OBSERVATIONS ON THE PRINCIPLES AND TENDENCY OF THE COUNTY COURTS ACT

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OBSERVATIONS, ETC.

When the last County Court Act was in progress through Parliament, if any lawyer ventured upon observations, either in the form of objection or advice, he was clamoured down by the cry that he was an interested person, whose object was to maintain existing abuses, and oppose a measure destined to diminish his professional emoluments. Thus it was that the experience calculated for the discussion of such a subject was excluded from its consideration, and those who were best able to give counsel, and to shape enactments into useful and beneficial instruments, were shut out by base and sordid insinuations. The result is, that we have now a statute which, both in respect of its principles and its details, is as perfect a mistake of legislation as anything that could be pointed out by Lord Coke in that legislature which he has signalised as the *Parliamentum indoctum* of his time. With its details it is not intended here to meddle, but reflections on some of its general principles may lead to a more accurate appreciation of the whole statute, and a more correct conception of what is really wanted, and would be truly beneficial.

Cheap law for the recovery of debts has been throughout every discussion of the County Courts Acts, both in Parliament and out, assumed to be a boon, and a requisition of the creditor's. The hardship of exposing a man to the necessity of incurring a long bill of costs to obtain a legal remedy, and the assistance of a judicial screw to be put in force against a

person who has already shown himself unwilling, or unable to pay his debt, and has thereby foreshadowed the event indicated in the expression of "throwing good money after bad," is a topic which lies upon the surface, and the first, and sometimes the only one encountered. Those who have rested their considerations upon it, (and they are the great majority,) have but a limited acquaintance with the working of such matters.

Creditors are not so terrified by the idea of costs as the argument assumes: they have, many of them, a son, or nephew, or cousin bred up in an attorney's office, just admitted, and with little or no private means of livelihood, deeply anxious to *make* business. By way of giving him a start, the affectionate relative affords him the *loan* of a few debts, which having been outstanding a sufficient length of time to warrant the conclusion that no loss of trade or patronage need be dreaded in the quarter from which they are owing, are culled from the ledger, and delivered over to the neophyte to try his hand upon. Sometimes it is a part of the arrangement that the creditor is to guarantee costs out of pocket; it as often happens that the attorney is to stand to all risks, and, if successful, to pay the recovered debt to the employer, and hug himself in the enjoyment of the taxed costs. Another plan adopted for the purpose of generating business, is, for the attorney, if he have a little capital, to embark it in the *purchase* of debts, and these having become his own property, with the privilege of suing in the creditor's name, form the materials out of which a long array of costs are to be extracted. There is yet another system which, however incredible, does exist to no small extent. It is not an unusual thing for the attorney to pay the creditor a per centage on all costs recovered, on the condition that the creditor shall employ him to sue all his dilatory debtors. A friend of the writer's, being one day in the office of one of such attorneys engaged in conversation with him, was interrupted by the entrance of a person who came in to make or obtain some communication. As he was going out, the attorney called him back, saying to him, "By the bye, Mr. ——,

whom do you employ now?" "Oh," replied the other, "I employ Mr. So and So." "And how much does he allow you?" "Ten per cent." was the answer. "Come to me," said the attorney, gently slapping him on the breast with the back of his hand, and winking cunningly at him, "Come to me, and I will give you twenty." It was a singular naïveté in the senator who, in the debate on the "optional" clause, expressed his conviction that no attorney would hazard the interests, or the favour, of his employer by suing in the superior courts for a debt which was a proper subject for the county courts. With all the facts above related, it is too much to be apprehended that a large proportion of creditors have an interest, either directly, or reflectively, in the expense of suits in the superior courts. And this apprehension is strengthened by a recurrence to the actual incidents which immediately followed the passing of the first statute. Bills of exchange and promissory notes under 20*l.* were sued for in the superior courts, under the notion, that being contracts of a strictly transitory character, transferred by indorsement, and existing with the holder wherever he might be at the moment they became due, there was no particular jurisdiction of any one county court which could be said to have cognizance of them. At first sight, one would be disposed to imagine that this was a legal difficulty, in which the act was defective, and by which the creditor was a sufferer. But no one can doubt that it originated in the ingenuity of the attorney, when it is known that, as soon as that difficulty was removed, recourse was had to another device to authorize resorting to Westminster Hall for redress. An attorney brought an action in his own name in a superior court for a debt under 20*l.*, and raised the question whether there was anything in the act which deprived an attorney of his common-law privilege of suing in the court of which he was a member, and in which, by not altogether a fiction of law, he was always supposed to "live and move and have his being." The decision being in his favour, immediately all holders of bills of exchange and promissory notes under

20*l.* indorsed them to their attorney, in whose name the action was brought in the superior court.

With a knowledge of all these facts, surely the creditor is not the only person for whose exemption from the risk of costs ingenuity is to be taxed, and towards which object legislatorial deliberation is to be confined. The debtor is certainly not less interested in the subject than the creditor; but a debtor is supposed to have no claim for sympathy. His own conduct has supplied the artillery which may be levelled against him, and there is but one question worth asking before that artillery is put in action,—whether he is worth powder and shot? But with the full concession that there are numbers fraudulent, or selfish enough to run into debt without the prospect or the design of payment, there are hundreds in the length and breadth of the land whose path, early inexperience, ill-fated imprudence the mere effusion of buoyant youth, or feelings for another's difficulties, moving a too pliant disposition, and impelled by a too thoughtless confidence in distant prospects, have beset with crags and thickets through which the future journey of life is a perpetual and heart-wearing struggle. And with such men a struggle it will continue to the end,—for awakened to their mistakes in riper years, and by woeful experience, and even in the course of their errors imbued with principles of honour, they will go on striving, and striving, with the deepest yearnings of the soul for extrication, but will as constantly be driven back by that frightful system of law.

> Optat quietem Pelopis infidus pater,
> Egens benignæ Tantalus semper dapis;
> Optat Prometheus obligatus aliti;
> Optat supremo collocare Sisyphus
> In monte saxum: *sed vetant leges* Jovis.

But after all, the subject is a serious one. How many a noble spirit has been broken,—how much of genius, how much of industry, how much of energy, which might have immortalized their possessor, and have diffused blessings

over countless generations, have been squandered, and dissipated, and wasted by ceaseless efforts to exorcise that ever-haunting spectre! Surely these are worthy considerations, and not improper objects of a legislator's care. But Heaven forbid that in this community—in commercial England,—in which with as much truth there may be said to flourish "Merchant Princes" as could ever have been said of that proud republic which once spread its arts and its arms, its commerce and its victories over the wave of the Adriatic—which counts amongst its shopkeepers men of spotless integrity, enlightened intellect, and pure and lofty minds,—Heaven forbid that the instances, which have been singled out for the purpose of considering this subject in all its bearings, should be characteristic of the mass. And whilst it is to be lamented that so many men, from one or two false steps, should have placed themselves in the troubles which that system of "cost-making" eternally renews, and who stand as it were on an ever-revolving wheel, which in the course of its revolutions brings them constantly within reach of plucking emancipation, but which, before that can be grasped, as constantly whirls them again into a downward course, without the longed-for prize being snatched; it also is too true that recklessness, selfishness, extravagance, and fraud are in many, many instances the materials of that pile of debt against which every right-minded man's aversion is excited, and which is regarded as an odious incumbrance, to destroy which every engine may be directed, though the worthless architect who erected it be himself buried in its ruins. The "sharp attorney," too, (who has been for the same purpose referred to,) is, thank Heaven, not the exemplar of the whole body. Indeed there is no profession or calling in this country which is so distinctly divisible into two classes. An educated and honourable attorney justly occupies a high place in society. His knowledge is extensive and various, his principles are high and pure, his powers of good are only equalled by his will to wield them. He is the depository of important confidences, the resource of injured

innocence, a faithful adviser in difficult emergencies. Such a man well deserves the respect of the respectable, and he derives his support from the most honourable exertion of social duties, not seeking to draw his sustenance from the blood of the afflicted. But there is another class of attorneys, whose course in life is so far apart from his, that they may be almost said to belong to another profession. They are as the offspring of Ishmael—in their nature predatory, their hand is against every man, and they not unreasonably suppose the hand of every man is against them.

Before applying the mind to a consideration of the views which ought to be preserved in framing a statute like the County Courts Act, there are some other observations to be made, and some other principles to be ascertained. These being done, the understanding will be better prepared to comprehend the real wants of the community, and the best mode of supplying them. But there is one remark which (if it be allowed that all which has been said above is well founded) cannot fail to occur at this point of the case. It is quite clear that any measure which leaves it optional for the creditor to sue in the superior or in the inferior court, to run up large costs, or to obtain his judgment at small expense, according to his own discretion, must be a gross mistake. Such a mistake in the act under consideration is founded partly on the great blunder of regarding the question of costs as one only affecting the creditor, forgetting that they are accumulated on the head of the debtor, and forgetting or ignorant of the true state of things with reference to attorneys. Even allowing that there are debtors who deserve no compassion, and who might without scruple be left to the ruinous consequences of their own misdeeds, a creditor is not exactly the person to whom the selection of proper victims should be entrusted. Creditors, who are smarting under actual or anticipated loss, are not very nice or impartial in contrasting merits and demerits, in perceiving the force of palliations, or in distinguishing between recklessness and indiscretion. But the mistake is principally produced by a sense of the inadequacy of such a court to