

(Ireland.)

R E P O R T

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From Committee on the Petition of the  
SIX CLERKS IN CHANCERY,  
IN IRELAND.

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*Ordered, by The House of Commons, to be printed,*  
*26 May 1813.*

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Printed by The House of Commons, to be printed,  
25 May 1881.

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THE COMMITTEE to whom the Petition of the SIX CLERKS of the Court of Chancery, in *Ireland*, was referred; and who were empowered to report their Opinion thereupon, and also the MINUTES of the EVIDENCE taken before them;—HAVE, pursuant to the Order of The House, examined the Matter of the said Petition; and have agreed upon the following REPORT:

TO prove the Allegations of the said Petition, Your Committee called several Witnesses before Them; whose Examination, together with several Documents, which have been laid before Them, They hereunto annex:—From the whole of which Evidence, Your Committee are unanimously of Opinion, That, at the period of passing the Act 49 Geo. III. cap. 126, “for the further prevention “ of the Sale and Brokerage of Offices,” the value of the office of a Six Clerk of the Court of Chancery, in *Ireland*, was £.6,000;—and that the said office was, before that Act passed, lawfully saleable; but the value thereof was diminished, by the said Act, one third:—And, That the said Six Clerks are entitled to Compensation for such diminution in the Value of their respective Offices.

26 May 1813.

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MINUTES

## MINUTES OF EVIDENCE.

Committee on Petition of Six Clerks in Chancery in Ireland.

The Right Honourable PATRICK DUIGENAN, in The Chair.

*Francis Dwyer*, one of the Six Clerks in Chancery, in Ireland,

**A**PPEARED before the Committee, on behalf of himself and the other of the Six Clerks, and delivered in the following Evidence :

1st.—A Book “ of the Fees of the several Officers of the Four Courts, the Sheriffs of the county and liberty of the city of Dublin, the Town-clerk of said city, the Clerk of the Commission of Oyer and Terminer for said county and county of said city, and the Clerk of the Peace of the county Dublin,” making altogether eighty-three officers; in which book, the office of Six Clerk is the only one recognized as a saleable office.

[Note. This Book was published by order of the House of Lords in Ireland in the year 1734, and printed by the King's printer.]

Then, an Act of the Imperial Parliament, passed in the year 1809, “ for the further prevention of the Sale and Brokerage of Offices,” by which all Six Clerks of said Court of Chancery in Ireland, after the present holders of said office, are prevented from selling or disposing of the same, was read.

Mr. *Francis Dwyer* also produced the following papers, which were severally read.

*Affidavit of John Cash.*

John Cash of the city of Dublin, esquire, one of the Aldermen of said city, maketh oath and saith, that having been in or about the spring of the year 1809 desirous to settle this deponent's second son, John Cash junior, who had been bred to the profession of an Attorney, in some respectable employment, entered into treaty with Thomas Spinner, esquire, then and now one of the Six Clerks of the High Court of Chancery in Ireland, for the purchase of said Spinner's office of Six Clerk in said Court, for said John Cash, junior. Deponent saith, that having enquired from professional persons, who were in deponent's opinion well acquainted with the nature and value of said office, what would be a fair and reasonable price to give for the same, was informed that about 6,000*l.* would be a fair and reasonable price. Deponent saith, that in consequence of such information and with the advice of deponent's professional friends whom he consulted on the occasion, deponent accordingly in the spring of the year 1809, offered and was then ready and willing to give the said Thomas Spinner the sum of 6,000*l.* for said office for his said son. But deponent saith, said treaty broke off, and was not carried into effect in consequence, as deponent best recollects and believes, of this deponent's declining to give a greater sum for said office to said Spinner than said sum of 6,000*l.*

Sworn before me the 27th day of April 1813, at the Sessions House in Green-street, in the city of Dublin.

*Thomas Ellis,*  
Master in Chancery.

CASE, with the Opinion of William Morgan, of the Equitable Assurance Office, London.

A. agreed to sell to B. his Office for Six thousand Pounds, which Office was saleable before the Agreement was carried into effect; an Act of Parliament passed preventing the sale of such Office in future, but giving A. liberty to sell; B. refuses to complete his purchase, alleging that the purchase-money would be entirely sunk, as he could not sell the Office, and as the law was changed it would be unfair to insist



insist on his completing his purchase. A. is willing to abate such proportion of the sum agreed to be given prior to the passing the disabling Act as you think is just between party and party, as B. can never sell his office as the law now stands. Please to observe, that this office is purchased by young men who have served their apprenticeship to Attornies, and are generally from the age of from twenty-four to thirty years.

## OPINION.

IN restraining this office to the life of the purchaser, the emoluments of it are made to depend on the continuance of his life, and therefore, instead of being able to realize the money originally paid for it whenever he should be inclined to dispose of it to another person, he has no other way of having his money refunded than by assuring the payment of it on his decease. Supposing the purchaser to be thirty years of age, the assurance of Six thousand Pounds on his life would require the immediate payment of 2,870*l.*; by this means the office would be reduced in value very nearly one half; or in other words, taking its value, with the power of selling it again, to be 6,000*l.* its value without such power would be only 3,130*l.* There is indeed a possibility that the purchaser might have died before he disposed of the office, and this ought undoubtedly to have some effect in lessening the reduction. But such an event, though no subject for compensation, is rather improbable, and therefore I should think, under all circumstances, that the office, restrained as above, cannot be worth more than two-thirds its original value, or 4,000*l.*

*William Morgan.*

OPINION of William Freind, esquire, of the Rock Office, on the foregoing Case.

Nineteen hundred and Thirty Pounds is the abatement to be made from the principal sum of Six thousand Pounds, being the equivalent for the loss of privilege.

*W. Freind.*

Rock, 18th March 1813.

*Jovis, 20 die Maij, 1813.*

The Right honourable PATRICK DUIGENAN, in The Chair.

The Right honourable Lord Redesdale was Examined as follows :

HAD your Lordship any conversation with the late Mr. Perceval on the case of the Six Clerks in Chancery, in Ireland?—I had. Mr. Perceval thought it reasonable that a compensation should be given, because it appeared to him it had always been considered as an office that was saleable. He did conceive it was fit that a compensation should be made to them; the amount of that compensation certainly never came within his consideration. During the time I was in Ireland, I always understood the ordinary price was 6,000*l.*; it was a subject of public notoriety that the office was sold, and that that was considered as the ordinary price for it. The actual value of the office of Six Clerks depends a good deal upon the industry and character of the person who holds the office. If the person who holds the office is very capable of business, if he is a person of high character, of course all the Solicitors, who are not particularly connected otherwise, will have a disposition to resort to such a person: that makes a variety in the value; but the general idea was, that there were none of them that might not be considered fairly of the value of 6,000*l.* because it might depend upon the purchaser whether his industry and skill were such as would put him upon a par with the other persons in that office. The Six Clerk selling his office, recommends his successor to all those persons that employed him in that office. Probably the Committee are not perfectly aware of the nature of the office; it is different from that of the Six Clerks in England, particularly with respect to the Equity side of the Court. The Register of the Master of the Rolls in Ireland does a great part of the duty of the Six Clerks in England. The office of Six Clerks in Ireland is the same with respect to the Court of Equity as the Sixty Clerks in England, whose offices have been constantly considered as saleable. The reason, as I conceive, is

*The Right hon.  
Lord Redesdale.*

*The Right hon.  
Lord Redesdale.*

this: the great value of the office of Six Clerks in Ireland, depends upon the industry of the person who holds it; the suitors are at liberty to make their choice of the Six Clerks, and therefore they chuse him whom they like best; his business, therefore, depends in a great degree upon his own industry and talents, and I conceive that it is an office as properly saleable as the business of an attorney, or merchant, or tradesman, whose business arises from his own industry and skill. As to the deterioration, it is clear the value of the office will be materially deteriorated, because whilst the office remains saleable, whenever a person holding the office finds himself, from his state of health, his advance in life, a change in his own situation, accession of fortune, or from any other circumstances, inclined to leave off business, he was certain of receiving a sum, probably at least equivalent to that which he had given, possibly more; but if he is not admitted to sell, the consequence will be, he must either abandon the office without any remuneration, or must continue in the office, perhaps in a state of health ill-suited to continue in it, perhaps in a situation which makes his continuance very inconvenient; and the injury which will be produced to the public in my conception is, that for all those offices there must be found a superannuation fund, or otherwise persons will be holding these offices at a time of life and under circumstances of infirmity when they are unfit for business; and having known the Court of Chancery in this country almost fifty years, I am of opinion that prohibiting the sale of those offices would be prejudicial to the public; and certainly the Parliament of Ireland, at the time of the table of fees being presented, had no idea of there being any impropriety in the sale of the office.

There has been evidence produced here, that Mr. Spinner, one of the Six Clerks, now very infirm, offered to sell his office, and he asked above 6,000*l.* for it.—When I was in Ireland, I understood the ordinary price to be 6,000*l.* circumstances might raise it higher; but any person of talent, fit to conduct that business, would give 6,000*l.* for it. What the degree of deterioration is, it is difficult to ascertain.

Your Lordship said it would depend upon the industry and talent of the individual; would it not therefore be necessary to ascertain what the value of the particular office might be?—I did understand that there was no one of these offices that was not considered of the value of 6,000*l.*—With respect to the calculation of the deterioration, I have seen those calculations which have been produced to the Committee, and in my opinion, the Accountants have not taken into their calculation one important circumstance. They have calculated simply the difference between the value of an office which may be sold, and the value of an office which cannot be sold, having regard to the duration of life. Now I think there is another consideration, which is important; the convenience that it is to a person advancing in life, or having other reasons for declining it, being at liberty at any time to dispose of it. If a man becomes infirm, falls into ill health, or is growing very old, or if his circumstances vary so that he wishes to part with the office, as a younger brother might purchase it, and succeed to the paternal property, and then might wish to retire from the office, he suffers a loss much more than in proportion to the value of his life, if he cannot part with the office. It is impossible to form any calculation of the difference—to one person it will be of greater value, to another of less. To a person who might probably succeed to a considerable property, it would upon a purchase be a much more important consideration than to a man who had no prospect of such a property. It appears to me the Accountants have made their calculation without the consideration of that circumstance, which appears to me to be an important circumstance.

Your Lordship stated, that the usual price of the office of a Six Clerk, whether they had business or not, was 6,000*l.*; because a man who bought it would probably expect that he would be more successful than his predecessor, using more diligence, and therefore 6,000*l.* was the usual price?—I believe it is putting it rather too strongly, describing that as the usual price. Since some of the present Six Clerks have had their office the value of money has considerably changed, therefore I believe I should speak more properly if I said, that during the time I was in Ireland, the general idea of the price for any one of the Six Clerk's offices was 6,000*l.*; it was the result of conversation I had with different officers of the Court, who meant to say, that any person conversant with the value of the business would willingly give 6,000*l.* for that office.

Whether your Lordship thinks the restriction upon the sale of offices was an expedient one, and whether it is advisable to continue it?—The restriction upon the sale of the offices of Six Clerks in Ireland, I am persuaded in my own mind, was not expedient. If that question is extended to other offices, it is to be considered what is the



the nature of the office. The office of a Master in Chancery was I believe never considered as saleable, because the Master in Chancery administers justice. He is as much a deputy of the Chancellor as the Master of the Rolls is, or as the Master of the Rolls or the Vice Chancellor in England are. The Chancellor frequently refers to the Master in Chancery certain points to enquire into by witnesses or otherwise, and to form a decision, upon which it is impossible for the Chancellor to enquire into himself. The administration of justice in the Court of Equity in many respects is really in the hands of the Master in Chancery, therefore I did conceive that the office of a Master in Chancery cannot properly be sold. The Six Clerks in Ireland have nothing to do with the administration of justice in that sense of the words, nothing depends upon their judgment or discretion; they are in the nature of solicitors conducting business, and though the Court sometimes may ask their opinion with respect to the practice, as the Court of King's Bench might ask any old attorney attending that Court, their decision is no authority upon the subject, and I conceive they have nothing to do with the administration of justice any more than any attorney.

*The Right hon.  
Lord Redesdale.*

Does your Lordship conceive that it would be of advantage to the public to have the Six Clerks allowed to sell their offices as formerly?—I think it would be advantageous to the public. There is a consideration which is a little material to be stated; I know with respect to one of the Six Clerks, that he has been prevented by this Act from selling his office, finding himself infirm, and therefore wishing to retire.

Would it not be a disadvantage to the public to have superannuated persons filling the office, on account of their not being able to dispose of it?—It is inconvenient in any office to have persons in that office who are not removable, and who are past the time when they could well transact the duties of their office; that inconvenience has been in some cases removed by a superannuation fund, but if all cases of that description are to have a superannuation fund, the charge upon the public will be very considerable indeed.

Did Mr. Spinner make as much of the office as the others did?—I could only judge by seeing the quantity of business in the Court each of the Six Clerks had; I think Mr. Stevelly and Mr. Dwyer had more than Mr. Spinner, and I believe Mr. Woods had more.

*Francis Dwyer, esquire, was called in, and Examined as follows:*

YOU are in the office of one of the Six Clerks in Chancery in Ireland?—I am; my office is three times as good an office now as when I first came into it, but I wish to divide the compensation with the others.

*Francis Dwyer,  
Esquire.*

Would it sell for more in the market?—It would, because there is more business in it, and that would bring more money.

Lord Redesdale.—Where one person succeeds another in the office of Six Clerks, he may get the business of the person whom he succeeds; but the business may be removed from the office. The office of Six Clerks in Chancery here was formerly sold, but it has not been sold for a great many years. The Sixty Clerks here are in the same situation with respect to the Equity side of the Court as the Six Clerks in Ireland.

Are the Six Clerks allowed to sell?—They are.

[Adjourned to Saturday.]

*Sabbati, 22 die Maij, 1813.*

The Right honourable PATRICK DUIGENAN, in The Chair.

The Right honourable *George Ponsonby* (a Member) was Examined as follows:

*The Right hon.  
Geo. Ponsonby.*

WERE the offices of Six Clerks in Chancery in Ireland formerly saleable?—Those offices were always saleable, and had always been sold; that was a transaction that was considered perfectly legal, and had been repeatedly under the view of the Irish Parliament. In the House of Lords there was a table of their fees; there had been

*The Right hon.  
George Ponsonby.*

an examination upon that subject in the Irish House of Lords; the legality of that sale had been considered as established in the House of Lords. I always understood so; it is quite plain from the papers and books I have seen upon that subject, there was a regular enquiry into the profits of those offices; they were all stated to be saleable offices, and the House regarded them as such upon that enquiry. When the Act to prevent the illegal brokerage of offices was depending in the House of Commons, I observed that the right of the persons who had bought those offices to sell them again would be affected by that Bill, unless there was a special provision made in their favour, and I mentioned it to the then Minister, Mr. Perceval, and stated that I thought it was a very unjust thing to take away from those officers the right of sale of those offices, they having paid for them as offices which they had a right to sell again. Mr. Perceval agreed with me in the principle, and told me he wished to speak to Lord Redesdale upon the subject as well as I recollect, and in some days afterwards I told him I had prepared a clause to protect those persons, giving to those persons who had bought, a power to sell, notwithstanding the general provisions of the Act; he told me it should have his support, it had his support, and it passed the House of Commons without any opposition; but that clause was in fact a defective one, because it provided simply for the persons who had bought offices, enabling them to sell again, but it did not make any sort of compensation to them for the loss which must be occasioned to them by selling to persons who could not themselves sell again, and the man who bought from them would not of course give so much for the office as if he were at liberty to sell it again; but it did not occur to Lord Redesdale, as I believe to Mr. Perceval, nor myself, or I should in the clause have proposed some provision for that subject; and I do not believe it would have met with any opposition, because those persons were made by the Bill to suffer an individual injury for the general benefit of the public, without any fault or imputation of fault in themselves; and therefore I conceived the public to be bound to make them a reasonable compensation.

Do you know what prices were given for those offices?—I do not know what the prices are that have been given for those offices; every body must see that they have been very considerably deteriorated.



