

**LORD BROUGHAM'S SPEECHES IN  
THE HOUSE OF LORDS, 26TH  
AND 28TH OF JULY, 1853, ON  
COUNTY COURTS AND LAW  
AMENDMENT**

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Lord Brougham's Speeches in the House of Lords, 26th and 28th of July, 1853, on County Courts and law amendment by Various

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**VARIOUS**

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LORD BROUGHAM'S  
SPEECHES IN THE HOUSE OF LORDS,

26TH AND 28TH OF JULY, 1853,

OR

COUNTY COURTS

AND

LAW AMENDMENT.

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LONDON:  
JAMES RIDGWAY, PICCADILLY.  
1853.

# IRISH COMMON-LAW PROCEDURE BILL.

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26th July, 1853.

IN moving the second reading of this Bill, I have the satisfaction of finding, that it has been prepared with great care, by men of ample learning; intimately acquainted with the practice of the law, especially in Ireland to which it relates; and of competent skill in the framing of statutory provisions. It was introduced into the other House by my learned friend, Mr. Whiteside, late Solicitor-General of the sister kingdom, who explained and supported it in a statement eminently powerful, as it was perfectly luminous, — a statement received with universal applause, and worthy in every respect of his high reputation. Introduced at the beginning of the Session, it has undergone repeated discussion in the course of the intervening period, and although only passed within the last ten days, it had gone through all its stages with an almost general assent.

It had been submitted to the heads of the law in Ireland, and been approved by the most distinguished members of the profession there, both on the Bench and at the Bar. I will not affirm that

all the details have received this approval, but its general scope, and its main provisions, I feel justified in repeating, ~~are sanctioned~~ by the high authority I have referred to.

Unconnected with the sister kingdom, I have been asked to take charge of this Bill, from the circumstance being well known, that my opinions go entirely along with its provisions. It is now a quarter of a century since I brought before the other House of Parliament, a statement of the various anomalies, defects, and abuses in our law, but more especially in our judicial system; and I had occasion, therefore, in trying that system by the test of its agreement with principle, to examine the rules which ought to preside over its structure, and to govern its procedure. A very large proportion of the defects then denounced, have since been removed in this country, while some of the most glaring continue still the opprobrium of our jurisprudence. But it gives me unalloyed gratification to find, from the Bill to which I now solicit your attention, that all the principles laid down on that occasion, have been fully considered by its learned authors; that hardly one has been overlooked by them in framing the measure; and that by far the greater number of the proposals made, have been embodied in its provisions. But I will go further and express my admiration of the Judicial reforms actually effected in Ireland of late years. We may well envy as well as applaud the sister kingdom, when we look to the vast progress which she has made in the constitution of her Courts; in some

improvements going before us by half a century; adopting others, which we ourselves have not yet made, to the incalculable benefit of our fellow subjects there. Thus the Civil Bill process has given them the great advantage of Local Courts for upwards of half a century. The Quarter Session jurisdiction has had, during that period, the valuable aid of the Assistant-Barrister, always chosen as Chairman, while in no instance have our Justices availed themselves of the County Court Judge in this manner. For the last three years, a rational and effectual course has been taken for equalizing the business in the Superior Courts, and there is no longer in Dublin the complaint so often and so justly made here—that one Court in Westminster Hall may have little to do, while another is overloaded. The suits are sent to all the three Irish Courts by rotation, in five and twenties, since the 13th and 14th of the Queen. But there is a natural anxiety further to amend the Procedure, to adopt the improvements introduced here by the Act of last Session, and to add others which are of greater value than those.

The Bill, then, which I am now to move, consists of two branches. It applies to Ireland the provisions of that Act, a hundred and forty odd clauses, having this object; its remaining clauses carry those provisions a great deal further, adopting some of the most important of the changes recommended by the Second Report of the Commissioners—a document which it is impossible to praise



too highly for its enlightened, and at the same time, judicious views. But this Bill, in some material particulars, is in advance of the Report; and I must at once distinctly affirm, that the steps which it proposes to take are both perfectly safe, and most important amendments of the law. As must ever happen in this course of legislation, we shall meet with resistance from two opposite classes of objectors, one dissatisfied with us for not going far enough, the other alarmed, lest, going so far, we should hereafter be obliged to go farther than is safe. But I well remember the answer made to this last and very prevalent objection, by one who was no friend of innovation,—no rash reformer,—no speculative dealer in changes, my lamented friend Sir W. Follett, one among the rare instances of parliamentary, all but equalling professional, success. A measure which he supported was assailed with the cry, “You will not be allowed to stop here.” “Wait,” he replied, “till they attempt to push us on. Is the thing right to be done? That is the question now. If right, do it; and resist when they would have you do what is wrong!” This was, I believe, among the last occasions on which his persuasive voice was heard. Soon after, with his sorrowing friends of the Senate and of the Bar, I followed his remains to a premature grave:—*cujus corpus a me crematum est, quod contra decuit ab illo meum.*\*

In all that regards Procedure, the objects to be

\* Cat. Maj.

ever kept in view, are aiding well-grounded claims, discouraging unjust ones, and expediting all litigation :—in short, throwing open the Courts to suits which ought to be brought thither ; closing the door to such as ought not ; and quickening the decision of all. The provisions of the Bill are framed with a due regard to these incontrovertible maxims, although I am far from asserting that there may not remain further improvements to make Procedure in all respects accord with them. In order to sift the cases, as it were, and apply these principles, there is nothing more important than encouraging compromise, or speedy termination of all controversy, by the permission to pay money into Court, or tender amends. This, which ought to be favoured by all means, is, on the contrary, by no means a favourite of the law. Nothing can well be conceived more absurd than the old rules which governed this matter, capricious in some respects, self-repugnant in others. The professed principle was, that any liquidated sum could be paid into Court, and yet payment was not allowed on a contract to deliver goods at a fixed price, nor in an action of debt for a fine in a Manor Court, nor in trover for goods certain ; nay, in trover, even producing the goods in Court was not permitted, although the action nominally for their value, or rather for the tort of converting, the value being the rule for estimating the damages, was in reality brought to obtain the goods themselves. These absurdities and gross inconsistencies, under the dis-

guise of excessive refinements upon a principle, are now done away; but still there is no power to pay in cases of tort, which, however, are exactly those where payment should most be favoured, as they are those where feelings are most excited. Here I have the misfortune of differing with the learned Commissioners. In the cases to which they refer, as giving more satisfaction by trial in Court, that trial may still be had though the money be tendered, because the plaintiff may refuse; and as for the chance of a wealthy defendant paying to prevent expense, he has the very same opportunity at present of buying off the plaintiff; he may agree to a verdict. The Bill now before us most justly provides, that in all cases whatever, there shall be the power of paying into Court. It goes as far as I had gone in the Evidence and Procedure Bill; only requiring the leave of the Court in cases of slander and seduction. The tendency of the power thus extended to discourage needless actions, and also to discourage vexatious defences, is manifest. I could have wished that a further step had been taken in the same direction, by improving the Law of Arbitration. The provision in the English Act of 1833, making submissions irrevocable, was adopted in Ireland some years ago. But I wish they had been in advance of us in further preventing litigation by reference. I hope, in the course of a few days, to lay a Bill before your Lordships, having this important object in view; and that its provisions, if