

COURT OF EXCHEQUER, IRELAND.

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COPY OF A  
COMMUNICATION

Dated the 29th November 1820, addressed to the Right honourable Charles Grant,  
Chief Secretary to the Lord Lieutenant of Ireland,

BY the Right honourable and Honourable the BARONS of His Majesty's Court of *Exchequer* in Ireland, upon the subject of that part of the Fourth Report of the Commissioners, appointed to inquire into the duties, salaries and emoluments of the officers, clerks and ministers of Justice in Ireland;—which relates to the Court of *Exchequer*.

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TO THE RIGHT HONOURABLE CHARLES GRANT,

&c. &c. &c.

SIR,

29th November 1820.

PURSUANT to your letter of the 18th of May last, transmitting the Fourth Report of the Commissioners of Inquiry, &c. and communicating the commands of the Lord Lieutenant, that the Barons of the Exchequer should take that part of the Report which relates to the court of Exchequer into their consideration, and report their Opinion upon the matters therein contained, with whatever Suggestions may occur to them;—WE took the earliest occasion to consider the said Report, and to confer with the several officers of the court of Exchequer, who are included in and affected by it.

WE observe that the Commissioners who made this Report, apprehend that it may be found inadequate to its object; and we have not before us any part of the evidence on which it is founded.

The Commissioners, in this Report, confine themselves to inquiring how these several Offices are executed; 2dly, what Profits they confer; 3dly, the probable amount of the Charges they impose upon the Public; and 4thly, what arrangement may be reasonable for the future Remuneration of the Officers.

With respect to the first of these points, namely, the duties of the several offices, we believe they are substantially detailed in the Report. With respect to the 2d and 3d points, namely, what profits they confer, and the probable amount of the whole, we believe the Commissioners, who have had evidence before them on those subjects, are as reasonably correct, in their Report upon those heads, as they profess to be. The 4th and last point is one of great moment, and obliges us to offer an opinion, as to whether the officer should be paid by fees as heretofore, or by salary, as suggested by the Commissioners.

In either case, as it will be necessary to determine what will be a reasonable remuneration, we have called upon the several officers interested in this subject, to state to us their views of it, severally, together with such reasons and observations as occur to them; and we subjoin, by way of Appendix to this letter, their several reports and memorials, which we beg leave to submit, as containing matter well worthy of consideration.

As the principle of paying subordinate officers by salary, in lieu of fees, appears already, in some instances, to have been adopted both by the Legislature and the Government, and as the courts of King's Bench and Common Pleas, though not without difficulty, incline to the same opinion in a qualified way, we must have some distrust in our own judgment, when we declare, that, after much consideration, we

have come to a different conclusion upon the subject. The question is not a new one, nor is the principle of paying by salary, in lieu of fees, a novel experiment; it has been tried, and it has failed; it is not adopted in England, and we believe it is not intended to be introduced here as an universal rule, which it ought to be, if it is a good one. By the common law, no officer, whose office related to the administration of justice, could take any fee but from the King. This is confirmed by the statute of Westminster, chap. 26, which adds a penalty for taking a fee. "That he who so doth, shall yield twice as much, and be punished at the King's pleasure." The inconvenience of this law must have been early felt, for from antient times it has been held, that "it cannot be intended to be the meaning of the statute to restrain the Courts of Justice, in whose integrity the law always reposes the highest confidence, for allowing reasonable fees for the labour and attendance of their officers." And so early as the reign of Queen *Elizabeth*, the Legislature, feeling the inconvenience arising from the remissness of officers upon salary, regulated the fees, which were in future to be paid to the sheriff, who is one of those officers prohibited from taking any fee, by the statute of Westminster mentioned.

The service which an officer renders to a suitor is not always confined to a mere discharge of his duties; besides working out of office hours, sometimes to a very late hour of the night, his knowledge and experience enables him to give much advice and assistance in the conduct of a suit, which may reasonably be expected to be withheld, when it becomes the interest of the officer to withhold it; and it is clear, that when an officer has a salary, and nothing more, the less business the court has in which he acts, the better for him; he is, therefore, interested, in the place of courtesy and kindness, to substitute repulsive and disobliging manners, and to discourage business instead of attracting it; and we are very clear, that it will be much easier to punish the extortion which might arise in collecting fees, than the remissness and inactivity of which a merely salaried officer might be guilty. We further beg leave to suggest, that the suitor, already made subject to heavy stamp duties, is still, according to the system proposed, to continue liable to the payment of fees in another shape; he is to bear the burdens of paying the officer, without enjoying any of the beneficial effects which the stimulating quality of fees is known to produce; he is not only to pay in full the officer whom he employs, but he is also to create a distinct fund in aid of the public service. Thus, a man who has the misfortune of having his property litigated, is not only made liable to the law expenses necessary to procure a decision upon his rights, but to create a surplus fund in aid of those persons who have the good fortune to enjoy their properties without any litigation at all.

Upon the whole, therefore, we are of opinion, that fees established, and their amount regulated, within just and reasonable bounds, by law, supply the most eligible remuneration for the official services of those concerned in the administration of justice, the best calculated to produce a diligent and efficient discharge of public duty, and to establish an equitable proportioning of the reward obtained, to the quantity and the value of the service done.

We beg leave to add, that we think there are strong objections to the plan suggested, of appointing one taxing officer for all the superior courts. This plan, we believe, originated in a jealousy, not improperly entertained, of the several taxing officers, and an apprehension that they might abuse the great powers necessarily vested in them; but we think this jealousy and apprehension must be fearfully augmented, when the powers of all those officers are united in one.

In England there is one taxing officer for each court; and, in every thing connected with the administration of justice, we apprehend it is our duty to follow her example.

The taxation of costs properly belongs to the several courts, and is of necessity, in the first instance, delegated by them, with many other duties of subordinate officers, in whom a confidence is reposed, and who are removeable by the court for misconduct.

This efficient control will be much embarrassed, when the officer is not the servant of one but of many courts. We cannot remove him from a portion of his office, without repealing the arrangement which gives one common officer to all the courts. On many questions, relating to costs and their taxation, we are obliged to call the officer before us; this step, frequently useful; and sometimes indispensable,

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can, in the present state of things, be taken without difficulty or the least delay ; but when he is to act under three courts, instead of one, the case, we apprehend, may be very different, and his complicated duties often disable him from attending promptly, and sometimes perhaps furnish a pretext for non-attendance.

At present, if a suitor or attorney conceives that the conduct of the taxing officer towards him has been influenced by any feeling of personal dislike or resentment, he may redress his supposed grievance by going into another court ; but by the proposed arrangement this consolation is denied him. He may change the Judges who are to decide his cause, if he feels dissatisfied with them, but the taxing officer continues his control and jurisdiction.

It may be supposed, that, by appointing one taxing officer, there must be one uniform rule of taxation ; but this is a misapprehension. In some cases, the courts of King's Bench and Common Pleas in England differ ; there are similar differences between the courts in Ireland ; the officer, in each taxation, must adopt the practice of the court in which the costs have been incurred. In addition to which, we must observe, that he exercises great discretionary power, which it is not possible to reduce within any certain limits, and in the exercise of which he will be constantly exposed to the imputation of partiality.

Amongst the instances which would illustrate the necessity that there is for allowing such an officer to exercise discretionary power, we may advert to his duty of regulating the allowance to be made for witnesses, under a vast variety of circumstances, of determining what evidence should be held sufficient to establish any particular charge, and such like matters, which will necessarily confer upon a sole taxing officer, more power than is perhaps enjoyed by any other officer in this country.

We have had, under the old system, two principal officers in the court of Pleas, who, in addition to their other duties, were fully competent to the taxation of costs. We beg leave humbly to state, that, under any circumstances, we conceive that two principal officers are necessary for the accommodation of the court and the public. We have been in the habit of receiving the attendance and aid of one in the court, while the other was beneficially employed in the office. The reduction of the number of these officers from two to one, we apprehend, will embarrass the court ; and by impeding the course of business, delay the suitor, from whom more is levied than sufficient to pay both ; and that therefore the proposed saving which may be made by the new arrangement, will be ultimately found inconvenient to the court and injurious to the public.

With reference to the last paragraph in the Report, we should mention, that there is no difference in law between the grant of an office for life, and during good behaviour ; and that such officers are now, and always have been, subjected to the summary control of the court, upon affidavits or otherwise, and that leaving the party complaining to his action at law, which is sometimes done, is purely at the discretion of the court, under all the circumstances of the case ; and therefore we do not conceive that any new law is necessary upon this subject.

We beg leave to add, that in the foregoing observations we do not mean to depart from the Answers heretofore given by us individually to the Board of Inquiry, on the subject of paying the Judges by salaries, which stands upon a different foundation ; nor do we mean to prejudice the claim of any person to any office in the court of Exchequer, or any right appurtenant thereto.

(Signed)

S. O'GRADY.

W. C. SMITH.

JA. McCLELLAND.

Mr. Baron George concurred in the substance of the above Report ; but as he is now confined to his bed by indisposition, it was not thought right to trouble him for his signature.

(Signed)

S. O'GRADY.

(A true Copy.)

C. W. Flint.

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