half-crown licence for his dog cannot be sworn nor examined on his own behalf (See Reg. *v.*, Sullivan, *Ir. Repts. Cr. Cases*, 407); and, following that decision it would seem that magistrates should not examine on oath a man charged with allowing his pig to wander on the road, for which the maximum fine is 2s., the offence being of a criminal nature. In some cases in magistrates' courts the accused parties manage to get in their evidence on oath by taking out cross summonses, and thus becoming complainants, and in such cases it is generally more easy to arrive at the real truth, for it is a matter of notoriety that evidence given on oath by an accused party is frequently the saving of him if he be innocent, and just as frequently is a trap for him if he be really guilty. Is it not then inconsistent with modern intelligence to allow the present system to continue unaltered?

A beneficial change in the present law would be to enable magistrates to order imprisonment, without the option of a fine, in the case of the habitual drunkard. At present no matter how frequently he gets drunk, so long as he does not get disorderly, he can only have a fine imposed on him.

A change is also required to increase the present low limit of fine for road trespass, namely, two shillings. In summer time when the pasturage is good along the roads, it is well worth while to turn the cattle out on the road to graze, and to run the risk of escaping capture until the cattle have probably eaten more than the amount of the fine.

We may now proceed to the civil jurisdiction, and here it is that we observe the greatest anomalies and the greatest need for change.

How often is hour after hour wasted at present in quarter sessions courts whilst cases are heard of perhaps 50s. in amount. I have seen the parties and witnesses in these cases coming sixteen to twenty miles to the quarter sessions town from places within a short distance of their own petty sessions, where the magistrates, with their local knowledge of the people, and with more time to hear the case, would have better opportunities of ascertaining the real facts of the case, and could at least have given their decision earlier and far cheaper to those concerned, but for the low limit of jurisdiction which they now have, *viz.*, under £2 in small debts. Yet a claim for wages up to £10 by the next door neighbours might have been tried at the same petty sessions. This must be a serious hindrance to the small shopkeepers and to commerce generally in the country districts, and must, of course, react upon those honest customers who pay their way, and have to make up for the bad debts of others. I would therefore suggest that the jurisdiction in all cases of debt should be extended to at least £10, or better £12, and whilst on the subject would also suggest that the present absurd restriction in the Small Debts Act, 22 Vict. chap. 14, of requiring a process to be taken out instead of the customary petty sessions summons (as allowed in cases of debts for wages, tuition, hire of carts, etc.), should be abolished, as the process is more complicated, more expensive, and not always so

readily obtainable as the summons. At present there is no jurisdiction at petty sessions in a case answering to an action for detinue, and several times I have heard inquiries made by farmers and others as to getting back small property, such for instance as a plough, cart, harrows, etc., from some neighbour who detains them. To such questions the stereotyped answer must be given, "*you must bring an action to recover them, or a process before the next quarter sessions for their recovery,*" knowing that the cost of the action or of attending the quarter sessions would exceed the value of the article detained. Now, why should this be so? Why should not a man be given some easier and more expeditious method of recovering his property, when the court is at hand if it only had the jurisdiction given to it?

A question also often arises at petty sessions, say, as to the repairing of a fence, but a question of title perhaps arises as to which party the ditch may belong, then at once the jurisdiction of the magistrates is ousted, and the parties must go to the superior courts, with all the expense and delay attending it.

The question of title is one that the legislature seems to be very jealous about, but who could be more competent to deal with these small cases of title than the magistrates? They know the country and the inhabitants, and have the greatest possible advantage from their opportunity of visiting the *locus in quo*, and thus acting as a view jury might do.

Again, magistrates are frequently required, under the 14th and 15th Vict., cap. 92, Summary Jurisdiction Act, section 20, to award damages to a complainant for injury done to his crops by the trespassing cattle of his neighbour, and, *after* that complaint has been made, they can order the occupier of the land upon which the bad fence may be to repair his portion of the fence, or to join in repairing the fences, within a reasonable time to be named, and in default of his so repairing them, they can make an order that the person complaining of the trespass may repair the fence at the cost of the owner of the fence; but here most unfortunately the Act of Parliament is a failure, for the magistrates have no jurisdiction to make any such order unless and *until such trespass has actually taken place*, and a summons been taken out for it, and the case heard. Thus, a farmer may have a very valuable crop, say, of young turnips, oats, or cabbage, and may see his neighbour's hungry cattle or sheep looking at them across the dilapidated boundary fence, and waiting for their chance to get in; yet, not till they have got in and have, may be, done irreparable damage to his crop is he entitled to get an order to compel his neighbour to put that boundary fence in order. This is a most deplorable omission in the statute pressing very hardly upon good farmers, and is one that, being pointed out, should be remedied at the earliest opportunity. There might also with great benefit to the careful farmer be given power to summons the careless, negligent neighbour who neglects to cut down the flowering weeds in his fields before they seed and blow their seeds over the well cultivated fields adjoining.

There is not either any probate jurisdiction given to petty sessions



courts, though I consider such might be given in small cases with great advantage to the poorer class of farmers, and, at the same time, with benefit to the revenue, as many widows or children of a deceased farmer of the smaller class would gladly have the wills proved or administration granted, if it could be done expeditiously and at a moderate expense, and this might be done by taking the petty sessions court as the initiative court, and allowing it to carry out the preliminary steps, and then to transmit the necessary documents to the district registry court for recording.

With this might be added a power to direct children either to be made wards of court or to have power to report such to the Court of Chancery, and so to preserve their small properties; for, in my own limited experience, I am aware of cases where moneys to which children ought to be entitled, have melted away during their minority and been lost, which might have been preserved had there been any jurisdiction available at petty sessions to look after them.

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IV.—*Notes on the Prices of Irish Agricultural Produce Illustrated by Diagrams.* By Richard M. Barrington, LL.B.

[Read Wednesday, 1st March, 1893.]

THE paper on this subject I had the honour of reading before the Society, in December, 1886, was based on statistics derived from private sources. The following notes and diagrams are, on the other hand, compiled and drawn from data which are, for the most part, public property. To speculate on the causes which affect prices, or discuss the remedies which have been, from time to time, applied or suggested to counteract their fall or check their rise, is outside the scope of this paper. Agricultural values only are dealt with, the figures and authorities are given. As far as possible, the great question of agricultural depression has been avoided. For some products the quotations extend backwards over a century.

No prices are infallible, many are misleading, and erroneous conclusions are constantly drawn from the most trustworthy statistics, by persons ignorant of the true origin of the fluctuation in values in different years. This is no reason why the best we have should not be discussed. Tables of figures are best realised by diagrams.

Of all things statistics require illustration. The report of the American Department of Agriculture is in this respect an example. As to expense, £100 a year from the Treasury would make our Irish agricultural returns more intelligible to the ordinary mind. At present, who can carry away a mental picture of anything from 150 pages of figures.

Eleven diagrams accompany this paper, they show:—

1. The average price of cattle at the great Ballinasloe October fair since 1828 (65 years), and the price of a 6½ cwt. fat beast in