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IRISH

GRAND JURY LAW REFORM.

"QUIETA NON MOVERE.

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We are unable to state accurately how long the present machinery for the application of the County Cess in Ireland has existed, but it may be assumed that it is of considerably older date than that at which our present law fixes it. The very term County Cess would also appear to have a broader signification than in England, as it includes every possible item of taxation necessary to meet the expenditure incurred by this country for county purposes. But whatever the actual age of the Irish Grand Jury System, our earliest text-book for its working is the Act of William IV., known as the Irish Grand Jury Act; and it is some of the attempts which have been made in Parliament to destroy or amend the provisions of that instrument, which it is proposed to discuss in the present paper. The remarks offered will bear mainly upon the degree of reform that is desirable. The necessity for reform of some nature or other cannot be denied.

Three principal attempts have been made during the last six years to deal with this question.

Firstly, Lord Hartington's Bill of 1872; secondly, a Bill introduced by Mr. Kavanagh, M.P., in 1875, and read a first time in the House of Commons; and thirdly, the Bill of this year, which was framed by the late Chief Secretary for Ireland. Of these the two latter may be termed fair attempts to deal with the few defects in the existing system, though one of them is far less dangerous prospectively, and more likely to settle the question finally than the other. Lord Hartington's Bill, on the other hand, adopts the destructive method, and threatens to fell the old structure at a blow—substituting a modern erection with all sorts of modern appliances, which carry with them that uncertainty of success which must accompany such an experiment. But it is more than an uncertainty of success, it is a certainty of failure, one way or other, either in Working or in Results. Whatever may be the merits of a County Board for the purposes of an English county, that body *pûr et simple* would be most ill adapted for such a purpose in Ireland. This is the conviction of the large majority of Irish proprietors, both as regards the effect upon the proper administration of the funds under its control, and the rapidity and accuracy of the discharge of its public functions. The difference between the English yeoman and the Irish tenant-farmer, as regards their social and educational status, is a very wide one, and is not sufficiently appreciated by the English legislative mind; but it is worth

its while to study it before forcing upon the people privileges and duties for which their training does not fit them, and which, in all probability, they would rather be without. Some people hold that the establishment of County Boards would be the death-cry of jobbing and such practices, "a charge," they say, "or at least a suspicion to which the present system may be open." But experience of similarly constituted assemblies leads us to think that it would most probably have an opposite tendency; and as to the Grand Juries, a reference to the evidence given before the Committee of 1868 will show the true value of such charges against them. The fact is, that even if there were a disposition in that direction, the constitution of the present system almost precludes the possibility of such practices—and were its few faults amended, the danger, such as it is, of their occurrence would cease to exist.

And what are the faults, we mean the radical faults, of the system, apart from any changes that may be advisable in matters of detail? They are very few, and it would overtask the ingenuity of the most hostile critic to discover any more. There are two in the present mode of constituting the Grand Jury; one, that the qualification of a Grand Juror is very vaguely and indistinctly laid down; the second, that under the present conditions by which the Sheriff is bound to summon Grand Jurors, there is no certainty that each

several Barony will be represented at the Assizes. The third fault is found in the presentment sessions. It is impossible, under the present system of selecting associated Cess-payers, that these bodies should be properly representative. We may, however, pass over this defect, as it is dealt with in the Chief Secretary's Bill of this year, and in that portion of the measure we fully concur.

Turning therefore to the two first-named defects, Mr. Kavanagh's Bill shows how they can be fully and satisfactorily dealt with, by the simple statement in any amending measure of some clearly defined qualification for Grand Jurors, and by binding the Sheriff, when summoning the Grand Jury, not merely to place one name for each barony first on his list, as is the present practice, but to take the County barony by barony, and call the list of qualified persons in each until such barony is represented. In this manner properly qualified persons and a proper representation would be secured.

Let us now, as it bears with some force on the course which is being pursued on this question, recall what took place in Parliament in 1875. Mr. Kavanagh's Bill received in the House of Commons the assent of the Government as regarded its principle, but the pressure of other public business, or some other cause, rendered it impossible to proceed with it further than a first reading. Subsequently, certain resolutions embodying the prin-

ciple of the Bill were submitted to the House of Lords, and in the course of the debate the Lord Chancellor remarked, "that all noble lords who had spoken seemed to admit that some alteration was desirable, but if any, it should take place in the lines pointed out by his noble friend (the mover)"—so that in both Houses of Parliament the correctness of the principle laid down by Mr. Kavanagh seems to have been acknowledged. The effect of his measure, had it been fortunate enough to become law, would have been to dispose finally, or at least for a very lengthened period, of the most vulnerable flaws of the present system.

Such was the position of the question at the end of 1875, and later on the question of English County Government was practically arranged by the acceptance of Mr. Reid's resolution on the subject of County Boards, to which reference will presently be made, in so far as it relates to the matter under discussion.

In their present attempt to reconstruct the County System, Her Majesty's Government have not forgotten to secure an adequate representation of the Cess-payers in the Baronial and County Courts—and there are many useful provisions in matters of detail introduced into their Bill. So far it is, no doubt, an excellently devised scheme, as securing to every contributor to county funds some voice in their distribution. But here exultation must give way to disappointment, at seeing

what might have been a useful and final measure, so sadly marred and crippled as almost to extinguish any hope of its lengthened existence. It cannot be that this "double headed system" is merely meant as a stop-gap, till an opportunity comes for reviving the legislature of 1872? or, is it merely a compromise, with all the weakness and danger of a compromise attending it? Whichever it is, the result will be the same. What was hoped for and expected from such a measure as that of 1875, was that the law would have been made so correct, and so clear, as to leave no room for misconception or misinterpretation, and placed in such a position, as to render the system it embodied unassailable in fairness and justice by political opponents. Certainly the old Grand Jury is not abolished under the present Bill, and although shorn of many of its functions, still retains many of the most important interests of the county under its control. But should the Bill pass, the thin end is fixed, the principle of County Boards for some purposes at least, is admitted and sanctioned—the day will be hastened when our Governors, of whatever political party they may be, will cry, "and if for some why not for all," and home the wedge will be driven. It would be most injudicious, to say the least of it, to entrust to those of whom half, if not the majority, of every County Board in Ireland may be composed, the entire control over such matters as

Presentments for malicious injuries, and under the Peace Preservation Acts, or for extra police. These are under the present Bill reserved for the Grand Jury; but it is well to point out the danger in time. These are matters for the Magistrates alone, and for them in Ireland if anywhere.

But to leave this most important objection to the Bill, it is still open to criticism in another direction. Grave doubts may be entertained as to the working of the new scheme, so long as it may be allowed to continue in being. The co-existence of the two bodies side by side, the Grand Jury and the County Board—served, as they will be by the same officer as secretary—may lead to an occasional clash, and on its being necessary to fill up a vacancy, it does not appear whether the Grand Jury is bound to accept the nominee of the County Board or no. It is probable that other cases of a similar nature might arise, and it is, at all events, likely that the County administration will not work as smoothly under the jurisdiction of the two bodies, whose functions, though they appear separate, might in some cases overlap, as they would under one, as at present. The great merit of the present system is, that it is essentially simple, and has few faults, that those faults could be easily mended, its simplicity thereby increased, and the entire machinery rendered perfect. The Bill now before Parliament tends to weaken instead of strengthen,

a nearly perfect arrangement, and that in a direction in which it is rather surprising to see a Conservative Government directing its energies.

And now to seek a reason why the Government, after the words of assurance and appreciation which were uttered in 1875, have chosen the course indicated in this Bill. It can only be supposed that the cause is Mr. Reid's motion, which for some reason or other has excited a desire, for there can be no necessity sufficiently strong in this case to warrant it, to assimilate the law of Ireland to that of England. It was only after a considerable struggle, and upon finding English opinion determined in the matter, that the resolution was acquiesced in, which makes the anxiety on the part of the Government to transport its action across the Channel, appear a little extraordinary. But in England there was an excellent reason for the introduction of County Boards. Besides the fact that they were suited to that country, the social and educational status of whose inhabitants qualified them for the exercise of the functions entailed by membership, the machinery for County purposes required amendment in the form of consolidation. But in Ireland no such necessity exists. The machinery is fixed and framed in a compact form, and by the addition of a few contrivances to meet requirements which have sprung up, and defects which have shown themselves since it was first erected,

can be made as good as new. We are asked therefore to try this dangerous experiment; merely because it looks well to have the fashion of the local law similar in both countries.

And at what cost is this assimilation to be attained? and is it worth the price we are asked to give for it? It is to be purchased by the semi-destruction and permanent mutilation of an old and well-tried system, and by paving the way for a change which would be eminently unsuited to the country. All this would have to be accomplished at a certain sacrifice of Conservative principle, for the sake of a purely ornamental advantage. The present Chief Secretary has the reputation of being more deeply imbued than most Conservatives with the traditional opinions of his party. If it be so, it will perhaps be not absolutely vain to hope that he may lay some stress upon arguments such as those which the present paper raises, and should he be led by a study of them to a reconsideration of the question and a re-casting of the scheme, he will have the satisfaction of having got rid of a measure with which no Irish Political Party is content.

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