is in this matter also open to objection, the salaries of these officials should be increased to pay them for the additional labour. This consideration tends to strengthen the opinion I have thrown out as to the desirability of the incorporation of the petty sessions courts with the county courts for the purposes of the local administration of justice.

While I have at the close of my paper, as at the beginning, to congratulate this Society on the extended jurisdiction of the local courts in equity and common law, and on the efficient method in which local ministerial officers for these courts are provided, I have to state as the result of my inquiry, that it is not in my opinion a desirable thing to prevent chairmen from practising in the supreme court, and at the same time I have to regret that permanent local judicial officers, after the model of the English registrars and Scottish sheriff-substitutes, have not been appointed. I have further to state, that the executive officers of the court are not appointed in the most desirable way, that their tenure is precarious, and the general system of executing decrees unsatisfactory. I suggest that the office of sub-sheriff should be reformed, by making his tenure permanent, by making his remuneration depend entirely upon salary and not upon fees, and by bringing him under the control of the court in the execution of the decrees. I think that the office of district registrar of the Court of Probate might be judiciously united to the office of the clerk of the crown and peace, and that officers of the local courts, including petty sessions clerks, should be officers of the supreme court for local purposes; and I regret that a bankruptcy jurisdiction has not been conferred upon the local courts, and that it is not likely to be conferred by the wise and thoughtful framers of an act which, notwithstanding the defects I have ventured to mention, will be a great and permanent boon to a great portion of Her Majesty's subjects in this island.

VII.—*The Preliminary Proceedings in Criminal Cases in England, Ireland, and Scotland, compared.* By William H. Dodd, A.M., Barrister-at-Law.

[Read 29th May, 1877.]

READERS of newspapers who favour the law intelligence with a cursory glance, will occasionally see the report of an application to the Court of Queen's Bench for a writ of *habeas corpus*, to bring before a coroner's inquest a person already in custody for a supposed crime in connexion with the death, into the cause of which the coroner is investigating. Such applications reveal a struggle which has been going on now for some years between two different methods of conducting the preliminary investigation into crime. On the part of the coroner, it may be said, indeed, to be a struggle for existence. It is contended, on the one hand, that two independent investigations

into the same matter are unnecessary, and that when once a person has been arrested for the crime, and the magistrates have committed him for trial, the object of the coroner's inquest ceases. It is contended, on the other hand, that the coroner is a judicial officer of very ancient authority, that his jurisdiction has been most beneficially exercised, and that by means of his tribunal crimes which would otherwise be concealed or be compromised, are dragged into light. It is urged, too, that as the coroner himself is selected by the people, and the jury are drawn from among the people, the most impartial and popular tribunal is thereby secured.

It may be of advantage, with reference to such a struggle, to examine into and compare the mode of conducting the preliminary investigation into crime in the three countries, and to ascertain if possible, from such comparison, the best and most judicious means of bringing criminals into the dock.

In all the three countries there is nominally an officer of the crown who is supposed to guide and control the criminal procedure. In Scotland this officer is called the Lord Advocate, in England and Ireland, he is called the Attorney-General. A crime is an offence committed against the public. The Queen, as the head of the state, is nominally the prosecutor in criminal cases, and her officers of the law are her deputies in this respect. But this constitutional principle works itself out to a different result in each of the three countries. The English Attorney-General does not, as a rule, conduct either in person or by deputy the criminal cases in England. The prosecutions are begun and ended at the instance of private persons. When the case has concluded, the Treasury, as the custodians of the public purse, allow a portion of the costs; but they do not, nor do the law officers as a rule, interfere in the conduct of the case. They do occasionally, however, take control of it at an earlier period, and then, curiously enough, it is the Treasury which is said to prosecute, rather than the Attorney-General; and when this is done, it is often made the subject of acrimonious observation, and the government of the day is accused of harbouring a vindictive desire to wreak vengeance on some criminal who is supposed to have had the ill-luck to run counter to their political sympathies.

In Ireland, on the other hand, all prosecutions, as such, are under the actual personal control and supervision of the Attorney-General, or the other law officers. In each county the Attorney-General appoints a solicitor for the crown, who sends to the Attorney-General instructions for opinion on each case sent forward by the magistrates for trial at the assizes, and the Attorney-General directs in accordance with his view of each case as to what should be done. In addition to this he has as counsel two members of the circuit to prosecute in each circuit town, and before the case comes on the indictment has been prepared and the proofs directed by these counsel. And at quarter-sessions, also, the Attorney-General is represented by a properly qualified solicitor, to conduct the sessional prosecutions for the crown. There is thus over the length and breadth of the country an organized force for the purpose of prosecuting crime, and the expenses of this force are defrayed out of the public funds. It

will be observed, then, that there is this important difference between England and Ireland. The public officer in England intervenes after the case has concluded, and when he is powerless to affect the result. The public officer in Ireland intervenes before the case comes on for trial, at a time when he can guide and control the case. But he intervenes after the preliminary investigation, whether before the magistrates, or the coroner, or both, has concluded. These investigations are conducted nearly entirely by the police, which is in Ireland a centralized and not a local force. It is frequently the sub-inspector of police who examines the witnesses, and makes the case for committal before the magistrates. Sometimes he is assisted by an attorney, more frequently he is not. It is the police also who summon the jury before a coroner, and it is the police as a rule who give intelligence to the coroner of a sudden death having occurred. It is the magistrates who hear the evidence, and decide whether the accused person shall be sent forward for trial or not.

In Scotland a still different method prevails. The process is more fully detailed by Sir Walter Scott, in his *Heart of Mid-Lothian*, than in any of the Scottish law books. The spirit and operation of the criminal law of Scotland are shadowed forth by him in connexion with scenes of the most touching pathos; but in the minutest details he is lawyer as well as artist, and he himself, a sheriff of a county, makes the counsel, Mr. Fairbrother, who opens for the defence, apologize for the absence of his senior at the Bar, Mr. Langtale, who had been called on a sudden emergency to the county of which he was sheriff. The method of proceeding has not altered much from Scott's time. Now, as then, all investigations into crime are conducted by public officials, who act under the guidance of the Lord-Advocate, and the other law officers. But while in England the public official intervenes when the case is concluded, and in Ireland when the criminal has been sent forward for trial, in Scotland the public official intervenes at the commencement. When a crime is suspected, information of it is given to the Procurator-Fiscal, either by the police or by any private person who may have knowledge of it. The Procurator-Fiscal maybe said to be the local representative of the Lord-Advocate. He acts under the guidance and seeks the advice and direction of the law officers. He discharges duties in part corresponding to those of the Crown-Solicitor in Ireland, in part corresponding to those of the Sessional Crown-Solicitor, in part corresponding to those of the coroner, and in part corresponding to those of the police in the conduct of a case before the magistrates. The Fiscal, as he is popularly called, makes inquiry into the case, examines privately all persons who are likely to know anything about the matter, "precognoscing" them, as it is called in the phraseology of the Scotch law. The precognitions, or, as we should call them, the informations, though these statements are not on oath, are signed by the persons examined, and it is on these the sheriff or magistrate acts in deciding whether he shall commit the person for trial or liberate him, and in serious cases the Fiscal proceeds in his inquiries under the personal direction of the sheriff or magistrate. The case then proceeds in much the same way as a case does in Ireland. The precognitions are sent to the law

officer for advice and direction, and in accordance with such direction, the prisoner may be sent for trial either to the sheriff's court or to the circuit court, or he may be liberated, or further inquiries may be directed, according as the circumstances of each case may render expedient.

There are differences, also, as regards the method of proceeding between Scotland, on the one hand, and England and Ireland on the other, and the lawyers in each of the countries stoutly maintain the excellence of their own system. In Scotland, for example, the witnesses are not examined in presence of a magistrate, and the accused is not allowed to be present at their examination, nor is he allowed to provide himself with legal assistance until the preliminary inquiry is over; and the magistrate has power to commit a person not before him, on statements not made on oath, and the preliminary enquiry is not conducted in public. The accused person is not bound to say anything; but he may if he so chooses, and he may be interrogated by the magistrate, as Reuben Butler, it may be remembered, was by Mr. Middleburgh, and very pertinent and pressing questions may be put to him. Any defence he suggests is inquired into, and on the whole the entire investigation is more inquisitorial than is liked on this side of the channel or to the south of the Tweed. It is unquestionably, however, an effective method of detecting crime; but the discussion of the two different systems in this particular is too wide a field of inquiry for my present purpose.

It appears, then, that the existing system in each of the three countries practically admits the expediency of having a public official to investigate into crime. The appointment of such an official is also sound in principle. It is the public who are outraged by the perpetration of crime. It is public justice which condemns; and so far are the rights of the public considered, that when a private person is injured by what is also a serious crime against the state, the private wrong must remain in abeyance till public justice is satisfied.

In each of the countries, moreover, that private wrongs may not be left without redress, if the public official be negligent or careless, the right of private persons to prosecute is recognised. In England, indeed, such is the rule; and in Ireland in cases of embezzlement by servants in large companies, such as banks, or in large establishments in trade, the Attorney-General usually directs that the prosecution should be conducted not by the crown officials but by the persons grieved.

It being, then, practically as well as theoretically conceded that there should be a public prosecutor, the only questions to be determined would appear to be

1. When should the public official take up the case?
2. Should there be more than one person in each locality charged with the duty of investigating into and prosecuting crime?

Now as to the first of these two questions, that is to say, what is the proper time for the public official to intervene, it seems clear almost to demonstration that the Scotch plan of beginning at the

beginning is preferable either to the Irish plan of beginning in the middle, or the English plan of beginning at the end. In one of the reported discussions on the subject, I have seen it boldly asserted that it is not expedient that all crimes should be brought to punishment, just as it is supposed not to be expedient that every civil cause of action should be brought to trial. On some such ground as this it might be inexpedient to have crime too closely watched and too carefully pursued. But if it be right and proper that crime should by punished, there are manifest disadvantages in the English system, and also in the Irish system, though not to the same extent. It will be observed that there is a great temptation in the English practice to private persons to compromise, or conceal, or to shrink from the cost of prosecuting crime. When Colonel Baker's crime, for example, was first noticed and talked about, the London papers threatened and bullied lest the case should be hushed up, and public vengeance baulked of its prey, though perhaps public curiosity may also have had something to do with it. And in addition to this there is at least an opening for suggesting political bias when the Government of the day does so far depart from their usual custom as to prosecute a notorious criminal, such as the Tichborne claimant. In Ireland, again, there is a serious disadvantage in having the earlier parts of a criminal case, investigated by the police without professional assistance. The two topics most usually resorted to by the counsel for the prisoner are the slack way in which the crown witnesses were dealt with in the original identification of the prisoner, and the divergence in the evidence of the witnesses at the trial from their sworn information before the magistrates. The witness is often pressed by the counsel for the prisoner: "You did not mention that before?" "No." "Why not? Why did you not tell it when you were examined before the magistrate?" The witness, as a rule, instead of saying, what would most probably be the true reason, "Because I was not asked," ventures to exculpate himself by saying he did not think it material. And then counsel avails himself of the opening thus made, and does not seek to make it less wide than it really is. It is sometimes painful to watch a witness trying to evade the pinch of the case, when he is so pressed in cross-examination either as to the alleged identification, when the prisoner had been so pointed out to him as the person it was intended he should identify, that he could not fail to do so, or as to the other matters of alleged discrepancies between his evidence and his former statements, and in many such instances—I would be safe in saying in most—it is really the police who conducted the preliminary investigation who have led the witness into trouble.

When we seek, however, to establish the soundness of the principle, that there should be a skilled lawyer charged with the duty of investigating into suspected crime in each locality, we are met by the objection that it is too costly. But, I would venture to ask, is it right in principle that a private individual should be asked to pay for redressing a public wrong? Surely this is the most unjust kind of tax. It is unequal; it is uncertain; it is inconvenient; it is wasteful. The man who suffers by the perpetration of crime must suffer further

in pocket that public justice may be satisfied. So unjust is this felt to be, that the costs of such prosecutions in England are borne, as we have seen, in part by the Treasury. And the question simply is, whether the additional money requisite to make the procedure simple, uniform, and effective, should not be supplied.

The income and expenditure of the nation so nearly balance, and the reluctance to increase taxation is so great, that those who urge any reform needing money to carry it out are put upon inquiry as to the ways and means of carrying it into effect. We must endeavour, therefore, to answer our second query:—Should there be more than one person in each locality charged with the duty of investigating into and prosecuting crime? The answer to this question brings us back to our friend the coroner. There is one kind of crime which society from an early period did not permit to be concealed or compromised, and that is crime resulting in the death of a human being. Such cases must not be left to the fear or favour, the malice or the revenge, of the private individual. Accordingly, our ancestors in their wisdom resorted to a coroner's inquest to throw a blaze of light on such crimes, and to reveal the causes, whether criminal or innocent, of sudden death. In other words, the coroner's inquest was a machinery for investigating into one class of suspected crime, and one class only. This inquest served the purpose of a newspaper report, by giving publicity to the facts, as well as of a court of inquiry into the cause of death; and the main reason given now by its most earnest advocates for its continuance, is that it is "a security against secret murder, and against all kinds of death from accident or neglect;" and it is on account of the good it does in these cases in detecting and punishing crime, that it is held to be justifiable to inquire into and disclose family matters which might otherwise be kept secret, and which, in many instances, are disclosed to no good result whatever. It is because of the system of private prosecutions in England that the coroner's inquest is necessary. It is because of the system of public prosecutions that there is no such machinery in Scotland, and that coroners' inquests are ceasing to be of necessity or importance in Ireland. Now since Scotland has a competent officer to inquire into all classes of crimes, as well as those specially the subject of a coroner's inquest, Scotland affords a very good test on the question of costs. I find that the total cost of criminal procedure in England and Wales for the year 1875, which is the last year I have obtained statistics of, was £225,003, and out of this sum £84,285 was for coroners' inquests. Now this sum of £84,285 for coroners' inquests was spent upon the preliminary investigation into one class of crime, and in so far as crime is not detected, the inquest is valueless, except to satisfy or gratify local curiosity. Now the entire number of cases investigated was 28,587.

We may divide the verdicts given in these cases into three classes:—

CLASS I.

Accidental death.
Death from causes not specified.
Death from injuries, causes unknown.
Found dead.
Justifiable homicide, and executed.

CLASS II.

Death from want, cold, and exposure.
Death from excessive drinking.

CLASS III.

Infanticide.
Death aggravated by neglect.
Murder, other than infanticide.
Manslaughter.

Now by the first of these classes of verdicts I think I may say society is not much benefited, and in so far as it is desirable to know such facts, the information is or may be given now in the medical certificate as to the causes of death when the death is being registered. By the second class of verdicts social philanthropists and charitable organizations might possibly be put upon inquiry as to the means of avoiding or averting similar evils in future. But as a machinery for detecting crime the benefit of the coroner's inquest depends upon the third class, and upon the third class alone. Now the entire total of this third class amounts to 526 in all, and the entire cost of the inquiries to elicit this result is £84,285. If we turn now to Scotland, we find that there were in all, in 1875, 60 Procurators-Fiscal, and they receive among them £23,332 in salaries, and £3,708 11s. 7d., in other emoluments, and £920 was paid for office expenses. That is to say, the entire crimes of Scotland of every description, and all suspected crimes including cases of accidental death, were investigated into by a competent authority at one-third of the cost of what was expended on coroners' inquests in England. But this was not all; for where prosecutions were directed to be conducted at the sheriff's court, the procurators themselves prepared the indictment, and conducted the case in addition.

The remaining sum of the total cost of criminal procedure in England and Wales is made up as follows:—

£6,330 for Government prosecutions,
£117,219 for defraying part of the cost of private prosecutions,
£17,169 for proceedings under the Criminal Justice Act, and Juvenile Offenders Act.

As far as England is concerned, therefore, if coroners could by any process of legal alchemy be turned into public prosecutors, and if they would be content with the same scale of remuneration as the Scotch public officials receive, the sums spent on inquests would furnish forth 180 of these public prosecutors for England and Wales, that is, on an average, three for each county; and if the £140,718 spent on

criminal procedure, as above-mentioned, were well and sparingly used, by means of, and through such public prosecutors, England could have public prosecutors without taxing overmuch the patience or the arithmetic of the Treasury officials. I may remark, too, that some such change must have taken place in the Procurator-Fiscal. What does this compound word mean? It means, when translated, the attorney or agent who looks after the money—that is forfeitures, fees, and the like. An improved system of payment of judges and officials, and in the mode of levying fines, deprived the procurer of such fines and fees of any excuse for continuing to exist. But he wisely, after the manner of his nation, adapted himself to the altered circumstances, and became transformed into a most admirable public prosecutor.

In Ireland no more money would, I think, be required. Instead of two crown-solicitors, one for assizes and one for sessions, the entire duty could, if such were found expedient, be amply and competently discharged by one properly paid solicitor, but whether one, or two, or more, the duty of conducting the preliminary investigation should be put upon him or them, and the remuneration ought to be sufficient to compensate him or them for this extra duty, and the sum of £8,000 saved by the abolition of the coroners' inquests could be added to the amount. In addition to the ordinary crown-prosecutions in Ireland, and private prosecutions, there are prosecutions by the Post Office, and prosecutions also by assignees in Bankruptcy, when so ordered by the court. The prosecution by the assignees seems a bad importation from England, adopted there apparently because there was no public prosecutor; but the prosecution by the Post Office is a finished specimen of what a public prosecution may become when all the steps of it are under the guidance of a skilled solicitor. Much of the excellence of Post Office prosecutions may be due to the special ability and zealous care of their able solicitor; but the expediency of having a case watched over and conducted from the beginning by a competent professional gentleman is well illustrated by them, and the disadvantage to the ordinary crown-solicitor from being thrust into the middle of the case, instead of having the management of it from the beginning, is also clearly shown. The class of crimes which Mr. Gage investigates could not be at all thoroughly sifted by the police, and any case resembling Post Office cases, trusted to the police without legal assistance, runs a very great risk of coming to grief. If, however, the duties of the crown-solicitor were extended in the direction I have suggested, this part of the duty of the solicitor to the Post-Office might safely be left in the hands of the local public-prosecutor, acting of course in concert with the solicitor to the Post Office, and thus uniformity and simplicity would be secured.

The present paper is concerned only with the differences in the systems in the British Isles themselves, but it is worthy of observation, that the Scottish plan of having a public official to conduct the investigation from the beginning, is the plan adopted in most of the Continental countries. As the Continental systems in their mode of dealing with an accused person, however, are supposed to be open to the same objection of being inquisitorial as the Scotch, the prac-

tice in America, where the principles of the criminal code are the same as in England and Ireland, would seem to afford a better subject of comparison. The most recent suggestions by jurists in the United States point to the abolition of the office of coroner, and to the substitution of the district attorney as an investigator into crime; and the State of Massachusetts, I believe, has given practical recognition to the suggestion by prospectively abolishing coroners in that state.

It is scarcely necessary for me observe that two principles which have been acted on in all legal reforms are to be kept steadily in view: the first, that no public servant should be compelled to discharge duties entirely dissimilar from those he contracted for; and the second that when an officer's duties are abolished he should be amply compensated for his loss. I may add further, that such changes as I have tried to suggest are the kind of changes that can with the least public inconvenience be gradually introduced. On the vacating of a coroner's place, the duty of inquiry into deaths and all other suspicious cases might be transferred to the sessional crown solicitor, if he were willing for the additional remuneration to undertake the additional duty; and again, as a crown solicitor's place became vacant, the sessional crown solicitor might be promoted to the place without surrendering his sessional work, on a salary fit to renumerate him for the entire duty; or in large counties the work might be divided between two, who should be each responsible for his own district. And finally, it might and I think should, in future appointments be made a condition that the solicitor should reside in the county, and take the oversight and conduct from the commencement of all criminal investigations within his district as a responsible public prosecutor.

VIII.—*Report of the International Law Committee, on the Impediments to the Trade between the United Kingdom and America which exist in Dublin from the unsatisfactory state of the Law as to Foreign Sailors.*

[Read by Philip H. Bagenal, Esq., 26th June, 1877.]

We requested Mr. Bagenal, one of our body, to make enquiries as to what impediments to the trade between The United Kingdom and America exist in the port of Dublin; and he wrote to the United States consul. The answer, in effect, was that the chief complaints were a lack of power to act on the side of the local authorities as well as on the side of the consul; that the United States and the United Kingdom have no treaty regarding sailors; that police aid to recover deserters is extended sometimes, and that by courtesy only. The consul's note ended with a suggestion that a reciprocal convention between the two countries would arrange matters satisfactorily.

Mr. Kent, in his commentaries on the American law, says the