to the knowledge gained by the scientific investigator, who might possibly be forced to the opinion that the great extension of poor-relief in this kingdom has been necessitated by the continued violation for centuries of the economic laws of free-trade in goods, land, and labour, as well as by the neglect of the law of savingness, which fault all are ready to condemn—especially when eager to cast blame on the poor, who are too often judged or measured by a standard of enlightenment, which is not always enforced with equal sense of justice when considering the faults and follies of the better educated classes.

If the present depressed state of affairs continue much longer we must prepare ourselves to fight over again free-trade against protection. The reciprocity ideas now so prevalent are merely a form of protection, and economists must be ready to combat such fallacies most vigorously, and to assert and to prove the erroneous weakness of treaties of commerce; or boldly and honestly to confess that we have been wrong, and that experience does not sustain theory. There can be no compromise as to the law. If freedom be right the treaties of commerce are mere concessions to erring public opinion; if the latter be right, the amount of protection can only be decided by the predominating influence of different interests on our rulers of the day.

VII.—*Observations on the Intestate Widows Acts, Ireland.* By George H. Smith, B.L., District Registrar, Probate Division, Armagh.

[Read, 6th May, 1879.]

SURPRISE has frequently been expressed at the fact that so little practical result has followed from the passing of the Acts of 36 & 37 Vic. c. 52, and 38 & 39 Vic. c. 27, and that the persons for whose benefit these enactments were introduced and sanctioned have to a very slight extent indeed availed themselves of their provisions. The main purpose sought to be accomplished by these measures—popularly known as the "Intestate Widows Acts"—was to enable the property of individuals in the humblest rank to be placed in train for distribution, at an expense bearing some relation to the financial condition of the parties concerned, and to the extent of the assets to be dealt with; but unhappily this commendable intention has been frustrated by the defects of the provisions of the Acts themselves. As a consequence, the number of cases annually dealt with under these statutes throughout Ireland has never exceeded 26 out of a total of about 400, which, except for the complications involved in the procedure, might have been carried out at small cost to needy and deserving litigants.

Those who introduced these measures (in 1873 and 1875) were no wiser in their generation than the authorities who instituted the Judgment Mortgage Act of 1850, for all alike deemed it unnecessary

in any way to take counsel with experienced officials before attempting to attach on to existing procedure newly devised pieces of judicial mechanism. Of the Act of 1850, Mr. Commissioner Macan, in a reported case (*In re Ryan*, 3 Ir. Chan. p. 42) said:—

> "It is due to the court to state publicly that this Act was introduced without any communication with Mr. Commissioner Plunket or myself, and I should probably have remained in complete ignorance of this injurious legislation until the present question was raised, were it not for the habit of reading the Acts passed each session, immediately on their being pulished."

And with equal truth it has been said that the Intestate Widows Acts were passed "without any concert with the departments whose official heads and staff would be best qualified to offer an opinion on their necessity or practicability."

This, however, is a small objection to be urged, if in reality such Acts were needed, or their provisions were capable of being satisfactorily worked. I submit, however, that the whole purpose for which they were passed could have been much more simply and effectually accomplished by procedure of a wholly different character. That purpose was twofold—(1) the reduction to a merely nominal sum of the expense of administration in all cases within the class dealt with; and (2) the providing of more easy means by which such cases could be carried through. The former intention could have been effectually accomplished by a few lines of a General Order providing that in the class of cases dealt with by the Acts the entire fees to be charged in reference to each grant should not exceed a maximum sum of 6s. 6d. Rightly to appreciate my view on the latter branch, a word must be said about the procedure in such cases under the still existing Probate laws.

It is only since 1858 that the practice in the Probate department has been thrown open to the entire body of the solicitor profession; but as yet such practice remains bound down by the special and technical rules which regulated its conduct under the old ecclesiastical tribunals. While, therefore, from 1858 to the present time, papers to lead to grants in the department have been largely dealt with by the general body of practitioners, who by experience have gained an aptitude in their correct preparation, it is undeniable that for their due completion considerable care and attention are needed, even from gentlemen accustomed to deal daily with purely legal documents. It is equally undeniable that in no class of cases in the Probate department are this care and attention more needed than in that of applications for intestacy grants, in which the nicest questions of kinship not unfrequently arise. Since 1858, under the Probate Act and Rules, any person desirous of obtaining a legal representation to a party dying within the limits of a District Registry—whether such party did or did not make a will—was empowered to apply personally at such District Registry, and on payment of a small extra amount of fees have all the requisite papers prepared and perfected for him by the District Registrar, without the intervention of any professional agent whatever. This provision, though oftentimes utilized, never was availed of to the extent which had been anticipated, simply because the additional fees on such cases made the

procedure very little cheaper to the applicant than if he employed a solicitor to transact the business; but whenever the arrangement was availed of, the papers were prepared by officials duly qualified to deal with them, and well acquainted with all the technical matters essential to exist in them to constitute them valid.

Now the new Acts not only reduce the fees on all grants applied for under their provisions—which is commendable enough though not needing the dignity of legislation for its adoption—but also draws a charmed circle round the office of District Registrar, and provides that for any applicant living *within* three miles from that place the old state of things must still exist, while for any applicant residing *beyond* that distance from a registry, the provisions of these Acts are operative. Why a widow of a poor man dying intestate with £95, who lives in or about Belfast, or Derry, or Cork, should be obliged to pay court fees to the amount of about £2 10s. or £3 for an administration grant, while her friend resident beyond three miles from these district centres can obtain it for 13s., seems to be the most arbitrary and unjust arrangement that could be devised; and yet this is the first absurdity which strikes the reader of these Acts of Parliament.

The next, however, is that by one sweep of the legislative pen the preparation of essentially technical documents connected with such applications for parties resident beyond three miles from a district, has by these Acts been transferred to a body of officials who previously to 1873 had as a class no knowledge whatever of or acquaintanceship with Probate law or its requirements; and who, to do them justice, had never sought to have such strange duties imposed upon them. Those officials are the Registrars of the Civil Bill (now County) Courts, who were, generally speaking, Deputy Clerks of the Peace, and in very many instances were unprofessional gentlemen. With a munificence characterizing the Treasury regulations of recent years, the Acts, and schedule of fees thereunder, provide that a Civil Bill Registrar performing this, to him, novel duty, shall receive as remuneration for filling up, and having duly verified a lot of technical papers, an amount varying from a minimum sum of 2s. 6d. to a maximum sum of 6s. 6d. To derive the benefit provided by the Acts, so far as reduction of fees is concerned, the applicant must attend personally at the office of the clerk of the peace, which in many cases may be ten, twenty, or even thirty miles distant from his own residence; and then the risk is run of the papers not being correctly filled according to technical requirements, and as a consequence the proceedings become both expensive and unsatisfactory. Clerks of the peace are naturally not in love with the enactments or the duties connected with them imposed upon them; district officials are not enamoured of a class of cases which involves their dealing with defectively prepared papers; and applicants do not realize a pecuniary benefit which can only be reached through long and toilsome journeys to officials who are not adepts in the work to be transacted.

No wonder, then, that these Acts are practically dead letters on the statute book. They are so, not because of the stringency of the Probate Court Rules which are formed strictly upon the lines of the

Acts themselves—not because of the obstructions of Probate officials, the vast majority of whom are paid by salary, and have no personal interest in driving away those small fee cases—not because of the objections of clerks of the peace, who have on the whole fairly tried to do their best in the directions laid down for them; but because the legislature has adopted an unworkable system for attaining an end useful and desirable in itself.

Moreover, parents or *minor* children (or adult nephews, nieces, or grand-children) of a deceased intestate cannot by any process avail themselves of the benefit of the Acts; nor can creditors in any way call their provisions in aid: and, with a strange perversity in the legislative mind, while those Acts (applicable to both England and Ireland) make £100 the limit of assets to be dealt with under them, provided it belong to an *intestate* deceased, the Acts for Scotland (38 and 39 Vict. c. 41, and 39 & 40 Vict. c. 24) embrace will as well as intestacy cases and cover assets to the extent of £150.

Can the boon of cheapness be retained, and a means be devised for satisfactorily securing it for the poor class of applicants really contemplated by the Acts? The answer is to my mind very simple indeed, and it is this:—

(1) Repeal so much of these Acts as draws any line of distinction between residents in any part of a district, and so much of them as throws upon County Court Registrars any duty whatever connected with the preparation of papers to lead to these grants.

(2) Provide that every petty sessions clerk shall be appointed an officer before whom any applicant for such a grant may attend to afford replies to certain prescribed and printed questions (such as those compiled by Mr. Galloway and detailed in *The Irish Law Times*, for 1877), and by whom such information, when so obtained, shall be transmitted to the Probate Registrar of the district.

(3) Provide that all the requisite papers shall, from such information, be prepared by the Probate Registrar, and transmitted back to the petty sessions clerk, who shall then be empowered to swear the parties to the papers so forwarded, and return them to the registrar duly perfected.

(4) Give the petty sessions clerk so acting a moiety of the present regulated fees as compensation for his trouble, and let him be the party to deliver the issued grant to the applicant.

(5) Make the Acts available by every one who under existing rules could otherwise apply for grants of the property of deceased intestates.

These changes would secure the boon of cheapness for the applicant, afford him or her a place for making the application easily accessible without cost of travel, secure that the papers were properly and correctly filled, and give some slight pecuniary benefit to a body of officials who would appreciate the boon, and find the duty perfectly within their powers satisfactorily to perform.