VII.—*Impediments to the prompt carrying out of some of the principles conceded by Parliament on the Irish Land Question.* By W. Neilson Hancock, LL.D.

In this paper I do not propose to deal with any principles as applied to the Irish land question, except those which have already been conceded by Parliament. With respect to one branch of the land question—the encouragement and facilities for the creation of peasant proprietors—a very elaborate inquiry has been made by Mr. Shaw Lefevre's committee, to ascertain the impediments to the successful working of what are called the Bright clauses.

I propose to state the results of a scientific investigation, on principles of economic science and jurisprudence, of the impediments to the working of some of the other clauses of the Land Act.

THE TENANT-RIGHT CLAUSES.

(1) *Transmission of tenant-right interest on death of tenant.*

Before the Land Act of 1870, the tenant-right interests not being recognised by law, to a large extent escaped probate and legacy duty, and were transferred in the books kept by the agents in the landlord's office. The legalisation of tenant-right has altered all this; the proving of wills and the taking out of letters of administration have become necessary. The steps taken to meet the altered state of affairs and accommodate the large body of people brought within the domain of law, have been very inadequate. Take for instance the district registrars of the Court of Probate; they are only eleven in number. Their number and locality depends on an extinct state of affairs—the number and site of the bishoprics of the disestablished Church when Lord Derby reduced the bishoprics in 1835. In Scotland the corresponding officers, called commissaries, are all in the process of being amalgamated with the county offices, so as to secure greater localization of administrative jurisdiction for the accommodation of the poor.

To meet this evil in the case where it presses hardest, Intestate Widows Acts were passed in 1873 and in 1874, which extend to Ireland; these Acts have, however, had very partial operation. In 1876, in five district registries, there arose no proceedings, and in the whole of the provincial registries only twenty-eight proceedings. These Acts are intended to enable clerks of the peace, where there are not district registries to help parties in taking out administration. Suppose the Acts to be in full operation; they would only extend the places where wills could be proved, from eleven to forty places. The least localization that would really meet what is wanted, would be a localization to all the towns where county court judges sit for civil business—about 150 in number. This extent of localization could be effected by employing 120 clerks of petty sessions under the Intestate Widows Acts.

The Acts affecting Ireland which are so inoperative are very inferior to the concurrent and subsequent Scotch Acts (36 & 37 Vic. c. 52, and 38 & 39 Vic. c. 27). (1) The Scotch Acts provided cheap proceedings for property up to £150. In Ireland, as in

England, the limit is £100. (2) The Scotch Acts extend to wills. The Irish and English are limited to intestacies. (3) The Scotch Acts prescribe the course to be pursued, and supply the appropriate forms. (4) The Scotch Acts limit the cases by value only. The Irish and English, adopting a lower limit of value, excludes from the benefit of the reform those who reside within three miles of the Probate Registry Office.

The stringency of the Irish Probate Court rules, again, checks cases under these Acts. They prohibit proceedings before the clerk of the peace, if the person applying happens to attend with professional aid or assistance, or if a professional or other agent appears in the matter, or if an application has necessarily to be made to the court in respect of the case, or when papers appear verified otherwise than before the clerk of the peace, or *in his office* before a commissioner of the Court of Probate. Here we have the principle conceded, that for wills and intestacies of £150 and under, there ought to be cheapness and more local facilities for proving wills and taking out administrations. Of the two methods sanctioned—the Scotch and the English—the one least favourable to the poor is extended to Ireland, and the concession of Parliament is further impeded by technical rules and want of organisation.

Thus, while we have 600 petty sessions clerks in the service of the state, ready for any cheap local detail work, they are wholly unused. In England steps have been taken to secure legal qualification in petty sessions clerks, under the Justices Clerks Act of 1876, but that Act has not been extended to Ireland. Here, then, we have the boon of legalised tenant-right, which was conferred by Parliament in 1870, marred in its operation in 1878 by a delay in adopting the latest Scotch and English models in organising the staff and jurisdiction of local courts, though Parliament has, by the Act of 1870, brought the affairs of small holders of land within the domain of law. What could be thought of the post-office department if it neglected to use railways for carrying letters, or telegraphs for sending messages? Is there not an equally strong obligation to have all legal departments improved according to the latest and best models?

Facility of transactions in Bankruptcy or Insolvency.

Under the tenant-right usages, upon the ejectment of a tenant for non-payment of rent, there was a local distribution of the value that the tenant-right sold for amongst creditors, making some provision for the tenant under the "live and let live" element of tenant-right. The effect of legalising tenant-right was to substitute a sheriff's sale or proceeding in bankruptcy for local jurisdiction in the landlord's office. Here, again, there is a similar grievance. In England the bankruptcy jurisdiction is localized in 131 county courts. The bankruptcy jurisdiction in Scotland is entirely local: Out of 382 cases in 1874, 296 were adjudged by the sheriffs or county judges: the 86 cases awarded by the court of session, or supreme court, were all remitted to sheriffs. The key to this solution in Scotland is the office of sub-sheriff being permanent, and consolidated with the county offices: the local court is thus strengthened for administrative purposes. This

reform was recommended for Ireland fifty years ago by a royal commission appointed in the administration of Lord Liverpool, and which reported under the administration of the Duke of Wellington.

In Ireland, in the recent reforms, the office of sub-sheriff and of sheriff-bailiff is still unreformed. The only bankruptcy jurisdiction proposed is local bankruptcy in Cork, Belfast, and Londonderry—in analogy to the solution proposed for England so far back as 1836, or forty years ago, while the later reforms of conceding county court jurisdiction in bankruptcy, passed in 1861, is not yet extended to Ireland, after the lapse of seventeen years.

Compensation for improvements.

This, so far as agricultural and pastoral holdings are concerned, has been conceded in the most complete manner; but for village holdings, and holdings in towns, very imperfect attempts have been made to protect improvements in human habitations against confiscation, from defects in title: though there are analogies in the Scotch law as to ruined houses in the royal burghs in Scotland, which afford a complete solution of the defect.

The Artizans and Labourers Dwellings Acts admit the necessity of some change in the law; and from these, and the law as to improvements in agricultural holdings, a complete reform might be easily devised. This urgent reform, on which the comfort of the labouring classes so largely rests, is still unaccomplished. The inhabitants in towns and villages, or non-agricultural holdings, form from a third to a fourth of the population.

Compensation for change of Tenancy.

The policy of this part of the Land Act is to check any undue pressure to produce a reduction in population. The logical consequence of this is to reverse the policy on which electoral division rating had been introduced in Ireland in 1838, and extended in 1849. The English Poor-law reformers of 1834 recommended union rating, and it was introduced in the Irish Poor-law Bill of 1838; but in its passage through Parliament electoral division rating was substituted. Union rating was carried for England in 1865. The areas of charge there are now 647 in number, giving an average population of 35,000 for each.

In 1867 Lord Cranborne carried the principles of a common fund for certain charges in the London Metropolitan district. This was extended by the subsequent government, in 1870, to all paupers in London workhouses above sixteen years of age. All London, with its 3,254,000 inhabitants, is thus for large purposes one area of charge. The average population of an Irish electoral division is about two-thousandth part of this, or 1,600 persons. The number of unions in England are 647; this would give for the Irish population 143 areas of charge; instead of this there are 3,438 electoral divisions.

In 1876 a great step was taken towards union rating in Ireland, by the provision that where the average union rating for union charges does not exceed fourpence, the electoral division charges cannot exceed sixpence; and where the average union rate is higher, he electoral division rating can never exceed the union average by

more than a half. The Land Act of 1870 is in accordance with the union rating policy adopted in England in 1865, and with the extension of that policy in London in 1867 and 1870. Under these circumstances a case is made out for asking for similar progressive legislation in Ireland, and to have the principle of union rating, partially sanctioned in Ireland in 1876, carried out to the full extent it has been adopted in England, so as to terminate the extremely minute area of charge in Ireland, and give Ireland the full benefit of the great reform of union rating, which, initiated by the English poor-law reformers of 1834, was so completely recognised by Parliament for England in the very year in which the Land Act was passed for Ireland.

Live and let live tenant-right and valuation on scales of prices.

The meaning of "live and let live" tenant-right is a recognition of the friendly society principle in tenant-right, under which some provision is made for an out-going tenant when broken down by age or poverty. In like manner one member of a family succeeding to a farm is expected to provide for any of the members who are helpless. As "live and let live" tenant-right means a letting that takes this element into account, and as this element has a marked tendency to reduce poor-rates (the poor-rates in Ulster being in 1876 only 8¾d. in £1, as compared with 1s. 6d. in Munster), it would appear just that valuation for local taxation should be guided by actual letting, in which "live and let live" tenant-right was recognised. The English principle of valuation according to rent fits in with "live and let live" tenant-right. The old Irish principle of valuation according to scales of prices of agricultural produce has a tendency to conflict with it, and to retard its cordial recognition where it exists, and the devising of adequate substitutes for it where it does not exist, like the compensation of disturbance clauses of the Land Act.

The adoption of a uniform basis of valuation for the purposes of taxation throughout the United Kingdom, besides its natural justness and equity, and its importance as a recognition of the principle of maximum identical legislation, with a view to the countries being cordially united, has, it appears, the additional advantage of smoothing the working of the principles conceded by Parliament as to land in 1870.

Simplification of the Law connected with Land.

The British government has to deal in India with the most eastern branch of the Aryan races, and in Ireland with the descendants of what was, before the discovery of America, the most western branch of the race.

In India, for the contentment and good government of the eastern Aryans, the Anglo-Indian law has been codified and simplified. We have had read at our Statistical Society in Dublin a very able prize essay by Mr. Francis Nolan, showing how easily the plan which has succeeded in India might be applied to Anglo-Irish law. In no branch of law is it more important that a simplification should take place than in the law relating to land; the complication which is burdensome to the rich is oppressive to the poor.

The reform of 1860, substituting contract for tenure in the relation of landlord and tenant, and the Act of 1870 recognising tenant-right, reversing the presumption as to improvements and favouring small ownerships; the legislation of 1877, giving a preference to equitable over legal rules, and favouring compensation and restraint in lieu of forfeiture; have effected such large changes, that the whole law as to land requires to be reviewed with a view to its simplification.

I have in other papers shown the importance of simplifying the law as to transfer of land, and of reconsidering the law of succession to suit not only small proprietors, but to suit what for years to come, if not always, will be a much larger class—those holding under tenants' interests. Now the more the question is examined, the more it will appear that for true simplicity in the law there must be a large and truly scientific investigation of how to really accommodate the poor in their legal dealings with land and with one another.

The reforms required are two-fold—partly in the structure of the law, and partly in the organisation of tribunals and official staffs. For the latter, the idea of the Judicature Commission is the true one —that all tribunals, from the highest to the lowest, should be part of one system, and all legal offices, in like manner, part of one organised legal service—the officers giving their entire time to the public, paid by salary and not by fees, so that no private or official interests should stand in the way of the adoption of the simplest and most convenient arrangement.

Summary of Conclusions.

The effect of the Land Act of 1870, in recognising tenant-right and the property of agricultural tenants in their improvements, has been to bring within the domain of law property worth some millions of money belonging to several hundreds of thousands of people that before, owing to its want of recognition, required no legal machinery for its management and disposal. If this change, as in every other case of concessions made by Parliament, is to produce contentment, and lead to good government, it should be promptly and cordially accepted in all its consequences; and above all the legal and official arrangements should be as completely and as effectually as possible organised, so that the parties intended to be benefited may really get the benefit conferred on them by Parliament. Again, when English or Scotch institutions are extended to Ireland, the latest and most improved form which is adopted in either of the sister countries is the one that should be extended.

The suggestions I have ventured to make all fall within these principles:—

(1) That the eleven district registrars of the Court of Probate should be consolidated with the county officers, as under a recent reform the commissaries have been consolidated with sheriff's officers in Scotland.

(2) That the office of sub-sheriff should, on the Scotch model, be made permanent, and consolidated with the county officers.

(3) That the entire jurisdiction in bankruptcy should be entrusted either directly or by remission to the local courts, as in Scotland.

(4) That to enable poor people to prove their wills, and take out administration as cheaply and as locally as possible, the recent Scotch Acts for this purpose should be followed.

(5) That taking the 150 towns in which County Court Judges sit, as the established convenient limit for exercise of local administrative jurisdiction, the petty sessions clerks of these towns should be the officers to carry out the cheap local proof of wills.

(6) That to make the petty sessions clerks in these towns suitable for this and other duties that would devolve on them as subordinate officers of justice, the principle of the English Justices' Clerk's Act, 1877, should be extended to Ireland.

(7) That the great principle of union rating, carried for England in 1865, and extended in principle to the whole of London in 1867 and 1870, should be followed in Ireland—the commencement made in 1876 being completed by the full adoption of the English system.

(8) That this reform would diminish the stimulus to interfere with the distribution of population produced by the 3,438 electoral divisions in Ireland, with an average population of 1,600, as compared with the 35,000 average population of the English area of charge.

(9) That the English principle of valuation for taxation according to letting value should be substituted for the old Irish principle, still retained, of valuing according to scales of prices of agricultural produce. That the Irish principle conflicts with live and let live tenant-right.

(10) That the adoption of a uniform basis of valuation for the purposes of taxation throughout the United Kingdom, besides its natural justice and equity, is of importance as a recognition as far as possible of the principle of maximum identical legislation.

(11) That the principle of simplifying and codifying the law which has in recent years been so successfully carried out in India, should be applied to Irish law, and especially to the whole of the laws relating to land in Ireland.

VIII.—*On the importance of raising Ireland to the level of England and Scotland in the matters of Industrial Schools and Compulsory Education.* By W. Neilson Hancock, LL.D.

THE principle of compulsory education has a two-fold aspect. (1) It secures the education of the neglected and the helpless, and provides an organised means by which their education shall be provided and paid for. (2) When non-attendance at school arises from parental neglect, then the state steps in to enforce the performance of parental duty. (3) The enforcement of the parental obligation logically leads to a further benefit—the utmost tolerance in the organization of schools, because the object which the state proposes to itself is not