Alabama, Bk. of the State.	This bank is winding up.
Com. Bank, Cincinnati.	Refuse all notes dated previous to 1845.
Franklin Bk. of Columbus.	The genuine notes of the old bank of this name have been almost all redeemed.
Ohio State Stock Banks.	The 10 dollar plate used by all these banks has been well counterfeited. Refuse all notes of this plate; vignette, female seated, with fasces and scales in left hand, and Mercury's wand in right; on right, a steamboat; on left, bridge, rail cars, steamboat, etc.
Bank of Marion, Ohio.	Notes from the genuine plate, with counterfeit signatures, are said to be in circulation.
Indiana.	Refuse all notes that are not signed by the "*Registrar and Auditor of State*;" as they are the only ones that have securities deposited.
State Bank of Indiana.	This bank issues or pays no notes except at its branches.
Mississippi, Arkansas, Florida, Iowa, Minnesota, and Texas.	The notes of Banks in these States are of doubtful and only nominal value.
Commercial Bk., Canada.	Beware of notes purporting to emanate from the Foreign and Domestic Exchange Company, New York.

V.—*On the Criminal Jurisdiction of Courts of Quarter Sessions in Ireland.*—By P. J. Mc Kenna, Esq.

[Read 17th March, 1856.]

THERE is nothing so zealously guarded by the constitution of these realms as the liberty of the subject. It is of the spirit of that constitution that no man shall be imprisoned without sufficient legal cause; and in conducting inquiries into the guilt of accused parties, our courts have ever shown a rigid impartiality, merciful towards the accused, and temperate as well as stern and just in imposing punishment when guilt has been ascertained. It is considered, and rightly so, the duty of the state to provide tribunals for ascertaining and settling the rights of individuals, for the protection and assurance of property and life. Great expense to the state and great inconvenience to individuals are borne without a murmur, because all recognise the necessity of having as authoritative, as impartial and as satisfactory a tribunal as human wisdom and ingenuity can devise, in order to preserve the well-being, the very existence of society. There is, however, an anomaly in our present system, at variance with all the other parts, which must excite wonder at having been so long overlooked—the extensive jurisdiction of Courts of Quarter Sessions in criminal cases, and which needs but to be brought under consideration to have its defects recognized.

It may be broadly stated that the most satisfactory tribunal available should investigate criminal charges as well as civil rights. This rule admits but of one exception grounded on convenience, that, when the charge is of a trifling nature, or the civil question in dispute of but little importance either as regards money or character, a less expensive and more summary method of disposing

of such cases than the superior courts afford should be adopted, by sending them to inferior tribunals. In every question of this kind, however, the burthen of proof lies upon those who seek to take from the superior tribunal any of its jurisdiction, or rather upon those who seek to give a jurisdiction to minor courts. I shall not, however, rest my case there, but mean to go further, and assuming the initiative to show that in the inferior courts there are classes of cases investigated, which from their gravity and the seriousness of the punishment with which they are visited demand the most satisfactory tribunal—namely, that of the judges of the land; and that those Courts of Quarter Sessions, as at present constituted, are open to the most serious objections, both as to competency and impartiality.

One of the evils consequent on this jurisdiction of Courts of Quarter Sessions, and by no means the most serious, has been mentioned by Mr. Hamilton Smythe in his book on "the Duties of Justices of the Peace."

"While in Ireland, although there are lawyers on the bench, the non-attendance of barristers at sessions, where so much of the judicial business of the country is now transacted, makes it both inconvenient to prosecutors, unfair to the accused, and highly unsatisfactory to the character of the administration of the public justice of the country, to try persons, when they cannot exercise the right allowed them by law, of making full defence by counsel, unless at an expense beyond the means of any but the higher classes of society. The attornies practising at sessions form as intelligent and experienced a class as any in the country: but the multiplicity of their avocations and their very nature necessarily disable them from performing the duty of defending prisoners in a very satisfactory manner."

Although there is an absence of information as to the number and class of cases actually tried at Quarter Sessions, we may obtain sufficient information on the subject by looking at the powers actually entrusted to them; and by the recommendations not to try particular excepted cases, we may see what the rule is. The authority of such courts is derived from the commission issued under the great seal, which empowers the magistrate to whom it is directed to act. By their commission as justices of the peace the magistrates duly assembled at Quarter Sessions are authorized to inquire into all treasons,* murders, manslaughters, burnings, unlawful assemblies, felonies, robberies, &c.; all persons lying in wait to maim or kill, of all offenders attempting to use weights or measures, and of a number of other cases, as witchcraft and other offences not now known. Such is the extent of their actual jurisdiction, which, however, is limited in practice by directions from the Lord Lieutenant, which, though not legally bound to pay attention to,

* In the usual form of the commission of the peace in England (3 Burn, 541) treason is not included among the offences into which the justices at their sessions are empowered to inquire, but this apparent distinction seems removed by a subsequent provision in the Irish, which excepts treason from those offences which the justices are assigned to hear and determine; and in fact the sessions never decide upon offences of such moment, or even upon capital felonies.

magistrates are in the habit of obeying. "By instructions transmitted by circular to the magistrates, by command of the Lord Lieutenant, and in which the propriety of returning all cases, whether the parties be held in custody or admitted to bail at the first competent tribunal, is particularly enforced, it is further recommended to magistrates to return to trial at Quarter Session, if they shall occur before the assizes, a class of felonies which it had not heretofore been the practice to return for trial to the sessions, viz. all felonies, though punishable with transportation for a term longer than seven years (which had been the extreme punishment for petty or simple larceny), if punishable with any term of transportation less than transportation for life. This recommendation brings within the ordinary practice of the Quarter Sessions in Ireland the trial of a large class of offences which it had been formerly the practice to reserve for trial at the assizes, more especially as by the progressive mitigation of our criminal code the scale of punishment of a large number of crimes, which had been heretofore punishable with transportation for life, or even capitally, has been reduced so as to subject them to a punishment under transportation for life."*

Having thus ascertained that those courts have so wide a jurisdiction, and one in practice so extensively exercised, my objection is, that although for trifling cases, for the sake of convenience and expedition, they may suffice, yet when such grave and serious charges come before them, and such immense power and discretion are vested in them, open as they seem to me to be to the charges of partiality and carelessness, they are, as regards those serious cases, an unsatisfactory and improper tribunal.

Let us see now how the constitution of this court involves its partiality. When the word partiality is used, it is not meant as an imputation; because the partiality is partly insensible, and partly from not rightly understanding the necessity for an entire absence of every consideration except that of the evidence adduced in court. Every prisoner put forward for his trial at Quarter Sessions, is known to some one or more of the court, perhaps a tenant to some one of them. He is a man of either good or bad character, and may have been undeservedly represented to some one or more of the gentry in his neighbourhood as being a far different description of person from what he really is. If in the opinion of some of the assembled magistrates he is an orderly well-conducted individual, it will be very hard to convict him; while, on the other hand, if he be of a wild or troublesome character, half the amount of evidence which will fail to convict in the former case will secure a verdict of guilty against him in the latter. A failure, perhaps, in the first instance, of public justice; in the latter, of justice to the individual. I suggest no unworthy motive as influencing the bench, as the fact that an accused person might be obnoxious to an individual magistrate, who would exert his influence against him both in convicting and punishing; because an objection of that kind would, I am convinced, be indecent as well as unjust, and would aim a blow at a most useful and most excellent institution, that of the magis-

* Nunn and Walsh, Justices of the Peace, p. 440.

tracy of the country. Country gentlemen, however, know nothing of the necessity for controlling their feelings and showing an utter impassiveness in presiding in their court. That impassiveness can only be attained by one who, from long training, is imbued with the identity of the functions of the judge as distinguished from those of the jury. The judge sits to exclude illegal evidence, to conduct in an orderly manner the trial of the case, to take notes of the evidence to which reference may be made, to observe upon that evidence in the spirit of one who discusses a scientific question, to state the law peculiar to the case, and to leave the jury with this assistance to form their own conclusion. An opinion on the case is beyond his duty; or, if hazarded, it is always with the qualification that they are not to let it weigh with them, but to judge for themselves as to the verdict. Now can any one expect a number of country gentlemen, earwigged more or less by dependents, with honest though erroneous aversions, and equally honest and erroneous predilections, to restrain themselves so as to show by no word or look, no gesture or observation, what their opinion is either of the prisoner or his case? True, the Assistant-Barrister presides, conducts the inquiry, and charges the jury; this he does, however, merely as the chairman of the bench who takes precedence of the others, as would one of the chiefs of our superior courts, who, from his superior rank and generally recognized attainments, carries considerable weight with his own court, and is yet possessed of the authority of but an individual member of the court.

Either the practice of our superior courts is wrong, or that of the Court of Quarter Sessions is faulty. The magistrates' court is objectionable, or our criminal code is erroneous in supposing innocence until guilt be established, in fencing round with various stringent rules the admission of evidence, in separating the functions of the judge from those of the juror, in requiring from the judge a perfect freedom from passion, favor, or prejudice, in surrounding him with every possible guard, humanly-speaking, to effect this object. A prisoner at Quarter Sessions is put forward, and some such whispered observations as the following pass on the bench:—"That is a bad boy; he is from my neighbourhood, and I hear very bad accounts of him; in fact he is a positive nuisance, and my bailiff tells me that some saplings of mine that were stolen must have been taken by him. I know myself he is always trespassing." Or, on the other hand:—"That poor fellow is a tenant of mine, a very regular kind of man, and I hear this whole thing is a charge trumped up against him, because he is going to get some land from me, out of which I had to turn a lot of idle ruffians who never would pay a halfpenny of rent." What more natural, what more well-meaning, yet what more objectionable than forming a court of men who will talk thus almost openly? Witnesses are asked questions in a tone and with a manner which would show the jury clearly enough, independent of looks and nods, what was the opinion of his or their worships. The country gentleman is acting from the best motives; he is trying to convict a man whom he believes to be guilty, or to acquit a man whom he thinks innocent; his opinions, however, on the subject of guilt or innocence being formed upon

evidence, not one scrap of which would be legally admissible in a court of law, and which should be put entirely out of consideration. If we consider for a moment the immense influence which the opinion of influential and intelligent men exercises upon ourselves, especially when in doubt, anxious and determined though we may be to arrive at a just conclusion, we may form some idea of the influence upon a jury which may be and is exercised by the magistrates upon the bench. If there be a conviction, the next question is as to the sentence. What punishment is to be inflicted on the criminal? Here, again, and still more manifestly will extraneous influences be brought to bear. Each magistrate has a voice in the matter, and a right to vote if there should be a difference of opinion, a right which he generally exercises. It has seemed proper to the legislature to confide a most extensive, it might almost be said a fearful latitude, as to punishment, to the hands of our criminal tribunals. If any thing requires an entire absence of feeling, of prejudice, of liking or disliking, it is the exercise of this power, which places in the hands of the court what, under ordinary circumstances, would be called an unwarrantable and dangerous confidence, of which no human tribunal is deserving,—transportation at the discretion of the court, from different periods, averaging seven years to that for life; imprisonment for periods ranging from one week to three years together, together with, in many instances, an alternative of imprisonment or transportation for the periods already mentioned: the practical effect of which is, that for the same offence a prisoner may be sentenced to imprisonment for a week, or transportation for life. Is this trust to be confided to a body of men with local prejudices and feelings, and it might be almost said without responsibility, as we have at Quarter Sessions neither of the two great purifiers and conservators of the general administration of the law—a bar, or a press? The 16th & 17th Vic., c. 99, which substitutes periods of penal servitude for all terms of transportation under fourteen years, does not in any way affect this power.

I have already shewn that from the very constitution of these tribunals, they are unsatisfactory, nay, more, objectionable; obnoxious alike to the public justice and the due observance of the law, as well as to the accused, who is not secure of an impartial trial. It may be doubted, therefore, whether I should put forward an argument against the present jurisdiction of these courts, by shewing that the manner in which prosecutions are conducted leads to the defeat of public justice, as that is a matter of detail which might be corrected; and important as beyond all question it is, I may be told that provision can be made for that abuse without touching the present powers of the Court of Quarter Sessions, and that the objection applies only to the practice of the prosecutions in these courts, not to the jurisdiction which they exercise. Although, then, I would point to this evil, rather with a view to its remedy in some way than as immediately concerning the subject of this paper, it strikes me that in one aspect it helps my case. In those minor courts it cannot be expected that trials could be conducted with the same care or regularity as in the Superior Courts, no matter what improvements may be effected in their procedure; and although

it would be desirable, in all cases, to have the most satisfactory and regular trial possible in every case, yet to dash in a careless, slipshod manner through cases of agrarian outrage, of burglary, of shooting at with intent to maim, of rape, of perjury, and the number of most serious cases now tried at Quarter Sessions, is a very different thing from enquiring in the same manner into a drunken row, or linen stripped from a hedge.

With regard, then, to the effectiveness of the prosecutions, it will be necessary to state the manner in which the solicitors who represent the crown at Quarter Sessions are in the habit of conducting their cases. When I say of conducting their cases, I do not mean in the least degree to attribute blame to those gentlemen, as they are only carrying out a practice in which they are merely ministerial. As each case is called on, the informations taken by the magistrates are handed to them, and without any other knowledge of the case, or any previous enquiries, they proceed to examine the witnesses for the crown. It may and does often happen, that material and necessary information, which, if there had been a previous investigation, might be produced, is not forthcoming, and thus the prosecution fails. Magistrates before whom prisoners are brought in the first instance, and who are to put the case in train for investigation, no matter how experienced or competent to discharge their duties, cannot understand those numerous points which require the direction of counsel conversant with criminal law, who have made the subject their study; it would be as reasonable to expect such a knowledge from them as to expect a solicitor to direct proofs in an intricate civil case. In many instances, as in actions on bills of exchange, or for goods sold and delivered, a solicitor might be able to tell his client what it would be necessary for him to prove in order to obtain a verdict; but it would hardly be contended that, therefore, the duty of directing the necessary proofs in every case which passes through his office should be imposed on him. If the case had been sent for trial to the assizes, the indictment would have been prepared by counsel, the crown solicitor would have been informed if there were any difficulties in it, or if there were any defect in the evidence taken before the magistrate which required to be supplied. It would be his duty to go down and examine the witnesses, in order to ascertain whether or not they could supply this deficiency; and if they could not, to find if there were other persons, as is generally the case, who could throw any light on the transaction to be investigated; and, having ascertained this fact, have them in attendance when the case should come on for trial.

Again, magistrates in returning cases for trial may and often do make mistakes as to the offence of which a prisoner has been guilty. If this mistake were made with regard to a case returned to the assizes, little or no harm could ensue, as the crown counsel would have before them the material facts and would thus have the proper indictment prepared against the prisoner. At quarter sessions, however, there is no competent person to remedy the evil. A few instances of the manner in which the interests of public justice may be and are thus prejudiced, would not be out of place here. Some time previous to the last Waterford assizes, a woman

was thrown by her husband into a dry well of considerable depth, and large stones thrown down on her; beyond all question, with a murderous intention. By some happy chance the unfortunate woman escaped with her life, having suffered no mortal injury. The case was investigated before the magistrates, who, acting on some notions which only themselves could understand, returned the man for trial to the approaching quarter sessions, to be tried for a common assault The case came by some means to the ears of the Attorney-General, who most properly directed that the man should be kept for trial for the then approaching (the summer) assizes, and that the proper indictment for wounding with intent to kill should be prepared against the prisoner. The offence was, according to the statute, capital, although not now generally punished with death. The bills were found; the man was put on his trial at the assizes, convicted on the clearest testimony, and sentenced by Mr. Justice Crampton, who tried the case, to transportation for life.

Another example of this is furnished by a case which should have come before the judge of assize in Westmeath, in the spring of 1854, and which resulted in a total failure of justice, as I take it, from the circumstance of its not having been heard of in time by the Attorney General of the day.

A bailiff, or game-keeper in that county, fired at a man who was stealing potatoes, and wounded him slightly. There was not, in point either of law or fact, any reason for justifying the act, as the man was running away trying to escape. The offence is capital, although now seldom if ever visited with the extreme sentence of the law; but, unless there be some very mitigating circumstances, prisoners who have been convicted of such an offence are transported for life. The magistrates before whom the game-keeper was brought looked upon the charge with the eyes of country gentlemen, and thinking it no great harm to fire at a thief, especially as no mortal injury had been done, sent the prisoner for trial at quarter sessions to be tried for a common assault, to which he pleaded guilty, and was sentenced to something like a month's imprisonment.

In referring to these cases, I am not to be taken as vouching for the perfect accuracy of the details, but the general outlines are beyond question correct, and, I believe, very generally known. If, however, an inquiry were made into the subject by the proper authorities, and returns made of the number and class of cases tried at Quarter Sessions, and also of the sentences passed, I have no doubt but that the conclusion at which one now arrives from reasoning upon what we know of the nature and authority of these tribunals, would be established.

The passing of such a measure as that of 5 & 6 Vic., c. 38, would seem, even in the absence of other reasons, to furnish a sufficient cause for limiting the jurisdiction of our Irish Courts of Quarter Sessions. That act, which applies only to England, is entitled, "An Act to define the Jurisdiction of Justices in General and Quarter Sessions of the Peace;" and after reciting that it is desirable to limit and define the jurisdiction of Courts of Quarter Sessions, provides "that neither the Justices of the Peace, etc., nor the Recorder of

any borough, shall try any person for any treason or felony, which, when committed by a person not previously convicted of felony, is punishable by transportation for life; or any of the following, amongst several other offences,—blasphemy, and offences against religion, administering or taking unlawful oaths, perjury and subornation of perjury, forgery, maliciously setting fire to crops, furze, etc., bigamy, and offences against the law of marriage, abduction of women and girls, endeavouring to conceal the birth of a child, offences against bankrupt or insolvent laws, composing libels, etc. stealing or fradulently destroying records or documents relating to proceedings in courts of law or equity, wills, or testamentary papers."

The authority of Courts of Quarter Sessions in both countries, as marked out by the commission of the justices, is almost the same in every respect, and it would be hard to assign a valid, if any reason, why an act which was thought expedient and desirable in England should not be equally desirable here. It may be said, that it is not customary in England to have barristers corresponding to our assistant-barristers for counties presiding at quarter sessions in England, and that, therefore, there is not the same reason for such a provision in this country. Possibly, there may not be equally cogent reasons; but, as I have already said, assistant-barristers are but the chairmen of the magistrates assembled at quarter sessions, and are but individual members of a court not likely to be in any way awed, much less controlled, by their legal heads; and the difference between those courts in the sister-countries, although affording grounds for drawing a distinction, can hardly afford a valid reason for not passing some similar measure to limit the jurisdiction of Courts of Quarter Sessions in Ireland. It must not be overlooked either that the above act controls the jurisdiction, not alone of Courts of Quarter Sessions, but of Recorders' and other inferior courts, and that the policy as well as effect of that act was to preserve for the superior courts every grave and serious criminal charge, and to leave to the inferior courts only such cases as public convenience and the nature of the tribunal would warrant in leaving to them.

As I have already observed, an absence of information on this subject enables me to discuss it but imperfectly. But from what little we do know of the present system, and from the conclusions at which we are enabled to arrive from the constitution of these courts, and the manner in which prosecutions are conducted in them, can any doubt exist that inquiry would shew still more to be dissatisfied with, and that an amendment or modification of some kind is required, both in justice to individuals and to the community? Some would say, remove the magistrates entirely from the bench, and leave the assistant-barrister as a sole judge. There are many objections which might be urged to this course, although I should consider it an improvement on the present system. Others would suggest modes by which the interests of public justice would be better cared than at present, by having better paid officials, who should bestow more time and attention on the effective discharge of their duties as sessional crown solicitors. All these measures, desirable though they may be, appear to me however to fail in satisfying that

demand which our institutions and public opinion require, that until and unless a valid reason for the exception be given, the most satisfactory tribunal should dispose of every case. There can be no suggestion that the judges of assize could not, consistently with the discharge of their other duties, dispose of the business which might thus be thrown on them, as they are detained as long in trying the most paltry cases as they would be in the investigation of those more serious charges which are at present disposed of at quarter sessions. The time at which the offence is committed is now, I may say, the only test as to whether it should be tried at quarter sessions or assizes; and the judge of assize has, with a very slight exception, exactly the same class of cases, both grave and trifling, as the assistant-barrister. If the paltry cases were sent to the Court of Quarter Sessions, and the serious charges reserved for the assizes, it would be found that there would be very little difference in the length of time required by either of these courts in transacting its business.

Although I do not feel myself at liberty to give the opinions of several assistant-barristers with whom I have conversed on the subject, I may state this much, that they generally agreed that there was much that was objectionable in the present state of those courts as regards public prosecutions; although, as to the mode in which the remedy should be applied, there may be some difference of opinion. My simple proposition is, that we should follow the course pointed out to us by legislation in England, and limit the jurisdiction of these courts. Minor courts such as these cannot be converted into superior courts, either in their forms of procedure or their practice. It would be a departure from their object to force on such an approximation. They have their duties as have the superior courts, and it is not by approximating these minor courts to the superior courts that the object is to be effected, but by sending to the superior courts those classes of cases which, from their gravity and importance, demand the most satisfactory investigation. Let each do its own proper work, and transact that class of business for which it was intended, and for which it is competent.

Much as may be urged against the jurisdiction of these courts of of Quarter Sessions, and the practice of sending to them for trial almost every case that presents itself, I can only imagine and have heard of but one objection to holding over cases for the assizes; namely, that a gross injustice would be done to accused persons by detaining them in prison, it might be for several months, when the Court of Quarter Sessions might sit in the same number of weeks and dispose of their cases. If this were to be the effect, I confess I should feel much difficulty as to the course to be adopted, as I feel fully impressed with the weight of this remark. I find, however, on making inquiry, that in nine cases out of ten, even the humblest people are able to procure bail for their appearance; and I have been assured by a gentleman who, from his official situation, has as much experience and means of information as perhaps any man in this country, that whether before the assistant-barrister or the judge of assize, in the greater number of the cases called on for trial, the prisoners have been standing out on bail, and that in the graver

cases, those which I would seek to have reserved for the judge of assize, in eight cases out of ten the accused have been able to procure the usual necessary bail required.

Although, from the absence of statistics, and accurate information upon this subject, not to speak of my own short-comings, I am unable to do more than glance at it, I shall not have failed of accomplishing my object, if, by attracting to it public attention, I shall provoke enquiry and discussion; and if I am right in my views, I have little fear but that, with the temper of the present day, considerate as it is of all that concerns the humbler classes, the evil will be remedied. It would, perhaps, be somewhat premature to offer suggestions as to the mode by which the present objectionable system should be altered. The precedent, however, offered by by the act already referred to in force in England, would seem to present a very simple and practical means of effecting a change.

VI.—*On the General Principles of Taxation, as illustrating the Advantages of a perfect Income Tax.* By W. Neilson Hancock, LL.D.

[Read, 18th November, 1850.]*

GENTLEMEN,

The duties of government, as enumerated by Adam Smith, are four in number:—

1st—To guard against foreign aggression.

2nd—To secure against internal fraud or violence.

3rd—To maintain public institutions which private individuals cannot support with profit.

4th—To make all the subjects of the state contribute their fair share towards the necessary expenses of government, by the payment of taxes.

Now, in this paper, I propose to direct your attention to the last duty, or in other words, to explain the general principles of taxation.† There are few branches of political economy more interesting in themselves, or of more importance at the present time, than the subject of taxation, and yet there is scarcely any on which greater errors are prevalent.

I shall, in the first instance, direct your attention to some of those errors, involving general principles; which, in fact, arise from a wrong way of looking at the subject, and which are, conse-

* Published by the Society in 1850, and now reprinted at the author's expense.

† There are very few treatises on the general principles of taxation. The following are the principal English authorities on the subject:—Smith's Wealth of Nations, Book V.; Ricardo's Principles of Political Economy, chapters VII. to XVI. inclusive; Sir Henry Parnell (afterwards Lord Congleton) on Financial Reform; R. J. M'Culloch on the Principles and Practical Influence of Taxation; J. Stuart Mill's Principles of Political Economy, Book V.; and Professor D. C. Heron's Three Lectures on Taxation.