

~~If a husband or any other person wilfully, or while under the influence of drink, takes away or keeps or damages anything so protected without the wife's consent, the person so offending shall, on her complaint, be liable to the same procedure and punishment as if he had committed a common assault on her.~~

~~In like manner, but only on proof that a wife is habitually intemperate and drunk, a husband may procure a like protecting order, with similar consequences, for—~~

- ~~1. Furniture, bedding, and other articles in use as household necessaries in the home.~~
- ~~2. The wearing apparel or school requirements of children or step-children, and their earnings, if any.~~
- ~~3. Tools, instruments, appliances, materials, or anything under his control, and not entrusted to his wife.~~

~~VI.~~

~~Extension to Ireland of power to establish Day Industrial Schools.~~

~~VII.~~

~~Power to enforce parental contributions under Industrial School Acts by imprisonment.~~

~~To throw on parents the onus of giving proof as to any inability to earn the means of so contributing.~~

~~To oblige parents who have children in Reformatory or Industrial Schools, or at home under supervision, to report their addresses or changes of address.~~

~~VIII.~~

~~Married persons may give evidence for or against each other in any matter under this Act.~~

III.—*The Coming Changes in Irish Local Government.*

By W. J. JOHNSTON, Esq., Barrister-at-Law.

(Read Tuesday, 19th April, 1898.)

THE changes in Local Government proposed to be made by the Local Government (Ireland) Bill, which is now on the eve of the Committee stage, aptly illustrates some economic and social theories which may well be discussed by this society.

This Bill, as introduced by the Chief Secretary for Ireland, is undoubtedly a large and generous measure, introducing into local affairs a principle of government which has for hundreds

of years existed in national affairs. A bold assertion has been made within the last few days to the effect that grand juries have at present no general power of imposing taxation, and that grand jurors and *ex-officio* guardians, though not elected, are really directly or indirectly representative of those who pay the bulk of all local taxation. It is to be feared, however, that this view is much too favourable to the present system, and not at all in accordance with the views of those responsible for the proposed changes. Mr. Gerald Balfour, in his speech introducing the Bill, spoke of "the general policy of withdrawing the control of local administration from nominated bodies and entrusting it to bodies chosen by popular election." "The existing system," he said, "has become antiquated, and is no longer in harmony with the spirit of the age." Mr. T. W. Russell frankly confesses that the measure will create a revolution.

The provisions of the Bill are too well known and have been too thoroughly discussed to render it necessary for me to refer to them in detail. The leading features include—

(a) The abolition of grand juries for administrative purposes, and the constitution of county and district councils elected triennially on the parliamentary franchise with the addition of women and peers.

(b) The re-construction of Poor Law Boards both in urban and rural districts and the abolition of *ex-officio* guardians.

(c) The consolidation of all local rates, the levying and collecting of which will for the future be in the hands of the County Councils.

(d) The incidence of such taxation on the occupier, with certain temporary changes in rent as a consequence.

(e) A grant from the Imperial Exchequer in aid of rates off agricultural land amounting to one-half of the county cess and the poor-rate raised off agricultural land during the years 1896-97.

(f) A fixed contribution estimated to produce £279,000 in aid of certain local purposes.

(g) The adoption of union, district, and county rating to meet union, district, and county at large expenses respectively.

(h) And the constitution of the Local Government Board as the superintending and controlling authority over all the local representative bodies.

It has been urged by many people, representing widely different shades of opinion, that the Bill embodying these varied and far-reaching proposals is not an example of clear, comprehensive and intelligent draftmanship; but, considering the extensiveness of the scheme and the multitude of its provisions, it seems to me that this criticism is very unfair. The Bill is a model of accuracy, fulness, and clearness when compared with many of a much less ambitious scope. The whole of Ireland—topographical, municipal, rural, judicial, political, and social—seems to have been clearly and constantly before the mind's eye of the draftsman, and the various clauses display a minute and accurate knowledge of every phase of Irish life. If the intelligibility of a measure be any test of the *bona fides* of its authors—and I think it is—then the Local Government Bill deserves well at the hands of all political parties in the community.

The first principle involved in the Bill is raised by the proposed new electorate, which is to consist, for all local elections, rural and urban, of everybody registered in the Parliamentary register, together with everybody who should, but for being a woman or a peer, be entitled to be so registered. The effect of this provision will be that many persons who pay no local rates, such as lodgers, servants, occupiers of a room in a house, and others, will be entitled to vote for local councillors, and the control of expenditure and the power of levying taxes will pass to some extent into the hands of those who contribute nothing to that expenditure. It has long been an established fact in the English Constitution that taxation without representation is tyranny, and it is now propounded as an argument against this franchise that the right to representation without the liability for taxation is, if not tyranny, at least unjust. Such a contention, however, is distinctly negatived by the state of the Parliamentary franchise at present, which imposes no such condition as the payment of Imperial taxes in order to entitle persons to vote for members of Parliament, and it would be absurd to require a higher or superior qualification in the electors for local councils. Everybody who lives in a district—whether he happens to pay rates or not—has a very close personal interest in the proper sanitation and general good government of that district.

This idea of a rate-paying qualification has been put forward in another form in a proposal, which seems to have the approval of the O'Connor Don, that two councillors should be elected by each district electoral division—one to be elected on the basis of the Parliamentary franchise and the other on a franchise of a rating of £50 a year, Government valuation. Such a provision would entirely destroy the popular character of the District Councils, and the claim for such special franchise privileges has been declared by Mr. Russell to be wholly inadmissible. The

man who pays a small amount of rates probably makes as great a sacrifice and has as great a dread of extravagant expenditure as the man who pays a large amount. Any consistent attempt to approximate the coincidence of rate-liability and voting-power must necessarily concede to the State, which proposes to be answerable for more than one-half of the rates in rural districts, the right of nominating a certain number of rural district and county councillors, and no one has, as yet, been bold enough to propose such a course.

The next important consideration is the question of the *personnel* of the new local councils. Who may offer themselves as candidates for election? The only condition prescribed by the Bill is a topographical one: a person to be qualified for election as a district or county councillor or a Poor Law guardian must be a local government elector in the place in which he seeks election. It has not been thought necessary to impose any property qualification, and the omission is in accordance with the principles of political philosophy. John Stuart Mill says that the principles which apply to the proper constitution of local representative bodies "do not differ in any respect from those applicable to the national representation," and the law of a property qualification for members of Parliament, which had been systematically evaded from its first establishment, was abolished altogether by the Statute 21 & 22 Vict., c. 26 (1858). There does not seem to be anything special in the circumstances of Ireland to render this principle, which has been adopted in the English and Scottish Local Government Acts, inapplicable here. It would be utterly illogical and arbitrary that a restriction in the shape of a property qualification should be placed on the electors in their choice of members of merely local councils (whose powers are so very limited)—a restriction which does not exist in the choice of members of the chief council in the Kingdom, which is all powerful with regard to taxation and finance.

Although there is no property qualification in the Bill, it is proposed to make certain classes of persons ineligible for election. A list of such persons—including infants, bankrupts, persons who hold offices of profit under any council or board, persons who, within five years before the election, had been convicted of any crime, and others—is given in the Draft Order in Council, which will come into force by virtue of clause 62, if the Bill becomes law, and this enactment is merely a provision in favour of propriety and order which does not involve any question of principle. The Draft Order in Council, however, proposes to exclude women as well from the County Councils, and there will probably be something said on this point when Sir Charles Dilke, who has taken up the cudgels for the weaker sex, comes to move the amendment of which he has given notice.

The proposed exclusion of persons in holy orders and ministers of religion has given rise to a good deal of controversy. It is one of those questions of a concrete nature which easily seizes hold of the popular mind, but which is of very little real importance. No general desire has been displayed by the clergy of any church or denomination to be rendered eligible for the local councils, and it is probable that very few would try to take advantage of the privilege if they had it. But it is difficult to see any principle in the proposed exclusion. The Chief Secretary says that there is no Irish precedent for an elective administrative body on which ministers of religion are allowed to sit, and that it would be unwise to depart from the principle; but Dr. Rentoul, in discussing the question, points out that no man is excluded in England on account of his profession, and that the English Act has been promised to Ireland as a whole.

The constitution and powers of the new councils are enacted in a multitude of clauses which involve many important considerations. Thus it is proposed to give the Local Government Board the power to alter the existing boundaries of counties, in order to avoid the overlapping of Poor Law unions, and the exercise of this power, by interfering with ancient landmarks, local feeling, and existing liability for rates, will give rise to much confusion. Letters of instruction have already been issued by the Local Government Board to many rural sanitary authorities, pointing out how the county boundaries will probably be changed.

The size and duration of the councils also raise questions of some importance. One-member representation for each electoral division has been introduced into the Bill, but the Chief Secretary has made known the willingness of the Government to consider the substitution of two-member representation in the county districts if there is any strong demand for it. If such a substitution were made, "the result would be," says Mr. Balfour, "that the district councils would consist of about forty members, and that I think too large a number for a district council. I think twenty a much more workable council." It is believed that by a scheme of double representation, the probabilities would be greatly increased of securing the presence on the councils of men of moderate political views, and possessed of experience in county administration, and that there would be a greater likelihood of the minority in each local community having some representation on the local councils. The truest form of representative government is, of course, that in which there is a representation of all, and not of the majority only; but all the plans (including the ingenious proposal of Mr. Thomas Hare) for bringing this principle into operation have hitherto failed, and I do not think that such advantage could be gained from having a double representation of local constituencies in Ire-

land as would be sufficient to outweigh the disadvantages that would result from the excessive size and unwieldiness of the councils.

The clause fixing the term of office of all county and district councillors and Poor Law guardians at three years, with triennial election for all, seems to be founded on an exact appreciation of the wants of the community, although the proposal has been the subject of some adverse criticism. An amendment, of which notice has been given, will be moved in committee to the effect that one-third of the members of each county and district council shall retire from office each year, and that their places shall be filled by a new election. It is expected that such a plan would be the means, first of all, of getting rid quickly of unsuitable or extravagant members, and, secondly, of preventing the continuity of the councils being broken every third year. But the principle which is embodied in the maxim "The king is dead; long live the king!" can easily be adapted to meet the latter difficulty, and as for the former, it is too much to expect that Parliament should take into consideration a possible want of regard for their own interests on the part of the electors. An annual electioneering agitation in the local constituencies would cause a never-ceasing state of unrest among the people, as well as much extra expense, which would be very harmful to the country at large. If the electors are injudicious or foolish enough to bestow their suffrages on unsuitable or extravagant candidates it is well that they should be taught a lesson in discrimination during the statutory term of office.

The provisions of the Bill which relate to the powers to be conferred on the new bodies have been subjected to much criticism of a negative kind. It is very easy to make suggestions as to the way in which the scope of authority of the county councils could or should be extended, but it is difficult to support these suggestions by valid reasons. The limitation to be placed on the functions and powers of local authorities is not and cannot be well defined: it depends on many things—the comparative positions of the central and local authorities, the capacity of the latter for work, the security against negligence or abuse, and the like—which are themselves of a character very difficult to define. It is obvious that all business that is purely local, such as the paving, cleaning, and general control of streets and roads, the drainage of houses, and the oversight of the health, cleanliness, and comfort of the inhabitants should devolve upon the local authorities; but the control of the police, which has been claimed for the Irish County Councils, being a matter of national importance, stands upon a different footing. The whole population is vitally interested in the proper administration of justice in each particular portion of the country, and such a state of affairs can only be attained by means of the

control of the gaols and the police by the central Government. It would be, no doubt, very gratifying and flattering to us as a nation if we were given control of such a fine body of men as the Royal Irish Constabulary; but as the central Government has already refused to concede a similar claim to the local authorities in England, it is scarcely likely that Ireland will get more favourable terms. A special case which ought to receive very careful consideration at the hands of the Government has been made for Dublin in the matter of police control, on the ground that that city pays a heavy rate for its own police force. "It is ridiculous," said Mr. Redmond in the House of Commons, "that whereas every great municipality throughout the Kingdom has the control of its own police, the Lord Mayor in Dublin has not authority to order a policeman to keep clear the traffic opposite the Mansion House or City Hall."

There are, however, several matters of an essentially local character in respect of which powers certainly ought to be conferred on the local councils. For instance, the district or county councils ought to have the power of leasing or acquiring land for village allotments. There ought also to be a clause authorising the urban councils to control all markets, fair tolls, stallages, or lettings within their respective districts, and to assess and collect all duties; and Mr. T. M. Healy has given notice of a clause authorising all county councils to undertake work of general utility not otherwise provided for by the Bill subject, however, to the approval of the Local Government Board. Again, there does not seem to be any reason why the county councils should not be enabled, within certain reasonable limits, to make bye-laws relative to road traffic in their counties, and in respect of all piers and harbours which may, from time to time, be vested in them.

The question of the management of lunatic asylums is one of much interest. The Bill proposes to abolish the Board of Control and to transfer the management and maintenance of each lunatic asylum to the county in which it is situate; and part of the grant in aid of local purposes is to be devoted to the maintenance and care of the lunatic poor throughout the country. It is very desirable, indeed, that the power of expending the ratepayers' money should be taken out of the hands of irresponsible Boards and placed in the hands of the ratepayers themselves; but it has been suggested that this reform should go even further, and that the Government should take into its own hands the entire control and expenditure in connection with lunatic asylums in the same manner as in the case of gaols. An enormous number of the inmates of our asylums are criminal lunatics, and it is becoming more and more difficult to define the boundary line between criminality and lunacy. I think that the care and custody by the State itself of all lunatics has

become just as national a necessity as is the custody of criminals. The adoption of a plan of State asylums would relieve certain districts of a pecuniary burden which has become almost insupportable ; and the lunatic asylums throughout the country would be managed with more uniformity and less expense than at present, and their rules and regulations enforced by more trained and skilful hands than those of purely local authorities.

But the constitution and powers of the new local councils seem to have created very little public interest indeed as compared with that aroused by the proposed changes in local taxation and financial proposals of the Bill. These changes and proposals are certainly of great importance. First of all, the county councils are to be the sole rating authorities in the rural districts, and the county boroughs and urban district councils in the urban districts. The Poor Law Boards are reduced to the position somewhat of trustees of charitable institutions, with the power to make estimates of the amount of money they will require, and the duty of seeing after its application. The principles on which these proposals have been based, as stated by Mr. Balfour in the House of Commons, are two :

(a) It has been sought "to make those in whose hands the power will in future lie bear their full share of the burden, to make them feel the full effect of their own extravagance, if they are extravagant, and at the same time enable them to reap the full benefit of their economy if they are economical."

(b) It has been further sought "to obliterate all distinction of interests between one class of the rate-paying community and the other."

For these purposes it is proposed to make taxation much less local in its character by establishing union rating for all Poor Law purposes, and district and county rating for all district and county purposes. This change will have the effect of relieving some electoral divisions in which the rates are high at present (notably the urban districts) at the expense of others in which they are low. The change which is proposed to be made in the incidence of taxation from the owner to the occupier will not for the present affect the occupiers of agricultural land, thanks to the agricultural grant, which is to be provided for their relief ; and for all other cases there is an elaborate provision in the Bill for the adjustment of rent until the tenancy is determined or until a new statutory term begins. These adjustments will probably cause some little confusion while they are in operation, but eventually competition and custom will restore the present relationship between occupier and owner. The collection of rates, however, will for the future be a much

more difficult and expensive operation in large towns than it is at present. The occupiers of small houses change their residence very frequently and very suddenly, and it is to be feared that the occupiers of better-class houses will have to make good many a loss to the rates under the new system.

The Governmental aid which is proposed in the Bill to be given to the agricultural classes in Ireland involves an abstract question of importance. When the Bill came up for the second reading in the House of Commons, Mr. Lambert moved an amendment to the effect that the House, while approving the extension of local government to Ireland, "disapproves of any scheme that necessarily involves a large permanent grant out of the Imperial funds for the relief of one class alone." It was contended that no Government has any right to take national moneys, contributed by the tax-payers as a whole, and devote them to the relief of any particular class in the community, whether that class be landlords or agricultural ratepayers, or the members of any particular trade that happens to be in a depressed state. It is urged by a certain section of English members that such a scheme is simply another form of the vicious system of protection, under which certain favoured trades and pursuits are kept in a state of vigour by protective duties and bounties at the expense of the general community.

However, Irishmen cannot afford the luxury of upholding abstract principles of economic science as against England. The financial relations between the two countries is already too unfavourable to Ireland to allow her to make such a sacrifice to principle. Accordingly, when, in 1896, the Agricultural Rating Act was passed for England, Mr. Vesey Knox very properly moved that the principle embodied in that Act should be applied to Ireland, and a few days after the debate on the motion, Mr. Balfour announced the policy now adopted in the Irish Local Government Bill.

The Agricultural Grant, which will consist of an annual payment to Ireland out of the Consolidated Fund equal to one-half the amount of poor rate and county cess raised off rural agricultural land in Ireland during the standard year (1896-97), has been estimated by the Chief Secretary at £730,000. The criticisms that have been made, and the resolutions that have been passed, with reference to this proposal all over Ireland—by every class and party—in every province and county—may be summarised in two words—Not enough! Never was there such unanimity in Ireland; never did all parties join for one common cause with such sincerity and steadfastness.

I should like, for the sake of brevity, to state *seriatim* the objections that have been made, and that might be made, to the amount of, and the method of, calculating the grant. Some of these, I confess, contain rather extravagant claims, but others

ought to, and no doubt will, be pressed on the notice of the Government by all Irish representatives.

(1) The English agriculturists have had their rates partially paid since 1896, out of the national taxes, and honesty and fairness demand that the full amount of the Irish grant should accrue from the same date.

(2) Ireland is almost entirely an agricultural country, and all rates are paid indirectly, if not directly, out of the fruit of agriculture. Therefore the grant should be sufficient in amount to relieve all rateable property, and not merely rural agricultural land.

(3) In many urban districts, including Belfast, there is even land of a purely agricultural and pastoral character. If the benefit of the grant cannot be extended to all rateable property, it should at least be extended to agricultural lands inside town boundaries, otherwise the occupiers of such lands will be placed in a very disadvantageous position as compared with their neighbours outside the boundary.

Seventeen years ago the Legislature, for some reason, refused to extend the benefits of the Land Act to the occupiers of townparks, and I suppose it is for the same reason that to-day the Government proposes to exclude the urban agricultural ratepayers from the benefit of the Agricultural Grant; but it would be well for the Government to bear in mind when they begin to reconsider the amendments in favour of the urban ratepayers that it has been *twice* found necessary to modify very considerably the provisions of the Act of 1881 as to townparks.

(4) It has been urged—and with a good deal of fairness, I think—that the annual agricultural grant should not be a fixed sum at all, but should vary with the expenditure from year to year. Mr. Gerald Balfour, who took a very hopeful view in introducing the Bill, said:—“ I shall not be surprised if, in many respects, the new bodies prove more parsimonious than the old,” and he appears to think it not at all unlikely that the changes in local government will cause a reduction in the local rates. Why should the Government, then, by fixing the grant, deprive themselves of a share in this saving? If the amount of the grant be not fixed, but be dependent year by year on the expenditure of the local authorities, any reduction in that expenditure will result in a proportionate reduction in the grant.

and a consequent gain to the Treasury to the extent of that amount.

(5) If, however, the grant must be a fixed sum, the method proposed of assessing it seems to be a most unfair one, and has been objected to by all parties in Ireland. The local taxation during the standard year was abnormally low for various reasons. In many unions the guardians, in order to stand well with the ratepayers, cut down the estimates unduly at the striking of the rate, thus causing those unions to be in debt at the end of the financial year. In other unions, owing to the fact that there were balances in hand, the actual rate "raised off" agricultural land did not at all represent the actual expenditure. The county cess also was far below the average in the standard year. With regard to Roscommon, for instance, the O'Connor Don says: "We economised in that year; we used up old balances that were to our credit." One of the resolutions of the Cork Grand Jury states the whole grievance, and one of the proposed remedies as well, in the following terms:—"We believe that to calculate the amount of the Agricultural Grant on the basis of the poor rate and county cess for one year only, would, in many instances, prove inequitable, and we consequently urge that the said grant should be calculated on the average amount for the three years ending 29th September, or 1st June, 1897, as the case may be."

Other resolutions have also been passed, all suggesting that the average amount of poor rate and county cess raised during a number of years, rather than the amount raised in any single year, should be taken as the test of the agricultural grant, and all these resolutions express the confident belief that such a test would be more favourable for Ireland than that which is proposed in the Bill.

It is difficult to see on what grounds the Government can resist this amendment. If they consider that, by taking the average rates in a number of years as the test, the amount of the Agricultural Grant would be increased, they would not be dealing fairly with Ireland in insisting on their own plan. If, on the contrary, they consider that such an assessment would result in a decrease of the grant, they would not be doing justice to themselves in opposing the amendment.

There is one question which has attracted the attention of all parties and sections in Ireland since the beginning of the discussion on the Bill. I refer to the question of safeguards. If the Chief Secretary thinks it necessary to safeguard all the diverse interests that have demanded safeguards, or chooses to adopt even a small percentage of the plans that have been sug-

gested, he will be a very weary statesman before he is done with Irish local government. Safeguards have been demanded by the large ratepayers against the small ratepayers, by the landlords against the tenants, by the individual ratepayer against the new councils, by the existing local officials against the would-be or possible candidates for their posts, by the urban ratepayers against the rural ratepayers, and even by ultra-patriotic inhabitants of particular counties against the inhabitants of other counties. All sorts of suggestions have been made to effect these desired results. It has been proposed to establish joint committees, special franchises, special powers of appeal to the county council or to the Local Government Board, a minority representation, a property qualification, and a special temporary court of appeal from the decisions of the Local Government Board, consisting of five members of the House of Commons. If one is to believe that all these proposals are sincere, we, as a nation, must surely be the most unreasonably suspicious or the most unscrupulous people on the face of the earth. However, in my belief, most of them are put forward, not with any serious intention, but merely to enliven the discussion of a Bill which has been accepted by all parties. Mr. Gerald Balfour showed quite plainly in his speech on the first reading, that he disapproved of what he called "safeguards of an irritating and provocative kind." The measure is intended by the Government to be a democratic one, and any so-called safeguards that would have the effect of limiting or restricting the powers proposed to be conferred on the new local bodies must necessarily be rejected. It is the occupier who is to be liable for rates in the future, and it cannot be admitted that there is any necessary antagonism between any one class of ratepayers and another.

The Bill has been expressly framed for the purpose of doing away, "so far as local government is concerned, with anything that emphasises the distinction between landlord and tenant, between large and small cess-payers," and I think I am expressing the feelings of all parties and sections when I say that I sincerely trust that this high ideal may be reached.

[NOTE—This paper was read when the Local Government Bill had just passed the second reading. Many clauses were afterwards added before it became law, some of which will be found to have been advocated above. Those additions do not, however, affect the questions discussed in the paper.—W. J. J.]