JOURNAL

OF THE

STATISTICAL AND SOCIAL INQUIRY SOCIETY OF IRELAND.

PART LV., *July*, 1879.

I.—*Irish Statute Law Reform.* By Henry L. Jephson, Esq.

[Read, 19th November, 1878.]

At the meeting of the British Association which was held in this city in August last, I had the honour of bringing before the Association the important subject of Irish legislation. In the paper which I read on that occasion, I endeavoured to establish the proposition, that it is desirable that legislation for England and Ireland should be simultaneous, and, as far as possible, identical. I pointed out that in many cases differences between the laws were created by current legislation, not alone quite unnecessarily, but with very deleterious effects. I dwelt upon the palpable and manifest evils arising from such a practice, and I suggested a plan, which if followed, would, I believed, prevent fresh differences being created. To deal with the part of the question relating to current legislation was a comparatively easy matter. Not so easy, however, was the other and more important part of the subject, namely, the existing differences in the laws of the two countries, and the steps which should be taken for their removal; and as I was forced to treat that part of it rather briefly, I now propose—with the object of completing my remarks on the general subject of Irish statute law reform—to direct your attention this evening to some of the matters I then omitted, craving your indulgence if my treatment of them is not as full as it ought to be.

I do not think the importance of this subject can be overrated, for in it are involved not merely private but many public—even imperial—interests of the utmost consequence; and it is a truism to remark that on the laws of Ireland depend in no small degree the well-being, peace, and prosperity of this country.

Much, too, which has lately been occurring has created a far greater public interest in Irish legislation at the present moment than at any previous time. To judge from the articles in the press,

it seems as if a crisis had been reached in the matter; the old order of things is suddenly found to have passed away; what were believed to have been possibilities are recognised now as being impossibilities; and a new starting point is anxiously being sought for. And yet, great as is the importance of the subject, it is one upon which a very remarkable amount of ignorance and not a little indifference exist; for in spite of all the discussions in Parliament, and in spite of endless pamphlets and articles, comparatively few persons know anything of the subject. The number of people who have sufficient cognizance of the laws of the two countries to know that there are many differences between them, is a rather limited one; fewer people care to inquire what the differences are, or whether there is any necessity or justification for their existence; still fewer know what are the practical effects and results of different legislation for the two countries.

It is full time that this ignorance were dispelled, and that Irish legislation, instead of moving one year in one direction, and another year in another direction, should be conducted on a settled principle, and aim at the realization of some object so imperial in its character as to enable both of the great parties in the state to give it a constant support, and sufficiently advantageous to this country to gain for it the support of the people of Ireland.

I believe that such an object is to be found in the assimilation of the laws and institutions of the two countries, and in the perfecting of the union between England and Ireland. I say "perfecting," for, as I have on a previous occasion pointed out, the Union was a very imperfect measure, and, as I have also pointed out, its imperfections have been added to by subsequent legislation.

The first and most important result of this imperfect union, and one I think not generally recognised, is that Ireland—now in the latter part of the nineteenth century, after seven hundred years connection, and nearly eighty years nominal union with England—occupies a perfectly unique position in the British Empire.

It is an incontrovertible fact—however strange and startling the statement of it may be—that amongst the numerous dependencies of the British crown there is not one that stands in the same relation to Great Britain as Ireland does. She is not a colony, for although she is governed by a governor-general, as they are, she has not her own houses of representatives as colonies have. She cannot be regarded as an integral part of the United Kingdom, for although she sends her representatives to the Imperial Parliament, she is not governed as the other parts of the United Kingdom are, but is governed by a deputy. Ireland hangs as it were between union and colonial independence; and this anomalous position lends on the one hand an aspect of intelligibility to the demands put forward for placing Ireland on the footing of a colony, and granting her a colonial constitution; whilst on the other hand it prevents the only conclusive answer being given to such demands—the answer that Ireland has been thoroughly and completely united to Great Britain, and that consequently no higher privileges remain to be granted to her.

Another result of the anomalous position so unfortunately assigned

to Ireland is, that it entails the necessity for a very large amount of separate legislation. Laws which in one country are entrusted to the execution of one person, are in the other country entrusted to the execution of another person, not because there is any real necessity for such a practice, but because different forms of government are maintained. And so now we find such great differences between the laws and government of England and Ireland, that Ireland appears almost as if she were a separate country, and the practice of separate legislation is so uniform that one might almost believe that it is intended she shall remain a separate country. And this at a time when, in imperial interests, every effort should be made to draw the two countries closer to each other—at a time when such union would remove the grounds for complaints arising from the position she now occupies, and when a large section of the population of Ireland anxiously desire to be incorporated more thoroughly into the body politic of the United Kingdom, and to be brought into closer relationship to the British Crown.

It is very curious to observe the sort of passive determination that exists to prevent the two countries amalgamating; this, too, in cases where the strongest inducement exists for the persons concerned to take action in the matter. As an illustration, we may take the case of the Irish peerage. At the time of the Union the peerages were left separate. For many reasons their union then was impracticable; but what was not impracticable, and what was not done, either then or since, was to make provision for uniting them ultimately into one. At the time of the Union with Scotland no power to create Scottish peers was given to the Crown, and the Scottish peerage, as a distinct one, has now almost come to an end; but in the case of Ireland this useful precedent was set aside, although the Irish lords protested at the time against the Irish peerage being kept up for ever, "thereby," as they said, "perpetuating the degrading distinction by which the Irish peerage was to continue stripped of all parliamentary functions." A Select Committee of the House of Lords inquired in 1874 into this subject, and recommended that steps should be taken for the gradual merging of the Irish peerage into the peerage of the United Kingdom, and Bills have been introduced to carry such recommendation into effect; but nothing further has been done, and the Irish peerage remains, therefore, as distinct now as it was before the Union.

I have not time to refer fully to the very numerous differences that are the results of the defects in the Union, nor, indeed, do I feel it necessary to do so, for my present object rather is to indicate that there are differences. What I have said is sufficient, I think, to do that much, and I will proceed now to another branch of the matter, namely—the differences which have been created since the Union, and which at present are in full operation. Legislation subsequent to that great measure has given to Ireland a system of valuation different from the English and Scotch system; it has left Ireland with a distribution of parliamentary seats almost identical with that in 1800, though parliamentary seats have been twice re-distributed in Great Britain since that time, and though the greatest possible

inequalities have long existed; it has excluded Ireland from a most valuable reform as regards parliamentary representation, namely—the representation of minorities; it has given to us different laws as regards the parliamentary and municipal franchises; it has given us differences in the poor-laws and in the licensing laws; it has altered the legal status of women in the two countries; it has given us different laws as regards local government, and as regards numerous other matters of more or less importance. The differences, in fact, permeate a great part of the statute law and the whole system of government.

Now I will go a little into detail in two or three of these matters, so far as regards the statute law, just to convey to you some idea of what lies under some of these headings that I have enumerated.

I will take first the differences in the law of England and Ireland as regards the protection and status of women; and I will refer you for full details to the very able report of Mr. W. G. Brooke on the subject, which was read before this Society in 1873. Summing up his examination of these differences, he says:—

> "These distinctions emphatically exhibit that in England greater protection is thrown around women than is afforded by the law to women in Ireland. The disabilities which are thereby fastened on the women of this country, while they affect all classes, especially place the poor at a disadvantage, and add one more burden to the load with which fortune has weighted them."

And further on he says:—

> "Thus it would appear that in place of equal rights as between the women of both countries, we are met with distinctions and partialities that shade off not too finely into injury or injustice."

Had this report been made within the last few months, Mr. Brooke might have added another difference to those he enumerated. In the last session of Parliament an Act was passed which enacted that—

> "If a husband shall be convicted, summarily or otherwise, of an aggravated assault upon his wife, the court or magistrate before whom he may be convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall no longer be bound to cohabit with her husband, and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty."

And such order might further provide a maintenance to the wife, and direct as regards the custody of the children. It thus results that in England measures can be taken for the safety of the wife if she is "in peril." In Ireland the unfortunate woman must remain "in peril."

Take another matter—the Poor-laws. There are there numerous differences, some of them necessitated by peculiar circumstances in Ireland, but some of them arising from the usual cause, and being both unnecessary and undesirable. The area of taxation is different, the system of administering out-door relief is different; the laws of removal and chargeability are different; the provisions for destitute wayfarers and casual paupers are different. For a more detailed account of these differences I will refer you to Mr. Brooke's paper already mentioned, to a very able paper by Dr. Hancock, read in 1871 before this Society, entitled, "Law of Poor Removals and Charge-

ability in England, Scotland, and Ireland;" and to the Report in 1876 of our committee as to the differences between the law in England and Ireland as to houseless poor.

Take another matter — the pawnbroking laws — comparatively unimportant when compared with some of the matters I have been referring to, yet still of some importance to the poor. Here, again, we have to thank Dr. Hancock for a paper on the subject, which you will find in our proceedings for 1876. From that paper it appears that in Ireland pawnbroking business is regulated still by an Irish statute of the last century, with many defects in it. In England the case is different: the whole subject was considered by Parliament in 1872, and an Act passed introducing several useful reforms, but Ireland was excluded, and the reforms were confined to Great Britain.

I have said nothing yet as regards the differences in the administration of justice. Were I to go into this I am afraid I should have to draw too much upon your patience, and I will merely refer you for some details to some of the very excellent Prize Essays of our Society —notably those of Mr. W. H. Dodd, which are well worthy of the praise awarded them.

There have been several great measures of assimilation lately in this respect, but there are many and marked differences still remaining, many of them being to the detriment of the suitor in the Irish courts, and causing a less effective administration of justice.

In the matter of local government, too, there are numerous differences. Details will be found in the Cobden Club Essays, and in several reports recently presented to Parliament.

I hope that you will refer to some of the papers I have been mentioning; for a perusal of any one of them will give you an idea of the number of differences that exist in any particular class of laws, some of them most provokingly petty differences, and you will then be better able to form an estimate of the whole state of the case.

I trust I have succeeded in conveying to you some idea of the mass of distinctions that exist. To convey an idea of the proportion which Acts affecting the United Kingdom, and Acts affecting each separate country, bear to the total amount of legislation, I have prepared the following table showing the number of Acts of Parliament passed during the last ten years, and showing whether they relate to the whole or any part of the United Kingdom. (*See next page.*)

From this table it appears that during the last ten years 956 Acts of Parliament have been passed. Of these, 359 were Acts relating to the United Kingdom; 272 related exclusively to England; 64 to Scotland; and 144 to Ireland; 25 applied to England and Scotland, and 34 to England and Ireland.

Without a minute examination of each of these it would be impossible to say whether assimilation had advanced or not; but the large number of Acts passed for each country separately, and the comparatively little change in the proportion of Acts passed for the United Kingdom, or in the number of Acts passed for Ireland alone, point to the conclusion that not much progress has been made in the assimilation of the laws of the different parts of the Kingdom.

This conclusion is strengthened if we examine in detail the Acts

TABLE SHOWING THE NUMBER OF ACTS OF PARLIAMENT PASSED IN THE FOLLOWING YEARS, AND WHETHER THEY RELATE TO THE WHOLE OR ANY PART OF THE UNITED KINGDOM.

	1869	1870	1871	1872	1873	1874	1875	1876	1877	1878	Total.	Per centages.
Total number of Acts, ...	117	112	117	98	91	96	96	81	69	79	956	
Deduct for Acts affecting { Colonies, ...	10	6	5	4	6	7	4	3	2	2	49	
Isle of Man, ...	—	2	—	1	1	2	—	1	—	—	7	
Total for parts or whole of the United Kingdom, ...	107	104	112	93	84	87	92	77	67	77	900	100
Countries affected by the Acts:												
United Kingdom, ...	39	45	48	30	31	30	37	38	34	27	359	40·0
England, ...	41	26	38	34	32	26	21	16	15	23	272	30·2
Ireland, ...	13	15	16	19	15	17	16	13	7	13	144	16·0
Scotland, ...	5	8	6	2	3	5	9	6	9	11	64	7·1
England and Ireland, ...	3	7	3	4	2	5	6	2	1	1	34	3·8
England and Scotland, ...	6	3	1	4	1	4	2	2	1	1	25	2·7
Wales, ...	—	—	—	—	—	—	1	—	—	1	2	·2

of any particular session. I will take the Acts of the last session as the latest illustration, and analyse them.

The volume of statutes for 1878 contains 79 Acts of Parliament. Of these, 2 were for the Colonies, and 1 for Wales; 23 were English Acts which did not apply to Ireland; 11 were exclusively Scotch Acts; 13 were exclusively Irish Acts; 1 was for England and Scotland; 1 was for England and Ireland; and 27, or only one-third, were Acts for the United Kingdom. Now, if we further analyse these 27 United Kingdom Acts, we find that 11 of them were Acts authorizing the raising of the annual revenue; 2 were the Mutiny Acts; 1 was the Expiring Laws Continuance Act, which continued several different laws in the two countries; 1 was an Act for further promoting the revision of the statute law, by repealing certain enactments which had ceased to be in force, or had become unnecessary, and which therefore does not affect the present laws; 1 was an Act relative to foreign jurisdictions; and 1 an Act regulating the law relative to offences at sea—the last two, from their nature, having to be made Imperial measures.

Including the Act above referred to, as affecting England and Ireland, there remain therefore only 11 Acts in which legislation for the two countries was simultaneous: 1 relates to factories (the laws regarding which have long been identical in both countries); 1 was the Weights and Measures Act; 1 relates to the use of continuous brakes in railways; 1 relates to acceptance of bills of exchange; 1 to the adulteration of seed; 1 for the further relief of innkeepers; 1 relates to a qualification, etc., for dentists; 1 relates to Postal Telegraphs; 1 relates to debtors; 1 is an Act to amend the Prisons Acts of England, Ireland, and Scotland; and 1 relates to the contagious diseases of cattle or other animals.

Now it may possibly be objected by some persons that this is not a fair way of stating the case, and it may be argued that some of the separate Acts passed for Ireland were Acts assimilating Irish laws to English laws. In some years this may be, and is, fortunately, to a certain extent the case; but I must observe that Acts passed years after similar English Acts almost always differ in many details from their prototype, and therefore that such assimilation is far from being complete. It was indeed against this very practice of unsimultaneous legislation that the arguments in my former paper were addressed, that practice being directly responsible for many of the differences that now exist. In the session at present under review, the Public Health Act was the only large measure of assimilation; whilst if we examine the exclusively English Acts we find three conspicuous instances of new legislation from the operation of which Ireland is excluded. One I have already referred to—the remedy given to wives who are ill-treated by their husbands. The second is a minor matter, but one where at least no political reason can be urged for excluding Ireland, namely, an Act for the prevention of accidents by threshing machines; and the third is an Act to consolidate and amend the law for preventing frauds upon creditors by secret bills of sale of personal chattels.

I need not pursue further this examination of differences. I feel

sure that the results which I have given will come upon you with no little surprise, for the general aspect of this question has been almost altogether lost sight of in the consideration of each of the separate measures as they come consecutively before Parliament; and the true state of the matter can only be realized after some such general review as that which I have undertaken this evening.

It cannot, indeed, but strike anyone who considers the matter, as being very strange that after nearly eighty years of union, and after eighty years of legislation by an Imperial Parliament, the state of the case should be such as I have described. It is the more strange when we consider that many of the great ministers who during that time held office, were fully impressed with the desirability of promoting the assimilation of the laws of Ireland to those of England.

I would here mention two important conclusions which I think anyone must form after making an examination of the statutes. One is, that separate legislation begets separate legislation, for it is quite evident that a large portion of the separate Acts of Parliament now passed are necessitated by the separate legislation of previous years; the other is that where there is unity of administration there also is identical legislation. The factory laws, mining laws, postal laws, mercantile laws, and railway laws which are administered by a single department for the two countries are almost if not indeed absolutely identical in both countries, and any fresh legislation affecting them is embodied always in one and the same Act of Parliament.

Having said so much in favour of assimilation, I must pause for a moment to make a brief explanation, so as to prevent my views being misunderstood. I do not wish to be understood as laying down an invariable rule that all legislation for Ireland should be absolutely identical with English legislation. I am fully conscious of the fact that identical legislation is not always possible. In some few matters it may not be desirable, and in some the effects produced by identical legislation would be different in each country. Separate legislation sometimes is required to bring about a similar state of things in the two countries. Indeed some of the separate legislation which has been passed has been directed towards the assimilation of the condition of Ireland to England. It is also manifest that a more chequered history, different historical traditions, and different personal characteristics, will for many years, in some matters at least, necessitate a somewhat different legislative treatment; but this does not weaken my general proposition—that where possible all differences should be removed; nor does it affect the incontestable statement that much which could and ought to have been done in legislating identically for the two countries has been left undone. Furthermore, I believe that in some matters Ireland is in advance of England; and I should be sorry to see any retrogression for the sake of assimilation. But this only makes the assimilation to be desired on England's account; it does not weaken the argument in favour of such a course.

The assimilation of the laws of England and Ireland is, as you are aware, no new topic in this Society. The general principle has been accepted without discussion, so clear, decisive, and unanswer-

able being the arguments in its favour; and our efforts have been directed towards ascertaining what some of the differences are, and so far as lay in our power towards obtaining their removal. I am happy to think that these efforts have not been devoid of a certain amount of success. But our action after all appears very limited, appears to have only touched the fringe of the subject, when we consider what the existing differences between the laws of the two countries really are.

The subject, to be dealt with thoroughly and satisfactorily, must be taken up by Parliament itself, and the first requisite in the matter is a clear and complete statement of what the differences are. If there are some people who are not disposed to concur in the advisability of assimilating the laws, they can at least have no valid objection to a statement of differences being prepared. The discussion as to the removal of the differences can, if necessary, be deferred until we know exactly what they are; though for my own part I must say that I have no doubt as to what the general opinion will be.

There appear to me to be two ways in which this information could be obtained: one by the appointment of a committee for the purpose; the other by the appointment of a Royal Commission. As regards the former, I would quote, as a sort of precedent, the Statute Law Committee which was appointed by Lord Chancellor Cairns in 1868, with the object of ascertaining what statutes had expired, and what ones were no longer in force and no longer wanted. It consisted of—Sir J. G. Shaw-Lefevre, K.C.B.; Sir Thomas Erskine May, K.C.B.; Sir Henry Thring, K.C.B.; Mr. F. S. Reilly, and Mr. W. G. K. Rickards; and last year, Sir Henry T. Maine, K.C.S.I., Mr. R. R. W. Lingen, C.B., and Mr. R. O'Hara were added to it. The Committee have just completed the publication of the Revised Statutes, terminating with the Acts of the year 1868, and as they proceeded with their labours Acts were passed (called Statute Law Revision Acts) repealing enactments which they found had ceased to be in force, or which had become unnecessary.

A comparison of the differences between the statute law of England and Ireland would not be a very different form of work from that which the Committee have been doing, and they might make periodical reports to Parliament, as to the differences they found existing.

The other means I have referred to is a Royal Commission. For this also there is an excellent precedent in the case of the Royal Commission, appointed in 1862, to inquire into the Superior Courts of Common Law and Courts of Chancery in England and Ireland, with the view of assimilating, so far as might be practicable, the administration of justice in England and Ireland. They made two reports, to both of which I would refer you. In the first report they described their method of procedure for ascertaining the differences, and the principles which guided them in forming an opinion on the subject. I will just quote one or two brief passages, as they are so pertinent to the subject. They say:—

> "In the first instance we thought it right to consider the diversity of practice in the Superior Courts of Common Law in England and Ireland,

> in order to enable us to form an opinion how far it was advisable that the administration of justice in both countries should be assimilated. We accordingly came to the resolution of appointing two barristers—Mr. Jellett, of the Irish Bar, and Mr. Holland, of the English Bar—to draw up statements of the practice and procedure of the Superior Courts of Law in each country, in such manner as to point out the distinctions and differences which now exist."
>
> . . . . . .
>
> "In dealing with the principle of assimilation we had to consider what portion of the practice and procedure peculiar to England it would be expedient to extend to Ireland, what portion peculiar to Ireland it would be expedient to extend to England, and whether there were any parts peculiar to the Irish system which it would be expedient to retain in Ireland and not extend to England.

On these reports, aided by some further inquiry, and by their own knowledge of the matter, the Commissioners formed their conclusions. No more excellent precedent could be quoted, and I venture therefore to put before you this evening for your consideration and for your observations thereon, the suggestion that either a committee or a Royal Commission be sought for, to inquire into and report upon the differences existing in the statute law of England and Ireland.

Lest any one should think that this scheme is impracticable owing to the largeness of the inquiry, I will mention that a similar, though not quite so large a work, has already been accomplished as regards the differences between the English and Scotch law, and that it was done by one gentleman, a Scotch barrister—Mr. James Patterson—in a single volume, entitled, *A Compendium of English and Scotch Law, stating their Differences.* In the preface to that work there is a short paragraph which I must quote. Mr. Patterson, in excusing himself from taking a side in the matter, observes:—

> "It is enough to say that the labour already taken has been quite sufficient for one occasion, and that as the foundation of all law reform must be a knowledge of the law as it now exists, law reformers, whether professional or lay, can be at no loss to do the rest, and draw their own conclusions."

It is a knowledge of the English and Irish laws as they now exist that is wanted to enable our law reformers to draw their conclusions; and I feel convinced that it only needs that the differences which exist be made clear to the people of England and Ireland, for their indefensibility to become at once apparent. So utterly inexplicable and so unaccountable, on any rational theory, are many of the differences, that once they are exhibited to and appreciated by the public, an irresistible demand for their removal will be made. I do not, however, rest the desirability of removing them solely on the ground that they are inexplicable and irrational. I place it on its proper, and very much higher ground—that it is desirable that we should work towards the definite object of amalgamating England and Ireland as closely as can be done by legislation; and that we should endeavour, as far as we can, to remove those differences which I will not say tend to, but which actually do keep the two countries apart. Every difference that is maintained is a barrier to that union to which all

the best interests of our country urge us; every fresh difference that is created is one more impediment thrown in the way of the much-to-be-desired amalgamation.

It is useless trying to ignore the fact—as some people try to do—that the destiny of this country is inseparably bound up with England's. I firmly believe—I am thoroughly convinced—that no better, higher, or more honourable a destiny could be assigned to her. But instead of opposing and throwing impediments in the way of such a future—as now is so constantly done—it should, I think, be the primary object of our legislators to facilitate and hasten its realization. I believe a great stride would be made towards this great end if the suggestion which I have made this evening were adopted, and if vigorous action were taken by Parliament on the reports of the Commission. I believe that such action would most materially benefit this country, and would redound not a little to the advantage of Great Britain also. Let us hope that henceforward this great object will be kept more constantly in view than it has hitherto been, and that future years, instead of seeing existing differences being added to, will see them diminishing. Let us hope that neither individual selfishness, personal jealousies, nor party intrigues, will be permitted to interfere with the realization of the great object of uniting the two countries, and of so completing the vast fabric of union whose foundations were laid almost eighty years ago; and of so incorporating Ireland more thoroughly, more completely, into that glorious Empire, to whose splendour and whose fame Irish intellect and Irish arms have already contributed no inconsiderable a share.

II.—*On the Valuation of Real Property for Taxation.* By Murrough O'Brien, Esq.

[Read, 19th November, 1878.]

In a paper read last session, I advocated the adoption in Ireland of the English system of assessing real property for taxation, so far as the ascertaining the annual value of the premises went, on the ground that the definition of annual value in England was more generally applicable to all kinds of property, and more likely to ensure equality of rating than the estimate made in pursuance of the Irish Valuation Act, of annual value with reference to prices of agricultural produce; for under such an estimate land, the worth of which does not depend only on its fertility, is necessarily assessed below its real value. I also pointed out that the government or rateable value was no fair guide to the rent between landlord and tenant, inasmuch as improvements made by the tenant must necessarily be included in any public valuation, and could not have been excluded from that made under the Act of 1852, although that valuation is generally referred to as a standard for rent.

The word "value" is used conversationally in many different senses; it is a word of wide range; and even in political economy no universally accepted definition of it exists. It is related of Sydney Smith