REPORT

FROM THE

SELECT COMMITTEE

ON THE

COURT OF PREROGATIVE (IRELAND) BILL;

TOGETHER WITH THE

MINUTES OF EVIDENCE,

APPENDIX, AND INDEX.

Ordered, by The House of Commons, *to be Printed,*
1 *July* 1850.

Printed image digitised by the University of Southampton Library Digitisation Unit

Lunæ, 27° *die Maii*, 1850.

COURT OF PREROGATIVE (IRELAND) BILL.

Ordered, THAT the Bill be committed to a Select Committee.

Lunæ, 3° *die Junii*, 1850.

And a Committee is nominated of—

Mr. Keogh.
Mr. Gladstone.
Mr. Napier.
Mr. Scully.
Mr. G. A. Hamilton.
Mr. W. Fagan.
Mr. Grogan.
Mr. Sadleir.
Lord Naas.
Mr. O'Flaherty.
Mr. Bouverie.
Mr. Solicitor-General for Ireland.
Mr. Monsell.
Mr. Bellew.
Sir John Young.

Ordered, THAT Five be the Quorum of the Committee.

Martis, 4° *die Junii*, 1850.

Ordered, THAT the Committee consist of Seventeen Members; that Mr. Goulburn be a Member of the Committee, and Mr. W. P. Wood.

Mercurii, 5° *die Junii*, 1850.

Ordered, THAT the Committee have power to send for Persons, Papers and Records.

Printed image digitised by the University of Southampton Library Digitisation Unit

REPORT.

THE SELECT COMMITTEE to whom the BILL "to Extend the Jurisdiction and Improve the Practice of HER MAJESTY'S COURT of PREROGATIVE in *Ireland*" was referred, and to whom several Petitions were referred, and who were empowered to send for Persons, Papers and Records, and to Report the Minutes of Evidence taken before them to The House :——

HAVE taken Evidence on the subject of the Bill to them referred, which they have agreed to Report to The House; and have gone through the Bill, and made several Amendments thereunto.

1 *July* 1850.

Printed image digitised by the University of Southampton Library Digitisation Unit

PROCEEDINGS OF THE COMMITTEE.

Mercurii, 5° *die Junii*, 1850.

MEMBERS PRESENT:

Mr. G. A. Hamilton.	Mr. Grogan.
Mr. Keogh.	Mr. Scully.
Mr. Bouverie.	Mr. Sadleir.
Mr. Monsell.	Mr. O'Flaherty.
Sir John Young.	Mr. Bellew.
Mr. Solicitor-General for Ireland.	Mr. Gladstone.

Mr. KEOGH was called to the Chair.

The Committee deliberated on their course of proceeding.

[Adjourned to Thursday, the 13th instant, at Twelve o'clock.

Jovis, 13° *die Junii*, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. Bouverie.	Mr. G. A. Hamilton.
Mr. Sadleir.	Mr. Grogan.
Mr. O'Flaherty.	Mr. Gladstone.
Mr. Scully.	Mr. Napier.
Mr. Solicitor-General for Ireland.	Mr. Monsell.
Mr. Bellew.	Mr. Goulburn.

The Right Honourable *Richard Keatinge*, examined.

[Adjourned till To-morrow, at Half-past Twelve o'clock.

Veneris, 14° *die Junii*, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. Napier.	Mr. Goulburn.
Mr. Grogan.	Mr. Monsell.
Mr. G. A. Hamilton.	Mr. Sadleir.
Mr. W. P. Wood.	Mr. O'Flaherty.
Mr. Bellew.	Sir John Young.
Mr. Solicitor-General for Ireland.	Mr. Scully.

The Right Honourable *Richard Keatinge*, again examined.

[Adjourned till Monday, at Half-past Twelve o'clock.

Lunæ, 17° *die Junii*, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. Sadleir.	Mr. Fagan.
Mr. Grogan.	Sir John Young.
Mr. Bouverie.	Mr. G. A. Hamilton.
Mr. O'Flaherty.	Mr. Bellew.
Mr. Solicitor-General for Ireland.	Mr. Monsell.
Mr. Goulburn.	Lord Naas.
Mr. Gladstone.	Mr. Scully.

Mr. *J. Hamilton*, examined.

[Adjourned till Wednesday, at Half-past Twelve o'clock.

Mercurii,

Printed image digitised by the University of Southampton Library Digitisation Unit

Mercurii, 19° *die Junii*, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. G. A. Hamilton.	Lord Naas.
Mr. O'Flaherty.	Mr. Monsell.
Mr. Fagan.	Mr. Sadleir.
Mr. Gladstone.	Mr. Bellew.
Mr. Solicitor-General for Ireland.	Mr. W. P. Wood.
Mr. Scully.	Mr. Goulburn.

The Right honourable *Richard Keatinge*, again examined.

Mr. *John Leahy*, examined.

The Venerable *Samuel M. Kyle*, LL.D., examined.

[Adjourned, till To-morrow, at Half-past Twelve o'clock.

Jovis, 20° *die Junii*, 1850.

PRESENT.

Mr. KEOGH in the Chair.

Mr. Bellew.	Mr. Monsell.
Mr. Sadleir.	Mr. O'Flaherty.
Mr. G. A. Hamilton.	

[Adjourned till To-morrow, at Half-past Twelve o'clock.

Veneris, 21° *die Junii*, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. Bellew.	Mr. Napier.
Mr. Sadleir.	Mr. Goulburn.
Mr. G. A. Hamilton.	Mr. O'Flaherty.
Mr. Monsell.	Mr. Scully.

Dr. *J. O. Radcliffe*, examined.

James Blakeney, Esq., examined.

[Adjourned to Tuesday, at Half-past Twelve o'clock, to consider Clauses of the Bill, the examination of Witnesses having closed.]

Martis, 25° *die Junii*, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. G. A. Hamilton.	Mr. Napier.
Mr. Bellew.	Mr. Gladstone.
Mr. Goulburn.	Mr. Solicitor-General for Ireland.
Mr. Grogan.	Mr. Scully.
Mr. Fagan.	Mr. Bouverie.
Mr. Monsell.	Mr. O'Flaherty.

Committee deliberated.

Printed image digitised by the University of Southampton Library Digitisation Unit

Motion made, and Question proposed—"That Mr. Wily, being deputed by the Advocates of Ireland, whose interests are materially affected by the Bill, to give evidence respecting the expediency of retaining the exclusive privilege of practice by Advocates in the Prerogative Courts, be now examined on that part."—(Mr. *Hamilton.*)—Question put, and agreed to.

Dr. *Wily,* examined.

Preamble of Bill read, and postponed.

Clause 1, read. Question put, "That this Clause stand part of the Bill."

Committee divided.

Ayes - - - 7.	Noes - - - 4.
Mr. Bellew.	Mr. Hamilton.
Mr. Fagan.	Mr. Goulburn.
Mr. Monsell.	Mr. Grogan.
Mr. Solicitor-General for Ireland.	Mr. Napier.
Mr. Scully.	
Mr. Bouverie.	
Mr. O'Flaherty.	

Clause 2, read, and amended.

Question,—"That this Clause, as amended, stand part of the Bill," put, and agreed to.

Clause 4, read, and agreed to.

Clause 5, read, amended, and agreed to.

Clause 6, read, considered, and agreed to.

Clause 7, read, amended, and agreed to.

Clause 9, read, amended, and agreed to.

Clause 10, read, and considered.

[Adjourned to Thursday, at Half-past Twelve o'clock.

Jovis, 27° die Junii, 1850.

PRESENT:

Mr. KEOGH in the Chair.

Mr. G. A. Hamilton.	Mr. Grogan.
Mr. Bellew.	Mr. Goulburn.
Lord Naas.	Mr. Sadleir.
Mr. Bouverie.	Mr. Napier.
Mr. O'Flaherty.	Sir John Young.
Mr. Scully.	Mr. Fagan.
Mr. Monsell.	

Clause 10, further considered, and postponed.

Clauses from 11 to 30, read, considered, and postponed.

Clause 31, read, amended, and agreed to.

Clause 32 read. Amendment proposed, to add these words at the end of the Clause, "And it shall be lawful for the said Judge, in any special case in which he may deem it expedient so to do, to issue a Commission for the purposes aforesaid."—(Mr. *Hamilton.*)—Motion made, and Question proposed, "That those words be there added," put, and negatived.

Clause agreed to.

Clause 33, "Jurisdiction vested in any Ecclesiastical Court in Ireland in respect to testamentary causes abolished," read, and amended.

Question put, "That this clause, as amended, stand part of the Bill."

Committee

Printed image digitised by the University of Southampton Library Digitisation Unit

Committee divided.

Ayes - - - 8.	Noes - - - 2.
Mr. Bellew.	Mr. Hamilton.
Mr. Bouverie.	Mr. Grogan.
Mr. O'Flaherty.	
Mr. Scully.	
Mr. Monsell.	
Mr. Sadleir.	
Sir J. Young.	
Mr. Solicitor-General for Ireland.	

Clause 34, read, and amended. Amendment proposed, at the end of the Clause to add the words, "or according to the law relating to the same at the passing of this Act, as to the Judge of the said Court shall seem fit." (Mr. *Hamilton*).—Question proposed, "That those words be there added," put, and agreed to. Words added accordingly.

Clause, as amended, agreed to.

Clause 35, read, and amended. Amendment proposed, after the word "calendars," in line 9, to insert "relating exclusively to testamentary matter." (Mr. *Hamilton*).—Question, "That those words be there added," put, and agreed to.

Clause, as amended, agreed to.

Clause 36, read, amended, and agreed to.

Clause 37, read, and amended. Amendment proposed, at the end of the Clause to add the words "to the same extent, and as if the same had not been appealed against under the law in force at the passing of this Act." (Mr. *Hamilton*).—Question, "That those words be there added," put, and agreed to. Words added accordingly.

Clause, as amended, agreed to.

Clause 38, read, and agreed to.

Clause 39, read, amended, and agreed to.

Clause 40, read, amended, and agreed to.

Clause 41, read, and negatived.

Clause 42, read, and agreed to.

Clause 43, read, and agreed to.

Clause 44, read; amendment proposed, after the word "Court," in line 3, to insert the words "and of which probate shall have been granted." (Mr. *Hamilton*).—Question proposed, "That those words be there inserted," put, and negatived.

Clause agreed to.

Clause 45, read, and agreed to.

Clause 46, read. Amendment proposed, to leave out the words "all witnesses in the Court," for the purpose of adding the words, "it shall be lawful for the Judge of the said Court, in any case in which he may deem it proper, to direct that witnesses." (Mr. *Hamilton.*)—Question put, "That the words proposed to be left out stand part of the clause."

Committee divided.

Ayes - - - 4.	Noes - - - 2.
Mr. Bellew.	Mr. Hamilton.
Mr. O'Flaherty.	Mr. Grogan.
Mr. Scully.	
Mr. Solicitor-General for Ireland.	

Clause agreed to.

Clause 47, read. Amendments proposed, after the word "Petitioner," in line 36, to insert "or in his absence, in such manner as the Judge shall direct;" and after the word "citation," in line 37, to insert "or such other person as to the Court shall seem fit." (Mr. *Hamilton*).—Question proposed, "That those words be there inserted," put, and agreed to. Words added accordingly.

Clause, as amended, agreed to.

Clause 48, read, and amended. Amendment proposed, after the word "Respondent," in line 41, to insert "or any other person interested to be called the intervenent." (Mr. *Hamilton*).—Question proposed, "That those words be there inserted," put, and negatived.

Printed image digitised by the University of Southampton Library Digitisation Unit

Another amendment proposed, at the end of the Clause to add the words "or in any other manner as directed by the Court, set forth his rights, so as to have them adjudicated upon and protected by the Court, and in reply to which the other parties in such cause shall, if so directed by the Judge, set forth in additional affidavits such matters as shall appear to the Court to be material." (Mr. *Hamilton.*)—Question proposed, "That those words be there added," put, and negatived.

Clause, as amended, agreed to.

Clause 49, read. Amendment proposed, to leave out from the word "that," in line 3, to "issue," in line 4, for the purpose of adding the words "when and so soon as the petition and affidavit and statements of all parties appearing or intervening shall have been intimated to the Court, the Judge shall declare the same to be at issue." (Mr. *Hamilton.*)—Question proposed, "That the words proposed to be left out stand part of the Clause," put, and agreed to.

Clause agreed to.

Clause 50, read. Amendment proposed, after the word "motion," in line 14, to insert the words "and any party being next of kin shall be at liberty to cross-examine, in writing, the attesting witnesses to the will or testamentary paper at issue." (Mr. *Hamilton.*)—Question proposed, "That those words be there inserted," put, and negatived.

Clause agreed to.

Clause 51, read, and agreed to.

Clause 52, read. Amendment proposed, at the end of the Question to add the words, "Provided also, that at any time before or pending trial, the Judge of the Court of Prerogative shall be at liberty to make provision, by order or otherwise, enabling any other person interested in such causes to intervene and take such part in such proceedings as the said Judge shall in his discretion think fit." (Mr. *Hamilton.*)—Question proposed, "That those words be there added," put, and negatived.

Clause agreed to.

Clause 53, read, and amended. Amendment proposed, at the end of the Clause to add the words, "Provided also, that it shall be lawful for the Judge of the said Court, in all cases in which he shall think fit so to do, to direct the costs of any proceedings to be paid, wholly or in part, out of the personal assets of the deceased." (Mr. *Hamilton.*)—Question proposed, "That those words be there added," put, and negatived.

Clause, as amended, agreed to.

Clause 54, read, amended, and agreed to.

Clause 55, read, and agreed to.

Clause 56, read, and agreed to.

Clause 57, read. Amendment proposed, after the word "order," in line 31, to insert the words "a commission or requisition for." (Mr. *Hamilton.*)—Question proposed, "That those words be there inserted," put, and negatived.

Clause agreed to.

Clause 58, read. Amendment proposed, to add the words "or in a Court of Equity," at the end thereof. (Mr. *Hamilton.*)—Question proposed, "That those words be there added," put, and negatived.

Clause agreed to.

Clause 59, read, and agreed to.

Clause 60 and 61, read, and agreed to.

Clause 62, read, and agreed to.

Clause 63, read. Amendment proposed, after the word "trial," in line 22, to insert the words "or unless the same shall be directed to be read by the Judge of the Probate Court." (Mr. *Hamilton.*)—Question proposed, "That those words be there inserted," put, and negatived.

Clause agreed to.

Clause 64, read, amended, and agreed to.

Clause 65, read and amended. Amendment proposed, after the word "Act," in line 36, to insert "or before any person specially authorized by the said Judge to take the same." (Mr. *Hamilton.*)—Question proposed, "That those words be there inserted," put, and agreed to. Words inserted accordingly.

Clause, as amended, agreed to.

Printed image digitised by the University of Southampton Library Digitisation Unit

Clause 66, read, and agreed to.

Clause 67, read, amended, and agreed to.

Clause 68, read, and agreed to.

Clause 69, read, considered and postponed.

Clause 70, read, and agreed to.

Clauses 71, 72, 73 and 74, read, and postponed.

Clause 75, read, and amended. Amendment proposed, to add after the word "Court," in line 8, the words "without special order from the Court." (Mr. *Hamilton.*)—Question proposed, "That those words be there inserted," put, and agreed to. Words inserted accordingly.

Clause, as amended, agreed to.

[Adjourned to Monday, at Half-past Twelve o'clock.

Lunæ, 1° die Julii, 1850.

PRESENT:

Mr. KEOGH, in the Chair.

Mr. Fagan.	Mr. Scully.
Lord Naas.	Mr. O'Flaherty.
Mr. G. A. Hamilton.	Mr. Monsell.
Mr. Grogan.	

Clause 10, read, and agreed to.

Clause 11, read, amended, and agreed to.

Clause 12, read, and amended. Amendment proposed, to insert in line 10, the words "Advocate," and "Proctor." (Mr. *Grogan.*)—Question proposed, "That those words be there inserted," put and negatived.

Clause, as amended, agreed to.

Clause 13, read, amended, and agreed to.

Clause 14, read, amended and agreed to.

Clause 14ª, read, amended, and agreed to.

Clause 15, read, amended, and agreed to.

Motion made, and Question proposed, that the following clause be added to the Bill —"And be it Enacted, That in all appointments to be made under the authority of this Act, the individuals now holding office in the Court of Prerogative, and whose duties may become unnecessary under this Act, shall, if duly qualified and in other respects capable to discharge the duties of any office under this Act, be appointed to said office; and if the emoluments of such office shall be less than the compensation to which such officer would by reason of the abolition of his office be entitled, he shall, in addition to the salary of his said office, be also entitled to receive the difference between the amount of his future salary and of the compensation he would have been otherwise, under the authority of this Act, entitled." (Mr. *Grogan.*)

Question put.

Committee divided.

Ayes - - - 2.	Noes - - - 3.
Mr. Hamilton.	Mr. Scully.
Mr. Grogan.	Mr. O'Flaherty.
	Mr. Bellew.

Clause 21, read, amended, and agreed to.

Clause 22, read, and amended, and agreed to.

Clause 30, read as amended.—Question put, "That this Clause, as amended, stand part of the Bill."

Committee divided.

Ayes - - - 4.	Noes - - - 1.
Mr. Hamilton.	Mr. Grogan.
Mr. Scully.	
Mr. O'Flaherty.	
Mr. Bellew.	

Printed image digitised by the University of Southampton Library Digitisation Unit

Clause 69, read, amended, and agreed to.

Clause 71, read, amended, and agreed to.

Clause 72, read, amended, and agreed to.

Clause 73, read, amended, and agreed to.

Clause 74, read, amended, and agreed to.

Clause 76, read, amended, and agreed to.

Clause 77, read, and agreed to.

Clause 78, read, amended, and agreed to.

Clause 79, read, amended, and agreed to.

Clause 81, read, and amended.—Question proposed, "That this Clause, as amended, stand part of the Bill."

Committee divided.

Ayes - - - 3.	Noes - - - 2.
Mr. O'Flaherty.	Mr. Hamilton.
Mr. Bellew.	Mr. Grogan.
Mr. Keogh.	

Clause 82, read, amended, and agreed to.

Clause 83, read, and amended.—Question put, "That this Clause, as amended, stand part of the Bill."

Committee divided.

Ayes - - - 3.	Noes - - - 2.
Mr. O'Flaherty.	Mr. Hamilton.
Mr. Bellew.	Mr. Grogan.
Mr. Keogh.	

Clause 84, read.—Question put, "That this Clause stand part of the Bill."

Committee divided.

Ayes - - - 3.	Noes - - - 2.
Mr. O'Flaherty.	Mr. Hamilton.
Mr. Bellew.	Mr. Grogan.
Mr. Keogh.	

Clause 85, read.—Question put, "That this Clause stand part of the Bill."

Committee divided.

Ayes - - - 3.	Noes - - - 2.
Mr. O'Flaherty.	Mr. Hamilton.
Mr. Bellew.	Mr. Grogan.
Mr. Keogh.	

Clause 86, read, and agreed to.

Clause 87, read, and agreed to.

Clause 88, read, and agreed to.

Clause 89, read, and agreed to.

Clause 90, read, amended, and agreed to.

Clause 91, read, amended, and agreed to.

Clause 92, read, amended, and agreed to.

Clause 93, read, amended, and agreed to.

Clause 94, read, and agreed to.

Clause 95, read, and agreed to.

Clause 96, read, and agreed to.

Mr. *David A. Nagle* called and examined, and put in certain bills of costs delivered to him by parties in the respective causes, which were ordered to be printed in the Appendix.

Schedule read, amended, and agreed to.

Preamble read, and agreed to.

Resolved, That the Chairman be instructed to move for power to report the Minutes of Evidence to The House.

Ordered, To report the Bill, with the Amendments, to The House.

Printed image digitised by the University of Southampton Library Digitisation Unit

EXPENSES OF WITNESSES.

NAME of WITNESS.	PROFESSION or CONDITION.	By what Member of Committee Motion made for Attendance of the Witness.	Date of Arrival.	Date of Discharge.	Total Number of Days in London.	Number of Days under Examination by Committee, or acting specially under their Orders.	Expenses of Journey to London and back.	Expenses in London.	TOTAL Expenses allowed to Witness.
							£. s. d.	£. s. d.	£. s. d.
The Venerable Archdeacon Kyle.	- - -	Chairman - -	15 June -	20 June -	5	5	8 5 -	5 5 -	13 10 -
Dr. Joseph Radcliffe -	- - -	- - - - -	20 „ -	22 „ -	3	3	7 - -	3 3 -	10 3 -
Judge Keatinge - -	Judge - -	- - - - -	13 „ -	20 „ -	7	7	7 13 -	7 7 -	15 - -
David Augustine Nagle	- - -	Chairman - -	14 „ -	1 July -	16	1	7 - -	1 1 -	8 1 -
J. Blakeney - -	Solicitor -	Chairman - -	20 „ -	22 June -	3	1	- -	6 6 -	6 6 -
							TOTAL - - - £.		53 - -

Printed image digitised by the University of Southampton Library Digitisation Unit

LIST OF WITNESSES.

Jovis, 13° *die Junii*, 1850.

Veneris, 14° *die Junii*, 1850.

Lunæ, 17° *die Junii*, 1850.

Mercurii, 19° *die Junii*, 1850.

Veneris, 21° *die Junii*, 1850.

Martis, 25° *die Junii*, 1850.

MINUTES

Printed image digitised by the University of Southampton Library Digitisation Unit

MINUTES OF EVIDENCE.

Jovis, 13° *die Junii*, 1850.

MEMBERS PRESENT:

Mr. Grogan.
Mr. Sadleir.
Mr. Keogh.
Mr. Gladstone.
Mr. Monsell.
Mr. G. A. Hamilton.
Mr. Solicitor-General for Ireland.
Mr. O'Flaherty.
Mr. Bouverie.
Mr. Bellew.
Mr. Napier.
Mr. Scully.
Mr. Goulburn.

WILLIAM KEOGH, ESQUIRE, IN THE CHAIR.

The Right Honourable *Richard Keatinge*; Examined.

The Rt. Hon. *Richard Keatinge*.
13 June 1850.

1. *Chairman.*] YOU are Judge of the Prerogative Court of Ireland?—I am.
2. And Commissary of the Court of Faculties?—Yes.
3. By whom were you appointed?—I was appointed by the Primate of all Ireland, but that appointment was at the request of the Government of the day.
4. In your particular instance, the Primate may be said to have given the right of nominating to the Government?—In a letter which the then Lord Lieutenant of Ireland, Lord De Grey, wrote to me, offering me the appointment, he stated that the Primate had yielded the appointment to the Government, and requested my acceptance of the office.
5. The appointment under the patent rests with the Primate?—Yes, with the Primate.
6. Will you be kind enough to inform the Committee what your duties are as Judge of the Prerogative Court?—The jurisdiction of the Prerogative Court is confined to cases of wills, of personal property, administrations of the goods of deceased persons who die intestate, and administration with will annexed, as the case may be; and all the judicial duties connected with the administration of the law devolve upon the Judge, and he directs and superintends the ministerial duties, whatever they may be.
7. You have no matrimonial or divorce jurisdiction in the Court of Prerogative?—None whatever.
8. In fact you have no jurisdiction, except that which you have stated, as Judge of the Court of Prerogative?—None.
9. Mr. *Bouverie.*] Does your jurisdiction extend over the whole of Ireland?—Yes, over the whole of Ireland; there is only one Court of Prerogative in Ireland.
10. Your power of granting probate extends to cases of *bona notabilia*?—To cases of persons who have died possessed of *bona notabilia* beyond 5 *l.* out of the diocese where they have died, or in two dioceses, as the case may be.
11. If they had *bona notabilia* in two dioceses, the diocesan probate would be void?—I consider so.
12. But that is not so as regards your Court?—No.
13. As Commissary of the Court of Faculties, would you be so good as to inform the Committee what your duties are?—The duties are very trifling; the granting special marriage licenses, which only can be given to persons who come within a particular class, and granting notarial faculties.
14. Would you mention the number of licences?—Some eight or ten are given in the year; perhaps in mentioning that number, I say too many; there may be not more than seven or eight; they are granted to Privy Councillors, Peers, and others; I have not exactly the names in my recollection.
15. And you say there are not more than eight or ten of them granted in a year?

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

year?—I think not more than that number; I was not aware that the precise number would have been asked for, or I would have ascertained it; I do not think they exceed eight.

16. Are there any other duties which you have to perform as Commissary of the Court of Faculties?—There is also the granting notarial faculties to public notaries in the various counties in Ireland, as well as in Dublin.

17. Are there many of those in the year?—I should say, on the average, perhaps there are three or four vacancies for country notaries in the year, and accordingly as a vacancy is created, the Judge has a great many applications for the appointment; in fact, I look upon that more as a matter of patronage than anything else.

18. The duties of your office, as Commissary of the Court of Faculties, are limited to those you have mentioned?—I am not aware of any other.

19. Does it occur to you that there is any valid reason why both those offices should be united in one person?—At present there may not be; but in former times perhaps there was, because the dispensation to hold pluralities was effected through the medium of a faculty, granted by the Court.

20. That was limited by a regulation of the present Primate?—Yes, I exclude that altogether from the duties of the Court.

21. Mr. *Gladstone.*] Would the separation of the offices entail an increase of expense on the public, or could it be done without increase of expense?—I am not aware of any increase of expense that it would occasion, except in this way: I believe that the fees belonging to the office of Commissary do not amount to more than 10 *l.* or 20 *l.* in the year, and I doubt if any persons could be had to discharge the duties of that office merely for the fees; I think it should be annexed to some other office, if taken away from the Judge of the Prerogative Court.

22. *Chairman.*] The patronage of that office rests with the Primate?—With the Primate.

23. And on former occasions the officer who discharged the duty was paid solely by the fees?—Yes, and the Judge of the Court was paid in the same way, until the passing of the 7 & 8 Geo. 4, c. 44.

24. What is the probable amount of a notary's annual fees or emoluments?—That depends upon the fees.

25. Received in the rural district?—Yes, in the case of country notaries, and I believe it is generally looked to, not as an office to occupy a man's whole time, but as being of use to a person having some other pursuit, and whose spare time can be devoted to do the duties of the appointment.

26. At present your salary is paid out of the Consolidated Fund?—My salary is paid, under the 7 & 8 Geo. 4, out of the Consolidated Fund.

27. What is the amount of salary you receive?—£. 3,000 a year.

28. Mr. *Bouverie.*] Does that embrace your functions as Commissary of the Faculty Court?—Yes, the Act of Parliament provides that both the offices shall thereafter be held by one and the same person, and that that one person shall receive 3,000 *l.* a year.

29. *Chairman.*] Before the 7 & 8 Geo. 4, that gentleman was paid by fees, I believe?—Yes, I believe so.

30. Mr. *Hamilton.*] Do matrimonial cases ever arise incidentally in the Prerogative Court?—They may arise incidentally, in the same way as they may arise in the other Courts.

31. Mr. *Bouverie.*] That is a question of marriage, not a question of matrimonial suit?—Yes.

32. *Chairman.*] Matrimonial cases may arise incidentally in your Court, as they do in a court of common law?—Yes.

33. Mr. *Hamilton.*] How many cases have arisen in which you have been called upon to decide questions of that nature in your Court?—As far as my recollection serves me, I have been only called upon, since I became Judge of the Court, to decide one question of marriage; and that arose in the case of a party claiming as a widow, and in that character seeking administration; her marriage was denied, and I had occasion to decide in that case upon the validity of that marriage.

34. Mr. *Gladstone.*] Is the Committee to understand that you had occasion to decide that question upon your own judgment, on a point purely belonging to you, and upon which you were entitled to determine the question?—Entirely to determine the question, in order to entitle that lady, in the character of a widow, to get the administration which she sought to get in that character.

Printed image digitised by the University of Southampton Library Digitisation Unit

35. Mr. *Hamilton.*] Has the Prerogative Court any concurrent jurisdiction with the Diocesan Court in testamentary matters, or has it exclusive jurisdiction? —The Diocesan Courts have power to grant administrations and probates of wills in cases of parties dying and having property only within their diocese; if the property be so circumstanced, to that extent the jurisdiction belongs to the Diocesan Court, and not to the Prerogative Court.

36. *Chairman.*] If it should happen that the party has property beyond 5 *l.* out of the diocese in which the probate has been obtained, is that probate void? —I take the law to be, that such a probate would be void, but that if the probate were granted by the Prerogative Court, where there is only property within the one diocese, and where, therefore, the Prerogative Court ought not to have entertained the question, there the probate would only be voidable.

37. And all acts done under the diocesan probate in that case would be invalid?—I presume that that follows as a necessary consequence.

38. Do you know how many Diocesan Courts there are in Ireland; the number is 22, is it not?—I should think about that.

39. You are aware that those 22 Diocesan Courts remain in full force, though there are not that number of Bishops, in consequence of the passing of the Church Temporalities Act; they still remain in force, notwithstanding the reduction of the number of Bishops?—So I understand.

40. Mr. *Bouverie.*] Is there a provincial court of appeal from the Diocesan Court, in respect to matters matrimonial, of discipline and so forth?—There is an appeal to the Primate's Court.

41. Mr. *Gladstone.*] An appeal to the Archbishop of the province?—I mean that there is an appeal to the Archbishop of Dublin, who is the Primate of Ireland, for one portion, and an appeal to the Archbishop of Armagh, Primate of all Ireland, for the other portion.

42. *Chairman.*] Are you aware who are the Judges of those different Diocesan Courts; whether they are persons acquainted with the law, or ecclesiastics?—I am really not prepared to answer, save that of the Diocesan Court of Dublin, Dr. Joseph Radcliffe is the Judge; Dr. Radcliffe is an eminent Barrister and Queen's Counsel, in considerable practice, I have no jurisdiction as Judge of the Prerogative Court over Diocesan Courts; there is no appeal from these courts to me.

43. Have you heard, in fact, that with the exception of two persons, the Judges of those Courts are all ecclesiastics?—I have generally understood that they were clergymen, but it is a matter there is no difficulty in ascertaining.

44. Mr. *Solicitor-General for Ireland.*] With respect to those diocesan administrations, of course they are very much confined to persons dying in limited circumstances within the diocese?—Yes.

45. And if they had not the opportunity of proving their wills or taking administration in the Diocesan Court, they would be obliged to come to the Prerogative Court, to the Central Court of Dublin?—Yes, or be sworn before Commissioners in the country.

46. Supposing, according to this Bill, the business was centralized in Dublin, would they not be obliged then to attend before Commissioners in some shape or other?—Yes, they must attend before they can get probate of a will, to take the necessary oaths before some tribunal; and a tribunal, as I understand, is contemplated by this Bill, by the appointment of Commissioners for the purpose.

47. That would apply to any limited estate, either of a deceased person, or an intestate; anything above 5 *l.*, if it came to 15 *l.*, or any sum beyond that, would result in the necessity of its being proved in the Central Court; that is, at the Head Court in Dublin; if the Diocesan Courts for proofs of wills, and taking out administrations, were abolished, and the business was all centralized, would not it induce that necessity in respect of parties living at a distance?—Personal property could not pass except under probate or administration; and if the Diocesan Court was abolished, the probate would be obtained in the Prerogative Court.

48. And that would be done without the intervention of the local Proctors?—It could.

49. *Chairman.*] Do you consider that probate could be granted at as moderate a charge to parties in the country, at a distance from Dublin, by appointing Commissioners analogous to Masters Extraordinary in Chancery to take the affidavits of the parties to a will where there were executors?—I do not see any difficulty in arranging suitable machinery for that purpose.

50. Are you aware of the periods of sitting of the Diocesan Courts, and of the practice of those Courts?—No, I am not.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

51. Can you inform the Committee whether or not it is the practice that those Diocesan Courts only sit about once a month?—I really do not know.

52. Supposing it to be the fact, that those Diocesan Courts only sit once a month, or say once a fortnight, and that it is the practice of the Diocesan Courts, as well as the other courts, only to transact one act in a cause upon each court day; would not it be much easier for a party to have his case determined in Dublin than by going backwards and forwards to those Diocesan Courts in the country, especially considering the great facilities for communication at present?—If the business in the Diocesan Court was to be conducted on the same plan as it is conducted in the Prerogative Court, and if in the Diocesan Court they only sat once a month, there must be, necessarily, great delay in the progress of the causes.

53. And great expense?—Delay would of course entail expense.

54. Mr. *Grogan.*] Do you, of your own knowledge, know anything about it?—No.

55. *Chairman.*] Would not an individual in the country get probate with equal expedition, supposing that a person were appointed by you in Waterford, for instance, to take the affidavits of executors, as in your Court?—Take the case of a party residing in any of the country parts of Ireland, and requiring a prerogative administration or probate, as the case may be; he need not come to Dublin, but a Commission may be sent down, and in practice is daily sent down, to such a person to swear him in the country, and on the return of that Commission with the necessary affidavit, probate or administration issues.

56. Has the Assistant-Barrister the power of granting probate in particular cases?—No.

57. Mr. *Bouverie.*] Do you know what the Assistant-Barrister's testamentary jurisdiction is?—He has a certain jurisdiction as to rights under a will, that will being first established as to the personalty, but he has no testamentary jurisdiction.

58. *Chairman.*] What are the names of the other officers of your Court, beginning with the Registrar?—The Registrar of my Court is Mr. Stuart.

59. By whom was he appointed?—Mr. Stuart was appointed by his father, the late Primate.

60. Was that an appointment in reversion, or did he immediately take upon himself the discharge of the duties of his office?—I have read somewhere what purported to be a copy of the appointment; I never saw the original appointment, and I knew nothing whatever of Mr. Stuart until after I became Judge of the Court.

61. Are you aware he was appointed jointly with another person, Sir John Robinson?—I understood so.

62. Do you know when Sir John Robinson died?—No.

63. Do you know when Mr. Stuart was appointed?—No.

64. Nor the year of his appointment?—I believe several years ago.

65. Do you know whether it was in 1821?—I cannot say that; but I do know that Mr. Stuart is now sole Registrar.

66. He, in fact, survived Sir John Robinson?—Yes.

67. Do you know about what are the gross emoluments of the office of Registrar?—I cannot say what the gross emoluments amount to; but the net emoluments of Mr. Stuart, by his fees, and to which I believe he has a right by law, are above 3,000*l.*

68. Do you know whether the gross emoluments of the Registrar of your Court would be as much as 4,500 *l.* or 5,000 *l.* a year?—I would suggest that it would be better to get those particulars from some person who can give them more correctly than I can.

69. At all events, you consider his profits are over 3,000 *l.* a year?—I understand that his net income exceeds 3,000 *l.* a year.

70. Did you hear that from himself, in point of fact?—Yes, I must have heard it from him; returns, I believe, have been ordered, which will furnish full information upon these points.

71. But you think that you have heard from Mr. Stuart that his net emoluments are over 3,000 *l.* a year?—Yes, I am certain that Mr. Stuart and myself have spoken upon that subject.

72. Do you know what have been the emoluments of the deputies, upon the average, for the last three or four years?—I think the emoluments of the deputies are upwards of 800 *l.* a year each; here, again, I do not profess to be very accurate; I only speak to the best of my recollection.

73. Your

Printed image digitised by the University of Southampton Library Digitisation Unit

73. Your son is one of the Deputy Registrars?—Yes. He is a Barrister, and had previously been one of the Examiners of the Court.

74. And you believe their emoluments are about 800 *l.* a year?—Upwards of 800 *l.*

75. Which have to be deducted out of the fees from which Mr. Stuart gets his net income, of course?—I suppose so.

76. And the Archbishop, who appointed Mr. Stuart, was his father?—So I believe.

77. Does Mr. Stuart reside in Ireland?—No.

78. Does he reside in England?—He resides in Hill-street, Berkeley-square.

79. He in fact never attends your Court?—I never saw him there.

80. He discharges the duties by deputy, as he is authorized to do by patent of Charles the First?—Yes.

81. How are the fees of the Registrars regulated; is there any established scale of fees?—They are calculated, I believe, according to an established scale.

82. By whom was that scale regulated; was it before you became Judge?—Long before I became Judge; and, I believe, long before Dr. Radcliffe was Judge.

83. Mr. *Bouverie.*] And he was your predecessor?—He was my predecessor.

84. *Chairman.*] Have those fees been materially increased at any particular periods?—Not to my knowledge.

85. Do you know the date of the scale of fees?—I do not know.

86. And you do not know whether those fees of the Registrars have been materially increased from time to time?—Not to my knowledge or belief.

87. Take for instance the Deputy Registrar; he also attends in the Court of Faculties with you?—Yes, they are Registrars of both Courts.

88. Now, take for instance the case of granting a license to a notary; it appears in the scale of 1718, which was entered in Dublin in the Rolls Office, that 1 *l.* 6 *s.* was the fee for that grant; it is now 3 *l.* 12 *s.*; are you aware of that alteration in the amount of the fees?—No.

89. You are not aware whether any alteration has taken place in the amount of the fees of the Registrar?—I am not, at any time.

90. Mr. *Bouverie.*] Has there been no alteration since you became Judge?—None whatever.

91. *Chairman.*] You are not aware whether there was in Dr. Radcliffe's time, or in the time of the late Mr. Hawkins, any material increase in the fees of the Registrar or Deputy Registrar?—I am almost certain no increase took place in Dr. Radcliffe's time.

92. Nor in the time of Mr. Hawkins?—I cannot speak of Mr. Hawkins; before Dr. Radcliffe became Judge.

93. Mr. *Napier.*] All that might be ascertained from the proper documents?—You can get the exact return of all those items from documents in the office.

94. Mr. *Grogan.*] In point of fact, you have not yourself sanctioned any scale of fees?—No.

95. Nor have you made any alteration in the scale of fees that existed previously to your becoming Judge?—No; and further, I do not think I have any power by law to reduce or increase a fee, or to create a fee.

96. Are you also of opinion that Judge Radcliffe, when he held the same office, was in precisely the same situation, that he neither sanctioned any scale of fees, nor made any alteration in what he found existing?—I am satisfied that was the case; I cannot, of course, speak of my own knowledge of the practice at that time.

97. *Chairman.*] Do you know the scale of fees that was authorized and sanctioned by Lord Stowel in 1812?—I only know it by having read some allusion to it some years ago in a Report of some Commissioners appointed to inquire into the fees of officers in Courts of Justice in Ireland.

98. Are you aware whether the costs of Proctors are regulated by that scale of fees at present?—The costs of Proctors are regulated by the scale of fees prevailing in Dr. Radcliffe's time; just the same scale as existed at the time of Dr. Radcliffe's becoming Judge.

99. Have you made any alterations?—No.

100. The scale was made in 1812, and Dr. Radcliffe was appointed in 1816?—Yes.

101. Mr. *Grogan.*] You have no power to modify or alter the scale?—No; as Judge of the Court, not having any Act of Parliament to authorize me to do so, I believe I have no right to reduce a fee, or increase a fee, or create a fee.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

102. Mr. *Bouverie.*] Is there any table of fees exposed in the Court to public view?—I rather think that in the offices of the Court a table of the fees which prevail is hung up for public inspection.

103. *Chairman.*] There are two Examiners in your Court?—Yes, there are.

104. By whom are they appointed?—The two Examiners are Dr. Mason and Mr. Bowen; Mr. Bowen is a Barrister.

105. The right of appointment of the Examiners vests in the Judge?—Yes.

106. Mr. *Hamilton.*] You are speaking of the Prerogative Court?—In considering the duties of my office, I throw out of consideration altogether the Court of Faculties.

107. In fact, your answers are all directed to the Prerogative Court?—All to the Prerogative Court.

108. Would you be good enough to inform the Committee what is the nature of the Examiners' duties?—The same Examiner examines in each case, both on the direct and on the cross; on the direct he examines, not through the medium of interrogatories, but of the pleading; it is the duty of the Examiner to read the pleading, and to make himself master of the case, which the pleading sets forth. There is sent to the Examiner a note of the particular articles of the pleading, to which the witness is to be examined, and accordingly he examines the witness to the several articles, shaping his own questions, as in his judgment will best bring out the truth; the cross-examination is conducted through the medium of interrogatories; the Examiner puts the interrogatories, as they are written, to the witness, and gets his answer.

109. Mr. *Bouverie.*] Those interrogatories having been communicated by the other parties?—In the Prerogative Court, the cross-examining party has an advantage which he has not in a Court of Equity, that of knowing the precise points to which the witness is to be examined against him.

110. The articles are communicated, as well as the pleadings?—Yes, along with the note of the witness's name; under the practice of the Court, you state the articles to be examined to.

111. *Chairman.*] That examination is conducted in private?—Yes.

112. And no party knows the answers given until the publication of the deposition?—The Examiner is sworn not to state anything until after publication, except to the Judge.

113. Mr. *Grogan.*] Except to the Judge only?—Except to the Judge only; and, in my practice, I have invariably abstained from holding any communication, directly or indirectly, with the Examiner, upon the subject of any pending examination; with this exception, that once or twice, perhaps, a difficulty has occurred to the Examiner in the course of the examination, and he has consulted me as to that difficulty which he may have had with a particular witness; as, for instance, he may have objected to answer to a particular point, or may not have conducted himself properly.

114. *Chairman.*] Does the Examiner conduct all the examinations in Dublin, or does he visit the country for the purpose of examinations?—Occasionally Commissions are issued to the country.

115. And they go to the Examiner?—Yes, they go to the Examiner.

116. Are you aware what the fees of the Examiner are for going into the country to conduct examinations of that kind?—The Examiner, I think, gets four guineas a day.

117. Whilst he is absent from Dublin?—He gets four guineas a day, when he is remaining in the country on duty examining; but what the allowance is for his time going, and his travelling expenses, I am not certain of.

118. Has any change been made, in that respect, from the time of 1830, when this Report, which is before me, was printed?—None that I now remember.

119. In that it is stated that he is allowed four guineas for every 30 miles travelled?—I think I am inaccurate in my last answer. There has been this alteration made, that since the railroads have facilitated travelling, I believe the Examiner is allowed a smaller sum for travelling expenses, and is expected to travel a greater number of miles in a day.

120. You do not know exactly what the scale is?—No; and the Commission is not granted as a matter of course, nor at all, except upon application to the Judge. I have very often refused to grant a Commission where the parties lived within a reasonable distance, which is now extended beyond what was formerly considered reasonable.

121. It was 40 miles formerly?—Yes.

122. Mr.

Printed image digitised by the University of Southampton Library Digitisation Unit

122. Mr. *Bouverie.*] In all cases is the Commission issued to an Examiner of the Court, and never to a third party?—I have never known it issued to a third person, except when the Examiners of the Court were otherwise employed.

123. *Chairman.*] And then it would be to the Registrar?—No; whenever I have occasion to issue a Commission not to one of the Examiners of the Prerogative Court, I direct it to the Deputy Registrar of the Consistorial Court, he being an Examiner of that Court, and a person acquainted with the duties of an Examimer.

124. Mr. *Bellew.*] Do you know the number of Commissions issued in the course of the year, or about the number?—They are very few, perhaps six or eight.

125. *Chairman.*] Is not it customary for the Proctor of the party to accompany the Commissioner for the purpose of taking the examination; is not it the invariable practice that the Proctor goes down to be present at the examination?—I believe the Proctor usually attends in the town where the examination is held.

126. And he is allowed a similar scale of charge?—I believe so; but all those particulars will be got much more satisfactorily from one of the officers of the Court.

127. Mr. *Grogan.*] You have described that in the direct examination, the Examiner examines the witness to the article of the pleading that is handed to him?—Yes.

128. Are the answers taken down, and if so, how are they taken down?—The Examiner takes them down himself as given by the witness; he takes them down in the first person.

129. *Verbatim*?—*Verbatim*; that is, he gives the substance.

130. And in the cross-examination a similar proceeding takes place as to taking down the answer?—Yes, precisely.

131. And those constitute the depositions?—Yes.

132. Mr. *O'Flaherty.*] Dr. Mason was one of the Examiners?—Yes.

133. He is a Doctor of Laws?—Yes; but the Examiners are not allowed to practise; the second Examiner is Mr. Bowen; he is a Barrister.

134. *Chairman.*] Dr. Mason is the Librarian of King's Library?—Yes.

135. And he has other duties to discharge?—Yes; I found Dr. Mason in office, the patronage of which belongs to the Judge; he had been 23 or 24 years in office, and my first act was to re-appoint him; I thought it would have been a gross abuse of my patronage to have appointed another in his place.

136. Mr. *Grogan.*] Referring to those proceedings of examination, are they of daily occurrence in one of the offices of the Court, while you may be in Court itself hearing other matters as Judge?—Yes.

137. *Chairman.*] How are the Examiners paid; are they paid by salary or fees?—By fees.

138. Mr. *Solicitor-General for Ireland.*] Are they sitting actually in your own presence?—No, in chambers.

139. Mr. *Bouverie.*] The Examiner is, in fact, a substitute for a Judge, I apprehend?—So you may call them.

140. It was originally the practice for the Judge to take those examinations?—Yes.

141. *Chairman.*] Do you mean that it was originally the practice to have the examinations taken in the presence of the Judge?—I believe, in very remote times, the examination was taken by the Judge himself; he performed the duty.

142. In writing?—Yes, he took it down in writing.

143. And examined in open Court?—The Judge performed the same duty which is now performed by the Examiner.

144. Mr. *Bouverie.*] Does the process here spoken of, as repeating the acknowledgment of the witness before the Judge, still go on?—That goes on, with this qualification; I found it a source of great delay, vexation and annoyance, and I satisfied myself that, having power to issue a Commission to the Examiners in the country, to examine a witness, and also to repeat him, I had clearly the right to issue a Commission to the Examiner in Dublin to repeat the witness; and I did so about three years ago; accordingly, though the witness continues to be sworn before the Judge in Court, the Examiner repeats him.

145. *Chairman.*] He must be sworn before the Judge in Court?—The Dublin witnesses must.

146. And that act involves a charge to the parties by the Proctor; that is considered one of the daily acts in the Court, for which the Proctor charges?—I take

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

it that whether a Proctor brings a witness to a Judge to be sworn before him, or whether he brings him to an Examiner to be sworn before him, in either case the Proctor ought to be entitled to make a charge.

147. Ought he to be entitled to charge in both cases?—If he gives two attendances.

148. Suppose he takes a witness into one court, and has him sworn there, and makes a charge for that attendance, and then merely goes with the witness, or tells him where to go to, is he entitled to charge for both those attendances?—If I were empowered by Act of Parliament to regulate the scale of fees, I might say the two attendances ought to count as one; I am not aware of the number of attendances charged in such a case.

149. Mr. *Bouverie.*] Is the witness brought into court to be sworn before you, and then is the *tête-à-tête* with the Examiner taken down, and then has he to go before the Commissioner to acknowledge his examination?—The Examiner is the Commissioner, and thus annoyance and inconvenience are avoided; a witness has been kept in town, before I made that rule, for a day or two, before he could make it convenient to wait upon the Judge at a time when he could receive him; it occurred to me, therefore, that all this inconvenience and difficulty might be avoided without any expense, and I issued this Commission.

150. Mr. *Sadleir.*] The witnesses are sworn in open court, and it may be several days before they get an appointment to be examined before the Examiner?—Yes.

151. And some communication has to be made to them of the particular hour the Examiner can examine?—Yes.

152. And that communication is made by the Proctor to the solicitor, and by the solicitor to the witness?—It may be so.

153. Mr. *Grogan.*] What is the meaning of the phrase "repeat"?—The witness's deposition is taken down, and he signs it.

154. That is before the Examiner?—Yes; then he is brought before the Court, and he is asked whether he gives in, avers, and repeats this as his evidence, and he says he does.

155. When the Judge in former times examined himself, and took down the evidence himself, must not the other proceedings which were pending in the Court have been suspended or delayed while this process was going on?—Of course the examination would have taken place in secret, none being present but the Judge and the witness; the Judge has now for many years been represented by the Examiner, for if the Judge were sitting in chambers, examining a witness, he could not be sitting in Court too.

156. Has this Examiner, exercising the office of Deputy Judge, facilitated and advanced the proceedings on the trial in your Court?—I do not think the Judge himself could perform that duty; I think if that duty was to be performed by a Judge of the Court, you would require more Judges than one, for it is a duty which takes a great deal of time.

157. *Chairman.*] Can you give the Committee any information as to how many contested suits there are at present in your Court in the course of the year?—In the course of the year, it is difficult to say; a suit may be a contested suit, strictly speaking, and yet it may be a suit of a very trifling character. Perhaps I may say there are not more than eight or ten serious suits in a year.

158. Can you say what is the average number of cases decided in your Court in the year, at present, of all classes, whether in common form or otherwise?—No; I could not give you any idea as to those common form proceedings.

159. Mr. *Napier.*] Could some of the officers of the Court tell how that is?—A Return has been ordered, I believe, upon all these matters.

160. *Chairman.*] You said that the Examiner examines and conducts the examination according to the best of his ability from the allegations; may I ask you how many pleadings there are in a contested suit in your Court?—There is only one special pleading on each side; unless with the special leave of the Judge, there are only two pleadings; each party exhibits, in the first instance, what is called his preliminary allegation. In testamentary suits the party alleging the will puts in a *condidit*, putting in issue the execution of the will. On the other side, the next of kin puts in an allegation, stating the intestacy of the deceased. Each party is allowed to exhibit a special case; there is the special case of the party claiming under the will in support of the will, and of the other party against the will; and in these pleadings the several matters relied on are set forth in separate articles.

161. The

Printed image digitised by the University of Southampton Library Digitisation Unit

161. The common *condidit* is the ordinary mode of propounding a will?—Yes.

162. Mr. *Solicitor-General for Ireland.*] May not questions of this kind occasionally arise, not only of a widow claiming administration, but may not questions arise, in respect of other relatives, such as questions of legitimacy or otherwise?—Yes, in the same way as the case I mentioned a while ago, the case of a widow claiming administration. A party may claim administration as a son, and the marriage of his father and mother may be denied; then a question of the validity of the marriage would be raised, the same as in any other court.

163. *Chairman.*] Is it your opinion that the system of examination practised in the Court leads to great expense?—It leads to expense, certainly, and perhaps to great expense; but if I am to understand the question as raising a distinction between the expense of taking evidence in the Prerogative Court and the expense of taking evidence in the courts of common law, then I am very far from saying that it leads to a greater expense.

164. Than a *vivâ voce* examination?—I doubt if it does.

165. What is your opinion as to the propriety of introducing a system of *vivâ voce* examination; are you favourable or unfavourable to it?—That is, as the Committee are aware, a question upon which a very great difference of opinion prevails; if I was obliged to select between *vivâ voce* evidence altogether, and evidence by written deposition, and nothing else, then, upon the whole, I should give the preference to *vivâ voce* examination, and I am very anxious myself that *vivâ voce* examination, to a certain limited extent, should be introduced into the Prerogative Court.

166. Will you be good enough to state what your judgment upon that subject is?—I think it would be very important that the Judge should have power, after publication is passed in the cause, to have summoned before him any of the witnesses whose evidence had left matters unexplained, or in very great doubt; the examination and cross-examination being in secret, it necessarily happens in many cases that matters are left unexplained on both sides.

167. Mr. *Bouverie.*] Is the Examiner permitted to travel out of his case?—He cannot travel out of his case; that being so, it might often be very important to the ends of justice that the Judge should have power to have the witness brought before him and examined *vivâ voce*; and it would be satisfactory to the Judge to have a case, where the witnesses so contradicted one another as to raise serious doubts as to their credit, investigated by a jury, and through the medium of an issue.

168. You are aware that the Bill before the Committee proposes to introduce trial by jury?—I understand the Bill as altogether excluding evidence by written deposition, except in cases where such evidence is used in the other Courts; that, I conceive, would not be an improvement.

169. Mr. *Bouverie.*] Were you practising at the Common Law Bar before you became Judge of the Prerogative Court?—My practice lay principally in the Court of Chancery and Common Law Courts in Ireland, and I frequently held briefs in important cases in the Prerogative Court, of which I was an Advocate; perhaps you are not aware there is no exclusive Bar for the Prerogative Court, and, generally speaking, the gentlemen of the Bar practise in all the Courts of Law and Equity; none but those who have obtained a Doctor of Laws degree, and are admitted as Advocates, can practise in the Prerogative Court.

170. Then you are able to speak, of your experience, of the two systems?—Yes, I am.

171. *Chairman.*] Does the question of sanity frequently arise before you in the Prerogative Court?—Very frequently.

172. Would you consider that the system of written depositions would be better calculated to elicit truth than trial by jury and *vivâ voce* examination on a question of that kind?—Written evidence has a very great value attached to it.

173. Supposing you had to decide between both, whether there were to be written depositions to be decided upon by a single Judge on the question of sanity, as in the case of real estate, or by *vivâ voce* examination, which would you be disposed to give your opinion in favour of?—Supposing the issue to be as to sanity alone, and to nothing else, and I am to say whether I think *vivâ voce* evidence altogether, or evidence by written deposition, and nothing else, is preferable; I should say I prefer the *vivâ voce* evidence.

174. Where the question is *devisavit vel non*, which would you prefer, general depositions or an issue?—*Devisavit vel non* may embrace a great deal more than mere sanity.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

175. Suppose that that were the question, embraced in all its magnitude, which do you consider the best, the secret written deposition, or the system of open *vivâ voce* examination before a jury?—I do not think you can consider the question respecting written deposition in the abstract; but the system, I think, you must consider in connexion with the course of proceeding in the Prerogative Court; the party in his pleading is obliged to state his case; he states it in the course of several articles, and thereby binds himself to a particular detailed statement of facts. Now, I think, in a very heavy and important case, and especially where there is reason to suspect fraud, that circumstance may very often give the party who is opposed to the party alleging the will, a very reasonable and fair advantage; it binds the party making his statement to a particular case, and if it be a false case he is not at liberty to back out of it afterwards; whereas on a trial at law and issue *devisavit vel non*, you will not have, according to the ordinary proceedings in law courts, any notice of the particular case to be relied upon by the party, who may come generally and say, "I rely upon the will of A. B.," and proceed to prove, as best he can, that it was a will made by a competent testator.

176. Mr. *Bellew.*] Balancing the good and evil of the two systems, and upon which you can give a valuable opinion, having belonged to both Courts, which would you say had the advantage, deciding between the one and the other?—I can only repeat, that if I must choose between *vivâ voce* examination in all cases and nothing else, and examination by written deposition and nothing else, I would give the preference to *vivâ voce* examination; but I think the perfection of proceeding in my Court would be to allow the case to go on pretty much as at present, with the addition of a power in particular cases (and the Judge to decide the proper cases) of examining the witnesses *vivâ voce* after publication, and in certain cases directing an issue.

177. Mr. *Grogan.*] And in the case of an issue sent to be tried by the Judge himself, or directed to another Court to try that issue, the evidence there would, of course, be *vivâ voce*?—Certainly, save that to some extent it might be permitted to use the depositions already taken.

178. Then would your impression be, that before the parties are brought to an issue, in the preliminary proceedings in dispute, the present practice of having pleadings divided into separate articles, each of which articles alleges a separate fact, is conducive to the ends of justice and economy towards the parties in Court?—I think it is conducive to the ends of justice, and from what I have heard, I believe it is less expensive than proceeding in another way; but upon the expense I am not myself in a position to give an opinion on which I should wish to rely; I must leave that to others.

179. Then in the latter stages of it, when it comes before you after publication, when the case comes before you for adjudication, circumstances may arise, or facts may not have been fully established so as to render it desirable for you, as Judge, to have an opportunity to re-examine any particular witness or to direct an issue, in that case you think a *vivâ voce* examination would render your process perfect?—I should say so; in some cases I should like to have the examination *vivâ voce* before the Judge, and in certain other cases I should wish very much to have the case sent to a jury to be investigated, perhaps, with certain restrictions.

180. Mr. *O'Flaherty.*] That would be after your own examination?—Yes.

181. Mr. *Grogan.*] In the event of an appeal from your judgment to another Court, do you consider that, having had the case previously set out in those articles, and all reduced to writing, and the points on which you were yourself unsatisfied, or upon which the jury was required, settled, do you consider that that mode of proceeding eventually reduces the probable expense in comparison to the course of proceeding in a Court of Common Law, with an appeal also?—I have heard statements as to the comparative expense of the proceedings in the Prerogative Court and the Court of Delegates, and proceedings in Courts of Common Law and Courts of Equity, but I am not able to form a satisfactory opinion upon that subject.

182. *Chairman.*] Do I rightly understand your proposition to be, that you would in all cases pursue the present system, and only allow trial by jury and *vivâ voce* examination when, having gone through the present process, you had ascertained there were great difficulties, and then you would adopt another system; is that your view, that you would allow the present system to remain, never calling in *vivâ voce* evidence or trial by jury until you found insuperable difficulties under the present system, and that then you would submit the case to a different

Printed image digitised by the University of Southampton Library Digitisation Unit

different process?—I think the advantages of the present system are great, and ought to be preserved; I think, from the nature of the jurisdiction, it is right, as far as possible, that a record should be preserved of the evidence on which the decree of the Court is founded. If an ejectment is brought to establish a will, the question may be precisely the same as in the Prerogative Court; still the decision of the jury and the judgment of the Court do not decide the right finally under that will, and you may have cross ejectments tried from assizes to assizes; whereas in the Prerogative Court the sentence of the Court, if unappealed from and unreversed, is binding for ever against all persons.

183. Mr. *Bouverie.*] As a mode of ascertaining truth and arriving at justice in a particular case?—I think it more important there should be a record of the evidence.

184. *Chairman.*] Do you consider the present system as it is, without superadding *vivâ voce* examination and trial by jury, satisfactory to you?—It is by no means satisfactory.

185. Considering the present system to be by no means satisfactory, you would alter it by keeping it in its present state up to a certain point, and then you would apply a *vivâ voce* examination, and trial by jury afterwards?—I wish to improve the present system by removing its defects.

186. That is a general answer; I ask you this, do I rightly understand your specific proposition to be, that you would retain the present system until you found such doubts and difficulties in the case that you would require to call in another system, and then you would, in fact, have both systems working in the same cause?—You may say both systems working in the same cause.

187. To what extent would you apply it?—Not to the entire extent of the evidence to be given in the cause; there may be 50 witnesses examined on paper, and I may say there are points I wish explained in the evidence of A, B, and C, and then I should like to have those witnesses up, and to put three or four questions to them, the answers to which might remove the difficulty.

188. Mr. *Bouverie.*] Have you considered whether you have that power now?—I have not, I think.

189. Have you examined into it?—I have never known it exercised.

190. *Chairman.*] Have you any power of impannelling a jury?—No.

191. Do you consider it desirable to introduce that principle into the Bill, to give the Judge the power of impannelling a jury?—I think in cases of importance, such as contradictions between witnesses, and the Judge being unable to decide to which party he should give credit, he should have the opportunity of further examining into the case.

192. Before a jury?—Certainly, I think it would be desirable.

193. You would not introduce the principle of trial by jury in the first instance, until the Judge had himself sifted the case?—No.

194. Are you aware you differ in opinion with some very eminent civilians?—Yes.

195. Are you aware that you differ with Dr. Lushington on that subject?—No, I am not aware that I do.

196. Have you read the evidence of Dr. Lushington before the Committee of this House that sat to inquire into the practice of the Admiralty Court in the year 1843?—I have read, some years ago, a great many Reports of Committees, and a great deal of evidence upon the subject; I do not charge my recollection with the particular evidence to which you refer.

197. Have you read the Nineteenth Report of the Commissioners appointed to inquire into your Court?—Yes.

198. Are you aware that Judge Crampton recommended trial by jury and *vivâ voce* examination?—Yes, I believe he did to some extent, and I should be sorry to underrate the importance of that *vivâ voce* examination and trial by jury, and if I am obliged to choose between the one system and the other, to provide for all cases, I prefer the *vivâ voce*.

199. You consider the present system decidedly unsatisfactory?—The present system is decidedly unsatisfactory, in the particulars I have pointed out.

200. Mr. *Solicitor-General for Ireland.*] As to the evidence of Judge Crampton, I am told he did not say that trial by jury should be exclusively used?—I presume the paper containing his evidence can be referred to.

201. With reference to the opinion you gave as to the benefit to be derived from having a record of the case, and of the evidence, and the assistance to be

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

derived from the *vivâ voce* examination, speaking from your experience of trials at common law, which I know myself to have been considerable, can you say that you have found the written depositions in the Court of Probate to have been of considerable advantage in investigating the authenticity of a will before a jury with respect to real property, as binding the witnesses to the evidence they had previously given?—It is very important in that way, and I should think would greatly facilitate the upsetting of a fraudulent case.

202. Mr. *Napier.*] In cases where an issue would become important, are they generally cases of fraud or capacity?—Generally.

203. Then in cases where the point at issue is one of capacity, does not that very often involve a question of fraud or imposition also?—Questions of fraud and capacity are very often mixed up together, because a party may be of sufficient capacity to make a will, yet be so weak as to be a fit subject for imposition to be practised upon.

204. Then, as to the question put by the Solicitor-General for Ireland, in cases where an issue would become generally important, there the depositions would furnish a great auxiliary to the parties at the trial, in affording them the satisfaction of sifting the case before the jury?—I should say, in a case where fraud was suspected, it might be very important, in the cross-examination of the witnesses to the supposed fraud, to have before you what they stated upon the former occasion in their written deposition.

205. And then to give the full benefit of trial by jury to the jurisdiction, it would be important to have the case tried, with all the incidents of trial by jury; that is, to have counsel properly instructed, and the witnesses properly examined and cross-examined before a Common Law tribunal?—I do not quite see the bearing of the question.

206. You have intimated that you wish to have a *vivâ voce* examination and trial by jury?—Yes, in certain cases.

207. And you have intimated that trial by jury might be sometimes important before yourself; I want to know whether your opinion was, in advising the assistance of trial by jury, to have it conducted as a trial by jury, with all its incidents at Common Law, or whether you would combine with it the incidents of a jury impannelled by yourself?—If I had power to call for the assistance of a jury, I should call for their assistance upon some distinct issue; that issue might embrace the whole case, or it might embrace a very small part of the case, according to the nature of the evidence already before me, and the doubts which existed in my mind, and the difficulty to be cleared away.

208. Mr. *O'Flaherty.*] Would you have that trial before your own Court, or direct the issue to be tried by another Judge in another Court?—I do not see why, if the witnesses were in Dublin, or they could attend without inconvenience or great expense, the trial should not be in Dublin, before the Judge of the Prerogative Court.

209. Mr. *Grogan.*] You are aware there is a continual Nisi Prius Court sitting in Dublin?—I believe there will be one under the recent statute.

210. Having regard to a Common Law Judge, continually in the habit of trying cases at Nisi Prius, and familiar with the rules of evidence, do you think that it would be more satisfactory to have any such question determined before him, than to stop the ordinary business of the Prerogative Court to have a distinct trial there?—I do not see, if the case is to be tried in Dublin, and before a jury, why the Judge of the Prerogative Court should not himself preside; it would save time, and a great deal of trouble to the suitors.

211. Suppose questions arose with regard to the admissibility of evidence upon that trial, and the party were to take a bill of exceptions in an important case, would you convert the Prerogative Court into a Court of Common Law to entertain those questions?—I presume, according to the Bill now under consideration, if any question arose before a Judge of Assize, the case would come back to the Prerogative Court, and the Judge of the Prerogative Court Court would decide upon the validity of the objection, and his rule upon the objection would be subject to revision in the Court of Appeal.

212. *Chairman.*] Have you read the 52d section of the Bill?—Yes, I have read it.

213. The 52d section provides, "That in any contested suit depending in the said Court, the said Court shall have power, if it shall think fit so to do, to direct a trial by jury of any issue on any question of fact arising in any such suit; and

Printed image digitised by the University of Southampton Library Digitisation Unit

and that the substance and form of such issue shall be specified by the Judge of the said Court at the time of directing the same, and that he shall have power to settle the same; and such trial shall be had before the Judge of the said Court, or before some Judge of Assize at Nisi Prius, as to the said Court shall seem fit; and in any case where the trial of such issue shall have been directed to be had before the Judge of the said Court, it shall be lawful for the said Court to issue process to compel the attendance of jurors and witnesses, and to that end exercise all the power vested for such purpose in any of Her Majesty's Superior Courts of Law at Dublin;" does that section appear to you to comply with your view as to your power of summoning a jury?—I think that section sufficiently provides for the Judge having a jury summoned.

214. And his discretion as to what the jury should do?—Yes.

215. Mr. *Bouverie.*] Do you require proofs by two witnesses of every fact?—No; I take the law upon that subject now to be this, that you cannot found a sentence upon the uncorroborated evidence of a single witness, but that upon the evidence of a single witness, with some corroboration, what they call in civil law cases *adminicular* evidence, you may found a sentence.

216. Would not that create a difficulty that you might have a different result in the trial of the issue before the Common Law Judge and before you, from the facts represented in that *adminicular* evidence?—I think there is some provision in the Bill to obviate that difficulty.

217. Mr. *Hamilton.*] According to the section that the Chairman has referred you to, the case might be tried before a Judge of an ordinary Court of Nisi Prius or before you; supposing the case to be tried before the Nisi Prius Judge, in that case to whom would the appeal be?—I take it in that matter the Bill as now prepared may be said to be defective; the section does not provide for the case.

218. Do you think it would be desirable, in the event of its being judged expedient that the trial should take place before a Judge at Nisi Prius, that the appeal should be an ordinary appeal in cases of trials at Nisi Prius, or an appeal to the authority provided by this Bill in reference to cases in the Prerogative Court?—I think it may be very inconvenient, and lead to a great deal of expense, if you have different courts of appeal for different stages of a cause; and if, from the decision of a Judge at Nisi Prius, you allow a bill of exceptions to go to the Twelve Judges and the Court of Error, the case may be carried to the House of Lords, and then, that point being decided in the House of Lords, the case would come back to me; and if I ultimately pronounced my judgment, my decree in the cause would be subject to revision.

219. *Chairman.*] Seeing that the power given is to direct an issue, having reference to an analogous case of an issue directed by the Chancellor, does it appear to you that any difficulty would arise under the Bill, in respect of an appeal?—If it were an Act of Parliament, perhaps it might be decided that the language was sufficiently strong; but I think it would be unsafe to leave it as it is.

220. Would you inform the Committee what alteration you would suggest that would make it more binding, the words used in the Bill, supposing it to pass into an Act, being that the Judge shall have power to direct an issue; do not the words in the 52d section give the Judge of the Prerogative Court ample power as to that issue, and the verdict of the jury upon the return; you see that by the 54th section there is power to grant new trials; is there any power which the Chancellor would have after directing an issue, that the Judge of the Prerogative Court would not have under those two sections, 52 and 54, the word used throughout being "issue" to be directed if the Court shall think fit; by the Interpretation Clause, the word "Court" meaning the Judge of the Prerogative Court?—Adverting to the 54th section, to which my attention is now for the first time directed, I rather think the Bill would give to the Judge of the Prerogative Court the same powers as the Chancellor now has as to issues directed by him.

221. Then you would not say, having read those two sections, that the question which at first occurred to you was a *casus omissus*?—I rather think, taking the 52d and 54th sections together, that the Judge would have power.

222. Then you withdraw the former observation, that you thought there was an omission in that section, upon the point suggested by Mr. Hamilton?—I thought it an omission in the section, but not in the Bill; that omission is supplied by another section, to which my attention had not been directed.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

223. There is not an omission in the Bill?—No.

224. Your expression was, that the Bill was defective?—That, perhaps, was an incorrect expression; when I used it, I had only the 52d section under my view, and I only intended my answer to apply to that section.

225. Mr. *Grogan.*] Considering the 52d and the 54th sections together, are you of opinion that the Bill is fully operative, so as to give the Judge control over the issue?—I think it is.

226. Mr. *Hamilton.*] Is not it liable to this objection still, that the issue tried at Nisi Prius, before the Judges of the Common Law Courts, would be subject to revision by the Prerogative Court?—That is the intention of the Bill, I believe.

227. *Chairman.*] It is so in the same way with an issue directed out of the Court of Chancery?—Yes.

228. That it is in all cases subject to the revision of the Chancellor?—Yes.

229. Mr. *Grogan.*] In fact, such an issue is an exceptional case that may arise in your Court, for the ascertainment of which you are anxious to have a *vivâ voce* examination before yourself or before a jury?—According to the provisions of this Bill, you would have trial by jury in a great many cases where I should not desire it.

230. Mr. *Hamilton.*] Then do you think it desirable that the Court of Prerogative should be a Court for the revision of the adjudication of a Common Law Court?—I think, if it be provided that in any case the Prerogative Court should have power to direct an issue, the Court of Prerogative should have the same control over that issue as the Court of Chancery has over an issue directed by the Court of Chancery.

231. *Chairman.*] And it would under this Bill have that?—Yes, I think so.

232. Mr. *Hamilton.*] I wish to draw your attention to the alternative in the Bill; it provides that the Judge of the Prerogative Court may either direct a trial by jury before himself or before a Common Law Court; I want to know whether it would be desirable that that power should be restricted to having the trial before himself, so as to avoid the difficulty of constituting the Prerogative Court into a Court for the revision of the trial before the Common Law Court?—If you look to the 56th section, you will find the meaning to be this, that in country cases, where a trial in Dublin might lead to great inconvenience and expense, the Judge may send a case to be tried at the assizes; it does not give a power to send any case to a Judge at Nisi Prius in Dublin.

233. Mr. *Solicitor-General for Ireland.*] Take it this way: suppose that case went before a Judge at Nisi Prius, and that it was a question of ruling upon evidence, of the admissibility of evidence, that would be one point; or suppose it were any other decision that might be made at Nisi Prius, that would come back to your Prerogative Court?—Yes.

234. And it would go from you to the Court of Equity on appeal?—Yes; it would go from me to the court of appeal, in the same way as the decision of the Chancellor after trial of an issue *devisavit vel non* would go to the House of Lords to be reviewed on appeal.

235. *Chairman,*] Therefore the difficulty does not exist under this Bill, any more than in regard to an issue directed out of the Court of Chancery in the case of real estate?—No.

236. Mr. *Napier.*] Look at the 56th section, which makes the issue conclusive, "That in any case where the trial of any such issue shall be had before a Judge of Assize, the record of the said issue, and of the verdict therein, shall be transmitted by the Registrar or Clerk of Assize of the Judge before whom the said issue shall have been tried, to the Registrars of the said Court, and the verdict of the jury upon any issues, whether tried before the Judge of the said Court, or a Judge of Assize at Nisi Prius (unless the same shall be set aside), shall be conclusive upon the said Court, and upon all parties to such suit; and in all further proceedings in the cause in which such fact is found, the said Court shall assume such fact to be as found by the jury." Under the present system, where all the evidence is taken by deposition, those depositions come before the Court of Delegates upon appeal, and they can revise the opinion, and alter your judgment in your Court?—Yes.

237. And if there was any further tribunal, that would revise it again?—Yes.

238. But here the opinion of the jury on this will be conclusive?—Yes.

239. Suppose

Printed image digitised by the University of Southampton Library Digitisation Unit

239. Suppose that in the case of an ejectment, where there is a will and real estate, where the party could have his bill of exceptions, might you not have conflicting decisions upon the same will, the one concluded by the verdict of the jury, where there was no bill of exceptions to the evidence, and the other, where upon the bill of exceptions the decision would be the other way?—This section would give to the verdict of the jury a value in relation to personal property, which the verdict of the jury would not have in relation to freehold estate.

240. *Chairman.*] But with an appeal to the Judge of the Court to grant a new trial if he thinks proper?—I speak of a verdict not disturbed by any order setting it aside.

241. May not there be, with regard to the question pointed at by Mr. Napier, a different decision relating now to the real estate; one decision in regard to real estate in a Common Law Court, and a different decision in your Court with regard to the personalty?—Yes.

242. Mr. *Napier.*] In the case I present, you consider it, I suppose, as a very great inconvenience, the possibility of conflicting decisions upon the same will?—I should say that, to carry out the principle of the Will Act of 1837, you ought to have the same Court to decide upon the validity of a will as to all kinds of property.

243. I want to ask you if you can have at present all the advantages that the law allows with regard to real estate, of having the title ascertained and then found, with all the safeguards that the law throws around it; should you have a lesser system for personal property, to enable a conclusive decision upon the will of personal property, without that assistance?—At present the decision of the Prerogative Court upon the question of *devisavit vel non* is conclusive and final, if not reversed; I think it is very material that it should continue to be conclusive and final, and this Bill does not make it more binding than it is at present; it leaves it just as it was.

244. Mr. *Grogan.*] Would you consider it judicious, in the case of an heir, to take up the point of real property which the Honourable Member, Mr. Napier, alludes to, that in the case of an heir under an issue of *devisavit vel non*, he being made party to the suit in the Prerogative Court, and thereby afforded the opportunity of propounding the will, if it were necessary to do so, he should be finally and absolutely bound by such decision, as well as the persons interested only in personalty?—I think it important to have machinery by means of which the validity of a will as to all kinds of estate should be decided upon in the same court.

245. Finally?—Finally.

246. Do you see any difficulty in providing that machinery?—I do not see any substantial difficulty.

247. Do you conceive it exists in the Bill before you?—It does not profess to do so.

248. Have you considered in what way you would wish the Bill to be modified to effect that object, or has your attention been directed in that way?—It has been directed to that subject; but I have often been struck by the circumstance of the Will Act putting the wills of freehold and the wills of personal property precisely upon the same foundation, and the validity of those being decided upon in different courts, to some extent, by different kinds of evidence, and the value of the decision differing; in the one case the decision being final, and in the other the decision only binding *pro tempore*, and the parties having power to raise the same question at a future period.

249. Then, if machinery could be devised, and added to the Bill now before the Committee, whereby a final decision upon both species of property should be obtained by one suit, it would get rid of the embarrassment of conflicting decisions in the two Courts on two sets of property arising from the same will?—But I do not think it would be agreeable to the public, that the question of real property should be decided save by the verdict of a jury.

250. Mr. *Napier.*] Subject to all the incidents of Common Law trial?—Yes.

251. The machinery of the present Bill by way of issue leaves all the difficulties remaining as to the incidents of that issue?—Yes.

252. Would not it be desirable to have the title of real estate secured and guarded as at present, and would it not be better to try and assimilate the cases of personal estate to those of real estate, rather than to bring down the real to the

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

position of the personal?—I think any enactment which would prevent the decision of the Court of Probate being final, and which would leave the parties the power of having the matter opened again, would be unsafe and unsatisfactory.

253. If it is desirable to assimilate the two classes of property, so as to prevent the possibility of conflicting decisions under the same will, must you not either bring down the mode of trying the real estate to the same as the personal, or elevate the personal to the mode of the real?—Yes.

254. Then, having regard to the general rights of property, and the view taken by the public, which of those two courses, upon the whole, would you think it more desirable to try to follow up?—If I am to understand the question asked to be, whether, supposing it was intended that the validity of wills of real and personal estate should be tried in the same Court, and that the decision of the Court as to both should be equally binding and conclusive; in that case, however partial I may be to the proceedings of the Prerogative Court, in which I have presided now nearly seven years, I have no hesitation in saying that the object could only be accomplished by giving the whole jurisdiction to one of the Common Law Courts, and letting questions as to personal property be decided by the same machinery as questions relating to real property, some enactment being made that the decision should be, with certain guards placed about it, final and conclusive as to both kinds of property.

255. Would not your view be accomplished in this way, that where a Judge should consider a case ought to be tried by a jury, he should send it then into a Common Law Court?—I think that would be an innovation, so far as real estate is concerned, highly unpopular; and I think, upon constitutional grounds, no lawyer could recommend it. Do you mean to send the trial of title to real estate to a Judge, to decide on parole evidence himself, and without a jury?

256. The view I was putting was this, whenever, in a case coming before you, in the Prerogative Court, a question should arise that you thought ought to be tried by a jury, you should send that into a Common Law Court to be tried, with all Common Law incidents?—Do you mean that question to be confined to personal estate?

257. Where it arose upon a will of personal estate?—No; I object to that as greatly multiplying expense, and producing an additional court of appeal; in that case, for instance, you may have a bill of exceptions upon evidence going to the Twelve Judges, and then going to the House of Lords, and then coming back to the Prerogative Court, then the Prerogative Court pronouncing its judgment upon the subject, and the case going from the Prerogative Court to the Chancellor or such other tribunal as shall be appointed to decide the case.

258. Then I am to understand you that you do not think there is practical machinery for getting rid of that possible conflict of decisions upon the question of personal estate and real estate?—No, I do not think there is.

259. *Chairman.*] And the present Bill avoids the difficulty which would arise in the case mentioned by Mr. Napier; it avoids that bill of exceptions, and so on; it does not raise that difficulty?—It avoids it.

260. Mr. *Grogan.*] Should you think the adaptation of machinery by this Bill by one issue before yourself, that would decide both species of property, would be injudicious?—That question assumes an intention to send the trials of wills of real estate into the Prerogative Court; if it be decided to send them to the Prerogative Court, or any court you please, all questions of fact should be decided upon by the verdict of a jury.

261. Mr. *Napier.*] Does not this appear to be a great hardship, that, suppose a will leaves a large amount of personal estate, and leaves a very small amount of real estate, the parties shall have a right to have that contested and decided with all the safeguards and machinery of a Court of Common Law; but that, as respects the enormous amount of personal estate, they shall be bound by the individual opinion of a Judge, or a Judge upon appeal?—No; I should say if you had a proper court of appeal no injustice could be done.

262. Then why, in the case of real estate, would not the same machinery answer; why should there be a difference?—I think it is desirable to avoid expense; in the case of an ejectment or an action in a Common Law Court, it is very true you have, after a trial at Nisi Prius a bill of exceptions, and you may go to the House of Lords upon it; but then, when that matter is decided, and the decision of the House of Lords is finally given one way in the case where, no matter what way the decision may be, the case should come back to the Court

Printed image digitised by the University of Southampton Library Digitisation Unit

Court of Prerogative, and the decision of the Judge of the Court of Prerogative might be reviewed by the Court of Appeal.

263. Mr. *Sadleir.*] I understand you to state what I deem very important, that your judgment has led you to the conclusion that it is highly inconvenient that it should now sometimes happen that a will should be deemed a good will in one Court, that is to say in the Prerogative Court, while at some subsequent period it may be determined, after a very lengthened investigation before an Equity Court, assisted by an issue directed to a jury, to be an invalid will as regards real property; I collect you to state that you had felt that was a great hardship?—The possibility of such a thing is to be guarded against.

264. Are you personally aware that such cases have taken place?—Yes, I am aware that such cases have taken place.

265. I believe that the present Bill does not profess to deal with that inconvenience, or remedy that evil?—It does not deal with real estate at all.

266. Perhaps you also know, that in some cases the parties who have been interested in contesting the validity or invalidity of a will in the Prerogative Court, have had no interest whatever in the validity of the same will, with reference to the real property it professed to deal with?—Yes, very often.

267. And, therefore, the parties interested in the validity of the will, as regards the real property, are no parties whatever to the proceedings in the Prerogative Court?—It must often happen.

268. Mr. *Grogan.*] By the recent statute of wills, all wills whether of personalty or realty, must be now executed with the same formalities?—Yes; all wills since the 1st of January 1838.

269. The same formalities apply to both species of property?—Yes.

270. Take a will of personalty coming before your Court, the compliance with those formalities having been duly proved, the main questions that can arise and be at issue must be the competency of the testator, or the right of the claimant from next of kin, or anything of that kind, to come under that will, those are the two main questions that can arise?—The Court of Prerogative does not put any construction upon the will, except to this extent: if a party comes forward to allege a will, saying he is executor or legatee, and in that character has a right to raise the question, the Court will decide whether on the construction of the documents he be executor or legatee, but beyond a case of that sort, the Court of Prerogative puts no construction upon a will; it sees that the parties have an interest in raising the question, but whether that interest is greater or less, they do not inquire into; there being an interest on behalf of the party asserting, and an interest on behalf of the party opposing, the case goes on. But how ultimately the establishing of that will may affect the rights of parties, is not a question for the Court at all, save as I have stated.

271. Mr. *Sadleir*] I do not know whether you are able to inform the Committee as to whether the witness is at liberty, in your Court, when under examination, to render his answers from any written note or memorandum?—I should think that that was a matter very much to be guided by the discretion of the Examiner.

272. You consider the Examiner has a discretionary power upon that point?—I think he has, in a fit and proper case; I should say an Examiner ought clearly not to allow a party to give his deposition altogether from written note; but supposing a question to be asked as to a particular transaction, and he takes out his pocket-book and says, "I took a note of that, and it is the 14th of January," and then he puts it up again, I see no objection to that; but, as a general rule, it would be most improper to allow a witness to give his evidence, or anything like the bulk of it, from a written paper. The referring to a written paper should be in the way of exception more than otherwise, and in all cases where the Examiner allowed a party to refer to a written document, he ought to let the fact of the reference appear on the face of the depositions.

273. Have you ever known any instance in which an Examiner has made a record of the fact that a witness had given his evidence by reference to a written note or memorandum?—I cannot say; my recollection is not very accurate upon the point, but I rather think that instances of the kind now mentioned have occurred.

274. Mr. *Napier.*] The Examiner himself would be able to tell us that?—Yes.

275. *Chairman.*] With reference to the expense of the written examination, I wish to ask, whether that does not involve an expenditure of this nature, that the party has

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

to take out, if he wants any deposition, a copy of the entire; perhaps you are not aware of the rules as to that?—I believe, according to the practice of the Court, and which has never been interfered with since I became Judge, and prevailed during the entire time of my predecessor, the party is obliged to take out a full copy of the depositions.

276. And of the pleadings?—And of the pleadings.

277. Are you aware that he has to take out a copy of the pleadings, if there is an examination by Commission, for the purpose of putting them before the Commission Examiner?—If there is an examination before the Commissioner or Examiner, an additional copy of the proceedings is given; such is the practice.

278. And must be paid for by the party?—I presume it must be paid for by the party.

279. Must the party again take out a copy of the pleadings when publication of the depositions passes, together with the depositions?—I believe he must take out a copy of the pleadings on which there has been an examination.

280. Then, in effect, if there was an examination upon the pleadings, he would then have two copies of the pleadings taken out and paid for?—Yes.

281. Suppose there is an appeal to the Court of Delegates, he must then take out and pay for a third copy of the whole of the pleadings and the depositions?—When there is an appeal to the Delegates, there is what is called an inhibition; and there is sent to the Court a *transmis*; that consists of a copy of all the pleadings, the evidence, and rules in the cause.

282. Therefore, according to the present practice of the Court, the party would have to pay, in the case I have mentioned, for three copies of the same documents?—I should think so.

283. Is not it your opinion that that must materially increase the expense of proceedings in that Court?—If the three copies are charged for at the same rate, they come, of course, to three times the price of one.

284. Mr. *Grogan.*] All wills, and formalities connected with the execution of wills, being now similar, whether in reference to realty or personalty; a will being brought before you for the proof of personalty, where there is no objection raised in regard to the validity of the will, nor anything apparent upon the face of it, that it was not duly and properly executed by a competent party; that will you grant probate of?—Yes.

285. And that will also embracing realty to a certain amount, if the parties who would be entitled to that realty were also brought before your Court, when probate of that will was about to be granted, would there be any objection to your decision being final in that case as well as in the other?—I think you are under a mistake as to the finality of the decision of the Court. Where there is no opposition in what is called common form business, when probate is obtained, it can be called in by the next of kin, as a matter of course; and he can oblige the executor to proceed to prove the will in the regular way.

286. There is a second form in the Court which is final?—Yes, there is; that is when issue is joined between the parties, and when the question is decided on such an issue, the decision is final, if not reversed on appeal.

287. In point of fact, there is a final decision then on the will?—Yes, or on the right to adminstration, as the case may be.

288. Take the case I have supposed, that the will embraces realty as well as personalty; that the parties interested in that realty, or claiming to be interested in that realty, have been brought duly before your Court, and their case inquired into before the decision was pronounced, what injustice or injury can you conceive would arise from that decision being final, with regard to the realty as well as the personalty?—Provided there is no objection to the tribunal, it would be important to have the same tribunal to decide upon the will in relation to all kinds of property.

289. Then may not an ejectment to try the validy of any will be brought at any period by the consent of the Court?—No consent is necessary.

290. It may be brought at any period?—Unless the claim be barred by the Statute of Limitations.

291. And as frequently as the impugnant of the will may think right, if he gets the consent of the Court?—He need not get the consent of the Court; unless perhaps in the case of a receiver of an estate appointed by the Court of Chancery, in which case the leave of the Court must be obtained, but I believe it is had as of course.

292. Under

Printed image digitised by the University of Southampton Library Digitisation Unit

292. Under realty, at this moment, the final decision of the Court may be protracted for a very great period of time, and great uncertainty may exist among the parties deriving an interest under that realty?—Yes, going on from Assizes to Assizes by cross-ejectments.

293. Therefore, if the case of the realty were fully and duly investigated before your Court, supposing the Court to be a Court for testamentary causes altogether, and that the parties interested in the realty had full opportunity to state and make their case before your Court, and the final decision was pronounced by you as in the case of personalty, would not it be highly beneficial to the public that the same should be equally binding in regard to realty?—I think it would be very important, because, as the law stands now, a party may have title both to real and personal estate under the same will, and the same party, to assert his full rights, must have recourse to two proceedings, one in the Prerogative Court, and another in a Court of Law.

294. You assuming that after your decision affecting both personalty and realty had been given, say, six or ten years should be appointed, within which the disturbance of your decision should not be permitted as regards realty, would not that conduce to the ease of all parties who might have, or be supposed to have, an interest in realty under that will?—I think it would be very important that persons having title to realty under wills should have that title clearly established, so that it could not be afterwards called in question, and that, perhaps, would be accomplished by the mode suggested.

295. So as to be effected in as speedy a manner as consistent with justice to all parties?—Yes.

296. Mr. *Napier.*] Suppose it were a question of realty, it would not come before you at all?—At present my decision would not bind realty.

297. Then if there was anything about personalty in the will?—If what is now suggested were carried into execution, it could only be a perfect measure by providing that the Court into which you would bring the question of realty and personalty should also decide upon the realty alone, where there was no personalty.

298. *Chairman.*] And should cease to be a Court of the nature of the Court that it is altogether, and become a Common Law Court?—Yes.

299. Altogether?—Yes.

300. In fact, it would sweep away the whole Court?—Yes.

301. Mr. *Napier.*] Would not there be this difficulty, that a man getting property under a deed where a deed was executed conveying property, the title to that property would have to be tried with certain incidents, but if it was under a will, it would have to be tried deprived of those incidents?—The proposed tribunal would only establish title under will; the title under deed should be tried by a different tribunal.

302. Would it be a politic or wise thing to have the property under a will disposed of in one way, and that under a deed disposed of in another way?—If there be a tribunal to dispose of one property, to adjudicate as to the validity of a will of one kind of property, and finally to adjudicate, it is a mistake not to allow the tribunal also to decide upon the remainder of the property, because the question will be precisely the same; you will be raising exactly the same questions, the capacity of the deceased, the absence of fraud, and the fairness of the transaction, and the question whether the document put in issue really carries out the intentions of the deceased. You will be raising all those questions throughout the entire of the case; but your decision can only bind, it may be, not one-twentieth part, perhaps, of all the property that is disposed of. There appears to be an objection to that course, when the will, as to real and personal property, is put exactly on the same footing.

303. Do you think that those questions about capacity and fraud would arise as much under a deed as under a will, or would affect large portions of property as well under a deed as under a will; do you think it would be politic to have a different course of decision, in the case of a deed, from what would take place in the case of a will?—I think it is politic, for this reason, that you avoid conflicting decisions upon the same document. The case you put of a deed is different; there, it is true, there may be repeated trials, from time to time, by the party who claims under that deed, or the party who claims against it.

304. Mr. *Hamilton.*] You have described to the Committee the process of

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

examination in contested cases, that depositions are taken before an Examiner; now, suppose cases to be brought within the Prerogative Court, even the small cases that now are tried in the Diocesan Court, do you see any difficulty upon the score of expense, or otherwise in regard to the process of examination in reference to the small amounts which you have described as to the practice of the Court; take the case of a person in a remote county, where the matter in dispute is 5 *l.*?—You are to compare the difference between the expense of going from the residence of the witness to the place where the Judge or Registrar of the Diocesan Court lives; that may be or may not be more expensive; it depends upon the localities; there are, for instance, country parts of Ireland from which you may reach Dublin in as little time and at as little expense as you could reach some parts of the same county.

305. Take the case of the small amount of 5 *l.*, given by will in a remote part of the country?—You are speaking of a contested case?

306. Yes; I am speaking of a contested case; I want to know whether the parties in that case would be subject to increased expense and difficulty, either by being obliged to have recourse to the process you describe as being the practice or procedure of the Prerogative Court, or by having to come to Dublin to have the case tried as provided by the Bill?—By jury?

307. Either the one or the other?—It is very hard to say what the difference of expense might be; I can conceive a party living in a portion of the county of Cork or Limerick, and it costing him as much to get to Limerick or Cork, or to the place where the country Judge lives, and the country Registrar, as to come to Dublin.

308. Then is the procedure in the Diocesan Court the same as to depositions as in the other Court?—Yes, I believe so.

309. *Chairman.*] Is it not, in fact, more expensive?—I believe so, but am not certain.

310. The procedure in the Diocesan Court is more expensive, where the same process is gone through, than in the Prerogative Court of Dublin?—I cannot speak to that.

311. Have you heard that?—I cannot say how that is.

312. Do you concur with Judge Crampton and others that it would be desirable to have one Court of Probate established in Dublin, no matter what that Court should be?—I think it is desirable to have one Court of Probate established in Dublin, and that, principally, with a view of registry. It is important to have one particular place where all wills could be found; and I think, again, it would be very important, as putting an end to all questions whether the country Courts have or have not exceeded their jurisdiction. If they have, their probate is void; I am constantly applied to for administration or probate, as the case may be, where probate or administration has been granted years ago in the country Courts. In a case where I am applied to for probates, I issue a monition to the Judge or Registrar of the Diocesan Courts to send up the original will; he is obliged to send up the will in obedience to that order, and then I allow it to be proved in my Court, and in almost all the cases I could mention, when they have come into my Court, they have passed without opposition. It is a mere matter of form, and the cases generally have arisen some years after the former probate or administration had been issued. It may have been discovered in making out the title to a property, or where it may have been necessary to represent a judgment creditor, that the probate or administration granted was worth nothing. All this would be avoided by having one Court.

313. Mr. *Bellew.*] In fact, are cases as low as 5 *l.* contested?—No, I never knew of any such.

314. *Chairman.*] It would not, in fact, be the first expense?—No.

315. Would you not add to those reasons you have given as to the propriety of having one Court of Probate, that there would be one step less in the way of appeal. At present there is appeal from the Diocesan Court to the Archbishop's Court, then to the Court of Delegates. There would be one step less in the process in your Court, because the appeal is direct from your Court to the Court of Delegates?—Yes.

316. You think that advisable?—It would constitute an additional reason.

317. Mr. *Hamilton.*] What is the smallest cost of taking out probate for the smallest sum in your Court?—I cannot tell; that is all decided by the proper scale,

Printed image digitised by the University of Southampton Library Digitisation Unit

scale, according to the strict course of practice, and no question of the kind has ever arisen before me.

318. *Chairman.*] Are you favourable to the existence of the Court of Delegates as a court of appeal?—I conceive it is a most objectionable tribunal.

319. How is the Court of Delegates constituted at present in Ireland?—When a party desires to appeal from a decision of the Prerogative Court, he presents a petition of appeal to The Queen, and that, as a matter of course, is referred to the Chancellor, and the Chancellor, under the statute of Henry the Eighth, appoints Delegates or Commissioners to investigate the merits of the appeal, and finally to decide upon the case.

320. Who are those Commissioners generally?—The Commissioners in number are five. They consist of three Common Law Judges; and formerly, up to very shortly before I became Judge of the Court, two Masters in Chancery. Shortly before I became Judge of the Court, the then Chancellor changed the course. He did not issue his commission to the Masters in Chancery, but in lieu of the Masters in Chancery, he put into the commission two of the practising Advocates of the Prerogative Court.

321. Do you consider that that alteration, as to putting in two of the practising Advocates of the Prerogative Court, was objectionable?—I consider it highly objectionable, and eminently calculated to bring into disrepute the Court of Delegates, and the Court appealed from.

322. Was not the result of that alteration, that, generally, Advocates who had no practice in the Court were appointed Judges of appeal from your decision as Judge of that Court; were they not persons selected as not being concerned in the causes?—The Advocates concerned in the causes could not be in the commission, and the number of Advocates is so small, that it often happened that the Advocates in the commission were persons certainly not in much business. I wish to observe, that upon the competency or the sufficiency of the Advocates to whom I refer to fill any judicial position, I make no observation, I make no suggestion against their being quite qualified for it.

323. Then, I need scarcely ask you any further about your opinion of the Court of Delegates?—I should observe, that this is a subject upon which I entertain very strong feelings, so strong, that perhaps my judgment is not to be very much relied upon. In England, the same course heretofore prevailed before the passing of the Act of Parliament referring cases of that kind to the Judicial Committee of the Privy Council.

324. That does not subsist now in England?—It originated in Ireland after that system had been condemned in England, and, I believe, almost universally reprobated, and after the statute sending the English appeals to the Judicial Committee of the Privy Council.

325. Mr. *Grogan.*] The present system of Delegates, are you speaking of?—No; the present system of including in the Commission two of the practising Advocates of the Court originated at the time I have stated.

326. *Chairman.*] You mentioned, in giving one of your last answers, that the number of Advocates was so very limited that the Chancellor was compelled to choose from Advocates not having extensive business; can you form any idea of what is the number of Advocates practising in your Court, persons whom you have known to practise in the Court?—I should think about ten.

327. Mr. *Bellew.*] Do you know the assumed ground of that change to which you have referred?—That ground was this: that the Masters in Chancery had a great deal to do for some years before, and they were overworked, and they complained, and I think very justly complained, of having this duty cast upon them; there was abundant reason for relieving the Masters in Chancery from the performance of that duty; my objection is to the class of persons appointed in their place.

328. Mr. *O'Flaherty.*] Are all Barristers in Ireland competent to practise in your Court?—No; as a matter of right, no persons can claim to practise in the Prerogative Court, as Advocate, unless admitted as such.

329. *Chairman.*] You said the number of Advocates was about ten?—There may be more occasionally.

330. Are Barristers generally allowed to practise in your Court?—Barristers who are not admitted Advocates of the Court cannot sign pleadings; but a Barrister is allowed by the courtesy of the Court to practise, if there are two Advocates of the Court concerned with him; and I generally find, in very important cases, that I have before me some eminent gentleman who is not an Advocate.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

331. Is it not the fact that, generally speaking, in an important case the management of the case is committed to a Common Law lawyer, he not being an Advocate?—No, not the management of the case, if I am to understand the conducting of it up to trial.

332. I mean in the hearing of it before you, as Judge?—I should say that, generally speaking, the Common Law Barrister brought in is a man of eminence, and being a man of eminence, he generally takes the lead.

333. And then he is brought in as special Counsel?—To this extent, that, perhaps, he may get a more liberal fee than the Advocates who ordinarily attend the Court; but I do not think he gets anything like what we call a special fee in Ireland.

334. You know the case of Kelly *v.* Thurles, lately tried in your Court?—Yes.

335. And Mr. Brewster and the Attorney-general were brought in on opposite sides in that case?—Yes, they were.

336. And on special fees, no doubt?—I do not know the amount of the fees they received.

337. Are members of the Roman Catholic persuasion entitled to practise in your Court?—That is a question of law upon which I would decline to give an opinion, save to this extent, that heretofore it was decided by my predecessor that they were not admissible unless they took certain oaths and made certain declarations.

338. Then every Advocate at present takes certain oaths in your Court?—Every Advocate in my Court, up to the present time, has taken certain oaths, and has been obliged to take certain oaths; but the question now put is, in other words, are they still obliged to take those oaths?

339. The Advocates practising in your Court have had to take certain oaths heretofore?—Yes.

340. Are those oaths inconsistent, as far as you know, with the religious belief of the Roman Catholics?—All the Advocates have heretofore taken the oaths, which are such that no Roman Catholic could conscientiously take them.

341. Does the same observation apply to Proctors?—Yes, it does.

342. Have any Roman Catholic gentlemen, in fact, made application to you to know whether you would admit them as Advocates?—I have had applications made to me since I became Judge of the Court, to admit gentlemen of the Bar as Advocates without taking the usual oaths. The first application was made by a gentleman who was not a Roman Catholic, but who said he had certain scruples about taking the required oaths, and he requested me to hear his application in chamber; to hear it privately, and decide upon it privately. I told him, if he wished to present his petition, it must be heard in the usual way; that is, that it must be argued and decided in public, and that I could not listen to any private argument in a question of the kind. I have also been applied to by Mr. Burke, a Barrister, who told me he was a Roman Catholic, and that he was entitled to take a Doctor of Laws degree; that his object in taking that degree was to be admitted an Advocate of the Prerogative Court; and he required my opinion whether, if he attained that degree, he would be admissible, being a Roman Catholic. My answer to him was, that I could not pronounce any opinion upon the question in that shape; that the opinion which I might form upon the question would not only affect his rights, but the rights of others; and that my decision upon the question could only be obtained in the regular way, in Court, and in the same way as upon any other question.

343. Have you any objection to state the name of the other gentleman who made application to you to be admitted?—I do not remember it.

344. Then, may I ask, would you have felt yourself justified in admitting either of those gentlemen without their taking the oaths, unless the question was discussed before you, and you were convinced of their admissibility by the discussion?—Certainly not.

345. You would not have admitted them?—Certainly not; the mere fact of its being an innovation in practice would suggest the propriety of having the case discussed.

346. Mr. *O'Flaherty.*] The mere fact of being an innovation of practice then showed the impression on your own mind of the inadmissibility of those parties, unless your mind were changed by argument in Court?—I think it may be fairly said so; I informed both the gentlemen, and Mr. Burke particularly (and I hope I succeeded in satisfying him), that I considered the question

Printed image digitised by the University of Southampton Library Digitisation Unit

question which I should have to decide, if he presented his petition, was a pure question of law, and nothing else.

347. May I ask what are the oaths which you consider inconsistent with conscientious Roman Catholic belief?—I really cannot give them; there is the declaration against Transubstantiation.

348. Is that required to be taken?—Yes; and I grounded my objection in each of those cases upon the fact of all those oaths being heretofore required; but, as I said before, I did not hear the question argued.

349. Mr. *Bellew.*] What other oaths are required to be taken?—There are other oaths which, I presume, it is quite clear that no Roman Catholic would object to take, but that is the leading oath.

350. The same observation, no doubt, applies to Proctors?—Yes.

351. Then, as a matter of fact, do not questions involving, very frequently, the character and conduct of Roman Catholic clergymen, come before you upon cases in your Court?—Yes; I have had occasionally the conduct of Roman Catholic clergymen, in relation to wills, the subject of evidence before me.

352. And their habits in communication with the members of their flock?—I am not aware that their general habits have come before me.

353. Perhaps I could call your mind to a case; do you remember the case of Cane *v.* Cane, decided before you, that came out of the county of Cork, about three years ago; or do you recollect the case of French *v.* French?—Yes, a recent case.

354. Were the characters of two Roman Catholic clergymen brought in question in that case?—Yes.

355. And, no doubt, imputations appeared against them upon the pleadings?—Yes.

356. Upon their conduct as clergymen?—Yes.

357. Did not questions arise as to their administration of the rites of their church?—As to their conduct in the transaction.

358. The administration of the rites of their church in connexion with matters relating to a will?—The state of mind of the deceased party at the time when the rites of the church were administered, was a question in connexion with the period at which the alleged will was made.

359. And the influence that the Roman Catholic clergymen might be supposed to have exercised over the deceased at that time?—If topics have been observed upon in that and other cases, I am bound to add that I have had similar topics addressed to me with reference to the conduct of Protestant clergymen and Dissenting clergymen.

360. Do you consider there is any substantial reasons why members of the Roman Catholic persuasion should not be admitted to act as Proctors and Advocates?—I see none whatever, provided they are otherwise qualified.

361. In the cases of the kind I have alluded to, such as French *v.* French, it would, perhaps, have been desirable that Roman Catholics should have been admitted to act as Proctors and Advocates?—I cannot say that it would.

362. You do not think it would have been more desirable, in such cases as that, than in a case where the conduct of a clergyman was not called in question?—No.

363. Mr. *Bellew.*] Are you obliged, as Judge of the Prerogative Court, to take the same oath?—Yes.

364. *Chairman.*] And so are the officers of the Court?—Yes.

365. You have said you see no reason why a Roman Catholic should not be a Proctor or an Advocate; do you see any reason why a Roman Catholic should not be a Judge or any other officer of that Court?—No, I do not.

366. Is not there a vast amount of property belonging to Roman Catholics administered in that Court?—I presume there is. The question whether the party be Roman Catholic or Protestant is not raised before me, except in cases where there is a suit, and generally in the suit the religion of the party appears; but I am safe in saying a large amount of property of Roman Catholics is administered through the Court.

367. Would you be justified in saying at least one-half of the personal property is belonging to Roman Catholics?—I am unable to answer that question.

368. Do you know what amount of property is administered in the Court annually?—I cannot at all say.

369. Mr. *Hamilton.*] Do you happen to be aware that some years ago an intimation was made, or representation expressed, by the highest authority, that it

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

would be desirable that a Bill should be passed to relieve Roman Catholics from that disability?—I know nothing save what I have heard, but to my own satisfaction I have ascertained, that several years ago the late Judge was applied to on the subject, and he applied to the present Primate, who at once assented, and said he saw no objection to Roman Catholic Proctors being admitted, provided they were otherwise qualified.

370. *Chairman.*] You are aware that there is a clause in the Relief Bill, providing that no Roman Catholic shall be Judge of the Prerogative Court?—I was not aware of any express provision to that effect.

371. You do not see any reason why that enactment should continue?—I should not, if the Judge was otherwise qualified.

372. It does not matter what his religion is?—I do not say that, but I see no objection to a Roman Catholic.

373. Mr. *Sadleir.*] Permit me to ask you a question as to those cases in which one of the material questions arising would be this, as to the theological effect of those vows of poverty and vows of obedience that are sometimes taken by ladies entering a convent, and whether, during your time, any case has arisen in which that has been the question brought before you, as a theological question, as to what was the precise effect of a vow of obedience or a vow of poverty taken by a person?—No, not in my time; the only question bordering on what is now mentioned, in my Court, was raised the other day, and it took only half an hour: there were, I think two persons in equal rights entitled to administration; one declined to take it, and the other was willing to take it; but it happened she was a nun in a convent, and it was suggested to me by counsel, who appeared for a party entitled in the second degree, that she was consequently not qualified to take administration; I cannot say the case was argued, it was rather a sort of suggestion thrown out, to see if the Judge would say anything in answer to it; I said at once that I did not see any objection to a nun's getting administration, and if she did not choose to act herself, she might appoint a nominee to act for her.

374. Are you aware of any instance of a Proctor, after his admission, subsequently having become a Roman Catholic, and continued to practise?—I never heard of it in Ireland.

375. Have you known an instance in Ireland of a person practising as an Advocate after he had adopted the tenents of the Roman Catholic religion?—No.

376. Will you venture to say whether a person would be entitled to practise as a Proctor or an Advocate after he became a convert to the Roman Catholic faith; a case has arisen in this country?—Perhaps that is scarcely a question that I ought to be required to answer.

377. Mr. *Grogan.*] You have stated that you did not see any objection to a Roman Catholic; your attention has been directed to a clause in the Relief Act, prohibiting Roman Catholics being Proctors or Advocates; I understood you to say you saw no objection to their being admitted if found otherwise qualified?—Yes, in the Prerogative Court; I say the Prerogative Court, because there are Courts where questions of discipline and doctrine might be raised; I confine myself to the Prerogative Court.

378. I also understood you to say, referring to the illustration that was mentioned of the case of some Roman Catholic clergymen, whose names were put forward in the question asked of you in regard to the case of French *v.* French; you do not see any reason why they should not be admitted on that account, because the conduct of Roman Catholic clergymen might be the point raised in the debate?—No, I should not consider it important, that merely for that reason, they should be admitted. Counsel could only observe upon the evidence in the case, and, I presume, Protestant Counsel or any kind of Dissenter could observe as freely upon the evidence, and, *vice versâ*, Roman Catholics could observe in the same way upon Protestant clergymen, when their conduct is in question in the evidence.

379. Mr. *O'Flaherty.*] Do you wish to have those Courts opened as largely as possible to every gentleman, of whatever religious persuasion, upon the general principle that the doors are open in all other Courts?—I cannot understand why it should not be so with the Prerogative Court.

380. There is no particular reason which suggests itself to your mind?—No.

381. Mr. *Bellew.*] You have mentioned other Courts; what are the other Courts you alluded to?—To the Diocesan Courts and to the Courts of Appeal; the

Printed image digitised by the University of Southampton Library Digitisation Unit

the Archbishops' Courts, in which questions connected with the conduct of clergymen and connected with Protestant doctrine might be raised.

382. *Chairman.*] Supposing the jurisdiction of the Diocesan Court to be transferred, as this Bill proposes to do, in testamentary matters, do you see any reason why Roman Catholics should not practise in testamentary matters?—Certainly not; I understand the Bill merely to transfer the testamentary jurisdiction.

383. Mr. *O'Flaherty.*] What objection could there be to permitting Roman Catholic Advocates practising in those Courts, though there might be possibly an objection to the Judge of those Courts being a Roman Catholic?—That is very much a matter of opinion; it would occur to me that there are questions in the discussion of which they ought not to be concerned, and questions in which many would not wish to be involved, such as questions of Protestant doctrine, and so on. That is purely an ecclesiastical matter.

384. *Chairman.*] As regards the Court of Delegates, can a Roman Catholic be a member of the Court of Delegates?—That is a question which there is some division of opinion upon; a Roman Catholic Judge, Judge Ball, has declared his opinion that he cannot sit under the present law; however, I believe, Sir Edward Sugden entertained a different opinion.

385. As regards the tribunal of appeal this Bill proposes to establish, I am aware some objections have been raised to it; but do you consider that the Chancellor, with two Common Law Judges assisting him, would be a proper tribunal of appeal?—I suppose, if the Chancellor has time to devote to it, with two Common Law Judges, it would be a very efficient Court.

386. Do you think it would be preferable to the Chancellor sitting alone?—I think there is a great objection to an appeal finally binding from one single Judge to another single Judge, however eminent.

387. Are you of opinion that it would be advisable, as proposed by this Bill, that there should be no Commission of Review (assuming other matters to be adopted), as at present exists from the Court of Delegates; the case having once gone from the Judge of the Prerogative Court to another tribunal; such Court of Appeal having been established, are you of opinion there ought to be finality of litigation with that tribunal, that there should be no further proceedings?—I am of opinion that there should be no appeal from the decision of the Court to which the case is to be sent from the Court of Prerogative.

388. Mr. *Grogan.*] That is, no second appeal?—No second appeal; if you have an additional appeal, it creates delay, and delay always brings with it a vast deal of expense; and I should also suggest, that appeals should be put under some restriction, for I look upon them as one of the great evils of the present practice. There are appeals in every stage of the case, if the party thinks fit to make them; every single order that the Judge pronounces, the Proctor can appeal against, provided he will submit to the expense; he has the right to hang up a cause in the Court for years; at every step I take, the Proctor can stop me.

389. Mr. *Hamilton.*] Do you approve of the provision of the 69th clause, that the appeal "any party is entitled to make under the provisions of this Act, shall be made to the Lord Chancellor in such manner, and subject to such rules, and upon such security, if any, as the said Lord Chancellor shall from time to time direct"?—I would suggest, as a preliminary question for the Committee to decide upon this Bill before they adopt that section, that is, is the party to be allowed to appeal from every order?

390. *Chairman.*] Do you consider it advisable that restrictions should be put upon the present right of appeal?—I think so.

391. What restrictions?—Particularly that parties shall not be allowed, as at present, to appeal from all interlocutory orders.

392. Mr. *Grogan.*] Would you make it general from any interlocutory orders?—I said, "all."

393. *Chairman.*] Would you suggest the restriction which you would advise, or where you would vest the power to restrict the right of appeal?—It would occur to me, that it might be very desirable not to allow of an appeal from an interlocutory order at all, unless, perhaps, you do it in this way, by consent of the Judge; and that I conceive to be very objectionable generally, because the Judge below may entertain a very strong opinion, and yet he may be wrong.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

394. I will mention a case of an interlocutory order. In the case of Kelly *v.* Thurles, you pronounced an interlocutory order in that case?—Yes.

395. And that interlocutory order was reversed on appeal?— That interlocutory order was reversed on appeal, and perhaps that is an instance that I might refer the Committee to, as to its being wrong to vest the discretion in the Judge below; because my strong impression is, that if I had had a discretion in that case, I should not have allowed that appeal, and yet my judgment was reversed.

396. And the parties considered the subject-matter of that interlocutory order as most vital in the case, I believe?—Yes, they did.

397. Mr. *Grogan.*] If you admit of an appeal on any interlocutory order, how can you prevent its extension to all, because if I am the Proctor conducting the cause, it may strike me that the very first interlocutory order pronounced I ought to appeal against, and the second may be still more important?—I further wish to add, in connexion with this, that I think there should be certain restrictions imposed upon appeals, such as the certificate of counsel. At present, an appeal is often brought for mere delay, and this works thus: A party obtains my sentence in his favour, in a perfectly clear case; one so clear, in fact, that in truth it is wonderful, after some time has been spent in the discussion, how it could have lasted five minutes. The appeal is made, and the party is hung up, according to the present system; it is very difficult to get the Judges together; they look upon attending Courts of Appeal as extra duty improperly cast upon them. It is, therefore, difficult to get them together; and the consequence of all that, in practice, is this, that in many cases a party who has obtained a decree, say with costs, against his adversary, is obliged to submit to this extent; he will waive his costs, if the other party will waive his appeal; and again, the decision may be against the party, yet the party may get costs out of the assets; or suppose he does not get costs out of the assets, and he appeals, it often happens that the party who has the sentence in his favour will submit to give him his costs; but that does not come before the Court, they merely come back, and say, "the thing is settled."

398. *Chairman.*] You say it would be advisable to require the certificate of Counsel to an appeal, which is required in the Court of Chancery; if you will turn to the 11th line of page 20 of the Bill, the 69th section, you will see what the words are; would not the Lord Chancellor have power, under the words of that section, "in such manner, and subject to such rules, and upon such security, if any, as the said Lord Chancellor shall from time to time direct," to make a rule that no appeal should be prosecuted until a certificate had been signed, in the first instance, by two Barristers or two Advocates, or more, if he required it, stating, in such terms as he thought proper, that it was a proper case to have an appeal in; would not he have all necessary power to make that rule under the words of that section?—Subject to such rules and restrictions.

399. Adding those words, you think the matter might be remedied?—No; I do not point my answer to the Chancellor, but the Court of Appeal should have the power.

400. Then what do you think would be the effect of vesting in the Court of Appeal that power of making those rules?—Then there arises the question, whether the Chancellor, with the two Judges, are to be fluctuating from time to time, because it occurs to me that that never can work well; I think you should have the same Judges always in the Court of Appeal, otherwise you will have conflicting decisions from day to day.

401. Mr. *Hamilton.*] Will you be so good as to direct your attention to the 72d Clause, which states that, "subject to any general order, to be made by the Lord Chancellor in that behalf, all appeals from final or interlocutors from the Court of Prerogative shall be on a special case, to be agreed upon by the parties to such appeal, and to be certified by the Judge of the Court"; does it appear from that, that the certificate of the Judge is necessary to an appeal?—No; I take the object of that to be to avoid the expense of going through the whole case, and a variety of documents to raise the question, and that the question upon the interlocutory order shall be raised in a short way.

402. *Chairman.*] That is the mode of appeal, not the right of appeal?—Yes.

403. Supposing the Chancellor to be only one member of the tribunal of appeal, do you see any objection to vesting in him, perfectly independent of the tribunal of appeal, the power of making, say, in conjunction with the Judge of the Prerogative

Printed image digitised by the University of Southampton Library Digitisation Unit

tive Court, as is now done between the Master of the Rolls and the Chancellor, such rules and regulations as appeals shall be subject to hereafter; would not that meet the case?—I should object to the Chancellor alone from time to time making orders which, on the subject of appeals, would bind the Prerogative Court. I would have no objection to the Chancellor, supposing him to be one of the tribunal with the other members, doing so; or the Chancellor and the Judge of the Prerogative Court.

404. Then you would think it sufficient to vest it in the Chancellor and the Judge of the Prerogative Court, as it is now with the Chancellor and the Master of the Rolls?—Yes.

405. Mr. *Grogan.*] I understand you to say, that you have no objection to that authority laying down rules with regard to appeals?—Yes; either all the members of it, or the Chancellor, if he be the head of the Court, or whoever is the head of the Court, with the Judge of the Prerogative.

406. Mr. *Sadleir.*] Would you not think it desirable, speaking generally of the nature, practice and progress of the Court, that the power of constructing and issuing, from time to time, rules to regulate and govern the nature, progress and practice of the Court, should be vested in the Judge of the Prerogative Court, conjoined with that Court of Appeal, whatever that Court of Appeal may consist of?—I have no objection to that.

407. *Chairman.*] I believe the Chancellor at the present moment, in reality, though not in strict form, is the ultimate tribunal from the Prerogative Court; in this way, after the Court of Delegates have decided, if a party chooses to seek a commission of review, is not he obliged to go before the Chancellor alone?—Yes; but the Chancellor does not decide the case; he sends the matter to the new Court of Delegates, or refuses to send it.

408. And the leaning of his mind must be, to induce him to do so, that the case has not had sufficient investigation before the Court of Delegates?—Either that there has been some gross mistake in point of fact, or some gross mistake in point of law; I take that as the shortest expression I can give of the rule which governs the subject.

409. Mr. *Grogan.*] You would prefer that rules should be laid down by the authority to whom the appeal is to be made, either by themselves or in connexion with the Judge of the Court. rather than getting the certificate of a Counsel to authorize the party to make the appeal?—No; if anybody be authorized to make rules and restrictions, then the rules and restrictions, when so made, will operate as if they were an Act of Parliament; that would be part of the Act.

410. Mr. *Sadleir.*] They may require the rules to be adhered to in certain claims and cases, and they may be dispensed with in others?—Yes.

411. Mr. *O'Flaherty.*] Will that certificate of Counsel practically obviate the delay and expense you have alluded to?—I am satisfied, in many cases, Counsel, who are generally very sanguine for their clients, will give a certificate when the judgment of the Court would be otherwise; I am satisfied in the Prerogative Court appeals are brought where Counsel, however sanguine, would never sanction them. It is right to mention, as justifying the proceedings of the Proctors in regard to appeals, that it is the duty of Proctors, according to the law of the Court, when a decree is pronounced, to protest, or give notice of appealing; that is, to put himself in a position that he can appeal if his client thinks fit; he puts himself in a position to entitle him to appeal, by entering that upon the court book; and, if he does not put it on the book, he cannot do it afterwards.

412. *Chairman.*] Has the Proctor any pecuniary interest in bringing the case to frequent appeals?—Of course he has a pecuniary interest.

413. Are you aware that it is the practice of your Court, with regard to the briefs to Counsel, which is the highest item of charge, which have been prepared for Counsel to address you in your Court, that after they have been charged for in the bill of costs in the Prerogative Court, and paid for by the client, if that case goes into the Court of Delegates, the same briefs are charged over again, at the same price, and that the same money is paid to the Proctors over again?—I do not know how that is.

414. Would you consider it within your province to prevent that?—I could not prevent it; having mentioned the duties of the Proctors as to giving notice of appeal, and having heard what the Honourable Chairman has said about the interest of Proctors in prosecuting appeals, it is due to the body to say, that in

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

13 June 1850.

many cases where appeals are prosecuted, that course, I believe, is taken against the wishes of the Proctors, and the appeal is prosecuted, not to the expensive stage, but just so far as to hang up the adversary, which may be done, in the present state of things, perhaps for five or six months, before any of the expenses alluded to are incurred; it is generally in the stage before those expenses are incurred that the appeal is dropped, where it is not a *bonâ fide* proceeding.

415. Mr. *Sadleir.*] According to the present practice, it is open to the Proctor, when he is urged to take the step by a client, to appeal for the mere purpose of delay?—Yes.

416. *Chairman.*] And he may appeal against every order?—Yes; if there is an appeal from an interlocutory order of mine, a petition is presented to the Chancellor; from the Chancellor it goes to the Court of Delegates, and they issue what is called an inhibition; so far as the Judge of the Court is concerned, it amounts to this, "Do not attempt to take one step further in this case until you hear from us again."

417. That ties up the case?—Yes.

418. Even where you pronounce the most trifling interlocutory order?—The party gets his inhibition, and then he stops the whole cause.

419. Do they get the inhibition as a matter of right?—Yes.

420. They are entitled to that, are they, from the Chancellor?—No, it is by the Delegates, not the Chancellor.

421. It goes as a matter of course?—I do not think it goes as a matter of course, because the party to be affected by the inhibition may, if he pleases, enter a caveat against its being issued, and, I believe the Delegates then would decline to issue the inhibition before hearing the parties, but, in the ordinary run of cases, it issues as a matter of course.

422. And that ties up your Court?—Yes, and that may go on from order to order.

423. And you may, in fact, have 20 or 30 appeals in the one case, according to the orders you pronounce?—The thing would be possible.

424. Mr. *Grogan.*] You are aware that a Commission was appointed in England to investigate this question of the Court of Delegates, and the utility of its continuance?—The question has reference to the Report of 1832, I presume; I am generally familiar with that Report.

425. And you know the recommendation it contains?—Yes.

426. As your attention has been directed to this subject, do you concur with that recommendation?—That is the Judicial Committee in Ireland; of course, when I am asked do I concur in the recommendation? that means, do I concur in the principle?

427. In the appeal being made to the Judicial Committee in Ireland?—Yes; we have now a Judicial Committee appointed under the Encumbered Estates Act; it consists of the Chancellor, Master of the Rolls, the Chief Judges, the Judge of the Prerogative, and all the Law Judges who are Privy Councillors, and all who have served any of those offices and are Privy Councillors.

428. *Chairman.*] Any Court of Appeal of the Judicial Committee would of course include the Lord Chancellor?—Yes.

429. Is it quite certain that there is a Judicial Committee established in Ireland?—Yes, by the Encumbered Estates Act.

430. Has there been any case brought before it?—Not yet.

431. Is it not the fact, that doubts exist whether under that Act there is a Judicial Committee?—No; but I believe there is some blunder in the clause, but not a fatal one.

432. You have had, in point of fact, no meeting of the Judicial Committee up to the present time?—No; the Committee will be aware that the Commissioners of Encumbered Estates have a restriction on appeal, and that there can be no appeal unless with their consent; and I believe in those cases in which they were applied to for consent, they refused it; but I know that up to the present time no case of the kind has come before the Privy Council.

433. If you were to choose between the Judicial Committee constituted under that Act, and between the Chancellor and any two Chief Judges, would you prefer the tribunal of the three, or would you prefer a tribunal consisting of the larger number?—I should prefer the fixed tribunal of three, and not a fluctuating tribunal; because, in the working of the proceedings before the Judicial Committee,

Printed image digitised by the University of Southampton Library Digitisation Unit

mittee, you should provide that a certain number should form a quorum. It may be a very unpleasant and troublesome duty, and there might be a difficulty in some cases in getting the members of the Court together.

434. You would prefer the Chancellor, and say two Judges, either the two junior or the two senior Judges of any particular Court?—Yes, to be fixed at the time.

435. Mr. *Grogan.*] Taking into account the importance of the identity of proceedings between the two countries, England and Ireland, and that this recommendation has been acted upon in this country, would you consider it preferable to establish a similar tribunal in Ireland to the Judicial Committee of the Privy Council in England, providing a new tribunal of the Chancellor and the two Judges?—Uniformity of proceeding, I think, is very desirable; but I have heard, perhaps without foundation, that it is the opinion of some very competent persons that the proceedings in the Judicial Committee of the Privy Council in England do not go on very well in matters of this kind, and for the reason I have mentioned, that it is a fluctuating body.

436. *Chairman.*] But you have had no experience of the working of the Judicial Committee in Ireland at the present time?—No.

437. Mr. *Grogan.*] Assuming the Chancellor and any two Judges, either junior or senior, of any particular Court, to constitute the tribunal of appeal from your Court, do you conceive that it would be advantageous that the Judge of the Court should also be a member of that tribunal *ex officio*?—I have always considered it unobjectionable that the Judge of the Court below should be a member of the Court above; you find in every day's practice in the Common Law Courts that a single Judge at Nisi Prius decides certain points; the case is brought before the full Court, and he invariably takes a part in the discussion of the case; he may very often give valuable assistance; I see no objection. I see no objection to the course proposed; but in that case you should look to the number of your Judges, because you should not have four; you should have five or three.

438. Would you be prepared to extend your answer a little further, and say, not that you see no objection, but that you see very great advantage from the Judge of the Prerogative Court being constituted a member of that tribunal, from his knowledge of the proceedings of the case and of the matters in question?—I think it might be advantageous.

439. Mr. *Hamilton.*] Having reference to the constitution of the different Courts in Ireland, does it occur to you that it would be desirable that the Judges of any particular Court, or particular Courts, rather than of any others (that is, speaking of the character of the Courts), should be the parties to be associated as a Court of Appeal; for instance, the Master of the Rolls or Chief Baron?—I do not see any reason for preferring the Judge of one Court to the Judge of another. Of course, no legislation can be made with regard to individuals; it is a general question.

440. Mr. *Grogan.*] Would you conceive, then, that the three Junior Judges of our three Courts, taking them on the ground that their time would not otherwise be too much occupied, added to the two other Judges, would constitute a most unobjectionable Court of Appeal; that would make five?—Yes, I should say they would.

441. *Chairman.*] Would not it take you a great deal away from your duties in the Prerogative Court?—It would increase my duties materially.

442. And this Bill contemplates the increase of your duties very much; the transfer of the testamentary jurisdiction of the Diocesan Court would enlarge your jurisdiction?—It would increase the duties of the Judge, but I am unable to say to what extent. If, as I am led to believe, the average number of probates and administrations issued by the Diocesan Courts exceeds the number issued by the Court of Prerogative, then the duties of the Judge would be increased very considerably; but, for the average numbers, I refer to the returns from the several courts.

443. However, it would give you all the business done now in the Diocesan Courts?—Of course it would.

Printed image digitised by the University of Southampton Library Digitisation Unit

Veneris, 14° *die Junii*, 1850.

MEMBERS PRESENT:

Mr. Napier.	Mr. Solicitor-General for Ireland.
Mr. Scully.	Mr. Bellew.
Mr. G. A. Hamilton.	Sir John Young.
Mr. Grogan.	Mr. P. Wood.
Mr. Sadleir.	Mr. Goulburn.
Mr. O'Flaherty.	Mr. Monsell.

WILLIAM KEOGH, ESQUIRE, IN THE CHAIR.

The Right Honourable *Richard Keatinge*, again called in; and further Examined.

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

444. *Chairman.*] CAN you inform the Committee how many Proctors there are practising in the Prerogative Court?—I know about 24; there may be some four or five more on the roll.

445. Are there not some of those in the same house, as Tilly, Ormsby & Hamilton?—Yes, there is a partnership consisting of Tilly, Ormsby & Hamilton, the two Worthingtons, uncle and nephew, and there is Swift & Son; I do not, at the moment, recollect any other partnerships.

446. In effect there would be about 18 houses practising the profession of proctor?—Yes; I think it would be reduced to about 20 establishments.

447. Can you state to the Committee what constitutes a proctor; what course of education persons go through to become proctors?—A proctor serves an apprenticeship of seven years, unless he is a graduate of one of the English or Irish Universities, and in that case five years' service is sufficient; every proctor must have a classical education, and his respectability is inquired into; and the Court exercises a control over his conduct during his apprenticeship.

448. To whom does he serve his apprenticeship?—To a proctor, and that proctor must be a proctor of ten years' standing; and no proctor can take more than one apprentice.

449. Has it always been the custom that a proctor should serve his apprenticeship to a proctor?—No, as I collect from the proceedings before a Commission which sat in Ireland some years ago on the subject, formerly the Deputy Registrar of the Court was the only person who could take apprentices, and I think he was at liberty to take three.

450. Would you say that the present proctors all served their apprenticeship to the Deputy Registrar?—I should say about two-thirds of the present proctors did not serve their apprenticeship to the Deputy Registrar.

451. Are you aware when the alteration in the system took place; was it in the year 1830?—I am not sure of the date.

452. Was it after the Report of the Commission?—It was after the Nineteenth Report.

453. And that was in 1830?—I believe so.

454. Do you know what is the usual fee paid by a proctor on his entering into the profession as an apprentice?—I do not know anything judicially on the subject, and I have no opportunity of knowing, except by report, but I understand it is 500*l.* or 600*l.*; however, it may be more or less.

455. Do you know what the fee was at the beginning of the present century, when Mr. Hawkins was Registrar of the Court?—No; my recollection will not carry me back to the beginning of the present century; I believe the amount of the fee appears in some former Reports.

456. What are the exact duties of a proctor practising in your Court?—There are two classes of business in which a proctor is engaged; we have in the Prerogative Court, what is called the voluntary jurisdiction, and the contentious jurisdiction. The voluntary jurisdiction is that which extends to cases where there is no opposition, and where the whole proceeding is *ex parte*. It includes obtaining probate of wills in common hall, administrations with wills annexed in common hall,

Printed image digitised by the University of Southampton Library Digitisation Unit

hall, and obtaining administrations in cases of an intestacy. In those several cases the proctor brings the party who is about to apply for the probate or administration, as the case may be, to the Judge or to the Commissioner in the country, and the usual affidavit is made, and the whole matter is transacted upon the responsibility of the proctor, who is the officer of the Court, under the Court's supervision, and who is held answerable for everything being as it ought to be.

457. Is not that portion of the proctor's duties in a great degree formal matters, filling up the affidavit, the inventory, and taking the party to be sworn?—I consider the manual part of the duty as merely formal; but I consider the other parts of the duty as highly substantial.

458. Is there not, generally, in the transaction of that portion of the business, a solicitor who brings the party desiring probate to the proctor?—I believe that in practice the proctors have very little acquaintance with the persons whom they call their clients; they are introduced by the solicitor, and the case generally comes to the proctor through the medium of the solicitor.

459. Was there, until the Nineteenth Report, what was called a solicitation fee?—Yes.

460. That was for communicating with the solicitor, and receiving his instructions, was it not?—No, the solicitation fee was a fee which the proctor paid to the solicitor, and charged in his own bill of costs against his client.

461. That has been discontinued?—Yes, for many years.

462. Are you aware that a solicitor is entitled to charge his client with a fee for attending on the proctor?—I am not aware of that.

463. Now, as to the other portion of the duties of a proctor, state what they are?—I have disposed of the voluntary jurisdiction. The contentious jurisdiction is conducting of suits for obtaining probates or administrations, or defending suits of that character.

464. And preparing pleadings?—Yes.

465. Giving instructions to counsel?—Yes, drawing cases, attending court during the progress of the cause, and seeing all the necessary proceedings taken.

466. Is it not very analogous to the business of a solicitor?—I should say precisely the same.

467. Is it not the custom for a solicitor to bring forward the witnesses, to prepare the case for the proctor, and to give him his instructions?—I rather think not, but am not at all certain.

468. You stated to the Committee it was the custom for the proctor to communicate with the solicitor, and not with the client?—No, I say they are introduced through the medium of the solicitor to the proctor.

469. Are you familiar with the fees which the proctor is entitled to charge?—No, only so far as I mentioned yesterday; there is a scale of fees that has prevailed many years, and that scale is followed.

470. Has it not been altered since you became Judge?—No; I mentioned yesterday, that without an Act of Parliament I have no power to reduce a fee, increase a fee, or create a fee. I think the Act of 10 Geo. 4, which applies to England, allows the Prerogative Judge to settle the rules of his Court, and to settle the scale of fees; but there is no such Act for Ireland.

471. Who taxes the costs of the proctors?—One of the Deputy Registrars.

472. Supposing the client is dissatisfied with the taxation of the Deputy Registrar, to whom does he appeal?—To the Judge.

473. Are there many instances of such an appeal from the decision of the Deputy Register?—I do not think I have had, perhaps, more than half-a-dozen cases in the course of seven years of objections to costs, and I cannot charge my memory whether the objection were as to the costs between party and party, or proctor and client.

474. Is it very much the custom to tax costs in the Prerogative Court?—I believe they are constantly taxed.

475. Between proctor and client?—I believe so.

476. Are you aware that there is any reluctance on the part of a proctor to tax the bill of his brother proctor?—I do not know.

477. Would a solicitor from the Court of Chancery, or an attorney, be allowed to attend or act in the taxation of costs in your Court?—I am sure he would be allowed to attend.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

478. And to act?—I should say not. The question never came before me, as I recollect; but I rather think, if applied to, to allow a solicitor to act on a taxation, I should decline to do so. I should say he was not an officer of my Court; you must employ a proctor for the purpose, just in the same way that a Judge of a Common Law Court would not allow a proctor to attend and act on a Common Law taxation.

479. Does the proctor pay any annual stamp-duty?—I believe he does.

480. Are you aware what it is?—Of course it is regulated by Act of Parliament.

481. Do you know who is the taxing officer in the Court of Delegates?—I believe the Registrar is Mr. Hamilton.

482. Is he a proctor himself?—He is a proctor.

483. And member of one of the largest and most respectable houses in Dublin?—A highly respectable gentleman; none more so.

484. Would it not happen, if there was a bill of costs of that house under taxation in that Court, that he would be the taxing officer?—Yes; but it is right to mention that Mr. Hamilton, being Registrar of the Court of Delegates, never practises in the Court of Delegates as a proctor.

485. But he would have the taxing of a bill of costs incurred by his own house for that Court?—Yes, certainly; and I have frequently heard the upright and honourable conduct of Mr. Hamilton, as Registrar of the Court of Delegates, in taxing the costs of his brother proctors, spoken of in the very highest terms.

486. Mr. *Bellew.*] In principle is not that very objectionable?—I think so, and being objectionable, I think it right to mention the honourable conduct of that gentleman; in his case the matter is perfectly safe in his hands.

487. Mr. *Grogan.*] As regards business in the Delegates Court, although he is a partner in the house, in general business, as a proctor, do you know whether he is a partner in business arising in the Court of Delegates or not?—I do not know; but I believe he has no part, share or concern in the business of the Delegates in which his partners are concerned as proctors.

488. Although a partner in the house generally, in matters connected with the Court of Delegates, he acts *per se*, and solely on his own account?—Yes.

489. And, therefore, as taxing master, he could tax his partners' costs, as well as any other party's costs?—Yes.

490. *Chairman.*] But take a case in which there is an appeal to the Court of Delegates from his office, he would be a partner in the original suit in the Prerogative Court?—Yes.

491. What you wish to convey to the Committee is, that as soon as the case goes to the Court of Appeal, he ceases to be partner, and does not participate in the emoluments of the appeal?—Yes, or in the management or conduct of the case in the Court of Delegates.

492. Are the proctors paid for the discharge of any duties that are merely constructive or nominal duties?—I rather think with proctors it is, as heretofore it has been with attornies, that there are some constructive duties, not actual duties, to which certain fees are attached; but I look upon these as, perhaps, payments for other services which are not sufficiently rewarded.

493. Can you mention any service in the Prerogative Court performed by a proctor which you do not think sufficiently rewarded?—No; I cannot state any particulars.

494. Mr. *Napier.*] Do you think their duties, as a whole, are sufficiently rewarded?—Yes.

495. *Chairman.*] You cannot state any duty performed by a proctor for which you think he is underpaid?—I cannot, nor for which he is overpaid. I have generally understood that, speaking of their costs as a whole, the profession was very liberally paid; but, beyond that, I am not able to say there is any particular item which is over-charged, nor to specify any that are under-charged. The taxing-officer could give you all the information you require on these points.

496. Briefs are prepared in your Court for the use of counsel, and they, of course, are taxed and paid for; but suppose there is an appeal, would you consider the proctor entitled to make a charge over again for those same briefs, because they happen to be used in the Court of Appeal?—Why, if the briefs are once

Printed image digitised by the University of Southampton Library Digitisation Unit

once made and paid for, unless some special reason can be assigned for allowing the proctor to charge for them again, of course he should not make the charge a second time.

497. Take a case in which 300 *l.* was paid for briefs in your Court, going on appeal to the Court of Delegates, and a charge made over again for the same work, would you consider that improper?—Whether it was 10 *l.* or 500 *l.*, the charge would depend upon the same principle; and I have heard charges of that sort defended on this ground, that the proctors in the Court of Delegates have a great deal of trouble, and a great many duties to perform, for which they get no fees at all, and, perhaps, if they are allowed to charge, either in part, or in whole, over again for briefs already paid for, it may be on that principle.

498. Do you consider it improper that such a system of payment should exist?—Yes, I do think it improper; and I think, in lieu of it, proper fees should be attached to all the duties performed in the Delegates.

499. Are you aware of any duty not being paid for?—No; nor do I know, but have heard that they are allowed to charge for briefs a second time. It was in answer to a question which was suggested here yesterday.

500. Mr. *Goulburn.*] Does not the same practice prevail in the Common Law Courts, where a matter has gone on appeal, and the briefs are charged for in the Common Law Courts, and then in the Appeal Courts afterwards?—I do not know what the course of taxation has been in such cases.

501. Mr. *Grogan.*] Are you able to judge whether costs in the Appeal Court are ever taxed as between party and party?—I believe they are; I do not know it; nothing of that kind comes under my judicial notice.

502. You are not able to say, clearly, whether opposition takes place with respect to the subject of costs in the Appeal Court?—Yes, I have heard of opposition in the taxation of costs in the Appeal Court.

503. Can you say whether the taxation of costs by the Registrar of that Court has been objected to, when the question as to the payment a second time for briefs must have come under consideration?—Why, any question of that kind, or any objection on the taxation of costs, in the Court of Delegates, would arise, not before me, but in the Court of Delegates; therefore I cannot say whether anything of the kind has occurred.

504. Is it within your knowledge?—No, it is not; but I recollect some months, or many weeks ago, having been told that an objection was made to the Registrar of the Delegates allowing for a brief used in my Court, and that the objection was overruled by the Delegates, and the charge confirmed.

505. Then, in point of fact, the very objection of briefs previously used in your Court, and subsequently used in the Delegates, being charged for twice, was raised and overruled?—Yes, so I heard; they were allowed by the Delegates, though charged for before in the Prerogative Court.

506. *Chairman.*] They allow them, because it was the practice?—I do not know the reasons.

507. Are you aware that they recommend the practice should be discontinued, in giving their judgment?—I am not.

508. Are you aware whether the number of proctors has materially increased since the Nineteenth Report of the Commissioners?—I believe the number has increased.

509. Do you know to what extent?—I stated to you the present number of proctors; I do not know the number in that Report; perhaps it may appear on the face of the Report.

510. Are you aware that the Commissioners recommend, that it would be advisable to increase the number of proctors of the Court?—And they have been increased accordingly, under the regulations by the then Judge.

511. *The Solicitor-General.*] Do you know it was considered as an unwarrantable monopoly of the Registrar to have the right to admit proctors?—Yes.

512. It appears, from the questions asked, that the admission of a proctor is attended with considerable expense?—Yes.

513. They are subject to a license, and also subject to large fees for apprenticeship?—Yes.

514. With respect to the position they hold, as between their clients and the Court, what is your opinion as to the extent of confidence reposed in them, and the necessity of there being a very strict vigilance with respect to the discharge of

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

their duties?—I think their position is one of the most confidential kind; I think it is absolutely necessary to the working of the business of the Prerogative Court, and especially the voluntary jurisdiction, that the proctors should be men of the very highest character.

515. The original documents of testate or intestate parties, and whatever may be connected with the proof of the wills, or otherwise, are generally deposited in the hands of those gentlemen?—They are.

516. If there was any improper attempt to tamper with the genuineness of those documents, these parties are the guardians of the property of their clients?—I should consider them so *pro tanto.*

517. And supposing there was any change, or an opening of admission more generally into the Court, does it occur to you that there should be considerable checks and controls on the admission of proper persons, which would be matter of regulation?—I should view the introduction of a very large number of proctors with very great alarm indeed; I think it important that the numbers should not exceed that over which the Judge of the Court could maintain almost personal supervision.

518. Does there occur to you to be any objection to a respectable solicitor being also admitted as a proctor, subject to the controls that there are at present over proctors?—I think the business would be better done by a limited number of proctors, whose attention was exclusively confined to that one subject, and I do not think the business of the Court sufficiently large to make it worth the attention of the body of solicitors; in truth, divided amongst the great body of solicitors, it would not be worth the while of any one man to attend the practice of the Court, and frauds of the grossest kind might be committed. If a proctor of the Court, or a person allowed to act as proctor, wished to lend himself to a fraud, he might walk in and produce a document, and any quantity of property might be taken out of the Bank; property even belonging to living persons.

519. He might obtain probate in a very short time?—Yes, in a very short time.

520. And transfer stock under it?—Yes.

521. *Chairman.*] You mention that a proctor, generally, only knew his client through an attorney?—Yes.

522. Consequently, if the attorney was disposed to commit a fraud of that kind, it would only be necessary for him to go one step further, and to introduce a person who had no right to get probate; the proctor must rely on the attorney?—Yes; I may mention, in connexion with that subject, that it has frequently happened in cases before me, where a proctor has entertained a suspicion of the case, he has, evidently very much against the will of the person produced before me as his client, stated the objections that occurred to him, and suggested that particular inquiries should be made; that has frequently occurred.

523. Could not all that be done by a respectable solicitor?—No doubt.

524. Do you see any objection to a respectable solicitor being admitted, under certain restrictions, to practise in the Prerogative Court?—I see none beyond the objections I have already mentioned.

525. Now, as regards the custody of important documents, you stated solicitors were generally engaged in the preparation of those wills?—Very often.

526. And the solicitor generally brings the will to the proctor, does he not?—He does.

527–8. Does the will remain any time with the proctor; is it not lodged at once in the Prerogative Court?—No; the proctor often has a will in his possession for weeks, or months, before it is brought into Court.

529. The moment it comes for proof, it is deposited in Court?—Yes; very shortly after the commencement of a suit for establishing a will, the will must be brought into Court.

530. And then it remains a record?—Yes.

531. *The Solicitor-General.*] The danger of tampering with documents is in the interval of time of getting possession of the will, and bringing it into Court?—Yes.

532. *Chairman.*] Do you think the body of Chancery solicitors are likely to commit a fraud of that kind?—No, they are a very respectable body, but a very numerous body; there are not more respectable men to be found anywhere than in the body of solicitors.

533. *The Solicitor-General.*] In a case of intestacy, is it not the duty of a proctor to

Printed image digitised by the University of Southampton Library Digitisation Unit

to inquire into the state of the next of kin, to say who is the party entitled to administration?—It is a duty which, I believe, is very faithfully performed.

534. With the exception of the risk of multiplying the number of proctors in your Court, subject to the controls and checks over proctors as to their admission and conduct, you do not see any thing inconsistent with the character of proctor and solicitor being both united?—No; you may have a person practising as attorney-at-law and solicitor in equity; but I think it is very important, from the peculiar duties they perform; if the solicitor or attorney performs all his duties as solicitor or attorney for one party against another, he is subject to the supervision of his opponent's solicitor or attorney, or if he is employed in an *ex-parte* matter, and is guilty of breach of confidence, the loss will generally fall on his own client; whereas in the voluntary portion of the jurisdiction of the Prerogative Court, there is no opposing professional person to oppose or control the proctor; everything must be done on his responsibility.

535. Mr. *Sadleir.*] With respect to the nature of the business of a respectable solicitor, speaking from your own experience, when you were practising at the Bar, do you not suppose that the amount of business of that voluntary character which comes within the ordinary course of his practice, that the power of a solicitor is far greater in any such business, of that voluntary character, than that which comes under the control of a proctor?—Of course, the business entrusted to solicitors by their clients out of Court is of the most highly confidential character and description.

536. Without any control or checks of an opposing solicitor?—None whatever.

537. In other words, are you prepared to admit, that the confidence and trust reposed in solicitors by the public is far greater than the trust and confidence reposed in proctors by the public necessarily from the practice of their profession?—I should say, that the confidence reposed in solicitors is necessarily, perhaps, greater than what is necessary for clients to repose in proctors; but if confidence be violated, the loss will fall on the person who employs the solicitor.

538. Now with respect to the business of proctors, either the voluntary business, or the contentious litigation, are you sufficiently acquainted with the practical working of the matter to be able to inform the Committee whether the proctor does not obtain all his information, or, in other words, whether it is not the solicitor, that really prepares the prosecution of the suit, as well as the defence?—The question was put to me before; I was rather under the impression that the proctor was in communication with the parties, and got information from them.

539. Mr. *P. Wood.*] You mentioned something about the education of proctors; is there any examination of the gentlemen who are articled as proctors?—There is an affidavit made on the subject, stating the course of education they have gone through, but there is no examination; with respect to most of the proctors admitted, they have been graduates.

540. Who makes the affidavit?—The father or near relation; the uncle or guardian, as he may be.

541. With respect to these frauds, might not the Court itself be a little more strict in its practice; supposing the possibility of proving the will of a living person, is it the practice to require the proof of the death of a party before his will is proved?—An affidavit.

542. Do you not require the certificate of burial?—No, not a certificate of burial.

543. Nor the ordinary evidence of the other Courts?—No.

544. Are you aware, in a Court of this country, that the will of Sir William Milner was proved while he was alive?—I was not aware of that; there was a case of the kind in my own Court, but it was not a fraudulent case.

545. Would it not be better if the Court were a little more strict in its practice?—Perhaps it might be an improvement.

546. With respect to solicitors and the comparative confidence reposed in them, are you aware of the course of business in the Court of Chancery, and whether the interests of infants, which are entrusted to solicitors there, are not of considerable magnitude?—Yes; but in cases of that kind, in cases of infants, I believe, in general there is a Master in Chancery to whom the matter of the particular case is referred, and who keeps a control over the proceedings; I believe it is so in Ireland.

547. Is it the custom in Ireland, as in England, in friendly suits, that the same solicitor should act for both sides?—I believe so.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

548. Is that the case frequently?—Yes, in amicable suits.

549. And where accounts are to be taken, and property administered?—I am not aware of any complicated accounts taken, in what would be called an amicable suit.

550. Still, in amicable suits, executors have to pass their accounts?—That happens constantly.

551. Is not that a matter that requires extreme confidence in the solicitor who has to watch the interest of the infant who is entitled to property under the will, yet, at the same time, has to pass the account of the executor?—Yes, certainly it does.

552. Have any very great evils resulted, to your knowledge, from the whole of that business being open to the body of solicitors?—I am not aware of any particular case at this moment.

553. With vigilance on the part of the Court, do you not consider the species of fraud you are apprehensive of, might be always sufficiently prevented?—With respect to proceedings in the Court of Chancery, or in the office of Masters of the Court of Chancery, such as you now refer to, they are proceedings which go on from time to time, which may last for weeks or months or years, as the case may be; whereas the proceedings which I allude to in the Prerogative Court are proceedings which would not take more than a quarter of an hour.

554. The bringing in of a false will?—Yes, getting persons to swear falsely that they are the next of kin, and cases of that kind.

555. Would any respectability on the part of the proctor prevent a person who intended to perpetrate a fraud from bringing in a false will, and procuring somebody else to represent the next of kin?—I do not think it would secure the public against such a fraud, but it would go a great way to prevent it.

556. Still, any solicitor who remained on the roll would use the same degree of diligence?—Yes; I do not wish to be misunderstood about solicitors; I would make the same observation if proctors were as numerous; it is impossible to get a body of 500 persons, or more, and not have some objectionable persons among them; the same observations would apply to proctors if they were as numerous.

557. After the proctor is possessed of the will, he proceeds with the affidavit to the Registrar?—No; in my Court, when the Judge is in town, he proceeds before the Judge; and when the Judge is out of town, before the Registrar.

558. In either case the Judge or Registrar sees the party, and has the same opportunity as the proctor would have of judging of the apparent outward respectability of the party?—As far as the proctor has, of course, although, perhaps, I am wrong in saying so, because the party much have been in communication with the proctor before he comes to the Judge, and I take it to be the duty of the proctor, as of the solicitor, to endeavour to see that the party is what he represents himself to be.

559. Mr. *Grogan.*] You were mentioning that cases have occurred within your own experience, in which the proctor has intimated to you that there were some matters requiring a more full investigation?—Yes.

560. That, in fact, the proctor was not himself altogether fully satisfied of the statements made to him?—Yes.

561. Now in that particular case or similar cases, do you conceive the proctor to have acted there more as the officer of the Court for the advancement of general justice, than as the officer of his client?—In the particular case, I consider him acting as adversely to his client, and, with a view to establish the propriety of the proceedings of the Court, to aid in the administration of justice, and to prevent a fraud.

562. In that point of view, can you conceive any distinction as existing between a proctor and a solicitor or attorney; is not a solicitor or attorney as much the officer of his client as the proctor can be considered in such a case?—No, I think I should say, if the proctors were as numerous as solicitors, that there would be great difficulty in getting on with the business of my Court; but whether the party be proctor or solicitor, speaking of an individual, if he be a respectable and competent man, I should say, I would repose as much confidence in the one as in the other.

563. From your answer, are the Committee to understand that instances have occurred in which the proctor, in the discharge of his duty as a public officer, has conceived it necessary to call the attention of the Judge to certain circumstances which were not clear and satisfactory to him?—Yes, frequently.

564. In

Printed image digitised by the University of Southampton Library Digitisation Unit

564. In that instance, he was not so much the officer or representative of the client, as the officer seeking to do general justice?—So I should say.

565. In the case of an attorney or solicitor, he is employed by his client to advance his interest alone?—But he is equally the officer of the Court, and he has no right to be a party directly or indirectly to any fraud or imposition; and what I have stated as proper conduct on the part of the proctor, would have been equally the duty of a solicitor or attorney in the Court in which he practised.

566. Mr. *Napier.*] Have you ever known any case in which a proctor has been guilty of any fraud or improper conduct?—No; I have been Judge of the Court very nearly seven years, and there were only two cases brought before me of alleged misconduct on the part of proctors. One was a case in which the complaint was regularly brought forward, and it was perfectly groundless; the conduct of the proctor was most creditable throughout. The other was the case of a proctor, who is since dead, who, on a cursory view of the matter coming under my observation, appeared to have acted fraudulently. I directed the case to be examined into. It was heard before me on affidavit, and, on the fullest investigation, I arrived at the conclusion that this gentleman, who is now no more, had been guilty of very great negligence; but there was not a shadow of evidence that he was guilty of fraud, and, on the contrary, there was abundant evidence that nothing fraudulent was intended by him.

567. *Chairman.*] Are you aware that solicitors are obliged to go through an examination previously to their being admitted?—I believe there are Examiners appointed by the Law Courts.

568. Are they not subjected to considerable scrutiny by the body of the Law Society before they are admitted?—I believe the Law Society, generally, keeps a superintending eye over the conduct of persons going into the profession.

569. Mr. *Napier.*] With respect to that, are you aware of cases where they have very strenuously opposed the admission of persons, who, notwithstanding that opposition, were admitted?—I remember in my own practice at the Bar, that there have been cases of apprentices applying to be admitted attornies of the Court who have been opposed by the Law Society, and who, notwithstanding the opposition, were admitted. I have held briefs for and against them.

570. Do you recollect one case brought before the Benchers of a person who had been a process server, who, notwithstanding that, was admitted an attorney, in Sir Edward Sugden's time?—The case occurred since I was a Bencher; I was Serjeant at the time. The case was not of a party applying to be admitted an attorney, but applying to be admitted an apprentice. And in that case, although there was opposition on the part of the Law Society, the Benchers arrived at the conclusion, that they were not at liberty to refuse to admit the party as an apprentice.

571. *Chairman.*] Could there not be a system devised by which you, acting as Judge of the Court, could at all times see that improper solicitors, to whom you had objection, should not be admitted to practise in your Court?—I should say, if it is deemed right to admit solicitors to the Court, every person who is on the roll of other Courts ought, *primâ facie*, to be admissible to the Prerogative Court; and I do not see what examination or investigation could be undergone.

572. Mr. *G. A. Hamilton.*] The 84th Clause provides, "That before any proctor, or an apprentice to a proctor, shall be admitted to practise as an attorney or solicitor in any of the aforesaid Courts, he shall take the usual oaths as administered to persons seeking to be admitted attornies or solicitors of the aforesaid Courts respectively, but no such proctor or apprentice to a proctor shall be liable to pay any stamp-duty or court fees in relation to such admission; and every such proctor or apprentice to a proctor, on taking the prescribed oaths, and signing the roll of attornies or solicitors in each of the said Courts, shall be entitled to all the privileges, and be subject to all the liabilities of an attorney or solicitor belonging to the Court into which he shall have been admitted;" do you think that provision will conduce to the public advantage?—I am of opinion it will not, and for the reasons I have already mentioned.

573. Would admitting attornies or solicitors to practise in your Court have the effect of destroying the profession of proctors?—I think the proctors would be extinguished as a profession.

574. Do you think it would operate injuriously to the public interest?—I think it would be extremely unjust towards the proctors, and injurious to the public.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

575. Are there other Courts in which the proctors alone can practise by the constitution of those Courts?—The proctors admitted into my Court can practise in all the Diocesan Courts.

576. Mr. *Grogan.*] That is, in the Ecclesiastical Courts?—Yes.

577. *The Solicitor-General.*] But the country proctors cannot practise in yours?—No; and those who practise in my Court do not practise in the Admiralty. I understand here, that proctors in the Ecclesiastical Courts in England practise in the Admiralty Court; but it is not so in Ireland.

578. Mr. *G. A. Hamilton.*] Is the principal business of proctors in your Court and the Consistorial Court?—Yes; I believe they very rarely, indeed I may say they never, are concerned in any suit or proceeding in any of the Diocesan Courts except the diocese of Dublin, but in the diocese of Dublin they are the only proctors. The Consistorial Court is in the same building as mine.

579. In point of fact, the admitting solicitors to practise in your Court would have the effect of annihilating the profession of proctors, and thereby depriving the persons who practise in the Consistorial Courts of practice in those Courts?—I do not think any proctor could make a livelihood in the Consistorial Court of Dublin.

580. *Chairman.*] Your principal reason for wishing to keep up an exclusive body of this kind is the great confidence reposed in them?—Yes; and the highly confidential nature of their duties.

581. Must not equal confidence be reposed in proctors who practise in the country Courts?—Yes, with this qualification, that, generally speaking, the property which passes under wills in the country Courts is of a very trifling amount.

582. But to the extent of property, equal confidence is required?—Yes.

583. Is it not the fact, that the proctors practising in the Diocesan Courts are, generally speaking, attornies, and persons who have had no previous education at all?—I believe some of them are not attornies at all.

584. Some of them have had no education at all in the profession?—I cannot say that.

585. Do you know any case of a diocesan proctor who has served an apprenticeship?—I do not know. I have nothing to do with the Diocesan Courts.

586. But there are many attornies practising in the Diocesan Courts throughout the country?—Yes, I believe so.

587. Mr. *Napier.*] In the Diocesan Courts, where the business is small, possibly it would not support a proctor to attend to it only?—No.

588. And then, if a man has been a respectable attorney, and also learned the duties of proctor, do you see any disadvantage?—I think not. The number of proctors in each country Court is very small; perhaps two, or three, or four, as I have heard.

589. Do you see any advantage that the public would gain by increasing the number of proctors?—I do not see any advantage to be gained by the public.

590. Mr. *Sadleir.*] Not by the admission of attornies and solicitors to act as proctors?—No.

591. Are you aware, that when a client has occasion to employ a proctor, he generally does so through the intervention of an attorney or solicitor?—I have answered that before.

592. And that the public have to pay two sets of fees in contested cases?—I was not aware of that.

593. And that in contested cases various interviews must necessarily take place between the proctor and the solicitor of the client; that the proctor is entitled to charge for his attendance on the solicitor, and that is paid ultimately by the client; and at the same time the solicitor makes his charge to the same client for his attendance on the proctor, and, consequently, when you come to make a calculation, you find that the public are charged something like 50 per cent. more than what would be the case if the attorney of the client was acting as the proctor?—Assuming your statement of facts to be correct, it would follow, that by allowing solicitors to practise in suits in the Prerogative Court there would be a saving of expense to their clients.

594. Are you aware that, generally speaking, the proctor is selected by the solicitor, and not by the client?—I believe in almost every case.

595. And,

Printed image digitised by the University of Southampton Library Digitisation Unit

595. And, in point of fact, every respectable solicitor in Dublin has his particular proctor?—So I believe.

596. And that the proctor looks to the solicitor, and not to the public, for the payment of his costs?—That I am not able to answer.

597. Are you aware of any form of guarantee or indemnity that the proctors are in the habit of using and tendering to such of the solicitors of Dublin as they may have only a slight connexion or acquaintance with?—I am not aware of such.

598. Assuming that solicitors and attornies were to be allowed to practise in the Prerogative Court, would you think it objectionable that they should be liable to suspension or removal from that Court, as they are now liable to be taken off the roll as attornies of the Queen's Bench or Common Pleas, or solicitors in Chancery?—If solicitors were to be admitted to practise in the Prerogative Court, it would be absolutely necessary that the Court should have the same supervision over them as the Courts of Law have over attornies at present.

599. Would that furnish a practical security against anything like fraud or misconduct on the part of proctors in the Prerogative Court, as it does now in the other Courts?—I think it would be a very wholesome remedy in the hands of the Court.

600. Mr. *Hamilton.*] Is it necessary for a client to apply to a proctor through a solicitor?—No, it is not necessary.

601. It is a matter of convenience?—Yes.

602. Are you aware, in the Report on the Ecclesiastical Courts, it is recommended that there should be no alteration made with respect to the proctors in those Courts?—No; I have read the Report at different times, but I have not that part of it in my mind at this moment.

603. Mr. *Goulburn.*] Is it generally the practice of the party to approach a proctor through a solicitor in Ireland?—I have always understood, according to the ordinary course, that the solicitor introduces the party to the proctor; that the instructions come, in the first instance, from the solicitor to the proctor; I was under the impression, that in the progress of the cause, the proctor communicated with the parties, but something has been thrown out in this Committee which leads me to doubt the correctness of that impression.

604. *The Solicitor-General.*] Do you mean to say there are not exceptions to the rule, that it is through a solicitor that application is generally made to proctors?—I do not mean to say it is universally so; what makes me pretty confident that it is so generally is this: that when this Bill was spoken of, the proctors, in a body, waited on me, to request that I would do what I could to protect their rights; and the representation made to me was, that they got their business uniformly through the solicitors, and that therefore they had no business except through solicitors.

605. *Chairman.*] Have you seen a memorial prepared by the proctors with respect to this Bill,—a printed paper?—No.

606. Are you aware, in that memorial, they state that nineteenth-twentieths of their business come to them through a solicitor?—No.

607. Does it frequently become necessary to procure letters of administration for the purpose of a Chancery suit?—Yes.

608. In that case, the solicitor in the cause puts himself in communication with the proctor for the purpose of getting that administration?—Yes.

609. And is the fee allowed by the Chancery rules three guineas for discharging their duty?—I am not aware of that.

610. Mr. *Grogan.*] Is the compensation received by the proctors in your Court generally of so large an amount that if divided among the body of solicitors and attornies, it would be any object to them whatever?—No object to them as a body: there is not enough to give full employment to the present body of proctors.

611. The body of proctors are about 20?—About 24.

612. Then the amount of business equally divided among the body of proctors would afford an inadequate remuneration to each of them individually?—I have no doubt of it.

613. *Chairman.*] Are you aware that they state in their memorial that the sum they receive is over 20,000 *l.*?—That is to be divided among 24 houses.

614. Divided among 24 men; is that a very scanty provision?—I do not think it much among 24 persons.

615. Mr. *Bellew.*] Whatever the expense to the public is now, would not that expense be greatly diminished by admitting solicitors to practise as proctors?—In

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

substance I have answered that question already; assuming what has been said to be correct, there would be a saving in expense to the client, in being allowed to conduct his case by the solicitor.

616. Mr. *Grogan.*] Would you deem it advisable that the powers which a recent Act of Parliament have conferred on the Judge of the Prerogative Court in this country to regulate the fees and rules of the Prerogative Court, should be extended to the Judge of Prerogative in Ireland?—Yes; should be extended to the making rules and regulating fees.

617. If that power was extended to Ireland, would not any objectionable fees that now exist be under the control of that party?—Yes.

618. Any fee unnecessary in itself, or too high in amount, could be reduced to the amount that would give full remuneration to the proctor, and at the same time protect the public?—If the Act of Parliament was extended to Ireland, or a similar enactment made for Ireland, it would be the duty of the Judge to proportion the fees to the duties.

619. Mr. *Sadleir.*] Would you propose that there should be that power conferred, then, on the Judge of the Prerogative Court to disallow the solicitor his fee for attending on the proctor, as the medium of communication between him and his client?—I really have had no occasion to consider that question.

620. The evil to the public is, that they have to pay two sets of attendances; the fees charged by the proctor are not at all unreasonable?—If there was an Act of Parliament, or a rule of Court made under an Act of Parliament, providing that the solicitor should not be allowed to charge his client for these attendances, the consequence might be, that the proctor would be brought into personal communication with the client, and perhaps the business as well done.

621. Is it your opinion, that without the assistance of the solicitors of Ireland, the business of the public could be conveniently transacted, and as efficiently performed, as it is now by the twenty-four proctors?—It is really very difficult for me to answer that question. I think it important that the proctors should be brought as much as possible into personal communication with their clients; but it might be very improper altogether to exclude, on fit and proper occasions, the intervention of a solicitor also. I cannot go beyond that.

622. Are you enabled to inform the Committee whether a very large proportion of the actual business of prosecuting or defending the suit is now performed by the solicitor, such as collecting the evidence, having interviews in the country with the various witnesses likely to be able to give important evidence on certain disputed points, inquiring into the credit, respectability and character of certain witnesses to be examined on one side and the other, and a variety of business of that nature, necessarily calling for a great expenditure of money, time and ability?—That is a matter not at all coming within my province, and I am not able to say anything about it. I was under the impression, when I came into the room this morning, that proctors were more in communication with their clients than, I collect from the questions, they are in fact, and I might perhaps mislead the Committee.

623. Mr. *Grogan.*] With respect to the extension of the Act of this country to Ireland, do you think it judicious that the fees, as well as the rules, should be left to the discretion of the Court, rather than embodied in the Act?—To the Judge of the Court, with power, from time to time, to alter and amend.

624. Mr. *P. Wood.*] What is your opinion with respect to the abolition of the other Courts of Probate throughout the country?—My opinion is this, that it would be desirable to have one Court for the entire country, if it was only with a view to register the wills, as well as for other reasons; but I am apprehensive, if you remove the probate jurisdiction from the Diocesan Courts, the efficiency of those Courts as to the remaining jurisdiction may be very much affected, because on the remaining business there would be no fees, or fees merely nominal, attached to it, and, consequently, competent men could not be had to do the business.

625. But, with respect to the probate of wills, you conceive it would be an advantage that they should all be in one place of deposit?—Yes, and the avoiding all questions of *bona notabilia* is very desirable.

626. Mr. *Bellew.*] You stated the business to be very trifling in those Courts?—There might be some consolidation of the other Courts; there might be some Court created, exercising jurisdiction, and discharging the duties that are at present divided among twenty-two.

627. *Chairman.*] There are twenty-two Diocesan Courts?—Yes, about that number, I believe.

628. The

Printed image digitised by the University of Southampton Library Digitisation Unit

628. The business does not correspond with the number of Courts?—No.

629. Is not the business very limited indeed in other respects, except granting probates?—Very little, I believe, except granting probates and administrations.

630. What other business would you say those Courts had which required a class of proctors?—They have divorce cases, and ecclesiastical cases, properly so called; offences of clergymen, and cases of that kind.

631. Do you think the balance of advantage would be much in favour of transferring the testamentary jurisdiction, rather than retaining that in the country, with all its disadvantages?—I doubt whether it would be just to withdraw the testamentary jurisdiction, without making some provision for the duties that remain.

632. In the principal part of Ireland, where the population is Roman Catholic, is the jurisdiction with regard to divorce cases often called into operation?—I believe divorce cases are of very unfrequent occurrence; but still the Courts have jurisdiction in those cases, and if the cases arise, there should be some machinery to have them disposed of.

633. Mr. *G. A. Hamilton.*] You stated yesterday that you were not prepared to give the comparative cost of proving a will in a Diocesan Court, or in your Prerogative Court?—Nor am I now.

634. Mr. *Goulburn.*] Would not the expense of proving a will be materially enhanced if proved in Dublin instead of in a Diocesan Court?—I should think not. If proving the will in Dublin involved the necessity of the party coming to Dublin to make the affidavit, there might be an increased expense; but if there were Commissioners or Surrogates before whom the party could attend, it does not occur to me that the expense would be materially increased.

635. If you have the same number of Surrogates which you have in the Diocesan Courts, you do not think the parties would be put to additional expense or inconvenience?—I should think not.

636. But the abolition of the Courts would involve the appointment of additional Surrogates?—Yes.

637. Would the proceedings before the Surrogate be cheaper than before the Ecclesiastical Court?—I should say, upon the whole, the party would obtain his probate, or administration, as the case might be, rather quicker by going before the Surrogate than by going before the Court.

638. Would he not employ a solicitor?—Yes, he must employ some solicitor or proctor.

639. Therefore, the expense, as far as proctor or solicitor is concerned, would be the same as before the Dublin Court?—I am not prepared to say which way the preponderance would be.

640. Would there be any material difference?—I do not think there would be. Speaking of Surrogates, it would be quite impossible, if all the jurisdiction is removed to Dublin, to do without having some Surrogates in Dublin.

641. Mr. *Napier.*] If you are obliged to have a Commissioner from the country, or some local person, what advantage would the public gain by the change proposed?—They would gain this advantage, so far as wills are concerned: they would have a general depository for the wills of the entire country, and no probate would be void by reason of the excess of jurisdiction; and the same as to administrations.

642. So far as an individual obtaining probate was concerned in the country, and the expense and trouble he was at, would there be any difference in the one machinery and the other?—I rather think, on the whole, the expense and the trouble at the moment to the individual would be about the same; but the benefit of the proposed alteration would consist in what I have mentioned.

643. What is your opinion as to continuing the Courts as they are, transmitting wills to a registry in Dublin, and making the probate granted in any local place have the effect of the Prerogative probate?—That might answer the same purpose in uncontested cases; but in contested cases, you would not have as good machinery for deciding rights.

644. *Chairman.*] With reference to contested cases, it was mentioned yesterday, that the Judges of the Diocesan Courts were ecclesiastics?—They generally are.

645. With two exceptions?—I believe so.

646. Would you say that the practitioners in the country Courts were as competent

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

to discharge the duties of proctors and advocates, if any, as the proctors and advocates practising in your Courts in Dublin?—Certainly not.

647. Now, the practice of the Diocesan Courts is to sit once or twice a month at farthest; in a contested case, would not that involve an enormous amount of expense by the parties having to return to that particular Court a greater number of times than where the Court sits as in Dublin from day to day?—If I assume your facts, the question answers itself; but I do not know what time they sit. Since I first took my seat on the Bench, I have invariably adopted a course which I believe was not pursued before; when a cause is begun, I go on from day to day until it is finished.

648. As to the ordinary expenditure with regard to the voluntary jurisdiction in the Diocesan Courts, is it not the fact, that the expense of taking out a probate in the Diocesan Courts, if there is any difference, is greater than in the Prerogative Court of Dublin?—All I can say is to repeat what I said yesterday: I am not aware of the precise charge, but I have understood that the charge was something beyond the charge in Dublin, but that may not be so when it is examined.

649. Mr. *Sadleir.*] In conveying to the Committee your opinion that it is extremely doubtful whether it would be more beneficial to the public to concentrate the business in Dublin, are not we to understand you as coming to that conclusion without having had the advantage of making yourself personally acquainted with either the charges in the Diocesan Courts, or the number of times those Courts are in the habit of meeting for the transaction of business?—I think you have not collected exactly what I intended to convey to the Committee. I conceive it would be an advantage to have all the probate business brought into one Court.

650. And the expense would be less to the public?—Yes, I think it an advantage so far as the probate jurisdiction is concerned; but I was apprehensive that it might interfere with the efficient discharge of the remaining duties of the Diocesan Courts.

651. Mr. *Goulburn.*] Are the suits generally in Diocesan Courts for the probates of wills and administrations very small?—Very small.

652. Much smaller than they are in your Court?—Much smaller; I am here speaking of what I have heard; I have no control over the Diocesan Courts; I am only brought into conflict with them when there are occasionally suits in my Court, after void administrations or probates in the inferior Courts.

653. *Chairman.*] The advocates, like the proctors in your Court, are an exclusive body, and also limited in number?—Yes.

654. You mentioned yesterday about ten?—I think there are about ten or twelve who practise.

655. And they must be barristers?—Every one is a barrister. I believe the late Judge admitted a gentleman named Hamilton, who was afterwards called to the Bar, but before he was actually admitted to the Bar.

656. But in practice there is no advocate who is not also a barrister?—They are not a separate profession; they are all barristers, and practise generally as such.

657. You stated yesterday that it was much the practice in heavy cases to bring in some of the leading Common Law counsel to argue cases before you?—There is a courtesy of the Court, where two doctors of the Court are employed, any gentleman of the Common Law Bar or Equity Bar will be heard along with them.

658. But there must be two doctors?—Yes.

659. There is a provision in this Bill, that all barristers are to be allowed to practise in the Court?—I am aware of it.

660. Have you any objections to the admission of the body of the Bar to practise in your Court?—Why, that is a subject which is to be viewed with reference to the present advocates and with reference to the public. With reference to the present advocates they have devoted a great deal of time and attention, and have incurred a great deal of expense, with a view to the practice which their position of advocates would give them in that Court. It would appear to me to be a very great hardship on them, perhaps a hardship which some persons would call an injustice; and I should be very sorry to see any injustice done to them, because they are a very respectable body.

661. They practise in the other Court at present?—Yes, they do; as far as the public are concerned, the question is very different.

662. What is your opinion as to the public advantage of admitting the general Bar

Printed image digitised by the University of Southampton Library Digitisation Unit

Bar of Ireland, or keeping it excluded?—If I was of opinion that by requiring the advocates of the Court to qualify themselves for practice there, by attaining the degree of Doctor of Laws, the study of the Civil Law would, in fact, and *bonâ fide*, be encouraged, I think no change should be made; but upon a very full consideration I have arrived at the opinion, that it does not tend to the cultivation of the Civil Law to render it necessary that a party practising in the Prerogative Court should obtain the degree of Doctor of Laws; and I regret to say that in practice the degree of Doctor of Laws can be had without a party's attaining any knowledge whatever of the Civil Law; I regret much to say it.

663. Mr. *Bellew.*] What is the amount of expense entailed on advocates in your Court?—It may cost, I believe, about 100*l.* to 120*l.* to get a Doctor's degree, and to pay for the Advocate's admission.

664. Mr. *Goulburn.*] Whence does it arise that Doctors of the Civil Law are admitted without knowing anything of the Civil Law?—All the laws of this country are based on the Civil Law, and especially the laws of the Ecclesiastical Courts; but no case has ever arisen before me where a knowledge of the Civil Law became much more necessary in that Court than in the ordinary Law Courts or Equity Courts; there are some peculiarities in the practice.

665. *The Solicitor-General.*] When a gentleman once gives up his mind to the practice of that Court he acquires a knowledge of the business of the Court by attending as a junior?—I do not think that the peculiar course of study necessary for the ordinary practice of the Court renders it at all necessary that the party should obtain the degree of Doctor of Laws. I should wish to see every barrister well skilled in the Civil Law.

666. Mr. *Goulburn.*] In order to be a Doctor of Civil Law, does he not show some proficiency in the Civil Law before the degree is conferred?—None whatever; it is a mere matter of course, attending a certain number of lectures, and after a certain time obtaining his degree.

667. *Chairman.*] Then you see no objection to the admission of the Bar generally to practise in your Court?—No; but it would press heavily on the present Advocates, and if the change is made, some pre-audience or other advantage should be given to the persons who have devoted their time to the practice of that Court.

668. Except that reason, namely, that those parties have been practising in your Court, you are in favour of the admission of the Bar generally to practice in your Court?—I must say, in my opinion, that it would rather tend to the better administration of justice in the Court.

669. Are you aware that Dr. Lushington was of a similar opinion in the Report on the Admiralty Court in England?—I am not aware of that; I think there are reasons in England for the preservation of the body of Advocates which do not apply to Ireland.

670. Mr. *Grogan.*] State those reasons as far as they occur to you?—There is an Admiralty Court here entertaining jurisdiction which does not belong to the Admiralty Court in Ireland; great questions of international law, prize questions, and cases of that kind, arise in England.

671. *Chairman.*] Which do not exist in Ireland?—They do not; and therefore there is a difference. I think it would be a great improvement if no gentleman was admitted to the Bar of either country without a competent knowledge of the Civil Law; but I do not see why, if they are admitted to practise in the Common Law and Equity Courts without that knowledge, that knowledge should be required for the Prerogative Court of Ireland.

672. Mr. *Napier.*] Would it be a great improvement if they had a competent knowledge of the Common Law?—Yes.

673. Mr. *Grogan.*] Do you think there is practice enough in your Court for a civilian, strictly so called?—I do not think there is; no person in the fullest business in my Court, and not practising elsewhere, could earn what I should call a respectable livelihood for a professional man in a high position.

674. Mr. *Goulburn.*] The non-occurrence of war gives no great practice to the civilians of the Admiralty Court?—None whatever. The Admiralty Court in Ireland has merely jurisdiction in cases of salvage and seamen's wages, and none as to prizes. I should be sorry that anything that has fallen from me should lead to the supposition that I underrate or undervalue the study of Civil Law; on the contrary, I express again my most sincere wish, that every person, before being admitted to the Bar of Ireland or England, should show a certain proficiency in that branch.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

675. Mr. *G. A. Hamilton.*] Your view of the alterations made by this Bill, would rather tend to preserve your Court very much as it is, with reference to its being founded on the principles of the Civil rather than the Common Law; you would retain the form of pleading, and various other things of that kind which pertain to the jurisdiction of the Court, as founded on principles of the Civil Law?—No, I should say in the proceedings of our Court there might be material alterations for the better.

676. You have suggested alterations, but you propose that the pleadings and forms of that kind should remain as they are, which are founded on the procedure of Courts of Civil and not of Common Law?—No; I suggested yesterday, or at least I think I did, that the course of pleading should be pretty much the same; that is, that the party should state the case as he now does, in the pleadings, consisting of several articles, and set forth in each article some particular of his case, and the evidence to which he refers; but, while I am anxious to retain that mode of procedure, so far as I have mentioned it, I think that the Court, in its practice, is capable of a great many improvements.

677. Assuming the Court to be altered, so as to be constituted on principles of the Common Law rather than the Civil Law, might it not be carried further, and might not all testamentary cases be adjudicated on in the ordinary Courts of Law, rather than in the Court of Prerogative?—I am of opinion that it would be a very important improvement in testamentary law, that the validity of wills of real and personal estate should be determined by the same tribunal, and that the decision as to one kind of property should extend to the other. That, I believe, was recommended by the Commissioners in 1832, in the Report that was the foundation of the Will Act, and the Will Act having passed, and wills of all kinds of property requiring the same formalities, I think it very objectionable that a party having two classes of rights under the same will, as the case may often occur, should be obliged to have those rights decided in different Courts. Then, if both these rights are to be ascertained in the one Court, I see no reason why, if there be time to do it, these rights could not as well be ascertained in any of the Law Courts of the country as in the Prerogative Court, or any other Court created for the exclusive purpose; that is my opinion; I may perhaps be partial to the Courts of Common Law, and more partial than I ought to be, because, as is known to Irish Members, the Advocates are not an exclusive profession in Ireland; they practise in other Courts, and my practice, until I left the Bar, although I occasionally held briefs in important cases in the Prerogative Court, lay chiefly in Common Law and Equity Courts in Ireland.

678. *Chairman.*] At the time you became Judge of the Prerogative Court, you were leader of the Nisi Prius Bar in Ireland?—I was in very considerable business, and had practice in Chancery and all the Law Courts.

679. Was it not at that time the custom that the Judge of the Prerogative Court should be Judge of the Consistorial Court; was not that the practice that prevailed?—Yes, the Judge of the Prerogative Court was always Judge of the Consistorial Court, and when I was offered the office of Judge of the Prerogative Court, I expected, as of course, that I should have been Judge of the Consistorial Court also. I think the income of that Judgeship is about 500*l.* or 600*l.* a year, or thereabouts. However, pending the offer that Sir Robert Peel made to me of the office, the Archbishop of Dublin, who had the patronage of the other Court, appointed a Judge; and that being the case, and for other reasons, I had great hesitation about accepting the office; I ultimately did accept it, and of course I have merely the salary of the Judge of the Prerogative Court.

680. Mr. *Goulburn.*] The two Courts were in the gift of different individuals?—Yes, the Archbishop of Armagh surrendered his right to the Crown, and the Government offered it to me.

681. *Chairman.*] At that time you were in full business in Ireland when this offer was made to you?—I was a very considerable loser in income by taking the office.

682. As regards the retiring pension of the Judge of your Court, it is by Act of Parliament at present only 1,000*l.* a year?—The pension by Act of Parliament is 1,000*l.* a year; when I was offered the office, I waited on Lord De Grey; at first I declined to take it; I took some time to consider, and the question of retiring salary was one of the matters I discussed with him; and he gave me to understand that in his opinion the retiring salary was very inadequate; that it was essential

Printed image digitised by the University of Southampton Library Digitisation Unit

essential that judicial persons should not remain on the bench when their faculties were not so much alive as they ought to be; and at the earliest moment when any changes in the Court were brought before Parliament, that matter should be attended to, and a proper retiring salary provided: that is the impression I had, and I left him under that full conviction.

683. The present Bill proposes to make the retiring pension 2,000*l.*?—Yes; there is a matter I wish to call attention to in that clause with respect to the retiring salary; in computing the services of the Judge, you have omitted to provide, with reference to the present Judge, that the time he has heretofore served should count; that is a mere omission, I presume.

684. Mr. *Bellew.*] That is from the time of his appointment?—Yes.

685. Mr. *Grogan.*] In the Bill before the Committee, there is a provision that in case of illness a substitute should be appointed to discharge the duties of Judge?—Yes; in case of illness or absence from any cause.

686. And that substitute should be paid out of the income of the Judge during his absence?—Yes, I read that with great surprise.

687. Of course, Judges of other Courts are unwell also at times; is there any such provision in operation in any other Court whatever?—I believe not; I believe nothing insulting to the Judge was intended by that provision in the Bill, but I consider it as extremely offensive. As that provision was in the Bill, I have brought with me a Parliamentary paper, ordered by The House of Commons to be printed, 22 February 1832, No. 192, and entitled, "Courts of Justice, Ireland.—Copies of Answers received to a Letter, dated 26 January 1831, from the Chief Secretary of Ireland to the several Courts of Justice, as to the Suggestions of the Commissioners of Judicial Inquiry." I hand in that paper to the Committee, and refer them to page 16, where will be found a letter from my eminent friend, the late Mr. North, at that time Judge of the Irish Court of Admiralty, in which, alluding to a recommendation of the Commissioners of Judicial Inquiry, with reference to the Irish Court of Admiralty, to the same effect as is contained in the eighth section of this Bill, he says, at page 21, "The restrictions it would impose on the freedom of the Judge are such as no man of feeling or spirit or independence would submit to, save under the pressure of overwhelming pecuniary necessity." My opinion agrees with his, and I have no hesitation in saying that if this Bill be passed, containing such a provision, nothing but, in the language of Mr. North, the pressure of overwhelming pecuniary necessity would induce me for one moment to retain my office as Judge of the Court. There is another provision, in Sec. 41, with respect to the Judge, on which I wish to say a word; it is as to the sitting of the Judge twice at least in each week throughout the year; that I conceive to be wholly unnecessary, and not only unnecessary, but mischievous. I think if the Judge be obliged personally to attend two days in the week throughout the year, it would necessarily lead to a delay of business, and the postponement of matters from time to time; the parties being sure that whenever they thought fit to attend, the Judge must be there. During many parts of the year, portions of the long vacation, and other times, the business of the Court is merely of a ministerial character, which can be performed as well and as efficiently by a Surrogate or officer of the Court as by the Judge himself. I should also wish to mention, that it was the practice of the late Judge of the Prerogative Court pretty generally throughout the year to attend himself in person; he was also Judge of the Consistorial Court, and had fees for attending as such. When I was offered the office, I was under the impression that the Judge of the Prerogative Court should attend, as Dr. Radcliffe was in the habit of attending, and under that impression I hesitated to take the office. It was then suggested to me to inquire into the matter, whether the law was as I supposed. Accordingly, I inquired into the matter, and I ascertained that the law was quite otherwise, and that in the time of Dr. Duigenam, the predecessor of Dr. Radcliffe, the Judge only attended during the terms, and when necessary to discharge judicial business, as contra-distinguished from ministerial business; and he sat in Parliament. On that occasion I received a letter from the Senior Proctor of the Court, Mr. Tilly, stating what the practice was in Dr. Duigenam's time, and what the necessity for the attendance of the Judge at particular periods was. I remember submitting that letter to Lord De Grey, and arriving at the conclusion, that, in point of law, such an attendance as I had supposed was not necessary, and I have acted on that view of the case ever since I have been Judge of the Court. Whether by absenting myself during parts of the vacations, the public service had been prejudiced or not, is not for me to say.

688. Mr. *Goulburn.*] It is quite evident that you do not think it has been prejudiced

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

judiced by your occasional absences from Court?—On the contrary, my opinion is, that the too constant presence of the Judge tends to the delay of business. I may state a thing that constantly occurs. I am at the winding-up of my term, and some particular case occurs in which it is quite right that the party should have a week or a fortnight to do a particular thing, and I say, "Let the cause stand over, and I will hear it in chamber this day fortnight." Throughout the remainder of the day, just at the winding-up, parties are not ready, and they say, "Your Honour is to sit again on such a day, and if you will have the kindness to let this case stand till then, we shall be ready on that day;" whereas not one of them would have applied for a postponement, had they not known that a day was fixed for the Judge to be in chamber on judicial business.

689. *Chairman.*] Do you think it would be advisable that the duty of taxing costs should be discharged by an officer who does not receive any fees taxable in those costs?—I think it objectionable that the officer receiving fees, the subject of taxation should be the taxing officer, for in truth he would be taxing his own fees.

690. And still more objectionable the case which was mentioned, of a gentleman taxing the costs of his partners?—It is objectionable; but observe the Registrar of the Prerogative Court is the Taxing Officer; if this Bill passes, and the Registrar is put on a salary, then there would seem to be no objection, provided he has time, to his taxing the costs.

691. But this Bill would impose additional duties on the Registrar, or the Deputy Registrar, would it not?—With reference to the Bill, I speak of the Registrar; the Bill would increase the duties of the Judge a good deal, but the duties of the Registrars would be very much increased indeed, because their duties would be quite independent of the amount of property; whether the property was 10 *l.* or 20,000 *l.*, the duty of the Registrar would be the same.

692. Mr. *Goulburn.*] What is the necessity for a separate Taxing Master for the costs in the Prerogative Court?—I have already answered that question; I think that the duty should be performed by the Registrar, if he has time.

693. But supposing the Registrar has not time, is there not a large establishment of Taxing Officers attached to the other Courts in Dublin?—There are only two, excepting the Court of Chancery.

694. Do you not think that a Taxing Officer of the Court of Chancery or a Taxing Officer of the Common Law Courts might tax the limited amount of costs incurred in the Prerogative Court?—I rather think he might.

695. Those officers are not overworked, according to their own evidence?—I am not aware of the extent of duty they have to perform; if they have time, I do not see any objection to their doing it; if the Court were to be remodelled in the general distribution of duties, there might, along with the duty of taxing costs in the Prerogative Court, be certain other duties given to the particular officer.

696. A separate establishment for taxing costs, the whole amount of which does not amount to 20,000 *l.*, seems rather unnecessary?—Yes; but do not understand me as saying a separate officer is necessary; if an officer belonging to the Court alone were selected, he should have other duties assigned to him.

697. *Chairman.*] But, in your opinion, the present system of the Registrar, who receives fees himself which compose a portion of the costs, should not be continued; nor the system of the Registrar of the Court of Delegates, who taxes his partner's costs?—No, certainly not; I conceive it most objectionable, that an officer receiving fees should tax his own fees. Now, I wish to mention, in connexion with this subject, that when I was appointed Judge of this Court, the Deputy Registrars practised largely as proctors, and they not only taxed their own costs and charges as officers of the Court and as Registrars, but they taxed their own costs as proctors. I thought it most objectionable that the Registrars should practise as proctors, and I was resolved, the very first opportunity I had of correcting that practice, to do so. I had no power to do it as Judge; but on the death of the elder Mr. Hawkins, the present Registrar, at the request of the Primate, who consulted me as to remodelling the office on that occasion, and when Messrs. Keatinge and Hawkins, the two present deputies, were appointed, it was on the express provision that they should not practise, and, consequently, that very objectionable course of proceeding has ceased.

698. Mr. *Napier.*] Are you aware that the question is now pending in the House of Lords, whether a Registrar can practise as a proctor?—Yes; or rather the question pending in the House of Lords is, whether a Registrar, not a proctor, could practise as a proctor. With respect to the former Registrars, they were

proctors.

Printed image digitised by the University of Southampton Library Digitisation Unit

proctors. Of the new Registrar's deputies, one is a proctor, and the other is not.

699. Suppose a Registrar, under the Act of Parliament, was not entitled to practise as a proctor, without being admitted a proctor, could not the whole matter be remedied by not admitting them as proctors to practise?—Yes, it could.

700. *Chairman.*] There is one other office the Committee wish to inquire about, there is the Record-keeper of the Court who has the custody of the wills and documents?—There are several clerks in the office.

701. You know Mr. Smith; is his an office of trust?—Very important; but there are other clerks in the office in whom great trust is reposed.

702. Mr. Smith styles himself Head Clerk and Keeper of the Records in the Prerogative Court of Ireland?—I do not know him as the head clerk; the persons I have been in the habit of looking to as the heads among the clerks in the establishment are Mr. Mackay and Mr. Smith; but it is right to mention of Mr. Smith and Mr. Mackay, as, indeed, I can say of all (I do not speak of scriveners, but of clerks in the office), that they are persons of extremely respectable conduct, and there is no man more respectable than Mr. Smith.

703. His remuneration is very small, only 130 *l.* a year, which would appear rather a small salary?—He has more than that, I believe.

704. What do you consider a sufficient salary for Mr. Smith?—I should say that Mr. Smith and Mr. Mackay, for I should be cautious in fixing the salary or duties of one person and not the other, and one or two others, would not be well paid by less than 300 *l.* a year.

705. Mr. *Hamilton.*] Who has the custody of wills when they are deposited in the first instance?—The custody of the wills belongs, of course, to the Registrar. The person who acts immediately under them in relation to the custody of the wills is Mr. Smith. Then the very confidential and important branch of duty of arranging all the documents, and examining them, and performing the duties discharged at Doctors' Commons by Clerks of Seats, is performed by Mr. Mackay, a gentleman of great intelligence and knowledge.

706. Their duties would be very much increased if all wills were brought into your Court?—Yes, very much, so much increased, that I doubt very much, with respect to Mr. Smith and Mr. Mackay, whether they would not require some assistance.

707. Mr. *Goulburn.*] The Registrar is the legal keeper of wills?—Yes.

708. And his Deputy Registrars are supposed to act under him in the custody of the wills?—Yes.

709. But neither the Deputy Registrar nor the Registrar does any thing; but Mr. Smith does the whole?—You are under a mistake there; they have the custody, and are attending from day to day with the wills and documents, and personally discharge several important duties.

710. Mr. *Grogan.*] Mr. Smith and Mr. Mackay are the leading clerks under the Registrar?—I so consider them.

711. Mr. *Hamilton.*] Access being frequently necessary to original documents, from parties going to copy or examine the documents, who has the custody of the documents in that particular instance; is it the Deputy Registrar, or Mr. Mackay, or Mr. Smith?—I might mislead you; that does not occur in my presence; and one of the Deputy Registrars could give you better information than I can. I have constantly seen Mr. Smith attending from the registry with the original wills in his hands. What duties he may have to perform respecting those original wills when I am not present, I am not prepared to say; but he is a highly respectable gentleman, in whom every confidence may be placed.

712. Mr. *Bellew.*] What is the lowest amount paid to any clerk in your office?—Here, again, I am unable to give you precise information. I understand, with the exception of one of the clerks (I do not mean scriveners), there is an office belonging to the scriveners where they write, which is not one of the offices of the Court; they get about 200 *l.* a year.

713. The lowest?—With the exception of one, Mr. Richardson, who I understand gets 130 *l.* or 140 *l.*

714. Are they all obliged to take the same oaths previous to taking office?—No, the clerks do not take any oaths; they are not the clerks of the Court; they are the clerks of the Registrar, and they are clerks over whom the Judge of the Court has no jurisdiction; and if one of them should misconduct himself I could not dismiss him.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Rt. Hon. *Richard Keatinge.*

14 June 1850.

715. *Chairman.*] Is not that a very bad system?—Yes. The Bill now under consideration contains some proper provisions on this point. I suggest, however, that the present Judge should not have the power of removing the present Clerks from their offices, except from misconduct. If he had the power, I am sure he would not exercise it, but I do not consider it fair towards the present clerks, who have all conducted themselves with great propriety, that such a power would be vested in the Judge.

Lunæ, 17° *die Junii*, 1850.

MEMBERS PRESENT.

Mr. Goulburn.	Mr. Gladstone.
Mr. G. A. Hamilton.	Mr. Grogan.
Mr. W. Fagan.	Mr. O'Flaherty.
Lord Naas.	Mr. Solicitor-General for Ireland.
Mr. Bouverie.	Mr. Bellew.
Mr. Monsell.	Sir John Young.
Mr. Sadleir.	

WILLIAM KEOGH, ESQUIRE, IN THE CHAIR.

Joseph Hamilton, Esq.; Examined.

J. Hamilton, Esq.

17 June 1850.

716. *Chairman.*] YOU are a Proctor, practising in the Prerogative Court in Dublin, are you not?—Yes, I am.

717. And in the Consistory Court?—Yes.

718. How long have you been a Proctor?—About 40 years.

719. Can you state to the Committee the number of Proctors at present in practice?—I think there are at present 25; and I think three young gentlemen are serving their apprenticeship.

720. Of those 25, some of them are partners in the same house as in your own house, are they not?—Yes; our own house consists of three; there are the two Mr. Worthingtons.

721. Are there no other partnerships?—Yes; Messrs. Swift.

722. Can you state what the apprentice-fee is to qualify a person to become a Proctor?—The largest apprentice-fee at our house was 600 *l.*; I have known, before the profession became so extended, that it has been as much as 1,000 guineas.

723. Do you know what the apprentice-fee was in the year 1800?—I believe it was only 200 *l.*; but it was raised some time afterwards; for I paid 500 *l.* myself.

724. And then it was raised to 1,000 guineas?—Yes; then it gradually rose to 1,000 guineas.

725. Was not the tendency of raising that fee materially to limit the number of Proctors?—No doubt, and I should say advisedly, because the business is limited in its extent.

726. But the result was as I say?—The Registrar, could not have more than three at one time. In 1830 that was altered, and Dr. Radcliffe made regulations that every Proctor of ten years' standing might take an apprentice, confining it to one at a time.

727. Have you ever known that rule of Dr. Radcliffe's, as regards the ten years' standing, to be departed from?—Not in any instance; that rule, to my knowledge, has not been departed from.

728. Are you aware that Judge Keatinge allowed a Proctor to take an apprentice before he was of ten years' standing?—No.

729. Did you know the house of Messrs. Stock?—Yes.

730. They were partners, were they not?—Yes, they were.

731. Did you know of the present Mr. Stock being allowed to take an apprentice before he was of ten years' standing?—I really cannot recollect exactly; perhaps he was at the time of the death of his uncle; I do not know the effect of every rule; it is still confined to one apprentice at a time, and I know myself that

Printed image digitised by the University of Southampton Library Digitisation Unit

that our firm applied to be allowed to take a second apprentice, and it was refused; Judge Keatinge refused it.

732. Is it not the case that Judge Keatinge has the power to admit any person to practice as a Proctor, if he thinks fit?—I really believe he can.

733. There is nothing to prevent him, is there?—I should say there is not; but Dr. Radcliffe, by his rules, bound himself not to admit any person a Proctor who was not an articled clerk or apprentice.

734. But he expressly stated that he had no power to bind his successors, did he not?—I think he did; and from that I would infer that Judge Keatinge, perhaps, has the power.

735. What are the duties of a Proctor, generally?—They are very numerous; there is the voluntary and the contentious jurisdiction. If the Committee will allow me, I will refer to a printed document which states the duties. The memorial I refer to is that presented by me to the Select Committee of 1837, see *App.* 91.

736. That is the Memorial of the Proctors, is it not?—Yes; I think they are fully stated there.

737. Would you wish to refer to that as a statement of the duties discharged by the Proctors?—I think it is a correct statement.

738. Do you know whether that memorial is not, in effect, transcribed from the memorial presented to this House in the year 1837?—I have seen it; I was the person who presented it, and I believe there have been many extracts taken from it.

739. I observe that there is an omission, in the present memorial, of a very important paragraph which was contained in the former memorial; there is this paragraph in the former memorial, "That the consolidation of jurisdiction exercised by the several Diocesan Courts into one Superior Court, would be a measure of great public advantage to Ireland;" that passage was in your memorial of 1837, was it not?—Yes.

740. Then the Proctors, in 1837, were, I assume, unanimously of opinion that that would be a measure of public benefit?—They were, I believe.

741. You signed that memorial, and presented it?—Yes.

742. But you have omitted that paragraph from your present memorial?—Yes; that was not drawn up by me; I was not in Dublin at the time.

743. You are aware that the paragraph is omitted, are you not?—Yes, I am aware of it; I did not compare the two together.

744. Are you of opinion that "the consolidation of the jurisdiction exercised by the several Diocesan Courts into one Superior Court" in Dublin, would be for the public benefit?—Do you mean altogether?

745. In the terms of the memorial of 1837?—Yes; I should say myself, upon a full consideration of the subject, that, perhaps, the testamentary jurisdiction, in very small cases, would be better left with the Diocesan Court, where all the property is within the diocese.

746. Then you are not now of the same opinion as you were in 1837, when you presented the memorial, stating, "That the consolidation of the jurisdiction exercised by the several Diocesan Courts into one Superior Court, would be a measure of great public advantage to Ireland," or do you wish to modify that statement in the memorial of 1837?—I have not recently read those memorials; and if the Committee will allow me, I should like to reserve the answer to that question. I beg to state, I have read the two memorials referred to in question 739, with respect to the consolidations of the Diocesan Courts, it was first suggested by Report of the Commissioners of Inquiry into the Courts in England, and adopted by the Select Committee of the House of Commons in 1833.

747. You have stated that you think it would be advisable to preserve the jurisdiction in small testamentary cases to the Diocesan Courts?—Yes; the class of cases I refer to is, that of the wills of farmers and small shopkeepers.

748. Where the assets could be ascertained to be in that diocese?—Yes.

749. Are you aware that very great difficulty exists with respect to ascertaining that fact?—No, I am not; but very frequently, and in all cases where there is 5 *l.* out of the diocese, that constitutes *bonâ notabilia*, and that constitutes the jurisdiction of the Court of Prerogative.

750. Then the probate of the Diocesan Court is void, is it not?—Yes; if there be no *bonâ notabilia*, and the probate issues from the Prerogative Court, it is only voidable.

751. The probate of the Diocesan Court is in all cases void if there be *bonâ notabilia* out of the diocese?—Yes.

752. Then all acts done under that probate are equally void, are they not?—Yes.

Printed image digitised by the University of Southampton Library Digitisation Unit

753. If it is void, are not all acts done under that void probate in themselves void?—Yes.

754. Have you not occasion to decide upon questions of that kind for your clients?—Yes, and it very often happens where there are judgments of record, and that administrations or probates have been taken out in the Diocesan Court, then it is necessary to have a new grant.

755. You have advised your clients that the Diocesan probate is void, have you not?—Yes; we are obliged to take out a new grant.

756. Mr. *Bouverie.*] Is that of frequent occurrence?—I should say very often.

757. *Chairman.*] That is in Dublin?—Yes.

758. Is it so in all cases?—Yes, when there happens to be *bona notabilia.*

759. Are you acquainted with the individuals practising in those Diocesan Courts, generally speaking, throughout the country?—Very rarely.

760. Do you know who the Judges of the Diocesan Courts are?—Some are clergymen.

761. Is not the vast majority of them clergymen?—I have not exactly turned my attention to that; I know that some are, and that some of them are not.

762. Will you state the cases in which they are not?—I think there is a Parliamentary Paper which I could refer the Committee to, that would probably give that statement; the return was made in 1844, of the names of the different Judges and Deputy Judges, Registrars and Deputy Registrars, and the amount of income enjoyed by each; it is a Parliamentary document; it is dated 15 June 1844, No. 353.

763. Mr. *G. A. Hamilton.*] Who is the Judge of Armagh?—Dr. Radcliffe.

764. And of Clogher?—Dr. Radcliffe is also Judge of Clogher, and Dublin, and, I believe, Meath.

765. *Chairman.*] Is Dr. Radcliffe the Judge who in effect grants probate in the diocese of Armagh?—No; I fancy it is the Surrogate.

766. The Reverend Dr. Millar?—He is dead; Dr. Radcliffe was appointed Vicar-general on his death.

767. In effect it is the Surrogate who grants the probate?—Yes.

768. And he is a clergyman, is he not?—Sometimes he is.

769. Is he so at present?—I do not know.

770. Are the duties of Proctors in contested suits analogous to the duties of Solicitors in contested suits in the Court of Chancery?—I am not aware of the practice of the Court of Chancery, and I could not give any specific answer to the question.

771. You were examined before a Committee in 1837, were you not?—I was.

772. A Select Committee sitting upon a Bill that was introduced afterwards by Mr. Barron?—Yes.

773. This question was put to you, "Is not a great part of the business of your profession strictly analogous to the business of an attorney in other courts?" Your answer is, "More to the profession of a solicitor conducting of suits, and so on;" do you see any reason to alter that statement?—I look upon the duties of a Proctor to be in a great measure analogous to those of a solicitor; but, with respect to the precise mode of procedure in those courts, I am, I may say, totally ignorant, except I know generally that the proceeding in Chancery is by bill and answer.

774. And by petition, very frequently?—I do not know, indeed; I have heard that there are petitions in minor matters, and in certain cases.

775. Can you form any opinion as to the relative expense of a suit in the Court of Chancery and in the Prerogative Court?—I cannot; I should say, myself, from what I have heard, that suits in Chancery were infinitely more expensive, particularly proceedings in the Master's offices, than in the Prerogative Court.

776. What is the relative duration of suits in the two courts?—I have heard of suits in Chancery lasting a number of years. In the Court of Prerogative the heaviest suit might be concluded in a year, but much depend on the nature of the suit and the conduct of the parties.

777. Are you cognizant of the Prerogative suit of Macnamara *v.* Macnamara, which has been often mentioned before this House?—Yes.

778. You were engaged in it as an Examiner, were you not?—I was.

779. Do you know what the amount of property in dispute in that suit was?—I do not recollect; I was not the Proctor concerned; I was acting occasionally as Examiner, and I examined witnesses.

780. As regards the charges made by Proctors, you are aware of them, as a Proctor,

Printed image digitised by the University of Southampton Library Digitisation Unit

Proctor, both in the Prerogative Court and in the Consistorial Court; are there any charges introduced into the bills of Proctors for services which are not rendered at all?—Not to my knowledge.

781. Take the charge for "draft brief"?—That is a constructive charge, certainly.

782. What is the charge for a "draft brief"?—It is 3*s.* 4*d.* a folio.

783. Then that 3*s.* 4*d.* a folio is charged for something which is never made, is it not?—In practice I think it is not made; but I think the principle was, that the Proctor is obliged to read all the depositions, and, perhaps, to note them down, and make observations upon them.

784. But the thing is not done for which the charge is made?—In point of fact, it is not.

785. Mr. *Goulburn.*] Is any charge made for reading the depositions which you have alluded to?—There was a charge, I think, made formerly, for perusing and abstracting depositions, but the Registrar never allows it on taxation.

786. Then the two charges are not allowed?—The "perusal," I think, is not allowed.

787. The "draft brief" is allowed?—Yes.

788. Mr. *Bouverie.*] Is it habitual to make a charge for "perusal"?—I really have not for a considerable time given my attention to that subject; I mean the drawing of costs.

789. *Chairman.*] Do you state with certainty that the charge for "perusal" is not made, but that the charge for the "draft brief" is a sort of substitute for the "perusal"?—Really, as I have mentioned just now, I have not given my attention to the drawing of costs for a considerable time: and I am not particularly conversant with them.

790. Would you wish to qualify that, namely, that the charge for "draft brief" is a substitute for "perusal"; if both are charged, it would convey an incorrect impression to the Committee?—They may be both charged in bills without my knowing anything about it, unless they come before me for taxation.

791. Then you cannot say whether or not the charges are not made for both?—I cannot; I beg to refer to my answer to the preceding question.

792. Are you aware that in the Court of Chancery there is no charge for the "draft brief," except where it is made?—I am not aware of the charges of the Court of Chancery, but I believe all those charges of the Court of Chancery were regulated within a recent period.

793. Are there any other constructive charges in the Prerogative Court, in addition to that constructive charge of "draft brief" which you have mentioned?—I think not, as well as I can recollect.

794. Take the charge for "extracting and collating," is that a constructive charge?—That charge for "extracting," I take to be for taking out of an article, whatever it may be, and the charge of "collating" is for the comparison; I think it is a general charge for the comparing of a will. The charges referred to relate to the charges on probates and administrations.

795. Is the service rendered, in fact, for which that charge is made?—Certainly it is. In reference to probates and administrations, there is a strict rule that the Proctor is responsible for the accuracy of the copy of the will he brings into the registry, and is obliged to certify its correctness at the end of the engrossment.

796. The charge for "extracting and collating" is 1 *l.* 6*s.* 8*d.*, is it not?—For the reason I mentioned just now, I cannot give you accurate information.

797. Are you not a taxing officer of the Court of Delegates?—Yes, I am; but it is a very different thing drawing a bill of costs and taxing a bill of costs.

798. Must you not be familiar with the charges in the Court to enable you properly to discharge the duties of taxing officer?—I should, and do make myself acquainted, and I always do investigate a bill of costs very rigidly, and I endeavour to ascertain, if possible, that the service has been performed.

799. As a taxing officer of the Court of Delegates, can you say whether the constructive charge for "draft brief" is made, and an additional charge for reading over the document?—The "draft brief" is charged.

800. Is a charge also made for reading the documents?—I really cannot charge my memory with the thing, unless it was brought home to me.

801. Have you lately had occasion to tax bills of costs in the Court of Delegates?—Yes.

802. You are a partner in the house of Tilly, Hamilton & Ormsby, are you not?—Yes.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

803. The most extensive Proctors concerned in the Court of Prerogative?—Yes.

804. Have you taxed bills of costs incurred in the Court of Delegates by that house?—Yes, I have.

805. I hold in my hand a bill of costs which appears to have been taxed in the year 1850 by you; will you turn to the last page of it, and just look at the name to the bill, and say whether you know the house of Swift & Swift—[*the same being handed to the Witness*]?—Yes, I do.

806. Is that the hand-writing of Messrs. Swift at the bottom of that bill of costs?—I think it is.

807. You were the Proctors opposed to Messrs. Swift in that cause, were you not?—Do you speak of the Court of Delegates?

808. I mean the Court of Prerogative?—It was in the Consistorial Court, in Dublin.

809. Your house were the Proctors opposed to Messrs. Swift in that cause?—Yes; but I never interfered, directly or indirectly, in any cause at all in which it goes into the Delegates Court; nor have I ever, since my appointment as Registrar of the Court of Delegates, which is now nearly 30 years, directly or indirectly participated in the profits derived by my partners from any professional business in the Court of Delegates.

810. But you have derived your proper share of the partnership profits in the Consistorial Court, in which Court that cause was?—I have.

811. In effect, you were the Proctors opposed to Messrs. Swift, in that cause of Donnellan *v.* Downes?—Yes.

812. You taxed that bill of costs?—This is not the original bill.

813. Did you tax that bill of costs?—I did.

814. Do you see that it is reduced there by 20 *l.*?—No, that is a reduction; all the costs are furnished in Irish currency, and then reduced to British.

815. The last charge is, "Act and Records, Swift read Registrar's Report on bill of costs, which their Lordships confirmed, and taxed the same to the sum of 200 *l.* 2 *s.* 5 *d.*," for which there is a charge of 9 *s.* 8 *d.*; will you refer to that item?—[*The Bill was handed to the Witness.*]—I do not see that there is any copy of my report here.

816. You observe that there is a charge made there for "reading your Report," reducing the bill to 200 *l.* 2 *s.* 5 *d.*?—Yes.

817. Do you recollect having taxed that bill of costs?—I do.

818. Will you just refer, and see whether you have not allowed the "draft brief," in the Court of Delegates?—[*The Witness referred to the same.*]—I have; that has always been allowed between Proctor and client.

819. There is, in that bill of costs, a sum of 37 *l.* for "draft brief"?—Yes; and that practice prevailed at my appointment.

820. Is that a constructive charge?—It is a constructive charge.

821. Do you not, in fact, charge for the brief in the Court of Delegates, after it has been previously charged for and paid for in the Prerogative or Consistorial Court?—It is the same brief, I believe, very often; but I should observe this, with respect to proceedings in the Court of Delegates, that the outlay of Proctors is extremely heavy in prosecuting an appeal; it becomes, in fact, a new cause in the Court of Delegates, as the proxy is terminated by the decision of the court below; the rules of the Court of Delegates are very few in number, and it has been always, as I understand, the practice that this "brief" should be allowed as a compensation for the heavy advances that the Proctors sometimes have, in those cases of appeal, to make; because the Proctor brings up the transmiss of the proceedings from the court below, which depends of course upon the length of the proceeding, and the amount of it; and the rules are very few in the court.

822. That is your explanation of the reason why this constructive charge is made?—Yes.

823. Are you aware of the case of Comyn *v.* Von Stentz?—Yes, perfectly well.

824. Mr. *Goulburn.*] What is the proportion in that bill of the outlay of the Proctor, and of the profits of the Proctor?—That would require a calculation which I am not prepared with.

825. *Chairman.*] The amount, at all events, of that appeal was 200 *l.*?—Yes.

826. Will you look at this bill of costs; it appears to have been a bill of costs in the same cause of Downes *v.* Donnellan, in the Consistory Court, and the name of

Printed image digitised by the University of Southampton Library Digitisation Unit

of Messrs Swift is also at the bottom of it [*the same being handed to the Witness*], and state the amount of that bill of costs?—This appears to be 377 *l.* 6 *s.* 11 *d.*

827. That is the bill in the Consistorial Court?—Yes.

828. You were the Proctor in that case; can you inform the Committee what was the amount of the assets in that case?—I cannot.

829. Turn to the bill, and you will see the charge there, stating that the assets were sworn to be under 600 *l.*?—I do not know.

830. Is that a correct copy?—I have no means of judging of its accuracy.

831. Do you recollect what the amount of assets in that cause was?—I do not; I think that our client was a pauper.

832. And he was permitted to sue *in formâ pauperis*?—Yes.

833. Assuming that the assets were under 600 *l.*, the costs of your antagonist were more than the amount of the assets; was not that so?—So it would appear; I believe that is not a singular case in law proceedings.

834. That the costs are frequently more than the subject-matter in dispute?—I have often heard of something of the kind.

835. In that case, I believe, the decision of the Consistorial Court was obtained?—Yes.

836. The decision was originally for your client?—Yes.

837. It was decided in favour of your client?—He set up a will, as well as I recollect the case, which was condemned by the Court of Delegates.

838. You mentioned that you were aware of the case of Comyn *v.* Von Stentz? Yes.

839. Messrs. Comyn were your clients in that case, were they not?—They were the clients of the office, but I never, for certain reasons, interfered in the management of the cause.

840. Were "briefs" charged in that case in the Prerogative Court?—They were.

841. And paid for?—I cannot exactly say.

842. They were charged, at all events?—Yes.

843. And taxed?—Yes.

844. Were the same "briefs," no new copy having been made, afterwards charged for and taxed in the Court of Delegates?—Yes, they were.

845. By you?—Yes.

846. Do you recollect what the charge for those "briefs" was?—I do not.

847. Was it over 100 *l.*?—I really cannot tell.

848. Cannot you state whether the charges were over 300 *l.*?—Upon my word I cannot.

849. You do not recollect the amount?—I do not; I cannot.

850. Do you recollect that they were a very large amount?—I think they were.

851. They were charged for twice, were they not?—Yes.

852. And they were to be paid for twice, if not already paid for?—Yes, they were; with reference to that particular case, I should beg to call the attention of the Committee to a statement with respect to that case of Comyn and Von Stentz; at the taxation of the costs in that cause, Messrs. Comyns attended the taxation, at least Mr. Peter Comyn attended, and his solicitor, Mr. M'Nevan, and his proctor attended, and the costs were very rigidly taxed; the course of proceeding is this, if a party is not satisfied with the taxation of the officer, he excepts to it; the Messrs. Comyn did except to the taxation, and one of the grounds of the exception was, the allowance of those "briefs;" the exceptions were argued before the Judges Delegates, and the Judges Delegates overruled the exception, and confirmed the Report.

853. The Court of Delegates decided that the charge should be twice made for the same work?—They decided that the Proctor had a right to have them in the Court of Delegates.

854. Did they express any opinion that it was an unfair charge, and ought to be discontinued?—They expressed an opinion to the effect that it should be discontinued.

855. They merely decided as they did, because it had been the established practice?—That it was the usage; that case was a very extreme case in all its circumstances; and it is easy to fix on an extreme case, but they occur in other courts.

856. Is it not the uniform practice that "briefs" are charged for twice, once in the Prerogative Court, and a second time in the Court of Delegates, if there is an appeal?—Yes.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

857. That is the uniform practice, and never departed from?—No.

858. What are the charges for the attendances of Proctors upon commissions?—The attendances of Proctors on commissions are at the rate of four guineas a-day.

859. If you have to go 100 miles from Dublin, how many days do you charge?—I think, for 100 miles, it would be about two days, or three days.

860. Three days, is it not?—I think it is.

861. That is 12 guineas, that you charge for going 100 miles from Dublin?—Yes.

862. May you not reach Cork from Dublin in six hours?—Yes, now; but those are old established charges; I have known the Registrar, Mr. Hawkins, to alter the allowance as the facilities of travelling increased.

863. You would charge now three days from Dublin to Cork, would you?—I should think not now.

864. Then how much?—I do not know just now.

865. What would you allow as the taxing officer?—I would investigate very rigidly; I should say that the allowance for attendances on commissions is composed of three guineas, in the first instance, as a recompense for the Proctor being taken away from his official business in town, and a guinea a day for expenses.

866. Do you make a double charge for attending the examination proceeding at the same time?—Certainly not.

867. Has it been done?—Not to my knowledge.

868. Do you recollect the charge of the Rev. Mr. Fenner, which is mentioned in the 19th Report of the Commissioners?—No, that was before my time.

869. In the year 1830?—No, in the year 1811 or 1812, I think.

870. Do you recollect the circumstances of that case?—No, I do not; I was only just admitted.

871. Mr. *Gladstone.*] Is not a Proctor travelling allowed for his fare, and so on, in a mileage allowance?—His travelling expenses are included in the four guineas.

872. Then there is no mileage allowance, for instance?—No, he pays all his travelling expenses out of the four guineas.

873. *Chairman.*] Did you not say, that for a journey of 100 miles the charge would be two and a half or three days?—Yes, under the old system.

874. Has no new scale been adopted?—Not that I am aware of; the principle of the old scale is still in existence; but the allowance is modified, as stated above in answer to question 862.

875. Referring to the case just mentioned, the case of Comyn *v.* Von Stentz, in which there was a very lengthened examination; in what year was that?—There was a commission to Vienna in 1845.

876. Can you state to the Committee what the charges made by your house for the expense of one of your partners going to Vienna and returning, were?—I cannot, and for this reason, that I took no part in the conduct of that suit, except merely what was necessary during my attendance in Court; Mr. Tilly himself, my senior partner, at the instance of Messrs. Comyns, accompanied them to Vienna, at a very serious inconvenience to himself, I believe.

877. Do you know whether the expenses were charged at the rate of four guineas for every 40 miles?—No; I think, from what I have heard from my partners, that there was a sort of composition, a certain sum agreed upon; I cannot state what the sum charged was.

878. Do you know whether the old scale of charges has been altered by any new scale?—I think Mr. Hawkins, did not always adhere to the old scale.

879. You cannot say in what respect he altered it?—The old scale was, as well as I recollect, to travel at the rate of 40 miles a day.

880. For that you would be allowed four guineas?—Yes.

881. If you travelled 100 miles in a day, would you charge at the rate of four guineas for every 40 miles?—You might perhaps go 100 miles in one day.

882. And your would charge three times four guineas?—Yes.

883. Mr. *Gladstone.*] Take the journey to Cork; what is the distance from Dublin to Cork?—I think 120 odd miles.

884. *Chairman.*] What would be your charge for making that journey under the old scale?—I think three days, at four guineas a day.

885. Twelve guineas for going to Cork, and 12 guineas for returning?—Yes.

886. And

Printed image digitised by the University of Southampton Library Digitisation Unit

886. And four guineas for a day there?—Yes; during the attendance on the commission.

887. Supposing the Proctor returned to Dublin whilst the commission was still going on, would he not have been entitled, under the old scale, to charge for every day the commission was there?—I do not think he would have been allowed that; he would only be allowed for the actual number of days he attended.

888. Have you ever known it charged?—I cannot call to my recollection, but the Examiner keeps a regular minute of each day's transaction that occurs on the commission, and it would appear from that return whether the Proctor was in attendance or not, and if the Registrar's attention was called to it, unquestionably he would not allow it; I would mention, with reference to commissions, that in the case of Stopford *v.* West, in which I had the taxation of the costs, I disallowed the guinea a day for the Examiners, and also for the Proctors' expenses, in taxing the costs; there was an exception taken to that, and the exception, so far as related to the Proctors' expenses, was allowed, and the Delegates ruled that, with regard to the Examiners' expenses, that having been *bonâ fide* paid to him as a public officer it should be allowed.

889. In fact they thought that you were wrong in deducting a guinea the day?—Yes.

890. You stated that you believed that the system of charges for travelling expenses has been altered of late years?—I think so.

891. Do you wish to make that statement to the Committee as of your certain knowledge?—My impression has been so from conversations I have had with the late Mr. Hawkins on the subject.

892. When did he die?—Four or five years ago.

893. Will you take this bill of costs into your hand in the case of O'Connell *v.* O'Connor; that was a case with respect to Cork, and say whether that is not a bill of costs out of your house—[*The same was handed to the Witness*]?—There was a case of that kind.

894. Turn to page 7, and you will see there the charge made by our house, made for going to Cork in 1842?—"To fees allowed travelling from Dublin to Cork to attend said commission, and returning to Dublin, in all six days, at four guineas per day, including all expenses, 27*l.* 6*s.*;" 8*l.* 6*s.* appear to have been taken off.

895. Now read the charge for the next inquiry?—"To my attendance on said commission in the city of Cork, on the 26th, 27th, 28th, 29th, 30th and 31st August, and 1st, 2d, 3d, 4th, 5th and 6th days of September, in all 12 days, at four guineas per day, including all expenses 54*l.* 12*s.*" It appears that three days have been struck off, amounting to 12 guineas.

896. Are you aware whether those days were days on which the Proctor did not attend?—I do not know; I did not attend that commission.

897. You cannot say what the reason of that was?—I cannot; I did not attend that commission.

898. Mr. *Grogan.*] What is the date of that item?—In 1842; I know Mr. Hawkins's practice was always to refer to the return on those occasions.

899. *Chairman.*] You can give no more distinct evidence as to the amount of charge by your house for going to Vienna and back again?—I really cannot.

900. Do you know whether it was over 150 guineas?—I really cannot give you any information about it; for certain reasons, I did not take any part in that cause.

901. Is there any charge in proctors' bills called "Poundage Fee"?—Yes, on probates and administrations.

902. Will you explain what that charge is?—I think the Committee will find it fully explained in that memorial which was before the Committee, in 1837; it is a compensation for the advances of stamp duties, and I think the Committee will find that very fully stated, and the same practice which exists here was adopted in 1812.

903. Do you adopt that statement which was before put forward, as to the "poundage fee"?—Yes, the statement in that memorial.

904. The "poundage fee" is a compensation for the advance of stamp duty by the Proctor?—Yes.

905. And it is charged in every case?—Yes, it is.

906. Does the Proctor really advance the stamp duty in every case?—In our house we do, in almost every case.

907. But not in every case?—If a party advances the duty, of course we receive it.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

908. And you charge the "poundage fee" notwithstanding?—I believe it is charged.

909. Notwithstanding there is no reason for it; is not that the case?—I think the "poundage fee" is charged in all cases, and with reason, having regard to advances.

910. Are you aware that there are other houses in the profession of Proctors, in which they never advance stamp duties?—There may be, but in our house we always advance it; I think I could give instances of it; the advances by our house, upon two years, were upwards of 13,000 *l.*; it frequently occurs, indeed almost every day, that parties die with or without wills, and those who are entitled to obtain administration have not funds of their own to meet those stamp duties, and we are frequently called upon in those cases to advance them, and we do so.

911. Is the "poundage fee" regulated by the sum advanced?—The "poundage fee," as I think it will be found in the memorial, amounts to 3 *s.* 4 *d.* in the pound up to a 60 *l.* stamp, and 6 *d.* in the pound after that. I think the "poundage fee" may be justified on other grounds; in very numerous classes, for instance, the stockbroker is entitled to his commission of so much per cent., and others also are entitled, all those who make any advances.

912. Is the "poundage fee" regulated by the amount of stamp duty advanced, or by the amount of assets?—The stamp duty is regulated by the amount of assets.

913. Is the "poundage fee" regulated by the amount of assets?—The "poundage fee" is regulated by the amount of the stamp duty.

914. This question appears in the evidence given in the year 1837: "Supposing the two wills to be precisely of the same nature, precisely of the same size, precisely of the same number of words; and if, under one will a man takes 50,000 *l.*, and under another will takes something under 500,000 *l.*, your charge in the first instance would be 20 *l.* 6 *s.* 2 *d.*, and in the second case would be 144 *l.* 12 *s.* 2 *d.* for precisely the same duty?" would that be so?—I never knew any instance of property sworn under 500,000 *l.* in Ireland.

915. That was not the question I asked you. What I asked you was, "Supposing the two wills to be precisely of the same nature, precisely of the same size, precisely of the same number of words, and if, under one will a man takes 50,000 *l.* and in another will takes something under 500,000 *l.*, your charge in the first instance would be 20 *l.* 6 *s.* 2 *d.*, and in the second case would be 144 *l.* 12 *s.* 2 *d.* for precisely the same duty?" would that be so?—If such a thing occurred, it would; but in Ireland it rarely happened that personal property exceeds 100,000 *l.*

916. Is there any reason why it should be so?—I conceive that it is necessary; it is the case in our firm to keep a considerable floating capital; we are also very frequently obliged to take bills for the amount of the duties of those probates, and give extensive credit, particularly to solicitors.

917. Is there any reason, in the particular case put, because the assets happened to be 500,000 *l.* in the one case, and in the other only 50,000 *l.* that you should charge 144 *l.* in one case, and only 20 *l.* in the other?—The principle extends to the one as well as to the other.

918. You state that your house are in the habit of advancing large sums for probate duty; I turn to your memorial of 1837, and I find this statement in it. "Again, the large sums of money which are entrusted to the profession in procuring probates and administrations in cases where property is considerable." Do you not mean, in that memorial, by "large sums of money which are entrusted to the profession," advances made by the clients for the very stamp duties of which you speak?—It would appear so.

919. Then in those cases the "large sums being advanced," means sums which the client advances, and not the Proctor?—The client certainly advances in many instances.

920. But you charge the "poundage fee"?—He is charged.

921. Have you any fixed scale of charges for Proctors with reference to bills of costs?—With respect to costs of suits, that may depend entirely upon the circumstances of the case.

922. Is there or not any fixed scale of charges?—There are certain allowances for attendances, rules, term and retaining fees, drafts and fair copies, pleadings, interrogatories, &c.

923. Is there any fixed printed scale of charges to which the public can have access, to regulate your costs?—There has been a scale with reference to probates and administrations?

924. With

Printed image digitised by the University of Southampton Library Digitisation Unit

924. With respect to the voluntary as well as a contentious jurisdiction?—No; I do not think there is any scale as to the contentious jurisdiction; what I would mean to convey is this, that there is a certain scale of charges such as, for attendances, drafts of pleadings, and rules, and those matters; but the general amount of those costs must depend upon the circumstances of the case, and the conduct of the parties.

925. Is there any fixed printed scale of charges to which the public can have any access?—No fixed printed scale for charges in a suit.

926. Mr. *Bellew*.] Is there any fixed scale, written or printed?—No; except with reference to the voluntary jurisdiction.

927. *Chairman*.] Does the voluntary jurisdiction extend to all cases in which probates and administrations are granted?—Yes.

928. Does the scale extend to all those cases?—I think it does.

929. Will you just consider your answer to that; does the scale extend to a case of administration *de bonis non*?—There is a difference in the extracting fee upon an administration *de bonis non*.

930. You say there is a scale as regards the voluntary jurisdiction?—Yes.

931. Is that a printed scale?—It was printed.

932. Is it not now printed?—It is, I believe, in the offices.

933. Is that scale publicly exposed in the offices at the present time; in the public offices?—No; but any one may have it who asks for it.

934. Is that exposed in the public office of the Prerogative Court?—No, I think not.

935. Is not that distinctly contrary to the 83d canon?—I recollect that scale having been hung up; but I cannot say now whether it is hung up.

936. Was it not one of the complaints of the Commissioners, in their published Report, in 1830, that such scale was not publicly exposed, and which was a violation of the 83d canon?—They did not refer at all to the canon; and the statement in the memorial with reference to that canon was made to show that the Commissioners did not know the proper mode of authenticating the table of fees, they assume that it should be entered on the rule-book.

937. Is it not, in fact, contrary to that canon?—The mode of authenticating the tables of fees is directed by that canon, the 83d.

938. How are they to be authenticated; is it not by public exposure in the offices?—Yes.

939. Is that complied with?—I believe, in point of fact, it is not complied with.

940. Does not that scale, which ought to be publicly exposed, and is not, extend to administrations *de bonis non*?—No, I think not.

941. As regards those administrations, you have no scales?—The office fees and the Proctor's fees are, I think, the same; with this difference, that instead of 6 *s.* 8 *d.* for extraction, or 13 *s.* 4 *d.* for instruction fee, there is a fee of 1 *l.* 6 *s.* 8 *d.* for extracting on administrations *de bonis non*.

942. Not regulated by any scale?—That has been the uniform scale, as long as I recollect anything of that part of the business.

943. Regulated by the Proctors themselves?—No, I think not.

944. By whom is that regulated?—I think it was a regulation in the office; the usage in the office, as long as I can remember.

945. The usage of the Proctors?—Yes, and in the Registrar's Office.

946. But the scale sanctioned by the Judge of the Court, the scale of 1812, did not allow of a fee of 1 *l.* 6 *s.* 8 *d.* in administrations *de bonis non*?—I do not think the scale it referred to administrations *de bonis non*, it referred to original grants only.

947. But that is charged by the Proctors?—Yes; but there is a great deal of additional trouble with respect to administrations *de bonis non*. You must attend at the office, and refer to the original will, or a copy of it, and see who is the party entitled to the grant; and there may be other attendances connected with that grant.

948. There is, at present, no scale of fees open to the inspection of the public in either the Registrar's Office or in the Proctor's Offices in Dublin?—I cannot take upon myself to say that there is not; but I should think, if anybody asked to see the scale of fees in either the Proctor's Offices or the Registrar's Office, they could do so.

949. On turning to the memorial of the Proctors in 1837, presented and signed by you, in which you accuse the Commissioners, who inquired into your office, of ignorance as to the practice, this paragraph occurs: "Had the habits of those gentlemen led them to any degree of acquaintance with the law or practice of the

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

Spiritual Courts, they would have understood that the proper and legal mode of promulgating fees from authority in those Courts is, by posting a table in certain public places;" and you cite "Burn's Ecclesiastical Law, Title Fees, page 264; 136th English Canon, 83d Irish Canon," for that; is that a correct statement?—The mode of authentication I believe to be correct.

950. You stated that, when you were accusing those Commissioners of ignorance, did you not?—That memorial was drawn up by Mr. Serjeant Stock.

951. Was it signed by you?—It might have been signed by me, I believe, when handing it in.

952. You presented it to a Committee of this House, did you not?—Yes; I do not remember that I signed it.

953. Assuming that to be a correct statement, is it complied with in practice?—It was; I really cannot say whether it is now in the office or not; I do say this, that I conceive that upon any person inquiring for such a scale, it would be produced to him.

954. Do you think that keeping the scale in the desk of the Proctor, and giving it to those inquiring for it, is a compliance with that law which you set forth in your memorial, namely, requiring the "posting in public places"?—It is not.

955. Is there any portion of the system of pleading at present used in the Prerogative Court which you consider entails unnecessary expenses upon the parties?—I think there is perhaps a great deal of repetition in reciting the title of a cause, the formal words and the concluding part of each article.

956. Must you not plead everything that is to be proved?—Yes.

957. Does not that entail great expense?—I can only say that I am only acquainted with that mode of practice, and it is inherent in the system; it is the law of the Court.

958. Is it the fact?—Yes.

959. That all facts to be proved are pleaded?—Yes.

960. And that entails great expense, does it not?—I should think that it is necessary to do so, from the system of the court.

961. Do you think it advisable that that system should be altered?—I am not prepared to give any answer to that question.

962. You have handed in a memorial to The House, as presented on behalf of the Proctors, and in that you ask this Committee to adopt the recommendations of the Ecclesiastical Commissioners in the year 1832, have you not?—Yes.

963. Are you aware that one of the recommendations of the Ecclesiastical Commissioners in 1832 was, to adopt the system of *vivâ voce* examination?—I believe, under certain limitations; I have not read that Report recently.

964. In your memorial you request this Committee to adopt recommendations which you have not read?—The memorial was to adopt the general principle laid down in that Report; I said I did not read it recently.

965. What do you consider to be the principle laid down in that Report; have you the memorial which you did present?—I have not. The object of the memorial I take to be this, to assimilate the practice.

966. In your memorial of 1837, which you presented to a Committee of this House, you stated that "the practitioners beg leave respectfully to submit, that the general arrangement of the Ecclesiastical Courts in Ireland, upon a plan similar to that which has been suggested in the very able and well-considered Report of the Commissioners of Inquiry into the Laws and Practice of the Ecclesiastical Courts of England, which has been recommended to be adopted in its fullest extent by a Select Committee of the House of Commons in the Session of 1833, namely, the consolidation of the jurisdiction exercised by the several Diocesan Courts into one Superior Court, would be a measure of great public advantage to Ireland"?—Yes; the meaning of that was taken to be this, that the practice in every thing should be assimilated to the practice of the same courts in this country, and that no measures should be applied to Ireland separately from the regulations of the courts in this country.

967. Then the Proctors in Ireland merely agreed with the Ecclesiastical Commissioners to this extent, that until the English courts were reformed, the Irish courts should not be either?—That was the object; to assimilate the law and practice in both countries.

968. But as regards their particular recommendations, you formed no opinion at all?—We conceived that the same principle should be extended to Ireland that was recommended for England.

969. Are

Printed image digitised by the University of Southampton Library Digitisation Unit

969. Are you in favour of adopting the system of *vivâ voce* examination in the Prerogative Court in Ireland?—I have, I believe, already said that I think *vivâ voce* examination is the best test of truth.

970. Are you in favour of adopting the system of trial by jury in the Prerogative Court?—Yes; under certain circumstances.

971. Will you state what those circumstances are?—I think, after the filing of the primary allegation, or *condidit*, as it is called in this country, which generally puts the will in issue after the attesting witnesses have been examined and cross-examined, that then the Judge should have the power of empannelling a jury in his own Court, or directing an issue.

972. Do you consider it would be advisable that the Judge should be bound by the decision of the jury as to matters of fact; that was your answer in 1837?—I understand it to be a general principle that the Judge is bound by the decision of the jury as to matters of fact.

973. You are a Proctor, practising in the Consistorial Court of Dublin, are you not?—Yes.

974. I believe all suits in the Consistorial Court are what are called "Plenary Suits," are they not?—Yes; there is some distinction as to the rules in the Court of Prerogative and in the Consistorial Court.

975. Is not the Consistorial Court, in point of practice, a more tedious and a more expensive court?—The proceedings are nearly the same; there are one or two rules more, perhaps, in the Consistorial Court than in the Prerogative Court, but I think they are pretty nearly analogous. There are three "Assignations for Sentence," in the Court of Prerogative, there is rule "for Publication unless cause," and there is a rule for "Publication Absolute." Then there are three "Assignations for Sentence" in the Prerogative Court; the second Assignation is "a Rule unless cause," and after it is made absolute, the cause is heard on the third assignation.

976. Are the rules in the Consistorial Court in Dublin more numerous than in the Court of Prerogative?—I think they are the same in effect; the general rules, with the exception of those that I now allude to; I mentioned the rules in the Court of Prerogative. After publication passes in the Consistorial Court, there is a rule decreeing "all acts propounded;" and there is then a rule decreeing "Conclusion unless cause" and then, "Conclusion absolute," I understand to be analogous to the "second Assignation for Sentence," in the Prerogative. And when those rules are gone through, there is only one Assignation for Sentence; I think, in point of fact, the number is nearly the same.

977. Is not a suit in the Consistorial Court a "plenary suit"?—It is clearly so.

978. And in the Prorogative they are summary?—Yes.

979. As a general proposition, is not a "plenary suit" more tedious than a "summary suit"?—The name would so imply.

980. Are there not, in fact, certain rules which the Judge of the Prerogative Court, if he thinks proper, can pass over, whilst there are none which the Judge of the Consistorial Court, considering it a "plenary suit," can avoid?—I think the rules in the one court are analogous to the rules in the other; if the rules were numbered, I think, they would be in effect the same.

981. Turn to the bill of costs in the case of O'Connell *v.* O'Connor, in your office, and you will find eight rules mentioned consecutively, one after the other, and each to the same effect, for which the same charge is made. Begin at the charge 4*s.* 4*d.*, and read the different charges to the Committee?—"Michaelmas Term, November 2d, rule, &c. appearance expected in prox. Pet. Tilly."

982. What is the charge?—Four shillings and four-pence.

983. The next?—Four shillings and four-pence.

984. Eight times that charge is made?—Yes.

985. In point of fact is not that a fictitious charge?—No, there may be reasons for continuing the rule; there may be many reasons for it.

986. Can there be any reason for not doing this, when the first rule is entered, to fix the time when the answer is to come in, or the appearance is to come in?—There is generally a day assigned for the appearance, and that may be under circumstances continued from day to day.

987. In that case it was continued eight times consecutively?—Yes.

988. Will you look on after, and see whether a similar charge is not repeated in the next Term?—"To answer Orme's exception;" that is, to join issue upon.

989. In the first instance there are eight charges of 4*s.* 4*d.*, and there is in Hilary Term a continuation, the rules beginning on January the 11th, and in all they

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

they appear to be "Tilly, to answer Orme's Exception"?—With reference to that particular case, I think it was a pedigree case; the question of right of administration, and a pedigree case; and the practice is, when an exception is put in to the title, that you must then appear with your replication; and it is very difficult in those pedigree cases to be prepared with your replication in time. Searches have to be made in registries for births and deaths, and so on; and in that way delay frequently arises in those cases.

990. Is there any reason to prevent the practitioner, once for all, getting the time fixed by the Judge of the Court, and not coming from day to day to extend the time?—Certainly not.

991. In this case, you appear to have eight or nine or ten charges for the same process continuing from day to day?—It does appear so.

992. And that entails immense expense upon the parties, does it not?—Yes; but those are, perhaps, exceptional cases.

993. Those exceptions appear to pervade the entire of this bill of costs; can you state why those exceptions occurred so often in this case?—I think the difficulty occurred from not enabling us to file a proper replication in answer to Mr. Orme's exception; the exception in that case was, that the party was not next of kin; then he must go into his case to show that he is next of kin, and he must set out his pedigree according to the degree of kindred he claims.

994. Will you explain what you mean by the charge of "The Third Term Probatory continued"?—The term probatory is the time within which witnesses are to be produced, and that is continued for the purpose of giving the party an opportunity of producing his witnesses.

995. Do they continue that from court-day to court-day?—There are three terms probatory usually granted, on cause shown, or on application to the court made, the court may extend the time.

996. In page 5 of this bill of costs, the charge for "Third Term Probatory continued," is made 11 times; the same charge 4*s.* 4*d.*, in one page of the bill of costs for the continuation of "Third Term Probatory;" why was that necessary?—It might be necessary from the difficulty of obtaining the attendance of witnesses.

997. Could not the Judge, on the 14th of April, have said, "Give them for the examination of witnesses till the 31st of May"?—Yes.

998. And that would have avoided all the expense?—Yes; the present Judge is very strict in doing that.

999. Would not that have avoided all the expense incurred in this bill?—Yes.

1000. An amendment of the practice in that respect is very necessary, is it not?—Yes, it is; I think the present Judge has remedied that; he will not extend the time unless on sufficient grounds, and frequently he requires an affidavit.

1001. Was not there a scale of fees for Proctors recommended by the Commissioners in 1830?—Yes, there was.

1002. Has that been adopted?—No.

1003. No portion of that scale of fees has been adopted?—No.

1004. Did not the Commissioners in 1830 give great attention to the practice of the Court of Prerogative in Ireland?—They investigated the fees very rigidly.

1005. And they recommended a scale of charges, did they not?—Yes, as well as I remember, they recommended a scale of charges founded on the scale of 1718, nearly a century and a half ago.

1006. Did not they recommend a scale of charges which would have placed the Proctors on an equality with the solicitors of Ireland as regards their charges?—I have not read that Report recently, and my recollection is not very perfect about it.

1007. It has not been adopted?—No; in short, it has been supposed that that Report was a dead letter, I may say.

1008. It has been treated as a dead letter?—Yes.

1009. The Commissioners were Messrs. Kemmis, Mitford, Conway, Dobbs, Low and Wynne; and your evidence is that that Report has been treated as a dead letter?—I should, with very great respect to those gentlemen, say, that their legal habits were not at all calculated to lead them to inquire properly into that court.

1010. Mr. Kemmis is a Queen's Council, and has been so for many years?—Yes; not one of those gentlemen was ever a practitioner in the court.

1011. Was not Judge Crampton a practitioner in the court?—Yes; he was examined as a witness.

1012. Did

Printed image digitised by the University of Southampton Library Digitisation Unit

1012. Did he recommend *vivâ voce* examination?—Yes, I believe so.

1013. And trial by jury?—Yes, I believe so.

1014. And proceeding by petition?—I suppose he did.

1015. Those recommendations have not been adopted?—None of them.

1016. He had been for many years a practitioner in the Prerogative Court, had he not?—He was, I should say, not a very general practitioner; he was in many cases; I cannot recollect that he had the conducting of many suits.

1017. Was the present Dr. Stock a practitioner for many years in the court?—Yes.

1018. He is Judge of the Admiralty Court, is he not?—Yes.

1019. Did he recommend *vivâ voce* examinations, trial by jury, and proceeding by petition?—I am not sure that he recommended proceeding by petition.

1020. His recommendations have not been carried out either?—No; he brought in a Bill, I think, in 1838.

1021. In carrying on suits, are you not in constant communication with the solicitors of the parties?—Yes.

1022. They are the persons from whom you derive your business?—Not always.

1023. You state in your memorial that in 19 cases out of 20 you do?—That refers to the common form of business; the probates and administrations, and all that sort of business, comes, I think, through the solicitors; I think people generally, if they have any law business, first apply to their solicitor.

1024. This paragraph is in your memorial, "inasmuch as nineteen-twentieths of their business is derived through the solicitors;" is that correct?—Yes.

1025. Are you not in constant communication with the solicitor during the progress of a cause?—In some cases; but in our office we communicate as much as it is possible with the parties.

1026. Do you know of the case of French *v.* French, tried last year?—Yes.

1027. Were you not, in the progress of that case, in daily communication with Mr. Blakeney?—I was not concerned for Mr. Blakeney; Mr. Orme was; I was concerned for Lord French.

1028. Were you in communication with the solicitor of Lord French, Mr. Power?—Occasionally; not in the progress of the cause; I went down in that cause to Castle French, and took the depositions of the witnesses, which occupied me a very considerable time; and, generally, communications from our house to Lord French were made by Mr. Tilly himself; there were some communications with the confidential counsel of Lord French, a Mr. O'Grady, a barrister.

1029. Where a solicitor communicates with a Proctor he has, of course, his bill of costs against his client, as well as the Proctor, has he not?—I presume so; but if a party chooses to employ a solicitor, we cannot object to it; I should say that he has the option of coming to the Proctor himself.

1030. But in 19-20ths of the cases in which you obtain your business from a solicitor, he of course makes a charge for getting your business?—With respect to probates and administrations, a solicitor is entitled to the solicitation fee.

1031. How much is that?—It varies from two to five guineas; he is allowed that, and I believe that appears in the Chancery fees.

1032. Then, in addition to your charge for the probate, the client has to pay that fee?—Yes.

1033. Is there any service rendered for it?—Yes.

1034. Beyond coming to you?—Not that I am aware of.

1035. Mr. *Sadleir*.] Could you inform the Committee, in such a case as that to which the Honourable Chairman has just referred, whether the schedules of the assets of the property are, or are not, frequently prepared by solicitors, and handed to the Proctor in a very perfect form?—Occasionally; I think, generally speaking, the Proctor is obliged to settle those.

1036. That is to say, to correct them?—Yes.

1037. In what respect?—In various respects, such as in the calculations of stock, and calculations of leasehold interests.

1038. Have you ever known those calculations to be made by a notary public?—In some cases.

1039. Where the Proctor was unable to make them?—There may be complicated cases of property that would certainly require calculations that a Proctor might possibly not be able to make, but those cases rarely occur.

1040. Do you think that a Proctor, from his previous education and habits of

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

business in a similar class of cases, is more competent to make a notarial calculation than a solicitor in stock cases?—I would not say that.

1041. Can you give an instance in which a Proctor is in the habit of correcting the schedule furnished to him as perfect by the solicitor?—In practice we have calculations to make as to interest, and other calculations; I would add, that we have often found schedules defective received from solicitors.

1042. Interest on a mortgage, for instance?—Yes.

1043. Do you find solicitors generally incompetent to calculate arrears of interest due upon a mortgage?—No, certainly not.

1044. The schedule, in voluntary cases, consists, does it not, of a return of the personal property of the deceased party; and the solicitor, as I conceive, is enabled to furnish this to the Proctor, from his interviews with the person about to take out the administration; he acquires in those interviews a complete knowledge of the nature and amount of the personal property; and having obtained that knowledge, he prepares a schedule, and hands it to the Proctor. I asked you whether it was not generally the practice for the solicitor to hand that schedule, containing a return of the amount of the assets of the deceased party generally in a very perfect form to the Proctor?—It very often happens, no doubt, and often the contrary.

1045. Is it not generally the case?—I have known instances in which several amendments have been necessary to be made in those matters.

1046. Can you instance a case to the Committee?—I cannot at this moment.

1047. Can you undertake to state to the Committee that you have known many instances in which the schedule has required to be corrected?—I have, many.

1048. By the Proctor?—Yes, but I do not mean to convey that the solicitor is not perfectly competent to do it.

1049. With reference to the cases coming within the contentious jurisdiction of the court, is it not the practice for the solicitor to give written instructions to the Proctor upon all material questions arising at issue in the suit?—It very frequently occurs.

1050. Does he, or does he not, communicate with the client and with the various witnesses to be examined in support of the client's case, and convey to the Proctor the necessary instructions to enable him to prosecute the suit?—It very frequently happens, no doubt.

1051. Referring to those cases in which administrations *ad litem* for the purposes of the suit become necessary, is there any stamp duty payable upon that class of administrations?—That depends upon whether it is a general grant or a special grant.

1052. My question referred to administrations specially granted for the purposes of the suit?—No; I believe there is no stamp duty upon that.

1053. Are you positive of that?—For a grant for a mere special purpose to substantiate a suit in equity, or to carry into execution the trusts of a deed, I think there is not any stamp duty.

1054. To put a case; suppose the next of kin of a deceased party believed that the deceased was entitled to a charge of 5,000*l.*, and was anxious to obtain administration for the purpose of prosecuting his claim, would any stamp be payable upon such an administration?—Yes, but that would be a general grant, and not a special grant; and of course he would have to pay stamp duty upon the amount claimed.

1055. It would be payable upon the 5,000*l.*?—Yes, whatever the amount claimed was.

1056. It would be payable upon the 5,000*l.* claimed?—Yes.

1057. If subsequently the party should not establish his right to the 5,000*l.*, can you inform the Committee whether the Stamp Office are not in the habit of remitting the duty to the party?—They are.

1058. In the case I have put, is it a per-centage that is charged upon the 5,000*l.* by the Proctor?—Yes.

1059. Does he act upon the same principle as the Stamp Office, and remit to the client that charge?—I have not known any instances in which it has been required.

1060. Mr. *Gladstone*.] Therefore it never is remitted?—It is not, I believe; I have never known any instance in which it has been.

1061. Mr. *Sadleir*.] Will you inform the Committee what is the nature of the affidavit

Printed image digitised by the University of Southampton Library Digitisation Unit

affidavit required as to the execution of a will in cases falling within the voluntary jurisdiction of the court?—That depends upon the nature of the case; if there are interlineations, or obliterations, the Judge generally requires an affidavit accounting for them, and to show that they were not made after the execution of the will, in which case they would not be available.

1062. Supposing the will contains a devise of real property, and that is struck out or crossed over with a pen, would he require any affidavit or explanation with reference to such an erasure, having reference exclusively to real property?—If the will had reference only to real property, there would be no necessity to prove it in the Prerogative.

1063. Supposing in a will to which administration or probate is necessary, there is contained a devise of real property, and the passage embodying the devise is struck out with a pen; does the Judge of the Prerogative Court require any affidavit with reference to the erasure?—Certainly.

1064. Although it refers to real property?—Yes; he requires it in all cases without reference to the property, where there is an interlineation or obliteration of any kind without reference to its relating to realty or personalty.

1065. Assuming the case of a will which refers to realty and to personalty, in which there is no interlineation or erasure whatever, what is the proof which is required with reference to the execution of the will?—The oath of the executor or administrator that he believes it contains the true and last will and testament of the deceased.

1066. Is no evidence required from the witnesses to the will?—Not unless in the cases which I have remarked upon previously.

1067. No affidavit is called for from the witnesses to the will in the case I put?—No.

1068. Then the probate or administration which issues is perfectly good for all matters relating to the personalty?—It is.

1069. But, in deducing a title to real property which is contained in a will, can you inform the Committee whether such an administration or probate would be received by a conveyancer as a satisfactory voucher?—I am not able to answer that question.

1070. *Chairman.*] I now find, in this bill of Donnellan *v.* Downes, that the assets were under 600 *l.*—[*The same was handed to the Witness.*]—Have you any doubt that they were under 600 *l.*?—No, I have not; I do not think I expressed any doubt.

1071. Nor can you have any doubt that the costs on one side exceeded the amount of the whole subject-matter in dispute in that particular case?—It appears so; but, as I said before, I believe that is no unusual occurrence.

1072. I find, in this bill of costs, several charges made for attested copies; how often is a party in the Prerogative Court obliged to take out an attested copy of the same document and the pleading?—He is obliged to take out a copy of his adversary's pleading when he is ordered to answer it.

1073. That is once; is he obliged to take out a copy of it again?—If there is a commission, he has to take it out again.

1074. Is he not obliged to take it out on getting publication of the depositions?—Yes.

1075. If there is an appeal to the Court of Delegates, is he not obliged to take it out again?—Yes.

1076. If the charge is 100 *l.* for an attested copy of the document, he must pay 400 *l.* for a thing that is of no earthly use to him?—Yes, that is the established practice of the Court.

1077. That is the usage of the Court, to compel a man to pay four times for the same document?—Yes; but, as I said before, that is inherent in the system.

1078. Was not that a portion of the system which the Commissioners, in their 19th Report, recommended should be altered?—Yes, I believe so.

1079. Then what do you mean by this paragraph in your memorial:—"It is proposed, in the 19th Report, to sink this functionary to a level with persons of the meanest education and lowest esteem in society"?—I think, as well as I recollect that memorial, that the fees proposed on probate and administrations by that Report, would be totally insufficient to enable Proctors to keep up their establishments.

1080. And you thought they would sink you to the level there described, as "persons

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

" persons of the meanest education and lowest esteem" ?—That is the language of the person who drew it up, Serjeant Stock.

1081. Mr. *Bellew.*] Are you aware whether there has been any material change in the practice, or in the charges for costs in your courts, or in the Diocesan Court, since the Committee of 1837?—I cannot speak with respect to the Diocesan Court, but Dr. Radcliffe made numerous alterations in furtherance of the recommendations of the Committee; for instance, he abridged the number of pleadings, which had before that been three, and he reduced the number to two.

1082. Did he make any alteration with regard to the four attested copies just mentioned?—No, I believe not; he could not.

1083. Were there such alterations made as materially diminished the expenses of a suit in that court?—I think the alteration I have referred to did materially reduce the expense, inasmuch as under the old system the party might have a commission on each of those pleadings.

1084. To what extent did that reduce it; how many pounds?—That would depend entirely upon the nature of the proceedings.

1085. *Chairman.*] It was since the alterations that that suit of Donnellan *v.* Downes took place?—Yes, it was; there are now only two pleadings allowed.

1086. In the Consistory Court?—Yes.

1087. Notwithstanding that, the costs in this case, which appeared to have been a very short one, amounted to about 600 *l.*?—Yes; there were a great many witnesses examined in the cause.

1088. Mr. *Grogan.*] With respect to the recommendation of the Commissioners, to which your attention has been directed, is there any power in the Judges of the court to alter their practice conformably to those recommendations?—Dr. Radcliffe conceived that he had not the power to make many of the alterations suggested.

1089. He was Judge of both courts, was he not?—Yes.

1090. Then do you conceive that any non-compliance with those recommendations on the part of the Judge depended, in a great degree upon a want of power?—Yes.

1091. And that an Act of Parliament was necessary to enable him to make those alterations?—Yes, that was Dr. Radcliffe's view of it in many respects.

1092. And the old system has continued in consequence up to this present time?—Yes.

1093. Has there been any Act of Parliament empowering the Judges of analogous courts in this country to make those alterations?—Yes; I understand there has been an Act passed, the 10th of Geo. 4, which regulated the Prerogative Court of Canterbury.

1094. Is there any analogous power in Ireland?—There is no Act yet passed, I believe; I should say, with reference to that Act, which was passed for the regulation of the Prerogative Court of Canterbury, that there is an express reservation of fees paid to the Proctor in that Act, by the fifth section.

1095. *Chairman.*] Can there be an appeal from the various orders of the Judge in the Prerogative Court?—There may.

1096. The suit is then tied up till that appeal is decided, by a letter of inhibition?—Yes; there may be an appeal from various interlocutory orders.

1097. May there not be an appeal from the Consistorial Court to the Metropolitan Court?—Yes.

1098. And from the Metropolitan to the Court of Delegates?—Yes.

1099. And that may be from what are called grievances, interlocutory orders?—No doubt it may; I believe the law allows it.

1100. Would it not be very desirable to prevent that system of appealing in interlocutory?—Certainly; to restrict it.

1101. Mr. *Grogan.*] Your attention was called to the fee of four guineas charged by Proctors for every 40 miles, and particularly to the case of the commission sent to Cork?—Yes.

1102. That was in the year 1842, was it not?—Yes.

1103. At that time was there any means of reaching Cork other than by the ordinary coach system?—No, I think not.

1104. There was no railway in operation at that time?—No, nothing but the mail and stage-coaches.

1105. You have stated that the Deputy Registrar in taxing costs has made some alteration lately in the allowance of four guineas per day for journeys of the same

Printed image digitised by the University of Southampton Library Digitisation Unit

same kind, have you not?—I think he held that those old fees for travelling at the rate of 40 miles a day should not be allowed, where facilities for travelling existed.

1106. Do you know of his actually allowing or disallowing any charge of that kind?—I think he did; but I cannot refer to any particular case at this moment.

1107. Is it the practice now to charge four guineas a day on the part of Proctors going on a commission, where railways run, for each 40 miles?—I do not know of any commissions; lately, I never myself attended on any commission since the railways in Ireland have been generally available; and I do not think the officer would at all allow it.

1108. Mr. *Bellew.*] Has no case come before you as taxing officer since the railways came into operation?—No.

1109. *Chairman.*] Is there a fee charged in the Consistorial Court for every witness examined?—There is.

1110. How much is that?—It depends upon the length of the deposition.

1111. But independently of the length of the deposition, is there not a fee charged for producing witnesses?—The Examiner charges a guinea for his examination, and the Registrar is entitled to a fee of 5*s.* 4*d.* for his production.

1112. Is there not a fee for the examination of every witness, of a guinea, independently of the length of his examination?—No; the mode of charging is a guinea for each sheet of paper written on the four sides, and, I think, the calculation is, that it should contain 16 folios; if it consisted of two sheets of paper written as I have mentioned, his fee would be two guineas, and so on.

1113. You say that there is no charge for the examination of each witness, independently of the length of his deposition?—Certainly not.

1114. I find at page 6 of this bill of costs, of Downes *v.* Donnellan, "attending on Elkanah Stephens, reading over pleading to him, previous to serving notice of his examination, 6*s.* 8*d.*; like attendance on the other several witnesses, seven in number, 2*l.* 6*s.*; drawing draft notice, 3*s.* 4*d.*; fair copy and service on opposite Proctors, 5*s.* 4*d.*; like on Examiner, 5*s.* 4*d.*; paid for their examination one guinea each, 9*l.* 2*s.*"?—There appears to have been eight witnesses at a guinea each, which would be 9*l.* 2*s.* Irish.

1115. Then it is an error which appears to pervade the whole bill of costs, for in page 13 there is "paid for examination of Nathan and Raphael, 5*l.* 13*s.* 9*d.*" [*The bill was handed to the Witness*]?—That must clearly be an error in drawing up the bill of costs; here are five witnesses examined at one guinea each, and their examinations would be as I have just stated.

1116. Is not that a charge perfectly distinct from the charge for their depositions by the Examiner?—No.

1117. "Attending at Consistorial, reading depositions, and bespeaking attested copy thereof, 6*s.* 8*d.*; paid for same, 885 sheets, at 10*d.* per sheet, 36*l.* 17*s.* 6*d.*"?—They are the Registrar's fees for the copy of the depositions.

1118. Then I was correct in saying that there was a fee charged for each witness of a guinea, quite independently of the expense of their depositions?—I understood you to say, a fee to the Examiner, independently of the guinea.

1119. There is a fee for examination quite independently of the fee for deposition, is there not?—A fee for a copy of the deposition to the Registrar.

1120. And also a fee for each witness examined?—Yes, on the examination, to the Examiner.

1121. In this case I see a charge for "extracting, 2*l.* 5*s.* 6*d.*;" what is that?—That is a fee which is allowed to a Proctor, rateably, for extracting documents, and which is allowed at a certain rate.

1122. It is a constructive charge, is it not?—No.

1123. Do you, in fact, extract anything from the depositions beyond briefing them, and charging them over again?—It means, taking it out of the office, and attendances, and so on.

1124. Then there is this charge again, "Attending at the Consistorial Office, reading depositions and bespeaking attested copy, 6*s.* 8*d.*;" and there is "extracting" for the same, and attendance, "2*l.* 5*s.* 6*d.*," for the same over again?—There is an extracting fee allowed upon the taking out of every document.

1125. In fact, it is a constructive charge, is it not?—It may be called so.

1126. And correctly called so, may it not?—Yes, but it is the established fee.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

1127. In the same page, there is first a " copy of the depositions, 885 sheets, at 10 *d.* per sheet, 36 *l.* 17 *s.* 6 *d.*;" and then, in the very next page, " draft brief, 177 sheets, at 3 *s.* 4 *d.*, 29 *l.* 10 *s.*; fair copy for Dr. Wily, at 2 *s.* per sheet, 17 *l.* 14 *s.*" ?—Yes

1128. Are not all those charges for one and the same service?—The charge for a " copy brief" is made at the rate of five office sheets in each sheet of brief.

1129. Is a sheet ever written?—No, it is not.

1130. Therefore, this party paid in the bill of costs, which swallowed up the entire property, 29 *l.* 10 *s.* for a service which was never rendered; is not that so? —It is so; but I should say that those are established charges by the usage for the draft brief as before stated.

1131. That charge is made of 29 *l.* 10 *s.*, for which no service was ever rendered, and you appear to have allowed that same " draft brief" again, at 32 *l.* 16 *s* 8*d.*, in the Court of Delegates?—Yes, it was charged.

1132. In fact, the party has paid over 60 *l.* odd for " draft brief" that was never made; is not that so?—It is so; but it is the usage.

1133. But the fact is, that the party in this case paid over 64 *l.* odd for a draft that was never made?—It is the fact.

1134. You, as taxing officer, allowed that?—Yes, I did; I felt myself coerced by usage.

1135. You stated that you never received any profits in the Court of Delegates? —Never.

1136. Your partners having produced a brief in this case, or any other case, which was used in the Prerogative Court to substantiate a case in the Court of Delegates, do not you then, in effect, participate in the profits, because you get a share of the profits in the Prerogative Court?—I say that I get a share of what arises in the Prerogative Court; I do not participate in any way, nor ever did, in anything arising in the Court of Delegates.

1137. Is not the brief, which is a portion of your property, and for which you are paid in the Court of Prerogative, produced to substantiate the same charge in the Court of Delegates, or rather to entitle your partners to make a double charge? —It is the same brief.

1138. Your document is produced to entitle your partners to make that double charge; is that not so?—It is; that is the general usage; but I would state to the Committee that the Honourable Chairman's conclusion as to my participation in that is not correct.

1139. Your documents are produced, to enable your partners to make a double charge for one service, are they not?—Yes; but I think this case might be put: suppose a party chooses to change his Proctor, and appoint a new Proctor in the Court of Appeal, without having settled his costs with his former Proctor, he would then be obliged to make out a new brief; that is, the new Proctor would.

1140. Do not you consider that this charge of 64 *l.*, considering that the amount of assets were under 600 *l.*, and that the party could not recover anything against his opponent in suing in *formâ pauperis*, was a most monstrous charge?—I think the system was bad; I candidly admit that.

1141. Mr. *Grogan.*] Was this charge of 64 *l.* for " double brief," to which you alluded in the earlier part of your evidence, stated in that identical case that was brought before the Court of Delegates, and allowed by them?—Certainly, it was.

1142. *Chairman.*] You stated that the Court of Delegates emphatically condemned the system, did you not?—Yes, I did.

1143. Did they go so far as to say that it should never be allowed again?—I do not recollect that they said any such thing; they said that it ought to be changed.

1144. Mr. *Bellew.*] That is not one of the changes that would require an Act of Parliament, is it?—I should think it would.

1145. Mr. *G. A. Hamilton.*] The Commissioners, in their 14th Report, stated, that the taxation of costs appertained to the duty of the Judge of the Court; are you aware of that?—He controls it.

1146. That being so, does it appear to you that the Judge would have any power to alter the charges of your court, or of establishing a regular scale of charges?—I always understood Dr. Radcliffe to say that he had not that power.

1147. You think that it would require an Act to authorize a change of those charges which have been established by long usage?—I think it would.

1148. With

Printed image digitised by the University of Southampton Library Digitisation Unit

1148. With reference to the bill, you have expressed some doubts with regard to the expediency of abolishing altogether the testamentary jurisdiction of the Diocesan Courts; can you state your reasons for entertaining those doubts, and which did not appear to have operated upon your mind when you signed the memorial to which the Honourable Chairman has referred?—I beg to say that I do not remember having signed the memorial, but I presented it. I conceive that where a party dies possessed of a small property, for instance, a country shopkeeper, or a farmer, or a person of that class, they might have the option of resorting to the Diocesan Court if they thought proper; then that would involve this question of giving those Diocesan Courts a concurrent jurisdiction with the Supreme Court.

1149. If you consider an option desirable, might not that option be given to parties in reference only to those cases in which they can resort to local jurisdiction only?—I do not conceive that the amount is anything; it does not confine the jurisdiction; there may be any amount within the jurisdiction; I only speak with reference to the wills of a certain class of persons, such as farmers and shopkeepers.

1150. Do you think it desirable to give to a party, up to a certain amount, the power of resorting to local courts, supposing this Bill were to pass, or to the Prerogative Court in Dublin?—It might be desirable to give them that option; at the same time the administrator could be sworn, or the executor could be sworn, by a commission from the Supreme Court; there would be this difficulty in bringing a will from the Diocesan Court, that the parties interested might be put to some additional expense in having a reference to the will.

1151. Can you inform the Committee what the expense of proving a will is in the common form in the Diocesan Court, or the Consistorial Court?—I do not know; in the Consistorial Court of Dublin the charges are the same as in the Prerogative Court.

1152. Can you inform the Committee, in point of amount, what are the costs of taking out a probate in the common form in the Consistorial or in the Prerogative Court in Dublin?—In very small poor cases I know, in the Consistorial Court, it frequently happens that both the Judge and the Proctor remit their fees altogether.

1153. Can you state the amount which, in that case, the taking out of a probate actually costs in the Prerogative Court in Dublin, or in the Consistorial Court?—I should think from about 3 *l.* 12 *s.* to 4 *l.*

1154. How is that amount made up?—I really cannot tell you.

1155. Mr. *Gladstone.*] That does not include the duty, does it?—I should think it includes the duty under 50 *l.*

1156. *Chairman.*] You cannot tell how that amount is made up?—I cannot; I should say, and I believe I have already said so, that I have not, for a length of time, taken any part in that branch of the business; Mr. Ormsby, my junior partner, manages all those matters.

1157. Mr. *O'Flaherty.*] I see a charge here: "Having obtained apostles from the court below, attending at Lord Chancellor's Secretary's Office; lodging same;" what does that mean?—Apostles means letters signifying an appeal to the Chancellor; it is an instrument under the seal of the Court, signifying the nature of the appeal to the Chancellor, and upon that instrument the Chancellor grants a commission of Delegates.

1158. That is removing it from the court below to a Superior Court?—Yes; it is the first act of transferring a suit from the Inferior to the Superior Court.

1159. Mr. *G. A. Hamilton.*] Have you attentively considered the provisions of this Bill?—Yes, I have.

1160. Can you inform the Committee what would be the cost of proving a will in such a case as that which you have already alluded to in a remote part of Ireland under the provisions of this Bill?—I have not at all turned my attention to that.

1161. In the event of probate being taken out, say in the county of Waterford, a Commission would issue to administer the oath, would it not?—Yes.

1162. What would be the process in the county of Waterford?—The present practice is to issue a commission directed to the clergyman of the parish, or any other more convenient person; to the rector or the curate of the parish.

1163. He swears the party?—Yes, according to the instructions.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850

1164. *Chairman.*] Is he not entitled to a fee for swearing the party?—I do not think he is.

1165. Are you not aware that a fee of a guinea is always charged?—No, I am not; I have heard that a clergyman in Cork did charge a fee of 1*l.*

1166. Mr. *G. A. Hamilton.*] What does this commission cost, independently of the fee?—I believe it costs about 3*l.*, including the official and Proctor's fees, and the stamp duty.

1167. Would that expense be increased or diminished under the provisions of this Bill?—I am not quite aware what the fees proposed to be given by this Bill are.

1168. *Chairman.*] The 32d section of this Bill proposes, "that it shall and may be lawful for the Judge of the said court, and he is hereby authorized and required, by writing under his hand, to appoint a sufficient number of fit and proper persons in and throughout Ireland, who shall be styled Commissioners of the said court, who shall receive, within the districts to be mentioned in the commission appointing them, all affidavits and oaths in reference to the business of the said court, and who shall perform such ministerial duties as may be assigned to them from time to time by any general order to be made by the said court, and who shall be entitled to receive such fees, and for such duties as may be specified by any general order as aforesaid;" do not you consider that the expense would be very small indeed under such a system as that?—I do not know what the expense of commissions for affidavits is.

1169. Mr. *Monsell.*] Have you any reason to believe that the expenses under the system proposed by this Bill would be greater than under the present system?—I think they would be less.

1170. *Chairman.*] Under the present Bill would there be any necessity for paying four times for the same attested copies?—I might say, with reference to this Bill, that it makes the Court of Prerogative so completely a Common Law Court, of which I am totally ignorant, that I could not presume to give any opinion upon that.

1171. The memorial to which I have referred so often, is intituled, "The Memorial of the Proctors of the Prerogative Court in Ireland;" and in that memorial they state that "the abolition of the Diocesan Courts in Ireland, and vesting their jurisdiction in one Superior Court, would be a measure of great public advantage to Ireland;" you presented that memorial, did you not?—Yes; but I have already stated with reference to that, that the object of it was that no special legislation should take place for Ireland independently of the English courts.

1172. May I say that the burthen of that memorial was that the Ecclesiastical Commissioners in England had not recommended the amalgamation of the body of Proctors with the general body of Solicitors?—They had recommended that, I think, and the consolidation of the courts.

1173. Was the reason of your relying in that memorial upon the recommendation of the Ecclesiastical Commissioners, that they had not recommended the amalgamation of the body of Proctors with the body of Solicitors?—We never had any idea of such an amalgamation taking place until the introduction of the present Bill.

1174. Was that the portion of the Ecclesiastical Commissioners' recommendation which you relied upon?—As I have already said, the general object of that memorial was, that no legislation should take place for Ireland distinct from this country; we conceived that we were entitled to the same fees and to the same consideration that the same profession is in this country.

1175. Do you consider it just or proper that a system should be allowed to continue, under which, as in the particular case which has been referred to, a party who happened to be very poor, was charged a sum of 64*l.* for a service which was never rendered?—That is quite a distinct question.

1176. Do you think that that system should be allowed to continue?—Certainly not.

1177. Do you think that that should not be reformed until a similar reform takes place in England, and that it is not just that it should be charged at present?—If a reform is to take place, all those matters may of course form a part of the general scheme.

1178. Is it right or proper that such an anomaly as you have admitted exists, namely, charging parties enormous sums for services not rendered, should be allowed to await a general measure of reform for England and Ireland?—I think

Printed image digitised by the University of Southampton Library Digitisation Unit

I think not; I think it ought to be done, but not at the expense of the existing profession.

1179. Has not the existing profession been levying upon the public enormous profits for services not rendered, for a series of years, as in the instances which I have mentioned?—I conceive that they are entitled to those fees from usage, and as such they are charged.

1180. Have you not stated that you thought it was not proper that they should be allowed to be charged?—I have.

1181. Have they not been charged for a series of years?—Yes, they have.

1182. And the public have lost to that extent in consequence, have they not?—The position I maintained is this ——

1183. Have not the public lost to that extent?—Yes, they may have been injured, perhaps.

1184. Mr. *Monsell.*] Have not the public certainly lost?—I should say not, when you take into consideration that these have been the established fees for a long series of years; I think the established usage justifies the fees; that is my impression.

1185. Mr. *Gladstone.*] Do you think that established usage constitutes such a right to a fee charged in respect of a service never rendered, that it would be unjust, if Parliament were to interfere to stop the continuance of that fee?—I have heard that a fee established for 20 years has been considered a legal fee; and I believe there is a provision in one of the Bills brought in for this country to that effect.

1186. Do you think that usage for 20 years, or a greater number of years, constitutes such a right to charge a fee for a service never rendered, taking into consideration the particular case that the honourable Chairman referred to, that it would be unjust if Parliament were to enact, that henceforth that fee should not be levied?—I do not go to that extent; I would respectfully submit to this Committee, that the clauses in that Bill having reference to the admission of Attornies to the Proctor profsesion are, I should say, most unjust; and the effect of it would be to extinguish the profession of the Proctors completely.

1187. *Chairman.*] Is there any necessity for the Proctors being continued, as a body, to practise in the Admiralty Court in Ireland?—No.*

1188. In fact, Judge Keatinge could at this moment admit the whole body of Solicitors, if he thought proper, could he not?—Perhaps he may think so.

1189. Have you any doubt that he could?—From Dr. Radcliffe's view of the matter, I presume, he is right.

1190. Is it not the fact, that the country Proctors, who have similar duties to perform, never serve any apprenticeship?—No, but it costs them nothing; it is in the power of the Judge of those courts to admit any one he pleases.

1191. Do not they pay for an annual license, the same as you do?—Not so much.

1192. If they came to reside in Dublin, they would pay as much, would they not?—I believe they would.

1193. They are, in fact, Attornies, generally speaking, or Solicitors?—I believe most of them are.

1194. You have stated, have you not, that the consolidation of the country practice with that of Dublin would be beneficial, unconnected with the question of letting the Solicitors in; if that were the case, would it not remove from the country to Dublin all the valuable business of the country Proctors with respect to the voluntary jurisdiction?—The consolidation, of course would, no doubt.

1195. Would it not be a fair thing, on behalf of those persons whose business would be taken away by the removal to Dublin, to give them permission to practise in the Prerogative Court, and that they should be admitted as a matter of right?—It was proposed in the Bills brought before Parliament, I believe in Dr. Stock's Bill, to extinguish the jurisdiction.

1196. And to admit them to practise in the Prerogative Court?—To admit Proctors, not being Attornies, who had been such from a certain period.

1197. Mr. *G. A. Hamilton.*] This Bill proposes to allow Proctors, after the passing of the Bill, to practice as Attornies without certificates; will that, in your opinion,

* With reference to the Proctor's practising in the Court of Admiralty, they did so formerly, and until Sir Jonah Barrington, who first admitted Attornies into that Court, made an Order in 1797, that no person could be admitted a proctor of the Court, unless he had served an apprenticeship to a Proctor of the Court. A Proctor of the Prerogative Court lately applied to be admitted, and was refused in consequence of that Rule.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

opinion, be an equivalent for any disadvantages arising out of the Bill?—Certainly not; I know as much about the practice of the Chancery and Law Courts as these papers in my hand; I am totally ignorant of it, and so are all the members of our profession; we have been brought up and trained in that particular profession, and we know no other; many of the gentlemen of our profession are now advanced in years, and they would be incapable of turning themselves to any other profession.

1198. Mr. *O'Flaherty.*] I believe many of the practitioners practising in the Consistory Courts in the country, are not Attornies at all?—I believe some few are not, but I really cannot say.

1199. Mr. *Monsell.*] Are the Attornies in Dublin as ignorant of your profession as you have just stated you are of their's?—I should say, generally speaking, that they are; but I would not wish to make any sort of invidious comparison between the two professions.

1200. Lord *Naas.*] Are the Committee to understand, that out of the 24 practitioners there are none who would avail themselves of the privilege to practise in the other Courts?—None of the seniors would; the juniors might, probably, after a time; but they would have, I should say, to serve an apprenticeship to that particular branch of the law.

1201. Mr. *Monsell.*] Would it not be as easy for a Proctor to learn the profession of an Attorney as it would be for an Attorney to learn the business of a Proctor?—I conceive that there are a great many shades of difference between them. As far as my experience goes, it is the constant practice for Attornies to come and consult us on matters connected with wills and administrations; and I may say, that I have been more than once asked by gentlemen of the Bar different questions as to the practice.

1202. Did you not state that you conceived that Attornies were as ignorant of your profession as Proctors were of their's?—I think they are

1203. And I asked you whether it would not be as easy for the Proctors to learn the profession of Attornies, as for Attornies to acquire a knowledge of the business of the Proctors?—I think that the attornies would require a sort of training or apprenticeship to learn the minutiæ of our business.

1204. Mr. *Gladstone.*] Will you explain, more in detail, why you think the admission of Attornies to practise as Proctors would be so ruinous to you; would not the public have a great interest in employing Proctors who were accustomed to the business, who knew the forms of the Court, and the particular law which the Court had to administer, and would not they have a great advantage in that respect over Attornies?—I should say that the great proportion of our business, as I have already stated, comes through the Attornies; and I should think it was not unreasonable to suppose that if they could do the business they would keep it to themselves.

1205. Mr. *Solicitor-General for Ireland.*] The voluntary jurisdiction would be a matter which they could easily accomplish?—There are a great many nice questions which arise with respect to raising representatives where cases are out of the statute, and cases again with reference to what may or not be considered as a residuary bequest, or who are the parties entitled to certain grants; all these require long acquaintance with the practice in relation to these matters.

1206. *Chairman.*] Do not you think that a Solicitor or an Attorney, in consequence of his practice in the Master's Office in Ireland in Chancery suits, requires to be well acquainted with those points?—I do not understand the practice in Chancery at all.

1207. Does not it occur to you, that the fact of the Attornies being likely to obtain all the business, implies a profession that would be very easily learnt?—I think there are a great many minute points that would require a regular practice.

1208. Would not that circumstance insure you the patronage of the public in preference to those who had not received that preliminary education?—The public already go to their Solicitors in the first instance.

1209. Would they be satisfied with their Solicitors?—Yes.

1210. Mr. *G. A. Hamilton.*] Who prepares the pleadings?—The Proctor, and also the interrogatories.

1211. And there are various other stages of procedure?—Yes; the Proctors never permit the Attornies to interfere in the preparation of those matters at all.

1212. *Chairman.*] Is that the case?—It is the case in our office, and in almost all the offices.

Printed image digitised by the University of Southampton Library Digitisation Unit

1213. How is it, if that is the case in your office, that I find in your bill of costs repeated "Conferences with Mr. Murdoch Green, Solicitor, with reference to the preparation of pleadings and the examination of witnesses"?—Not with reference to the preparation of pleadings, I think; the Solicitor may furnish a statement of facts.

1214. Here is a bill of costs from the office of Tilly, Hamilton & Ormsby, and I find "Sir Henry Meredyth having advised a replication;" that is a pleading is it not?—Yes, it is.

1215. "Sir Henry Meredyth having advised a replication to be filed in answer to said exception, attending Mr. Greene, conferring and taking instructions for replication, 6*s.* 8*d.*"?—That is as to mere matters of fact, in order to ground that replication.

1216. You confer with the Solicitor as to what is to be stated in that replication?—Yes; it may be necessary to ascertain matters of fact, and all the witnesses names.

1217. The next charge is, "Consulting with Mr. Greene on the subject of this cause, and the proofs to be made, when it was considered advisable to lay a case before Sir Henry Meredyth for his opinion on the matter, and taking instructions;" I find in almost every sheet a conference with the Solicitor?—In that case, particularly, I think the party resided in a distant part of the county of Cork; he was the town agent of the Solicitor of the party.

1218. Turning to the other bill of costs, in Downes *v.* Donnellan, I find, in almost every page "Conferences with Mr. King, the Solicitor;" in that case the parties resided in Dublin, did they not?—Yes; I know in our office that we never did allow the Solicitors to prepare those matters.

1219. Do not you advise with them upon them?—Yes.

1220. Mr. *Sadleir.*] Do you wish to convey to the Committee, that you never fall back upon the Solicitors to write out a pleading, or to draft it?—We draft the pleading when we receive instructions through the Solicitor, from those instructions. No doubt that is the case where there may be a necessity to employ a Solicitor; but in every case that we can, we communicate with the party ourselves.

1221. Mr. *G. A. Hamilton.*] Supposing the distinction to be done away with under this Bill, in reference to the Prerogative Court, what courts would remain in Ireland then, in which Proctors alone could practise?—By this Bill, the matrimonial jurisdiction would remain to those courts; I take it that it affects nothing as I understand the Bill, but the testamentary jurisdiction.

1222. So that a staff of professional Proctors would be required in order to practise in courts having jurisdiction in matrimonial cases?—Yes, but those cases are not many, I believe; I do not suppose they would support the profession in the country courts.

1223. Are there any other cases in which Proctors would be required to practise?—There are Church Discipline Causes, but this Bill does not interfere with those; but those cases I should also say are very rare.

1224. Mr. *Solicitor-General for Ireland.*] Would that branch of the jurisdiction, either in the country or in Dublin, afford a reasonable maintenance or support to the Proctors?—I do not think it would, either to the Proctors or the Bar.

1225. Are Proctors, and Proctors only, permitted to practise in cases of appeal to the Court of Delegates?—Yes, the Proctor follows his appeal to that court.

1226. Are Attornies permitted to practise before the Court of Delegates in cases of appeal?—No, Proctors only.

1227. *Chairman.*] Is an Attorney allowed to appear on the taxation of costs?—By courtesy, he is.

1228. Has he not been objected to?—I never objected to it.

1229. Have you read the examination of Mr. Montgomery, the Solicitor, before the Commissioners in 1830, in which he stated that he applied to be allowed to object, and was refused?—Such cases may have occurred; I would not object to it, nor my partners.

1230. Would you allow him to attend without the attendance of a Proctor also?—It has been usual for a Proctor to attend.

1231. Would you allow him to attend without his having also a Proctor with him to tax your bill of costs?—That would depend entirely upon the party himself.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

1232. Does your firm object to an Attorney taxing a bill of costs, without the attendance of a Proctor with him?—No, I think not.

1233. Can you give an instance in which that was allowed?—I do not recollect any case of taxation of that kind, except the one referred to, of Comyn *v.* Von Stentz.

1234. Was not there a Proctor attending in that case?—Yes; but that was not in the power of Mr. Tilly or Mr. Ormsby.

1235. A Proctor did attend?—Mr. M'Nevin, their Solicitor, attended, and they thought proper to employ a Proctor.

1236. Was not a Proctor brought in because it would have been contrary to the practice to hear an Attorney without a Proctor?—I should say that a Proctor was necessary, because he, perhaps, understood the charges better than an Attorney.

1237. Is it the fact that the Proctor assented to the propriety of those double charges, and the Attorney protested against them?—In that particular case, I think, the Proctor assented to the established usage.

1238. In point of fact, he was brought in to tax the bill, but he supported the charge, and did not object to it; is not that the fact?—He stated, as well as I remember, that such was the practice; he admitted that that was the practice.

1239. In point of fact, he appeared for the client, but he supported your case?—He supported the charge, no doubt.

1240. Mr. *Solicitor-General for Ireland.*] With your great experience and knowledge of the practice, with respect to the taxing of costs, supposing a Proctor one side attended with his bill before the Registrar, and there was no attendance on the part of an Attorney appointed, and no Proctor on the other side, and the Proctor who wanted to get his bill of costs taxed objected, before the Registrar, to have his bill taxed without the attendance of a Proctor, would not the Registrar yield to that objection, and say, "I will not go on with the taxation unless there is a Proctor on each side"?—I never knew such a case occur.

1241. *Chairman.*] Did not such a circumstance occur in the case of Mr. Montgomery?—I do not know; that was before I was a Proctor, I think.

1242. The case you have mentioned was the case of Comyn *v.* Von Stentz, and there Mr. Comyn brought in a Proctor to tax your bill of costs?—Mr. Tilly's bill.

1243. The Proctor he brought in, stated that the double charge was right, did he not?—He admitted that that was the usage.

1244. In fact, he gave his opinion against the side for which he was brought in to plead?—It would appear so.

1245. Mr. *Grogan.*] Was that the point that was brought before the Judges of the Court?—It was the same point.

1246. And the Court decided that the charge was customary and regular?—Yes.

1247. *Chairman.*] That it was customary, but not regular, I apprehend?—That it was the usage; it was regular, and they suggested that it was a practice that ought to be changed.

1248. Mr. *G. A. Hamilton.*] Can you say whether the expediency of keeping the two professions distinct, has been recognized in any Act of Parliament?—I think there is an Act of Parliament, the 54 Geo. 3, which prescribes that no Proctor shall admit any person to practice, or do any act in relation to suits or obtaining probate in his name, or participate in the profits; and I think it imposes penalties on any Proctor doing so, either striking him off the Roll, or suspension.

1249. With respect to the Rules laid down by the late Judge Radcliffe, in 1830, did they contain any provisions recognizing the importance, according to his view, of keeping the two professions distinct?—There was a rule of his specially excluding anything of the kind; any interference of attornies in any branch of the profession, or any charge for them.

1250. Mr. *Sadleir.*] Is it the practice in the more critical and difficult cases to employ counsel to draft the pleading?—The pleading is always laid before counsel; it could not be received unless it was signed by counsel. With respect to the practice in my own office, we almost invariably draw a draft of the pleadings and lay it before counsel; and also a draft of the interrogatories; I cannot answer as to other offices.

1251. Lord *Naas.*] Do you never employ counsel to draft the pleadings—I do not recollect any case.

1252. *Chairman.*]

Printed image digitised by the University of Southampton Library Digitisation Unit

1252. *Chairman.*] Will you allow me to call your attention, in the case of O'Connel *v.* O'Connor, to this charge: "Attending Mr. Greene, and taking instructions for allegation on behalf of promovent." That is the first pleading. "Drawing draft allegation, 8*s.* 4*d.*; fair copy for perusal, and amendment of Advocate, 5*s.*; attending him therewith, 6*s.* 8*d.*; paid him, 1*l.* 2*s.* 9*d.*" In that case the Advocate drew the first pleading, did he not?—No, he perused the draft.

1253. Mr. *Sadleir.*] In your own office it is the invariable practice to draft every pleading, however difficult it may be?—I think it is.

1254. That is not a positive answer?—I think I may say it is the case.

1255. And then the pleading is submitted to counsel for his perusal, amendment and signature?—Yes.

1256. Has it frequently happened that a counsel has felt it to be his duty to make material and extensive alterations in your draft?—Very frequently.

1257. Are there rules and orders to govern and regulate the practice and proceedings in the Consistorial and Prerogative Courts issued from time to time by the respective Judges?—Yes. The late Dr. Radcliffe has introduced all the rules that are in use at Doctors' Commons.

1258. Are those rules and orders printed and published?—Yes, they are; and there is an order book kept, of which each Proctor is expected to have a copy.

1259. The rules and orders are printed?—They are not printed; they are entered in a manuscript book, and kept in the office; and every Proctor is expected to have a copy of them, and I believe every Proctor has; in speaking now of printing, I may say that Dr. Joseph Radcliffe has recently printed the orders of his court.

1260. Of the Consistorial Court?—Yes; and which are similar in all cases to those in the Prerogative Court.

1261. Are the rules and orders governing and regulating the practice and proceedings in the Consistorial Court all printed?—Yes.

1262. The rules and orders of the Prerogative Court are precisely similar, are they not?—Yes.

1263. They are not printed?—They are not printed.

1264. Will you give the Committee your opinion whether, if Solicitors and Attornies had an opportunity of considering and perusing those various rules and orders, they would succeed in obtaining sufficient knowledge to enable them to become safe practitioners in those courts?—I do not think those rules and orders would convey to them a general knowledge of the regular practice of the court; I think the Committee will find in that Report of 1837, all the orders made by Dr. Radcliffe; a copy of them.

1265. Do you conceive it impossible to frame and publish such a set of rules and orders governing the practice and proceedings of those courts, as would enable an intelligent Solicitor and Attorney to obtain a safe and familiar knowledge with the practice?—I think it would require a very extensive treatise to do so.

1266. *Chairman.*] Do you think it possible that any client to whom you furnish a bill of costs can understand what he is paying for, from the language used in such bills of costs?—What language does the question refer to?

1267. Take, for instance, this very case just mentioned, "Tilly this day prayed Apostles;" would any unlearned man know what he was paying for, when he read that?—I do not know whether he would understand it or not.

1268. Do you consider that any unlearned man can understand these charges, "Certificate execution of citation continued to this day, which day Tilly returned citation and exhibited proxy; Kildahl, a caveator, appeared for impugnant and exhibited a proxy, both parties to allege in prox." ?—I do not know what may be your view of it or not; to me, it is perfectly intelligible.

1269. I ask you your opinion, with the view of the Committee having your answer; do you think it possible that any unlearned man can understand the language of your bills of costs?—Those are the terms applicable to the course of practice, and it would be awkward to use any others.

1270. In the bill with reference to O'Connell *v.* O'Connor, there is a series of rules; namely, "Rule, &c, appearance expected in prox. Pet. Tilly;" the same thing is repeated eight times over, and the same charge made for it; do you think any man can understand what he is paying for from that?—I clearly understand it.

1271. Here is the same charge repeated eight times, without any intervening charge; do you consider that a man who is paying that can understand what he is paying for?—I do not know whether he does or not.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

1272. It is a matter of indifference, perhaps?—I have heard, I think, that there are terms made use of in the Law Courts that would be equally unintelligible; for instance, would an unlearned man understand what a "*venire de novo*" meant, or a "cognovit?"

1273. Do you think this is a proper way of charging bills of costs; here is an item repeated eleven times, for which there is a charge of 4 *s.* 4 *d.*; "The third T. P. continue to this day in prox. Pet. Tilly, who by his Advocate, Sir Henry Meredyth, moved for the personal answer of impugnant to all the articles"; then there is "Rule &c., the 3d T. P. continued; 3d court day, Pet. Tilly, 4 *s.* 4 *d.*;" do you think any unlearned man can be satisfied when he sees those charges repeated?—I cannot give you any opinion as to what any person may think of it.

1274. Is it the fact that parties intimidated by this cabalistic way of charging, never seek to get the costs taxed at all?—Certainly not.

1275. Have you known parties say that they would not have them taxed, lest there should be additions made to them?—Never.

1276. Mr. *Grogan.*] Are the particular terms used professional language, which is thoroughly intelligible to all professional men?—Yes; they are the professional language made use of in all the bills of costs, according to the established practice of the court.

1277. Could not the meaning of those terms be conveyed in ordinary language, and introduced into bills of costs, but with more circumlocution?—Yes; instead of "T. P." it might be put "term to prove."

1278. Are those terms introduced into that bill of costs, and into similar bills, for brevity sake?—They are.

1279. There is no doubt or difficulty in their interpretation on the part of professional men?—Not in my judgment.

1280. Would that bill in ordinary cases, supposing it to be taxed, be handed by the client to his professional friend or Proctor?—It would, and the Proctor would understand it perfectly.

1281. In other professions, are you aware that technical phrases are also made use of, and for the same purpose, namely, brevity?—I am not at all acquainted with any legal proceedings; I never had a suit at law in my life, or saw a bill of costs.

1282. What is the meaning of the word "fi. fa."?—I have heard that it is a writ commencing with the words "fieri facias;" but that would be quite as unintelligible to an unlearned person as the honourable and learned Chairman wants to make out this bill is.

1283. *Chairman.*] I hold in my hand a copy of the rules of the Consistory Court; have the goodness to refer to them—[*the same being handed to the Witness*]—you will see Mr. Samuel's signature on the other side; is that his signature?—I do not think it is his signature; I think the rules themselves are in the handwriting of a clerk in his office.

1284. They are out of the Registrar's Office in the Consistory Court, are they not?—Yes, they are.

1285. It is Mr. Samuel's name at the bottom, is it not?—Yes.

1286. Just look to those rules, they are the rules in full, and say whether you think they are calculated to give a particle more information than the abbreviations which I have read to you?—These are the established forms, in which the rules of the Court are taken down on the rule-book, and the Registrar cannot depart from them.

1287. I observe in one of these bills a charge for the Examiner of 81 *l.*; will you inform the Committee what are the charges to which the Examiner is entitled?—On a commission?

1288. Precisely; who are the two Examiners?—Mr. Henry Monk Mason is one, and Mr. Robert Cole Bowen is the other.

1289. Are they equally employed as Examiners?—They take their rotation, which is established in each cause when issue is joined; they take it alternately.

1290. Which of those gentlemen took the depositions in the case of Comyn *v.* Von Stentz, at Vienna?—Mr. Keatinge, the Judge's son, was the Examiner at that time.

1291. What are the charges to which the Examiner is entitled?—He gets the same fees as a Proctor, four guineas a day.

1292. Here is a bill of your's, Messrs. Tilley, Hamilton and Ormsby, and I find there

Printed image digitised by the University of Southampton Library Digitisation Unit

there is a charge, "Paid Examiner his fees on said Commission, as per his bill and receipt;" has he any fees except the four guineas a day?—No.

1293. The days are enumerated, and it appears that he attended twelve days in all, and that you paid him 81 *l.* 18 *s.* for his attendance; just look at that—[*the same being handed to the Witness*]—what is the number of days stated in the charge?—Twelve.

1294. For that you charge 81 *l.* 18 *s.*?—Yes, but that includes 27 *l.* 6 *s.* for his going and returning from Dublin to Cork. The items are these: "To fees allowed travelling from Dublin to Cork to attend said Commission, and returning to Dublin, in all six days at four guineas per day, including all expenses, 27 *l.* 6 *s.*

1295. Could not the journey from Dublin to Cork have been made at that time in one day by the mail?—Yes.

1296. And yet there is a charge of 27 *l.* 6 *s.* included in that item of 81 *l.* 18 *s.* for going and returning?—Yes; but, as I said before, that is charging upon the established scale.

1297. What might have been the expense of performing that journey in 1842; would it have been more than two guineas by the mail?—I do not recollect.

1298. Yet the Examiner of the court charged 27 *l.* 6 *s.*, is not that so?—It is so of course, but it is according to the established usage of that period.

1299. Mr. *G. A. Hamilton.*] Would that charge remain under the Bill in a similar case?—I apprehend it would.

1300. *Chairman.*] Are you aware that the Bill proposes to prevent the examination of witnesses altogether, except where parties are out of the country?—No; I understood that the Judge was to have the power of granting commissions under certain circumstances, in cases of illness.

1301. Was it a case of illness in the instance that has been referred to?—I really do not know exactly; I think, as well as I remember, in that case there was a Roman Catholic clergyman, a very aged person, who was not able to come to town, and it was necessary to have him examined; there appears to have been 8 *l.* 6 *s.* taken off the 27 *l.* 6 *s.*, reducing it nearly two days.

1302. Does that appear to have been taken off; is it not quite possible that those are the marks of the Proctor who was to have acted on the taxation, with a view of securing that reduction?—I do not know whether the costs were taxed at all, or not, in this case.

1303. Mr. *G. A. Hamilton.*] The 57th clause of the Bill states, "That it shall be lawful for the Court in every suit pending therein, upon the application of any of the parties to such suit, if it shall think fit, to order the examination on oath, upon interrogatories or otherwise, before one of the Registrars of the said Court or other person to be named in such order, of any witnesses within the jurisdiction of the Court, or to order a Commission to issue for the examination of witnesses on oath at any place or places out of such jurisdiction, by interrogatories or otherwise;" can you inform the Committee whether, supposing that clause to be passed, the expense which has been alluded to would be saved, in reference to the examination of witnesses?—I should say not.

1304. *Chairman.*] Would it not be competent under this Bill, if the Judge is to make such rules as he thinks proper, to him to make a rule to prevent that extravagant expenditure?—I have no doubt that the Judge having power to make rules, would not allow such charges as that.

1305. Have you any doubt that he would not?—Considering the facility of communication now, I think that Judge Keatinge would take into his consideration a fair remuneration for the services; 19 *l.* 18 *s.* was taken off the Examiner's Bill.

1306. You stated that you could not say whether that bill of costs was taxed?—This is the mode of taking out in the margin.

1307. Is that done in pencil by the officer?—Yes; it might as well be done by arrangement between the Proctor and the party.

1308. Will you look at the last charge in that bill of costs—[*The Witness referred to the same and read it*]?—"To my attendance on said commission in the city of Cork, on the 26th, 27th, 28th, 29th, 30th and 31st August, and 1st, 2d, 3d, 4th, 5th and 6th days of September, in all 12 days, at four guineas per day, including all expenses, 54 *l.* 12 *s.*; paid Examiner his fees on said commission as per his bill and receipt, 81 *l.* 18 *s.*"

1309. Have you any doubt that the Proctor charged three days for going to Cork and three days returning?—It is so charged.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.

17 June 1850.

1310. Could he not at that time have made the journey in one day, and have returned in one day?—I should, with great respect, say that the Proctor is not bound to travel post-haste, like a post-letter.

1311. Mr. *Bellew.*] Would you think that he was bound to go by the mail or the coach conveyance of that day?—Yes, but I think he may travel at such rate as he pleases.

1312. Mr. *Bouverie.*] And at the expense of his client?—Yes; this all resolves itself into what I have said before, that these fees have been the established fees.

1313. *Chairman.*] Do not you think that they ought to be altered?—I admit that they ought to be altered.

1314. Mr. *Bellew.*] Do not they amount to a gross imposition on the client?—I should say that what is allowed by usage is not extortion.

1315. As being levied under the form of law?—Yes.

1316. *Chairman.*] If it was not the usage, would you not consider a charge of that kind, made in the first instance, a gross extortion?—I should say it was very extravagant; but I do not think that a charge of extortion can be fastened on practitioners for what the law allows them to charge; I should, with very great respect, say that that was an unfair interpretation; those allowances have been the established allowances for attending on commissions.

1317. Mr. *Bouverie.*] Are they fixed by statute?—No.

1318. Has the question of their reasonableness ever been raised before a jury?—I am not aware.

1319. Mr. *Grogan.*] Has the point been raised before the Judge?—Frequently.

1320. How has it been ruled?—It would be competent to any person to take an exception to the taxation of the officer, and the Judge decides upon the propriety of the charges allowed.

1321. *Chairman.*] Do you know the case of Mr. George Fenton, which was decided some time ago in the Prerogative Court of Ireland?—I do not know it; it was not in our office.

1322. Mr. *Monsell.*] But you considered those charges, and the power of making them, as a part of the vested right of the Proctors?—I should say so; until they were altered, I should say that usage entitles the Proctor to them.

1323. And, therefore, the right of charging three days for going to Cork, and three days for coming back, you would consider a portion of the vested rights of the Proctors?—I should say so, to that extent; usage established the fee.

1324. Mr. *G. A. Hamilton.*] With regard to the expediency of maintaining the distinction between the two professions, Mr. Webber gave some evidence upon that subject in the year 1837, did he not?—I think he recommended limitation of the profession of Proctors.

1325. In the Reports of the Commissioners for the Ecclesiastical Courts of England and Wales in 1832, it was recommended that there should be no alteration as to the separate profession of Proctors, was it not?—Yes, I am aware of that.

1326. *Chairman.*] Do you know, in this case of Donnellan *v.* Downes, whether, as a matter of fact, the Proctor engaged for the lady has not filed a bill for the sale of her separate estate, for the amount of those costs in the Consistory Court?—I am aware of it; I have heard recently that there was a decree.

1327. And a receiver appointed over her property?—Yes, a decree entitling him to those costs.

1328. So that she has not only lost the whole of that which she succeeded in recovering, but her separate estate is to be sold for the Proctor's costs?—I presume the Chancellor would not grant a decree if he did not feel himself justified in doing so.

1329. Is that the result?—The result is that the Proctor under this decree will receive his costs, I suppose.

1330. Mr. *G. A. Hamilton.*] Can you state the number of bills of costs which are usually taxed in a year?—I have no means of ascertaining; I should say that they are not very numerous.

1331. Is there any appeal from the taxation of the costs by the Registrar or taxing officer?—There is.

1332. To whom?—To the Judge, by way of exception.

1333. Lord *Naas.*] To the Judge of the Prerogative Court?—Yes.

1334. But his decision is final, is it not?—Yes; the course is to take an exception

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Hamilton, Esq.
17 June 1850.

exception in writing to the several items that the party considers should not be allowed, and then the matter of exceptions is argued before the Judge, and he decides whether they shall or shall not be allowed; if he considers that the taxation is correct, he confirms the report; if not, he refers the bill of costs back again to the officer to re-consider his report; but that is a case which very rarely occurs.

1335. He never makes an award himself?—He does by confirming the report.

1336. But in cases in which he disapproves of the report, he does not say what the actual sums shall be?—Yes he does; sometimes he refers it back; I am not aware of any case lately in which that has occurred.

1337. To what do you refer?—A reference back again to the Registrar; I think, generally speaking, the Judge confirms the Registrar's report.

Mercurii, 19° *die Junii*, 1850.

MEMBERS PRESENT:

Mr. G. A. Hamilton.	Mr. Keogh.
Mr. O'Flaherty.	Mr. Gladstone.
Mr. Solicitor-General for Ireland.	Mr. Sadleir.
Lord Naas.	Mr. Bellew.
Mr. Goulburn.	Mr. Scully.
Mr. Page Wood.	Mr. Monsell.
Mr. Fagan.	

WILLIAM KEOGH, Esquire, IN THE CHAIR.

John Leahy, Esq.; Examined.

John Leahy, Esq.
19 June 1850.

1338. *Chairman.*] YOU are a member of the Irish Bar, are you not?—Yes.

1339. How long have you been a member of the Irish Bar?—I have been practising since 1836.

1340. Your practice is in the Court of Chancery, and also in the Common Law Courts, is it not?—Yes.

1341. Are you a Circuit Barrister, and do you go the Munster Circuit?—Yes.

1342. Have you gone the Munster Circuit for some years?—Yes, since 1836.

1343. You are a magistrate of the county of Kerry, are you not?—Yes.

1344. And a landed proprietor in that county?—Yes.

1345. Do you know of the existence of a Diocesan Court in the county of Kerry?—Yes.

1346. What is the name of that diocese?—Ardfert and Aghadoe, under the Bishop of Limerick.

1347. Where does that Court sit?—At Tralee.

1348. Do you know who the Judge of that Court is?—The Vicar-General, or Surrogate he is called, I believe.

1349. Who is he?—The present Vicar-General is the Dean of Ardfert.

1350. Where does he reside?—About nine miles from Tralee.

1351. Does he discharge the duties of that Court himself, or are they performed by deputy?—By deputy, the Rev. A. B. Rowan.

1352. He is a clergyman of the Established Church, is he not?—Yes.

1353. Does he reside in Tralee?—Near Tralee.

1354. Who is the Registrar of the Diocesan Court of Ardfert?—The General Registrar of Ardfert and Aghadoe is Mr. M'Mahon, of Limerick, I believe.

1355. What is he?—An Attorney.

1356. Does he discharge his duties in Ardfert by deputy?—The Deputy-Registrar is Mr. Eagar.

1357. Does he discharge his duties by deputy?—Mr. Eagar is the deputy.

1358. Mr. Eagar is the Deputy-Registrar of the Diocesan Court of Ardfert and Aghadoe?—Yes.

1359. Where does he reside?—In Tralee.

1360. What is Mr. Eagar?—The proprietor of a local newspaper.

Printed image digitised by the University of Southampton Library Digitisation Unit

John Leahy, Esq.

19 June 1850.

1361. Has he the custody of the wills of that diocese?—Yes.

1362. Where does he keep them?—In his own private house.

1363. Where his newspaper is edited?—Yes, I have seen him frequently produce the wills in Court on trials, and he has always brought them, as I understood, from his private house; I feel confident that he keeps them there.

1364. Did he reside in the neighbourhood of Tralee, at some distance from the town, until lately?—About three years since he resided, I believe, about a mile from the town.

1365. Then you mean that, at that time, the wills were at his house in the country?—I cannot say that; the newspaper was conducted in Tralee; I believe he kept them at his house.

1366. Do you know, in the practice, how the emoluments of the Registrar of the Court are derived?—I believe, in the case of an ordinary administration or probate, the fees altogether amount to about 5 *l.*, as I have heard, where there is no contest.

1367. Do you know of a practice of this nature existing; that of letters being addressed to tenantry and poor people in the county of Kerry, threatening them with actions for penalties, if they did not prove wills?—Yes, they have frequently come to me to complain of that; the families of farmers who have died leaving but a small property, perhaps merely the cows and the stock on the farm, and perhaps a few pounds in ready money or in a Savings Bank; they have come to me frequently, complaining of their having received letters sent from the Registrar, or at his instance, threatening them that unless they came in to prove, proceedings would be taken against them by way of penalty.

1368. Under the Stamp Laws?—Yes, I believe so.

1369. Mr. *G. A. Hamilton.*] Have you seen any of those letters?—Yes, they have brought them to me, and asked me what they were to do, when I was residing occasionally in the neighbourhood of the Court.

1370. *Chairman.*] They knowing you to be a practising member of the Irish Bar?—Yes; some of them were tenants of my own.

1371. Have they complained to you of the hardship of that system?—Very much so; because, perhaps, the family were willing to divide the property between them, it being of a small amount, and there was no occasion for administration at all.

1372. Do you know with what object the letters were written; was it for the purpose of getting the fees for the Registrar, incident to obtaining probate or administration?—So they stated always; and I have known some abuses arise from that, which they complained of; for example, that one member of a family having obtained probate or administration, without notice, commenced proceedings against the other members of the family, and thereby got a legal advantage, which inflicted injury upon the other members.

1373. Do you know whether it is the custom in the diocese, that the first person who makes application for probate or administration has it granted to him?—I am not aware that that custom exists; I have heard, in some cases, that it has occurred, and complaints have been made of it; I have heard that from persons interested, that, in the cases to which they alluded, the person first applying, having paid the fees, got the administration.

1374. Do you know whether any great evils arise from granting the diocesan probate, with reference to the existence of *bona notabilia* in another diocese?—Professionally, I have known cases in which it was necessary for the parties to take out a new administration in the Prerogative Court, in consequence of the probate in the Diocesan Court being insufficient, the parties, moving in a humble sphere of life, not being aware of the difference.

1375. Do you know whether any trouble is taken by the Registrars of these Courts to point out to parties the inconvenience and expense that would be involved in case of the existence of *bona notabilia* elsewhere?—I am not aware that they do.

1376. Do you recollect a case in which the party's name was Falvey?—Yes, I recollect being professionally consulted in a matter of that kind.

1377. Had a diocesan probate been taken out in that case?—It was applied for, and there was a dispute; the will was lodged, and the dispute was about the rights of the parties entitled to the probate; and, after the expense was incurred of contesting this matter, one of the parties, as well as I recollect, got the will removed to the Prerogative Court, by an Order, and thus the party, having removed the will, defeated the objects of the other party.

1378. Do you consider that the existence of the law as to *bona notabilia*, and the

Printed image digitised by the University of Southampton Library Digitisation Unit

the practice as to diocesan probates, lead to great abuses in the practice of the law?—I do, in the cases that have been referred to, where it turns out that the diocesan probate is insufficient, and in the other cases also.

1379 If a testator or an intestate die possessed of a judgment to any amount, is not the diocesan probate void?—Yes, because the judgment being in Dublin, a Prerogative administration becomes necessary.

1380. If a party dying is possessed of railway shares, would not you say that a similar rule would apply?—I believe so.

1381. Or shares in any other public company?—Yes, where it is out of the diocese.

1382. Are you acquainted with the system of granting probates and administrations in the Prerogative Court in Dublin, and the expense connected with those Courts?—The matters to which my experience generally refers are administrations taken out for the purposes of suits.

1383. Can you inform the Committee whether any evil arises from the necessity of taking out those administrations under the present system?—Yes, I conceive that very great evils arise. During the course of my professional experience, I have known the profession, both Barristers and Solicitors, complain very much indeed of the very great expense caused by reason of those administrations; and before I went to practise at the Bar in Ireland, having been in the chambers of Mr. Bethell, the eminent Chancery Barrister in this country, and having acquired some knowledge of the practice here, I was surprised, on going to Ireland, to find that the administrations necessary for the purposes of suits in Ireland were enormously more expensive, and more tedious in obtaining, than similar administrations in this country.

1384. Do you recollect the case of Breen *v.* Cooper in the Court of Chancery?—Yes, I was counsel in that case.

1385. Do you recollect any difficulty arising as to obtaining administration in that suit?—Yes, we were delayed for a considerable time, I believe for more than a year, for the purpose of obtaining that administration, which was merely nominal; the plaintiff was a creditor of Mr. Cooper, and Mr. Cooper died in 1830, possessed of no personal property. A bill was afterwards filed to raise the debt out of his real property, and though it was known and admitted by every one that he did not leave any personal property whatever, yet, for the purposes of taking out the administration, some of his family being in America, it was necessary to issue public edicts and citations, and such difficulties arose in the Prerogative Court, that eventually the plaintiff's Solicitor had to get one of the children, who was a mere pauper, to consent to allow his name to be made use of as administrator, the Solicitor for the plaintiff having to pay out of his own pocket all that expense.

1386. Can you state, from your experience, about what is the expense of raising an administration *ad litem* in a cause, even when uncontested?—I believe in that case, although there are no personal assets whatever to be administered, that the costs came to between 20 *l.* and 30 *l.*; but I cannot say with accuracy.

1387. Do you recollect the case of a person of the name of Dumas, in the county of Kerry?—Yes.

1388. Do you know in that case of the widow, I believe, of the deceased person having proved the will?—That was an abuse of another branch of jurisdiction; that was an ordinary case of proving the will of Mr. Dumas. Mr. Dumas was possessed of freehold property, and of scarcely any personal property; he made a will, and having no children, he left his property to his wife. He had not been on good terms with his sisters; he had no brother, only his sisters and his wife; he left his property to his wife, and the husband of one of his sisters, who was a shopkeeper, and in a rank of life below him, lodged a caveat to the will, and by reason of doing that, and without putting himself to any expense, except a mere trifle for cross-examining witnesses; I understand from the parties interested, and I have no doubt the fact is that Mrs. Dumas, the devisee, was put to an expense of between 150*l.* and 200*l.* for costs of Solicitor and Proctor in proving that will, to which there was no *bonâ fide* objection.

1389. Have you read over the Bill which is at present before the Committee, and has been read a second time in the House?—Yes.

1390. Do you consider that the provisions of that Bill are calculated to lessen the expense of those proceedings?—I think the principal provisions of the Bill would lessen the expense a great deal. The details which, in my opinion, are very much the cause of the present expense in the Court, would have to be set right by orders to be made by the Judge; and this Bill gives certain powers to the Judge to

Printed image digitised by the University of Southampton Library Digitisation Unit

John Leahy, Esq.

19 June 1850.

make orders. There are, at present, technical difficulties, according to the present practice of the Court, which give rise to great abuses and unnecessary expense. I think these should be remedied by orders to be made by the Judge, so that this Bill would not make a great difference unless the Judge carried out the spirit of the Bill by proper orders. I allude particularly to one case, in which an eccentric country gentleman in my neighbourhood died, about two years since, much indebted, and left his property for charitable purposes, and he appointed me one of his executors; the executors declined acting. In consequence of some technical informalities in the drawing of the will, and some interlineations, it became so difficult to prove that will by any of his creditors, that though it is two years since, that will is unproved to this day, as there should be an examination of witnesses and expense incurred.

1391. In reference to that clause in the Bill which authorizes the Judge to appoint Commissioners to take affidavits in the country, do you not consider, supposing the present Commissioners for taking affidavits were continued or new ones appointed, that that provision would tend materially to lessen the expense of proving wills, according to the present practice?—Yes; then all parties, who had to give any evidence as to an administration on oath, could go before the Commissioner in their neighbourhood and make an affidavit, and then that affidavit would, generally, be sufficient for the purpose of having the will proved in Dublin; whereas, now, a commission must issue at an unnecessary and enormous expense.

1392. Do you consider that the system of *vivâ voce* examination and trial by jury, as provided by the Bill, would tend materially to lessen the expense of proving wills in contested cases?—Yes, certainly; and I know that the profession generally consider the present mode of pleading in the Prerogative Court as a monstrous abuse. The pleadings and the documents run to such an enormous length, that it is a great injury to any person to go into the Court as a suitor.

1393. Do you know that a suitor in that Court is obliged to pay double costs, —a set of costs to his Solicitor, and another set to his Proctor?—Yes, that is one of the grievances of the Court; the client generally employs an Attorney, and the Attorney has to employ a Proctor, and there are two sets of costs.

1394. Mr. *Solicitor-General for Ireland.*] Not to the same amount?—No; but the costs payable by the party wishing to prove the will are enormously increased by it.

1395. Lord *Naas.*] Do those remarks apply to cases where litigation is pending, or to all cases?—I apply my remarks principally, as I said before, to cases which have come more peculiarly within my own observation; for example, cases of applications to the Court for administrations, with reference to suits.

1396. Mr. *Solicitor-General for Ireland.*] Probates and administrations?—Yes, and for the purposes of suits.

1397. Lord *Naas.*] Your observations, with reference to the relative expenses, did not apply to cases where litigation is not pending?—I think the comparative expense, in a simple case in the Diocesan Court, as compared with the Superior Courts, is very trifling.

1398. Mr. *Solicitor-General for Ireland.*] Which is the greater?—I should say, perhaps, in the Prerogative Court, the expense would only be, in a simple case, the very lowest case, perhaps 8*l.*, and about 5*l.* in the Diocesan Court.

1399. *Chairman.*] You think it is about 5*l.* in the Diocesan Court?—Yes, that is what I have heard.

1400. When you referred to the abuse practised by the Registrar, namely, forcing parties to come into the Court where they did not require to do so, you applied that to the Diocesan Court, did you not?—Yes.

1401. You stated, that you knew of cases in which the Registrar, for his own purposes, wrote to parties, requiring them to come into his Court, or he would have them sued for penalties?—I have no doubt of the fact; a letter came from the Registrar's office, and I was consulted as to how the parties were to avoid the proceedings. With reference to the expense of ordinary probates, I may state, that except personally in my own case, having had to prove a will myself, I do not know the expense in the Prerogative Court of ordinary probates.

1402. Mr. *Solicitor-General for Ireland.*] Are the Committee to understand you to say, that you do not know of your own knowledge what the expenses of the Proctors are in the Diocesan Court of a simple ordinary proof?—No.

1403. Lord *Naas.*] You cannot of your own knowledge say what the comparative expenses are in the two Courts?—No, I cannot of my own knowledge.

1404. *Chairman.*]

Printed image digitised by the University of Southampton Library Digitisation Unit

1404. *Chairman.*] You have always understood that it is about 5*l.* in the Diocesan Court?—Yes, where there is no contest.

1405. In cases where you require to take out an administration *ad litem* to raise a representative to a trust or charge in the Court of Chancery, does the plaintiff in most cases lose his costs?—In many cases the plaintiff in the Court of Chancery loses the costs altogether in getting an administration raised; in other cases he would get them as part of the costs of making out the title; but in many cases he loses the costs altogether, and they will have to come out of his own pocket; even though his debt may be only 100*l.*, he may have to pay 30*l.* or more, the costs of the administration raised in the Prerogative Court for the purposes of the suit, which he would not get reimbursed in any way.

1406. Mr. *Solicitor-General for Ireland.*] That applies generally to the system, does it not?—Yes.

1407. It is not a question between the two Courts, the country Court and the Dublin Court?—It applies to both; an administration for the purposes of a suit is generally taken out in the Prerogative Court.

1408. *Chairman.*] As regards the system of taxation of costs, have you known any professional complaints made as to the impossibility of getting any satisfaction in that respect?—I have frequently as a Barrister, in conversation with Solicitors when they have been complaining, in the progress of a suit, of the enormous expense they have been put to by these administrations in the Prerogative Court, asked why they paid so much, and they have replied generally, that the proceedings there were such a mystery to them that they had no check whatever on the Proctors.

1409. Have you heard observations made as to the language adopted in the preparation of bills of costs in that Court?—I have heard them say that they believed, in some cases, the costs were increased by unnecessary or irregular proceedings on the part of some of the Proctors, more than by the practice of the Court, perhaps; but that they had no check on them, no effectual means of taxing them; and that I believe to be the fact, that there are no practically effectual means of taxing Proctors' costs.

1410. Have you read the Report of the Ecclesiastical Commissioners in this country?—No.

1411. Are you aware that they recommended the concentration of all that diocesan jurisdiction in one Court of Probate?—No.

1412. Do you consider that it would be a public benefit that the jurisdiction in testamentary cases of the Diocesan Courts should be concentrated in one Court of Probate?—I should think so; I should add, that I was not aware until late yesterday that I was to be examined here. I came to London on other business, and therefore, although, of course, I am ready to give any general information to the Committee, I came wholly unprepared with any details, which I think I ought to have had if I had been in the least degree aware that I was to be examined here; therefore my observations can only be from my general knowledge as a Barrister, and from occasional residence as a country gentleman in that county where I have a residence, and I cannot give details for that reason.

1413. Your opinion is favourable to the concentration of those Diocesan Courts in one Court of Probate, is it not?—Certainly; I should say that there can be no doubt about it, and particularly now, from the increased facilities of communication through the country, and the Attornies being now more constantly in Dublin, who were formerly in the habit of residing in the country, and it being competent to them, therefore, to have the business done directly under their own eye in Dublin; whereas, before, they must have communicated from the country with a Proctor, or through another Attorney in Dublin with a Proctor.

1414. You allude to the facilities afforded by railway communication?—Yes.

1415. Having regard to the 32d Clause of the proposed Bill, which provides for the appointment of Commissioners by the Judge to receive affidavits in the country, do you not think that probate might be obtained as cheaply from the Court of Prerogative in Dublin, and as expeditiously, as in the Diocesan Courts?—I cannot speak of my own knowledge of the expenses to be incurred in Dublin.

1416. Do not you consider that by the adoption of proper rules, and the appointment of Commissioners in the country for the purpose mentioned, that the system could be made as cheap as in the Diocesan Courts?—I should say that it ought to be just as cheap, and any business requiring investigation would of course be better done. At present the Vicars-General, being clergymen, are

Printed image digitised by the University of Southampton Library Digitisation Unit

John Leahy, Esq.

19 June 1850.

wholly unacquainted with matters of law; and the Registrars are also unprofessional persons, or at least it is so in my Diocese, and therefore, in the examination of witnesses, and otherwise, that circumstance proves very unsatisfactory to the parties.

1417. Mr. *Bellew.*] They are almost universally non-professional men, are they not?—I cannot speak as to any other dioceses; I believe the Registrars are very often Attornies, but that the Surrogates are generally clergymen.

1418. Mr. *Sadleir.*] With reference to the particular Diocesan Court with which you are personally acquainted, can you inform the Committee what number of local practitioners as Proctors there are attending that Court?—I am not aware that there are any regular local practitioners; but I believe that the Attorney who happens to be engaged for a client in a particular case attends there.

1419. And he is allowed to practise by courtesy?—Yes.

1420. Are you able to inform the Committee how frequently that Diocesan Court sits for the transaction of business during the course of a year?—During the time of the late Surrogate, who died two years since, I am aware of his sitting on one particular day in the week, or more frequently, if occasion required. He was always resident in Tralee, and was very ready to fix any time that might be required.

1421. Does the gentleman who at present fills that office reside at Tralee?—Yes, he resides near Tralee; he is the Deputy Surrogate. The Surrogate is the Dean of Ardfert, and he is curate to the gentleman who is his deputy at Tralee. He is curate of the parish in which he lives, nine miles from Tralee, and that parish belongs to the gentleman who is acting in Tralee as his deputy.

1422. Do you think that those country people who have to resort to that Court to obtain probates and administrations, have any considerable distance to travel to reach Tralee?—Yes; in my county, in some cases, I should think the distance would be 50 or 60 miles that they would have to travel.

1423. The habits of the country people there, I presume, would be similar to the habits of the people in other parts of the south; do those poor people travel backwards and forwards every court-day pending any litigation with reference to the grant of a probate or administration?—I am not aware how that has been.

1424. Have you known any instances in which those local practitioners in the Diocesan Court held at Tralee, have, on an application being made for probate or administration by any party, canvassed amongst the next of kin of the deceased person for a retainer or authority to enter a caveat?—I am not aware of that, of my own knowledge.

1425. In your practice as a Barrister, have you frequently had to advise on abstracts of title to real property?—Yes.

1426. Should you regard one of those probates or administrations as a satisfactory voucher; take the case of a probate; would you conceive a probate from the Diocesan Court as a satisfactory voucher in deducing a title to real property?—Certainly not, because of the danger of there being *bona notabilia.* The will may only profess to speak of real property within that diocese, and yet the testator may have *bona notabilia* in another diocese, which would render that probate voidable: in fact, I may state, that I scarcely know of anything connected with the administration of justice in Ireland at present, which gives rise to more abuses than the system which I have referred to with respect to granting letters of administration for the purposes of suits and other matters arising in said Courts.

1427. Mr. *Bellew.*] Is that a very general opinion among the public?—Yes, and it is the general opinion of the profession, as far as my own observation goes; administrations *ad litem* can be obtained in England under similar circumstances, as I believe, for a trifling expense, compared with that in Ireland.

1428. Mr. *Sadleir.*] In point of fact, in Ireland, if a party is anxious to obtain administration for the purposes of a suit, say, for the purpose of prosecuting a claim to a charge of 5,000*l.*, he is obliged to pay stamp-duty upon the charge of 5,000*l.* before the letters of administration issue; and if he ultimately fails in establishing his claim to the charge, do not the Stamp Office return the duty, if it is claimed?—I believe so.

1429. But in this country it is the uniform practice to issue such administrations without charging the stamp-duty until the money is actually realised?—Yes; I may add from the experience which I had when I was at Lincoln's-Inn, that I believe

Printed image digitised by the University of Southampton Library Digitisation Unit

I believe administrations *ad litem* would be considered sufficient for the purposes of a suit in England, where a general grant of administration is required in Ireland, and for which purpose the next of kin must be cited. It gives rise to great expense and delay in Ireland as compared with England.

1430. *Chairman.*] Were any changes contemplated in the practice of the Courts upon the accession of the present Judge?—Yes; I believe it was supposed that a great many of the evils that existed might have been corrected; but I am not aware whether he had the power of doing so or not.

1431. Mr. *G. A. Hamilton.*] Is the difference that you spoke of with reference to the stamp-duties, attributable to a difference in the law, or in the practice?—I cannot give a positive opinion; but I have been under the impression that that might be rectified in Ireland without any legislation for the purpose.

1432. By the Commissioners of Stamps?—No; by the practice of the Court.

1433. Lord *Naas.*] You stated, did you not, that it was the habit, in the part of the country that you are connected with, for the officer of the Court to write letters when a party died, ordering their representatives to come in and take out probate under a threat of penalties?—Yes; they have come to me, making those complaints, and I know it to have been the fact in some cases.

1434. Have you ever seen a letter of that nature?—Yes.

1435. Have you any objection to state from what quarter it proceeded?—I cannot state positively; but my impression and belief is, that it proceeded from the Deputy Registrar.

1436. From what Court?—From the Diocesan Court.

1437. Where?—Of Ardfert and Aghadoe.

1438. When did this occur?—The last complaint on the subject made to me was three or four years since.

1439. Do you believe it to be the general custom for the officer of that Court to write letters of such a kind?—I have heard it frequently complained of by several.

1440. Mr. *Fagan.*] Is that in cases where they act on the will?—No, where a farmer died, and no will was proved or administration taken out.

1441. Was it the duty of the officer to write those letters to the parties?—I think not.

1442. Mr. *Solicitor-General for Ireland.*] Is there a stamp-duty payable on probates and administrations?—Yes.

1443. Were not those letters written to those persons to enforce the payment of the stamp-duties as well as the fees?—No.

1444. The effect of their taking out administration or probate, would be the payment to the revenue of the amount of stamp-duty?—The effect of complying with the letter would be the payment to the revenue of a certain sum for stamp-duty, and also the fees payable in the Diocesan Court, from which the proceedings were to issue.

1445. *Chairman.*] Do you entertain the opinion that it was an anxiety for the revenue that induced an officer, not belonging to the revenue, to write those letters, or an anxiety for his own fees?—My opinion was, that it was to get business for the Court, of course.

1446. Mr. *Solicitor-General for Ireland.*] Do you take upon yourself to swear, as a matter of fact, putting yourself in the place of a witness before a Common Law tribunal, that of your own knowledge none of those letters were ever written to enforce the payment of the stamp-duty?—I cannot state that some of those letters were not written for the purpose of enforcing the stamp-duty.

1447. Mr. *G. A. Hamilton.*] Do you know whether a similar practice prevails, either on the part of the officers of the Prerogative Court or of the Consistory Court?—I believe not; no such thing exists in the Prerogative Court.

1448. *Chairman.*] Do you know whether the Registrar, or the Deputy Registrar, who is editor of the Kerry Evening Post, is an officer of the Government or not?—No, he is not.

1449. Is he connected with the Stamp Office?—No.

1450. In any way?—No.

1451. Mr. *Solicitor-General for Ireland.*] Those letters, you say, were written by that person?—I was shown a number of them. They came from him; or some person, I believe, at his instance.

Printed image digitised by the University of Southampton Library Digitisation Unit

John Lealy, Esq.

19 June 1850.

1452. *Chairman.*] Do you know whether the Surrogate, the Rev. Mr. Rowan, is an officer of the Public Revenue?—No.

1453. Is he in the Stamp Office?—No.

1454. Mr. *Solicitor-General for Ireland.*] Did you ever know the Surrogate in any Diocesan Court, in your life, to be an officer of the Stamp Office?—No; and I do not believe that the present Surrogate, or the former Surrogate, ever had anything to do with the writing of such letters.

1455. Lord *Naas.*] You believe that those emanated entirely from an inferior officer of the Court?—Yes.

1456. Mr. *G. A. Hamilton.*] Is Mr. Eagar a clergyman?—No.

1457. *Chairman.*] Mr. Eagar is the proprietor of a newspaper, and is the Deputy Registrar from whom you believe those letters emanated?—Yes.

1458. Mr. *Sadleir.*] Can you give the Committee any information with reference to what arrangements are made for the preservation of the wills which are deposited with the Registrar; whether there is any system of classification, or index, by which easy reference can be made to any particular will which may be deposited there; and whether there are any precautions taken against injury to those wills by damp or accident?—I once had occasion to go to his house to make inquiries about a case, and they appeared to me to have been all carefully kept in bundles, with a book purporting to be an index.

1459. Mr. *Bellew.*] In the Registrar's house?—Yes.

1460. Mr. *Sadleir.*] It sometimes becomes of great importance to refer to some of those wills, does it not?—Yes; he pointed out to me some that were over 100 years old, as well as I recollect.

1461. Mr. *Bellew.*] Is there any office or particular apartment used for the purpose?—It is in the house.

1462. Supposing the Registrar were changed, those wills would have to be transferred to the house of the new Registrar, would they not?—Yes, of course.

1463. Mr. *Sadleir.*] Were you actually in the room in which the wills were deposited, in Tralee?—Yes.

1464. Was the room exclusively devoted to that purpose?—It appeared to be the office of this gentleman.

1465. Was it anything in the nature of a strong room?—No.

1466. Do you think that every due and proper care is taken to preserve those documents, having reference to their importance and value in a country in which there is no system of registration of births, deaths and marriages?—I think this gentleman appeared to keep them as carefully as they could be kept in a private house. I should say, at the same time, that there is no doubt that that is not the proper way to keep public documents.

1467. Do not you think it would be extremely desirable that the same system should be adopted for the preservation of those wills, having reference to the property of the industrial and humble classes, that is adopted with reference to every other description of voucher relating to real and personal property in Ireland?—Certainly. In the course of my experience, I have known properties of very large amount, the wills relating to which are lodged in that house.

1468. Mr. *Bellew.*] Was there any protection from fire?—No.

1469. Lord *Naas.*] Are you aware of the manner of keeping them in the Prerogative Court in Dublin?—Not particularly.

1470. Mr. *Solicitor-General for Ireland.*] Have you ever, as a circuit-going Barrister, found that it was a convenience in the course of a trial to refer to the Diocesan Court of Limerick, Cork or Kerry, without being obliged to send up for the original will to Dublin?—I have in the course of my business, while going the circuit, found that it was very convenient to have the will in the town where the assizes were going on; but any inconvenience arising from the wills being in Dublin could be easily met by an alteration in the Bill which it is now proposed to pass. With reference to that, I would suggest, in addition to the rule which is proposed by the Bill as printed, that where it became necessary to refer to the original will, and not to the attested copy, there should be a provision for enabling the officer of the Prerogative Court to lodge that will, sealed up, with the Registrar of the Judge of Assize; that might be done by an amendment in your proposed Bill.

1471. Lord *Naas.*] Might not a very easy plan be adopted for keeping those wills safe in the different Diocesan Courts?—I think it would be much better to have

Printed image digitised by the University of Southampton Library Digitisation Unit

have them all lodged in Dublin, if a facility for producing the original will without expense at the assizes were afforded.

1472. There could not be much difficulty in lodging them in a safe place?—No, they may of course be made safe.

1473. Mr. *Monsell.*] Would there not be a difficulty, from there being such a number of places, to find a proper place of deposit for them?—A fire-proof safe might be made in every town where there is a Diocesan Court, at some expense.

1474. But who would be responsible for their safe custody?—It would be more satisfactory, certainly, to have them all lodged in Dublin together, because at present if you want to look for a will you have to search the office in Dublin, and also the Diocesan Office; and sometimes a search is necessary in several Diocesan Offices. I have known a case, in which as Counsel I was concerned in an Equity suit, and we had to search for the will in several different dioceses as well as in Dublin.

1475. Lord *Naas.*] Do you think they could be lodged as safely in those Diocesan Courts?—Yes, with precautions, and at expense.

1476. *Chairman.*] Would not that involve the appointment of permanent officers, and interfere with the present system of the officers changing with each bishop?—Yes, I should think so; in the public offices in the country, I am aware that there, documents are sometimes kept very irregularly, and with great want of security, such as in the office of the Clerk of the Peace and the Clerk of the Crown.

1477. Mr. *Monsell.*] Those offices have permanent houses attached to them, have they not?—Generally, they are in Court-houses attached to them; still the documents are kept in a very unsatisfactory way.

1478. In the case of Registrars of Dioceses, it would be impossible, unless the system was completely changed, to have permanent offices attached to them, would it not?—Yes, unless the system was completely changed.

1479. Lord *Naas.*] You said, "unless the system was completely changed"?—Yes, you must have a public office continually kept for the purpose, and never to be changed; therefore the present system should be changed.

1480. Mr. *Solicitor-General for Ireland.*] Did you ever know a Registrar's office begin in a cathedral?—I have not; I only speak of my own diocese.

1481. Mr. *O'Flaherty.*] Would not an attested copy of a will be sufficient for the purposes of trial?—No, not for real property; the amendment proposed in the Bill does not go, I think, sufficiently far.

1482. *Chairman.*] With that addition, of entrusting the will to the custody of the Judge's Registrar going the circuit, you think every difficulty might be met?—Yes; but in case the original will was not produced before the Judge at the Assizes, I would leave it optional with him to decide whether or not the non-production of it was to be fatal to the party neglecting to produce it.

1483. Mr. *Fagan.*] Would it not be an improvement to allow the probate of a will to have the same effect as regards real property?—I see no objection, except in cases which might arise in which the validity of the will was absolutely questioned.

1484. Mr. *Solicitor-General for Ireland.*] Solicitors dealing fairly, in general, admit the copy of a will, when the genuineness of it is not disputed?—Yes, the difficulty here is, that in certain proceedings, such as by a landlord against a tenant, the tenant will put the landlord to every possible expense, without any advantage to the tenant; and the landlord has no opportunity of being recompensed the expenses, and I would allow the probate to be evidence in every case, except where the validity of the will was contested.

1485. Is not the expense connected with the production of the original will very large?—Yes, and it amounts to a failure of justice in many cases. Within the last week there was a case in which a landlord, to whom, I believe, three years' rent was due, amounting to 400 *l.*, was obliged to give up his proceedings, in consequence of not wishing to incur the expense of producing and proving the will by witnesses.

1486. Mr. *Solicitor-General for Ireland.*] If any sudden emergency arose for the production of an original will, might it not be convenient to have the Court where it was deposited convenient to the assizes?—Yes.

1487. *Chairman.*] The 44th Section of this Bill provides, that "Office copies of wills shall be received and taken as evidence in certain cases;" do not you consider that that is an improvement upon the present system?—Certainly.

Printed image digitised by the University of Southampton Library Digitisation Unit

John Leahy, Esq.

19 June 1850.

1488. Referring to the question which the Solicitor-General for Ireland put to you as to the convenience of having wills deposited in a country town, would it not be necessary to have a far different system to secure the proper custody of those wills?—Certainly.

1489. That would require a staff of permanent officers, would it not?—Yes, it would require some building to be provided for the purpose, with a permanent officer to take charge of them.

1490. If all the wills were lodged exclusively in Dublin, there being a provision that an officer, for instance, the Judge's Registrar, going the circuit, should have any will that was required, that would meet the difficulty, would it not?—Yes; where it was necessary to produce the original will. But, as I said before, I see no occasion to produce the original will, except where it is disputed.

1491. But where the original will was required, the allowing the officer to hand it to the Judge's Registrar would meet all the difficulty, and avoid all the expense, would it not?—Yes; and it would be following the precedents now frequently adopted by the Judges of the Superior Courts, according to which they direct a public record from those Courts to be handed to the Judge's Registrar, for production at a trial.

1492. An answer in the Court of Chancery would be now given to the Judge's Registrar upon an application to the Court?—Yes.

1493. Mr. *Solicitor-General for Ireland.*] Supposing the Courts, both with respect to the suppressed Bishopricks and the existing Bishopricks, all combined, and one Diocesan Court made, with the provisions and guards that you are suggesting for the protection of the records, do you think that that might be as good a mode of securing the wills and affording facilities as if they were all concentrated in Dublin?—I do not think they would do so well, because a party dying may have property in two or three different dioceses, and you would have to search then in the different dioceses for the will; but if you had but one office in Dublin, the thing would be simplified.

1494. The result of your experience is, that if facilities are given for the production of an original document upon circuit from the head office in Dublin, that that would, upon the whole, be the better course?—Yes.

1495. Mr. *Sadleir.*] Looking to the importance of having those documents in a place of safe-keeping, do you think it would be more convenient to have them all concentrated in Dublin?—Yes.

1496. Are you aware that a complete and well-arranged system exists in Dublin for the preservation, safe-keeping and arrangement of testamentary documents?—I have heard that it is so.

1497. Mr. *Solicitor-General for Ireland.*] The effect of the removal of the Diocesan Courts to Dublin would be to put the local Proctors out of practice, would it not?—There are no local Proctors in my diocese; the only persons who act are Attornies.

1498. Do they pay for licenses as Proctors?—No, it is by courtesy that they are allowed; I believe the Surrogate will allow almost any person interested to appear before him; I am almost certain that there is no Proctor's license paid for by any person whatever in the Diocese of Ardfert and Aghadoe.

1499. Mr. *Monsell.*] Is it not so in the Diocese of Limerick?—I am not aware.

1500. *Chairman.*] Does a probate of the Diocese of Ardfert extend to Limerick? Suppose a party has assets in the Diocese of Limerick, a probate from the Diocese of Ardfert would not be sufficient to carry those assets, would it?—Not in Limerick; they are distinct jurisdictions, I believe.

1501. Mr. *Monsell.*] Therefore, in all the small dioceses in Ireland there are separate jurisdictions?—I think so. The Bishop of Limerick is Bishop of Limerick, Ardfert and Aghadoe.

1502. *Chairman.*] They are separate jurisdictions as they are?—Yes, to grant probates.

1503. Mr. *Monsell.*] What is the size of the Diocese of Aghadoe?—I had reason to inquire at one time, as a Barrister, for the purposes of a trial, as to the nature of the separation between Ardfert and Aghadoe, and we could not find out what it was. It is always styled "Ardfert and Aghadoe," and one administration serves for both.

1504. *Chairman.*]

Printed image digitised by the University of Southampton Library Digitisation Unit

John Leahy, Esq.

19 June 1850.

1504. *Chairman.*] Then, that uncertainty with respect to the boundaries of the diocese would create difficulties, would it not?—I do not think so.

1505. Mr. *Fagan.*] Does it include the entire county of Kerry?—Yes, it does. No question could be raised whether a party died in Ardfert or in Aghadoe; it is merely sufficient that the probate should be in the diocese.

1506. Mr. *Sadleir.*] Are you able to inform the Committee whether there is any fee charged in the Diocesan Court to which you have been referring, for inspecting or examining a will?—I believe there is a fee charged, but I do not know it of my own knowledge; I believe the practice is to require the party to take out a copy of the will.

1507. In lieu of charging him a fixed fee?—Yes, to pay for a copy of the will.

1508. Mr. *Solicitor-General for Ireland.*] Do they allow a person to inspect a will at all, or will they refuse an inspection of it without taking out a copy?—I cannot give any information from my own knowledge upon that; I believe they require the party to take a copy.

1509. Mr. *Sadleir.*] Are you aware that in Dublin there is a regulation with reference to the production of those original wills; viz. that they will not allow any party, however respectable, to examine a will, except in the presence of at least two of the officers in charge of the Court?—I am aware that they require some person to be present.

The Venerable *Samuel M. Kyle*, LL.D.; Examined.

The Venerable *Samuel M. Kyle*, LL.D.

1510. *Chairman.*] YOU are Vicar-General of the Dioceses of Cork, Cloyne and Ross, are you not?—I am.

1511. How long have you been Vicar-General?—I have held the office with respect to Cork and Ross since 1837, and with respect to Cloyne since 1840.

1512. Who is the Registrar for the Court of Cork and Ross?—Mr. Henry Stopford Kyle.

1513. Does he reside in London?—Yes.

1514. By whom are his duties performed?—By the Deputy Registrar, Mr. William Cockburn Bennett.

1515. Is he an Attorney?—A Solicitor and Notary Public, residing constantly in Cork.

1516. Who is the Registrar of the Court of Cloyne?—Mr. Wilkinson, and his deputy is his son. Mr. Wilkinson is a gentleman advanced in life, and his son performs the duty; but both reside in Cloyne.

1517. Is there a Court held for testamentary purposes both in Cork and Cloyne?—Yes, there is.

1518. Is the jurisdiction of your Court very extensive?—The extent of the whole county of Cork, with the exception of two or three townlands belonging to Limerick, I believe.

1519. Does it include the Diocese of Cloyne also?—Yes, it does.

1520. You know Castletown Berehaven, do you not?—Yes, I do.

1521. How far is Castletown Berehaven by the road from Cork?—I should say 60 or 70 miles.

1522. How far is it from Bantry?—I cannot exactly say.

1523. How far is Bantry from Cork?—It must be between 40 and 50 miles; I have never been in Castletown Berehaven but once.

1524. Is it not 100 miles from Cork?—It is not; I think that the whole extent of the county, from east to west, is not much more than that distance.

1525. Is Castletown Berehaven in the Diocese of Cork and Ross?—Yes.

1526. Who are the practitioners in your Court?—There are four Advocates and six Proctors.

1527. Are the Proctors Solicitors?—All of them; I was careful to appoint no gentleman who was not qualified as a Solicitor.

1528. Are any of the Proctors in your Court members of the Roman Catholic persuasion?—No.

1529. Mr. *Bellew.*] But they are all Solicitors?—Yes, and all men of practice. I have appointed nearly every one in the different Courts, and I took care to appoint men of the longest standing, and the best qualified, as far as my judgment would enable me.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

1530. Is there any reason why you should not appoint Roman Catholics?—It was never the practice.

1531. Is there any reason why they should not be appointed?—I believe the oaths they would have to take; I believe those oaths are the bar.

1532. Mr. *O'Flaherty.*] Have you had any applications from Roman Catholics to be admitted?—Never.

1533. *Chairman.*] Are there not a number of Solicitors who practise in the city of Cork?—Yes.

1534. And very respectable practitioners, are they not?—I believe as much so as in any city.

1535. Have you turned your attention to the evils which arise from the doctrine of *bona notabilia*; that is, parties having assets in two dioceses; and are you aware that the first probate is void in that case?—Yes, it is void in the Inferior Courts, and it is voidable in the Metropolitan Courts.

1536. Do you not consider that an evil?—Yes; but it might be easily remedied.

1537. Do you see any objection to the admission of members of the Roman Catholic persuasion to practise as Proctors in your Court?—None.

1538. Mr. *O'Flaherty.*] Is there any oath of obedience to the Bishop or the Ordinary of the diocese required from the Proctors?—I believe merely the oaths of abjuration and supremacy.

1539. Mr. *Gladstone.*] The question put to you was, whether you saw any objection to the admission of members of the Roman Catholic persuasion to practise as Proctors in the Diocesan Court?—Yes.

1540. Does not that Diocesan Court take cognizance of spiritual causes?—Yes; but I understood the Honourable Chairman to refer to the testamentary part of the business.

1541. *Chairman.*] In testamentary matters you see no objection to their being permitted to practise?—No.

1542. May not questions involving the discipline of the Roman Catholic Church come before you incidentally in testamentary cases?—I do not see that they would; no case has come before me of that kind.

1543. Have you not heard of cases in which the conduct of a Roman Catholic clergyman has been called in question?—Yes.

1544. Do not you consider it objectionable that a clergyman of the Established Church should be the Judge to decide upon a question involving the conduct and character of a Roman Catholic clergyman?—Those questions, so far as spiritual matters are concerned, could only come on incidentally.

1545. Is it not peculiarly objectionable that in Ireland a clergyman of the Established Church should be the Judge to decide upon a question involving the conduct and character of a Roman Catholic clergyman?—I should hope that they would treat such a case in an unbiassed way.

1546. Do you, as the Judge of this Diocesan Court, and as an Archdeacon of the Church of England, consider it objectionable that a clergyman of the Established Church should be the Judge to decide upon questions involving the character and conduct of a Roman Catholic clergyman?—So far as I am concerned, I should not think it objectionable at all; I should act in quite as unbiassed a way in that case as in any other.

1547. Do you consider it fitting that a clergyman of the Established Church should be the Judge to decide upon the conduct and character of a Roman Catholic clergyman?—I do not see any difference between a temporal and a spiritual judge.

1548. Is it calculated, do you think, to give satisfaction to the Roman Catholic population of Ireland?—I should say not; but I would rather not answer that question; I have had Roman Catholic Clergymen before me.

1549. Mr. *G. A. Hamilton.*] In what manner is it possible that any question can arise before you, impugning the conduct or character of a Roman Catholic Clergyman?—I cannot imagine it.

1550. *Chairman.*] Did you hear of the remarkable case that has been on trial in Dublin, namely, the disputed will of Lord Ffrench's brother?—Yes.

1551. Did you hear that the conduct of a Roman Catholic Clergyman was impugned in that case?—I have no exact recollection of the circumstances of the case; I may say that I think it is extremely improbable that any question connected with

Printed image digitised by the University of Southampton Library Digitisation Unit

with the discipline or spiritual government of the Roman Catholic Church could come before me in any way.

1552. Have you turned your attention to the necessity that exists for establishing a central registry of wills in the country?—I think it would be very desirable in connexion with a local one; if the original wills were sent to Dublin, as the metropolis of the kingdom, and attested copies were kept, which would be evidence in courts of justice for local purposes in the different districts, I think great advantage would arise.

1553. As regards the system of pleading and practice in your Court, have you not adopted the system of pleading and practice in use in the Consistorial Court of Dublin?—I have.

1554. In every respect?—Yes.

1555. Any evidence which the Committee may receive as regards the practice in the Consistorial Court of Dublin, they may consider as applicable to the Diocese of Cloyne and Ross?—Yes; it was only recently that the Judge of the Court in Dublin was kind enough to send me a copy of the rules of his Court, and on comparing them with the practice of my Court, and conferring with the practitioners upon the subject, I found that the rules were substantially, if not verbally, the same; they have, therefore, been formally adopted for the purpose of giving new practitioners the advantage of local reference.

1556. Mr. *G. A. Hamilton.*] Then those General Orders of the Consistorial Court in Dublin are printed?—Yes.

1557. And made known in that way to the practitioners of your Court?—Yes, each practitioner has a copy of them, and he is required, if he finds anything contrary to the general practice, to mention it.

1558. Mr. *Bellew.*] Where do you hold your Court?—In a part of the Cathedral in Cork.

1559. Mr. *Solicitor-General for Ireland.*] Where do you deposit the wills?—The Registry Office immediately adjoins it.

1560. Mr. *Bellew.*] Where you hold your Court, are the rules and regulations printed and hung up?—They are rather too long to be printed.

1561. *Chairman.*] Is there any scale of charges hung up?—Yes, in the Registry Office there is a scale of fees; that which is adopted in the Archdiocese of Dublin, by an order; and, I believe, it follows the table prescribed by the Act of Parliament of 1663.

1562. Can you state what the expense of proving a will in the common form, without any contest, is in your Court?—I can approximate to it pretty nearly. If it is small, under 50 *l.*, exclusively of the stamp-duty, the costs would not be more than 3 *l.* or 4 *l.* In poorer cases, half fees are charged, 30 *s.*, and in cases of great difficulties and distress no fees are charged at all.

1563. That is entirely a matter of benevolence on your part?—Yes, it is optional; but it is the general practice.

1564. And it might not be adopted by your successor?—It might not. Speaking of the expense of taking out a probate, except in contested cases, the Proctors' charges do not exceed 6 *l.*, and, I believe, the office fees are 2 *l.* or 3 *l.* more.

1565. Does your experience extend to any other Diocesan Courts besides your own?—To none beyond my own.

1566. Can you state whether the smaller Diocesan Courts are managed equally as well as yours?—I would rather confine myself to what I am acquainted with.

1567. You can only speak as regards those two Courts?—That is all.

1568. Mr. *Bellew.*] How many days, usually, do you sit in a month?—Twice a month regularly whenever business had required it: I have sat from day to day; but, owing to the nature of the practice in that Court, to sit more frequently than twice a month would involve unnecessary expense to the suitors. When witnesses are under examination, the Court does not sit again until they are ready to take the deposition, but whenever a Proctor or Attorney expresses a wish that the Court should sit to save time or expense, I am always ready to do so.

1569. What number of days do you usually sit in a month?—Formally two days in a month; it depends entirely upon the number of cases before the Court; sometimes there is no case occurs in a month; then the sitting would be only two days; on other occasions, when a suit of any weight is before the Court, the sittings would be oftener.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

1570. Are there 24 days more in the year on which the Court sits, besides the 24 regular days?—I should say there are.

1571. *Chairman.*] Do you take any steps to ascertain, before you grant a probate, whether there are *bona notabilia* out of your diocese?—I can do no more than warn the parties, explaining to them the oath, and directing them to be careful in drawing up the schedule of the property.

1572. Have you ever, in an inventory of assets, a judgment-debt due to any of the parties?—Yes; and I have always directed, although that comes more in the Registry business than in mine, those things to be sent to Dublin to the Prerogative Court, and very great care is taken in those cases.

1573. If there should be an appeal from your Court, to what Court does it go?—To the Metropolitan Court of Dublin.

1574. And if an appeal should be necessary from that Court, to which Court does it go?—To the Court of Delegates.

1575. Do you not consider that it would be advisable to diminish the expense of that appellate jurisdiction, by not allowing the matter to go through three gradations of appeal?—The expense is not very great, I believe, from the Diocesan to the Metropolitan Court; I am not aware what the expense is from the Metropolitan Court to the Court of Delegates. There have been no appeals from my decisions from Cork and Ross. There has been one from Cloyne.

1576. Have you formed any opinion as to the prudence of introducing the system of *vivâ voce* examination in certain cases?—I think it would be very desirable in many cases; for instance, with regard to small sums requiring probate or administration. With the consent of the parties on both sides, I have heard witnesses *vivâ voce* occasionally.

1577. You are decidedly in favour of permitting the introduction of that system in certain cases?—I think it should be permissive. In heavier cases, it might be desirable to have written depositions, as it would be more easy to transmit them to Dublin than to bring up witnesses.

1578. Have you formed any opinion as to trial by jury?—I think it would be very important to be allowed to try certain matters of fact.

1579. You are Vicar-General of both dioceses; suppose there is property in the Diocese of Cloyne, and probate is taken out in the Diocese of Cork and Ross, that probate would not be sufficient for both, would it?—It is never so taken out; it becomes then *bona notabilia* in a different diocese.

1580. The probate would be void, if there was property in Cloyne, would it not?—If the property be in Cloyne and in Cork, the matter must go to Dublin, owing to the wording of the clause in the Act of Parliament uniting the jurisdiction of the Bishoprics; it was doubtful, and it is a question among legal men, whether the jurisdiction was consolidated or not; in case of doubt, I would not act. Whenever a party dies, having property in Cloyne and property in Cork, the matter goes to Dublin.

1581. Would not a party to a will have to incur some expense in travelling to Cork before he ascertains that?—No, the Proctors are quite well acquainted with that.

1582. Must not a party apply to a Proctor at Cork before he ascertains whether that is necessary or not?—There are two Proctors residing in Cloyne.

1583. Suppose a party seeking a probate resides at Bantry, must he not go to Cork before he ascertains that you have no power to grant him a proper probate?—I do not think it is necessary to go to Cork; any Attorney could inform him.

1584. He must consult somebody, must he not?—Yes.

1585. Suppose there was but one Court of Probate in Ireland, and that in Dublin, and that Attornies were allowed to practise in that Court, and Commissioners were appointed in the different districts in Ireland to receive affidavits, could not a party obtain probate, without going to Cork, in his own district, from Dublin, through his Attorney?—He would seek an Attorney in the first instance.

1586. Have you not said, that he could find an Attorney in his district?—An expense would be saved in consulting an Attorney; but in many contested cases I think it would be better to have a local jurisdiction, than to have to go to Dublin.

1587. As regards the contentious jurisdiction, you think a local jurisdiction would be better than the same jurisdiction in Dublin?—I think it would be cheaper for

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

for the parties to have a local tribunal to which they could have recourse in every case.

1588. Can you inform the Committee whether, if there was one Court of Probate in Dublin, and Attornies were allowed to practise in that Court, a party living in a remote district in the county of Cork might not communicate with his Attorney, have the will sent to Dublin, and then swear the necessary affidavit before the Commissioner in the district, without being put to the trouble of going to Cork?—That might be so; and in Cork and Cloyne, in the same way, Attornies, instead of writing to Dublin, might write to Cork and get the same information.

1589. If this Bill passed, it would be unnecessary to employ a Proctor; and do not you consider that a farmer could obtain his probate at a less expense directly through his Attorney, without employing any other person?—I am not aware. I think with regard to the scale of fees which is appended to the Bill, that if that rule were established for Cork, or for Cloyne, or for any other Diocesan Court, and the process were simplified, it would be better to have a tribunal to apply to, nearer than Dublin.

1590. Do you consider that having to apply to two persons diminishes the expense?—It is not necessary to employ two persons always; the Proctors are also Attornies, and parties generally write to them direct.

1591. Take the case of a farmer in the country applying to a local Solicitor, do you consider in that case that his expenses will be reduced by requiring him to apply also to a Proctor?—Unquestionably, the fewer the number of parties to be applied to, the less the expense will be.

1592. Mr. *G. A. Hamilton.*] Would there be fewer?—That is a question; the Honourable Chairman supposes that there would be fewer.

1593. In point of fact, would there be fewer?—Generally speaking, they apply to a Proctor at once, and he is an Attorney.

1594. Mr. *Fagan.*] How many Proctors are there in Cork?—Six.

1595. Mr. *O'Flaherty.*] Are you at all aware of the proceedings in other Courts?—No, I am not at all acquainted with them.

1596. Have you heard that in other Diocesan Courts in the country the Proctors are not Attornies?—I am not sure whether one of the Proctors at Cloyne, who was not appointed by me, is not a Solicitor; I think he is not.

1597. Generally, you may have heard that it is not the case that in every Diocesan Court they are Attornies?—Certainly, there are instances of that where the Proctors are not Attornies.

1598. Mr. *Page Wood.*] Have you many litigated causes in the course of a year in your Court?—In the last three years, in the two dioceses, the average was, I think, 343 or 330 testamentary cases.

1599. I asked you what the number of litigated cases was?—Forty-five were litigated in Cloyne; when I say litigated, I require cases to come into Court where there is any doubt or difficulty, for the purpose of putting on record the grounds of the decision I come to.

1600. That would occur frequently, where there was some defect in the attestation, or matters of that kind, would it not?—Yes, exactly.

1601. But in cases in which witnesses were examined, were they many or few?—Not more than 17 or 18 since 1837, in Cork, of what I should call heavy cases.

1602. With regard to the 45 litigated cases, would there be any difficulty in submitting a point of law of the description that you have named to a Judge in Dublin, in the same manner as it is now submitted to you in Cork?—There would be no difficulty.

1603. Would there be any increase in the expense?—No; if witnesses were necessary to be examined, of course great expense would be incurred.

1604. In uncontested cases, where the only evidence that you would require would be, as I may say, to satisfy the mind of the Court, could not that be done by affidavit, and transmitted to the Prerogative Court?—Clearly.

1605. *Chairman.*] In a litigated case, if there was a reference to the Judge above, and he sent an issue to be tried before the Judge of Assize, or before an Assistant Barrister at Sessions, would not that materially limit the expense?—I do not know what the expense would be, but that would be quite effective.

1606. Are not sessions held in Bantry?—Yes; quarter sessions are held in five or six places.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

1607. It would be more convenient to take witnesses there than to Cork, would it not?—Yes, in some cases.

1608. Have you any doubt about it; what is the extent of your jurisdiction?—The entire county of Cork is in the Diocese of Cork, Cloyne and Ross, except two or three townlands.

1609. Might not some parties be 70 or 80 miles from you?—I do not think they are.

1610. How far is Skibbereen from Cork?—I suppose over 50 miles.

1611. Castletown Berehaven is in your district, is it not?—Yes.

1612. What is the distance to Castletown Berehaven?—

1613. You mentioned that there were six Proctors in Cork?—Yes.

1614. Is Mr. Exham one of those?—Yes.

1615. Are you aware that he has signed a petition to this House in favour of this Bill?—I am aware that he did; but he said that he did not know what the petition was; that he had signed it without reading it.

1616. Will you just look at that petition—[*the same being handed to the Witness*]—you will see the names of Messrs. Parker & Large; are they not a very respectable and eminent firm in Cork?—They are; I am acquainted with them all.

1617. And all those who have signed the petition in favour of this Bill?—Yes; I am acquainted with most of them, and they are all most respectable men.

1618. Mr. *Bellew.*] Do you concur in the statement contained in that Petition; will you read it?—"The humble Petition of the undersigned Attornies practising in the city of Cork, showeth, that your petitioners approve of the measure now pending in your honourable House to improve the practices of the Court of Prerogative in Ireland; that the provisions of the Bill, whereby the Court will be opened to the legal profession, is one calculated to be of great advantage, as the suitors in this Court have been prejudiced by the withdrawals of their suits from the active superintendence of their usual professional advisers, and petitioners have felt that circumstance to be an anomalous grievance: petitioners pray your honourable House to pass the Court of Prerogative (Ireland) Bill, and as in duty bound they will ever pray."

1619. You have stated that that petition is, to your knowledge, signed by the most respectable firms in the City of Cork?—I know nearly every name, and there cannot be more respectable gentlemen.

1620. Mr. *G. A. Hamilton.*] Do you agree in the statements contained in that petition yourself?—I agree in the other petition, the opposing petition of the Proctors.

1621. The opposing petition states, "That since the appointment of the present Judge, in the year 1833, there was in no single instance an appeal from his decision, though many important testamentary cases came before him?"—Yes, there was an appeal from Cloyne, but not from Cork.

1622. *Chairman.*] Was there not an appeal in the case of Boles and Marks?—Yes.

1623. Did you know the case of ——— *v.* ———?—No. There was only one decision reversed, and that was Boles and Marks.

1624. Mr. *G. A. Hamilton.*] They state further, "That the practitioners of each of these Courts consist of two Advocates, who are Barristers-at-law, and reside in the city of Cork, one being the Recorder of that city, and six Proctors; and that the number of these being limited, they have always been selected from persons of established character, which your petitioners humbly submit is of the first importance, as cases frequently come before them where fraud might be practised with impunity." Do you agree in that statement?—I do.

1625. Mr. *Sadleir.*] I collected from your evidence that there were four Advocates practising in Cork?—There are four Advocates, but only two reside; there are two resident practitioners.

1626. The petition is correct, is it not?—Yes, quite correct.

1627. *Chairman.*] Who are the two Advocates that you refer to?—T. Forsayeth, esq., the Recorder, and Mr. Justin M'Cartie, esq.

1628. They are both members of the Church of England, are they not?—They are.

1629. There

Printed image digitised by the University of Southampton Library Digitisation Unit

1629. There are no Roman Catholics regularly admitted Advocates in your Court; no Proctor is a Roman Catholic?—No.

1630. Mr. *G. A. Hamilton.*] In point of fact, are Roman Catholics admitted by courtesy, or otherwise, to practise?—There are two resident Roman Catholic Barristers in Cork, who are regularly employed in every case.

1631. Do they regularly practise?—Yes, regularly.

1632. Mr. *Fagan.*] Do you require that they should be Doctors of Laws?—Yes; the obstacle that stands in the way is the stamp-duty, which makes the expense of the degree very heavy, 40*l.* or 50*l.*

1633. *Chairman.*] Will you inform the Committee what is the average number of cases, of all kinds, litigated or not, which are decided in your Court in each year?—There are 340 testamentary cases between the two Courts within three years.

1634. In both Courts?—Yes.

1635. In the two dioceses?—Yes.

1636. That would be at the rate of about 110 cases per annum for the two Courts?—Yes.

1637. Or 50 cases for each diocese?—Yes, about that; from 50 to 60, taking the average of three years.

1638. Litigated, and not litigated?—Yes.

1639. Fifty or 60, taking the average?—Rather more.

1640. This separate jurisdiction is kept up, with all its advantages and disadvantages, for those 50 or 60 cases in each diocese?—Those have been all within the last three years.

1641. Therefore, for the last three years this separate testamentary jurisdiction has been kept up in each diocese for those 50 or 60 cases?—Yes.

1642. Yours is the most extensive jurisdiction in Ireland, is it not?—It is, I believe, the most extensive in point of territory, and the population is very large, but I believe there may be more business in other Courts.

1643. Mr. *G. A. Hamilton.*] The petition states, that in the opinion of the petitioners "the removal of testamentary cases to the Prerogative Court, as contemplated by the present Bill, will necessarily cause considerable inconvenience to the inhabitants of these dioceses, and particularly to the lower classes, who, in contested cases, will be unable to incur the expense of attending, with their witnesses, in Dublin, which a *vivâ voce* examination, as contemplated, will render necessary, and that probably in many cases wills will not be proved at all;" do you concur in that statement?—There are many cases which I have heard of, where parties would not have taken out administration or probate if the expense were considerable, or the distance were great.

1644. Mr. *Bellew.*] Would not that objection be met, as you have before stated, if the affidavits were taken in a quarter sessions town?—It would to a great extent diminish the expense; I do not know the amount that the Attornies would be entitled to charge for doing it.

1645. *Chairman.*] Is this statement in the petition correct, "That the provisions of the Bill, whereby the Court will be opened to the legal profession, is one calculated to be of great advantage, as the suitors in this Court have been prejudiced by the withdrawals of their suits from the active superintendence of their usual professional advisers"?—I do not know that that is injurious.

1646. Would you say that country farmers in the remote parts of Cork would not be anxious to employ their own local Attornies?—I should rather employ such a person myself.

1647. As regards poor farmers living in the remote parts of Cork, who are Roman Catholics, would they prefer employing a Proctor to their own local Attorney?—If they were aware, as I think they are, that a Proctor would be more competent to do the business than the Attorney, they would go to him in the first instance.

1648. As things are, do you consider that a farmer living in a remote part of the county of Cork would prefer employing a Proctor to an Attorney?—Of course he would prefer employing a person whom he knows, particularly as there would be only one instead of two.

1649. In point of fact, the present system is against the wishes of the people?—I merely speak in the abstract; I cannot speak from my own knowledge.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

1650. Do you consider that the present system, working in that way, is against the wishes of those people who are most interested?—I can hardly take upon myself to say that, or to base an argument upon such an inference.

1651. Will you say that farmers living in the county of Cork have any disposition to employ the Proctors in Cork, of whom they know nothing?—I think they would go to the party who they thought would do the business best.

1652. Mr. *Bellew.*] Is it not the superior knowledge of the practice that is acquired by the practitioners in your Court that secures to them the exclusive practice in it?—That is undoubtedly the cause of it.

1653. Supposing only 20 Advocates and 20 Attornies were permitted to practise in the Court of Chancery, would it not in the same way happen that those men would obtain a more accurate knowledge of the proceedings in the Court?—Yes; individually I have no objection to throw it open; but I have not considered that branch of the question.

1654. *Chairman.*] Are not Messrs. Parker and Large as competent men to discharge such duties as any Proctors in the Court?—I do not think they have been reading Ecclesiastical Law, and the late Will Act many of them are not acquainted with; it is not very well understood.

1655. Do you consider that those gentlemen do not find it necessary to consider that Act with a view to the other branches of their profession?—I do not know; they may not be acquainted with the practice of the Courts.

1656. What are the names of the Proctors practising in your Court?—Mr. Exham, Mr. Gregg, Mr. Morgan, Mr. Hodder, Mr. Tuckey, and Mr. Lane; there are six.

1657. What do you mean by "Proctor of Office;" Mr. Exham signs himself so?—He is the Senior Proctor.

1658. Do you not consider that the Proctors in Cork, and the gentlemen practising in your Court, are in familiar communication with the Roman Catholic population of the county of Cork?—I think they are; the most of them are Quarter Sessions Attornies, and practise in the Quarter Sessions Courts very extensively.

1659. Mr. *G. A. Hamilton.*] Without reference to the expediency of admitting such gentlemen as those who have been referred to, do you think that to admit Attornies to practise in those Courts would be for the advantage of the suitors or not?—I think, so far as the parties are concerned, it would be an advantage. A man would rather employ a person that he knew; but on the other hand, the Proctors would say, that having paid a heavy stamp-duty, and having qualified themselves, it would be unfair to admit them.

1660. *Chairman.*] Are those gentlemen, the six Proctors, who have signed this Petition, to be compared, in point of professional standing, with such men as Messrs. Parker & Large or Messrs. Noblett & Jameson?—Under the correction of the Honourable Member, Mr. Fagan, I believe that Messrs. Exham & Gregg are as competent and as highly qualified as any gentlemen to be found.

1661. Are they, in point of professional standing, in the same position as those gentlemen that I have named?—I should say in rather a higher standing as Solicitors.

1662. Mr. *Sadleir.*] Do you conceive that Messrs. Exham and Tuckey have a larger professional business, as Solicitors, than the firm of Parker & Large?—I believe Mr. Exham has as large a business as any firm in the city of Cork. Mr. Tuckey is a young man, but I believe he has a very extensive practice.

1663. *Chairman.*] Has Mr. George Hodder a very extensive practice?—He is also a young man.

1664. Has Mr. Lane?—He is a man of a very extensive business as a young man; they are all respectable men.

1665. Messrs. Foot & Fitzsimons, are they not the senior and most responsible firm in the city of Cork?—I should not like to draw a distinction; they are a very old and respectable firm. I believe Mr. Exham's is rather an older firm.

1666. Mr. *Bellew.*] You stated, that in some important cases Advocates are allowed to practise who are not regular members of the Court?—Yes, two Barristers.

1667. Is there not rather an anomaly in that, that in cases of greater importance the same exclusive system should not be pursued as in an ordinary case of practice?—I conceive

Printed image digitised by the University of Southampton Library Digitisation Unit

—I conceive that as Judge of the Court I have a power in the one case which I have not in the other, and I am glad to exercise it when I conceive it necessary.

1668. Mr. *Sadleir.*] Do you wish to convey to the Committee, that the rural population in the county of Cork are in the habit of communicating directly with some one of those six Proctors, when they want business done in your Court, and not through the intervention and agency of their local legal advisers who are resident in the various towns within their own immediate neighbourhood or district? —In simple cases, that is, in cases of mere form, the intervention of a Proctor is not always required. The Solicitor goes to the Registrar, and if the case is simple, the intervention of a Proctor is frequently dispensed with to save the expense. But if it is a difficult case, or where a will requires to be engrossed, then it goes through a Proctor, and frequently it comes through a Solicitor.

1669. Do you mean to convey to the Committee, that in your opinion the rural population of the county of Cork get their business done in the Diocesan Court through the agency and intervention of the local Attornies in their district?—Only incidentally; I can hardly say that it is the practice; the regular mode is through a Proctor, undoubtedly.

1670. Will you state whether you think the rural population in the county of Cork transact their business in your Court through the agency of some one of the six Proctors, without the intervention of a local Attorney resident in their district? —Ultimately it must be, I should say, done through a Proctor.

1671. Independently altogether of the local Attornies, who are their usual legal advisers?—I presume that, in the first instance, they frequently resort to a local Attorney, or their friends, but ultimately the matter must come through a Proctor.

1672. *Chairman.*] Is it not the local Attorney who employs a Proctor for them? —Certainly.

1673. The first application by a party is to his local Attorney to tell him what he is to do, is it not?—Yes, and he sends him to a Proctor.

1674. If a local Attorney were allowed to practise in the Court, would that render unnecessary the intervention of the Proctor?—Yes; provided that all the Solicitors were acquainted with the practice of the Court.

1675. Mr. *Sadleir.*] You stated that in ordinary cases, where the voluntary jurisdiction is appealed to, the public frequently obtain probates or administrations without the intervention of a Proctor at all?—I said, where there is a very poor case, a very simple case, that the Registrar alone is competent to give directions, and then a Proctor is not employed at all.

1676. But a local Attorney is?—He may come in and state facts in the office; but that is not the regular course.

1677. However simple the case, must there not be either a Proctor or an Attorney representing the party applying for a probate or administration?—Yes.

1678. In very simple cases, and in some cases where the parties are very poor, do you wish to convey to the Committee that it frequently happens that a local Attorney is the party to act?—Frequently.

1679. Then to go to contested cases, do you wish to convey to the Committee, that in those cases the public resort directly to some one of the six gentlemen practising as Proctors in your Court, and that they do not consult or advise with their Attorney or Solicitor at all?—I could not say that; I have no means of ascertaining that fact; I presume that they go to their friends first, and to the Proctor afterwards.

1680. If the public are in the habit of consulting a local Attorney or Solicitor, and also of employing a Proctor in contested cases, would it not necessarily follow that they are charged two sets of fees?—Clearly; I have no jurisdiction over what passes between themselves and the Solicitors, but I have over the Proctors.

1681. You have stated that you believed the expense of a probate or administration in the Diocesan Court, taken out in the common form, exclusive of the stamp-duty, would be from three to four pounds?—The Proctor's fees; the office fees are either 2 *l.* or 3 *l.*

1682. That would come to something like 6 *l.* 10 *s.*?—Something about that, in proportion to the amount of the assets.

1683. Exclusive of stamp-duty?—Yes.

1684. When you were classifying the contested cases, you did not include within that number those cases in which a caveat may be entered, and some rules entered for the purposes of delay, and cases in which, ultimately, no material

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

issue would come to be determined by you at all?—But very few cases of caveat have come before me; one of them was rather of importance, and it was heard *vivâ voce*, by the consent of the parties on both sides. The caveator was condemned in costs, as I thought the objection was frivolous, and that had the effect of preventing any attempt being made again.

1685. Do many cases occur in either of your Courts, where parties enter a caveat, and shortly afterwards abandon their opposition, and allow the probate or administration to issue?—Very seldom; it was tried once, and the parties were punished in costs. I never knew it done without any colour of ground to go on.

1686. You stated that great care was taken to avoid the evils and the inconveniences of issuing from your Courts probates or administrations which might be absolutely void; can you undertake to say, that no void probate or administration has issued from either of those Courts since you became the head of them?—I cannot say that; but none has come to my knowledge.

1687. You can say that you never knew or heard of any instance in which any probate or administration that has issued from either of your Courts has become void?—I cannot call to recollection any such instance.

1688. Mr. *G. A. Hamilton.*] Have you, as Judge of the Court, any power to regulate the costs?—No.

1689. Would it be desirable that such a power should be conferred upon the Judges of Diocesan Courts?—Yes, I think it would be desirable that such a power should be conferred upon the Judge; and a Schedule should fix the maximum, and that the Judge should be permitted to diminish it according to circumstances.

1690. Do you think it desirable, where two dioceses are circumstanced as those are over which you preside, that they should be consolidated with reference to testamentary jurisdiction?—Undoubtedly, most desirable; it has an anomalous effect in a great many ways.

1691. The Church Temporalities Act, which united certain dioceses, took no cognizance of the testamentary jurisdiction of the separate Courts, and left that jurisdiction as it was previously?—The clause was worded so loosely, that it was doubtful whether it was consolidated or united, or merely held together.

1692. *Chairman.*] Has Mr. Henry Stopford Kyle ever acted as Registrar?—He is consulted frequently by Mr. Bennett, his deputy.

1693. He resides in London, does he not?—Yes.

1694. Do you consider it advisable that ecclesiastics should continue to be the Judges in testamentary matters in those Courts?—I am not exactly the person to ask that question of, I think.

1695. Is there any ecclesiastical reason why they should continue to be the Judges?—I do not see any reason against them, if they are qualified.

1696. Is there any ecclesiastical reason for it?—None, that I am aware of.

1697. Are you aware that the Judges of those Courts, with two exceptions throughout Ireland, are ecclesiastics?—There are two, Dr. Radcliffe and Dr. Longfield; I cannot go through them all, but there are some who are not clergymen.

1698. Do you know of any other lay Judges, except Dr. Radcliffe and Dr. Longfield?—I am not acquainted with them, and I cannot say.

1699. Does Thom's Dublin Almanac contain a proper statement of them?—Yes, it does, undoubtedly.

1700. Who appoints the Registrar of the Court?—The Bishop of the diocese. Dr. Radcliffe is Judge of two Courts.

1701. Of what diocese is Dr. Longfield Judge?—Of Ossory.

1702. Where does that Court hold its sittings?—In Kilkenny.

1703. He is at present a Commissioner for the sale of Encumbered Estates, is he not?—Yes.

1704. And resident in Dublin?—Yes.

1705. Mr. *Bellew.*] What is the amount of fees received by the Registrar in your Court?—I am not aware.

1706. Mr. *Fagan.*] Can you state which of the two petitions before the Committee was sent forward first?—I cannot say; I believe that the first one was in favour of the Bill. I know the other was talked of for a long time, but owing to the illness of one of the Proctors it was postponed.

1707. How do you account for so intelligent a gentleman as Mr. Exham, the first Proctor in your Court, signing this petition in favour of this Bill, and signing subsequently

Printed image digitised by the University of Southampton Library Digitisation Unit

subsequently a petition against the Bill?—I cannot say; he stated that he did it inadvertently, and he had not read it.

1708. Was Mr. Kyle practising in England when he was appointed Registrar?—Yes, he was.

1709. He was appointed Registrar, when practising as a Barrister in London?—He was.

1710. Mr. *G. A. Hamilton.*] Are the documents in your Court in safety and security?—Yes, they are very well kept.

1711. In what manner are they kept?—They are in the office in regular divisions, and there is a regularly classified alphabetical index. The wills date from the year 1755.

1712. Are they secured against fire?—I believe they are; there is not a fire-proof building, but they are quite safe.

1713. Lord *Naas.*] Are you aware of the mode of keeping them in the Prerogative Court in Dublin?—No.

1714. Mr. *Fagan.*] Has your attention been drawn to the religion of parties taking out probates or administrations in your Courts?—I never asked the question.

1715. You are not aware whether the larger amount of property for which probates or administrations were taken out belonged to Roman Catholics?—I have no means of knowing that; I never asked the question.

1716. Mr. *G. A. Hamilton.*] Are any of the documents in your Court of ancient date?—The oldest book in our office is a book containing wills of 1575; then there is an accurately classified set of wills from the year 1606 up to the present date, alphabetically arranged and indexed.

1717. *Chairman.*] Are you aware that Dr. Stock, the present Judge of the Admiralty Court, in speaking of the Diocesan Courts of Ireland, was in favour of their jurisdiction being vested in one Court of Prerogative?—Yes.

1718. And he drew a distinction between your Court, as being a well-managed one, and the other Diocesan Courts in Ireland?—He excepted Armagh, Cork and Belfast, in which he said the business was well done.

1719. And in the others it was not so?—That would be the inference.

1720. Mr. *Fagan.*] Do you administer any particular oaths to Proctors, on admitting them to practise in your Court?—It ought to be always done, but I am not sure whether it is always done; I have administered the oath to Advocates also.

1721. Can you say what those oaths are; is the oath against transubstantiation administered?—I think the oaths of abjuration and supremacy are the two oaths.

1722. Mr. *G. A. Hamilton.*] Supposing the Diocesan Courts were consolidated, there being one Court for each Bishoprick, would it be desirable to give parties the option, in any case, of applying, if they thought proper, for a probate to the Prerogative Court in Dublin?—Yes; I think it would be desirable, if they had any distrust of the tribunal, that they might go to Dublin, but I think they should have a local tribunal in each district, and if they thought fit to go to Dublin, they might do so.

1723. You suggested that it would be desirable that all wills should be sent to a registry office in Dublin, and that attested copies should be retained in each local district?—I think it is a very important feature in the present Bill to do so.

1724. Mr. *Bellew.*] Could not copies of wills be kept in the Clerk of the Peace's office?—Except that all the early records have been kept there.

1725. Mr. *Fagan.*] You have stated that the law requires you to administer certain oaths before Attornies are allowed to practise in your Court?—Yes.

1726. Do not you act illegally in allowing Attornies occasionally, who are not Proctors, to practise in the Court?—They never act in the Court at all; it is only the Advocates; no person can address the Court but a Proctor.

1727. Do you remember the case of the disputed will of Miss M'Carthy, who was in a Roman Catholic Convent near Cork?—Yes, I heard of it.

1728. That was a very much litigated case, was it not?—Yes.

1729. The question in dispute was, whether she had a right to make a will, having entered into a religious institution, was it not?—I believe it was connected with her religious vows.

1730. Do you consider that that was a question involving Roman Catholic discipline, and if so, that an ecclesiastic of the Established Church would have been a proper person to decide upon that question?—I think that was more for the Court of Chancery.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

1731. Supposing that question arose in your Court, would you consider yourself the proper person to decide upon it?—I do not think that that question could have been brought before me.

1732. Supposing it had been, and that the same question was raised as to her right to make a will, she being a member of a Roman Catholic Religious Institution, and having taken the vows, do you consider that it would have been desirable in Ireland, that a Protestant ecclesiastic should decide upon a question of that nature?—I should not have felt myself justified in going beyond the Statute with regard to making wills; I should not have gone into the religious question.

1733. If a religious question was raised, would you think it desirable that a Protestant ecclesiastic should decide upon it?—I do not think such a question would have come within the cognizance of my Court at all.

1734. Mr. *G. A. Hamilton.*] Could a question with regard to the competency of a person to make a will arise in your Court?—The only competency would be as to the sanity or insanity of a party, or if he were a felon; religious incapacity could not come before me; I would not entertain it for a moment.

1735. *Chairman.*] If you refused to entertain it, that would be one way of deciding the question, would it not?—That would depend entirely upon the way of bringing it before me.

1736. Are you aware how that case was decided?—I really am not very well versed in that case; but I do not think I could entertain it at all.

1737. Mr. *Goulburn.*] The decision was pronounced by the Lord Chancellor?—Yes.

1738. Mr. *Page Wood.*] You do not enter into questions of influence, when you inquire into the effect of a will?—Undue influence might be a ground for invalidating a will.

1739. Mr. *Goulburn.*] If the question of undue influence were raised before you, would that be properly a matter coming within your jurisdiction?—Undue influence certainly would come within the Ecclesiastical Laws.

1740. *Chairman.*] Supposing this question were raised, whether a Roman Catholic clergyman had not exercised undue influence, as in the case of Ffrench *v.* Ffrench, do you think it would be advisable that an ecclesiastic of the Established Church should decide that question as to undue influence being exercised?—I do not think that would be considered undue influence in the legal acceptation of the term.

1741. You are aware of the case to which I have referred, namely, the case of Ffrench *v.* Ffrench, where a charge was made that a Roman Catholic clergyman had exercised undue influence; if that question were raised before you, do you think it would be desirable that an ecclesiastic of the Established Church should decide that question?—I should rather avoid it myself.

1742. With an entire body of Protestant Proctors and Protestant Advocates, do you think that a case of that nature should be so decided?—So far as I am concerned, I should have had the assistance of Roman Catholic gentlemen; it would not be exclusively confined to Protestants.

1743. You stated, did you not, that you could not allow any Roman Catholics to be admitted, either as Proctors or as Advocates?—But they practise with Advocates; for instance, Messrs. Walsh and Scannell, Roman Catholic Barristers.

1744. That is, provided there is an Advocate of the Established Church with them?—In such heavy cases, there are always more than one.

1745. Would you allow them to practise alone, without being associated with a Protestant Advocate?—I could not do so.

1746. Mr. *Sadleir.*] You stated, did you not, that there were only two resident Advocates in Cork?—That is all.

1747. Supposing that those two gentlemen are retained on one side; how does the other party obtain the assistance of an Advocate; do you consider then that he is entitled to call in one of those Roman Catholic Barristers?—They generally retain an Advocate in Dublin.

1748. I have put the case of the two resident Barristers being employed by one party; how would you proceed then?—I do not think I should be at liberty to extend the indulgence or the relaxation of the rule, unless there was an Advocate of the Court on each side.

1749. If a very active party choose to retain the two resident Advocates, and to pay the two absent ones to remain where they were in Dublin, the other party might be placed in a very disadvantageous position, might he not?—No; any Advocate

Printed image digitised by the University of Southampton Library Digitisation Unit

Advocate of the Court of Prerogative in Dublin can practise *ex officio* all through the country; and therefore a party could not be confined to the two absent and the two resident Advocates.

1750. Would not the party have to pay him a special fee for coming to Cork? —Yes.

1751. *Chairman.*] If one party engaged the two resident Advocates, the other party could not have justice done him without bringing down specially an Advocate from Dublin?—They generally arrange that.

1752. But would not that be so?—It might happen that the resident Advocates were all on one side.

1753. And, therefore, the other party would have to bring an Advocate from Dublin at considerable expense?—Yes.

1754. Mr. *Fagan.*] Is there any reason for limiting the number of Advocates in your Court?—None; the practical reason is, the amount of the stamp duty; it is very heavy.

1755. Lord *Naas.*] In point of fact, the constitution of the Court has nothing to do with the paucity of the number of Advocates?—No; it is merely the English stamp duties which are extended to Ireland; the stamp duty for a Doctor of Laws is double what it used to be.

1756. *Chairman.*] Are there Roman Catholic Barristers resident in Cork?—Yes.

1757. If you could admit them as Advocates, would they become Advocates of your Court?—I should think they would; and I should be glad of their assistance in testamentary matters.

1758. Has not Mr. Walsh the Barrister by far the largest business in the city of Cork?—I believe Mr. Forsayeth, the Recorder, has more.

1759. Mr. Walsh is in considerable practice, is he not?—Yes, very considerable.

1760. He is a Roman Catholic, is he not?—Yes, and a very competent person; he is a Professor of Laws in the Queen's College, Cork; Mr. Scannell also has a very large business.

1761. Mr. *G. A. Hamilton.*] You have stated, that if a probate should be issued in your Court, and it should afterwards be discovered that there were goods in another diocese, that that probate would be invalidated?—It would.

1762. Would it be desirable to provide for that case, that there should be some short process by which a probate issued in one diocese should be rendered valid, either in the Prerogative Court, or in reference to other dioceses?—That would be very important; and it might be arranged by an affidavit, stating that the probate had been taken out inadvertently, and without the knowledge of there being *bona notabilia* in another diocese; the party might have the probate from the Court below recognised by the Court above, without going to the expense of taking out an entirely new probate, taking it for granted that the party proved that it had been inadvertent, and not intentional, and that would meet the difficulty, I think, that the honourable Chairman referred to.

1763. You are aware, I believe, that the Commissioners have recommended, in reference to England, that the local jurisdiction should be abolished?—They have.

1764. Can you state whether the case of the Diocesan Courts in Ireland is analogous to that of similar Courts in England?—No, the cases are different; in England there is a great variety of ecclesiastical jurisdiction. There are Archdeacons' Courts; there are Peculiars, Diocesan Courts, Metropolitan Courts, and a Court of Arches, and a great number of gradations. In Ireland there are no Courts except the Metropolitan and Consistorial Courts; there are no Archdeacons' Courts, nor any Peculiars; there was one Peculiar, which has been suspended, the Deanery of Lismore. The jurisdiction of Newry has never been recognised, though it has been claimed, so that the case of the Ecclesiastical Courts in Ireland and in England is not exactly the same.

1765. *Chairman.*] Is not the case of a Diocesan Court in Ireland, the same as that of a Diocesan Court in England?—Yes, but there is not the same number of Courts.

1766. Mr. *G. A. Hamilton.*] The Commissioners recommended that the local jurisdiction should be abolished; but my question was put to ascertain whether there was any analogy between the local jurisdictions connected with the Diocesan Courts in Ireland and those in England?—I understood the word "local" to embrace all the minor courts.

1767. You are of opinion that the Diocesan Courts in Ireland might be to a certain extent consolidated, but not abolished?—I think it would be better to

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

consolidate them; that they should have the benefit of the present Bill as far as the reduction of costs goes, giving power to the Judge to diminish them further according to circumstances, and also to legalize the practice of taking *vivâ voce* evidence in certain cases.

1768. You think there should be a Diocesan Court for each of the ten Bishopricks and two Archbishopricks?—Yes.

1769. Instead of the 22?—There are not exactly 22; some of them are consolidated.

1770. Mr. *Bellew.*] Did you not say before, that you saw no objection to having the Courts all consolidated in the Prerogative Court in Dublin, subject to having copies of wills retained in the local districts?—A general registry I said would be very desirable.

1771. Mr. *Sadleir.*] You do not think it would be desirable to alter the system so as to avoid the recurrence of those evils that have arisen from issuing void probates and void administrations from the Diocesan Courts?—I have not, within my own knowledge, met with a case of such an administration having been granted. I think in cases where it has occurred, it might easily be remedied, on satisfying the Court to whom the administration or probate should have gone in the first instance, that it had been inadvertently done, by an affidavit, and then the Court above, recognizing the probate of the Court below, provided they were satisfied that it arose from inadvertence.

1772. Is there never any difficulty in ascertaining whether there are *bona notabilia* out of the district?—Not generally; I have found no difficulty in ascertaining that.

1773. Supposing a trader should die, to whom there were several shop-debts due, and who might have obtained, in his lifetime, a Civil Bill Decree, that Civil Bill Decree might be registered in Dublin under the recent Act?—Yes, it might occur, undoubtedly, but I think it might be met.

1774. A nice question might arise, might it not, as to whether there were *bona notabilia* in that case?—It would be a nice question.

1775. And if it should be erroneously decided, the probate or administration would be absolutely void, would it not?—Yes.

1776. And every act which might have been done under it?—Yes; but the gentlemen who are consulted in such cases are pretty well acquainted with those niceties.

1777. It is rather the interest of the local practitioners and Proctors, is it not, that the probate or administration should issue from a local Court, rather than out of the Prerogative Court in Dublin?—I suppose so.

1778. Then their vigilance is rather opposed by their personal interest upon that point?—They would not act illegally or improperly in any way; they are fully of too high character.

1779. Your last observation applies merely to the Court over which you preside yourself?—Yes.

1780. Mr. *G. A. Hamilton.*] The 57th clause of the Bill proposes, that the examination of witnesses may be on oath upon interrogatories; do you think that a good mode of arriving at facts?—In some instances I consider it is; I think in heavy cases it is better done by interrogatories; as in cases of appeal the depositions can be transmitted with more ease to the Court of Appeal, and with less expense than would be incurred in sending witnesses; I think Dr. Radcliffe gave the same view in 1827.

1781. Mr. *Fagan.*] Are there any penalties imposed for practising in those Courts without taking the oaths that you have mentioned?—I believe none.

1782. It has been stated, that in Tralee the practice on the part of the Surrogate is to admit local Attornies to practise in the Court?—I fancy that there may not be sufficient number of resident qualified practitioners, which may have led to that relaxation of the rule.

1783. But there is no penalty imposed upon persons for practising without taking those oaths?—Not that I know of.

1784. If you allowed a Roman Catholic in the present state of the law to practise in your Court, without taking those oaths, nothing would result from it?—I cannot exactly say how far I should be subject to censure in neglecting to administer the law as it is my duty to do.

1785. *Chairman.*] You are in favour of reducing the present Diocesan Courts from 22 to 10?—Yes; 12 it would be.

Printed image digitised by the University of Southampton Library Digitisation Unit

1786. Why do you fix upon the number 12, seeing that the testamentary jurisdiction has nothing to do with the ecclesiastical?—It has formed a part of the Ecclesiastical Courts' jurisdiction from the time of Henry the Second downwards.

1787. Except from that ancient usage, is there any reason why the number of Testamentary Courts should correspond with the number of Bishops?—No; the reason is, that each Bishop has his own Court, and in each Diocesan Court, part of the jurisdiction was testamentary, and part was matrimonial.

1788. You would recommend that there should be a Testamentary Court for each Bishop, and no more?—No, I do not say that; I mean that the jurisdiction of each Bishop should be consolidated.

1789. That each Bishop should have a Testamentary Court?—That he should continue to have his Court, part of whose jurisdiction is testamentary, and part matrimonial.

1790. If the number of Bishops were reduced to four, you would therefore recommend that there should be only four Diocesan Courts?—That might make too small a number.

1791. Mr. *Bellew.*] Will you state in what point of view you consider that retaining 10 Courts would be desirable for suitors, rather than having the jurisdiction confined to one Court in Dublin?—I think it would be an advantage to have local Courts, as a general principle, and to have a tribunal as near as possible to the parties; at present each Court has its own jurisdiction, and, I think, the party should go to that Court. If they know that the Bishops are diminished in number, and that the jurisdiction is scattered, there is sometimes this advantage, that the parties may be labouring under uncertainty, living in the same district, whether they should go to Dublin or to Cork, for instance; I think it is desirable that the jurisdiction of the Diocesan Courts should be preserved, to be simplified and amended by the plan proposed.

1792. Did you not state that it would not be necessarily cheaper if the plan suggested were adopted of having depositions taken in a Quarter Sessions town?—I think the Diocesan Court would be as cheap as any plan that could be adopted.

1793. But not cheaper?—No, perhaps not.

1794. Therefore that advantage would not be gained of diminishing the expense?—I still apprehend that, in the event of taking parties to Dublin in contested cases; and you must have witnesses either *vivâ voce* or otherwise; and if by interrogatories, it must be done by commission.

1795. *Chairman.*] Are you aware that the present Bill provides for those difficulties?—I am aware that it provides for examination by commission in the country, or upon an issue.

1796. You speak principally with a view to contested cases; how many contested cases have you had?—I said 17 heavily contested cases; there were more, from 40 to 50, that I did not consider cases contested, which were disposed of at a single Court day; I call a case contested where Advocates have been employed for two days or more.

1797. The entire amount would not be more than 40 or 50 since 1837?—There might have been more than that.

1798. Mr. *Bellew.*] Would there not be counterbalancing advantages derived from having the Court in Dublin, and having constant sittings?—I intended to say that I sit as often as may be necessary, but, from the mode of practice in the Court, the depositions being taken in writing, if I sat every day, the expense to the suitors would be increased; I sit as often as a cause is ready to be heard.

1799. If a suitor had to come and stay in Cork, the expense would be as great as in Dublin, would it not?—No. When a witness is examined, if he is examined for a day or two, when the papers are ready to be laid before the Court for publication, then I sit again a day; if I were to sit each intermediate day, it would increase the expense to the suitors. I sit as often as a cause requires; I am always ready to sit an additional day, if the Proctor says that the cause of his client requires it.

1800. Mr. *Goulburn.*] You have stated the number of litigated cases; in how many cases of those that were litigated has there been an appeal from your decision?—None from Cork and Ross; there was one from Cloyne, in which my decision was reversed. As to the others, there was one or two very heavy cases, upon which I know the opinions of the most eminent civilians in Dublin were taken, and their verdict was, that the decisions were correct, and the grounds correct on which they were founded.

Printed image digitised by the University of Southampton Library Digitisation Unit

The Venerable *Samuel M. Kyle*, LL.D.

19 June 1850.

1801. Practically, there has been only one appeal from your decision?—Only one.

1802. *Chairman.*] Do you ever call in a legal man to act as assessor?—No, I never have. My attention has been directed to the study of the Ecclesiastical Law for a number of years, and all the Reports I procure from time to time. The gentlemen practising before me as Advocates are very competent men, and I take very copious notes of their arguments, and give the best consideration to the matter that I can.

Veneris, 21° *die Junii*, 1850.

MEMBERS PRESENT:

Mr. Monsell.	Mr. Sadleir.
Mr. Napier.	Mr. G. A. Hamilton.
Mr. Goulburn.	Mr. O'Flaherty.
Mr. Scully.	

WILLIAM KEOGH, Esq., IN THE CHAIR.

Joseph O. Radcliffe, Esq., LL. D., Q.C.; Examined.

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

1803. *Chairman.*] YOU are Judge of the Consistorial Court of Dublin, are you not?—Yes.

1804. You are also Judge of other Courts, are you not?—I am Vicar-General of Armagh, and also Vicar-General of Clogher.

1805. Are there separate Courts for each of those places?—Yes; the Court of Armagh corresponds to the Court in Dublin; it is the Metropolitan and Diocesan Court.

1806. The Consistorial Court of Dublin is the Diocesan and Metropolitan Court in Dublin?—The sub-diocese of Dublin includes the provinces of Leinster and Munster.

1807. Where is the Diocesan Court of Clogher held?—It is generally held in the court-house of Monaghan.

1808. Where are the wills in the diocese of Clogher kept?—In the Registrar's house, in the town of Monaghan.

1809. Who is the Registrar of Clogher?—The Deputy Registrar is Mr. Burnell.

1810. Who is the Registrar?—The Rev. John Gray Porter is the present Registrar.

1811. Where does he reside?—He resides in the county, near Enniskillen.

1812. He discharges his duties by deputy?—Principally, if not altogether.

1813. Who is the deputy?—Mr. Maurice Burnell.

1814. Is he a clergyman?—No, he was a Proctor.

1815. Is he an Attorney?—No; I am almost certain of the fact that he was a Proctor, and then became Deputy Registrar.

1816. Who is the Registrar of the Consistorial Court of Dublin?—The Rev. Charles Cobbe Beresford.

1817. Where does he live?—Somewhere in the country; I forget exactly the name of his place.

1818. He is not resident, is he?—No, the business is done by Mr. Samuels, his deputy.

1819. Who are the Registrars of the Diocese of Armagh?—Mr. George Scott, and, I believe, Mr. Bridges.

1820. Are they clergymen?—Neither, I believe.

1821. Do they discharge their duties by deputy?—Mr. Scott attends in person; he had been a Proctor.

1822. Do you hold a Court at Armagh yourself?—No; I have a Surrogate in each, both in Monaghan and Armagh.

1823. You discharge your duties by deputy in the Dioceses of Clogher and Armagh?—Yes, to a large extent; but subject to this, that if there were anything important, I would go down, on its being so represented to me.

1824. How long have you been a Judge?—I was appointed to Clogher in March 1840, to Dublin the 29th of July 1843, and I was appointed to Armagh the 23d of October 1848; I resigned Meath on my appointment to Armagh.

1825. Have

Printed image digitised by the University of Southampton Library Digitisation Unit

1825. Have you, since your appointment, personally held a Court in either Armagh or Clogher?—No, I have not; I have superintended, and I have been consulted upon causes in progress there; I have read over the papers, and communicated my opinions upon them to the Surrogate. I have not gone down.

1826. Those have been exceptional cases, have they not?—Yes, but the Surrogate of Clogher generally communicates with me on causes pending there.

1827. Do you remember the case of Hughes *v.* Murphy, which was decided in the Court of Armagh not long since, in which there was a bequest for Roman Catholic purposes?—Does the question refer to a priest's will? I do not remember the names.

1828. Yes; there was a bequest in the will for singing masses for the deceased person?—Yes, I remember such a case as that.

1829. Did you read the decision in that case, or a report of it?—I think I did.

1830. Do you recollect that the Surrogate made strong observations upon the nature of that bequest?—No; I recollect some observations to this effect, that though he, as a Protestant, did not believe in the efficacy of masses for the souls of departed people, he had nothing to say to that; that it was his duty to administer the law according to the religious belief and opinions of every body; and that he thought it was the most natural bequest in the world, if the party believed in the efficacy of masses for the soul of a deceased person, to leave money for that purpose, and he established the will, with the bequest as to masses in it, thinking that there was nothing wrong in the transaction of the will.

1831. Was it necessary for him, in deciding whether he should establish the will or not, to make commentaries upon the bequests in the will?—I apprehend that the professional gentlemen concerned in the cause had introduced and argued upon a great deal of irrelevant matter, and that the Judge had read over the will, and commented upon the matter, with a view of answering the arguments, which probably had been used; and I often think it due to professional men to notice their arguments, though irrelevant.

1832. You would consider that, surely, an irrelevant matter to comment upon in the discharge of his duties, unless it was brought under his notice by the arguments of counsel, would you not?—I do not say that.

1833. Do you or not consider that it would be irrelevant?—I could not tell, until I see the case. What is the evidence?

1834. You did not make any inquiry, and the matter was not submitted to you for your opinion?—No, I suppose there was not anything in that case particular.

1835. There was another case, was there not, about the same period, as to the will of a priest, in which he had given money under some misdescription, and the next of kin disputed it?—Yes, I thought that was a case of charity; that he had given it for some religious purposes. It was not a case to be passed by in silence, nobody disputing it; and I thought that the Attorney-General ought to be apprised of it, and communicated with, and he was communicated with. The great difficulty that we often have is in rousing the Attorney-General, or the Crown, to take care of their rights; and in this case it ended in the Crown not giving any satisfactory answer on the case. I advised them to issue a citation, to make the Crown come forward, or say that they did not intend to come forward; and it ended in a citation being issued, and then the Crown saying that they would not interfere in the case.

1836. Mr. *Napier.*] Was that under the Charitable Bequests Act?—No, we have to look at the interests of every person. It will not do to say that a particular party has failed, or is defeated. The whole proceedings of our Courts are so different from those in the Common Law Courts, where they are *in personam*, that they cannot be compared; for example, there is a will containing 50 legacies; one of the next of kin comes in, and disputes that will; the executor does not defend the will, or, may be, will give a consent to its being set aside; we cannot act upon that; we are deciding upon that whole paper; there must be a judgment *in rem* on that whole paper. Frequently parties, A. and B., have no interest, in reality, in the case at all, but they represent classes, and we look at the class that they represent. If we find that the executors will not defend the will, before we give judgment we would look at the will, and see what it contained; there would

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

be perhaps 20*l.* for masses, 100*l.* for chapels, and so on, with the legatees who should have notice and protection.

1837. To whom would you grant probate in case the executors renounced?—To the residuary legatee, and if there be none, we look then to the next of kin. With respect to bequests of money for charities, we call upon the Attorney-General, or some one on behalf of the Crown, to come in, and to save expense, instead of a citation, a letter is often written, stating the particulars of the case, so as to give information of the rights of the Crown; I believe that was done in the case of the priest's will.

1838. Have you known instances in which commentaries have been made upon the conduct of Roman Catholic clergymen?—Yes, I have.

1839. Have you known strong comments, involving their character, made in some cases?—Yes.

1840. Have you known cases in which it has been imputed to them that they made the administration of the rites of their church subservient to obtaining a particular will?—Their conduct with respect to obtaining wills has been arraigned; but I forget the particular motives imputed.

1841. Have you known cases in which it has been imputed to them that they made the administration of the rites of their church, or their communications with the deceased person, subservient to the purpose of obtaining a particular will. Take the case of Ffrench *v.* Ffrench, such imputations were thrown out in that case, were they not?—Yes, imputations were thrown out against one gentleman, whose name I need not mention, for using his influence as a priest, but not for the purposes of his own church.

1842. Do you think it desirable that ecclesiastics of the Established Church should be persons placed in a position to decide upon such cases as those?—I see no objections to it on principle.

1843. Do you think, considering the state of feeling in Ireland on religious matters, that it is desirable that the conduct of a Roman Catholic clergyman should be pronounced upon by a clergyman of the Established Church?—I see no objection to it, if he be an honest Judge. We do not pay much attention to these things in our Courts. I have experience as Counsel and as Judge; and we do not pay the slightest regard as to what church a man belongs to; and we have the conduct of Protestant clergymen arraigned frequently as well as that of Roman Catholic and Presbyterian clergy.

1844. Are not the Judges of the Diocesan Courts in Ireland, with two exceptions, yourself and another gentleman, ecclesiastics of the Established Church?—There is Dr. Longfield.

1845. With the two exceptions I have mentioned, are not the Judges ecclesiastics of the Established Church?—I do not think there are any other laymen but Dr. Longfield and myself.

1846. All the others are ecclesiastics, are they not?—Yes, I think they are.

1847. And of course they are ecclesiastics of the Established Church?—Of course.

1848. There is no danger that a question involving the conduct of a Protestant clergyman should be decided by a Roman Catholic?—Not in those Courts, except that in the temporal Courts a jury may be all Roman Catholics or all Protestants.

1849. Can there be a jury in the practice of the Diocesan Courts?—No; but in the case of Ffrench *v.* Ffrench there was.

1850. Mr. *Napier*.] Was the will condemned in that case?—Yes; and in both Courts.

1851. *Chairman*.] Who are the practitioners in the Consistorial Court of Dublin?—The same as in the Prerogative; we have no separate Bar, nor separate Proctors.

1852. Is a Roman Catholic admissible to practise in your Court?—No, I think not. According to the decision of Dr. Duiganan on the Act of 1793, the offices of Advocate and Proctor were held to be ecclesiastical offices. The question was, after the passing of the Emancipation Act, again raised before my father, then Judge of the Prerogative Court, and his opinion coincided with that of Dr. Duiganan, the words of each Act being similar.

1853. You have no Roman Catholic Proctor in your Consistorial Court?—Not in Dublin.

1854. Or in the others?—There is one Roman Catholic Proctor (I cannot tell you how he got there) in the diocese of Meath, where I was Vicar-General for some

Printed image digitised by the University of Southampton Library Digitisation Unit

some years. There are two Proctors only in that Court; one of them is a Protestant, and the other a Roman Catholic.

1855. Mr. O'Riley, is it not?—Yes, I think so.

1856. You would not admit a Roman Catholic as a Proctor now?—I would admit nobody who did not take the oaths required.

1857. It would be inconsistent for a conscientious Roman Catholic to take them, would it not?—I do not think they take the oaths of supremacy, or make the declaration against transubstantiation.

1858. Is the rule, as regards Advocates practising in your Court, the same as in the Prerogative Court?—Yes.

1859. Are the rules in your Court the same as in the Prerogative Court?—There is some small difference.

1860. Mr. *Bellew.*] Do you see any objection to doing away with the exclusive character of the practitioners in your Court?—Not the slightest reason against it, but every reason for doing away with it. It has been virtually done away with, as far as the consent of the authorities connected with the Court can do it. In the year 1837, when the Select Committee sat in this House, over which Sir Henry Winston Barron presided, a communication was made, I think through Mr. West, the then member for the city of Dublin, on the subject of Roman Catholic Proctors and Advocates being admitted: he made a communication on the subject to the present Primate, the Archbishop of Armagh, Lord John Beresford. I speak this with a certain degree of knowledge, because I saw the correspondence; and his Grace said, that whatever was right and proper ought to be done, but being head of the Court, he could not do anything without the consent of the Judge; and he wrote to my father, who was then Judge of the Prerogative Court, who wrote over to say, having considered the matter, that not only did he approve of it, but he thought it ought to be done. He sent over that answer to the Primate, who at once gave his free and unqualified consent to an immediate change of the law, that Roman Catholics should be admissible as Advocates and Proctors; and a notification thereof was made, I believe, to Sir Henry Winston Barron; after which nothing further was done, I believe.

1861. *Chairman.*] Have you never admitted a Roman Catholic Proctor or Advocate since then?—No; the Judge cannot change the law.

1862. Mr. *Bellew.*] Do you suppose that the opinion of the Primate would meet with the general concurrence of the Judges in the other Diocesan Courts throughout the country?—I think it would; I do not think there is any wish to make any restrictions; I think the days are gone by for restrictions.

1863. You think, then, that an alteration of the law in that respect would give general satisfaction?—I would not say universal satisfaction.

1864. Mr. *Sadleir.*] What would be the feeling of the existing Proctors upon the subject?—I think they would be rather pleased at it; we do not like restrictions. I can answer for my own feelings on the subject.

1865. My question referred to the feeling of the Proctors?—I think they would not be at all displeased; some would be very glad.

1866. Mr. *Goulburn.*] It would not increase the number of the Proctors, would it?—I do not think it would ultimately make any material difference. In this way way it might increase the number; they would think, having been excluded so long, that there would be something very good to get, and many of them might rush into it, but when they were disappointed they would settle down, like other people. I do not like to make any difference between Roman Catholic gentlemen and anybody else; but they have had exaggerated notions of the wealth that has been made in the Prerogative Court. I happen to have practised there a good deal for some years, and I have also practised in all the other Courts, and I do not find that the wealth is so very abundant in the Prerogative Court; you often get a good fee, but it is for very hard work.

1867. You are a practising Advocate in the Prerogative Court?—Yes.

1868. And before the Court of Delegates?—Yes.

1869. Are the rules in your Court the same, generally speaking, as in the Prerogative Court?—Substantially the same; there are different names.

1870. Have there been any alterations made since the time of the late Dr. Radcliffe?—No, very little; there are one or two rules which I made, following the Prerogative Court rules. Whenever the Prerogative Court makes a rule, if it be a good one, I follow it.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

1871. Are not all the suits in the Consistorial Court plenary suits?—Yes.

1872. In the Prerogative Court they are summary suits, are they not?—Yes.

1873. Does not that entail some slight prolongation of the proceedings in your Court, as compared with the Prerogative Court?—No; I think that the doctrine of "Plenary" and "Summary" was more applicable some years ago. Probably a suit will come to an end in my Court just as soon as in the Prerogative Court, when the parties appear; if the party defendant will not appear, we have the difference of one citation, and that causes some delay; when once the defendant appears, I think the cause would come to an end just as soon in my Court as in the Prerogative Court.

1874. If the party does not appear, the cause would be somewhat longer?—Yes.

1875. Do you consider it necessary for the public advantage that there should be two Courts in Dublin, exercising testamentary jurisdiction, when one Court could do all the business?—I think if you get one Court to do the business of ten, one only would be necessary.

1876. Having regard to the state of business in both Courts, do you think it necessary for the public advantage that those two Courts should exist for the proof of wills?—I do not think that in Dublin it is necessary to have two Courts for the proof of wills.

1877. How often does your Court sit?—The Court days are twice a week; I attend three times a week for ministerial business.

1878. Are your sittings long in each day?—That depends upon the business.

1879. Generally speaking, have you business for the Court for the whole year?—We do not go on all the year round; it is during the terms. In the two terms of Hilary and Trinity, we have twelve sessions; and at Easter and Michaelmas, ten sessions, besides extra days whenever required.

1880. How many days in the year, altogether, on the average, do you sit?—I never average in that way.

1881. Do you sit three months regularly through the year, and two days a week?—Yes, and more than that. The Court days in term are the regular Court days for rules which do not occupy much time, and the Court does not sit late unless there be a cause at hearing, and sometimes they are very troublesome; and I often sit all day there on such occasions.

1882. How many contested causes do you dispose of, coming within the testamentary jurisdiction of your Court, in a year?—The heavy testamentary business is done in the Prerogative Court; but I have had heavy and troublesome testamentary causes; I cannot tell how many.

1883. Will you state how many contested testamentary causes in a year you have had; a dozen?—No, I do not think there are a dozen testamentary causes this year; there are three pending before me now, and when they are disposed of I do not know of any others coming on; they generally come in batches.

1884. Have there been appeals often from your Court to the Court of Delegates?—Sometimes; indeed, very often; I mean as compared with the decisions.

1885. Do you remember the case of Donnellan *v.* Downes?—Yes; I decided the case; and an appeal was made to the Court of Delegates, and they reversed my decision.

1886. That was the case of a will decided to have been forged, was it not?—I held that it was genuine; and they decided that it was not genuine, though the particular grounds I do not know.

1887. Do you recollect who were the witnesses to the will?—Yes, they were people of bad character; I think the testator himself was a man of bad character; he seemed to have been leading a loose kind of life; the testator, and also the witnesses, such as attending races and drinking together.

1888. Had the witnesses to the will been tried for felony?—No.

1889. Did not that appear before you?—I think not.

1890. How long did that cause last?—Not very long before me.

1891. Are you aware of the amount of costs incurred?—No.

1892. Nor in the Court of Delegates?—No; when they appealed from me, there was no taxation of costs.

1893. Then how does a party obtain taxation of costs in your Court?—When the sentence was reversed, it was all taken away from my Court. They served me with inhibition not to proceed; my sentence being set aside, there could be no taxation, except between the Proctor and the client.

1894. The

Printed image digitised by the University of Southampton Library Digitisation Unit

1894. The costs would be taxed in the Court of Delegates?—Yes, the Delegates' costs would. If a Proctor wanted to proceed in an action for the costs in my court, they would tax them before me.

1895. Who is the taxing officer of your Court?—The Registrar, Mr. Samuels.

1896. Suppose a party were dissatisfied with his taxation, to whom would he appeal?—He would come to me.

1897. Have you, in any cases, reversed his decision?—I do not know that I have, because when a dispute arises, we try to make every thing as cheap as possible. He reserves questions of dispute; and with reference to an item, he states to me, in the presence of the parties, his reasons for allowing it; or when they go into objections, I hear them both, and decide; if they go to strictness, they must put in an exception, and then it is more expensive and more formal. I think I have differed from him occasionally on points with regard to costs, but not often; he is a very good taxer, and a very accurate and careful officer, and thoroughly understands his business.

1898. Do you happen to recollect the amount of assets in the case of Donnellan *v.* Downes?—I do not; I know it was very difficult to make out the amount; I should say 1,500*l.* or 2,000*l.* that they were estimated at; and there was a Chancery proceeding.

1899. I have a copy of the inventory here from the Stamp-office, and the bill of costs signed by the Proctors, Messrs. Swift, and it appears that the assets were under 600*l.*?—There was a small freehold property.

1900. The assets appear to have been under 600*l.*; the suit appears to have commenced on the 7th of January 1847; that is the date of the first item in the bill, and the last item is on the 30th of November 1847, not quite a year?—That is not very long.

1901. Would you be surprised to hear, that in your Court alone the costs were 408*l.* 16*s.* 6*d.*?—No.

1902. You would not consider that an unusually large sum?—I am not surprised at it.

1903. Would you be surprised to hear that the costs of the appeal to the Court of Delegates in that case were 240*l.*; in fact, that the costs were some 90*l.* over the amount of the assets?—We have nothing to say to the assets; in that case of Downes *v.* Donnellan, I recollect that the parties impugning the will went into a long case of *alibi*, which they tried to make out by tracing a man for a couple of days, and bringing a whole host of witnesses to prove that he could not have been in the place when the will was executed. The costs depend upon the litigious character of the parties, and very often it happens that the most expensive suits are pauper suits.

1904. Are you aware that in this case the party in whose favour you decided was suing *in formâ pauperis*?—Yes, I believe so.

1905. You decided in favour of the will?—Yes.

1906. Your decision was ultimately reversed, was it not?—Yes.

1907. In consequence of the litigation in that suit, the party succeeding sustained a loss of 93*l.* over the amount of the assets; are you aware of that?—That is like a Chancery suit, where there is nothing left.

1908. Is that of common occurrence, that the costs in your Court exceed the amount of the assets?—I do not think it is common in our Courts; there are often suits in our Courts where there are no assets at all. In the case that has been referred to in the Prerogative Court of Ffrench *v.* Ffrench, there were not assets to pay one quarter of the testator's debts, and yet the Prerogative Court was selected to fight the battle in; and I think the Judge remonstrated with them at the beginning, and said, "Your personal debts exceed five times the amount of any assets that you can have; this is not the Court to try it in; go to a jury;" but the cause proceeded in the Prerogative Court, because they get the case much better made out there than in a Court of Law. Parties at times proceed there, where they often are taken by surprise, and do not understand the case; in Ffrench *v.* Ffrench the case was fought out in the Prerogative Court, and every shilling they laid out exceeded the assets, because there were none, after payment of debts.

1909. Mr. *Napier.*] Was that case ultimately brought before a jury?—Yes; a bill was filed in Chancery, and an issue was directed out of Chancery; there

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850

was a trial in the Prerogative Court, and two trials before the Lord Chief Justice and a special jury; the first of those verdicts was set aside, because the Judge would not allow Mr. Whiteside to speak to the evidence, and they began again, and the second trial was with the same result; the will was condemned in every Court. I was counsel for Lord Ffrench, and Mr. Keogh was counsel for his Lordship's brother, and can correct me if inaccurate.

1910. *Chairman.*] Do you recollect that in that case Lord Ffrench, the unsuccessful party, forced on the trial of the case in the Prerogative Court?—Quite the contrary; it was forced on by his brother.

1911. In the Prerogative Court?—Yes.

1912. How did that happen; do you not recollect that it was Lord Ffrench who brought in the will into the Prerogative Court, and sought to prove it there?—Yes, he did.

1913. He sought to obtain probate in the Prerogative Court, did he not?—Yes, but that could not do any harm to his brother; that probate could not do him any harm; it would not affect the real estate.

1914. At all events he brought in the will into the Prerogative Court, and sought a decision upon it, did he not?—He did.

1915. Are there appeals to your Court from the other Diocesan Courts?—Yes, from all the Diocesan Courts of Leinster and Munster; they all lie to me in Dublin; and from those of Ulster and Connaught to me in Armagh.

1916. Do many appeals come to you in testamentary cases?—I have had two or three appeals in those cases in Dublin.

1917. And another appeal lies to the Court of Delegates, does it not?—Yes.

1918. Do not you consider that it would be advisable to prevent that double appeal and triple proceeding?—Yes, I think there is no occasion for all those appeals.

1919. Do you consider the Court of Delegates a desirable tribunal to be continued for the decision of such cases?—Yes, if they would sit more regularly, but with some alterations; it is a fine tribunal, and the best that we have; it is nearly half a jury.

1920. Do you consider it desirable that there should be an appeal from the Judge of a Court to two Advocates of his Court?—It is no portion of the legal constitution of the Court.

1921. As it is at present constituted, is it not so?—It depends upon the Lord Chancellor.

1922. Is it not constituted as I state?—Now, it is.

1923. Is that desirable?—I do not think that it is at all times; I think sometimes it is.

1924. Of whom is the Court composed?—It is composed of three Law Judges, and two other persons, to be appointed by the Lord Chancellor, who are generally Advocates.

1925. Is it desirable that that constitution of the Court should continue; that two Advocates in the Court should be an appellate tribunal from the Judge of the Court?—No, I do not think it should; though I think that the two practising Advocates bring sometimes a good deal of knowledge to bear; there are other objections to them, perhaps; but with regard to the objection to the Advocates of that Court being made Judges of Appeal, I do not think so much of it as others do. I think that a good working Advocate, who knows his business, would make as good a Judge as anybody else, and be fresh and vigorous.

1926. Are they not generally, from the circumstances of the case, the Advocates with the smallest business who are selected?—There are two Advocates who are very often selected to sit in the Court of Delegates, and as long as they are there I think they cannot be objected to. One is Mr. Serjeant Stock, the present Judge of the Admiralty Court, who seldom practises in the Court of Prerogative, having rather withdrawn from it; and he is one of the Advocates selected; he is a very good and efficient Judge; and there is Dr. Longfield, the present Judge of the Encumbered Estates Court, who used to sit a good deal in the Court of Delegates, and we have very often had those two sitting together, and they, with the Law Judges, make a very careful tribunal. Sometimes they put on junior men, who would be liable to objection, perhaps, as practising in the Court; but I do not attach so much importance to that as others do.

1927. Mr. *Bellew.*] Is there any similar instance in any other Court where the practitioners in the Court become a Court of Appeal from the decision of the Judge

in

Printed image digitised by the University of Southampton Library Digitisation Unit

in whose Court they are practising?—No, I do not believe that there is; I think if you had a permanent Court of Delegates, who could make general orders, and have the same Judges sitting there, that it would be a great improvement. I think our Court of Delegates, which is a fluctuating Court of Appeal, with one set of Judges in one cause, and another set in the next cause, is objectionable.

1928. You stated that Dr. Longfield and Mr. Serjeant Stock were the persons principally chosen as Advocates; have you known Advocates with scarcely any business in the Court acting in the capacity of Judges of Appeal in the Court of Delegates?—Yes.

1929. Has Dr. Stock lately been much in the Court of Delegates?—No, I think not, we have had so little business lately.

1930. Take the case of Kelly *v.* Thurles; did Dr. Stock or Dr. Longfield take any part in that case?—I think Dr. Stock was Counsel in that case at one period, and therefore he could not be one of the Delegates in the case.

1931. Was Dr. Longfield one of the Delegates in the case of Kelly *v.* Thurles?—I think he was in the early stage.

1932. Was that a case in which immense property was in question?—Yes.

1933. Is it not frequently necessary, in consequence of the more eminent Advocates being concerned in a cause, to select those as members of the Court of Delegates who have comparatively but little practice?—Yes, it is.

1934. You are not favourable to the continuance of that system, are you?—I think if you can get a better, you might give it up.

1935. You are aware that that system has been abolished in England, are you not?—Yes; there the appeals lie to the Privy Council. You have materials for such a tribunal here that we have not.

1936. Mr. *G. A. Hamilton.*] Have you read the provisions of the Bill with reference to that Court of Appeal?—Yes.

1937. *Chairman.*] Would you consider a Court of Appeal, consisting of the Lord Chancellor, with, say, three of the junior Judges of the Common Law Courts, and the Judge of the Prerogative Court sitting himself in appeal, was a desirable tribunal?—Certainly not, with the Judge of the Prerogative Court, if the appeal be from him; I would not let the Judge sit from whom I was appealing.

1938. Would you approve of an appeal to the Lord Chancellor with two of the junior Judges of the Common Law Courts?—The Chancellor has so much to do, that he can scarcely do his own business; and I do not see how you can put more upon him.

1939. Is it the result of your experience, that the Chancellor has more to do than he can accomplish?—He has an immense deal of business to do, and he has not time to do it all; frequently the lists are carried on. The Chancellor must have recreation, and he has a great deal of public business to do besides; you cannot heap business of this kind upon him.

1940. Supposing the Chancellor found time, and had no objection, would you then consider that the Chancellor, with two of the Common Law Judges, would be a desirable Court of Appeal from the Court of Prerogative?—Yes, very good, if they would sit.

1941. Supposing they did sit, would you approve of such a tribunal?—You could not have a better. With the Chancellor and two Common Law Judges you would have a capital tribunal; but my opinion is, that they would not sit sufficiently often. The Chancellor could not do it in justice to his own Court; it would be impossible. I think it is necessary to have an expeditious Court of Appeal; the mischief of tying up testamentary causes is very great; we are greatly delayed by appeals, and if you tie them up in these testamentary cases, you stop the whole administration of the property.

1942. You may have an appeal from every Order of the Court, may you not?—Yes.

1943. If the Court should direct an inhibition to issue, then the suit is stopped, is it not?—Yes; but they do not appeal from every Order. The Proctors will not appeal, except the Advocates advise it, and Advocates seldom do so.

1944–5. *Chairman.*] In the case of Kelly *v.* Thurles, was not an appeal made from the order of the Judge, on the ground that he would not allow the Attorney to produce a particular document?—Yes.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL. D.

21 June 1850.

1946. It was an appeal from an order, as regarded a particular piece of evidence?—Yes; it was a very important order.

1947. His judgment was reversed by the Court of Delegates, was it not?—Yes.

1948. Are you aware of the practice and constitution of the minor Diocesan Courts throughout the country?—To a certain extent I am; not generally.

1949. Have you practised in them?—Yes; I have been down to Armagh as counsel.

1950. To take those in Kerry, Aghadoe and Ardfert and Ossory, can you give the Committee any information as to how they are managed?—Ossory, I should say, is well managed; Dr. Longfield is the Vicar-General, and he is a very clever man; the others may not be so well managed; there was a very sensible man at Ardfert, Dr. Hurley, and at Down and Connor there is a very good Vicar-General.

1951. You think that Ardfert would be one of those that would be well managed?—I do not say that; the gentleman I referred to is dead.

1952. Would you be surprised to hear that the person at present officiating there is the proprietor and editor of a country newspaper?—But what is he besides?

1953. I refer to Mr. Eagar, the Registrar of the Court?—I have known very eminent Barristers conducting newspapers. I know nothing of the gentleman named.

1954. Have you read the evidence which was given by the late Dr. Radcliffe before the Commissioners in 1830?—I have.

1955. Is there anything that you would wish to add to that evidence as regards the practice of your own court?—I think that giving power to the Judge to make orders in certain cases would shorten the proceedings; but the great fault I find with all the Courts is this: our Ecclesiastical Courts are the last remnant of a bad system, there having been reform in every other Court in the community except them; and the system I object to is this, that the suitor pays the expenses of the court for the Registrar and every body else; I mean the suitor in the particular case: in Chancery, and in all the Law Courts in England and Ireland where the officers, the Prothonotaries and others, were paid by fees, which was the old system, that has been abolished, and everywhere else, except in the Ecclesiastical Courts. The officers now are paid by salaries. If the local courts were in like manner reformed, you would find them just as efficient and economical.

1956. Mr. *Goulburn.*] Are not the salaries in the Chancery offices in England paid out of the Suitors' Fee Fund?—Yes; but they do not depend upon that; the Chancellor and other officers get certain fixed salaries, independently of the Suitors' Fee Fund. In our Courts there is not a single salary given to any person, except the Judge of the Prerogative; it is all done by fees, and you cannot alter, because all the officers depend upon them. If we had the option of settling the fees, there would be no difficulty about it.

1957. Mr. *G. A. Hamilton.*] How is the amount of the costs regulated; has the Judge of your Court any power to regulate them?—No, we do not see how we can do that; we have no power to do it; they are paid by fees, and nothing but the fees.

1958. When or how is the schedule of fees settled?—It is an ancient schedule; I believe the fees I receive were taken in 1718.

1959. Would it be desirable that the Judge should have the power of regulating or altering or adjusting the fees?—I think it would be desirable to let the Judge, subject to the control of the Chancellor, as the head of the law, determine and fix the scale of fees; but to do that, you should provide salaries for the officers; for supposing you took away from the Registrar of the Court three-fourths of his emoluments, you ought to give him some compensation for it.

1960. The Bill proposes to allow Attornies to practise in the Prerogative Court; what is your opinion with reference to that provision?—I think that it would be a very bad provision, and you would not gain any thing by it. You have at present a very respectable and intelligent body of men, and the Bill proposes to let loose upon the Court the whole body of Attornies and Solicitors of Ireland. Now, first of all, you would not have in a large body of persons nearly so respectable a body of practitioners, of course, as you would have in a small body that are select; then you would have, in addition to that, nobody interested in studying the practice; there would be no emoluments worth competition, and you would then really not benefit the public in any way, and I do not think that the public look with particular favour either on Attornies or Proctors. I have been frequently asked

Printed image digitised by the University of Southampton Library Digitisation Unit

asked this question, "What will be gained by this alteration to the public?" All that the public at large look to is a diminution of the expenses of the Courts. To set aside the Proctors would be unjust, merely to substitute for them another set of men as practitioners.

1961. Mr. *Bellew.*] If that principle is good for anything, is it not good to this extent, that you might determine that only twenty men should practise in the Court of Chancery?—We do not limit the number; as many as like to do so may come in, but they must begin as apprentices.

1962. There are only twenty-four?—There appear to be only twenty-four; but all those of ten years' standing may take apprentices, and increase the number.

1963. *Chairman.*] One apprentice each?—Yes, an Attorney can only have two apprentices, I think, or three. These things are monopolies: the Bar is a monopoly; the Attornies enjoy a monopoly; every one else is excluded.

1964. Mr. *Goulburn.*] If the fees in the Ecclesiastical Courts were diminished, would there be any ambition on the part of Attornies to come into them?—I should say not. I have spoken to many Attornies in the higher walks of the profession in Dublin, and I have found an almost unanimous feeling among a large body of them against the change.

1965. *Chairman.*] Are you aware that petitions have been presented to this House, signed by a large body of the Attornies in Dublin, in favour of the change?—Yes; but I know very many who are opposed to it.

1966. And also from every single practising Solicitor in the city of Cork?—It may be so. We all know how petitions are got up.

1967. And no petition has been presented the other way from Attornies?—I am not aware of how that may be.

1968. Mr. *Bellew.*] On what grounds would the Attornies be opposed to opening the Court?—Because the Attornies in business have as much as they can well do to attend to their Law and Equity business; and if they were obliged to become Proctors, they must have a staff accordingly, and either attend in person or send their clerks to do the business in the Prerogative Court. They must have persons educated in that particular branch of business, and they must learn it themselves, and accustom themselves to a line of business that they are unacquainted with, and that they would not soon become acquainted with, and then there would not be business enough among them to compensate them for all this.

1969. Mr. *G. A. Hamilton.*] Does it require a separate mode of education; is the subject-matter so different?—It is quite distinct, and totally different.

1970. *Chairman.*] An eminent Proctor, Mr. Hamilton, has been examined before the Committee; would you be surprised to hear that he said that the business of a Proctor, and the business of a Solicitor, were analogous?—That depends upon what he means by "analogous;" if he means that the client is acting in the one Court by a Solicitor, and in the other by a Proctor, they are analogous; but that does not say that the one business is the same as the other.

1971. Mr. *Bellew.*] If the Solicitors were not competent to do the business, they would not interfere with the present Proctors, would they?—That does not follow; you do not always see the competent men get the business.

1972. *Chairman.*] If the Solicitors did not wish to do the business, they need not do it?—That is quite a different thing from not wishing to have the business transferred to them; in that case they must do it. If I were to have a Solicitor who refused to transact that particular class of business, I should feel disposed to transfer my general business to another Solicitor, who would be willing to execute all my business.

1973. Do you think that the body of Solicitors would complain of having the business to do?—They do not want it.

1974. Mr. *Bellew.*] No one has signed a petition the other way?—I do not know that they have.

1975. *Chairman.*] With regard to administration bonds, you take administration bonds, do not you, in your Court?—Yes.

1976. Who are the parties who usually sign those administration bonds?—Except there is special security required, anybody.

1977. Generally speaking, it is the Proctor's clerk, is it not?—No, I believe not.

1978. Have you known a Proctor's clerk to be the person executing an administration bond?—I cannot say that I have.

1979. You cannot say who the usual persons are?—No, they bring people with them to sign them.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

1980. Are those bonds prepared with great regard to their legal validity?—Yes, they are perfectly valid, as I believe.

1981. Have you known any cases in which they were not valid?—Not that I recollect at the moment.

1982. Has any case come before you, as a practising Barrister, to advise whether those bonds could be sued on or not?—I think I advised the party once to sue on a bond, but I heard no more of the case afterwards, and therefore I suppose it was settled.

1983. Mr. *Napier.*] Is it of very great importance that there should be a unity of system between this country and Ireland with regard to questions of probates and administrations?—It is absolutely necessary; we place reliance on each others proceedings, and there is an interchange between us.

1984. How is that interchange carried on?—If it be necessary to have persons sworn in Ireland, in order to obtain probate in England, they send over a requisition to us, and we swear the parties for them. The papers are made up, and they go back. They grant probate here on the faith of our probate. If the domicile is in Ireland, they send over a copy of the probate taken out in Ireland, where probate is thereupon generally granted in England. There is that mutual interchange of business in our Courts more peculiarly, but there is an interchange over the whole world. I have observed in the Bill something about the examination of witnesses under commissions only; if we want to examine parties in England, we send a requisition to the Bishop of the diocese, and his officers examine the witnesses in that particular locality; and that saves the expense of a commission. If we want parties examined in France, we communicate by letters of request, one authority with another; and we request them to examine a particular witness, and it is done in a foreign country under that system.

1985. Do you think it important to preserve a unity of system between this country and Ireland?—Decidedly.

1986. *Chairman.*] And between France and Ireland too?—I only mention that as an illustration of the working of the system. If we wanted to swear a gentleman to a probate who lived in a distant county, he would or might be sworn in his own house. The Commission would go down to the neighbouring clergyman, and there would be no trouble about it; but if you had Commissioners appointed, alone authorized to act, a party might be 40 miles from a country town, and he might have to ride off to find him out, and perhaps have all the trouble over again. If you diminished the expense, you would find the old system work a great deal better; and I therefore think the present system is better than the system proposed by the Bill, unless it were merely superadded to the present system.

1987. You think that a clergyman in the country would go to a gentleman's house and swear him, and would be more accessible than a Commissioner appointed for taking affidavits in the ordinary way in each town?—I do.

1988. And that it would be cheaper?—You may regulate the expense as you like.

1989. What is the expense of a Commissioner taking an affidavit in Chancery?—I do not know what he is allowed.

1990. Are you aware that it is half-a-crown?—Perhaps it is so.

1991. Do you think that a clergyman of the Established Church would attend upon a party to take his affidavit for that sum?—He most probably would, if that were the legal charge, or, at all events, swear him in some convenient place in his parish.

1992. Are you aware that the charge proposed is 1*l.*?—I do not know that; but whatever you would fix, I think they would take, for administering the oath in their own parish.

1993. What is the charge made by a clergyman for doing the service, which you say can be well done by them?—I am not aware.

1994. Then you cannot state that it would be less than under the system recommended by the Bill?—I did not say that it would be less; I said that the system was better. If you diminished the expense of it, I have no doubt that you would get a clergyman, or any particular person named by the Court, to do the business for a statutable fee.

1995. Mr. *Napier.*] If there were a schedule of fees, the machinery would be better, would it not?—Yes.

1996. *Chairman.*] Do you think it desirable that clergymen should be so employed, going away from their parishes, and swearing affidavits?—No; but they

Printed image digitised by the University of Southampton Library Digitisation Unit

they do not leave their parishes; besides the Commissioner might authorize some other person to do it.

1997. Mr. *Bellew.*] Then what advantage would you gain?—The advantage of locality.

1998. What objection have you to the proposal in that Bill?—I do not object to it; but I say that I think the other system would be better to be left, though the proposed plan may be added thereto.

1999. *Chairman.*] Is not the Surrogate the person who swears parties?—No.

2000. Who is it?—The Commission is to swear wherever a man happens to live. If he is in a town with a Surrogate, the Commission would go to the Surrogate.

2001. If there were no Surrogate, to whom would the Commission go?—To the Protestant clergyman of the parish.

2002. Do you know the west of Ireland?—Yes, to a certain extent.

2003. Is the Protestant clergyman always the most accessible person in that portion of the country?—If he were not, it would not go to him.

2004. Mr. *Goulburn.*] Are not clergymen more generally distributed over the country than the Commissioners for taking affidavits?—Yes; you can go anywhere you like.

2005. *Chairman.*] Is there any expense incurred in issuing commissions of that kind to clergymen?—Yes.

2006. What is the expense of issuing a Commission out of your Court at present?—I do not know. I referred to Commissions out of the Prerogative Court.

2007. Then you cannot give the Committee any information as to the expense of your own Court?—Yes, I can.

2008. With reference to your own Court, what is the expense of issuing a Commission of that kind at present?—I cannot tell; I do not issue Commissions out of the diocese; it is by requisition. I say that if you diminish the expense, the system in the Prerogative is better.

2009. You issue a requisition at present, which you consider a desirable system; what is the expense at present of that requisition?—I do not know, and the proceeding by requisition is different.

2010. Have you any fee upon it?—I do not know; I forget.

2011. Is there any fee to the officers of your Court?—Yes, to everybody.

2012. But you cannot say whether you receive a fee yourself?—I do not think I have any myself.

2013. Can you state what anybody else receives?—I cannot.

2014. It is a requisition that you issue in the Consistorial Court?—Yes.

2015. To whom do you grant a Commission to examine witnesses?—I do it all by requisition in my Court, out of the diocese; but if it is in the diocese, the Registrar goes as the Commissioner, except the parties agree upon somebody else. In my Court the Examiner is the Registrar.

2016. You cannot inform the Committee what the fee on that requisition is?—No.

2017. Or what the fee on the Commission is?—No; I know that they are all too expensive.

2018. At page 15 of the Twenty-first Report of the Commissioners on Duties, Salaries and Emoluments in Courts of Justice, I find a schedule of fees relating to the Consistorial Court; will you turn to that Report, and read the items?—[*the same being handed to the Witness.*]—"For a commission to take an oath or bonds in the country, or to appraise goods, or to take an account, 3*s.* 4*d.*"; that is for the Registrar's part, I suppose; "For a commission to examine witnesses, or party principal, 3*s.* 4*d.*"; "Commission or requisition to swear executor or administrator, and bond, or to examine, 17*s.* 2½*d.*, including 2*s.* 8½*d.* for clerks."

2019. Seventeen shillings and two-pence half-penny; the fees have not been altered since then, have they?—No, certainly not.

2020. That is the Registrar's fee on that commission?—Yes.

2021. Will you turn and see what the fee of the Judge is upon that?—"For a commission to examine witnesses, 10*s.*; For a commission to take an oath or bonds in the country, or to appraise goods, or take an account, 7*s.* 8*d.*; Commission or requisition to swear executor or administrator, 7*s.* 8*d.*"

2022. That would make 1*l.* 5*s.* 4*d.*?—Yes.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

2023. Would there be a fee to any other officer of your Court?—No.

2024. Do you consider that under the Schedule in the Bill it would be more expensive? — "Every affidavit, 1 *s.*; Every commission under seal of Court, 1 *l.*; Swearing affidavit, 1 *s.*": that would be cheap enough, as far as it goes.

2025. Mr. *Bellew.*] Under the Schedule in that Bill the process would be much less expensive, would it not?—Yes, if you do not take into account the possible necessity for a man to drive off to a place being at a distance.

2026. *Chairman.*] Is there any quarter sessions town in which there are not two or three Commissioners to take affidavits?—No, I should think not.

2027. They are very numerous, are they not?—There are two or three in each county, I think.

2028. Mr. *G. A. Hamilton.*] Considering that wills are frequently proved by persons in delicate health, do you think, with so small a fee as that which is proposed, there would be, practically, any difficulty in the mode of proceeding which the Bill contemplates?—I suppose they would be the Commissioners of other Courts; I apprehend so, and that you would not get respectable persons to act as Commissioners of those Courts alone for the fees allowed.

2029. Are you aware that there is power under that Bill to appoint Commissioners in every village in Ireland?—Yes, generally.

2030. *Chairman.*] Are you not aware that in Ireland a profit of two or three pounds a year is very often the subject-matter of solicitation, and a good deal of canvass?—It is. There is one matter with respect to the Bill that I wish to mention: by the constitution of our Court, the next of kin, or any one likely to be affected by the will, has a right to cross-examine the witnesses to that will, without any charge whatsoever; that is his legal vested right, and I think, if there is any legislation upon this subject, it would be very desirable to preserve that right; it is a most important right, and it is highly prized by the next of kin. We very often have parties to cross-examine witnesses, and they do no more than make a few inquiries just to see how the will has been made, and there they leave it.

2031. A Barrister of considerable practice, namely, Mr. Leahy, has been examined before this Committee, and I will read to you the statement that he made on that particular subject to which you have alluded: "Do you recollect the case of a person of the name of Dumas, in the county of Kerry? Yes.—Do you know, in that case, of the widow, I believe, of the deceased person having proved the will? That was an abuse of another branch of jurisdiction; that was an ordinary case of proving the will of Mr. Dumas. Mr. Dumas was possessed of freehold property, and of scarcely any personal property; he made a will, having no children, and he left his property to his wife. He had not been on good terms with his sisters; he had no brother, only his sisters and his wife; he left his property to his wife, and the husband of one of his sisters, who was a shop-keeper, and in a rank of life below him, lodged a caveat to the will, and by reason of doing that, and without putting himself to any expense except a mere trifle. I understand from the parties interested, and I have no doubt the fact is, that Mrs. Dumas, the devisee, was put to an expense of nearly 200*l.* in proving that will to which there was no *bonâ fide* objection"?—That may have been one of the abuses of a constitutional and vested legal right; I would not take the legal right away.

2032. Mr. *Goulburn.*] Does not that consequence necessarily result from allowing a man to sue *in formâ pauperis*?—Yes.

2033. *Chairman.*] In the case of next of kin, they can put a party on the proof of a will, without themselves incurring any expense?—Yes; but I do not consider that a ground for taking away a right, because other people abuse it.

2034. Do not you think it would be right to throw upon the party who put his opponent to vexatious costs the burthen of those costs?—My remedy would be to give a power to the Judge to punish a person who was guilty of vexation, by making him pay the costs; but I would not take away from an innocent party a valuable legal privilege.

2035. At present that power does not exist, does it?—No; except there is an abuse in the cross-examination; if it runs to an unreasonable length, or anybody does any thing scandalous or vexatious, the duty of the Judge would be to make the guilty party pay the costs.

2036. You think it fair that every next of kin should have the power of putting a party on proof by cross-examining the witnesses without any liability himself?—Yes, I think that ought to continue; for instance, a family may be absent, a will

is

Printed image digitised by the University of Southampton Library Digitisation Unit

is got up in a very extraordinary manner, which happens at times, and it is a very important privilege to be able to ask, "When was this executed, and where was it executed?" and to find out something about it, without being obliged to pay costs.

2037. Mr. *Goulburn.*] Is that the practice in the English Courts also?—I believe so; I am pretty certain it is.

2038. *Chairman.*] You would change that system in the particular you have mentioned?—Yes; to meet the reasoning of the gentlemen who say that there is great abuse of the privilege; I would rather give that power than take away the privilege.

2039. Mr. *G. A. Hamilton.*] Will you turn to the seventh Clause of the Bill with regard to the position of the Judge—[*The Witness referred to the same.*]—And can you state whether your father, who was so long Judge of the Court, had any opinion with reference to the position which the Judge of the Prerogative Court ought to hold?—I have a floating recollection of hearing from him, and I thought it appeared in some reports, that he ranked before a Puisné Judge. I am not certain, but I think it is mentioned in Mr. North's letter. There is another point that I would wish to call to the attention of the Committee, which is this: by the present practice, parties being desirous to preserve the evidence of the execution of a will, for fear of witnesses dying or going abroad, or for other reasons, may cite in the next of kin to see the will proved in special form, instead of taking probate in common form, when, after certain steps being taken, they may have the witnesses examined, and the case determined. Now I do not think your proceedings under the Bill would be applicable to this, unless you mean that if they, the next of kin, do not state any objection, they should be concluded.

2040. *Chairman.*] In the case of common forms you can recall the probate at any time; there is no statutory limitation; does not the Bill propose to limit the recall of a will to seven years?—Yes, it does, and I do not think it should be so; but a limitation of seven years leaves my objection unanswered.

2041. No; cannot you recall a will for 20 or 30 years, if it is in the common form?—Yes; but to a great extent subject to the control of the Court, if the right to recal the probate be disputed: but my object is to enable a party to prove a will in special form of law, to meet the difficulties to arise from witnesses dying or leaving the country, even within the period of your seven years' limitation; and I think that ought to be provided for.

2042. Cannot you under this Bill prove a will at any time?—I do not see that, except you mean that the non-disputing them shall bar the parties for ever. I was asked about the Consistorial Courts in the country, with a view to the testamentary jurisdiction being taken away. I would say, upon that subject, that if you strip those Courts of all the best emoluments, viz., those arising from the testamentary jurisdiction, they cannot be kept up with any efficiency; for instance, in my own Court, if you take away all the emoluments, and leave all the matrimonial cases to try, no competent Judge could hereafter be procured for such a Court; and I apprehend that matrimonial suits are just of as much importance to the community as testamentary causes; and if you leave those in our Courts, not consolidating them, and give no payment for trying them, you must entirely transfer them to persons knowing nothing whatever on the subject, and let loose the law and the practice of the Court, which may lead to very dangerous results.

2043. Did not you state that it was unnecessary to have two testamentary Courts sitting in Dublin?—Yes, I do not think it is absolutely necessary; I said, that if one Judge can do the business of two Courts, I see no necessity why you should have two; but that does not meet my observation with regard to the protection of the public. I think that suits on the subject of marriage generally in the country are of vast importance; the morality of the country and the happiness of families may be seriously affected by them.

2044. How many matrimonial causes have there been in your Court during the last three years?—I cannot tell; at the present moment I think there are four pending before me; one a question relative to the marriage of a young female, stated to have been married at 12 years of age, one suit for cruelty, and two suits for adultery. I may continue to act as Judge, but a competent successor is not likely to be had, unless there be adequate payment provided.

2045. Are you not paid for them?—The fees arising from such suits are very trifling.

2046. Do you think that the testamentary jurisdiction, supposing it was

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

unnecessary, ought to be maintained for the sake of the other jurisdiction which is necessary?—I say that you ought to leave the other jurisdiction; you ought not to strip the Court of its emoluments for nothing.

2047. Mr. *Goulburn.*] This Bill does not provide for matrimonial Courts?—No, it does not touch them.

2048. Mr. *G. A. Hamilton.*] Would it be desirable to unite several of the subordinate Diocesan Courts, so as to form one Court?—I think the poorer people would be sufficiently accommodated by consolidating the Courts. If you took away the testamentary jurisdiction, I think it would be absolutely necessary to consolidate, on the principle that where there is one Bishop there should be one Court, and to consolidate the jurisdiction of the suppressed Sees with the existing Sees, all into one Diocesan Court.

2049. *Chairman.*] Have you known any matrimonial causes arising between Roman Catholics in your Court?—Yes, one; the lady was a Roman Catholic, and the gentleman was a Protestant.

2050. Have you only known one case in the Court of that description?—I only, at present, recollect that one case.

2051. As the result of your own experience as a Barrister, do you think that the Roman Catholic population of the country apply to your Diocesan Courts in matrimonial causes, generally speaking?—A matrimonial suit is very expensive.

2052. Put the expense on one side?—I think that Roman Catholics prefer matrimonial questions being settled, if they can, according to their canons. They do not allow or submit to the jurisdiction of Courts on such matters.

2053. Do they at all submit to your jurisdiction in matrimonial suits?—I do not think they do, in general; it is not their law.

2054. Are you not certain that it is not?—I should say that it was not their law, but I cannot speak with certainty.

2055. Do you think that an ecclesiastic of the Protestant Church would be the proper Judge to appeal to in matters of that kind, if they did go to those Courts?—I do not think it has anything to do with religion at all; it is their canon law. In that case that I mentioned, the Roman Catholic was the plaintiff, and began the suit.

2056. Mr. *Bellew.*] Is it not the fact, as regards the great mass of the population, that they are not in the slightest degree affected by those Courts?—On the subject of matrimony, decidedly.

2057. Mr. *Goulburn.*] Does not that arise from marriage in the Roman Catholic Church being a sacrament, and entirely a religious ceremony?—I think there are mixed motives; but then we have very few matrimonial suits among Protestants of the lower classes; it is expensive, and the husband must pay the costs of the suit for both parties. Besides they are not so particular in a certain class of life. It is more for the higher classes of life that matrimonial suits are carried on.

2058. *Chairman.*] Would not the necessities of the Protestant population of the country be met in this way, that, instead of having, as now, two laymen as Judges of these Courts, there were twenty ecclesiastics; that the testamentary jurisdiction should be taken away from all of them, and that Protestant ecclesiastics should be the Judges of all the Courts, to meet the requirements of the Protestant population in matrimonial cases?—I am not very fond of separating the Roman Catholics from the Protestants; they are divided too much as they are.

2059. Are they not divided by the necessities of the case?—I do not think they are; with respect to the remark that they do not approve of the jurisdiction, I would rather strike out a plan not to divide them; I do not like the other plan.

2060. Mr. *Goulburn.*] You stated that you thought it would be desirable to consolidate the Diocesan Courts more than they are at present?—Yes.

2061. Do you think that would be preferable to establishing one Court in Dublin?—Yes, in some respects; it depends upon the business left to them; with respect to matrimonial suits, probably one Court would be enough for the whole of Ireland. If a person wanted a probate or administration, he would not go to Dublin for it. The stamp duties are very high, and they administer large quantities of property, and cheat the revenue, without any administration or probate at all; wherever there are moveable chattels, they will not go into the Courts anywhere if they can avoid doing so.

2062. Mr. *Bellew.*] The local courts do not prevent that?—No; in anything that is done, they go there to a certain extent, but they will not, in my opinion, go to Dublin.

2063. Why

Printed image digitised by the University of Southampton Library Digitisation Unit

2063. Why not?—They do not like the expense and trouble.

2064. Would the expense be more?—I should think so.

2065. Why?—How can they do it without.

2066. *Chairman.*] What is the expense of obtaining a probate in the common form in your Court?—I do not think the mere expense of the probate——

2067. Will you say what the expense is?—I do not know; it fluctuates.

2068. If you do not know what the expenses of your own Court are, you cannot make a comparison between your own Court and any other?—Yes, I can; I know that there is no very great difference in the costs.

2069. What makes it more expensive to go to Dublin?—The expense of the journey, and the loss of time; people like to look after their own business in the country, and a man must go to somebody to get it done in Dublin.

2070. Mr. *Bellew.*] What is the expense in both cases?—I say it would be more expensive for a person to go to Dublin for a probate or administration, than it would be to walk into a Diocesan Court and get it himself.

2071. How is it more expensive?—There is a Proctor employed about it, and there is the journey.

2072. *Chairman.*] Have you read this Bill which is before the Committee?—Yes.

2073. Are you aware of the provisions of it?—Yes.

2074. Do you consider that under the provisions of this Bill it would be necessary for the party ever to go to Dublin?—Certainly not, except he was called for by his professional man.

2075. Then why do you say that the expense would be increased by coming to Dublin?—Because I know the habits of the people; they will not act, in my opinion, under this machinery; they will not be communicating with parties, and settling it in that way.

2076. Archdeacon Kyle stated, that he thought the people would prefer going to their local Attorney, rather than to a Proctor in the Diocesan Court?—Perhaps they might; but I think they would not act on the machinery of the Bill.

2077. If a local Attorney were allowed to practise in the Courts in Dublin, do you think that the people would be better satisfied with that proceeding than the present one?—Very often the local Proctor is an Attorney.

2078. Will you be good enough to answer the question; if the local Attornies were allowed to practise in the Courts in Dublin, do you think the people would prefer that system to the present system?—I do not think they would; I think they like to go in themselves.

2079. Mr. *Bellew.*] If they chose to act under the provisions of that Bill, the process would not be more expensive than going to Dublin, would it?—No, certainly not; if you did not let the Proctors or local Attorney charge more for doing it in that kind of way than otherwise, it would come to the same thing; you could regulate all that.

2080. Mr. *O'Flaherty.*] Why should he be allowed any more for doing it in that way than any other?—There is no reason if the scale did not allow it, save that a local Attorney could not himself do the business in Dublin.

2081. *Chairman.*] Have you read the scale attached to this Bill?—Yes, I have, and it does not provide for Proctors or Attornies at all.

2082. Mr. *O'Flaherty.*] Is that scale higher or lower than under the old system?—It is a great deal lower, I think; but it does not touch the duties; every probate or administration is 1*l.*; that is very cheap; nothing could be cheaper.

2083. Do you think that sufficiently remunerative?—This only goes to the officer of the Court, I believe.

2084. *Chairman.*] The Bill, you are aware, opens the profession to Attornies?—Yes.

2085. Are you aware that it also enables the Judge to settle the scale of fees?—Yes.

2086. The fees chargeable would be quite in the discretion of the Judge of the Court?—Yes.

2087. Mr. *G. A. Hamilton.*] Will you be good enough to turn to the 46th Clause, which provides, "That from and after the commencement of this Act, all witnesses in the Court shall be examined *vivâ voce*, unless as hereinafter provided"?—Yes, I perceive that.

2088. Subject to that, do you think it desirable to restrict in that manner the examination of witnesses to *vivâ voce* evidence?—In the Court before the Judge?

Printed image digitised by the University of Southampton Library Digitisation Unit

J. O. Radcliffe, Esq. LL.D.

21 June 1850.

2089. Yes?—I think that would be very bad.

2090. Why?—It would take an immensity of time, and it is very expensive. If you allow the Judge to examine the witnesses *vivâ voce*, you must allow the counsel to be present to object to the witnesses, and to cross-examine them; and then you turn the Judge into an examiner, and the only advantage you would gain would be from the Judge seeing the witness. If he was the sole Judge on the evidence of the witness, that would be very good, but not if you appeal from him. We have a good deal of *vivâ voce* evidence in the Admiralty Court; Mr. Serjeant Stock likes *vivâ voce* evidence better than written depositions.

2091. *Chairman.*] Is there not an Act allowing him to take *vivâ voce* evidence?—No: I think he takes it by consent.

2092. Did not the Admiralty Court Act empower him to take evidence *vivâ voce*?—I think not. When I sat there myself, I always had the consent of the parties to it.

2093. Mr. *G. A. Hamilton.*] Would it be desirable that that clause should be made permissive, instead of obligatory, to the extent to which it goes?—Yes.

2094. Mr. *O'Flaherty.*] You are against taking *vivâ voce* evidence, are you not?—Yes, I am; I have tried it, and I am decidedly against it.

2095. Are you aware that Judge Keatinge has expressed quite an opposite opinion?—I believe he would like it, at least to some extent; it is a mere matter of opinion, and mine is decidedly against it. I have sat in the Admiralty Court, and I have tried it, as Surrogate, for Dr. Stock; and I have been counsel engaged in other cases; and I think that if there is to be *vivâ voce* evidence, there is nothing like a jury, and not to have a single Judge to decide on such evidence.

2096. Mr. *G. A. Hamilton.*] Would it be desirable to have an officer who should specifically have charge of the records of the Prerogative Court?—Certainly.

2097. My question had reference to the statement that was put in by Mr. Smith; do you know him?—Yes; he is a highly respectable gentleman, and I have known him for years. The records there are most important; and the slightest alteration in a will there may destroy the rights of parties.

2098. You have written a letter to Mr. Smith, which letter I hold in my hand, in which you have expressed your high opinion of the manner in which he has discharged the duties of that important office?—Yes; I had no hesitation in stating that.

James Blakeney, Esq.; Examined.

J. Blakeney, Esq.

2099. *Chairman.*] YOU are an Irish Solicitor, are you not?—Yes.

2100. You are also Clerk of the Crown for the county of Galway, are you not?—I am Crown Solicitor.

2101. Have you been a long time in practice?—I have; for 25 years.

2102. Has your practice been extensive in the Court of Chancery in Ireland?—Yes; very extensive.

2103. Your brother is your partner, who resides in Galway?—Yes.

2104. Were you concerned as solicitor in the case of Ffrench *v.* Ffrench?—Yes, I was.

2105. That cause was tried in the Prerogative Court during the last year and the year before; was it not?—It was.

2106. Had you to employ a Proctor to conduct the business of that cause?—I had.

2107. Was it a very much litigated case?—Very.

2108. Had you opportunities of making yourself acquainted with the system of pleading and practice in use in the Prerogative Court during the progress of that case?—I had.

2109. Do you consider, contrasting the system of pleading in the Prerogative Court with that which is in use in the Court of Chancery in Ireland, that there is any unnecessary prolixity in the one more than the other?—Yes; I think there is in the Prerogative Court proceedings.

2110. Is there very great expense heaped upon the parties by that system?—Yes.

2111. Have you known the Judge of the Prerogative Court in that particular case to comment strongly upon the prolixity in the proceedings, as entailing expense upon the parties?—Yes; he expressed himself very strongly in pronouncing

Printed image digitised by the University of Southampton Library Digitisation Unit

nouncing judgment, and said, that each party should bear his own cost in consequence.

2112. Those pleadings were prepared by the eminent Advocates in the Court, were they not?—Yes, they were.

2113. Have you had occasion to make yourself acquainted with the system of examination, and with the system of interrogation on commission?—Yes, I have.

2114. Was it a Proctor who conducted the practical portion of the business in that case, or did you, as Solicitor for the Honourable Mr. Ffrench, conduct it?—I conducted, as Solicitor, the important portions of the case.

2115. Did you prepare any interrogatories for the examination of witnesses in the case?—Several.

2116. Did you prepare those which were submitted to the witnesses examined on the commission in that case?—I did, several.

2117. Did you feel yourself competent to discharge that duty without calling in a Proctor or an Advocate to do it?—Yes; I considered I was competent.

2118. Could you have undertaken to carry on the proceedings in that cause without the intervention of a Proctor?—I think I could, with the exception of the mere routine of practice, which, in some trifling particular, I was not acquainted with.

2119. For those services, which you say you performed in the conduct of the cause, did the Proctor make charges notwithstanding, in his bill of costs, those same services?—He did.

2120. Can you state what the amount of the Proctor's bill on your side was, in that particular case?—About 1,400 *l.*

2121. Mr. *Goulburn.*] What was the amount of the Solicitor's bill?—I have not furnished any bill yet. I will not charge for the preparation of those interrogatories, or any matters of that description. I will charge for my attendance, because I attended the Commission.

2122. *Chairman.*] You would be entitled to charge for anything that you did, as work and labour done?—Yes.

2123. It would entail a double charge of costs upon the client if you did otherwise, would it not?—Certainly.

2124. Did you employ eminent Advocates in that case?—I did; the most eminent in the Court.

2125. I believe you took also special Counsel into the Court from the Common Law Bar of Ireland (Mr. Brewster), did you not?—Yes, I did.

2126. He was not entitled to practise in the Prerogative Court without being associated with two Advocates?—No, he was not.

2127. If your client was satisfied with Mr. Brewster, still he was obliged to incur the expense of two additional Advocates, was he not?—He was.

2128. Did that entail very considerable expense upon him?—It did, very considerable.

2129. Special fees?—Yes.

2130. Do you consider that the interests of your client could have been as well defended by members of the general Bar?—I can make no distinction between them; I think that one would be just as good as the other.

2131. Has your attention been called to the preparation of allegations in the Prerogative Court?—It has been.

2132. Is there any particular objection that you consider exists to that system of preparing allegations?—Yes; the allegations are read for the witness, and they suggest his answers; and his answers are generally an echo of the allegation.

2133. In the case of Ffrench *v.* Ffrench, did you find that the answer of the witness was generally given in *hæc verba* with the allegation?—Exactly so; there was no variance in any portion, from first to last.

2134. So that, in fact, the Pleader suggests or leads the witness to the answer he is to give?—Exactly; and I consider that a most vicious system.

2135. And calculated to defeat the ends of justice?—Yes; and it was so stated by the Lord Chief Justice.

2136. Do you recollect Lord Chief Justice Blackburne making an observation upon that subject, in that case?—Yes; he censured the course of examination generally.

Printed image digitised by the University of Southampton Library Digitisation Unit

J. Blakeney, Esq.

21 June 1850.

2137. Have you had any acquaintance with the system of granting administrations *ad litem* for the purposes of Chancery suits ?—I have had.

2138. Do you consider that it is calculated to entail expense upon the parties interested in those suits ?—Yes.

2139. And that expense might be materially reduced ?—Yes ; it is attended with considerable expense, and a very great deal of the most unnecessary delay ; I have been obliged to abandon a suit in consequence of the delay attending it.

2140. Mr. *Goulburn.*] Do you refer to a suit in Chancery ?—Yes.

2141. *Chairman.*] Is it the fact, that a party who is obliged to obtain an administration *ad litem*, frequently does not obtain a return of the money ; in a Chancery cause he is not allowed it against the estate, is he ?—No, not against the estate of an intestate or testator ; he is sometimes allowed it in a cause, but very rarely.

2142. In that case he is at the loss of it himself, is he not ?—Yes.

2143. Have you had any acquaintance with the Diocesan Courts in Ireland ?—I have.

2144. You have been, by yourself and your brother, for years connected with the county of Galway, have you not ?—Yes, we have.

2145. And you are Solicitors, very extensively engaged in that county, are you not ?—Yes ; we have the leading business there.

2146. There is a Diocesan Court at Tuam, is there not ?—Yes.

2147. Would it be desirable and advantageous to the public that the Diocesan Court jurisdiction should be consolidated in one Court in Dublin ?—I think so.

2148. Do you know of any expense entailed upon parties by reason of their being obliged to swear affidavits before the Surrogates ?—Yes; the expense of travelling to find the Surrogate, and the expense of going a second or a third time before they can find him.

2149. If Commissioners for taking affidavits were substituted, would that diminish the expense ?—No doubt ; it would be a great public advantage.

2150. As a matter of fact, do you know whether Commissioners for taking affidavits in the country would be more accessible than the Surrogate ; take the county of Galway, for instance ?—Decidedly ; there is a Commissioner in every town in the county of Galway.

2151. Is there a Surrogate also ?—I am not aware, except in Tuam and Ballinasloe.

2152. Mr. *O'Flaherty.*] Who is the Surrogate in Ballinasloe ?—Mr. Walker.

2153. *Chairman.*] Is there more than one Commissioner in many towns ?—There are two or three in almost every important town ; there are three or four in Galway.

2154. Have you read this Bill now before the Committee ?—No.

2155. Assuming that the system recommended by that Bill were, that parties should be at liberty to swear the necessary affidavits before the Commissioners, and that country attornies should be allowed to practise in the Court of Prerogative in Dublin, could probates be obtained at a smaller expense than they are now ?—Yes, I do think so.

2156. Would the people, small farmers, for instance, prefer transacting their business through a local attorney, to going to the Diocesan Court to employ a Proctor ?—I believe they would prefer transacting their business through a local attorney ; he is more accessible.

2157. Would you say, from your experience, that the country people throughout the county of Galway are at all acquainted with the Proctors in the Diocesan Court ?—They do not know them at all ; and I am sure that they have no communication with them ; the communication is with the Attorney, who communicates with the Proctor.

2158. Mr. *O'Flaherty.*] Are you referring to the country Courts ?—No ; I thought the question referred to Dublin.

2159. *Chairman.*] If they require to communicate with the Proctors, has the class of persons that I have referred to any means of becoming acquainted with the Proctors ?—I think in the country places that persons in the immediate vicinity of the Court are acquainted with the Proctors.

2160. But in the more distant parts of the country are they ?—They are not.

Printed image digitised by the University of Southampton Library Digitisation Unit

2161. They then would wish to transact their business through their Attorney, would they not?—They might, or they might not.

2162. Do you know the case of a person of the name of Prendergast?—Yes.

2163. Is that a case arising in the Diocesan Court of Tuam?—No, in Clonfert; I was employed to obtain administration in that case for one party who claimed to be next of kin; I took out an administration in the Prerogative Court of Dublin, and it was obtained to entitle this party to receive a sum of money; in the meantime an administration was taken out in the Diocesan Court, and another party got the money; there were two administrations.

2164. Are any pains taken by the officers of the Diocesan Court to prevent an occurrence of that description?—I really do not know.

2165. In that particular case, if they had taken proper precautions, would that have occurred?—Then I think notice would have been sent to me that another party wanted to obtain administration.

2166. Do you know the case of a person of the name of Comyns, in the diocese of Tuam?—Yes; two administrations were taken out there; one in the Court of Tuam, and the other in the Prerogative Court in Dublin.

2167. If proper precautions had been taken, you think that could not have occurred?—I think it could not; the party who took out the subsequent administration was not aware of the first administration having been taken out.

2168. Do you consider it advisable to substitute a system of *vivâ voce* examination for written depositions?—Yes: I was always of that opinion, but more so since the case of Ffrench *v.* Ffrench; I found there that a *vivâ voce* examination was far more effectual, and elicited facts that we discovered for the first time, which were most important in the case.

2169. Mr. *Goulburn.*] The same thing would apply to examinations in Chancery, would it not?—Certainly.

2170. *Chairman.*] Would you be favourable to the system of trial by jury in such cases?—I think it would be an important change, and a beneficial one.

2171. Do you know whether the body of Solicitors would be anxious to be permitted to transact their own business in the Court relating to wills, assuming the system to be altered?—I believe they would.

2172. You have not heard among your profession any disinclination expressed to do business of that kind, have you?—Not the least.

2173. You have a very extensive intercourse with the practitioners of Ireland, both in Dublin and in the country, have you not?—Yes, I have.

2174. You do not conceive that the body of Solicitors would complain of having this branch of business thrown upon them, if they were paid for it?—No, I do not; I never heard any objection; but, on the contrary, I think they would have no objection.

2175. Mr. *Goulburn.*] You say that you approve of trial by jury being introduced?—Yes.

2176. How would you manage the summoning of a jury, and procuring their attendance, and the other concomitants of that mode of proceeding?—I would summon them as they are summoned in all cases of issues.

2177. Would you summon them for the Prerogative Court, or try the causes at the assizes?—I would have the trial in Dublin, if the witnesses were convenient; or if the witnesses were not convenient, where the transaction occurred, and where the parties were known.

2178. The matter would be tried by an issue sent down from the Prerogative Court?—Yes; and I have heard the Judge of the Prerogative Court express himself anxious to have the aid of a jury.

2179. *Chairman.*] On what occasion do you refer to?—In the case of Ffrench *v.* Ffrench.

2180. Mr. *Goulburn.*] In those cases the Judge of the Prerogative Court would not be the Judge who tried the cause if an issue were sent down to the country assizes?—No; but I do not think that would be important.

2181. Mr. *O'Flaherty.*] Would it not be more desirable that it should be tried before another Judge at Nisi Prius?—I think it would; it would answer the same purpose, and perhaps be more effectual.

2182. *Chairman.*] Have you heard the present Chief Justice Blackburne complain of the enormous length to which depositions and examinations of witnesses have reached in the Prerogative Court?—Yes, he did complain very strongly. There is another system of examination in the Prerogative Court which I think

Printed image digitised by the University of Southampton Library Digitisation Unit

very improper also, namely, that a witness may be examined twice upon the same subject, and then he will subsequently correct his first examination when he has an opportunity of communicating with the parties. In the case of Ffrench *v.* Ffrench a witness was examined a second time, and he corrected his evidence manifestly from a suggestion made to him.

2183. Do you recollect whether any of the witnesses were obliged to admit that they had communicated with the parties previously to changing their evidence?—They did admit communicating with the parties previously to changing their evidence.

2184. Mr. *Goulburn.*] Did not that conflict of evidence give a great hold to the counsel on the other side?—It was an advantage to us at the Nisi Prius trial.

2185. If a man deposes to two things which are totally distinct, having communicated with an interested party——?—That communication with an interested party did not appear till the case came to the Court of Queen's Bench; it did not appear in the Prerogative Court.

2186. The variance in the evidence appeared in the Prerogative Court, did it not?—Not materially, till we ascertained, by cross-examination of the party, in what way the correction was made.

2187. You stated, did you not, that the second examination materially differed from the first?—Yes; but still the difference was not such as to throw any discredit upon the witness, while it made his party's case stronger; it might have appeared a want of memory.

2188. Mr. *O'Flaherty.*] Are there not Proctors in those Diocesan Courts who are not Attornies or Solicitors?—There are.

2189. Would those persons be competent, if they were transferred under the new Bill, to practise in the Court of Probate in Dublin, which is proposed to be established?—If they are not Solicitors, and merely acquainted with the practice of their own Court, I cannot pronounce upon their competency.

2190. *Chairman.*] Do you think that the expense of proceedings in the Court of Probate would be materially lessened by substituting *vivâ voce* examination and trial by jury?—I think it would; for instance, in the case I have alluded to, the examination by commission continued for nearly 30 days in the country, and that examination, if it had been *vivâ voce*, would have terminated in two days.

2191. What was the charge of the Proctor for attending the examination in the country on commission?—I believe four guineas a day.

2192. When did that examination take place?—That examination took place about a year and a half ago from this time.

2193. Therefore, the four guineas a day system prevailed at that time?—Yes, it did.

2194. Do you know whether the charge for the examination was not four guineas a day also?—Yes; I believe it was four guineas also. The expense of that Commission, was, I may say, very heavy, while a *vivâ voce* examination would have terminated in two days.

2195. If it were to take place in a county town at the Assizes, it would be a very trifling expense?—Decidedly.

2196. Mr. *Goulburn.*] Is not the sending an issue down from the Court of Chancery to the Courts of Law a very expensive proceeding in general?—That depends upon the nature of the case. In some cases the expense is very trifling, but in this particular case the expense was very heavy, because it was quite necessary to rely upon a large mass of evidence given in the Prerogative Court; in ordinary cases the expense of an issue is trifling.

2197. Do you mean the expense of an issue, and the expense of a trial, are trifling?—Yes.

2198. Subject to the prospect of having a new trial moved for, and other accompaniments of a trial before a Judge?— Yes, subject to that possibility.

2199. *Chairman.*] Do you know whether, when an appeal is made from the Rolls Court to the Court of Chancery, the expense of that appeal is anything more than the fees to Counsel?—Very little more; there is a sum of 10*l.* lodged to meet the costs of the appeal.

2200. Supposing a brief were prepared for the hearing at the Rolls, and it was charged for to the client, should you think of charging that over again in the Court of Chancery on appeal?—Certainly not; it would be highly improper and most unwarrantable; in fact there would be no expense attending the appeal, except

Printed image digitised by the University of Southampton Library Digitisation Unit

except the fees of Counsel, and the Attorney's attendance; the expense is incurred in the previous proceeding.

2201. Supposing you did a thing of that kind, and charged this over again, do you consider that you would be allowed to remain a Solicitor of the Court of Chancery in Ireland?—I do not think I would; it would be most improper and unwarrantable, and I never heard of it being done.

2202. Mr. *Goulburn.*] Do you give the same brief to the Counsel in the Court of Appeal?—Yes, the very same; they argue the case over again.

2203. You do not charge for a separate brief?—No, unless the party may bring in additional Counsel, and then you require an additional copy.

2204. *Chairman.*] Are you allowed in the Court of Chancery to charge for a draft brief?—No; except you draw observations just for a few sheets.

2205. Is there such a charge as this in the Court of Chancery, that for the whole length of your briefs, there is an imaginary draft brief for which you charge?—No, it is abolished altogether.

2206. I think it would be desirable that it should be abolished in the Prerogative Court?—Yes; it is a charge for doing nothing; it has been abolished in the Court of Chancery and in the Law Courts.

2207. Mr. *Bellew.*] Has it been many years abolished?—About four or five years.

2208. *Chairman.*] Have you in the Court of Chancery any bills of costs or charges for services never rendered?—No, I am not aware of any; I am sure there are none.

2209. How often do you take out copies of pleadings in the Court of Chancery?—Only once.

2210. Would you think it desirable that the system of taking out pleadings four times in the Court of Prerogative should be abolished?—Decidedly.

2211. Mr. *Goulburn.*] Do not you, as a Solicitor, when a number of persons sign a deed, charge for each signature to that deed a separate fee?—No, certainly not, if they are executed at the same time.

2212. *Chairman.*] You charge merely for the attendance at the execution of the deed if there are 20 parties?—Yes.

2213. Take the case of a marriage settlement; if you attended to have it executed by the parties, you would merely charge your attendance?—Decidedly so; nothing more; if it were executed by a hundred parties, I would only charge one attendance.

2214. Do you know the expense of the draft brief in the case of Ffrench *v.* Ffrench?—I cannot now say; I am sure it was very heavy; there were over 1,000 sheets in the brief, at the rate of 4*s.* a sheet, and that would be nearly 200 *l.*

2215. It would be altogether an imaginary charge, would it not?—It would; so far as regards the pleadings and the depositions, it is an imaginary charge; there is no draft.

2216. Mr. *Goulburn.*] Do you draw a brief without a draft first?—Yes; where there is a brief of documents in the Prerogative Court, a draft is charged for, though it is merely a copy of the documents; there is no draft.

2217. The other part of the brief, not a copy of the documents, is a legitimate charge?—Yes; where there are observations, where drafts are actually necessary, they might not extend over more than five or six pages in a brief of 200 sheets.

2218. *Chairman.*] You think that system ought to be altered?—I think the system of charging for drafts where there are none is a highly improper one.

2219. Do you think that the system of compelling a party to pay for attested copies of pleadings four times is improper?—I think it more improper; I cannot understand why it should be done.

2220. The assets in the case of Ffrench *v.* Ffrench were very small, were they not?—Not more than about 300 *l.* or 400 *l.*, and the costs on both sides were some thousands.

2221. Mr. *Goulburn.*] They were litigious parties, were they not?—Very; my client was not so; he was on the defensive; he was compelled; he was brought into the Prerogative Court by his opponent.

Printed image digitised by the University of Southampton Library Digitisation Unit

Martis, 25° *die Junii*, 1850.

MEMBERS PRESENT:

Mr. Bellew.	Mr. Napier.
Mr. Keogh.	Mr. Goulburn.
Mr. Hamilton.	Mr. Grogan.
Mr. O'Flaherty.	Mr. Gladstone.
Mr. Fagan.	Mr. Scully.
Mr. Solicitor-General for Ireland.	Mr. Bouverie.
Mr. Monsell.	

WILLIAM KEOGH, Esq., IN THE CHAIR.

William Wily, Esquire, LL.D.; Examined.

William Wily, Esq. LL.D.

25 June 1850.

2222. *Chairman.*] YOU are an Advocate of the Court of Prerogative in Ireland?—Yes.

2223. And a Barrister?—Yes.

2224. How long have you been a Barrister?—I have been a Barrister since the year 1839.

2225. How long have you been an Advocate?—I was admitted, I think, a few months before the present Judge was appointed.

2226. When was that?—About seven years ago.

2227. Who is the Senior Advocate practising in the Court of Prerogative?—The Senior Advocate practising, that is occasionally practising, is Sir Thomas Staples; but his practice is very limited; he is retiring, to a great extent.

2228. Is Dr. Radcliffe in considerable practice?—Yes.

2229. Is Dr. Gayer?—Yes; his practice is coming up at the hearing of cases.

2230. He is also in considerable practice in the Equity Courts?—Yes; he seldom comes upon motions; I have not known him come up lately at all; he comes up only on the hearing of heavy cases.

2231. What is the number of Advocates practising in the Court?—They are very limited.

2232. How many are there?—I do not think they exceed seven or eight.

2233. Would you include in that number Sir Thomas Staples?—Yes; I may be wrong as to the number.

2234. Is Sir Henry Meredith a practising Advocate?—He has lately retired from business; he was the leading Advocate for many years.

2235. How many would you say were in considerable business in the Court?—There are not so many as eight.

2236–7. Are there as many as five?—In considerable business? they do not exceed it, certainly, in considerable business; but there are several others with occasional practice.

2238. Have you read the clause in this Bill which proposes to admit to practice in the Court the general body of the Bar in Ireland?—I have.

2239. Have you any objections to make to that clause?—I have.

2240. Will you be so good as to state to the Committee your objections to that clause?—They are numerous.

2241. Will you proceed to state them?—I think the business of the Court is so very limited, that unless there is an exclusive Bar for that Court (I do not mean to say it is necessary they should be all Doctors of Law), but unless there is an exclusive Bar for that Court, a Bar that is in some degree protected, I do not think the business of the Court can be at all properly performed. There are in Ireland about 300 or 400 Barristers. The number of cases in the Prerogative Court is so very small, I do not think they would average 30 heavy cases in a year. I believe there may have been that number, but not more; last year there were not anything like that number. Certainly, the business is very limited, and it would not be worth any man's while, unless he were in some degree protected, to give so much attention to the business of that Court as would enable him to acquire a knowledge of the practice or the law of that Court, and the other Ecclesiastical Courts, so as to work the cases for the interests of the clients. There is in that Court

Printed image digitised by the University of Southampton Library Digitisation Unit

Court a branch of jurisdiction which is confined exclusively to it, and which none of the general Bar generally know anything about; that is, the law of administrations. Wills may occasionally be disputed in Courts of Common Law and Equity; but the law of administrations is peculiar to that Court, and is exclusively exercised by that Court, and other Ecclesiastical Courts; so that the Common Law Counsel, I do not think, would be competent to undertake that business. There is a great deal of matter of practice which is acquired only by experience in the Court, in the ascertainment of who are entitled to administration, what persons should be cited, and a variety of other matters of that kind. Again, the practice and the principles of that Court are founded upon the Civil Law, in a great degree, and it is necessary that men should have an interest in devoting their time to acquiring it. Again, the Advocates of the Prerogative Court are the only persons competent for conducting the other ecclesiastical business of the country, and the matrimonial business, which is very important.

2242. Has the Prerogative Court any jurisdiction in matrimonial causes?—No original jurisdiction; but it decides upon questions of matrimony incidentally arising. I am now stating the reasons why there should be a distinct Bar in the Court of Prerogative; and one of them is, that those gentlemen being there, and giving their attention exclusively to it to a certain extent, that is to the business of the Courts of Civil and Canon Law, are the only persons who are competent to conduct business in the other Courts, the Consistorial Courts of Dublin, and occasionally throughout the country; and if you destroy that body, you will have no men to conduct that business, which is very important to the country, involving sometimes questions of great learning and great difficulty; and if the Bar of Advocates were dispersed, which it unquestionably would be if the entire general Bar were admitted to come into the Prerogative Court to practise, there would be no person to conduct that business. Again, there would be no persons from whom to select the Judges of these Courts. Again, there is a practical, though perhaps lower, ground which may be taken with respect to the Prerogative Court, or any Court of such limited business, which is this: unless a few men make it worth their while to attend in the Court and conduct the business, the interests of the clients in that Court will not be properly attended to, because if men are going from one Court to another, they cannot, of course, give that entire attention to a case that they do now. There will be fewer men who will give that exclusive attention to the business of the Court, on the days that it sits, that they do now. I have known, myself, causes delayed even by some Advocates who, having extended their practice in the Courts of Law, retired from close attendance on the Court, but who were occasionally brought in, in heavy cases. I have myself known causes delayed, and I have known the Court obliged to be adjourned, because the Counsel engaged in the cases have happened to be engaged elsewhere; and when they do come, they will only just wait and make their speech, and then go away to the other Courts; whereas it is as important to the suitors that their Counsel should be present, and follow out and watch the entire progress of the case. I have frequently known gentlemen, whose business it has been to reply, make not a reply, but an original statement, because they have not been able to be present to hear the arguments. I would say, that in a Court of such very limited jurisdiction, and affording so very little business, that the inducement to attend to it at all would be lost, and it would be injurious altogether to the public interest to destroy those men who do attend in that Court.

2243. Those are your main reasons for entertaining the opinion you have expressed?—Some of them.

2244. Will you add any others you have to state to the Committee?—I should say, that the Advocates have been the only persons by whom a knowledge of Civil Law in the country is preserved. I am aware that a distinction has been taken before the Committee between England and Ireland; that it is said that it is not so necessary in Ireland as in England to keep up that knowledge. I do not know whether that is a sound view to take of the question; I do not know whether Irishmen should not be induced to cultivate that very important part of the law, which is the foundation of the entire practice and proceedings of the Court, its principles having been originally drawn from that source. And at the present day, though cases have perhaps defined the law more accurately, and the Statute of Wills has defined what shall be the form of the will, circumstances do arise, and may arise, involving the necessity of an acquaintance with that law. We

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

know this, that the wills of soldiers and of sailors are regulated at the present moment by the old law; the will of a sailor or soldier in actual service is exempted from the operation of the present Wills Act; and the principles applicable to such cases are those of the Civil Law. There are a variety of other questions that may arise involving a knowledge of Civil Law, such as questions of domicile; the domicile of a man determines the form in which his will is to be made, or determines the distribution of his assets, and that opens a wide field for acquaintance with the Civil Law. And other questions, which I cannot at once point out, may arise involving the necessity of an acquaintance with that law. If you look through the Ecclesiastical Reports, you will find in many cases of modern occurrence that reference is frequently made to the Civil Law by the Judges; among others by the late Dr. Radcliffe. And it would be highly injurious to the public to prevent a body of men from still cultivating that law, which is the foundation of the law of the Ecclesiastical Courts; the Ecclesiastical Courts are perhaps the only Courts whose practice was originally founded entirely upon the Civil Law. I am stating, I believe, the general rule correctly, when I say that, where there is no rule for a particular case. Suppose a new case arose to-morrow in the Court of Prerogative, with respect to which a Court of Law has not declared the rule, and where there is no statute, its guide would be the Civil Law; and cases will arise (of course, in a limited practice, they do not frequently arise, but they may arise), and in my own practice questions of domicile have arisen. Again, nothing is more common than for a will or an administration cause to branch out into a matrimonial case in the Prerogative Court. In every case where a widow applies for administration, she is liable to be met by the assertion that she is not a widow. The Prerogative Court has to decide that question of marriage; and it may be a foreign marriage. That arises more frequently with us than with any other Court.

2245. Mr. *G. A. Hamilton.*] Are wills executed in a foreign country, regulated by the Statute of Wills?—By the domicile of the party; if the party is domiciled abroad, the law of the country is what you look at.

2246. *Chairman.*] You stated that matrimonial cases very frequently arise?—I do not say very frequently arise; I say they may arise.

2247. Have you known them to arise in your own practice?—Yes; I have one case at this moment of a similar kind, in the Consistorial Court; it is a will case.

2248. Confine yourself to the question; at present I am asking as regards the Prerogative Court; have you known, in your practice in that Court, matrimonial questions to arise?—I cannot at present remember but one.

2249. Then you do not recollect any but one?—I do not at present; I merely state that to show to the Committee how it may arise; it may arise every day, and it may not arise in 10 years. A widow applies for administration, or a woman applies, alleging that she is the widow of the deceased, and she is met with the exception that she is not the widow, and she is put upon the proof of her marriage. The question may arise incidental to a pedigree inquiry. In pedigree causes, questions of marriage have arisen incidentally.

2250. Your practice is pretty much contemporaneous with Judge Keatinge's time upon the Bench?—Yes; I think I was a few months before him.

2251. Have you known, as a matter of fact, of more than one case to have arisen in the Prerogative Court of a matrimonial nature?—I do not think I was engaged myself in more than one.

2252. Have you known, without restricting yourself to cases in which you have been engaged, of more than one case in which that has arisen?—At present I cannot recollect more than one in which it has arisen directly upon exception.

2253. Can you mention more than one case?—I think I was in another case where it arose incidentally to the pedigree of a party.

2254. Judge Keatinge was asked this question by the Chairman, "Matrimonial cases may arise incidentally in your Court, as they do in a Court of Common Law?" to which Mr. Hamilton added, "How many cases have arisen in which you have been called upon to decide questions of that nature in your Court?" The answer is, "As far as my recollection serves me, I have been only called upon, since I became Judge of the Court, to decide one question of marriage, and that arose in the case of a party claiming as a widow, and in that character seeking administration; her marriage was denied, and I had occasion to decide in that

Printed image digitised by the University of Southampton Library Digitisation Unit

that case upon the validity of that marriage." Do you concur in that answer?—I think there was another case, in which it arose incidentally to a pedigree, where it was necessary to prove a marriage, and the marriage was disputed; but I do not think the case came to a decision. I cannot name the case now, but it is quite pertinent to the present question to state this, that at this moment in the Consistorial Court, which has concurrent jurisdiction, or jurisdiction with reference to wills within the diocese of Dublin, a question is now before the Court. A will was brought forward purporting to be the will of a spinster, and a person came forward and alleged that he was her husband; and that is the point in question, whether he is or not the husband. I now remember that something of the same kind also arose in a recent case in the Prerogative; viz. London *v.* Patton; and I was Counsel in another case from Armagh, where in an administration case the sole question was the validity of the widow's marriage.

2255. Would not that case arise in a Court of Law or Equity, in the same way as in the Court of Prerogative; I put you this question distinctly; might it not just as well occur in the Court of Chancery upon the filing of a bill, or in a Court of Common Law upon bringing an action?—I presume it might, if the title was founded on marriage.

2256. Might not the question arise in a Court of Law or Equity, whether she was a spinster or not?—It might.

2257. Let me ask you this question: you stated that it was necessary to keep up an exclusive body of practitioners, and one reason you assigned for that was, that otherwise there would be no body of persons from whom to select the Judge of the Court; was the present Judge of the Court an Advocate of the Court of Prerogative?—Yes; his practice or business was confined to the hearing of causes; he practised in all the Courts, and consequently he did not devote his attention to the working of causes in the Prerogative Court; he very seldom, if ever, came up in the progress of a cause; he was brought up to discuss cases when the evidence was published, and the cause was ready for hearing.

2258. You use the words "exclusive body of practitioners;" is your practice individually confined to the Prerogative Court?—I have given so much attention to the Court of Prerogative, that I have really lost business in the other Courts; I am a Barrister generally.

2259. I am aware that you are a Barrister generally, but my question was, is your business confined to the Prerogative Court?—Sometimes it is, and sometimes it is not; I am occasionally brought into an Equity cause.

2260. Are you not a Barrister regularly attending the Courts of Dublin?—I do not attend regularly; I occasionally go into the Four Courts.

2261. Occasionally you do go into the Four Courts?—I have been.

2262. And you do go now?—I have not been for some time.

2263. Do you say you have not been employed in the Courts in Dublin for some time back?—I have not been very recently; I have given almost exclusive attention to the Prerogative Court; and I am perhaps the only Advocate who does give almost entire attention to the Court; and I need not say that when one does, one is thrown out of the business of the Four Courts.

2264. Were you employed in any case in the Four Courts in Dublin during the last term?—No.

2265. Did you attend the Courts?—I did, the after sittings; I do not in point of fact attend regularly.

2266. You have spoken of other Advocates; does Dr. Gayer confine his attention exclusively to the Prerogative Court?—No; within my recollection, he has scarcely been upon a motion in a case; he comes up on the hearing.

2267. Does Sir Thomas Staples confine his attention to the Prerogative Court?—I am not able to speak as to his practice.

2268. Does not he go the circuit?—He is not in many cases in the Prerogative Court.

2269. Does not he go the circuit?—He is a Crown Prosecutor.

2270. Do you know Dr. Ball?—Yes.

2271. Does he confine his attention to the Prerogative Court?—No.

2272. Is he not extensively engaged in the circuit and in the Courts in Dublin?—I do not know; I believe he is.

2273. Will you mention any Advocate in the Court of Prerogative who does confine his attention exclusively to the Prerogative Court?—I do not think any

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

of us attend exclusively to the Prerogative Court, because we would go into the other Courts if we had business, and some of them have business in the other Courts.

2274. Is there any Advocate who exclusively confines his attention to the Prerogative Court?—I know of no Advocate who exclusively confines his attention to the Prerogative Court; but the Committee will remember that the regular sessions of the Court are only twice a week.

2275. Those difficulties which you say arise frequently from an Advocate coming up, who has not been attending to the cause generally, arise under the present system of the body being confined to seven or eight?—They do, and they would be a hundredfold greater than at present if the present body of Advocates were swept away.

2276. That is your opinion, that these difficulties would accumulate by opening the Court to the whole body of the Bar?—Yes, a hundredfold.

2277. Would not it be likely, if a larger number of persons were admitted, that these difficulties would be diminished?—No, I think not; the very limited business would be too much divided; no one person would have a sufficient interest in it.

2278. You are of opinion, then, that admitting a greater number to practise in the Court would not insure greater punctuality of attendance on the part of Advocates?—Certainly, that is my view. To illustrate the neglect in an individual cause by Counsel grasping a great many Courts, I have seen this occur, that a case has been called on in one Court, whilst the Counsel has been stating his case in another, and the statement has devolved upon a junior. I have seen the same thing occur when it became the duty of the Counsel to reply, that he was engaged in another Court; and I say that it is the interest of the suitors to have a number of men in any Court who will attend to their causes.

2279. But you have already informed the Committee that there is no body of men who exclusively confine their attention to the Prerogative Court in Dublin?—On the days the Court sits.

2280. Does Dr. Gayer attend always upon every day?—No; he rarely comes up except when there is a hearing; but there are Dr. Radcliffe, myself, Dr. Darley and Dr. Ball sometimes, who, during the days the Court sit, remain often till the Court rises; the business of the Court is so very limited, that the Court frequently rises at one o'clock, except there is a heavy case.

2281. Mr. *Bellew*.] Are there any more than you have named; is that the largest body practising in the Court?—There is Dr. Miller, and there is Dr. Kelly, who cannot practise in the other Courts as being a Magistrate, but he sits in this Court; there are others who have occasional practice.

2282. *Chairman*.] Is not he a police magistrate, who is obliged to sit from ten o'clock till four in Dublin?—Not every day; he has had one or two cases in which, I think, I remember him.

2283. Is not Dr. Kelly; is not he the Henry-street Police Magistrate; that is, the presiding Magistrate of the most important police office in Dublin?—He is not practically a practitioner, because I remember him in one or two cases only.

2284. You do not mention his name as that of a person who attends the Court?—He does, because he sits there those days on which he is not otherwise engaged.

2285. You do not mention him as one of the practitioners regularly attending the Courts?—No; I have only known him in one or two cases.

2286. Mr. *Bellew*.] Then five are the number of practitioners, you state?—Five or six give constant attention; but then the business is only occasional in the Prerogative Court. As to the hearing of causes, when a cause is at hearing, those Counsel will sit from day to day, until the cause is heard out.

2287. *Chairman*.] Would that not be a strong reason why persons could attend that Court regularly, who also practise at the general Bar?—If it was worth their while. By the general Bar, you mean the general Bar in business. If they had business elsewhere, of course they would not come there, and there would be no advantage in bringing men in who have no practice anywhere.

2288. I mean by the general Bar, the Bar of Ireland; have you known many heavy cases in the Prerogative Court?—I have conducted some very heavy cases.

2289. Is not it very much the practice in heavy cases to bring in Common Law lawyers upon the hearing of a cause?—They sometimes in very heavy cases bring in the first men at the Bar to speak to the case merely.

Printed image digitised by the University of Southampton Library Digitisation Unit

2290. Do they bring in a Common Law lawyer upon the hearing of the cause? —They generally select the most eminent man of the Bar; sometimes they do not, but in many cases they do select the most eminent man to state the case.

2291. Those are not Advocates?—I believe not.

2292. Is Mr. Brewster an Advocate?—I have heard of his practising formerly a good deal, but believe he is not.

2293. You cannot form an opinion whether he is or not?—You may set him down as not so.

2294. Is the present Attorney-General for Ireland an Advocate?—No, certainly not.

2295. Have you known both of those gentlemen engaged in cases in the Prerogative Court?—Yes, I have known the Attorney-General in two cases.

2296. Is not it a great expense to the suitors, the bringing of those gentlemen in specially; did not the Attorney-General in Relly *v.* Thurles get a special fee? —He only got the same fee that I did. In former times I have known Mr. Blackburne and Mr. Pennefather get 100 *l.* for coming there; but special counsel are taken elsewhere also.

2297. Have you not known Mr. Brewster get that?—I do not know, but it is quite a distinct thing, conducting a case in the Court and bringing men to speak to it; they have not the conduct of the cause; having the reputation of being powerful speakers, their clients suppose they will present the cause well to the Court; they merely deal with the facts as they are in evidence.

2298. Then your desire is, that the number of the practising Advocates in the Court should be limited to the present number; that is, five; I think that is your evidence?—No, I am not desirous of any such thing; I do not object to the entire Bar being Advocates; they may become so if they like; there are many of the general Bar Advocates.

2299. Is there anything to prevent them, except the payment of the sum of 120 *l.*?—Yes; they must have a degree, and pay the stamp-duty.

2300. Is there any examination necessary to obtain the degree?—None, I believe.

2301. Then, in fact, it resolves itself into the payment of fees?—No; a man will not come into the Court and pay a fee, nor take the degree, unless there is a prospect of business in the Court.

2302. My suggestion is, is there anything to prevent a man, if he becomes a Doctor of Laws, being an Advocate of the Court, except his religion, and the payment of fees?—Nothing, I believe.

2303. Does not that reduce the exclusiveness of the Prerogative Court to the question of the payment of fees?—That is the first entrance to the Court; I thought it was generally understood that if you obtained a degree of Doctor of Laws, and paid the stamp-duty, you could become an Advocate.

2304. There is no examination for the degree of Doctor of Laws?—I am not an advocate for retaining the degree of Doctor of Laws as a qualification at all; my view is, that, perhaps, the Doctor of Laws degree is not of much value; but I think gentlemen practising should obtain a University education; it secures some degree of education to the practitioners. I am not at all an advocate for the retention of the ordinary degree of Doctor of Laws. My view is, not that the degree is necessary, but that there is an advantage in retaining a peculiar Bar for that Court, and protecting it in a slight degree; because, of course, that gives an inducement to those men practising there to remain.

2305. Mr. *Hamilton.*] In point of fact, do men go into that Court to practise regularly as practitioners, without having made the Civil Law their study?—I should think, generally speaking, they qualify themselves to this extent: wishing to go into that Court, they qualify themselves for it by reading; but the principal qualification, I should say, is derived from the practice in the Court, and then the party having that practice, and having an interest in remaining in that Court, applies himself to the law, and becomes, of course, more proficient in it than gentlemen of the Bar, having perhaps only an occasional case once a year, because it will come to that, if the Bar is let in generally. If the practice is to be extended, one man will have a case once a year; others, perhaps, once in three years; and there will be no motive to any man to master the law.

2306. *Chairman.*] Would not the whole of that argument apply to any other Court in the country, with parties practising in a Court with limited employment?—It would apply to any Court of limited practice; but in the Court of Chancery there is a large practice, and sufficient interest for a large number of

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

men to remain constantly in the Court. Where there is a Court of small practice, it is not desirable to throw it open to the whole Bar, and that is peculiarly the case with the Prerogative Court and the Consistorial Court, where the law is peculiar.

2307. Are you aware that there was a Court in this country, in which the practitioners were limited to four in number?—No.

2308. I speak of the Palace Court?—I have heard of that Court, but I never heard of its constitution.

2309. In your experience, has any case occurred in the Prerogative Court where a knowledge of the Civil Law was more necessary than in the ordinary Courts of Law and Equity in Ireland?—I have frequently, in my practice, had occasion, in a case, to refer to books of Civil Law and matters of practice.

2310. That does not meet my question, which was, whether, in your experience, any case had arisen where a knowledge of the Civil Law was more necessary than in the ordinary Law Courts or Equity Courts of the country?—Yes, I think I recollect one particular case, where we took an exception to a party bringing forward a will, on the ground that it had been decided before. We relied upon doctrines found in the Civil Law.

2311. Was that a good position that you maintained?—I think the facts were not borne out; the point was ruled against us.

2312. What was the case; Cummin *v.* Little?—Yes.

2313. Was not the case ruled against you?—Yes, I stated so; but that does not detract from the argument.

2314. That case was not a proof of knowledge of the Civil Law, because it was decided to have been wrong?—The point we contended for was ruled against us; that does not involve the principle that the law we laid down was wrong.

2315. Was that in Judge Keatinge's time?—Yes.

2316. Allow me to read the answer given by him to this question, put by a Member of the Committee: "Whence does it arise that Doctors of the Civil Law are admitted without knowing anything of the Civil Law?" The answer is, "In truth all the laws of this country are based on the Civil Law, and the law of that Court is based on the Civil Law; but no case has ever arisen before me where a knowledge of the Civil Law became more necessary in that Court than in the ordinary Law Courts or Equity Courts of the country; very seldom there are some peculiarities in the practice." Do you concur in that statement of the Judge of the Court?—No, I think there must be an erroneous taking down of his evidence.

2317. You think it is an erroneous taking down of his evidence?—Allow me to say I think there must be some mistake, when he states all the law of this country is founded on the Civil Law. The Common Law is not founded on the Civil Law; it is based rather on a repudiation of the Civil Law; whereas the law of the Ecclesiastical Court and Prerogative Court is exclusively founded on the Civil Law; that must be a mistake, I think.

2318. This evidence has been corrected by the Judge of the Court?—I am only quarrelling with the first part.

2319. Then, in reference to that part of the answer that states, that "no case has ever arisen before me where a knowledge of the Civil Law became more necessary in that Court than in the ordinary Law Courts or Equity Courts of the country;" do you concur in that answer?—I do not recollect any case but the one I have mentioned, as I stated at an early part of my evidence, I think.

2320. But now, confining your attention to that part of the answer which I have just read to you, having practised contemporaneously with Judge Keatinge's presiding on the Bench, do you concur in that answer?—I only remember the one case I have stated.

2321. In that case the peculiarity did not exist?—I think that in that case the facts did not warrant the application of the law; but that I do not think meets my views of the case, because those questions may all arise to-morrow. Suppose, in time of war, a soldier making a will; the Civil Law is the only foundation of the law in such case. There was the case, I believe, of Steel *v.* Delacourt, in which a question arose, I think, of domicile. The case, however, did not turn on it, and I would not rely on it; but it may arise to-morrow.

2322. Would you say there are not 50 members of the Irish Bar at this moment as well versed in any knowledge necessary for the Prerogative Court as the Advocates who practise there?—I do not think there are any.

2323. How, then, do you account for men being brought from the Common Law Bar

Printed image digitised by the University of Southampton Library Digitisation Unit

Bar to lead the Advocates?—I said, that they were brought in to state the facts. There is no instance in my experience of any but the most eminent Common Law men being brought in; and that not for their knowledge of the law applicable to the case, or for the conduct of the case, but for their reputation as to statements of facts, to plead and state the case. They always apply to the Advocate in every case as to the working of the cause; and they generally commence (I have heard them in many cases) their speech by stating their embarrassment by reason of the peculiar forms of the Court. Another thing I would say is this: under the Bill, though some changes are to be made in the procedure of the Court, it is left discretionary with the party, that it shall be lawful for him to commence his case by petition. Then there is another clause, which states, that the Judge shall be at liberty to make such orders as he thinks fit as to the pleading or other mode of procedure. It will be absolutely necessary, in my opinion, in conducting a cause in that Court, to retain much of the pleadings; and if the Judge is allowed the discretion, he would be obliged to do it; and no one at the Bar knows anything about the system of pleading or procedure in that Court except the Advocates. At the present moment, supposing the entire Bar let in at once, and the old practitioners retired (which we should do if the whole Bar came in), the new men would not know how to proceed to conduct the cause, if there were any of the old procedure remaining; and there is a branch of the jurisdiction of that Court, namely, administration, where they would be utterly incompetent at present to advise their clients what they should do, or how they should proceed.

2324–25. Mr. *Bouverie.*] You said the Advocates would retire; would they give up practising in the Court?—I should think none of them would feel it their interest to remain, and give their attention to the cases in that Court.

2326. It seems to be your opinion that the business is of that peculiar character that an ordinary practitioner at the Bar would be unable to carry it on?—Yes.

2327. Then, practically, you think that opening the Court by law would merely open it to the ordinary practitioners, because a person, if aware that any exclusive knowledge was necessary, would only employ a Counsel in whom he had great confidence?—The number of general practitioners is about three or four hundred, and the chances are, out of that number many would be employed; the Advocates would not be exclusively employed. The general Bar might in that case be employed altogether. This Act, if it passes, declares, that they are competent, but unquestionably the Prerogative Court, under the new system, if it be established, will not work; so that it may ultimately come round to the same thing, that a few men will become the exclusive practitioners in the Court, because the business will not work unless a few men be got to attend to the causes, and watch their progress; they are very peculiar, and require great attention and watchfulness on the part of the Advocate to regulate the whole proceedings. My view is this, that, practically, it will never work under the new Bill unless it comes round to that; and then *cui bono* destroy the present men.

2328. I understand you to say the practice is quite peculiar?—Yes.

2329. And the knowledge is peculiar?—Yes.

2330. Then, under any circumstances, will not that branch of the profession that pursues that particular portion of legal knowledge carefully always be employed?—No, I think not; if it were a Court of extensive business, that might be so, but really the causes last year were not 20; I think there were not 20 heavy cases, certainly; if the causes were sufficient to give practice to a number of men, it would be so; but if the Court be opened, it would not be worth my while to give exclusive attention to the Court.

2331. *Chairman.*] You do not give exclusive attention to that Court, do you?—I am the only one who has given so much exclusive attention to that Court. I have been in almost all the cases within the last four or five years; all the heavy cases; and I have attended every day regularly in the Court, and by that means got the business.

2332. You were called to the Bar in 1839?—Yes.

2333. You did not commence practice in that Court until about seven years ago?—About that time.

2334. Can you state why it was, with your peculiar views, you did not direct your attention earlier to that particular Court?—I was not competent; I did not get a degree till then. Business in the Common Law Courts depends in the first instance upon connexion, as you may be aware.

2335. How "upon connexion"?—Upon having a connexion with Solicitors to introduce

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

introduce you to practice; that I never had. I had an opening in the Prerogative Court, and I attended to it.

2336. Had you any particular connexion with the Prerogative Court?—Yes.

2337. What?—My brother-in-law was a Proctor.

2338. What is his name?—Ormsby.

2339. Of the firm of Tilley, Ormsby & Hamilton?—Yes.

2340. They have a most extensive business?—Yes, they have the largest business.

2341. Was that the circumstance that directed your attention to practising in that Court?—Having an opening in that Court, first induced me to practise in it.

2342. If it had been open to the profession at large, that reason would not have existed?—It might. Under this Bill it is very possible that one Attorney may have a great deal of business more than another.

2343. If it were open to the general body, it would not exist in the exclusive way you have mentioned, when only four or five Advocates are practising in the Court?—Ultimately, after a length of time, it would come round to that, perhaps; it will be limited; the business of the Court will not go on. I do not see how the business can work.

2344. Judge Keatinge made a statement to the Committee; he is asked this question, "Then you see no objection to the admission of the Bar generally to the practice in your Court?" His answer is, "No, but it would press heavily on the present persons, and if the change is made, some pre-audience should be given to the persons who have devoted their time to the practice of that Court." He is then asked, "Except that reason, namely, that those parties have been practising in your Court, you are in favour of the admission of the Bar generally to practise in your Court?" To which he replies, "I must say, in my opinion, that it would rather tend to the better administration of justice in Court." Do you concur in that answer of Judge Keatinge?—No, certainly not.

2345. You disagree entirely with it?—Yes, I do; I have spoken to Judge Keatinge upon the subject, and called his attention to his own complaints in many cases where Counsel, much engaged in business in other Courts, have not come up. I have known in one case of his getting up off the bench and go into chamber to wait for Counsel, and I have known him frequently declare he would not wait. He did not state to me any satisfactory reason, nor is there stated there any reason why it would be a benefit to the public.

2346. Do you know that Dr. Lushington has on the same subject given a similar opinion?—Yes; but Sir John Nicoll, and Sir Herbert Jenner, and a variety of others, hold a contrary opinion.

2347. Was not that in relation to the Admiralty jurisdiction of this country?—Yes, I believe it was partly, but not altogether.

2348. Is there any such Court in Ireland?—I am informed not.

2349. Is there such ground in Ireland?—We are not, unfortunately, consulted generally, but I see no reason why we may not be consulted as well as Englishmen.

2350. Is there any Admiralty jurisdiction in Ireland similar to that which influenced Sir Herbert Jenner and those persons you have mentioned in giving the opinion you have stated?—I know the general difference is, that our Court of Admiralty has never held a Prize Commission.

2351. Are the Proctors of the Prerogative Court, Proctors of the Admiralty Court?—No.

2352. What is the jurisdiction of the Admiralty Court in Ireland?—I am not a practitioner in the Court of Admiralty.

2353. You are not, then, acquainted with the practice of that Court?—No.

2354. Do you know any Advocate who is acquainted with the practice?—Yes.

2355. Is not the Admiralty jurisdiction confined to cases of salvage and wages?—Occasionally, and cases of Bottomry Bonds; I speak only from general knowledge.

2356. There is no prize jurisdiction?—I believe not; I believe, however, it is a question whether there is not an inherent jurisdiction in matters of prize in the Admiralty Court.

2357. At all events, the reason that governed those eminent persons in England does not exist in Ireland?—So far as it was founded on the prize jurisdiction.

2358. Does

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

2358. Does the tribunal exist for prize jurisdiction in Ireland?—I believe not; but that is not the only ground on which those Judges have rested their views; they rested them upon others, namely, the advantages of an acquaintance with international law, and that the Government here have frequently, upon questions of treaties, and a variety of other questions, to consult eminent civilians, who have made themselves acquainted with the Law of Nations; now, our studies lead us to that in Ireland, as well as in England. I have read the Law of Nations in connexion with other portions of the Civil Law, and I do not see why the Irish Bar should be exempted from that field.

2359. Do you think it is likely that Advocates in Ireland would be consulted upon questions of international law?—Not, perhaps, if the present state of things continues.

2360. Mr. *Goulburn.*] There have been cases of that kind, have there not?—I believe the late Dr. Radcliffe was consulted; but I do not see why civilians and jurists should not be nursed in Ireland as well as in England.

2361. Mr. *Hamilton.*] Do you know that Mr. Freshfield, in his evidence, assumes the importance of maintaining a separate Bar for Matrimonial business, as well as Admiralty business?—I do not know how Matrimonial business could be at all conducted unless the civilians be preserved, because the Common Law Bar have not turned their attention to it. The business is very limited. There are not, perhaps, 12 suits throughout the country in a year; yet each of those suits may involve the most difficult questions, and reference to the Canon Law; and the Matrimonial Law is exclusively founded upon the Canon and Civil Law, and unless the Advocate is acquainted with it, he cannot guard the interests of his clients.

2362. There are also questions of ecclesiastical discipline?—The civilians are the only depositaries of those laws. I know of no instance, with the exception, perhaps, of Mr. Napier, where any but Advocates are consulted by the clergy in Ireland; but if this Bill passes, and the Bar be destroyed, and the Prerogative Court be turned into a Court of Common Law, and the testamentary jurisdiction be taken away, the Ecclesiastical and Matrimonial Courts would be mere skeletons, and there would be no one to do the business, or any persons from whom to select competent Judges.

2363. *Chairman.*] Does not the Matrimonial jurisdiction partake somewhat of the skeleton character, if there are not 12 cases in the year?—Each of them may involve questions of great learning; there is the question of an alleged marriage of a child 12 years of age.

2364. That is the case of Mr. Jacob?—Yes; there was also the case of Sever *v.* Sever, involving very abstruse questions.

2365. Do the Roman Catholic inhabitants of the country ever interfere with the jurisdiction?—Yes; I was counsel for a Catholic lady; I do not see that religion makes any difference.

2366. Her husband was a Protestant?—Yes. Our Matrimonial Courts cannot break the *vinculum* of marriage; and, I believe, it is only with reference to the dissolubility of the marriage contract that we differ from the Roman Catholics. If the husband beats the wife, they will protect her, and if she is guilty of adultery, they will divorce her; a Catholic has no other Court to go to; I do not know why Roman Catholics would not come into these Courts. Our Matrimonial Law is founded on the ancient Canon Law of the Popes.

2367. Mr. *Scully.*] Do you see any reason why Roman Catholics should not be admitted as Advocates?—None in the world; I should be most happy to have them all admitted, either in the Prerogative Court or matrimonial matters. If there was any consolidation, it should extend to matrimonial as well as testamentary matters.

2368. Mr. *Solicitor-General for Ireland.*] Do you apply the same observation to Proctors being admitted, they being Roman Catholics?—I do not see any objection to them in civil questions; matrimonial causes are purely civil.

2369. Any oaths that are now necessary to be taken, in order to be admitted as Proctors, should be dispensed with?—Yes, of course, any oaths that are repugnant to the feelings of Roman Catholics.

2370. Mr. *Grogan.*] What are the oaths that are now taken?—I am not aware, but I understand that the Roman Catholics object to the oaths.

2371. Mr. *Solicitor-General for Ireland.*] When you spoke about wills, and granting administrations, being taken from the Diocesan Courts, you said the jurisdiction would be rendered, in matrimonial cases, merely skeleton?—Yes.

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

2372. Would the business be worth following?—It would not be worth following.

2373-4. Would it be better to combine the two?—Yes, if you do anything to reform the whole, and to make a combination into one of the two.

2375. Suppose the whole business brought to the Metropolitan Court, should you have any objection to the other questions being brought too, as far as regards marriages?—No.

2376. Mr. *Bellew.*] Are not the Judges of those Diocesan Courts clergymen of the Established Church?—I believe they are generally; there are Dr. Radcliffe's Court and Dr. Longfield's Court, which are not so.

2377. Mr. *Bouverie.*] Have you conducted cases in the Provincial Courts?—I have never gone down to any of them; but I have conducted cases in the Provincial Courts.

2378. Have you observed the way in which business is conducted in those Provincial Courts?—I have, I think.

2379-80. Can you say whether the Ecclesiastical Law is sufficiently well administered there or not?—I should say not; but I must add, that though I have never been engaged in Cork, I have heard a good character of that Court.

2381. Is there a Local Ecclesiastical Bar in Cork?—Yes, I believe so; and a Bar leads to the due administration of justice; I believe there are Advocates in the Court in Cork.

2382. Mr. *Goulburn.*] Do the Barristers in Ireland generally practise in both the Chancery and Common Law Courts?—Yes.

2383. They make no distinction?—No, they make no distinction; with this exception, that in the Court of Chancery, when a few men get into a very good business, they then withdraw from the other Courts practically, and confine themselves to that course of practice; but in their earlier years they embraced all the Courts.

2384. There is not the same distinction in Ireland between the Courts as there is in England?—No. I have heard that often referred to as an advantage, in England, that the Common Law practitioners keep to the Common Law Courts, and the Chancery men to the Chancery Courts. In Ireland, a great many men practising in Chancery, practise at Common Law too.

2385. Then, that system obtaining of gentlemen practising in both Courts, would, by having another Court with a different system of law, be disadvantageous?—I do not see how it could work. There were not 20 causes last year in that Court, and if that number is to be distributed amongst 400 men, it would not be half a brief to each.

2386. Mr. *Bellew.*] They would have all the business of the country?—But that business is very little.

2387. They would have the other legal business?—Yes, and therefore they would not attend to the ecclesiastical; that is my view.

2388. Do you happen to know whether the consequence of their practising generally in all the Courts has been to retain in each case a much greater number of Counsel than would otherwise have been retained?—Yes, I have heard it said, that they retain two or three to secure the attendance of one; and Mr. Freshfield stated the case of a cause being given up by an English gentleman, on account of the expense; and that applies to all the other Courts, as well as to the Prerogative. I think, on general principles, it is useful to the public (and it is the public that should be looked to), that they should have a Bar who will attend, and hear their causes throughout.

2389. *Chairman.*] You stated, that they did not attend in the Prerogative Court?—Those who give exclusive attention to it do.

2390. That is, those four you have mentioned?—Yes.

2391. Is not one of those four, Mr. Ball, a very rising Junior at the Bar, who practises in the other Courts?—He does not attend much, although he comes up and makes a speech.

2392. Is not Dr. Radcliffe frequently and constantly employed in the other Courts of the country?—Yes; but not so that he cannot give attention to the other business. He frequently sits there; and when the cause is at its hearing, he remains throughout.

2393. He is constantly employed in the other Courts of the country; with the exception of yourself, is there an Advocate whom you can mention that is in constant

Printed image digitised by the University of Southampton Library Digitisation Unit

constant attendance, or that is not extensively employed in the other Courts of the country?—I do not think Dr. Radcliffe's practice is so extensive as that of some other practitioners; he generally attends closely to the Prerogative cases.

2394. Have you not turned your attention, even as a writer upon the law, to other subjects besides those connected with the Prerogative Court?—No, to ecclesiastical subjects merely; I have turned my attention principally to that Court; but I would not decline practice in the other Courts if I had it; I am at intervals employed there.

2395. You do not mean to say that you would hold yourself out as a Barrister confining his attention exclusively to the Prerogative Court?—I should hold myself out as a person who, by my course of life, have given great attention to the Prerogative Court.

2396. Would you do business in any Court of the country if it were sent to you?—I would, and perhaps, if I got it to any extent, to produce a larger income, then I would give up the other.

2397. Have you ever refused briefs sent you from the other Courts?—Not unless I was unwell; I refused a brief in Ffrench *v.* Ffrench, not being well.

2398. You have never refused on the ground that you were not practising in the Courts?—No.

2399. Mr. *Solicitor-General for Ireland.*] If you were offered a brief for business in the Court of Chancery, or in one of the Common Law Courts that clashed directly with your business at the other Court, what should you do?—I would not neglect the Ecclesiastical business for that; it has been a very good business for me.

2400. You would not refuse business elsewhere if it did not clash with your other business?—No; if I got more business in the other Courts, it would then become a question between the two.

2401. *Chairman.*] If you were not, for instance, engaged in the Prerogative Court, you would go to the Court of Chancery?—Yes.

2402. In precisely the same way as at Dublin, Barristers cannot be in two places at once, but they will take business in any Court?—So it appears, and the public suffer.

2403. Mr. *Scully.*] Would not that apply equally to the Court of Chancery?—No; there is practically a separate Bar there, and they remain throughout the entire cause.

2404. Have you ever been aware of cases arising where they have sent for Counsel into other Courts to argue cases occurring in the Court of Chancery, and they have had to delay the causes to get the Counsel from those other Courts?—I cannot speak so much for the Court of Chancery; I have seen it often in the Courts of Common Law, where the Counsel who was to state was speaking in another Court, and could not attend; then it devolved upon the junior. I have seen that frequently, and a junior has also sometimes had to reply.

2405. Mr. *Fagan.*] Practically, do the Advocates confine their practice to the Prerogative Court?—No; they do not confine their practice to that Court, but they give the greatest share of attention to that Court; they give it more attention than a man would who is only occasionally employed there.

2406. Mr. *Scully.*] Do you mean to say that if it was in the power of any client to choose an eminent Counsel in whom he had confidence, it would be injurious to the public that he should have that selection from the larger class of Barristers to defend his cause in that Court?—It entirely depends upon the competence of the Counsel; a Counsel may be most competent to state a case when it is reduced to the facts, but if it be a case involving questions of law peculiarly incident to that Court, I should say a civilian would be far more competent than any Common Law man.

2407. Are there not eminent Counsel—men who are Chamber Counsel, as they are called in Ireland—who are as competent, and know the Civil Law as well as Advocates?—I believe not; they are not conversant with the law in our Court. It may not be often that we refer to the Civil Law, but many principles, though fixed by decided cases, are derived from the Civil Law.

2408. Do not questions of Civil Law, Domicile and other cases, ever occur to Barristers practising in Chancery and Courts of that nature, upon which the Court forms its opinion?—I have not heard of them where the title depends upon them; they may arise.

Printed image digitised by the University of Southampton Library Digitisation Unit

William Wily, Esq. LL.D.

25 June 1850.

2409. Mr. *Grogan.*] You have stated that you have attended generally to the management and conduct of a cause up to its hearing?—Yes.

2410. Now, in the general management and preparation of a cause up to its hearing, you are in immediate communication, I suppose, with the Proctors about the different pleadings, and so on?—Constantly.

2411. And he submits to you, as an Advocate, his pleadings, in the same way as a Solicitor does to a Counsel for preparation and correction?—Yes; I was going to observe, that there is a clause here that authorizes a party to commence a suit in the Prerogative Court by petition and affidavit; I was about to show that that cannot work.

2412. *Chairman.*] Does that affect the question of the admission of the general Bar of Ireland to practise in this Court?—I think it does; you will find it pertinent.

2413. Then, will you have the goodness to state your opinion upon the point?—It is the 47th Clause to which I am referring; it will be almost impossible to apply that provision to the working of a cause in the Prerogative Court. Having regard to the nature of the questions generally arising in the Ecclesiastical Court, that proceeding will be inoperative; there must be pleadings adopted in order to carry out the business of the Court, and the Advocates are the only parties conversant with the mode of pleading and with those pleadings; for instance, a suit is commenced with regard to a will, and the next of kin may call upon the party to prove it in special form of law: the next of kin stands by, and alleges nothing, until the will is *primâ facie* proved against him, or the witnesses examined. The *onus* lies upon the party relying upon the will, and it is his business to allege the execution of the will, and possibly, in some cases, instructions for it; if he does not do so, it may be unnecessary for the next of kin to bring forward any case then. It is not until the third stage of the case, where the party finds the will proved against him, or the witnesses examined, that the case is gone into by the next of kin; then the question may arise of the deceased having been insane, or of the will having been obtained by undue influence; here there must be pleadings. The next of kin has in the first instance frequently nothing to allege, because, as I have said, the *onus* lies on the party relying upon the will; but this clause would make both parties bring forward at once the attack and defence. The framer of this Bill saw it was necessary to preserve pleadings, and I should say that, with some reform, ours are admirably adapted to elicit the truth. The Judge, if he thinks fit, is empowered by the 78th Clause to direct pleadings; and if there must be pleadings, the Advocates are alone conversant with that part of the proceedings. It would be ruinous, also, to make the next of kin put his case on record until the attesting witnesses have been cross-examined; it would defeat that cross-examination through which the first breach is made in a fabricated case; the 47th Clause therefore cannot work.

Printed image digitised by the University of Southampton Library Digitisation Unit

APPENDIX.

THE following BILLS of COSTS were laid before the COMMITTEE by Mr. *David A. Nagle*.

No. 1.

No. 1.

Consistory Court. Costs in the Cause of Downes v. Donnellan.

CONSISTORY COURT.

Benjamin Rainsford Downes, one of the Executors named in the last Will and Testament and Codicil of Edward Behan, late of Camden-street, in the City of Dublin, Job Coach Proprietor and Undertaker, Deceased - - - - - PROMOVENT.

Maria Donnellan, otherwise Behan (wife of John Joseph Donnellan), the pretended natural and lawful Sister of said Deceased, also Messrs. John and Robert Staples Swift, Notaries Public, their Proctors, Caveators in special, and all others in general - - - - - - - - IMPUGNANTS.

John Joseph Donnellan and *Maria Donnellan*, his Wife,

To *John Swift* and *Robert Staples Swift*, Proctors, Debtors.

In the Goods and Chattels of *Edward Behan*, late of Camden-street, in the City of Dublin, Job Coach Proprietor and Undertaker, deceased.

		£.	s.	d.
1847:				
7 January -	Attending Mr. King this day, when he informed me that an alleged will of deceased's would be endeavoured to be proved; at the same time he instructed me to lodge caveats in both Courts, and taking instructions for same - -		6	8
	Proctor's retaining fee - - - - - - - -		6	8
	Paid entering caveat - - - - - - - -		13	4
	Having been served with citation,—			
	Attending on Mr. King, informing him thereof, when he directed me to appear on behalf of impugnant - -		—	
	Drawing and engrossing proxy of impugnant - - -		5	4
	Hilary Term, 1847:			
12 „ -	Rule and motion—Tilly returned citation, and exhibited a proxy; Swift, sen., appeared for impugnant, and exhibited a proxy; both to allege in prox. - - -		4	4
	Paid exhibiting proxy - - - - - - - -		1	6
	Paid impugnant's appearance and fee - - - -		6	4
	Attending and taking instructions for primary allegation -		6	8
	Draft primary allegation, six sheets, at 1 *s.* 4 *d.* - - -		8	—
	Fair copy for advocate, at 7 *d.* - - - - - -		3	6
	Attending him therewith - - - - - - -		6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Having received same, settled by counsel,—			
	Engrossing - - - - - - - - - -		3	6
16 „ -	Tilly and Swift were assigned to allege this day, which day they respectively alleged; each to answer in prox. - -		4	4
	Paid exhibiting allegation - - - - - -		1	6
	Paid for attested copy, impugnant's allegation and will, 12 sheets, at 10 *d.* - - - - - - - - -		10	—
	Extracting - - - - - - - - - -		3	4
	Attending advocate therewith to peruse and answer - -		6	8
	Paid him his fee - - - - - - - - -	1	2	9

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
18 January -	Attending Mr. King this day, and by his desire attending on Mr. Clay, one of the executors named in the pretended will, and appointing with him to attend at the Consistorial Office to inspect hand-writing of will, and subsequently attending with Mr. Clay, inspecting same - - -	-	6	8
	Corresponding fully with Mr. King, by his desire - -	-	3	4
19 „ -	Rule and motion—Tilly and Swift were assigned to answer each other's allegation this day, which day they contested same negatively. Terms assigned; petition, Tilly, who produced Henry Raphael and William Nathan on promovent's pleadings; Swift to interrogatories - - -	-	4	4
	Paid swearing said witnesses to interrogatories, 5 *s.* 4 *d.* each	-	10	8
	Having received notice of examination of said witnesses,—			
	Attending on Mr. King with same, and requesting instructions for interrogatories - - - - - - -		—	
	Having received written instructions,—			
	Perusing same previous to drafting interrogatories - -	-	6	8
	Draft interrogatories, 40 sheets, at 1 *s.* 4 *d.* - - -	2	13	4
	Fair copy for advocate, at 7 *d.* - - - - - -	1	3	4
	Attending him therewith - - - - - -	-	6	8
	Paid him his fee - - - - - - - -	3	8	3
22 „ -	Attending Dr. Wily this morning for interrogatories, when he mentioned he could not by possibility have them completed before Monday, but at the same time mentioned that he had been conversing with Mr. King yesterday, who promised to endeavour to get further information -	-	6	8
23 „ -	Rule and motion—This is the first term probatory - -	-	4	4
25 „ -	Having received letter this morning from Mr. King containing some further information,—			
	Attending Dr. Wily therewith, and conferring with him -	-	6	8
	Having received draft interrogatories amended,—			
	Engrossing same, 40 sheets, at 7 *d.* - - - - -	1	3	4
	Attending advocate therewith for certificate, and subsequently attending examiner lodging same - - -		—	
	Paid examiner for cross-examination of H. Raphael - -	3	8	3
	Paid examiner for cross-examination of Edward Nathan -	4	11	-
30 „ -	Rule and motion—This is the second term probatory lapses; petition, Tilly - - - - - - - - -	-	4	4
1 February	Rule and motion—This is the third term probatory lapses; petition, Tilly - - - - - - - - -	-	4	4
	Mr. Donnellan having called and requested that I would take up two persons that he intended to produce as witnesses to inspect deceased's handwriting to will previous to their production,—			
8 „ -	Attending Messrs. Pidgeon and Whitty accordingly to inspect deceased's signature to will at Consistorial Office -	-	6	8
12 „ -	Rule and motion—Publication decreed unless cause in prox.	-	4	4
16 „ -	Corresponding with Mr. King by direction of Advocate, requesting to have any original document bearing the signature of deceased, in order to compare with will -	-	3	4
	Having this day received from Mr. King a certain deed and other documents with deceased's signature,—			
	Attending Dr. Wily, and with him attending at Consistorial Office and inspecting signature to will - - - - -	-	6	8
22 „ -	Rule and motion—Publication to pass absolutely on Saturday, 1 March next, unless Swift files a pleading on or before that day; petition, Tilly - - - - -	-	4	4
	Attending Mr. Donnellan, and subsequently attending Mr. King and taking in part instructions for additional allegation - - - - - - - - - - -	-	6	8
	Having received written instructions for allegation,—			
	Perusing same previous to drafting - - - - -	-	13	4
	Draft additional allegation, 43 sheets, at 1 *s.* 4 *d.* - -	2	17	4
	Fair copy for advocate, at 7 *d.* - - - - -	1	5	1
	Attending him therewith - - - - -	-	6	8
	Paid him his fee - - - - - - - -	3	8	3
	Having received allegation amended,—			
	Engrossing same - - - - - - - -	1	5	1
	Fair copy for Mr. King, at his request - - - -	1	5	1

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
1 March -	Rule and motion—Swift exhibited additional allegation; Tilly to answer	–	4	4
	Paid exhibiting	–	1	10
	Term fee	–	13	4
6 „ -	Rule and motion—Tilly was assigned to answer Swift's additional allegation this day week; petition, Tilly	–	4	4
	Easter Term, 1847:			
14 April -	Attending on Mr. King and Mr. Donnellan, consulting and advising, when it was deemed advisable to have a consultation with Dr. Wily on the merits of the cause, and further information having been obtained, and subsequently attending on Dr. Wily appointing time for consultation	–	6	8
	Attending on consultation pursuant to appointment, when 12 o'clock to-morrow was fixed for another	–	6	8
	Paid Dr. Wily consultation fee	2	5	6
15 „ -	Attending consultation this day at Dr. Wily's from two to past four o'clock, at which Mr. King, Mr. Nash and police officer were present	–	13	4
	Paid Dr. Wily consultation fee	2	5	6
16 „ -	Attending this day with Mr. King at Dr. Wily's, consulting and advising, when it was deemed necessary to file additional articles	–	6	8
	Attending and taking instructions for same	–	6	8
	Draft additional articles, 10 sheets, at 1 *s.* 4 *d.*	–	13	4
	Fair copy for advocate, at 7 *d.*	–	5	10
	Attending him therewith	–	6	8
	Paid him his fee	2	5	6
	Having received draft additional articles amended,—			
	Engrossing same	–	5	10
17 „ -	Rule and motion—Swift exhibited additional articles to his additional allegation; Tilly to answer in prox.	–	4	4
	Paid exhibiting additional articles	–	1	10
20 „ -	Rule and motion—Tilly was assigned to answer Swift's additional allegation and additional articles this day, which day he contested same negatively; terms assigned; petition, Swift	–	4	4
21 „ -	Attending Mr. King this day, when he handed me a list of witnesses, which he stated he wished to have examined; perusing said list in order to prepare an index thereto	–	6	8
	Draft index, 8 sheets, at 1 *s.* 4 *d.*	–	10	8
	Fair copy	–	4	8
22 „ -	Attending Mr. King and Mr. Donnellan this morning for a considerable length of time, reading over allegation, and marking the several articles to which witnesses were to be examined, then attending with them on Dr. Wily, consulting and advising, and subsequently attending in my office with them, when they gave me the names of certain of the witnesses against whom citation should issue	–	13	4
	Paid for citation under seal	–	7	9
	Fiat directing and extracting	–	6	8
	Instructions and marshal	–	4	8
	Fifteen copies for service, at 2 *s.*	1	10	–
	Corresponding, enclosing same	–	3	4
	Drawing and engrossing affidavit of service	–	5	4
24 „ -	Rule and motion—This is the first term probatory lapses; petition Swift, who produced Elkanah Stephens, Catherine Dobbs, George Purcell, Patrick Kinselagh, George Brien, Thomas Carroll, James Quigley and Luke Prender, on promovent's pleadings; Tilly to interrogatories	–	4	4
	Paid for the production of said eight witnesses, at 5 *s.* 4 *d.*	2	2	8
	Attending on Elkanah Stephens, reading over pleading to him previous to serving notice of his examination	–	6	8
	Like attendance on the other several witnesses, seven in number	2	6	8
	Drawing draft notice	–	3	4
	Fair copy and service on opposite proctors	–	5	4
	Like on examiner	–	5	4
	Paid for their examination, one guinea each	9	2	–

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes v. Donnellan.

1847:		£.	s.	d.
24 April -	Corresponding with Mr. King, informing him thereof, and requesting him to send the other witnesses on Tuesday next to be examined - - - - - - - - -		3	4
27 „ -	Rule and motion—This is the second term probatory lapses; petition Swift, who produced Edmond B. O'Reilly and Patrick Ledwidge, John V. Horan, William Nevin and Thomas Purcell, on impugnant's pleadings; Tilly to interrogatories - - - - - - - - - -		4	4
	Paid for the production of said five witnesses, at 5 *s.* 4 *d.* each - - - - - - - - - - - -	1	6	8
	Attendance on all said witnesses separately in order to ascertain what each could prove - - - - -	1	13	4
	Draft notice - - - - - - - - - - -		3	4
	Fair copy and service on opposite proctor - - -		5	4
	Like on examiner - - - - - - - - -		5	4
	Paid for their examination, one guinea each - - -	5	13	9
	Draft additional notice of examination of Patrick Ledwidge, to second article of additional allegation - - -		3	4
	Fair copy and service on opposite proctor - - - -		5	4
	Like on examiner - - - - - - - - -		5	4
30 „ -	Attending with Mr. King (by his desire) on Mr. Samuels, and requesting of him to discharge the eight witnesses who had been examined, interrogatories not having been lodged - - - - - - - - - - -		—	
1 May -	Rule and motion—This is the third term probatory lapses; petition Swift, who produced Daniel Brown, M.D., Patrick King and Edward Whitty on impugnant's pleading; Tilly to interrogatories - - - - - - - -		4	4
	Paid for the production of said three witnesses, at 5 *s.* 4 *d.* each - - - - - - - - - - -		16	—
	Attendance on said witnesses to ascertain what each could prove - - - - - - - - - -	1	—	—
	Draft notice of their examination - - - - -		3	4
	Fair copy and service on opposite proctor - - - -		5	4
	Like on examiner - - - - - - - - -		5	4
	Paid for their examination, one guinea each - - -	3	8	3
4 „ -	Rule and motion—Swift being restored to a term probatory, produced Stephen Pidgeon, the Rev. James Hickey, William K. Clay and Joseph Ryan, on impugnant's pleading; Tilly to interrogatories - - - - - - -		4	4
	Paid for the production of said witnesses, at 5 *s.* 4 *d.* each	1	1	4
	Attending on said witnesses separately in order to ascertain what each witness could prove - - - - - -	1	6	8
	Draft notice of their examination - - - - -		3	4
	Copy and service on opposite proctor - - - -		5	4
	Like on examiner - - - - - - - - -		5	4
	Paid for their examination - - - - - -	4	11	—
10 „ -	Having received a letter from Mr. King requesting me to see Dr. Wily, and press him to get publication passed at once,—			
	Attending accordingly on Dr. Wily, when he said he would make application to have publication passed to-morrow -		—	
11 „ -	Rule and motion—Publication decreed, subject to cross-examination and repetition of Patrick King and William Keating Clay - - - - - - - - -		4	4
15 „ -	Rule and motion—Publication decreed, unless cause this day, subject to the repetition of said witnesses; Tilly undertaking to plead on Thursday next, and in case he should not file a pleading on that day, publication to pass peremptorily on that day, and by consent of Tilly. A conditional rule for all acts decreed propounded to be exhibited - - - - - - - - - -		4	4
	Term fee - - - - - - - - - -		13	4
	Trinity Term, 1847:			
20 „ -	Rule and motion—Publication decreed, unless a pleading filed by Tilly at the sitting of the court this day, which day he exhibited an additional allegation; Swift to answer in prox. - - - - - - - - - -		4	4
	Paid for attested copy said allegation, 62 sheets, at 10 *d.* per - - - - - - - - - - -	2	11	8

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes v. Donnellan.

1847:		£.	s.	d.
20 May -	Extracting - - - - - - - - - -	-	6	8
	Attending advocate therewith for his perusal and answer -	-	6	8
	Paid him his fee - - - - - - - - -	2	5	6
	Having received same, with instructions to contest the admission of third article,—			
	Draft notice accordingly - - - - - - - -	-	3	4
	Copy and service on opposite proctor - - - -	-	5	4
	Having received notice of amendment of said third article,—			
	Perusing same, and amending our copy allegation accordingly - - - - - - - - - -	-	6	8
	Attending Mr. King this day, when he informed me that the establishment in Camden-street would become utterly valueless if some measures were not immediately adopted to take its control out of the hands of promovent, who was allowing the establishment to go to ruin, and that the tenants to the freehold were not paying their rent, and were becoming insolvent, consulting and advising, when he directed me to apply for administration, *pendente lite* - - - - - - - - - -	-	6	8
21 „ -	Draft notice of motion for appointment of administrator, *pendente lite* - - - - - - - - -	-	3	4
	Copy and service on promovent's proctor - - - -	-	5	4
	Attending taking instructions for affidavit to ground application for administrator, *pendente lite* - - - -	-	6	8
	Draft affidavit of Mrs. Donnellan, 10 sheets, at 1 *s.* 4 *d.* -	-	13	4
	Fair copy for advocate, at 7 *d.* - - - - -	-	5	10
	Attending him therewith - - - - - - -	-	6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Having received same settled,—			
	Engrossing - - - - - - - - - -	-	5	10
	Attending getting same sworn - - - - - -	-	6	8
22 „ -	Rule and motion—Swift was asssigned to answer Tilly's additional allegations this day in prox.; petition, Swift, who exhibited affidavit to ground application for administration, *pendente lite*; Tilly to answer in prox., if so advised - - - - - - - - - -	-	4	4
	Paid exhibiting affidavit - - - - - - - -	-	1	10
25 „ -	Rule and motion—Swift was assigned to answer Tilly's additional allegation this day, which day he contested same negatively; terms assigned; petition, Tilly, who exhibited two affidavits in answer to Swift's application for administration, *pendente lite*; parties to be heard in prox., petition, Tilly - - - - - - - - -	-	4	4
	Paid for attested copy affidavit of promovent, and exhibit 40 sheets - - - - - - - - - -	1	13	4
	Extracting - - - - - - - - - -	-	6	8
	Paid for attested copy affidavit of Michael Carroll - -	-	5	3
	Extracting - - - - - - - - - -	-	3	4
	Perusing same, and also the several papers of instructions, in order to prepare affidavits in reply - - - -	-	13	4
	Draft affidavit of P. King, Esq. - - - - - -	-	6	8
	Fair copy thereof - - - - - - - - -	-	3	4
	Attending advocate therewith - - - - - -	-	6	8
	Paid him his fee, perusing affidavit, and answering ones -	2	5	6
	Having received same settled,—			
	Engrossing - - - - - - - - - -	-	3	4
	Draft and fair copy affidavit of Thomas Hanlon - -	-	5	4
	Engrossing - - - - - - - - - -	-	3	4
	Attending getting same sworn - - - - -		—	
27 „ -	Draft notice of exhibiting said affidavits for service on Messrs. Tilly & Co., in order that they might be prepared for motion next court-day - - - - - - -	-	3	4
	Copy and service - - - - - - - - -	-	5	4
	Attending at the Consistorial Office, and lodging the affidavits of Messrs. King and Hanlon - - - -		—	
	Paid exhibiting same - - - - - - -	-	3	8
	Draft brief affidavits for motion, 9 sheets, at 3 *s.* 4 *d.* -	1	10	-
	Brief affidavits for motion to-morrow, 9 sheets, at 2 *s.* per -	-	18	-
	Attending advocate therewith - - - - - -	-	6	8
	Paid him his fee - - - - - - - - -	2	5	6

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

		£.	s.	d.
1847:				
29 May -	Rule and motion—This is the first term probatory lapses; petition Tilly, who produced John Lund, William Fleming, John Callaghan and John Lennon, on promovent's pleading Swift to interrogatories; parties were assigned to be heard on motion to appoint an administrator *pendente lite*; Dr. Wily for impugnants, Dr. Darley for promovent; Tilly nominated Richard Harrison Wyhants and Robert G. Peter on the part of the promovent; Swift proposed Thomas Lawlor, of No. 150, Capel-street, in the city of Dublin, Esq.; parties to be further heard in prox. -		4	4
	Paid swearing said four witnesses to interrogatories, 5 *s.* 4 *d.* each - - - - - - - - - - -	1	1	4
	Attending on Mr. King requesting instructions for interrogatories - - - - - - - - - -		6	8
	Having received written instructions,—			
	Perusing same previous to drafting interrogatories - -		6	8
	Draft interrogatories for John Lund and John Lennon, 25 sheets, at 1 *s.* 4 *d.* - - - - - - -	1	13	4
	Fair copy for advocate - - - - - - -		14	7
	Attending him therewith - - - - - -		6	8
	Paid him his fee - - - - - - - - -	2	5	6
	Having received same,—			
	Engrossing 25 sheets, at 7 *d.* - - - - - -		14	7
	Paid for their examination - - - - -	2	5	6
	Having been served with notice of the examination of Mr. A. Fleming,—			
	Attending and taking instructions for interrogatories - -		6	8
	Draft same, 18 sheets, at 1 *s.* 4 *d.* - - - - -	1	4	—
	Fair copy for advocate, at 7 *d.* - - - - - -		12	6
	Attending him therewith - - - - - -		6	8
	Paid him his fee - - - - - - - -	1	2	9
	Having received same,—			
	Engrossing - - - - - - - - -		12	6
	Paid for his examination - - - - - -	2	5	6
	Attending and taking instructions for interrogatories for John Callaghan - - - - - - - - -		6	8
	Draft same, 6 sheets, at 1 *s.* 4 *d.* - - - - -		8	—
	Fair copy for advocate, at 7 *d.* - - - - -		3	6
	Attending him therewith - - - - - - -		6	8
	Paid him his fee - - - - - - - -	1	2	9
	Engrossing amended interrogatories - - - - -		3	6
	Paid for his examination - - - - - -	1	2	9
June - -	Draft affidavit of Mrs. Donnellan the impugnant, to resist the appointment of the nominees of promovent, 10 sheets, at 1 *s.* 4 *d.* - - - - - - - - -		13	4
	Fair copy thereof for advocate, at 7 *d.* - - - -		5	10
	Draft affidavit of John Joseph Donnellan, husband of impugnant, respecting promovent's imprisonment as an insolvent; three sheets, at 1 *s.* 4 *d.* - - - -		4	—
	Fair copy thereof for his perusal previous to engrossing -		1	9
	Draft affidavit of Connor as to promovent curtailing oat measure and provender; three sheets, at 1 *s.* 4 *d.*		4	—
	Fair copy for his perusal previous to engrossing - -		1	9
	Attending advocate with said affidavits for perusal and amendment - - - - - - - - -		6	8
	Paid him his fee - - - - - - - -	1	2	9
	Mr. Donnellan having called on me, and stated his wish to see me at eight o'clock to-morrow morning,—			
	Attending Mr. Donnellan this morning at eight o'clock, pursuant to appointment, reading over to him the three prepared affidavits (which he approved of with trifling alterations), and at same time reading over with him very long instructions for interrogatories which he brought to me -		13	4
	Engrossing said three affidavits, in all 16 sheets, at 7 *d.* -		9	4
	Attending to have same sworn - - - - -		6	8
	Rule and motion—This is the second term probatory lapses; petition, Tilly, who returned citation for testimony against Thomas Stubbs and Samuel Dale; appearance expected; Tilly produced Thomas M'Keon and George Connor on promovent's pleading Swift to interrogatories; Tilly also produced Edward William Nathan and Henry Raphael; Swift to interrogatories - - - - - -		4	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
June - -	Paid swearing said four witnesses to interrogatories 5*s.* 4*d.* each - - - - - - - - - - - -	1	1	4
	Having received notice of the examination of William Nathan and Henry William Raphael,—			
	Attending and taking instructions for interrogatories - -		13	4
	Draft interrogatories, 45 sheets, at 1*s.* 4*d.* - - -	3	-	-
	Fair copy for Dr. Wily, at 7*d.* - - - - - -		19	3
	Attending him therewith - - - - - - -		6	8
	Paid him his fee - - - - - - - - -	2	5	6
	Having received same,—			
	Engrossing - - - - - - - - - - -		19	3
	Attending on Mr. King and Mr. Donnellan, and subsequently attending on Dr. Wily, when it was considered advisable to put further interrogatories to Henry Raphael		6	8
	Attending and taking instructions for same - - -		6	8
	Draft further interrogatories; 30 sheets at 1*s.* 4*d.* - -	2	-	-
	Fair copy same, at 7*d.* - - - - - - -		19	2
	Attending advocate therewith - - - - - -		6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Engrossing, as amended - - - - - - - -		19	2
	Paid for examination of Nathan and Raphael - - -	5	13	9
5 „ -	Rule and motion—Tilly produced Thomas Stubbs; Swift to interrogatories. Third term probatory continued, and appearance of Samuel Dale expected in prox.; Thomas Stubbs and Daniel Dale to citation for testimony; expected Tilly; produced said Thomas Stubbs; Swift to interrogatories; Swift exhibited three affidavits; liberty to Tilly to answer said affidavits, and if he shall be advised, to exhibit any affidavits. The Judge ordered that he should furnish Swift with copies before two o'clock on Monday next; both parties to exhibit written consents of the persons nominated by them, consenting to act as administrator, and also to furnish same to each other's proctors before two o'clock on Monday, with the names and addresses of the sureties proposed by each party respectively, and parties to be further heard on Tuesday next		4	4
	Paid exhibiting three affidavits, 1*s.* 6*d.* each - - -		4	6
	Attending and taking instructions for interrogatories for Stubbs and Dale - - - - - - - -		6	8
	Draft interrogatories, 20 sheets, at 1*s.* 4*d.* - - -	1	6	8
	Fair copy for advocate, at 7*d.* - - - - - -		11	8
	Attending him therewith - - - - - - -		6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Having received same from advocate, settled,—			
	Engrossing - - - - - - - - - - -		11	8
	Paid examiner for examination of Thomas Stubbs - -	1	2	9
	Attending receiving instructions as to names of sureties proposed by administrator - - - - - -		6	8
	Draft notice accordingly - - - - - - - -		3	4
	Fair copy and service on opposite proctor - - - -		5	4
	Draft and fair copy consent of Mr. Lawlor to become administrator, *pendente lite* - - - - -		6	8
	Brief, three affidavits, two sheets, three at 2*s.* - - -		6	-
	Copy promovent's notice to annex - - - - -		2	-
	Attending advocate therewith - - - - - -		6	8
	Paid him his fee - - - - - - - - -	2	5	6
8 „ -	Rule and motion—Third term probatory was continued, and the appearance of Daniel Dale for citation to testimony expected this day, and parties were assigned to be further heard; this day the third term probatory was continued, and the appearance of Daniel Dale expected in prox. Judge decreed administration, *pendente lite*, to Thomas Lalor, limited, &c.; security for 1,000 *l.* to be given - - - - - - - - - - -		4	4
	Paid examiner for cross-examination of Nathan and Raphael	5	13	9
	Paid for attested copy rule and extracting - - -		7	9
	Warrant - - - - - - - - - -		10	8
	Oath and attendance - - - - - - - -		7	8
	Schedule - - - - - - - - - -		15	10
	Bond - - - - - - - - - - -	1	1	8
	Administration under 600 *l.* - - - - - -	4	12	10
	Duty, 15 *l.* 10 *s.*, British - - - - - - -	16	5	-

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
8 June -	Extracting by decree - - - - - - - - -	1	6	8
	Clerks - - - - - - - - - - - -	-	11	4½
	Draft notice of sureties for service on opposite proctors -	-	3	4
	Copy and service - - - - - - - - - -	-	5	4
	Draft affidavit of Thomas Lawlor and filing fees - -	-	8	10½
	Attending at Dr. Radcliffe's, in Mount-street, getting party and sureties sworn - - - - - - - - -	-	6	8
12 „ -	Rule and motion—This is the third term probatory, was continued to this day, and the appearance of Samuel Dale to citation for testimony was expected this day in prox.; petition, Tilly - - - - - - - - -	-	4	4
15 „ -	Rule and motion—The third term probatory was continued to this day, and the appearance of Daniel Dale to citation for testimony expected this day - - - - -	-	4	4
19 „ -	Rule and motion—The third term probatory was continued, and the appearance of Daniel Dale to citation for testimony was expected this day in prox.; Tilly to inform the Court on Tuesday next when he will finish the production and examination of witnesses - - - -	-	4	4
22 „ -	Rule and motion—The third term probatory was continued, and the appearance of Daniel Dale to citation for testimony was expected; Tilly was assigned to state when he will produce and examine his witnesses; which day the Judge pronounced said Daniel Dale contumacious, and decreed a *significavit*; the third term probatory lapses; petition, Swift - - - - - - - - -	-	4	4
26 „	Rule and motion—Tilly to produce and examine all his witnesses on or before this day week; petition, Swift, and liberty for either party to move this day week, as also on Tuesday week; Tilly produced Daniel Dale; Swift to interrogatories - - - - - - - - -	-	4	4
	Paid swearing said witnesses to interrogatories - - -	-	5	4
	Paid for his examination, interrogatories having been lodged	1	2	9
	Term fee - - - - - - - - - - -	-	13	4
3 July -	Rule and motion—Liberty to either party to move this day; publication decreed unless cause on Tuesday next - -	-	4	4
	Attending, consulting and advising with Mr. Donnellan, and also with Mr. King, when it was arranged I should prepare draft, further additional articles, and meet Mr. Donnellan at my office at half-past seven o'clock on Monday morning - - - - - - - -	-	6	8
	Perusing all the instructions, and taking extracts in order to prepare said articles - - - - - - - -	-	6	8
	Drawing draft articles, 80 sheets, at 1*s.* 4*d.* - - -	5	6	8
	Fair copy thereof for Dr. Wily, at 7*d.* - - - -	2	6	8
	Attending advocate therewith - - - - - - -	-	6	8
	Paid him his fee - - - - - - - - -	2	5	6
5 „ -	Attending Mr. Donnellan this morning, pursuant to appointment, consulting and advising, and subsequently attending with him at Dr. Wily's - - - - - - - -	-	6	8
6 „ -	Rule and motion—Publication decreed, unless cause this day, on Saturday; petition, Tilly - - - - -	-	4	4
10 „ -	Rule and motion—Publication decreed, unless cause this day, on Tuesday next, and liberty to Swift to exhibit additional articles on that day, unless cause and liberty to move on that day - - - - - - - -	-	4	4
	Attending Mr. Donnellan at Dr. Wily's this morning, receiving instructions from Dr. Wily as to facts to be further alleged - - - - - - - - -	-	6	8
	Having received draft additional articles from Dr. Wily,—			
	Engrossing same, 80 sheets, at 7*d.* - - - - -	2	6	8
13 „ -	Rule and motion—Swift exhibited additional articles to his additional allegation; Tilly contested same negatively; a term assigned; petition, Swift, who was directed to produce and give notice of the examination of his witnesses within one week; Tilly to be at liberty to exhibit such allegation responsive to the first and fourth of said additional articles as he may be advised, provided same be exhibited within one week from the repetition of Swift's witnesses, and Tilly to produce his witnesses thereto (if any), forthwith on issue being joined therein, and liberty to either party to move this day week, or any other day the Court may sit -	-	4	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
13 July -	Paid exhibiting additional articles - - - - -	-	1	6
	Attending Mr. Donnellan, requiring instructions to issue citation for testimony against seven witnesses - -	-	6	8
	Paid for citation under seal - - - - - -	-	7	9
	Fiat directing and extracting - - - - - -	-	6	8
	Instructions and marshal - - - - - -	-	4	8
	Seven copies for service, at 2*s.* - - - - - -	-	14	-
	Corresponding enclosing - - - - - - -	-	3	4
	Drawing and engrossing affidavit of service - - -	-	5	4
20 „ -	Rule and motion—This is the first term probatory lapses; petition, Swift, who produced Martin Horseman, William Custis, Peter Bramble, John Mooney, Peter Donohoe, Thomas Mooney and Henry Bentley; Tilly to interrogatories; liberty to either party to move this day week; Tilly declaring, with the consent of his client expressed in open Court, that he did not intend to examine any of the witnesses produced this day, and the registrar not opposing, the Court ordered that the administration of the oath to answer interrogatory should not be considered as binding on any party - - - - - - -	-	4	4
	Paid for the production of said nine witnesses at 5*s.* 4*d.* each - - - - - - - - - - - - -	2	8	-
	Attending on said witnesses, and reading pleading to them separately, which occupied a considerable time - -	3	-	-
	Draft notice of their examination to serve on opposite proctor - - - - - - - - - - -	-	3	4
	Fair copy and service - - - - - - - -	-	5	4
	Like for examiner - - - - - - - - -	-	5	4
	Paid for their examination one guinea each, with the exception of Martin Horseman - - - - -	9	2	-
27 „ -	Rule and motion—Liberty to either party to move this day, which day Tilly exhibited additional articles; Swift contested same negatively; a term assigned; petition, Tilly, who produced John M'Garry on said articles; Swift to interrogatories; Tilly to produce and examine all his witnesses by this day week, and liberty to either party to move on that day - - - - - - - -	-	4	4
	Paid swearing said witnesses to interrogatories - - -	-	5	4
	Paid for attested copy articles - - - - - -	-	8	4
	Extracting - - - - - - - - - -	-	3	4
	Attending Dr. Wily therewith to peruse and answer - -	-	6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Having received notice of examination of said witness,—			
	Copy notice by direction of Mr. King - - - -	-	1	-
	Attending Mr. King with same and copy articles, and requesting instructions for interrogatories - - -	-	6	8
	Having received written instructions for interrogatories,—			
	Perusing same to enable us to draw interrogatories - -	-	6	8
	Draft interrogatories, 14 sheets, at 1*s.* 4*d.* - - -	-	18	8
	Fair copy for advocate, at 7*d.* - - - - - -	-	8	2
	Attending him therewith - - - - - - - -	-	6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Having received same, amended,—			
	Engrossing - - - - - - - - - -	-	8	2
	Paid examiner for cross-examination of said witness - -	1	2	9
29 „ -	Rule and motion—Tilly produced John Clements and George Clooney, on promovent's additional articles; Swift to interrogatories - - - - - - - -	-	4	4
	Paid swearing said witnesses to interrogatories - - -	-	10	8
	Having received notice of their examination,—			
	Attending with same, and requesting instructions for interrogatories - - - - - - - - - -		—	
	Having received written instructions for interrogatories,—			
	Perusing same to enable us to draw interrogatories - -	-	6	8
	Draft interrogatories, 25 sheets, at 1*s.* 4*d.* per - - -	1	13	4
	Fair copy for advocate, at 7*d.* - - - - - -	-	14	7
	Attending him therewith - - - - - - - -	-	6	8
	Paid him his fee - - - - - - - - -	2	5	6

(*continued*)

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
	Having received same, amended,—			
29 July -	Engrossing - - - - - - - - - - -		–	14 7
	Paid for cross-examination - - - - - - -		2	5 6
	Caveat Day,—			
3 August -	Rule and motion—Liberty to either party to move this day; publication decreed, unless cause on Saturday next; petition, Tilly - - - - - - - - - -		–	4 4
7 „ -	Rule and motion—Publication decreed, unless cause this day, on Tuesday next; petition, Tilly, and liberty to him to produce Donatius Henchy on or before that day in case he shall arrive in Dublin; Tilly produced said Donatius Henchy; Swift to interrogatories - - -		–	4 4
	Paid swearing said witness to interrogatories - - -		–	5 4
	Having received notice of his examination,—			
	Attending Mr. King therewith, and requesting instructions for interrogatories - - - - - - - - -		–	6 8
	Having received instructions for draft interrogatories,—			
	Perusing and noting same to enable us to draw interrogatories - - - - - - - - - - -		–	6 8
	Draft interrogatories, 14 sheets, at 1 *s.* 4 *d.* per - - -		–	18 8
	Fair copy for advocate, at 7 *d.* - - - - - -		–	8 2
	Attending him therewith - - - - - - - -		–	6 8
	Paid him his fee - - - - - - - - - -		1	2 9
	Having received same amended,—			
	Engrossing - - - - - - - - - - -		–	8 2
	Mr. Henchy having declined to remain to be cross-examined,—			
	Paid for citation under seal against Donatius Henchy -		–	7 9
	Fiat directing and extracting - - - - - - -		–	6 8
	Instructions and marshal - - - - - - -		–	4 8
	Copy for service - - - - - - - - -		–	2 –
	Paid service - - - - - - - - - -		–	2 8½
	Drawing and engrossing affidavit of service - - -		–	5 4
	Rule and motion—Citation for testimony against Donatius Henchy returnable this day; citation continued till Thursday next; publication decreed, unless cause this day, which day publication decreed; petition, both subject to the repetition of the witnesses already produced - -		–	4 4
	Mr. Henchy having attended,—			
	Paid for his cross-examination - - - - -		1	2 9
18 „ -	Attending on Mr. King, and also on Mr. Clay respecting their repetition, which Mr. Samuels had informed us he had forgotten at the time of their direct examination, and subsequently attending getting them repeated - -		–	6 8
19 „ -	Rule and motion—All acts decreed propounded, unless cause on the 5th October next; petition, Swift - - -		–	4 4
	Attending at Consistorial, reading depositions and bespeaking attested copy thereof - - - - - - -		–	6 8
	Paid for same, 885 sheets, at 10 *d.* per - - - -		36	17 6
	Extracting - - - - - - - - - -		2	5 6
	Indexing same - - - - - - - - -		–	13 4
	Attending Dr. Wily therewith, for his advice and opinion -		–	6 8
	Paid him his fee - - - - - - - - -		3	8 3
	Attending on Dr. Wily for his opinion, when he gave me same, as also copy depositions - - - - - -		–	6 8
	Draft brief, 177 sheets, at 3 *s.* 4 *d.* - - - - -		29	10 –
	Fair copy for Dr. Wily, at 2 *s.* per - - - - -		17	14 –
	Indexing same - - - - - - - - -		–	6 8
	Attending him therewith - - - - - - - -		–	6 8
	Paid him his fee - - - - - - - - -		6	16 6
	Like brief index, attendance and fee for Dr. Gayer - -		25	3 10
5 October -	Rule and motion—All acts to be decreed propounded, unless cause this day; which day, all acts decreed propounded, and conclusion to be decreed, unless cause on Saturday next - - - - - - - - - - -		–	4 4
6 „ -	Having been served with notice by the opposite proctors of their intention to apply to have their client admitted a pauper,—			

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 1.

Consistory Court. Costs in the Cause of Downes *v.* Donnellan.

1847:		£.	s.	d.
6 October -	Copy notice and corresponding (enclosing same) with Mr. King - - - - - - - - - - - -	-	3	4
9 „ -	Rule and motion—Conclusion to be decreed, unless cause this day; which day, Tilly read petition of promovent a pauper; Swift not opposing; the Judge admitted the promovent a pauper; conclusion admitted, unless cause this day week - - - - - - - - - -	-	4	4
16 „ -	Rule and motion—Conclusion to be decreed, unless cause this day; which day, conclusion to be decreed on first day of term; petition, Tilly - - - - - - -	-	4	4
	Michaelmas Term, 1847:			
2 November	Rule and motion—Conclusion to be decreed, unless cause this day; which day, conclusion decreed and assignation for sentence, and liberty for Swift to inform second court day - - - - - - - - - - - -	-	4	4
9 „ -	Rule and motion—Court assigned to receive information this day in prox.; petition, both - - - - - -	-	4	4
13 „ -	Rule and motion—Court assigned to receive information this day; Dr. Darley stated promovent's case, and Tilly read depositions of witnesses, &c. - - - - -	-	11	-
	Fiat for Registrar's attendance with Rule-book - - -	-	5	4
	Paid for his attendance - - - - - - - -	-	6	8
	Attending on Dr. Gayer and Wily with refreshers for next court-day - - - - - - - - - -	-	13	4
14 „ -	Attending on Dr. Gayer and Wily with refreshers for next court-day - - - - - - - - - -	-	13	4
	Paid refreshing fees - - - - - - - -	4	11	-
18 „ -	Rule and motion—The court assigned to receive information this day, which day Dr. Gayer and Wily argued for the impugnant, and information being complete, the judge assigned to give judgment on Monday the 27th instant -	-	11	-
	Fiat for registrar's attendance with Rule-book - - -	-	5	4
	Paid his attendance - - - - - - - -	-	6	8
	Attending on Dr. Wily with refresher for judgment - -	-	6	8
	Paid him refreshing fee - - - - - - - -	2	5	6
27 „ -	Rule and motion—The judge assigned to give judgment in this cause this day; which day, judge pronounced judgment in favour of promovent for Will, alleged in this cause; each party to pay their own costs, and assigned to sign sentence in prox. - - - - - - - -	-	11	-
30 „ -	Rule and motion—Judge assigned to sign sentence this day, which day Judge signed sentence for promovent; Swift appeared and prayed apostles, which Judge decreed and assigned him to retro-certify on or before Thursday the 30th instant - - - - - - - - -	-	4	4
	Term fee - - - - - - - - - -	-	13	4
	Drawing and engrossing petition to tax costs - - -	-	5	4
	Attending on Judge for order of reference, and subsequently attending examiner appointing time for taxation - -	-	6	8
	Attending taxation - - - - - - - - -	-	6	8
	Paid Judge and Registrar for report - - - -	-	10	8
	Paid exhibiting petition - - - - - - -	-	1	6
	Irish - - - £.	408	16	6
	British - - - £.	377	6	11

Office, 17, Henrietta-street, 21st day of August 1848.

Take notice, that we hereby call upon and require you to pay us the amount of the foregoing Bill of Costs, within one calendar month from the date of the service hereof, otherwise proceedings will be adopted for the recovery of same.

John & Robert Staples Swift,
Proctors.

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 2.

Court of Delegates. Costs in the Cause of Donnellan *v.* Downes, on Appeal.

No. 2.

COURT OF DELEGATES.

Maria Donnellan - - - - - - - - - - - APPELLANT
against
Benjamin Rainsford Downes - - - - - - - - RESPONDENT.

John Joseph Donnellan and *Maria Donnellan*, his Wife,

To *John Swift* and *Robert Staples Swift*, Proctors, Debtors.

In a certain Cause of Appeal from the Consistorial Court of Dublin.

		£.	s.	d.
1847:				
	Proctor's retaining fee - - - - - - - -		13	4
	Having obtained apostles from the Court below,—			
	Attending at Lord Chancellor's Secretary's Office, lodging same, and requesting his Lordship's fiat for Commission of Delegates - - - - - - - - -		6	8
	Attending, this day, at Lord Chancellor's Secretary's Office when I obtained said fiat - - - - - - -		6	8
	Paid secretary his fee thereon (12*s.* 6 *d.*, British) - -		13	6½
	Attending with fiat at Hanaper Office, lodging same, and bespeaking Commission of Delegates - - - -		6	8
	Attending at Hanaper Office when I obtained Commission of Delegates - - - - - - - - -		6	8
	Paid for same (12*s.*, British) - - - - - - -		13	-
	Attending at judges therewith to accept - - - -	1	-	-
20 December	Act, &c.—Swift lodged Commission of Delegates' inhibition decreed - - - - - - - - - - -		6	-
	Fee thereon and attendance - - - - - - -		6	8
	Paid for inhibition under seal - - - - - - -	4	-	2
	Extracting - - - - - - - - - - -		13	4
	Copy to serve on judge of Court below, 20 sheets, at 7 *d.* -		11	8
	Like on registrar - - - - - - - - - -		11	8
	Like on opposite proctor - - - - - - - -		11	8
	Attendances therewith - - - - - - - -		13	4
	Drawing and engrossing proxy of appellant - - -		5	4
1848:				
5 January -	Act, &c.,—Swift returned inhibition - - - - - -		12	8
	Fee thereon, and attendance - - - - - - -		6	8
2 February -	Act, &c.,—Tilly appeared for respondent and exhibited proxy and prayed transmiss - - - - - - -		9	8
	Paid for transmiss, 910 sheets - - - - - - -	37	18	4
	Extracting - - - - - - - - - - -	1	6	8
4 „ -	Act, &c.,—Swift lodged the transmiss in this cause - -		9	8
	Paid appellant's proportion for transmiss, one-third of 910 sheets - - - - - - - - - -	11	7	6
	Attending and taking instructions for appellatory libel -		6	8
	Draft appellatory libel, 11 sheets, at 1*s.* 4*d.* - - -	1	14	8
	Fair copy for Dr. Wily, at 7*d.* - - - - - - -		6	5
	Attending him therewith - - - - - - - -		6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Having received same,—			
	Engrossing - - - - - - - - - - -		6	5
	Draft case, 92 sheets, at 1*s.* 4 *d.* - - - - - -	6	2	8
	Fair copy for perusal and amendment of Dr. Wily, at 7 *d.*	2	13	8
	Attending him therewith - - - - - - - -		6	8
	Paid him his fee - - - - - - - - -	4	11	-
	Having received same,—			
	Engrossing for printer - - - - - - - - -	2	13	8
	Having received proof sheet,—			
	Perusing same, and subsequently attending and instructing printer as to the alterations made in said case - -		6	8
	Paid printing same - - - - - - - - - -	2	14	2
	Attending on opposite proctor with cases, and exchanging same - - - - - - - - - - - -		6	8

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 2.

Court of Delegates. Costs in the Cause of Donnellan *v.* Downes, on Appeal.

1848:		£.	s.	d.
4 February -	Act, &c.,—Swift lodged appellant's cases, and exhibited appellatory libel; Tilly contested same negatively, and exhibited respondent's cases - - - - - -		6	-
	Fee thereon and attendance - - - - - -		6	8
	Paid exhibiting - - - - - - - - -		3	8
	Paid registrar his attendance on judges with cases - -	1	13	4
	Paid same, attending judges to convene - - - -	1	13	4
	Paid same for summons and service - - - -		18	11½
	Attending Mr. Donnellan this day, and subsequently attending on Dr. Wily, consulting and advising, when it was considered advisable to hold a consultation with Dr. Gayer relative to new evidence lately obtained, which occupied a considerable time - - - - -		13	4
	Paid Dr. Wily consultation fee - - - - - -	2	5	6
6 April -	Attending on Dr. Gayer, appointing time for consultation, and subsequently attending on Dr. Wily informing him of Dr. Gayer having appointed the 7th of April instant, at the hour of 11 o'clock, in the Four Courts - - -		13	4
	Paid Drs. Gayer and Wily consultation fee, 2 *l.* 5 *s.* 6 *d.* each	4	11	-
	Attending said consultation for a considerable time this day, when it was agreed that the evidence laid before them at consultation should be turned into affidavits, and that an application should be made to the Court of Delegates for liberty to file additional articles grounded on those affidavits - - - - - - - - -		13	4
	Attending Mrs. Donnellan, the appellant, and taking instructions for her affidavit - - - - - - -		6	8
	Draft affidavit of appellant, six sheets, at 1 *s.* 4 *d.* - -		8	-
	Fair copy for advocate, at 7 *d.* - - - - - -		3	6
	Attending and taking instructions for affidavit of Alicia Rudd		6	8
	Draft affidavit, seven sheets, at 1 *s.* 4 *d.* - - - -		9	4
	Fair copy for advocate, at 7 *d.* - - - - - -		4	1
	Attending and taking instructions for affidavit of James Rudd		6	8
	Draft affidavit of James Rudd at 1 *s.* 4 *d.* - - - -		8	-
	Fair copy for advocate, at 7 *d.* - - - - - -		3	6
	Attending and taking instructions for affidavit of Anthony Kelly - - - - - - - - - -		6	8
	Draft affidavit, seven sheets, at 1 *s.* 4 *d.* - - - -		9	4
	Fair copy for advocate, at 7 *d.* - - - - - -		4	1
	Attending and taking instructions for affidavit of John Joseph Donnellan - - - - - - - -		6	8
	Draft affidavit of ditto, eight sheets, at 1 *s.* 4 *d.* - - -		10	8
	Fair copy for advocate - - - - - - - -		4	8
	Attending and taking instructions for affidavit of Esther Miley - - - - - - - - - -		6	8
	Draft affidavit, 20 sheets, at 1 *s.* 4 *d.* - - - -	1	6	8
	Fair copy for advocate, at 7 *d.* - - - - - -		11	8
	Attending on advocate with said affidavits, consulting and advising - - - - - - - - - -		13	4
	Paid advocate his fee on perusing affidavits - - -	3	8	3
	Having received affidavits,—			
	Attending on appellant and the several persons who were to make the affidavits, and filling blanks previous to engrossing - - - - - - - - - -	1	6	8
	Engrossing affidavits, 54 sheets, at 7 *d.* - - - -	1	11	6
	Attending and taking instructions for additional articles for filing in the Court of Delegates - - - - -		13	4
	Fair copy same for advocate, at 7 *d.* - - - - -		12	3
	Attending him therewith - - - - - -		6	8
	Paid him his fee - - - - - - - - -	2	5	6
	Having received same,—			
	Engrossing - - - - - - - - - -		12	3
	Fair copy affidavits, and pleading for service on opposite proctors, by directions of advocates, 75 sheets, at 7 *d.* -	2	3	9
	Draft notice to accompany same - - - - -		3	4
	Copy and service - - - - - - - - -		5	4
	Draft brief of transmiss, &c., 197 sheets, at 3 *s.* 4 *d.* - -	32	16	8
	Fair copy brief of transmiss, affidavits and additional articles, 197 sheets, at 2 *s.*, for Dr. Gayer - - - - -	19	14	-
	Indexing - - - - - - - - - -		13	4
	Attending Dr. Gayer therewith - - - - -		6	8
	Paid him his fee - - - - - - - - -	6	16	6
	Like brief index, attendance and fee to Dr. Wily - -	27	10	6

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 2.

Court of Delegates. Costs in the Cause of Donnellan *v.* Downes, on Appeal.

1848:		£.	s.	d.
April - -	Attending on registrar of Court of Delegates to ascertain when the cause might be heard, when I was informed, that from the number of cases then before the Court of Delegates, he could not state what time would be appointed, and subsequently attending on appellant, informing her thereof, when it was deemed advisable to have petition prepared for the Court to be submitted to the Court of Delegates - - - - - - - -	-	6	8
	Draft petition, six sheets, at 1 *s.* 4 *d.* - - - -	-	8	-
	Engrossing, at 7 *d.* - - - - - - - -	-	3	6
	Attending appellant, and subsequently attending on Judges Delegates, getting her sworn thereto - - - - -	-	13	4
	Five fair copies thereof for Judges Delegates - - -	-	17	6
	Attending Delegates with copies of said petition - -	-	13	4
	Having received notice of the intention of Delegates sitting on the 1st of June,—			
	Attending on appellant, informing her thereof, and requesting her to have the persons who were to make the affidavits with me on the following morning, in order to their being sworn thereto - - - - - - - - -	-	6	8
	Attending Dr. Gayer, and subsequently attending on Dr. Wily, informing them of the sitting of the Delegates -	-	13	4
1 June -	Attending appellant this day, as also the persons who were to make the affidavits, reading the same over, and subsequently attending before the sitting of Court, getting them sworn thereto - - - - - - - -	-	13	4
	Acts and records—Swift exhibited six affidavits, cause heard, and judges deliberated to the 5th instant - -	-	9	8
	Fee thereon - - - - - - - - - -	-	6	8
	Paid exhibiting affidavits - - - - - - -	-	11	-
	Attending hearing - - - - - - - -	1	-	-
	Paid Registrar of Consistorial Court, attending with records	-	11	4½
	Attending Drs. Gayer & Wily with refreshers for judgment	-	13	4
	Paid refreshing fees - - - - - - -	4	11	-
7 „ - -	Act and records—Judgment for appellant - - - -	-	9	8
	Fee thereon - - - - - - - - - -	-	6	8
	Attending at judgment - - - - - - - -	1	-	-
	Paid for decree - - - - - - - - -	1	-	-
	Term fee - - - - - - - - - -	1	6	8
	Draft sentence, 20 sheets, at 1 *s.* 4 *d.* - - - -	1	6	8
	Fair copy for advocate, at 7 *d.* - - - - - - -	-	11	8
	Attending him therewith - - - - - - -	-	6	8
	Paid him his fee - - - - - - - - -	1	2	9
	Engrossing, at 7 *d.* - - - - - - - - -	-	11	8
	Act and records—Judges read and signed sentence - -	-	9	8
	Fee thereon - - - - - - - - - -	-	6	8
	Paid exhibiting sentence - - - - - - -	-	1	6
	Attending Court - - - - - - - - -	1	-	-
	Warrant for swearing administratrix - - - -	-	10	8
	Oath and attendance - - - - - - - -	-	7	8
	Schedule for Stamp Office - - - - - -	-	15	10
	Engrossing inventory and affidavit - - - - -	-	10	-
	Drawing and engrossing petition to tax - - - -	-	6	8
	Attending on appellant for signature - - - - -	-	6	8
	Attending on Judges Delegates with same, and getting order of reference - - - - - - - - -	-	13	4
	Attending on registrar, appointing time for taxation - -	-	6	8
	Attending taxation - - - - - - - -	-	6	8
	Paid judges' and registrar's fees on taxation - - -	-	10	8
	Act and records—Swift read registrar's report on bill of costs, which their Lordships confirmed and taxed the same to the sum of 200 *l.* 2 *s.* 5 *d.* - - - - -	-	9	8
	Fee thereon - - - - - - - - - -	-	6	8
	Irish - - - £.	240	8	2
	British - - - £.	221	19	1

Office, 17, Henrietta-street, 21 August 1848.

Take notice, that we hereby call upon and require you to pay us the amount of the foregoing Bill of Costs within one calendar month from the date of the service hereof, otherwise proceedings will be adopted for the recovery of same.

John & Robert Staples Swift,
Proctors.

No. 3.

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell v. O'Connor.

No. 3.

COURT OF PREROGATIVE.

O'Connell v. *O'Connor*.—In the Goods of the Rev. *Thomas O'Connor*, late of Ballyfeard' in the County of Cork, Roman Catholic Clergyman, Deceased, Intestate.

COSTS incurred on behalf of Impugnant, Mr. *Jeremiah O'Connor*, Administrator of the Deceased in this Cause, cited to introduce Administration.

		£.	s.	d.
1841: June -	Retaining fee - - - - - - - - - - -	-	6	8
	Attending Mr. Browne's correspondent, who handed me administration heretofore granted of the goods and so forth of the above deceased, and obtained by the nephew of deceased; also a copy citation served upon him calling in same at suit of an alleged half-sister of deceased, when as we were not prepared with full particulars, and as term was nearly at a close, it was deemed expedient to avoid an appearance this term, and thus throw the adverse party into the following Michaelmas Term; but it was necessary that I should watch the proceedings in court lest any rule should be obtained to the prejudice of impugnant - -	-	6	8
	To my several attendances in court to watch the proceedings, and, if necessary, to oppose the opposite proctor in pressing to have impugnant pronounced contumacious - -	-	6	8
	Michaelmas Term:			
3 November	Writing to Mr. Browne informing him that the opposite proctor evinced every disposition to press this term, and requesting he would inform me what course of defence was meant to be adopted in order that I might arrange my course accordingly - - - - - - - -	-	3	4
10 „ -	Received letter from Mr. Browne which stated that the promovent in this cause is not the half-sister of deceased, and giving me, as an outline of her alleged case, an extract from a bill filed by her against his client in the Court of Chancery, and promising to give me further particulars in a few days.			
	Perusing said letter and extract, and taking abstracts to enable me to form my opinion of the case, and frame my proceedings accordingly - - - - - - - -	-	6	8
	Writing in reply, mentioning for his and his client's information the probable course to be followed by all parties -		—	
7 December	Rule and motion—The appearance of impugnant was expected to this day; Orme appeared for impugnant and introduced administration; Tilly to allege in prox. -	-	4	4
	Paid exhibiting administration - - - - - - -	-	1	6
	Appearance and fee - - - - - - - - -	-	6	4
11 „ -	Rule and motion—Tilly was assigned to allege this day; he exhibited an allegation; Orme to answer on Tuesday next	-	4	4
	Paid for attested copy allegation, eight sheets, at 10*d.* per	-	6	8
	Extracting - - - - - - - - - - -	-	3	4
	Term fee - - - - - - - - - - -	-	13	4
	In Vacation:			
14 „ -	Rule and motion—Orme was assigned to answer Tilly's allegation this day on Thursday next - - - - -	-	4	4
	Attending Dr. Radcliffe with copy promovent's allegation for him to peruse, and answer, and consulting generally as to the progress of the cause - - - - - - -	-	6	8
	Paid him his fee - - - - - - - - - -	1	2	9
	Dr. Radcliffe having advised a peremptory exception to be filed in answer thereto,—			

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell *v.* O'Connor.

		£.	s.	d.
1841:				
14 December	Draft exception accordingly, 3 folios, at 1*s.* 4*d.*	–	4	–
	Fair copy for Dr. Radcliffe, at 7*d.*	–	1	9
	Attending him therewith	–	6	8
	Paid him his fee	1	2	9
	Engrossing exception for exhibition	–	1	9
18 „	Rule and motion—Orme was assigned to answer Tilly's allegation this day; he exhibited an exception	–	4	4
	Paid exhibiting exception	–	1	6
23 „	Rule and motion—Tilly was assigned to answer Orme's exception this day week	–	4	4
30 „	Rule and motion—Tilly was assigned to answer Orme's exception this day	–	4	4
1842:	Hilary Term:			
11 January	Rule and motion—Tilly was assigned to answer Orme's exception this day in prox.; petition Tilly	–	4	4
15 „	Rule and motion—Like rule	–	4	4
18 „	Rule and motion—Like rule	–	4	4
22 „	Rule and motion—Like rule	–	4	4
	Attending Mr. Browne, who informed me that he had written to impugnant for funds, and to know his intentions as to whether he would accept the proposition made by opposite party; conferring and consulting respecting the cause, when I informed him of its progress, &c.; he said he was going out of town to-morrow, but that he would, upon receiving a letter in reply to his from impugnant, communicate with me on the subject, but during the interval that I was to give every possible opposition	–	6	8
29 „	Rule and motion—Tilly was assigned to answer Orme's exception this day, second court-day pet[r] Tilly	–	4	4
5 February	Rule and motion—Like rule	–	4	4
10 „	Received letter from Mr. Browne enclosing attested copy affidavit of promovent; also copy letter from our client with remarks on promovent's affidavit filed in Chancery, and requesting an answer shortly.			
	Paid additional postage (*see* envelope)	–	–	4
	Perusing same and taking extracts therefrom, in order that I might be able to form an opinion of the course I should pursue in resisting the claim of the promovent	–	6	8
12 „	Rule and motion—Tilly was assigned to answer Orme's exception this day in prox.; pet[r] Tilly	–	4	4
14 „	Writing to Mr. Browne in reply to his letter of the 10th, informing him how the cause stood, and the course likely to be pursued by the opposite party, whom I was pressing as much as possible to file their answer to our exception, of which answer I would send him a copy	–	3	4
15 „	Rule and motion—Tilly was assigned to answer Orme's exception this day; Tilly exhibited a replication; Orme to answer in prox.	–	4	4
	Attending in the Prerogative Office, perusing replication and bespeaking attested copy thereof	–	6	8
	Paid for attested copy replication, 31 sheets, at 10*d.* per	1	5	10
	Extracting	–	3	4
17 „	Copy same to forward to Mr. Browne for the perusal and observations of impugnant, 31 sheets, at 7*d.*	–	18	1
	Corresponding enclosing copy replication	–	3	4
	Pre-paid letter	–	–	6
19 „	Rule and motion—Orme was assigned to answer Tilly's replication this day, or this day week	–	4	4
	Term fee	–	13	4
	In Vacation:			
	Having by rule of the 19th been assigned to answer Tilly's replication on a certain day,—			
23 „	Attending Dr. Radcliffe with attested copy promovent's replication for his advice and direction respecting the answering of same, when I found he was on circuit	–	6	8
	Corresponding with him, enclosing attested copy replication and fee	–	3	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell *v.* O'Connor.

1842:		£.	s.	d.
23 February	Paid postage - - - - - - - - - - -	–	–	6
	Fee enclosed - - - - - - - - - - -	2	5	6
26 „ -	Rule and motion—Orme was assigned to answer Tilly's replication this day, on Tuesday next - - - - -	–	4	4
	Writing to Mr. Browne, informing him I understood the opposite party purposed applying for a commission to examine in Cork, and that to enable me to cross-examine their witnesses, I should attend on it, and requested he would lose no time in forwarding me the copy replication I had sent him, with Mr. O'Connell's observations on it -	–	3	4
1 March -	Rule and motion—Orme was assigned to answer Tilly's replication this day; he contested it negatively; the term assigned, and commission to examine decreed, returnable first day of next term; pet^{r} Tilly, and liberty to both parties to produce witnesses in vacation, giving notice -	–	4	4
2 „ -	Writing to Mr. Browne, saying the commission to examine had been decreed, and the probability that the same would open in a week, or 10 days at farthest, and requesting instructions for interrogatories with as little delay as possible - - - - - - - - - -	–	3	4
8 „ -	Received parcel containing Mr. O'Connor's and Mr. Browne's observations and further instructions in this matter.			
	Corresponding with Mr. Browne, acknowledging receipt of further instructions, to all of which I would give my immediate attention, and that I was in momentary expectation of receiving notice of opening commission - -	—		
	Perusing new as well as former instructions, which were very voluminous, and taking several extracts therefrom, in order to enable me to prepare draft interrogatories immediately - - - - - - - - - -	–	13	4
	Having received letter from Mr. Morgan, Proctor of the Diocese of Cork and Cloyne, mentioning that he had an interview with Mr. O'Connor, who requested he would write to me to know the state of the cause, and that any possible assistance that lay in his power he would give when commission issued, being on the spot,—			
	Corresponding fully in reply with Mr. Morgan - - -	–	3	4
	Easter Term:			
14 April -	Rule and motion—The 3d T. P. was continued to this day in prox.; pet^{r} Tilly, who by his advocate moved for the personal answer of impugnant to all the articles of promovent's replication decreed - - - - -	–	4	4
	Writing to Mr. Morgan, informing him that the opposite party had moved for the personal answer of Mr. O'Connor to all the articles of promovent's replication, which of course prevented me from pressing for any rule for publication, and that I should have further communication with Mr. O'Connor, as the instructions I had received were not sufficient, and requesting to know Mr. O'Connor's address in London, but that if he was in Cork, I would send down copy replication, and that Mr. Morgan could take down his (Mr. O'Connor's) answers in writing to the different answers thereof - - - - -	–	3	4
16 „ -	Rule and motion—The 3d T. P. was continued to this day 3d court-day, pet^{r} Tilly - - - - - - -	–	4	4
	Received letter from Mr. Morgan, saying he would be in town shortly.			
	Mr. Morgan having arrived in town,—			
	Attending him, conferring and consulting, when he told me Mr. O'Connor was at present in Cork, when I observed, it would be better for Mr. O'Connor to come up to town himself, and that from his own verbal instructions and those written ones I had already received, I would be able to prepare a draft of his personal answer; Mr. Morgan said he would write to Mr. O'Connor to come up immediately	–	6	8

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell v. O'Connor.

			£.	s.	d.
1842:					
23 April	-	Attending Mr. O'Connor, who had just arrived in town, reading over with him the promovent's replication article by article, and referring to the written instructions I had of all the circumstances of the case, and taking down in writing Mr. O'Connor's answers to each article as further instructions to enable me to prepare draft, personal answer for him, and afterwards reading over to Mr. O'Connor said instructions as taken down by me from his dictation, in order to see if he had any alteration to make or new matter to suggest; this attendance occupied nearly five hours	1	–	–
		Draft personal answer, 20 sheets, at 1 *s.* 4 *d.* per - -	1	5	–
		Attending Mr. O'Connor, and reading over same with him, when he approved thereof, after making some amendments therein - - - - - - - - -	–	6	8
		Fair copy for the perusal and amendment of Dr. Radcliffe, 20 sheets, at 7 *d.* per - - - - - - - -	–	11	8
		Attending him therewith - - - - - - - -	–	6	8
		Paid him his fee - - - - - - - - -	2	5	6
		Having received personal answer from Dr. Radcliffe, amended,—			
		Engrossing same for swearing and exhibition - - -	–	11	8
		Attending Mr. O'Connor, when he read over personal answer, and signed same - - - - - - - - -	–	6	8
26 „	-	Rule and motion—The 3d T. P. was continued to this day in prox.; pet^{r} Tilly, and liberty to Orme to move on Thursday next - - - - - - - - -	–	4	4
28 „	-	Rule and motion—Impugnant was sworn to, and gave in, his personal answer - - - - - - - -	–	4	4
		Paid exhibiting personal answer - - - - -	–	1	10
30 „	-	Rule and motion—The 3d T. P. was continued to this day -	–	4	4
3 May	-	Rule and motion—Like rule - - - - - - -	–	4	4
7 „	-	Attending Mr. Tilly, the opposite proctor, who informed me his client was willing to compromise the suit, and offered on her behalf to accept of a certain sum, in consideration of which sum he (Mr. Tilly) had instructions to drop the proceedings, and requested I would communicate with my client on the subject, when I said I would write Mr. O'Connor, my client, and let him (Mr. Tilly) know the result when I heard from him - - - - -	–	6	8
		Writing to Mr. O'Connor, giving him particulars of my interview with Mr. Tilly, and stating the terms of compromise offered, with my views on the subject, and recommending an acceptance of the terms proposed - -	–	3	4
		Rule and motion—The T. P. was continued to this day, 2d court-day - - - - - - - - - -	–	4	4
14 „	-	Rule and motion—The T. P. was continued to this day, and liberty to produce witnesses in vacation - - -	–	4	4
18 „	-	Received letter from Mr. Morgan, informing me that it was Mr. O'Connor's determination not to enter into any compromise.			
		Attending Mr. Tilly, the opposite proctor, and informing him of my client's reply to his proposition of compromise -		—	
		Term fee - - - - - - - - - -	–	13	4
23 „	-	Having received notice from opposite proctors of their taking exceptions to the personal answer of my client to the 2d, 3d and 4th articles of promovent's replication, on the grounds that the answers to said articles were short, evasive and insufficient,—			
		Copy promovent's notice to show Dr. Radcliffe - - -	–	3	4
		Attending Dr. Radcliffe for his advice and direction, when I showed him copy notice, replication, and personal answer for his perusal - - - - - - - - -	–	6	8
		Paid him his fee on advising and directing - - -	1	2	9
		Trinity Term:			
24 „	-	Rule and motion—The 3d T. P. continued to this day in prox.; pet^{r} Orme - - - - - - - -	–	4	4
28 „	-	Rule and motion—The 3d T. P. was continued to this day, in prox.; pet^{r} Tilly - - - - - - - -	–	4	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell v. O'Connor.

1842:		£.	s.	d.
	Dr. Radcliffe having advised that notice should be served on opposite proctor, denying the insufficiency of the answers of the promovent's replication, and calling upon them to proceed with despatch in the cause, or in case of further delay that I would apply for publication,—			
30 May -	Draft notice accordingly - - - - - - - -		3	4
	Copy and service on opposite proctor - - - - -		5	4
31 „ -	Rule and motion—The 3d T. P. was continued to this day 2d court-day; pet' Orme - - - - - - - -		4	4
1 June -	Writing to Mr. Morgan, informing him that the opposite party were using every device to prevent me getting the rule for publication, and that they even excepted to the personal answer of Mr. O'Connor to their replication, but on this point they finally yielded, but that they had now prayed a commission to examine in vacation, and that I was opposing them on the ground of not having sped former commission, and they are limited to Tuesday next to produce an affidavit to ground the present application, and that I would use my utmost endeavours in pressing to have the rule for publication this term - - - -		3	4
2 „ -	Attending Mr. Morgan, who had just arrived in town, when I found, as matter of course, he did not receive my letter of yesterday; I however informed him of the particulars, and explained to him the delay the opposite party were giving, but as they were limited to Tuesday next to produce an affidavit to ground application for commission to examine, upon which day I would press them as much as possible, and use my utmost to get rule for publication, and that I was of opinion that they only wished to harass us in order that their terms of compromise might be accepted, when Mr. Morgan said he entertained the same feelings, but that his client would not yield to any terms at all proposed by promovent - - - - - -		6	8
7 „ -	Rule and motion—The 3d T. P. was continued till this day; Tilly exhibited affidavit; liberty to Orme to answer same; commission to examine decreed, unless cause in prox. -		4	4
11 „ -	Rule and motion—The 3d T. P. was continued, and commission to examine decreed, unless cause this day, 2d court-day - - - - - - - - - - -		4	4
18 „ -	Rule and motion—The 3d T. P. was continued, and commission to examine was decreed, unless cause this day in prox., and commission to examine decreed - - - -		4	4
21 „ -	Rule and motion—The 3d T. P. was continued to this day, 1st day of next term - - - - - - - -		4	4
25 „ -	Writing to Mr. Morgan, informing him that notwithstanding the utmost opposition on my part the opposite party had obtained a decree for commission to examine, but whether they intended to speed it or not I could not positively say, and that before it could be sped I should get 10 days' previous notice of the opening of commission - -			
	Term fee - - - - - - - - - - - -		13	4
	In Vacation:			
2 August -	Writing to Mr. Morgan, informing him that I this day had a conversation with Mr. Tilly, the opposite proctor, who said that the commission would open on the 23d instant, and I thought it advisable that he should write to Mr. O'Connor, so that he might be to a certain extent prepared in the event of the commission being really brought down, and saying that when served with notice I would lose no time communicating with him, so as to enable us to make any ultimate arrangement that might appear necessary - - - - - - - - - -		3	4
12 „ -	Received notice of commission being opened on either the 23d or 24th instant,—			
	Writing to Mr. O'Connor, informing him thereof, and requesting his presence in Cork, as he might be aware of many important facts connected with the witnesses that may be produced, and as to which he would cross-examine them; also informing him I had written to Mr. Morgan, informing him of commission - - - - -		3	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell *v.* O'Connor.

1842:		£.	s.	d.
12 August -	Writing to Mr. Morgan respecting notice of opening commission being served - - - - - - - - -		3	4
	Close copy promovent's replication, to bring with me to Cork on commission, 31 sheets, at 7 *d.* - - - - -		18	1
	Close copy impugnant's personal answer, for like purpose, 20 sheets, at 7 *d.* - - - - - - - - - -		11	8
24 „ -	To my attending on commission in Cork, being 18 days, three days proceeding to Cork on said commission and three days returning inclusive, at four guineas per day -	81	18	–
	Having been instructed by Mr. O'Connor to draw and prepare a further pleading on his behalf,—			
	Perusing the several instructions, correspondences, statements, with the notes and observations of Mr. O'Connor, and other documents, and taking general extracts therefrom, and from the several letters of Messrs. Brown & Morgan, to enable me to prepare a draft of additional articles to be added to the exception heretofore exhibited on his behalf in this cause; the documents being very voluminous, it occupied me a considerable time examining and taking extracts from them - - - - - -	1	–	–
	Drawing draft additional articles to exception, 32 sheets, at 1 *s.* 4 *d.* - - - - - - - - - -	2	2	8
	Fair copy for the perusal and amendment of Dr. Radcliffe, at 7 *d.* - - - - - - - - - -		18	8
	Attending him therewith - - - - - - - -		6	8
	Paid him his fee - - - - - - - - -	3	8	3
	Dr. Radcliffe having amended draft, desired that I would fair copy same, and when done to bring it to him,—			
	Fair copy accordingly, 32 sheets, at 7 *d.* - - - - -		18	8
	Attending Dr. Radcliffe and re-perusing instructions with him, when several matters connected with the examination of our witnesses, and the matters to be alleged suggested themselves when he gave me a list of queries, and desired I would write to my client to have same answered before he could finally settle pleading, and that all blanks should be filled up - - - - - - - - -		6	8
19 October -	Writing to Mr. O'Connor, with the queries required to be answered, and fully, as to the filling up of blanks, and everything in fact necessary to be done before the pleading could be finally settled, and enclosing pleading -		3	4
	Paid postage - - - - - - - - - -		–	6
25 „ -	Received parcel from Mr. O'Connor, enclosing draft, with original letters from deceased to impugnant, and long written instructions and answers to my several queries for to enable me to fill blanks in draft before laying same before Dr. Radcliffe for final settlement, as directed by him.			
	Perusing said instructions, and afterwards filling in blanks in draft, and making alterations and amendments therein, such as was necessary from the new instructions, which were very voluminous, and occupied a considerable time		13	4
	Attending Dr. Radcliffe with draft, conferring and consulting, when he desired I would leave him all the new instructions I had received, and that he would peruse and finally settle draft - - - - - - - - - -		6	8
	Paid Dr. Radcliffe further fee on consultation, and for re-perusing and further amending additional articles -	1	2	9
	Having received draft, with directions from advocate to exhibit the original letters, and other exhibits referred to in articles,—			
	Engrossing additional articles for exhibition - - -		18	8
	Copy letters which were to be exhibited therewith for office use, 18 sheets, at 7 *d.* - - - - - - - -		10	6
	Michaelmas Term:			
1 November	Rule and motion—The 3d T. P. was continued to this day; Tilly returned commission to examine aperture decreed; T. P. lapses - - - - - - - -		4	4
8 „ -	Rule and motion—Publication decreed unless cause - -		4	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell *v.* O'Connor.

		£.	s.	d.
1842:				
12 November	Rule and motion—Like rule	–	4	4
15 „	Rule and motion—Publication decreed, unless cause; Orme exhibited additional articles, and six exhibits; Tilly to answer in prox.	–	4	4
	Paid exhibiting additional articles	–	1	6
	Ditto, six exhibits, 1*s.* 6*d.*	–	9	–
	Having received letter from Mr. —— on the 8th instant, informing me that his client would now compromise, if the opposite party seemed at all disposed to do so, and desiring that I would (cautiously) try their feeling on the subject,—			
16 „	Writing in reply to said letter, stating the reason of my delaying my answer so long, and that I had filed additional articles to the exception already filed, and describing fully our present position, with my views as to the compromise, the terms of which (if at all effected) I considered would not be so eligible as those offered our client a year ago	–	3	4
19 „	Rule and motion—Tilly was assigned to answer Orme's additional articles this day, second court-day	–	4	4
26 „	Rule and motion—Tilly was assigned to answer Orme's additional articles this day in prox.; p^r^ Tilly	–	4	4
2 December	Received notice from opposite Proctor, stating that he would take exceptions to the 17th article of the additional articles, exhibited on behalf of the impugnant.			
	Attending advocate with notice and copy pleading; reading over the article objected to by notice, when he directed that I would alter the article, by striking out the objectionable part, and serve notice thereof on opposite proctor	–	6	8
	Paid him his fee on consultation	1	2	9
	Draft notice of my having amended pleading	–	3	4
	Copy and service	–	5	4
3 „	Rule and motion—Tilly was assigned to answer Orme's additional articles this day in prox.; pet^r^ both	–	4	4
6 „	Rule and motion—Like rule on Thursday next	–	4	4
10 „	Rule and motion—Like rule on Tuesday next	–	4	4
13 „	Rule and motion—Tilly was assigned to answer Orme's additional articles this day; he contested same negatively; terms assigned Orme, who, by his advocate, moved for the personal answer of promovent to 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 articles of said additional allegation decreed	–	4	4
	Term fee	–	13	4
	Hilary Term:			
1843:				
10 January	Rule and motion—This is the first T. P. lapses	–	4	4
14 „	Rule and motion—This is the second T. P. lapses	–	4	4
17 „	Rule and motion—This is the third T. P. in prox.; pet^n^ Orme	–	4	4
21 „	Rule and motion—The T. P. was continued to this day, in prox.; Tilly returned commission, to take personal answer in prox.	–	4	4
24 „	Rule and motion—The third T. P. was continued to this day in prox.	–	4	4
28 „	Rule and motion—Like rule; pet^r^ Orme	–	4	4
31 „	Rule and motion—Like rule, commission to examine decreed, unless cause in prox.	–	4	4
4 February	Rule and motion—Like rule; pet^r^ Orme	–	4	4
7 „	Rule and motion—Like rule	–	4	4
11 „	Rule and motion—Like rule	–	4	4
14 „	Rule and motion—The third T. P. was continued to this day, and commission to examine was decreed unless cause; commission to examine was decreed, returnable first day of next term; T. P. continued, unless cause in prox.	–	4	4
18 „	Rule and motion—Liberty to produce writs in vacation, giving notice; pet^r^ Orme	–	4	4
	Term fee	–	13	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 3.

Court of Prerogative.—Impugnant's Costs in O'Connell v. O'Connor.

1843:		£.	s.	d.
	In Vacation:			
20 February-	Attending Mr. Tilly this day, mentioning the subject of a compromise, when he informed me that he would write to his client, Mr. Hall, on the subject; and requested I would write to my client on the subject, as in case the compromise was broken off, and in case commission was not sped, he would pray publication, and would have cause heard at once next term - - - - - -	-	6	8
	Writing to Mr. Morgan, stating that I had received his letter of the 6th instant, with my view of offer made by Mr. Hall, and the subject of compromise altogether, in a very long letter - - - - - - - - - -	-	3	4
	Not having heard from Mr. O'Connor,—			
8 March -	Corresponding with him, saying, I supposed he and Mr. Morgan were in communication respecting the compromise, and that expedition should be used - - -	-	4	4
	Paid postage - - - - - - - - - - -	-	-	1
	Having received letter from Mr. O'Connor,—			
10 „ -	Corresponding with Mr. Morgan, mentioning that I had received a letter from Mr. O'Connor, and that I saw from it what sort of a compromise we should have, and directing him as to the course he should adopt - - - - -	-	3	4
	Paid postage - - - - - - - - - - -	-	-	1
15 „ -	Received letter from Mr. Morgan desiring I would stop the proceedings, as compromise, he thought, was effected, and all that was wanted to complete it was the opinion of counsel on certain matters relative thereto.			
	Attending Mr. Tilly, who had been pressing me with regard to bringing down commission, when I showed him the letter I had received, and promised to give him every facility according to the terms of the compromise when finally agreed on - - - - - - - - -	-	6	8
	Having received letters from Mr. Morgan and Mr. O'Connor, the former stating that the compromise had been completed, the latter authorizing me to sign consent on his behalf, which had been already signed by the respective solicitors,—			
	Attending in Messrs. Tilly & Co's office, signing consent, and getting same signed by them, when they handed me consent to retain, in consideration of which it was agreed I should give every facility on behalf of my client, to a speedy termination of the cause - - - - - -	-	6	8
	Easter Term:			
15 April -	Rule and motion—Publication decreed, Orme consenting -	-	4	4
20 „ -	Rule, &c.—First assignation for sentence - - - -	-	4	4
22 „ -	Rule and motion—Second assignation for sentence unless cause; pet[r] Tilly - - - - - - - - -	-	4	4
25 „ -	Rule and motion—The judge assigned to hear sentence on the 2d assignation, unless cause this day, 2d decreed, and 3d, and to inform in prox. pet[r] Tilly - - - -	-	4	4
27 „ -	Rule and Motion—Judge assigned to receive information in prox.; pet[r] Tilly - - - - - - - -	-	4	4
2 May -	Rule and motion—The Judge assigned to receive information in this cause this day, which day Tilly read the depositions of Edward Hubbard to 1, 2, 4, 9 articles of promovent's replication. Johanna Quinlan to the 1, 2, 8, 9 articles of said replication; Edward Galway to 11th article of same; Thomas Barry to the 11th and 14th articles of same; Rev. Patrick O'Flynn to 11th and 12th articles of same; Eliza Sheehy to the 14th article of same; John Dinan to 12th article of same; and information being complete, Judge read and signed sentence on behalf of promovent, in pain of impugnant and Orme; Judge then revoked and cancelled administration - - - -			
	Term fee - - - - - - - - - - -	-	13	4
	Irish - - - £.	142	3	11
	British - - £.	131	5	2
	By cash at sundries from Mr. O'Connor - - -	45	-	-
	Balance due - - - £.	86	5	2

No. 4.

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 4.

COURT OF PREROGATIVE.

PROMOVENT'S COSTS.

O'Connell against *O'Connor*.

In the Goods of the Rev. *Thomas O'Connor*, deceased, Intestate.

No. 4.

Court of Prerogative.—Promovent's Costs in O'Connell v. O'Connor.

1841:		£.	s.	d.
	Retaining fee	–	6	8
	Attending Mr. Greene, and conferring as to the institution of this suit for calling in letters of administration to this deceased obtained by the impugnant, and obtaining same for Mrs. O'Connell who is a sister by the half-blood	–	6	8
	Attending at registry and searching for grant of administration and taking abstracts to enable us to prepare citation	–	6	8
	Paid search	–	2	8½
13 May -	Paid for citation under seal	–	7	1
	Fiat directing and extracting	–	6	8
	Copy for service	–	2	–
	Instructions and marshal	–	4	8
	Drawing and engrossing proxy	–	5	4
22 „ -	Attending Mr. Greene when he informed us that since the issuing of said citation the impugnant had gone to reside in England out of the jurisdiction of the court, upon which it became necessary to cite him by letters of request	–	6	8
	Paid for letters of request under seal	–	11	1
	Fiat directing and extracting	–	6	8
	Instructions and marshal	–	4	8
	Attending Mr. Greene therewith	–	6	8
	Trinity Term:			
19 June -	Rule, &c.—Citation continued in prox.; pet. Tilly	–	4	4
22 „ -	Rule, &c.—Like rule	–	4	4
	Having received said citation duly executed,—			
26 „ -	Rule, &c.—Tilly returned citation, appearance expected in prox.	–	4	4
	Paid promovent's appearance and fee	–	6	4
29 „ -	Rule, &c.—Appearance expected, and liberty to Tilly to move on Saturday next	–	4	4
	Term fee	–	13	4
	In Vacation:			
3 July -	Rule, &c.—Appearance expected on Tuesday next; pet. Tilly	–	4	4
6 „ -	Rule, &c.—Like rule 1st day of next term	–	4	4
	Michaelmas Term:			
2 Nov. -	Rule, &c.—Appearance expected in prox.; pet. Tilly	–	4	4
6 „ -	Rule, &c.—Appearance expected in prox.; pet. Tilly	–	4	4
9 „ -	Rule, &c.—Appearance expected in prox.; pet. Tilly	–	4	4
13 „ -	Rule, &c.—Appearance expected 2d court-day; pet. Tilly	–	4	4
20 „ -	Rule, &c.—Appearance expected in prox.; pet. Tilly	–	4	4
23 „ -	Rule, &c.—Like rule in prox.; pet. Tilly	–	4	4
27 „ -	Rule, &c.—Like rule in prox.; pet. Tilly	–	4	4
30 „ -	Rule, &c.—Like rule 2d court day; pet. Tilly	–	4	4
7 Dec. -	Rule, &c.—Appearance expected; Orme appeared for impugnant, and introduced letters of administration; Tilly to allege in prox.	–	4	4
	Attending Mr. Greene and taking instructions for allegation on behalf of promovent		—	
	Drawing draft allegation	–	8	4
	Fair copy for perusal and amendment of advocate	–	5	–

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 4.

Court of Prerogative.—Promovent's Costs in O'Connell v. O'Connor.

		£.	s.	d.
1841:				
7 Dec. -	Attending him therewith - - - - - - - -	–	6	8
	Paid him - - - - - - - - - -	1	2	9
	Engrossing same as amended - - - - - - -	–	5	–
11 „ -	Rule, &c.—Tilly to allege; he exhibited an allegation; Orme to answer on Tuesday next - - - - - -	–	4	4
	Paid exhibiting allegation - - - - - - -	–	1	6
	Term fee - - - - - - - - - - -	–	13	4
18 „ -	Rule, &c.—Orme to answer Tilly's allegation; he exhibited an exception; Tilly to answer in prox. - - - - -	–	4	4
	Attending at Prerogative Office, perusing said exception and bespeaking copy - - - - - - -		—	
	Paid for attested copy exception - - - - - -	–	7	9
	Extracting - - - - - - - - - - -	–	6	8
	Attending advocate therewith for his perusal and answer -	–	6	8
	Paid him - - - - - - - - - - -	1	2	9
23 „ -	Rule, &c.—Tilly to answer Orme's exception on this day week - - - - - - - - - - - -	–	4	4
30 „ -	Rule, &c.—Tilly to answer Orme's exception this day on this day week - - - - - - - - - -	–	4	4
	Sir Henry Meredyth having advised a replication to be filed in answer to said exception,—			
	Attending Mr. Greene, conferring and taking instructions for replication - - - - - - - - - -	–	6	8
	Drawing draft replication accordingly, 30 sheets, at 1*s.* 4*d.* per - - - - - - - - - - - -	2	–	–
	Fair copy for the perusal and amendment of Sir Henry Meredyth, 30 sheets, at 7*d.* - - - - - - -	–	17	6
	Attending him therewith - - - - - - - - -	–	6	8
	Paid him - - - - - - - - - - -	2	5	6
	Engrossing same as amended - - - - - - -	–	17	6
	Attending Mr. Greene and consulting on the subject of this cause and the proofs to be made, when it was considered advisable to lay a case before Sir Henry Meredyth for his opinion on the matter, and taking instructions accordingly	–	6	8
	Drawing draft case, 10 sheets, at 1*s.* 4*d.* - - - - -	–	13	4
	Fair copy for the advice and opinion of Sir Henry Meredyth, 10 sheets, at 7*d.* - - - - - - - -	–	5	10
	Attending him therewith - - - - - - - - -	–	6	8
	Paid him his fee - - - - - - - - - -	2	5	6
	Having received case with Sir H. Meredyth's opinion thereon,—			
	Fair copy opinion for Mr. Greene by his desire - - -	–	5	–
	Attending him therewith - - - - - - - -	–	6	8
1842:	Hilary Term:			
11 January -	Rule, &c.—Tilly to answer Orme's exception in prox.; pet. Tilly - - - - - - - - - - -	–	4	4
15 „ -	Rule, &c.—Like rule in prox. - - - - - - -	–	4	4
22 „ -	Rule, &c.—Like rule 2d court day; pet. Tilly - - -	–	4	4
29 „ -	Rule, &c.—Like rule 2d court day; pet. Tilly - - -	–	4	4
5 February -	Rule, &c.—Like rule 2d court day; pet. Tilly - - -	–	4	4
12 „ -	Rule, &c.—Like rule in prox.; pet. Tilly - - - -	–	4	4
15 „ -	Rule, &c.—Like rule; he exhibited a replication; Orme to answer in prox. - - - - - - - - -	–	4	4
	Paid exhibiting replication - - - - - - -	–	1	6
19 „ -	Rule, &c.—Orme to answer Tilly's replication this day on this day week; pet. Orme - - - - - - -	–	4	4
	Term fee - - - - - - - - - - -	–	13	4
26 „ -	Rule, &c.—Orme to answer Tilly's replication on Tuesday next - - - - - - - - - - -	–	4	4
1 March -	Rule, &c.—Orme to answer Tilly's replication; he contested it negatively; terms assigned and commission to examine decreed returnable first of next term; pet. Tilly, and liberty to both parties to produce witnesses in vacation, giving notice - - - - - - - - -	–	4	4
	Easter Term:			
14 April -	Attending Sir H. Meredyth, and instructing him to move for the P. answer of impugnant to promovent's replication	–	6	8
	Paid him - - - - - - - - - - -	1	2	9

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 4.

Court of Prerogative.—Promovent's Costs in O'Connell v. O'Connor.

1842:		£.	s.	d.
14 April -	Rule, &c.—The 3d T. P. continued to this day, in prox.; pet. Tilly, who, by his advocate, Sir H. Meredyth, moved for the personal answer of impugnant to all the articles of promovent's replication; decreed - - - - - -	-	4	4
	Paid for decree - - - - - - - - - -	-	4	6
16 „ -	Rule, &c.—The 3d T. P. continued, 3d court-day; pet. Tilly - - - - - - - - - -	-	4	4
26 „ -	Rule, &c.—The 3d T. P. continued in prox., and liberty to Orme to move on Thursday next - - - - -	-	4	4
28 „ -	Rule, &c.—Impugnant was sworn to, gave in, and repeated his personal answer - - - - - - -	-	4	4
	Paid for attested copy said personal answer, 20 sheets, at 10 *d.* - - - - - - - - - -	-	16	8
	Extracting - - - - - - - - - -	-	6	8
30 „ -	Rule, &c.—The 3d T. P. continued in prox.; pet. Tilly -	-	4	4
3 May „	Rule, &c.—The 3d T. P. continued in prox.; pet. Tilly -	-	4	4
7 „ -	Rule, &c.—The 3d T. P. continued, 2d court-day; pet. Tilly - - - - - - - - - -	-	4	4
14 „	Rule, &c.—3d T. P., and liberty to produce witnesses in vacation, giving notice - - - - - - -	-	4	4
	Term fee - - - - - - - - - -	-	13	4
	Trinity Term:			
24 „ -	Rule, &c.—3d T. P. continued in prox.; pet. Orme - -	-	4	4
28 „ -	Rule, &c.—3d T. P. continued in prox.; pet. Tilly - -	-	4	4
31 „ -	Rule, &c.—3d T. P. continued, 2d court-day; pet. Orme -	-	4	4
7 June -	Attending Mr. Greene, and conferring generally on the subject of this suit, and particularly as to the necessity which existed for procuring a commission for the examination of witnesses on the promovent's pleading, and taking instructions for an affidavit to ground application for such commission - - - - - - - - - -	-	6	8
	Drawing draft affidavit, 17 sheets, at 1 *s.* 4 *d.* per - -	1	12	8
	Fair copy for the perusal and approval of Mr. Greene previous to engrossing same for swearing, 17 sheets, at 7 *d.*	-	9	11
	Attending Mr. Greene, and reading over affidavit with him, when he approved thereof, and directed same to be engrossed for swearing in the country, with vicar's-general return thereto - - - - - - - - -	-	6	8
	Engrossing same, 17 sheets, at 7 *d.* - - - - - -	-	9	11
	Drawing and engrossing vicar-general's return thereto -	-	5	4
	Attending Mr. Greene therewith, and giving him the necessary instructions to have same sworn and the return executed - - - - - - - - -	-	6	8
	Rule, &c.—3d T. P. lapses; Tilly exhibited an affidavit, liberty to Orme to answer; commission to examine decree, unless cause in prox. - - - - - - -	-	4	4
	Paid exhibiting affidavit and marshal's fee - - -	-	1	10
11 „ -	Rule, &c.—3d T. P. continued, and commission to examine decreed, unless cause 2d court-day - - - -	-	4	4
18 „ -	Rule, &c.—3d T. P., and commission to examine decreed; notices of witnesses to be served, pursuant to rule, in Dublin; pet. Orme - - - - - - - -	-	4	4
21 „	Rule, &c.—3d T. P. continued 1st day of next Term; pet. Tilly - - - - - - - - - -	-	4	4
	Term fee - - - - - - - - - -	-	13	4
	Attending Mr. Hall, and conferring relative to the speeding of the commission in this cause, and as to the most convenient time for opening same, and afterwards attending Dr. Moore, the examiner, when we finally arranged to open said commission in Cork on either 23d or 24th day of August inst., and requesting Mr. Greene would have the necessary witnesses in attendance - - - -	-	6	8
	Drawing draft notice of our intention to open said commission accordingly - - - - - - - -	-	3	4
12 August -	Fair copy and service on Mr. Orme - - - - -	-	5	4
	Paid for attested copy promovent's replication to accompany commission, 30 sheets, at 9 *d.*, and clerks - - -	1	5	-
	Extracting - - - - - - - - - -	-	6	8
	Paid for receipts - - - - - - - - -	-	4	5
	Attending in registry and signing same - - - -	-	6	8
	Paid for commission under seal - - - - -	2	11	6
	Fiat directing and extracting - - - - - -	-	6	8

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 4.

Court of Prerogative.—Promovent's Costs in O'Connell *v.* O'Connor.

		£.	s.	d.
1842: August -	To fees allowed travelling from Dublin to Cork to attend said commission, and returning to Dublin, in all six days, at four guineas per day, including all expenses - -	27	6	–
	To my attendance on said commission in the city of Cork on the 26th, 27th, 28th, 29th, 30th and 31st August, and 1st, 2d, 3d, 4th, 5th and 6th days of September, in all 12 days, at four guineas per day, including all expenses -	54	12	–
	Paid examiner his fees on said commission, as per his bill and receipt - - - - - - - - - - -	81	18	–
	Michaelmas Term:			
1 November	Rule, &c.—3d T. P. continued; Tilly returned commission; aperture decreed; T. P. lapses - - - - - -	–	4	4
	Paid exhibiting commission - - - - - - -	–	1	6
8 „ -	Rule, &c.—Publication, unless cause in prox.; pet. Tilly -	–	4	4
12 „ -	Rule, &c.—Publication, unless cause in prox.; pet. Orme -	–	4	4
15 „	Rule, &c.,—Publication, unless cause; Orme exhibited additional articles, and six exhibits; Tilly to answer in prox. - - - - - - - - - - - -	–	4	4
	Attending at Prerogative Office, perusing said articles, and exhibits, and bespeaking copy - - - - - -		—	
	Paid for same attested, 32 sheets, at 9 *d.*, and clerks - -	1	6	8
	Extracting - - - - - - - - - - -	–	6	8
	Attending Dr. Wily therewith for his perusal and answer -	–	6	8
	Paid him his fee - - - - - - - - - -	1	2	9
19 „ -	Rule, &c.—Tilly to answer Orme's additional articles 2d court-day - - - - - - - - - - -	–	4	4
26 „ -	Rule, &c.—Like rule in prox.; pet. Tilly - - - - -	–	4	4
29 „	Rule, &c.—Tilly to answer Orme's additional articles in prox. - - - - - - - - - - - -	–	4	4
2 December	Counsel having advised that the 17th article of said additional articles should be opposed, for stating that promovent is the daughter either of Daniel Dinan or John Dinan - - - - - - - - - -		—	
	Drawing draft notice for service on opposite proctor, calling on him to amend said articles, as it was impossible we could cross-examine any witness he might produce to said article as it at present stood - - - - - -	–	3	4
	Fair copy and service on Mr. Orme - - - - - -	–	5	4
3 „ -	Rule, &c.—Tilly to answer Orme's additional articles this day in prox.; pet. Tilly - - - - - - - -	–	4	4
6 „ -	Rule, &c.—Like rule on Thursday next; pet. Tilly - -	–	4	4
8 „ -	Rule, &c.—Like rule in prox. - - - - - - -	–	4	4
10 „ -	Rule, &c.—Like rule on Tuesday next; pet. Tilly - -	–	4	4
	Term fee - - - - - - - - - - - -	–	13	4
	Having been served with notice, stating, that the article objected to was amended as required,—			
	Attending at Prerogative Office, perusing said article, when I found said article was amended - - - - - -		—	
13 „ - -	Rule, &c.—Tilly contested Orme's additional articles negatively, terms assigned; pet. Orme, who, by his advocate, Dr. J. Radcliffe, moved for the personal answer of promovent to the 4. 5, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23d articles of said additional articles; decreed - - - - - - - - - - -	–	4	4
	Attending Mr. Hall, and consulting generally and informing him of the opposite party's having obtained a decree for the personal answer of promovent to certain articles of impugnant's additional articles, and requesting instructions for same, which he promised to furnish forthwith -	–	6	8
1843: 10 January -	Rule, &c.—First T. P. lapses; pet. Tilly - - - - -	–	4	4
	Having received long written instructions for personal answer,—			
	Perusing, abstracting and arranging same in order to enable us to draw draft personal answer, occupying us a considerable time - - - - - - - - -	–	13	4
	Drawing draft personal answer, 30 sheets, at 1*s.* 4*d.* -	2	–	–
	Fair copy for the perusal and amendment of Dr. Wily, 30 sheets, at 7*d.* - - - - - - - - - -	–	17	6
	Attending him therewith - - - - - - - - -	–	6	8
	Paid him - - - - - - - - - - -	1	2	9

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 4.

Court of Prerogative.—Promovent's Costs in O'Connell v. O'Connor.

1843:		£.	s.	d.
10 January -	Engrossing same as amended - - - - - -	-	17	6
	Fiat for commissioner and attendance to take same - -	-	6	8
	Paid for same under seal - - - - - -	2	11	6
	Paid for attested copy, additional articles and exhibits to accompany same, 32 sheets - - - - - -	1	6	8
	Extracting - - - - - - - - - -	-	6	8
	Instructions and marshal - - - - - -	-	4	8
	Corresponding and enclosing same to Mr. Greene - -	-	3	4
14 „ -	Rule, &c.—2d T. P., lapses; pet. Tilly - - - -	-	4	4
17 „ -	Rule, &c.—3d T. P. lapses in prox.; pet. Orme - -	-	4	4
21 „ -	Rule, &c.—3d T. P. in prox.; pet. Tilly, who returned commission to take personal answer - - - -	-	4	4
	Paid exhibiting commission - - - - - -	-	1	6
24 „ -	Rule, &c.—3d T. P., continued in prox.; pet. Orme - -	-	4	4
28 „ -	Rule, &c.—3d T. P. in prox.; pet. Orme - - - -	-	4	4
31 „ -	Rule, &c.—3d T. P. continued, and commission to examine, unless cause in prox.; pet. Orme - - -	-	4	4
4 February	Rule, &c.—3d T. P. continued, and commission to examine, unless cause in prox.; pet. Orme - - -	-	4	4
7 „ -	Rule, &c.—Like rule in prox.; pet. Orme - - -	-	4	4
11 „ -	Rule, &c.—Like rule in prox.; pet. Orme - - -	-	4	4
14 „ -	Rule, &c.—Like rule; commission decreed returnable first day of next term; T. P. continued to same day; pet. both - - - - - - - - - - -	-	4	4
18 „ -	Rule, &c.—Liberty to produce witnesses in vacation, giving notice; pet. Orme - - - - - - - -	-	4	4
	Term fee - - - - - - - - - -	-	13	4
	Easter Term:			
15 April -	Rule, &c.—Publication decreed, Orme consenting - -	-	4	4
	Attending at Prerogative Office, perusing deposition and bespeaking copy - - - - - - - -		—	
	Paid for same attested and clerks, 373 sheets - - -	15	10	10
	Extracting - - - - - - - - - -	1	2	9
	Indexing same - - - - - - - - -	-	8	4
20 „ -	Rule, &c.—First assignation for sentence; pet. Tilly -	-	4	4
22 „ -	Rule, &c.—Second assignation decreed, unless cause in prox.; pet. Tilly - - - - - - - - -	-	4	4
25 „ -	Rule, &c.—Second assignation for sentence decreed, and 3d, and to inform in prox.; pet. Tilly - - - -	-	4	4
	Drawing draft brief for the hearing, 60 sheets, at 3*s.* 4*d.* per - - - - - - - - - -	10	-	-
	Fair copy for Dr. Wily, 60 sheets, at 2*s.* per - - -	6	-	-
	Attending him therewith - - - - - - - -	-	6	8
	Paid him his fee - - - - - - - -	3	8	3
29 „ -	Rule, &c.—Judge assigned to receive information in this cause this day in prox.; pet. Tilly - - - -	-	4	4
	Drawing draft sentence 10 sheets at 1*s.* 4*d.* - - -	-	13	4
	Fair copy for the perusal and amendment of Dr. Wily, 10 sheets, at 7*d.* - - - - - - - -	-	5	10
	Attending him therewith - - - - - - -	-	6	8
	Paid him - - - - - - - - - -	1	2	9
	Engrossing same - - - - - - - - -	-	5	10
	Drawing draft fiat for registrar's attendance, with records -	-	3	4
	Fair copy and service - - - - - - - -	-	5	4
2 May -	Rule, &c.—Information this day, which day Dr. Wily stated promovent's case, and Tilly read the depositions of Edward Hubbard to the 1, 2, 4, 9 articles of promovent's replication; Johanna Quinlan to 1, 2, 8, 9 of same; Edward Galway to 11 of same; Thomas Barry to 11 and 14 of same; Rev. Patrick O'Flinn to 11 and 12 of same; Eliza Sheehy to 14 of same; John Dinan to the 12 of same, and information being completed, Judge read and signed sentence on behalf of promovent, in pain of impugnant and Orme; Judge then revoked and cancelled letters of administration - - - - - -	-	14	4
	Paid registrar attending with records - - - -	-	6	8
	Paid exhibiting sentence - - - - - -	-	1	6
	Paid judge and registrar for decree - - - - -	1	11	-
	Paid court-keeper and crier - - - - - -	-	11	4½
	Term fee - - - - - - - - - -	-	13	4

Printed image digitised by the University of Southampton Library Digitisation Unit

No. 4.

Court of Prerogative.—Promovent's Costs in O'Connell *v.* O'Connor.

1843:	Administration under Seal.	£.	s.	d.
	Fiat for commission and attendance	–	6	8
	Paid for same under seal	2	9	–
	Stamp on bond	1	1	8
	Returning commission	–	6	8
	Administration under seal	7	8	8
	Stamp duty	32	10	–
	Extracting	1	6	8
	Registrar's clerks	–	11	4½
	Schedule and filing	–	15	10
	Late Currency £.	323	–	5½
	Present Currency £.	298	3	6

No. 5.

COURT OF DELEGATES.

Comyn v. *Vonstentz.*

No. 5.

Court of Delegates. Comyn *v.* Vonstentz. Exception.

An Exception on the part and behalf of Peter Comyn, Respondent in this Cause, to a pretended Taxation, lately had herein, of a certain Bill of Costs, alleged to have been incurred by this Party, which Bill now remains in the Registry of this honourable Court, and in the custody of the Registrar thereof.

This party excepient, saving and reserving to himself the benefit of the law in all things, and of the practice and usage of this honourable Court, doth except, allege and say, that this party is in and by said Bill of Costs charged with the drawing of draft brief for hearing of this Cause, and for fair copies thereof for counsel, amounting in the entire to the sum of 93 *l.* 9 *s.* 4 *d.*; but which sum, or any part thereof, this party denies that he should pay, the same not being justly and fairly due for work and labour done in this Cause on behalf of this party; for this party saith, that said draft and fair copies of briefs were not made or prepared for the hearing of this Cause of Comyn *v.* Vonstentz before the Judge of the Court of Prerogative, and from the decision of which Court this suit in this honourable Court is an Appeal, and which said draft and fair copy briefs now charged in said Bill of Costs in this Cause are those prepared and used in the Court below, and not divers, and for the preparation of which this party has been already charged as Costs incurred by them in said Court of Prerogative.

That in and by the 78th and 79th pages of said Bill of Costs, this party is charged for copies of the notes and arguments of counsel made on the hearing of this Cause in the Court below. Such charges amounting to the sum of 56 *l.* 19 *s.* 8 *d.*, and which this party doth except and say he should not have been charged and is not liable to, inasmuch as that said arguments of counsel used in the Court below could not in anywise affect this party on the hearing of this Cause of Appeal before this honourable Court, and were by reason thereof superfluous, unnecessary and extravagant, and were not work and labour done for the benefit of this party during the progress of this Cause before this honourable Court; nor is it the usage or practice of this honourable Court, by reason aforesaid, to tax or allow such charges against the suitors of this honourable Court.

That the fees paid to counsel in this Cause, and which are charged against this party in and by said Bill of Costs, are excessive, unnecessary and extravagant, with the charges consequent thereon, and connected therewith, and should not be taxed by this honourable Court against this party; such fees so charged as aforesaid being as follows:—

	£.	s.	d.
By the 3d page thereof, fee on Draft Affidavit	1	1	–
„ 5th Consultation	2	2	–
„ 6th Draft Affidavit	2	2	–
„ 10th Ditto	3	3	–
„ 11th Refresher	3	3	–
„ 14th Case	1	1	–
„ 18th Ditto	1	1	–
„ 22d Consultation	2	2	–
„ 24th Case	1	1	–
„ 33d Ditto	2	2	–
„ 44th Consultation	1	1	–
„ 47th Draft Affidavit	3	3	–
„ 50th Ditto	1	1	–
„ 53d Refresher	3	3	–
„ 54th Ditto	1	1	–

Printed image digitised by the University of Southampton Library Digitisation Unit

	£.	s.	d.
By the 60th page thereof, fee on Case - - - - - -	1	1	–
„ 61st - - - - - - - Draft Affidavit - - -	1	1	–
„ 66th - - - - - - - Case - - - - -	2	2	–
„ 67th - - - - - - - Ditto - - - -	2	2	–
„ 73d and 74th - - - Draft Affidavit - - -	2	2	–
„ 79th - - - - - - - - - - - - -	16	5	–
„ 88th - - - - - - - Refresher - - - -	2	2	–

No. 5.
Court of Delegates.
Comyn v. Von-stentz.
Exception.

Whereupon this party excepient prays, that this honourable Court will be pleased to revise such taxation of said Bill of Costs, and that this his exception may be decreed valid with costs, and so forth.

John & Robert Staples Swift,
Respondent's Proctors.

W. R. Miller, Adv.

No. 6.

Extracted from the Registry of Her Majesty's High Court of Delegates in Ireland.

No. 6.
Court of Delegates.
Von Stentz v. Comyn.
Attested copy Rule, 19 April 1850.

Acts had, sped and despatched on Friday the 19th day of April 1850, before the Hon. Mr. Justice Jackson, Mr. Serjeant Stock, and Dr. Andrews, Judges Delegates, with others in this Cause, in the Court of Admiralty, Four Courts, Dublin, in presence of

Jos. Hamilton, N. P., Registrar.

Von Stentz v. *Comyn.*

On which day Swift appeared for Respondent, and exhibited proxy, and an exception to the Registrar's report on the taxation of costs. Dr. Miller, for Respondent, argued in support of said exception.

Whereupon, and on hearing Dr. Radcliffe on behalf of Messrs. Tilly & Ormsby, their Lordships overruled the said exceptions, and taxed said Bill of Costs to the sum of 899 *l.* 0 *s.* 6 *d.* Dr. Radcliffe then moved on the petition of Messrs Tilly & Ormsby, that their Lordships would refer the Bill of Costs incurred on behalf of the Respondents in the Court of Chancery, on the application to the Lord Chancellor for a Commission of Review to the Registrar for Taxation.

Their Lordships, on hearing Dr. Millar for Respondents, refused to make any rule on said motion, without prejudice to such application as the parties may be advised to make should necessity arise.

(The foregoing is a true copy.)

(signed) *Jos. Hamilton, Jr*, N. P.
Deputy Registrar.

Printed image digitised by the University of Southampton Library Digitisation Unit

ANALYSIS OF INDEX.

ALPHABETICAL and CLASSIFIED LIST of the PRINCIPAL HEADINGS in this INDEX, with the Paging at which they will be respectively found.

Printed image digitised by the University of Southampton Library Digitisation Unit

Printed image digitised by the University of Southampton Library Digitisation Unit

Printed image digitised by the University of Southampton Library Digitisation Unit

I N D E X.

[*N.B.*—In this Index, the *Numerals* following *Rep.* refer to the Paging of the Report; the *Figures* following the Names of the Witnesses to the Questions of the Evidence, and those following *App.* to the Page of the Appendix.]

A.

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

ADVOCATES—continued.

2. *How far there is any necessity for the number being limited:*

There is no reason for limiting the number of advocates in the Diocesan Courts; the practical reason is the amount of the stamp duty; it is very heavy, Dr. *Kyle* 1754, 1755——Witness considers the advocates of the Prerogative Court are the only persons competent for conducting the other ecclesiastical business of the country and the matrimonial business, which is very important, Dr. *Wily* 2241–2244——How far the advocates in the Prerogative Court confine their business exclusively to that Court, *ib.* 2258–2288, 2331–2342. 2389–2405——There is nothing to prevent advocates entering the Prerogative Court but the payment of the stamp duty, and the necessity of taking the degree of Doctor of Laws, *ib.* 2298–2304.

See also, *Barristers. Civil Law. Common Law Lawyers. Consistorial Court. Cork Diocesan Court. Doctors of Laws. Ffrench* v. *Ffrench. Oaths. Roman Catholics. Solicitors.*

Affidavits. Nature of the affidavit required as to the execution of a will, in cases falling within the voluntary jurisdiction of the Court, *Hamilton* 1061–1069.

See also, *Commissioners for taking Affidavits. Petition and Affidavit. Probate of Wills.*

Allegations. Objections existing to the system of preparing Allegations in the Prerogative Court, *Blakeney* 2131–2136.

Appeals. At present there is appeal from the Diocesan Court to the Archbishop's Court, and then to the Court of Delegates, Hon. *R. Keatinge* 40, 41. 315——The tribunal of appeal this Bill proposes to establish, that is, the Lord Chancellor, with two Common Law Judges assisting him, would be a very efficient court, provided the Chancellor has time to devote to it, Hon. *R. Keatinge* 385–443; Dr. *Radcliffe* 1936–1947——Great objection to an appeal finally binding from one single judge to another single judge, however eminent, Hon. *R. Keatinge* 386–443——Suggestions and observations generally on the subject of appeal, *ib.* 387–443——Appeals from the Cloyne and Ross Diocesan Court go to the Metropolitan Court of Dublin; the expense of appeal is not very great, Dr. *Kyle* 1573–1575——Practically there has been only one appeal from witness's decisions in his courts, *ib.* 1800–1802.

The appeals from the Consistorial Court to the Court of Delegates are frequent as compared with the decisions, Dr. *Radcliffe* 1884——Instance of the cause of Donnellan *v.* Downes, showing the enormous expense of appeals; this was an appeal from the decision of the Consistorial Court to the Court of Delegates; nature of the taxation of costs in cases of appeal, *ib.* 1885–1914——There are appeals to the Consistorial Court from the other Diocesan Courts, *ib.* 1915——From the Diocesan Courts of Leinster and Munster appeals all lie to witness in Dublin; from Ulster and Connaught they all lie to him in Armagh, *ib.* 1915, 1916——Another appeal lies to the Court of Delegates, *ib.* 1917——It would be desirable to prevent this double appeal and triple proceeding; there is no occasion for all these appeals, *ib.* 1918.

See also, *Bills of Costs. Central Court of Probate. Copies of Proceedings. Delegates, Court of. Depositions. Interlocutory Orders. Taxation of Costs.*

Appointments. The appointments in the Prerogative Court rest with the Primate, Hon. *R. Keatinge* 1–5. 22.

See also, *Commissioners for taking Affidavits. Examiners. Judges*, 1. *Registrars.*

Apprentices. Persons studying for the profession of proctor serve an apprenticehip of seven years to a proctor, and that proctor must be of ten years' standing, and no proctor can take more than one apprentice, Hon. *R. Keatinge* 448——Formerly the Deputy Registrar of the Court was the only person who could take apprentices, and he was at liberty to take three; the alteration in the system took place in 1830, *ib.* 449–453——Witness believes the usual fee paid by a person on his entering into the profession as an apprentice is about 500*l.* or 600*l.*, *ib.* 454, 455——Amount of the apprentice fee to qualify a person to become a proctor, *Hamilton* 722——It is now about 600*l.*; it was 200*l.* in 1800, and gradually rose to 1,000 guineas, *ib.* 722–724——The tendency of raising the fee was materially to limit the number of proctors, and witness would say, advisedly, as the business is limited in its extent, *ib.* 725, 726——The rule that no proctor of less than ten years' standing shall take an apprentice, confining it to one at a time, has never been departed from, *ib.* 726-734.

Archbishop's Court. See *Appeals.*

Ardfert and Aghadoe Diocese. There is a Diocesan Court in the county of Kerry; the name of the diocese is Ardfert and Aghadoe, under the Bishop of Limerick; the Court sits at Tralee, *Leahy* 1345–1347——The Vicar-general, or surrogate as he is called, is the judge of this court; the present Vicar-general is the Dean of Ardfert; he resides about nine miles

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Ardfert and Aghadoe Diocese—continued.

miles from Tralee, *Leahy* 1348–1350——The duties of the Court are performed by deputy, the Rev. A. B. Rowan, a clergyman of the Established Church; he resides near Tralee, *ib.* 1351–1353.

Attested Copies. Number of times a party in the Prerogative Court is obliged to take out an attested copy of the same document and the pleading, *Hamilton* 1070–1080. 1082.

See also *Wills.*

Attorneys. By admitting attorneys and solicitors to practise in the Prerogative Court, the proctors would be extinguished as a profession, and would be extremely unjust towards them, Hon. *R. Keatinge* 573, 574; *Hamilton* 1171–1247. 1250–1265——No advantage would be gained by the public in increasing the number of proctors by the admission of attorneys and solicitors to act as proctors, Hon. *R. Keatinge* 589, *et seq.*——Objections generally to the admission of attorneys, *Hamilton* 1171–1247. 1250–1265——Witness believes the expediency of keeping the two professions distinct has been recognized by Act of Parliament, *ib.* 1248——There was a rule of Judge Radcliffe's in 1830, specially excluding anything of the kind, any interference of attorneys in any branch of the profession, *ib.* 1249.

So far as the suitors are concerned, it might perhaps be an advantage to admit attorneys to practise in the Diocesan Courts, Dr. *Kyle* 1645–1680——But, on the other hand, the proctors would say, that having paid a heavy stamp duty and having qualified themselves, it would be unfair to admit them, *ib.*——The provision in the Bill allowing attorneys to practise in the Prerogative Court is a very bad provision; nothing could be gained by it, Dr. *Radcliffe* 1960–1974.

See also, *Advocates. Barristers. Fees. Oaths. Probate of Wills. Solicitors.*

B.

BARRISTERS:

1. *Generally.*
2. *Objections to the admission of the general Bar to practise in the Prerogative Court.*

1. *Generally:*

All barristers in Ireland are not competent to practise in the Prerogative Court, Hon. *R. Keatinge* 328——Barristers who are not admitted advocates of the Court are not allowed to sign pleadings, *ib.* 330——But a barrister is allowed by the courtesy of the Court to practise, if there are two advocates of the court concerned with him, *ib.*——Witness generally finds, in very important cases, that he has before him some eminent gentleman who is not an advocate, *ib.* 330–336——Witness does not concur in the evidence of Judge Keatinge, that the admission of the Bar generally would tend to the better administration of justice in the Prerogative Court, Dr. *Wily* 2344–2369——The barristers in Ireland generally practise both in the Chancery and Common Law Courts, *ib.* 2382–2388.

2. *Objections to the admission of the general Bar to practise in the Prerogative Court.*

In so far as the public is concerned, there might be no objection to the admission of the general Bar to practise in the Court; it would be perhaps an advantage, Hon. *R. Keatinge* 657–671——But this would press heavily on the present advocates, and if the change is made, some pre-audience or other advantage should be given to those persons who have devoted their time to the practice of that Court, *ib.*——Witness has read the clause in this Bill which proposes to admit to practise in the Prerogative Court the general body of the Bar in Ireland, Dr. *Wily* 2238——Witness has numerous objections to make to this clause; statement of the nature of these objections, *ib.* 2239, *et seq.*

The business of the Court is so limited, that unless there is an exclusive Bar for this court, a Bar that is in some degree protected, witness does not consider that the business can be at all properly performed, Dr. *Wily* 2241. 2343——The business is so limited that it would not be worth any man's while, unless he were in some degree protected, to give so much attention to the business of the Court as would enable him to acquire a knowledge of the practice of the law of this or the other Ecclesiastical Courts, so as to work the cases for the interests of the clients, *ib.*——One objection to the admission of the body of barristers is, that there would be no persons from whom to select the Judge of the superior court, *ib.* 2242. 2257——There is a lower ground that may be taken with respect to the Prerogative Court, which is, that unless a few men make it worth their while to attend in the Court and conduct the business, the interests of the clients in the Courts will not be attended to; grounds for forming this opinion, *ib.* 2242.

See also, *Advocates. Attorneys. Civil Law. Common Law Lawyers. Doctors of Law. Ffrench* v. *Ffrench. Oaths. Petition and Affidavit. Proctors. Roman Catholics. Solicitors.*

Bennett, Mr. *W. C.* See *Registrars*, 3.

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Bills of Costs:

1. *Generally.*
2. *Papers laid before the Committee.*

1. *Generally:*

Examination upon the charges of the proctors in the bill of costs in Downes *v.* Donnellan, with explanation relative to various of the items, and how far any of these charges are constructive or otherwise, *Hamilton* 1114-1144——How far there is any difficulty in clients understanding what they are paying for, from the language used in bills of costs, *ib.* 1266-1286.

2. *Papers laid before the Committee:*

Bills of costs laid before the Committee by David A. Nagle, *App.* 137——Bill of costs in the Consistory Court in the cause of Downes *v.* Donnellan, *ib.*——Bill of costs in the Court of Delegates, in the cause of Donnellan *v.* Downes, on appeal, *ib.* 148——Bill of costs in the Court of Prerogative; Impugnant's costs in O'Connell *v.* O'Connor, *ib.* 151——Promovent's costs, Court of Prerogative, O'Connell *v.* O'Connor, *ib.* 159.

See also, *Costs. Taxation of Costs.*

Blakeney, James. (Analysis of his Evidence.)—An Irish solicitor; Crown Solicitor for the county of Galway, 2099-2103——Was concerned as solicitor in the case of Ffrench *v.* Ffrench, a cause tried last year and the year before in the Prerogative Court; it was a very much litigated case; witness had to employ a proctor to conduct the business of the cause, 2104-2107. 2220, 2221——During the progress of this case, witness had opportunities of making himself acquainted with the system of pleading and practice in use in the Prerogative Court, 2108——Contrasting the system of pleading in the Prerogative Court with that which is in use in the Court of Chancery in Ireland, there is unnecessary prolixity in the Prerogative Court proceedings, 2109-2112——Witness would have considered himself competent to have carried on the proceedings in this cause without the intervention of a proctor, with the exception of the mere routine of practice; this would have saved a considerable expense, 2113-2123.

Witness took special counsel into Court from the Common Law Bar in Ireland; his not being allowed to practise without being associated with two advocates of the Court also entailed very considerable expense, 2124-2130——Objections existing to the system of preparing allegations in the Prerogative Court, 2131-2136——The system of granting administrations *ad litem* for the purposes of Chancery suits is calculated to entail great expense and delay on the parties interested in those suits; this expense might be materially reduced, 2137-2142——It would be desirable and advantageous to the public that the Diocesan Court jurisdiction should be consolidated in one court in Dublin, 2143-2147.

Expense entailed upon parties by reason of their being obliged to swear affidavits before the Surrogates, 2148——If commissioners for taking affidavits were substituted, there is no doubt it would diminish the expense, and would be a great public advantage, 2149-2153——If parties were at liberty to swear the necessary affidavits before the commissioners, and country attorneys were allowed to practise in the Court of Prerogative in Dublin, probates could be obtained at a smaller expense than they now are, 2154-2161——Instances in which two administrations have been taken out, one in the Prerogative Court and one in the Diocesan Court; whether this might be prevented, 2162-2167——It would be advisable to substitute a system of *vivâ voce* examination for written depositions, 2168, 2169. 2190-2198.

The system of trial by jury would be very important and very beneficial in certain cases, 2170. 2175-2181——Witness believes that the body of solicitors would have no objection to be permitted to transact their own business in the Prerogative Court relating to wills, 2171-2174. 2188, 2189——One system of examination in the Prerogative Court which witness considers very improper is, that a witness may be examined twice upon the same subject; evils resulting from this, 2182-2187——Compelling parties on an appeal to take out so many copies of the proceedings, is a system which ought to be abolished, 2199-2219.

Bona Notabilia. Cases in which great evils will arise from granting the diocesan probate, with reference to the existence of *bona notabilia* in another diocese, *Leahy* 1374-1381——Witness would not regard a probate from the Diocesan Court as a satisfactory voucher in deducing a title to real property, because of the danger of there being *bona notabilia, ib.* 1426, 1427. 1429——The evils arising from the doctrine *bona notabilia* might easily be remedied, Dr. *Kyle* 1535, 1536——Steps taken to ascertain, before a probate is granted, whether there are *bona notabilia* out of the diocese, *ib.* 1571, 1572——Should this be the case, the probate would be invalidated, *ib.* 1761——To provide for this case, it would be desirable that there should be some short process, by which a probate issued in one diocese should be rendered valid, either in the Prerogative Court or in reference to other dioceses, *ib.* 1762.

See also *Central Court of Probate.*

Breen

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Breen v. *Cooper.* See *Administrations.*

Briefs. Briefs are prepared in the Prerogative Court for the use of counsel, and they, of course, are taxed and paid for, Hon. *R. Keatinge* 496——How far, if there is an appeal, the proctor is entitled to make a charge over again for the same briefs, because they happen to be used in the Court of Appeal, *ib.* 496-507——It is a uniform practice that briefs are charged for twice, once in the Prerogative Court, and a second time in the Court of Delegates, if there is an appeal, *Hamilton* 821-857.

C.

Catholics. See *Roman Catholics.*

Central Court of Probate:

1. *Opinions in favour of one Central Court of Probate.*
2. *Objections thereto.*

1. *Opinions in favour of one Central Court of Probate:*

If the testamentary jurisdiction of the Diocesan Courts were transferred to the Central Court in Dublin, there would be no difficulty in arranging suitable machinery for the purpose, Hon. *R. Keatinge* 45-47——Evidence as to the desirability of having one central Court of Probate established in Dublin, and transferring the testamentary jurisdiction of the Diocesan Courts to this Court; there would be no great difference of expense to the parties interested, *ib.* 304-317——One advantage of having only one Court of Probate would be, that there would be one step less in the way of appeal, *ib.* 315, 316.

With respect to the probate of wills, it would be desirable to have one court for the entire country; and the avoiding all questions of *bona notabilia* is very desirable, Hon. *R. Keatinge* 624-632, 649-652——Still witness doubts whether it would be just to withdraw the testamentary jurisdiction from the Diocesan Courts without making some provision for the duties that remain; nature and extent of those duties, *ib.* 624-632. 650-652——Witness is decidedly in favour of the concentration of the Diocesan Courts into one Court of Probate, *Leahy* 1410-1422——It would be desirable and advantageous to the public that the Diocesan Court jurisdiction should be consolidated in one court in Dublin, *Blakeney* 2143-2147.

2. *Objections thereto:*

Reference to a paragraph in a memorial presented to the House by the Proctors in 1837, "That the consolidation of the jurisdiction exercised by the several Diocesan Courts into one superior court would be a measure of great public advantage to Ireland," *Hamilton* 739-746——In witness's own opinion it would be advisable to preserve the jurisdiction in small testamentary cases to the Diocesan Courts; suggestion as to what course should be pursued in the case of *bona notabilia, ib.* 744-758——Grounds upon which witness founds his doubts as to the expediency of abolishing altogether the testamentary jurisdiction of the Diocesan Courts, *ib.* 1148, *et seq.*——Grounds for forming the opinion that in many contested cases it would be better to have local jurisdictions than to have one central Court of Probate in Dublin, Dr. *Kyle* 1579-1612——Witness concurs in the statement in the petition of the Proctors, that in the opinion of the petitioners "the removal of testamentary cases to the Prerogative Court, as contemplated by the present Bill, will necessarily cause considerable inconvenience to the inhabitants of those dioceses, particularly to the lower classes, and that probably in many cases wills will not be proved at all," *ib.* 1643, 1644——If the testamentary jurisdiction be taken away, it will be absolutely necessary to consolidate some of the Diocesan Courts, Dr. *Radcliffe* 2048——This consolidation would in some respects be preferable to establishing one Court in Dublin, *ib.* 2060-2086.

See also *Diocesan Courts.*

Chancery Suits. See *Administrations. Expense of Proceedings. Pleadings.*

Civil Law. Great importance witness attaches to a competent knowledge of the Civil Law, Hon. *R. Keatinge* 662-674——The practice and principles of the Prerogative Court are founded upon the Civil and Canon Law, in a great degree, and it is necessary that men should have an interest in devoting their time to acquiring it, Dr. *Wily* 2241, 2242. 2305-2330. 2406-2408——Witness would say that the Advocates in the Prerogative Court have been the only persons by whom a knowledge of the Civil Law in the country is preserved, *ib.* 2244. 2305-2330. 2406-2408——Opinion that it would be highly injurious to the public to prevent a body of men from still cultivating this law, which is the foundation of the Ecclesiastical Courts, *ib.*

Clergymen. See *Roman Catholics.*

Clerks. Responsible situation of the clerks in the office; lowness of the salary of the head clerks, Hon. *R. Keatinge* 710, 711——Objection to the provision in the Bill, giving the Judge of the Prerogative Court the power of removing the present clerks, *ib.* 714, 715——He should not have the power except for misconduct, *ib.*

See also *Salaries.*

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Clogher Diocesan Court. The Diocesan Court of Clogher is generally held in the Court-house of Monaghan, Dr. *Radcliffe* 1807.

See also *Custody of Wills.*

Cloyne and Ross Court. The Diocesan Court of Cloyne and Ross is held in a part of the Cathedral of Cork, Dr. *Kyle* 1558——The wills are deposited in the Registry Office which immediately adjoins it, *ib.* 1559——Periods at which Courts are held, *ib.* 1568–1570.

See also, *Diocesan Courts. Appeals. Costs. Custody of Wills. Fees. Procedure.*

Commissary of the Court of Faculties. Nature of witness's duties as Commissary of the Court of Faculties; they are very trifling, Hon. *R. Keatinge* 13–18——The fees of the office of Commissary of the Faculties are so very small, not above 10 *l.* a year, that if the office be taken away from the Judge of the Prerogative Court it must be annexed to some other office, *ib.* 21. 24, 25. 29–34.

See also *Judges,* 1.

Commissioners for taking Affidavits. Observations on the subject of the appointment of Commissioners for taking affidavits in the country, *Hamilton* 1159–1169——The clause in the Bill which authorizes the Judge to appoint Commissioners to take affidavits in the country will tend materially to lessen the expense of proving wills under the present practice, *Leahy* 1391——Reasons for objecting to the appointment of Commissioners for taking affidavits in the country; opinion that it would lead to greater expense, Dr. *Radcliffe* 1986–2030——Expense entailed upon parties by reason of their being obliged to swear affidavits before the Surrogates, *Blakeney* 2148——If Commissioners for taking affidavits were substituted, there is no doubt it would diminish the expense, and would be a great public advantage, *ib.* 2149–2153.

See also *Examiners.*

Commissions. Particulars relative to the allowances to Proctors for attendance on commissions, Hon. *R. Keatinge* 125, *et seq.*——Evidence, in detail, relative to the charges for the attendance of Proctors on commissions; the principle of the old scale is still in existence; amount allowed for travelling expenses, &c., *Hamilton* 858–900.

See also *Examiners.*

Common Law Lawyers. Practice of the Advocates to bring in Common Law lawyers into the Prerogative Court in very heavy causes, Dr. *Wily* 2288–2297. 2323.

Comyn v. Vonstentz. Exception in the Court of Delegates on the part and behalf of Peter Comyn, respondent in this cause, *App.* 164.

Consistorial Court. The practitioners in the Consistorial Court of Dublin are the same as practise in the Prerogative Court; there is no separate bar, no separate proctors, Dr. *Radcliffe* 1851——As regards the general rules of the Consistorial Court, there is some trifling difference as compared with those of the Prerogative Court, *ib.* 1859. 1867–1871——There is not the slightest reason against doing away with the exclusive character of the practitioners in the Consistorial Court, but every reason for doing away with it; witness believes the proctors would be pleased at it, *ib.* 1860–1866.

See also, *Advocates. Appeals. Bills of Costs. Cross Examination. Examination of Witnesses. Judges,* 1. *Jurisdiction,* 2. *Proctors. Registrars,* 2. *Roman Catholics. Suits.*

Consolidation of Courts. See *Central Court of Probate. Diocesan Courts. Jurisdiction,* 2.

Constructive Services. How far there are any charges introduced into the bills of proctors for services which are not rendered at all, *Hamilton* 780–820.

Contested Cases. See *Central Court of Probate. Diocesan Courts.*

Copies of Proceedings. Compelling parties on an appeal to take out so many copies of the proceedings, is a system which ought to be abolished, *Blakeney* 2199–2219.

See also, *Attested Copies. Depositions.*

Copies of Wills. See *Inspection of Wills.*

Cork Diocesan Court. The practitioners in witness's Court at Cork are four advocates and six proctors; the proctors are all well qualified as solicitors; none of them are members of the Roman Catholic persuasion, Dr. *Kyle* 1526–1529——Testimony borne by Dr. Stock, the present Judge of the Admiralty Court, as to the superior manner in which the business of the Diocesan Court of Cork was managed, *ib.* 1717–1719.

See also *Oaths*

Costs.

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850--*continued.*

Costs. Reference to the scale of fees by which the costs of proctors are regulated; witness believes a table is hung up in the offices of the Court for inspection, Hon. *R. Keatinge* 98–102——There is a certain scale of charges, such as for attendances, drafts of pleadings and rules, and those matters; but the general amount of the costs must depend upon the circumstances of the case, and the conduct of the parties, *Hamilton* 921–924——Witness, as Judge of the Diocesan Court of Cloyne and Ross, has no power to regulate the costs, Dr *Kyle* 1688——It would be desirable that such a power should be conferred upon the Judge of the Diocesan Courts, and that a schedule should fix the maximum, and the Judge be permitted to diminish it according to circumstances, *ib.* 1689.

See also, *Bills of Costs. Ecclesiastical Courts. Expense of Proceedings. Fees. Taxation of Costs.*

Cross-examination. By the present constitution of the Prerogative Court and the Consistorial Court, the next of kin, or any one likely to be affected by the will, has a right to cross-examine the witnesses to that will, without any charge whatsoever; it would be very desirable to preserve this right, Dr. *Radcliffe* 2030–2038.

Custody of Wills, Records, &c. Suggestions generally on the subject of the custody of wills, and as to the places which would be safest and most convenient for their being deposited, *Leahy* 1467–1496——The documents in witness's Court of Cloyne and Ross are very well kept, and are in safety and security, Dr. *Kyle* 1710–1713. 1716——The wills in the diocese of Clogher are kept in the Registrar's house in the town of Monaghan, Dr. *Radcliffe* 1808.

See also *Cloyne and Ross Court.*

D.

Decease of Witnesses. See *Witnesses.*

Delegates, Court of. The Court of Delegates, as a Court of Appeal, is a most objectionable tribunal; present constitution of the Court of Delegates; nature and cause of witness's objection to the constitution of this Court, Hon. *R. Keatinge* 318–327——The Court of Delegates is a desirable tribunal for the decision of appeals, if they would sit more regularly, Dr. *Radcliffe* 1919——Observations and suggestions generally on the subject of the constitution of the present Court of Appeal, the Court of Delegates, *ib.* 1920–1935.

See also, *Appeals. Bills of Costs,* 2. *Briefs. Comyn v. Vonstentz.*

Depositions. Witness understands the Bill before the Committee as altogether excluding evidence by written depositions, except in cases where evidence is used in the other Courts; this would not be an improvement, Hon. *R. Keatinge* 168——Written examination involves this expense, that the party has to take out, if he wants any deposition, a full copy of the depositions and of the pleadings, *ib.* 275, 276——He has also to take out a copy of the pleadings, and pay for it, if there is an examination by Commission, for the purpose of putting them before the Commissioner or Examiner, *ib.* 277–280——And has also to take out another copy of all the pleadings, the evidence and rules in the cause, when there is an appeal to the Court of Delegates, *ib.* 281——Therefore, according to the practice of the Court, the party would have to pay for three copies of the same documents, *ib.* 282, 283.

See also, *Examination of Witnesses. Vivâ voce Examination.*

Deputy Registrars. See *Records, &c. Registrars.*

Diocesan Courts. There are about 22 Diocesan Courts in Ireland; this number still remains in force, notwithstanding the reduction of the number of Bishops, Hon. *R. Keatinge* 38, 39——Continuing the Courts as they are, transmitting wills to a registry in Dublin, and making the probate granted in any local place have the effect of the Prerogative probate, might answer the same purpose in uncontested cases, *ib.* 643–648——But in contested cases there would not be so good machinery for deciding rights, *ib.*——In all the small dioceses of Ireland there are separate jurisdictions, *Leahy* 1500–1505——It is most desirable, where two dioceses circumstanced as those are over which witness presides, that they should be consolidated with reference to testamentary jurisdiction, Dr. *Kyle* 1690, 1691——The case of the Diocesan Courts in Ireland is not analogous to that of similar Courts in England, *ib.* 1764——The cases are different in England; there is a great variety of ecclesiastical jurisdiction, *ib.*——It would be better to consolidate the Diocesan Courts in Ireland, rather than to abolish them altogether, *ib.* 1767–1779. 1785–1799——How far it would be desirable to concentrate the business of the Diocesan Courts into one Court at Dublin, Dr. *Wily* 2371–2381.

See also, *Administrations. Advocates,* 2. *Appeals. Attorneys. Bona Notabilia. Central Court of Probate. Clogher Diocesan Court. Cloyne and Ross Court. Cork Diocesan Court. Judges,* 2. *Jurisdiction,* 2. *Oaths. Probates of Wills. Proctors. Registrars,* 3. *Surrogates. Wills.*

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Doctors of Laws. Witness does not consider it necessary that all members of the Bar of the Prerogative Court should be doctors of laws, Dr. *Wily* 2241.

See also, *Advocates*, 2.

Documents. See *Custody of Wills. Record Keeper. Records, &c.*

Donnellan v. *Downes.* See *Appeals. Bills of Costs*, 2.

Downes v. *Donnellan.* See *Bills of Costs.*

Dumas, Mr. Instance of an abuse in an ordinary case of proving a will in the county of Kerry, the will of a Mr. Dumas, *Leahy* 1387, 1388.

E.

Eagar, Mr. See *Registrars*, 3.

Ecclesiastical Commissioners. The scale of fees for proctors, recommended by the Commissioners in 1830, has not been adopted; the Report of those Commissioners has been treated as a dead letter, *Hamilton* 1001–1008——Their recommendations with respect to *vivâ voce* examination, trial by jury, and proceeding by petition have not been adopted, *ib.* 1009–1020.

See also, *Jurisdiction*, 2. *Proctors. Vivâ voce Examination.*

Ecclesiastical Courts. How far there has been any material change in the practice, or in the charges for costs, in the Ecclesiastical Courts, since the Committee of 1837, *Hamilton* 1081–1094.

See also, *Advocates. Barristers*, 2. *Civil Law. Procedure.*

Emoluments. See *Fees. Proctors. Registrars*, 1. 3. *Retiring Pensions. Salaries.*

Evidence. See *Depositions. Examination of Witnesses.*

Examination of Witnesses. The system of examination practised in the Prerogative Court leads to expense, certainly, and perhaps to great expense, Hon. *R. Keatinge* 163——But, as regards the comparison between the expense of taking evidence in the Prerogative Court and the expense of taking evidence in the Court of Common Law, witness is far from saying that it leads to greater expense, *ib.* 163, 164——Whether the witness is at liberty in the Prerogative Court, when under examination, to render his answers from any written note or memorandum, is a matter very much to be guided by the discretion of the examiner, *ib.* 271, 272——In a fit and proper case the examiner has a discretionary power on this point, *ib.* 272–274——An examiner ought clearly not to allow a party to give his deposition altogether from written notes; the reference should be in the way of exception more than otherwise, *ib.* 272——Explanation relative to the fee charged in the Consistorial Court for every witness examined, *Hamilton* 1109–1120——The system of examination in the Prerogative Court, which witness considers very improper, is that a witness may be examined twice upon the same subject; evils resulting from this, *Blakeney* 2182–2187.

See also, *Cross-examination. Depositions. Interrogatories. Vivâ voce Examination. Witnesses.*

Examiners. There are two Examiners in the Prerogative Court; the right of appointment vests in the Judge, Hon. *R. Keatinge* 103–107——Information as to the nature of the Examiners' duties; evidence as to their fees and emoluments; amount of their allowance and travelling expenses when employed on commissions, *ib.* 108–121. 137, *et seq.*—— Nature of the proceedings before the Examiners; advantages of appointing commissions, *ib.* 127–131. 139–156. 160, *et seq.*——Evidence and examination on the subject of the "Examiners' charges"; the provisions of this Bill, with respect to the appointment of commissioners for taking affidavits, would not save this expense, *Hamilton* 1287–1323.

Exham, Mr. See *Petitions to Parliament.*

Expense of Proceedings. Witness would say, from what he has heard, that suits in Chancery were infinitely more expensive, particularly proceedings in the Master's offices, than in the Prerogative Court, *Hamilton* 775–779——How far any portion of the system of pleading, at present used in the Prerogative Court, entails unnecessary expense upon the parties, *ib.* 955–961——There is, perhaps, a great deal of useless repetition in reciting the title of a cause, the formal words, and the concluding part of each article, which entails great expense, *ib.*

See also, *Administrations. Appeals. Central Court of Probate. Commissioners for taking Affidavits. Depositions. Examination of Witnesses. Ffrench* v. *Ffrench. Orders of Court. Probate of Wills. Surrogates. Vivâ voce Examination.*

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

F.

Faculties, Court of. See *Commissary of the Court of Faculties.*

Fees. There is a scale of fees which the proctor is entitled to charge, which scale has prevailed for many years, and is still followed, Hon. *R. Keatinge* 469——It has not been altered since witness became Judge; without an Act of Parliament, he has no power to reduce a fee or create a fee, *ib.* 470——In the case of proctors, in the same way as in the case of attorneys, there are some constructive duties, not actual duties, to which certain fees are attached, *ib.* 492——But witness looks upon these as, perhaps, payments for other services, which are not sufficiently rewarded; on the whole, their duties may be sufficiently rewarded, *ib.* 493-495——It would be advisable that the powers which a recent Act of Parliament has conferred on the Judge of the Prerogative Court in this country, to regulate the fees and rules of that Court, should be extended to the Judge of Prerogative in Ireland, *ib.* 616-618. 623——A scale of fees is not publicly exposed in the offices at the present time, as directed by the 83d Canon; but if any body asked to see the scale, it would be shown to him, *Hamilton* 923. 925, 926. 933-939. 948-954——A scale of fees is hung up in the Registry Office of the Diocesan Court of Cloyne and Ross, Dr. *Kyle* 1561——It would be desirable that the Judge should have the power of regulating or altering and adjusting the fees, Dr. *Radcliffe* 1957-1959.

See also, *Administrations. Apprentices. Commissary of the Court of Faculties. Ecclesiastical Commissioners. Examination of Witnesses. Examiners. Judges,* 1. *Jurisdiction. Poundage Fees. Registrars,* 1. *Salaries. Solicitation Fee. Taxation of Costs.*

Ffrench v. *Ffrench.* Witness was concerned as solicitor in the case of Ffrench *v.* Ffrench, a cause tried last year and the year before in the Prerogative Court; it was a very much litigated case; witness had to employ a proctor to conduct the business of the cause, *Blakeney* 2104-2107. 2220, 2221——During the progress of the case witness had opportunities of making himself acquainted with the system of pleading and practice in use in the Prerogative Court, *ib.* 2108——Witness would have considered himself competent to have carried on the proceedings in this cause, without the intervention of a proctor, with the exception of the mere routine of practice; this would have saved a considerable expense, *ib.* 2113-2123——Witness took special counsel into Court from the Common Law Bar in Ireland; his not being allowed to practise without being associated with two advocates of the Court, also entailed very considerable expense, *ib.* 2124-2130.

H.

Hamilton, Joseph. (Analysis of his Evidence.)—Proctor, practising in the Prerogative Court in Dublin, and also in the Consistory Court; has been a Proctor about 40 years, 716-718——There are at present 25 Proctors in practice; number of partnerships, 719-721——Amount of the apprentice fee to qualify a person to become a Proctor, 722——It is now about 600*l.*; it was 200*l.* in 1800, and gradually rose to 1,000 guineas, 722-724——The tendency of raising the fee was materially to limit the number of Proctors, and witness would say advisedly, as the business is limited in its extent, 725, 726——The rule that no Proctor of less than 10 years' standing shall take an apprentice, confining it to one at a time, has never been departed from, 726-734——The duties of the Proctors are very numerous, 735-738.

Reference to a paragraph in a memorial presented to The House by the Proctors in 1837, "That the consolidation of the jurisdiction exercised by the several Diocesan Courts into one superior court, would be a measure of great public advantage to Ireland," 739-746——In witness's own opinion, it would be advisable to preserve the jurisdiction in small testamentary cases to the Diocesan Courts; suggestion as to what course should be pursued in the case of *bona notabilia*, 744-758——Some of the Judges of the Diocesan Courts are clergymen, 759-769——Witness looks upon the duties of a Proctor to be in a great measure analogous to those of a solicitor, 770-774——Witness would say, from what he has heard, that suits in Chancery were infinitely more expensive, particularly proceedings in the Master's offices, than in the Prerogative Court, 775-779.

How far there are any charges introduced into the bills of Proctors for services which are not rendered at all, 780-820——It is a uniform practice that "briefs" are charged for twice, once in the Prerogative Court, and a second time in the Court of Delegates, if there is an appeal, 821-857——Evidence in detail relative to the charges for the attendance of Proctors on commissions; the principle of the old scale is still in existence; amount allowed for travelling expenses, &c., 858-900. 1101-1108——Explanation of the charge in Proctors' bills called "Poundage fee" on probates and administrations, a fee on the stamp duty, or rather a compensation for the advance of stamp duty by the Proctor, 901-920——With regard to the voluntary jurisdiction of the Prerogative Court,

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Hamilton, Joseph. (Analysis of his Evidence)—*continued.*

there is a printed scale of charges for Proctors with reference to bills of costs, but not as to the contentious jurisdiction, 921-932. 940-947.

There is a certain scale of charges, such as for attendances, drafts of pleadings and rules, and those matters; but the general amount of the costs must depend upon the circumstances of the case and the conduct of the parties, 921. 924——This scale of fees is not publicly exposed in the offices at the present time, as directed by the 83d Canon; but if any persons asked to see the scale, it would be shown to them, 923. 925, 926. 933-939. 948-954——How far any portion of the system of pleading at present used in the Prerogative Court entails unnecessary expense upon the parties, 955-961——There is, perhaps, a great deal of useless repetition in reciting the title of a cause, the formal words, and the concluding part of each article, which entails great expense, 955-961.

In the memorial presented to The House on behalf of the Proctors, they ask this Committee to adopt the recommendations of the Ecclesiastical Commissioners in the year 1832; 962——Witness believes that one of the recommendations of the Ecclesiastical Commissioners in 1832, was to adopt the system of *vivâ voce* examination, under certain limitations, 963——Witness considers that *vivâ voce* examination is the best test of truth, 969——Witness is in favour of adopting the system of trial by jury in the Prerogative Court, under certain circumstances, 970-972——How far suits in the Consistorial Court are more tedious and expensive than in the Prerogative Court, 973-1000.

The scale of fees for Proctors recommended by the Commissioners in 1830 has not been adopted; the Report of those Commissioners has been treated as a dead letter, 1001-1008——Their recommendations with respect to *vivâ voce* examination, trial by jury, and proceeding by petition, have not been adopted, 1009-1020——In carrying on suits, the proctors are in constant communication with the solicitors of the parties; but the solicitors are not always the persons from whom they derive their business; parties have the option of coming to the Proctor themselves, 1021-1050.

There is no stamp duty on administrations *ad litem* specially granted for the purposes of a suit, 1051-1060——Nature of the affidavit required as to the execution of a will in cases falling within the voluntary jurisdiction of the Court, 1061-1069——Number of times a party in the Prerogative Court is obliged to take out an attested copy of the same document, and the pleading, 1070-1080. 1082——How far there has been any material change in the practice, or in the charges for costs, in the Ecclesiastical Courts, since the Committee of 1837; 1081-1094.

It would be very desirable to prevent the system of appealing in interlocutory orders, 1095-1100——Explanation relative to the fee charged in the Consistorial Court for every witness examined, 1109-1120——Examination upon the charges of the Proctors in the bill of costs in Downes *v.* Donnellan, with explanation relative to various of the items, and how far any of these charges are constructive or otherwise, 1114-1144——The Judge of the Prerogative Court controls the taxation of costs; but it does not appear to witness that the Judge has any power to alter the charges of the Court, or to establish a regular scale of charges, 1145-1147.

Grounds upon which witness founds his doubts as to the expediency of abolishing altogether the testamentary jurisdiction of the Diocesan Courts, 1148 *et seq.*——Observations on the subject of the appointment of Commissioners for taking affidavits in the country, 1159-1169——Grounds for forming the opinion that the admission of attorneys to practise as Proctors would be ruinous to the present body of Proctors; objections generally to the admission of attorneys, 1171-1247. 1250-1265——Witness believes the expediency of keeping the two professions distinct has been recognized by Act of Parliament, 1248——There was a rule of Judge Radcliffe's, in 1830, specially excluding anything of the kind; any interference of attorneys in any branch of the profession, 1249——How far there is any difficulty in clients understanding what they are paying for, from the language used in bills of costs, 1266-1286——Evidence and examination on the subject of "Examiners' charges"; the provisions of this Bill with respect to the appointment of Commissioners for taking affidavits, would not save this expense, 1287-1323——The bills of costs which are taxed in a year are not very numerous, 1330——There is an appeal from the taxation of the costs by the registrar or taxing officer to the Judge of the Prerogative Court, 1331-1337.

I.

Inspection of Wills. In cases of persons wishing to inspect or examine a will, witness believes it is the practice to require the party to take out a copy of the will, *Leahy* 1506-1509.

Interlocutory Orders. It would be very desirable to prevent the system of appealing on Interlocutory Orders, *Hamilton* 1095-1100.

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Interrogatories. The examination of witnesses on oath upon interrogatories, as proposed by the 57th Clause of the Bill, is, in some instances, a good mode of arriving at facts, Dr. *Kyle* 1780.

J.

JUDGES:

1. *Prerogative Court.*
2. *Diocesan Courts.*

1. *Prerogative Court:*

Nature of witness's duties as Judge of the Prerogative Court, Hon. *R. Keatinge*, 6–12——At present there may not, perhaps, be any valid reason why the offices of Judge of the Prerogative Court and Commissary of the Court of Faculties should be united in one person; but in former times there was sufficient reason, because the dispensation to hold pluralities was effected through the medium of the faculty to be granted by the Court, *ib.* 19, 20——The Judge of the Prerogative Court was paid by fees till the passing of the 7 & 8 Geo. 4; *ib.* 23——The present salary for the two offices is 3,000 *l.* a year, paid out of the Consolidated Fund, *ib.* 26–28——It has always been the custom that the Judge of the Prerogative Court should be Judge of the Consistorial Court; reason why witness has only the salary of the Judge of the Prerogative Court, *ib.* 678–680——Witness was a very considerable loser in income by taking the office, *ib.* 681.

2. *Diocesan Courts:*

Witness has generally understood that, with the exception of one or two persons, the Judges of the Diocesan Courts are clergymen, Hon. *R. Keatinge* 42, 43——Some of the Judges of the Diocesan Courts are clergymen, *Hamilton* 759–769——There is no ecclesiastical reason why clergymen should not continue to be the Judges in testamentary matters in the Diocesan Courts, Dr. *Kyle* 1694–1704.

See also, *Ardfert and Aghadoe Diocese. Barristers*, 2. *Clerks. Commissary of the Court of Faculties. Commissioners for taking Affidavits. Costs. Fees. Proctors. Reform of the Court. Retiring Pensions. Taxation of Costs. Trial by Jury.*

Juries. See *Trial by Jury.*

JURISDICTION:

1. *Prerogative Court.*
2. *Diocesan Courts.*

1. *Prerogative Court:*

Cases in which the Prerogative Court has concurrent jurisdiction with the Diocesan Courts, Hon. *R. Keatinge* 35–37——With regard to the voluntary jurisdiction of the Prerogative Court, there is a printed scale of charges for Proctors with reference to bills of costs, but not as to the contentious jurisdiction, *Hamilton* 921–932. 940–947.

2. *Diocesan Courts:*

Supposing the Diocesan Courts to be consolidated, there being one Court for each bishopric, it would be desirable to give parties the option, in particular cases, of applying, if they thought proper, for a probate to the Prerogative Court in Dublin, Dr. *Kyle* 1722–1724——The Ecclesiastical Commissioners have recommended, in reference to England, that the local jurisdiction should be abolished, *ib.* 1763——Difficulties in the way of taking away the testamentary jurisdiction from the Consistorial Courts in the country, or Diocesan Courts, and leaving only the matrimonial and other jurisdictions, Dr. *Radcliffe* 2042–2047. 2049–2059.

See also, *Administrations, Law of. Diocesan Courts.*

K.

Keatinge, Right Hon. *Richard.* (Analysis of his Evidence.)—Judge of the Prerogative Court of Ireland and Commissary of the Court of Faculties; the appointments under the patent rest with the Primate, 1–5. 22——Nature of witness's duties as Judge of the Prerogative Court, 6–12——Nature of his duties as Commissary of the Court of Faculties; they are very trifling, 13–18——At present there may not, perhaps, be any valid reason why both these offices should be united in one person; but in former times there was sufficient reason, because the dispensation to hold pluralities was effected through the medium of the faculty to be granted by the Court, 19, 20——The fees of the office of Commissary of the Faculties are so very small, not above 10 *l.* a year, that if the office

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Keatinge, Right Hon. *Richard.* (Analysis of his Evidence)—*continued.*

be taken away from the Judge of the Prerogative Court, it must be annexed to some other office, 21. 24, 25. 29–34——The Judge of the Prerogative Court was paid by fees till the passing of the 7 & 8 Geo. 4; 23——The present salary for the two offices is 3,000 *l.* a year, paid out of the Consolidated Fund, 26–28.

Cases in which the Prerogative Court has concurrent jurisdiction with the Diocesan Courts, 35–37——There are about 22 Diocesan Courts in Ireland; this number still remains in force, notwithstanding the reduction of the number of Bishops, 38, 39——There is an appeal from the Diocesan Courts to the Primate's Court, 40, 41——Witness has generally understood, that, with the exception of one or two persons, the Judges of the Diocesan Courts are clergymen, 42, 43——Diocesan administrations are, of course, very much confined to persons dying in limited circumstances within the diocese, 44——If the testamentary jurisdiction of the Diocesan Courts were transferred to the Central Court of Dublin, there would be no difficulty in arranging suitable machinery for the purpose, 45–57.

Particulars relative to the appointment of Mr. Stuart as Registrar of the Prerogative Court; net emoluments of the office; emoluments of the deputies; way in which the fees of the Registrar and Deputy Registrars are regulated, 58–97——Reference to the scale of fees by which the costs of proctors are regulated; witness believes a table is hung up in the offices of the Court for inspection, 98–102——There are two examiners in the Prerogative Court; the right of appointment vests in the Judge, 103–107——Information as to the nature of the examiners' duties; evidence as to the fees and emoluments of the examiners; amount of their allowance and travelling expenses when employed on commissions, 108–121. 137, *et seq.*——Particulars relative to the allowances, &c. to proctors, for attendances on commissions, 125, *et seq.*——Nature of the proceedings before the examiners; advantages of appointing commissions, 127–131. 139–156. 160, *et seq.*

In a contested suit in the Prerogative Court there is only one special pleading on each side, 160–162——The system of examination practised in the Prerogative Court leads to expense, certainly, and perhaps to great expense, 163——But as regards the comparison between the expense of taking evidence in the Prerogative Court and the expense of taking evidence in the Courts of Common Law, witness is far from saying that it leads to greater expense, 163, 164——The introduction of *vivâ voce* examination into the Prerogative Court, to a certain limited extent, would be an advantage, such as in cases of sanity, for instance, 165–167. 169–180——Witness understands the Bill before the Committee as altogether excluding evidence by written depositions, except in cases where evidence is used in the other Courts; this would not be an improvement, 168.

In certain difficult cases, witness would wish very much to have them sent to a jury to be investigated, perhaps with certain restrictions, 179, 180. 182–207——But witness would not introduce the principle of trial by jury in the first instance, until the Judge had himself sifted the case, 180. 182–207. The present system, as it is, without, in particular cases, superadding *vivâ voce* examination and trial by jury, is by no means satisfactory, 184–207——If witness had to choose between one system and the other, to provide for all cases, he would prefer the *vivâ voce* to the present system, 198. Grounds for forming the opinion, that in cases on which witness would consider it would be desirable to have trial by jury, there is no reason why the trial should not be before the Prerogative Judge, rather than before the Nisi Prius Judges, 207–270.

Whether the witness is at liberty, in the Prerogative Court, when under examination, to render his answers from any written note or memorandum, is a matter very much to be guided by the discretion of the examiner, 271, 272——In a fit and proper case, the examiner has a discretionary power upon this point, 272–274——An examiner ought clearly not to allow a party to give his deposition altogether from written notes; the reference should be in the way of exception more than otherwise, 272——Written examination involves this expense, that the party has to take out, if he wants any deposition, a full copy of the depositions and of the pleadings, 275, 276——He has also to take out a copy of the pleadings and pay for it, if there is an examination by commission, for the purpose of putting them before the commissioner or examiner, 277–280——And has also to take out another copy of all the pleadings, the evidence and rules in the cause, when there is an appeal to the Court of Delegates, 281——Therefore, according to the practice of the Court, the party would have to pay for three copies of the same documents, 282, 283.

In the probate of wills, it would be highly beneficial to the public that the same decision should be equally binding in regard to realty as in regard to personalty, 284–303——Further evidence as to the desirability of having one Central Court of Probate established in Dublin, and transferring the testamentary jurisdiction of the Diocesan Courts to this Central Court; there could be no great difference in the expense to the parties interested, 304–317.

One advantage of having only one Court of Probate would be, that there would be one step less in the way of appeal, 315, 316——At present, there is appeal from the Diocesan Court to the Archbishop's Court, and then to the Court of Delegates, 315——The Court of Delegates, as a Court of Appeal, is a most objectionable tribunal; present constitution of the Court of Delegates; nature and cause of witness's objection to the constitution of this

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Keatinge, Right Hon. *Richard.*—(Analysis of his Evidence)—*continued.*

this Court, 318-327——All barristers in Ireland are not competent to practise in the Prerogative Court, 328—As a matter of right, no persons can claim to practise in the Prerogative Court, as advocates, unless admitted as such, 328-336——Barristers who are not admitted advocates of the Court cannot sign pleadings, 330——But a barrister is allowed by the courtesy of the Court to practise, if their are two advocates of the Court concerned with him, 330——Witness generally finds, in very important cases, that he has before him some eminent gentleman who is not an advocate, 330-336.

Every advocate and proctor practising in witness's Court up to the present time, has been obliged to take certain oaths, 337-339——The question now is, whether they are still obliged to take these oaths, and whether Roman Catholics cannot practise in this Court; this is a question of law, upon which witness declines giving an opinion, 337——These oaths are such that no Roman Catholic could conscientiously take them, 340. 347-350——Witness has objected, and would still object, from the fact of its being an innovation of practice, to admit Roman Catholics as advocates or proctors, without the question as to their eligibility being discussed and decided in the regular way, 342, *et seq.* ——Witness sees no objection to Roman Catholics being admitted to act as proctors and advocates in the Prerogative Court, the same as in the other Courts, provided they are otherwise qualified, 360-384——The tribunal of appeal this Bill proposes to establish, that is, the Lord Chancellor with two Common Law Judges assisting him, would be a very efficient Court, provided the Chancellor has time to devote to it, 385-443——Great objection to an appeal finally binding from one single Judge to another single Judge, however eminent, 386-443——Suggestions and observations generally on the subject of appeal, 387-443.

[Second Examination.]—There are about 18 establishments practising the profession of proctor in the Prerogative Court, 444-446——Statement as to what constitutes a proctor; course of education persons go through to become proctors, 447 *et seq.*——He serves an apprenticeship of seven years to a proctor, and that proctor must be of 10 years' standing, and no proctor can take more than one apprentice, 448——Formerly, the deputy registrar of the Court was the only person who could take apprentices, and he was at liberty to take three; the alteration in the system took place in 1830; 449-453 ——Witness believes the usual fee paid by a person on his entry into the profession as an apprentice is about 500 *l.* or 600 *l.*; 454, 455——Exact duties of a proctor practising in the Prerogative Court, 456-458. 463-468——Until the Nineteenth Report, there was what was called the solicitation fee, a fee which the proctor paid to the solicitor, and charged in his own bill of costs against his client; this fee has been discontinued for many years, 459-462.

There is a scale of fees which the proctor is entitled to charge, which scale has prevailed for many years and is still followed, 469——It has not been altered since witness became Judge; without an Act of Parliament, he has no power to reduce a fee or create a fee, 470——One of the deputy registrars taxes the costs of the proctors; there is an appeal to the Judge; rarity of appeals, 471-491——Evidence and observations generally on the subject of the taxation of costs, 471-491——In the case of proctors, in the same way as in the case of attorneys, there are some constructive duties, not actual duties, to which certain fees are attached, 492——But witness looks upon these as, perhaps, payments for other services, which are not sufficiently rewarded; on the whole, their duties may be sufficiently rewarded, 493-495——Briefs are prepared in the Prerogative Court for the use of counsel, and they, of course, are taxed and paid for, 496——How far, if there is an appeal, the proctor is entitled to make a charge over again for those same briefs, because they happen to be used in the Court of Appeal, 496-507.

Witness believes the number of proctors has materially increased since the Nineteenth Report of the Commissioners, 508, 509——The Commissioners recommended that it would be advisable to increase the number of proctors of the Court, and they were increased accordingly, under the regulations, by the then Judge, 510——It was considered as an unwarrantable monopoly of the registrar to have the right to admit proctors, 511——The admission of a proctor is attended with considerable expense, 512, 513——Their position is naturally one of the most confidential kind, and it is, therefore, necessary that they should be men of the very highest character, 514-516. 580——Witness would view the introduction of any very large number of proctors with very great alarm indeed, 517——It is important that the numbers should not exceed that over which the Judge of the Court could maintain personal supervision, 517——Objections to solicitors being also allowed to act as proctors, 518-572. 579-588.

By admitting attorneys or solicitors to practise in the Prerogative Court, the proctors would be extinguished as a profession, and would be extremely unjust towards them, 573, 574. 579——The proctors admitted into the Prerogative Court can practise in all the Diocesan Courts; but the country proctors cannot practise in the Prerogative Court, 575-577——The principal business of proctors is in the Prerogative Court and the Consistorial Court, 578, 579——No advantage would be gained by the public in increasing the number of proctors by the admission of attorneys and solicitors to act as proctors, 589 *et seq.*——It is not necessary for a client to apply to a proctor through a

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Keatinge, Right Hon. *Richard.* (Analysis of his Evidence)—*continued.*

solicitor; but it is the usual practice in Ireland for the solicitor to introduce the party to the proctor, 595–597. 600–609.

If solicitors were to be admitted to practise in the Prerogative Court, it would be absolutely necessary that the Court should have the same supervision over them as the Courts of Law have over attorneys at present, 597–599——If the amount of business were equally divided amongst the 24 proctors practising in the Prerogative Court, it would not afford an adequate remuneration to each of them individually, 610–614——There might perhaps be some saving to the client if he were allowed to conduct his case by the solicitor, 615——If there were an Act of Parliament or a rule of court providing that the solicitor should not be allowed to charge his client for the attendances on the proctors, the proctor would then most probably be brought into personal communication with the client, and perhaps the business as well done, 616–622.

It would be advisable that the powers which a recent Act of Parliament has conferred on the Judge of the Prerogative Court in this country to regulate the fees and rules of that Court, should be extended to the Judge of Prerogative in Ireland, 616–618. 623——With respect to the probate of wills, it would be desirable to have one Court for the entire country; and the avoiding all questions of *bona notabilia* is very desirable, 624–632. 649–652——Still witness doubts whether it would be just to withdraw the testamentary jurisdiction from the Diocesan Courts, without making some provision for the duties that remain; nature and extent of these duties, 624–632. 650–652——If surrogates were appointed, the expense of proving a will would not be enhanced by being proved in Dublin instead of in a Diocesan Court, 633–642——If all the jurisdiction should be removed to Dublin, it would be quite impossible to do without having some surrogates in Dublin, 640——Continuing the Courts as they are, transmitting wills to a registry in Dublin, and making the probate granted in any local place have the effect of the Prerogative probate, might answer the same purpose in uncontested cases, 643–648——But in contested cases there would not be so good machinery for deciding rights, 643–648.

The advocates, as well as the proctors, in the Prerogative Court, are an exclusive body, and also limited in number, about 10 or 12; they are all barristers, 653–656——In so far as the public is concerned, there might be no objection to the admission of the general Bar to practise in the Court; it would be perhaps an advantage, 657–671——But this would press heavily on the present advocates; and if the change is made, some preaudience or other advantage should be given to the persons who have devoted their time to the practice of that Court, 657–671——Great importance witness attaches to a competent knowledge of the Civil Law, 662–674——Further suggestions as to the beneficial alterations which might be made in the proceedings of the Prerogative Court, as regards pleadings and forms of that sort, 675, 676.

It would be a very important improvement in testamentary law, that the validity of wills of real and personal estate should be determined by the same tribunal, and that the decision as to one kind of property should extend to the other, 677——It has always been the custom that the Judge of the Prerogative Court should be Judge of the Consistorial Court; reason why. witness has only the salary of the Judge of the Prerogative Court, 678–680——Witness was a very considerable loser in income by taking the office, 681——Inadequacy of the retiring pension; observations on the amount of which, and conditions on which, it is proposed to be fixed by this Bill, 682–688.

It would be advisable that the duty of taxing costs should be discharged by an officer who does not receive any fees taxable in those costs, 689, 690. 697–699——The Registrar of the Prerogative Court is the taxing officer, 690——If this Bill passes, and the Registrar is put on a salary, there would seem to be no objection, provided he has time, to his taxing the costs, 690–696——Evidence on the subject of the office of Record-keeper of the Court, who has the custody of the wills and documents, 700, *et seq.*——Responsible situation of the clerks in the office; lowness of the salary of the head clerks, 701–711——Lowest salary paid to any of the clerks in witness's office, 712, 713——Objection to the provision in the Bill, giving the Judge of the Prerogative Court the power of removing the present clerk, 714, 715——He should not have this power, except for misconduct, 714, 715.

Keatinge, Judge. See *Barristers,* 1.

Kyle, The Venerable *Samuel M.,* LL.D. (Analysis of his Evidence.)—Vicar-general of the dioceses of Cork, Cloyne and Ross, 1510, 1511——The Registrar for the Court of Cork and Ross is Mr. Henry Stopford Kyle; he resides in London; the duties are performed by Mr. William Cockburn Bennett, solicitor and notary public, residing in Cork, 1512–1515. 1692, 1693. 1708, 1709——The Registrar of the Court of Cloyne is Mr. Wilkinson, who is advanced in years, and his son, who is his deputy, performs the duties; both reside in Cloyne, 1516——There is a court held for testamentary purposes, both in Cork and Cloyne; the jurisdiction of witness's Court is very extensive, 1517–1525.

The practitioners in witness's Court are four advocates and six proctors; the proctors are all qualified as solicitors; none of them are members of the Roman Catholic persuasion, 1526–1529——It has never been the practice to appoint Roman Catholics; the oaths they would have to take are the bar; witness sees no objection to their admission to

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Kyle, The Venerable *Samuel M.,* LL.D. (Analysis of his Evidence)—*continued.*

to practise as proctors in the Diocesan Courts in testamentary matters, 1530–1534. 1537–1551——The evils arising from the doctrine of *bona notabilia* might easily be remedied, 1535, 1536——A central registry of wills in Ireland, in connexion with a local one, would be very desirable, 1552——If the original wills were sent to Dublin, and attested copies kept which would be evidence in courts of justice for local purposes in the different districts, great advantage would arise, 1552.

As regards the system of pleading and practice in witness's Court of Cloyne and Ross, he has adopted the system in use in the Consistorial Court of Dublin, and it is followed out in every respect, 1553–1557. 1560——The Diocesan Court of Cloyne and Ross is held in a part of the Cathedral in Cork, 1558——The wills are deposited in the Registry Office which immediately adjoins it, 1559——A scale of fees is hung up in the Registry Office, 1561——Approximate expense of proving a will in the common form, without any contest, in witness's Court, 1562–1567. 1681–1683——Periods at which courts are held, 1568–1570——Steps taken to ascertain, before a probate is granted, whether there are *bona notabilia* out of the diocese, 1571, 1572——Appeals from this Court go to the Metropolitan Court of Dublin; the expense of appeal is not very great, 1573–1575——It would be very desirable in many cases to introduce the system of *vivâ voce* examination, 1576, 1577.

It would be very important if trial by jury were allowed as regards certain matters of fact, 1578——Grounds for forming the opinion, that in many contested cases it would be better to have local jurisdictions than to have one central Court of Probate in Dublin, 1579–1612——Mr. Exham is one of the six proctors in Cork; witness is aware that he has signed a petition to this House in favour of this Bill; but he said he did not know what the petition was; he signed it without reading it, 1613–1615. 1706, 1707——All the parties who have signed the petition are respectable men, 1616, 1617. 1619——Witness does not concur in the statements contained in this petition; he agrees in the other petition, the opposing petition of the proctors, 1618. 1620–1632——Average number of cases, of all kinds, litigated or otherwise, decided in witness's Court in each year, 1633–1642. 1684–1687.

Witness concurs in the statement in the petition of the Proctors, that in the opinion of the petitioners, "the removal of testamentary cases to the Prerogative Court, as contemplated by the present Bill, will necessarily cause considerable inconvenience to the inhabitants of those dioceses, particularly to the lower classes, and that probably, in many cases, wills will not be proved at all," 1643, 1644——So far as the suitors are concerned, it might perhaps be an advantage to admit attorneys to practise in the Diocesan Courts, 1645–1680——But, on the other hand, the proctors would say, that having paid a heavy stamp duty, and having qualified themselves, it would be unfair to admit them, 1645–1680——In very important cases, advocates, that is to say, two barristers, are allowed to practise, who are not regular members of the Court, 1630–1632. 1666, 1667.

Witness, as Judge of the Court, has no power to regulate the costs, 1688——It would be desirable that such a power should be conferred upon the Judges of the Diocesan Courts, and that a schedule should fix the maximum, and the Judge be permitted to diminish it according to circumstances, 1689——It is most desirable, where two dioceses circumstanced as those are, over which witness presides, that they should be consolidated with reference to testamentary jurisdiction, 1690, 1691——There is no ecclesiastical reason why clergymen should not continue to be the Judges in testamentary matters in the Diocesan Courts, 1694–1704——The documents in witness's Court are very well kept, and are in safety and security, 1710–1713. 1716——Testimony borne by Dr. Stock, the present Judge of the Admiralty Court, as to the superior manner in which the business of the Diocesan Court of Cork was managed, 1717–1719.

Oaths which are administered to proctors, 1720, 1721——Supposing the Diocesan Courts to be consolidated, there being one Court for each Bishopric, it would be desirable to give parties the option, in particular cases, of applying, if they thought proper, for a probate to the Prerogative Court in Dublin, 1722–1724——The law requires certain oaths to be administered to attorneys before they are allowed to practise in the Diocesan Courts, 1725, 1726——How far a question with regard to the competency of a person to make a will could arise in the Diocesan Courts, 1727–1742——Roman Catholic advocates or barristers do act in witness's Court, although they cannot be admitted members, 1743–1753. 1756–1760——There is no reason for limiting the number of advocates in the Diocesan Courts; the practical reason is the amount of the stamp duty; it is very heavy, 1754, 1755——If a probate be issued in a Diocesan Court, and it is afterwards discovered that there were goods in another diocese, that probate would be invalidated, 1761——To provide for this case, it would be desirable that there should be some short process by which a probate issued in one diocese should be rendered valid, either in the Prerogative Court or in reference to other dioceses, 1762.

The Ecclesiastical Commissioners have recommended, in reference to England, that the local jurisdiction should be abolished, 1763–1766——The case of the Diocesan Courts in Ireland is not analogous to that of similar Courts in England, 1764–1766——The cases are different; in England there is a great variety of ecclesiastical jurisdiction, 1764–1766——It would be better to consolidate the Diocesan Courts in Ireland, rather

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Kyle, The Venerable *Samuel M.,* LL.D. (Analysis of his Evidence)—*continued.*

than to abolish them altogether, 1767–1779. 1785–1799——The examination of witnesses on oath upon interrogatories, as proposed by the 57th Clause of the Bill, is, in some instances, a good mode of arriving at facts, 1780——Witness is not aware that any penalty is imposed for practising in the Diocesan Courts without taking the oaths prescribed, 1781–1784——Practically there has been only one appeal from witness's decisions in his Courts, 1800–1802.

Kyle, Mr. *H. S.* See *Registrars,* 3.

L.

Leahy, John. (Analysis of his Evidence.)—Member of the Irish Bar; has been practising, since 1836, in the Court of Chancery, and also in the Common Law Courts; goes the Munster Circuit; magistrate of the county of Kerry, and a landed proprietor in that county, 1338–1344——There is a Diocesan Court in the county of Kerry; the name of the diocese is Ardfert and Aghadoe, under the Bishop of Limerick; the Court sits at Tralee, 1345–1347——The Vicar-general, or Surrogate, as he is called, is the Judge of this Court; the present Vicar-general is the Dean of Ardfert; he resides about nine miles from Tralee, 1348–1350——The duties of the Court are performed by deputy, the Rev. A. B. Rowan, a clergyman of the Established Church; he resides near Tralee, 1351–1353.

The general registrar of the Diocesan Court of Ardfert and Aghadoe is Mr. M'Mahon; Mr. Eagar is the deputy registrar; he is the proprietor of a local newspaper, 1354–1360 ——The deputy registrar has the custody of the wills of this diocese; he keeps them in his own private house, 1361–1365. 1458–1469. Source from which the emoluments of the registrar of the Court are derived, 1366, *et seq.*——In the case of an ordinary administration or probate the fees amount to about 5*l.*, where there is no contest, 1366—— Witness has frequently had complaints from poor people in the county of Kerry, of their having received letters sent from the registrar, or at his instance, threatening them, that unless they came in to prove, proceedings would be taken against them, by way of penalty, under the Stamp Laws; injustice of this proceeding, 1367–1373. 1400, 1401. 1433–1457——The parties have always stated that these letters were written for the purpose of getting the fees for the registrar, incident to obtaining probate or administration, 1372. 1400, 1401. 1433–1457——Witness will not undertake to say that some of these letters were not written with a view to enforcing the payment of the stamp duty, 1372. 1400, 1401. 1442–1446——Cases in which great evils arise from granting the diocesan probate, with reference to the existence of *bona notabilia* in another diocese, 1374–1381.

Great evils arising under the present system in Ireland from the necessity for taking out administrations for the purposes of suits, 1382–1388. 1395–1399——The administrations necessary for the purposes of suits in Ireland are enormously more expensive and more tedious in obtaining, than similar administrations in this country, 1383. 1395–1399 ——Instance of the suit of Breen *v.* Cooper, in the Court of Chancery, showing the delay arising in obtaining administration, 1384, 1385——The expense of raising an administration *ad litem* in a cause, even when uncontested, is between 20*l.* and 30*l.*, 1386. 1405 ——Instance of an abuse in an ordinary case of proving a will in the county of Kerry, the will of a Mr. Dumas, 1387, 1388——Opinion that the principal provisions of this Bill would lessen the expense of these various proceedings a great deal, 1389, 1390—— The details, which are very much the cause of the present expense in the Court, would have to be set right by orders to be made by the Judge; and this Bill gives certain powers to the Judge to make orders, 1390.

The clause in the Bill which authorizes the Judge to appoint Commissioners to take affidavits in the country will tend materially to lessen the expense of proving wills under the present practice, 1391——The system of *vivâ voce* examination and trial by jury, as provided by the Bill, would tend greatly to lessen the expense of proving wills in contested cases, 1392–1394——The comparative expense in a single case, a case of ordinary proof, in the Diocesan Court, as compared with the Superior Courts, is very trifling; it is lowest in the Diocesan Court, 1398, 1399. 1402–1407——Unsatisfactory nature of the present system of taxation of costs; there are no practically effectual means of taxing proctors' costs, 1408, 1409——Witness is decidedly in favour of the concentration of the Diocesan Courts into one Court of Probate, 1410–1422——Witness, in his practice as a Barrister, has frequently had to advise on abstracts of title to real property, 1425—— Witness would not regard a probate from the Diocesan Court as a satisfactory voucher in deducing a title to real property, because of the danger of there being *bona notabilia,* 1426, 1427. 1429.

Evidence relative to the difference in the practice between this country and Ireland, with respect to advances for stamp duty on legacies, &c., 1428, 1429. 1431, 1432—— Upon the accession of the present Judge of the Prerogative Court, it was supposed that a great many of the evils that existed might have been corrected; but witness is not aware whether

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Leahy, John. (Analysis of his Evidence)—*continued.*

whether he had the power of doing so or not, 1430——Further evidence in detail on the subject of the custody of the wills in the diocese of Ardfert and Aghadoe by the deputy registrar, 1458, *et seq.*——Witness does not consider that the registrar keeping them in his private house is the proper way to keep public documents, 1458–1469——Still witness has found that this gentleman kept them as carefully as they could be kept in his private house, and they were easy of access for reference, 1458–1466.——Suggestions generally on the subject of the custody of wills, and as to the places which would be safest and most convenient for their being deposited, 1467–1496——How far the effect of the removal of the Diocesan Courts to Dublin would be to put the local proctors, or those persons whe act as proctors, out of practice, 1497–1499——In all the small dioceses of Ireland there are separate jurisdictions, 1500–1505——In cases of persons wishing to inspect or examine a will, witness believes it is the practice to require the party to take out a copy of the will, 1506–1509.

Local Proctors. See *Proctors.*

Lord Chancellor. See *Appeals.*

M.

M'Mahon, Mr. See *Registrars,* 3.

Matrimonial Causes. Extent of the jurisdiction of the Prerogative Court in matrimonial causes, Dr. *Wily* 2242–2244. 2246–2256. 2361–2366.
See also, *Advocates,* 2. *Jurisdiction,* 2.

Metropolitan Court of Dublin. See *Appeals.*

N.

Nagle, Mr. *David A.* See *Bills of Costs,* 2.

Nisi Prius Judges. See *Trial by Jury.*

O.

Oaths. Every advocate and proctor practising in witness's Court up to the present time has been obliged to take certain oaths, Hon. *R. Keatinge* 337–339——The question now is, whether they are still obliged to take these oaths, and whether Roman Catholics cannot practise in this Court; this is a question of law upon which witness declines giving an opinion, *ib.* 337——These oaths are such that no Roman Catholic could conscientiously take them, *ib.* 340. 347–350——Oaths administered to proctors in the Diocesan Court of Cork, Dr. *Kyle* 1720, 1721——The law requires certain oaths to be administered to attorneys before they are allowed to practise in the Diocesan Courts, *ib.* 1725, 1726——Witness is not aware that any penalty is imposed for practising in the Diocesan Courts without taking the oaths prescribed, *ib.* 1781–1784.
See also *Roman Catholics.*

O'Connell v. *O'Connor.* See *Bills of Costs,* 2.

Officers of the Court. See *Appointments. Clerks. Fees. Judges. Registrars. Salaries.*

Orders of Court. Opinion that the provisions of this Bill are calculated to lessen the expense of the proceedings before the Prerogative Court; the details, which are very much the cause of the present expense, would have to be set right by orders to be made by the Judge, and this Bill gives certain powers to the Judge to make orders, *Leahy* 1390.

P.

Pensions. See *Retiring Pensions.*

Personal Estate. See *Real Estate.*

Petition and Affidavit. Reference to the Clause in this Bill authorizing a party to commence a suit in the Prerogative Court by petition and affidavit, Dr. *Wily* 2411–2413——Evidence showing that this cannot work; way in which it affects the question of the admission of the general bar of Ireland to practise in the Prerogative Court, *ib.*
See also *Ecclesiastical Commissioners.*

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Petitions to Parliament. Mr. Exham is one of the six proctors in Cork; witness is aware that he has signed a petition to this House in favour of this Bill, but he said he did not know what the petition was; he signed it without reading it, Dr. *Kyle* 1613–1615. 1706, 1707——All the parties who have signed the petition are respectable men, *ib.* 1616, 1617. 1619——Witness does not concur in the statements contained in the petition; he agrees in the other petition, the opposing petition of the proctors, *ib.* 1618. 1620–1632.

Pleadings. Contrasting the system of pleading in the Prerogative Court with that which is in use in the Court of Chancery in Ireland; there is unnecessary prolixity in the Prerogative Court proceedings, *Blakeney* 2109–2112.

See also, *Expense of Proceedings. Procedure. Special Pleadings.*

Plenary Suits. See *Suits.*

Pluralities. See *Judges*, 1.

Poundage Fee. Explanation of the charge in proctor's bills called "poundage fee" on probates and administrations, a fee on the stamp duty, or rather a compensation for the advance of stamp duty by the proctor, *Hamilton* 901–920.

Prerogative Court. See *Advocates. Barristers. Civil Law. Consistorial Court. Judges*, 1. *Jurisdiction. Orders of Court. Procedure. Proctors. Registrars*, 1; *and the principal Headings in this Index.*

Priests. See *Roman Catholics.*

Primate, The. See *Appointments.*

Probate of Wills. The comparative expense in a simple case, a case of ordinary proof, in the Diocesan Court, as compared with the Superior Courts, is very trifling, it is lowest in the Diocesan Courts, *Leahy* 1398, 1399. 1402–1407——Approximate expense of proving a will in the common form, without any contest in witness's Court, Dr. *Kyle* 1562–1567. 1681–1683——Opinion that it is not necessary to have two Courts in Dublin for the proof of wills, Dr. *Radcliffe* 1875–1883——Evidence showing that it is of greater importance that there should be a unity of system between this country and Ireland, with regard to questions of probates and administrations, *ib.* 1983–1986——If parties were at liberty to swear the necessary affidavits before the Commissioners, and country attorneys were allowed to practise in the Court of Prerogative in Dublin, probates could be obtained at a smaller expense than they now are, *Blakeney* 2154–2161.

See also, *Administrations. Bona Notabilia. Central Court of Probate. Commissioners for taking Affidavits. Dumas*, Mr. *Jurisdiction*, 2. *Poundage Fee.*

Procedure. The present system of procedure in the Ecclesiastical Courts as it is, without in particular cases superadding *vivâ voce* examination and trial by jury, is by no means satisfactory, Hon. *R. Keatinge* 184–207——Suggestions as to the beneficial alterations which might be made in the proceedings of the Prerogative Court as regards pleadings and forms of that sort, *ib.* 675, 676——As regards the system of pleading and practice in witness's Court of Cloyne and Ross, he has adopted the system in use in the Consistorial Court of Dublin, and it is followed out in every respect, Dr. *Kyle* 1553–1557. 1560.

Proceedings of the Committee. *Resumé* of the proceedings of the Committee *de die in diem*, *Rep.* iv.–x.

Proctors. There are about 18 establishments practising the profession of proctor in the Prerogative Court, Hon. *R. Keatinge* 444–446——Statement as to what constitutes a proctor; course of education persons go through to become proctors, *ib.* 447 *et seq.*——Duties of a proctor practising in the Prerogative Court; their duties are very numerous, Hon. *R. Keatinge* 456–458. 463–468; *Hamilton* 735–738——Witness believes the number of proctors has materially increased since the Nineteenth Report of the Commission, Hon. *R. Keatinge* 508, 509——The Commissioners recommended that it would be advisable to increase the number of proctors of the Court, and they were increased accordingly under the regulations of the then Judge, *ib.* 510——Their position is naturally one of the most confidential kind, and it is therefore necessary that they should be men of the very highest character, *ib.* 514–516. 580.

Witness would view the introduction of any very large number of proctors with very great alarm indeed, Hon. *R. Keatinge* 517——It is important that the number should not exceed that over which the Judge of the Court could maintain personal supervision, *ib.*——The proctors admitted into the Prerogative Court can practise in all the Diocesan Courts; but the country proctors cannot practise in the Prerogative Court, *ib.* 575–577——The principal business of proctors is in the Prerogative Court and the Consistorial Court, *ib.* 578, 579.

If

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Proctors—continued.

If the amount of business were equally divided amongst the 24 proctors practising in the Prerogative Court, it would not afford an adequate remuneration to each of them individually, Hon. *R. Keatinge* 610-614——There are at present 25 proctors in practice; number of partnerships, *Hamilton* 719-721——Witness looks upon the duties of a proctor to be in a great measure analogous to those of a solicitor, *ib.* 770-774——How far the effect of the removal of the Diocesan Courts to Dublin would be to put the local proctors, or those persons who act as proctors, out of practice, *Leahy* 1497-1499.

See also, *Admission of Proctors. Advocates. Apprentices. Attorneys. Bills of Costs. Central Court of Probate*, 2. *Commissions. Consistorial Court. Cork Diocesan Court. Ecclesiastical Commissioners. Fees. Jurisdiction. Oaths. Petitions to Parliament. Roman Catholics. Solicitation Fee. Solicitors. Taxation of Costs.*

Proving Wills. See *Administrations. Central Court of Probate. Dumas*, Mr. *Jurisdiction*, 2. *Surrogates. Vivâ voce Examination. Witnesses.*

R.

Radcliffe, Joseph O., Q.C., LL.D. (Analysis of his Evidence.)—Judge of the Consistorial Court of Dublin; vicar-general of Armagh, and also vicar-general of Clogher, 1803-1806. 1824——The Diocesan Court of Clogher is generally held in the Court-house of Monaghan, 1807——The wills in the diocese of Clogher are kept in the registrar's house, in the town of Monaghan, 1808——Names of the registrar and deputy-registrar of Clogher; the duties are performed by the deputy, 1809-1815——Name of the registrar of the Consistorial Court of Dublin; the duties are done by deputy, 1816-1818——Names of the registrars of the diocese of Armagh, 1819-1821——Witness' duties in the dioceses of Clogher and Armagh are, to a large extent, performed by deputy; he has a surrogate in each Court, both in Monaghan and Armagh, 1822-1825——Witness communicates with his surrogates in all important cases, 1823-1826.

Witness has known instances in which commentaries have been made upon the conduct of Roman Catholic clergymen; their conduct has been arraigned with respect to obtaining wills by undue influence, 1827-1841——Witness sees no objection, on principle, to ecclesiastics of the Established Church being the persons placed in a position to decide upon such cases, 1842-1850——The practitioners in the Consistorial Court of Dublin are the same as practise in the Prerogative Court; there is no separate bar nor separate proctors, 1851——Roman Catholics are not admissible to practise in the Consistorial Court; they cannot take the oaths conscientiously; witness would admit nobody who did not take the oaths required, 1852-1857. 1861.

The rule, as regards advocates practising in the Consistorial Court, is the same as in the Prerogative Court, 1858——As regards the general rules of the Consistorial Court there is some trifling difference, as compared with those of the Prerogative Court, 1859. 1867-1870——There is not the slightest reason against doing away with the exclusive character of the practitioners in the Consistorial Court, but every reason for doing away with it; witness believes the proctors would be pleased at it, 1860-1866——All the suits in the Consistorial Court are plenary suits; in the Prerogative Court they are summary suits, 1871, 1872——This does not now entail any prolongation of the proceedings in the Consistorial Court as compared with the Prerogative Court, 1873, 1874.——The doctrine of "Plenary" and "Summary" was more applicable some years ago than it is now, 1873.

Opinion that it is not necessary to have two Courts in Dublin for the proof of wills, 1875-1883——The appeals from the Consistorial Court to the Court of Delegates are frequent, as compared with the decisions, 1884——Instance of the cause of Donnellan *v.* Downes, showing the enormous expense of appeals; this was an appeal from the decision of the Consistorial Court to the Court of Delegates; nature of the taxation of costs in cases of appeal, 1885-1914——There are appeals to the Consistorial Court from the other Diocesan Courts, 1915——From the Diocesan Courts of Leinster and Munster, appeals all lie to witness in Dublin; from Ulster and Connaught they all lie to him in Armagh, 1915, 1916——Another appeal lies to the Court of Delegates, 1917——It would be advisable to prevent this double appeal and triple proceeding; there is no occasion for all these appeals, 1918.

The Court of Delegates is a desirable tribunal for the decision of appeals, if they would sit more regularly, 1919——Observations and suggestions generally on the subject of the present constitution of the Court of Appeal; the Court of Delegates, 1920-1935——Witness would approve of an appeal to the Lord Chancellor, with two of the Junior Judges of the Common Law Courts sitting with him, as proposed by the Bill, if the Lord Chancellor had time to attend, 1936-1947——But witness doubts very much if he would have time to sit sufficiently often, 1936-1947——Opinion in favour of paying the officers of the Ecclesiastical Courts by salary instead of by fees, 1954-1956——It would be desirable that the Judge should have the power of regulating or altering and adjusting the fees, 1957-1959.

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Radcliffe, Joseph O., Q.C., LL.D. (Analysis of his Evidence)—*continued.*

The provision in this Bill allowing attorneys to practise in the Prerogative Court is a very bad provision; nothing would be gained by it, 1960–1974——Administration bonds are perfectly legal instruments; they are prepared with great regard to their legal validity, 1975–1982——Evidence showing that it is of great importance that there should be a unity of system between this country and Ireland with regard to questions of probates and administrations, 1983–1986——Reasons for objecting to the appointment of Commissioners for taking affidavits in the country; opinion, that it would lead to greater expense, 1986–2030——By the present constitution of the Prerogative Court and the Consistorial Court, the next of kin, or any one likely to be affected by the will, has a right to cross-examine the witnesses to that will, without any charge whatsoever; it would be very desirable to preserve this right, 2030–2038.

Suggestion with a view to enabling a party to prove a will in special form of law to meet the difficulties arising from witnesses dying or leaving the country, 2039–2042—— Difficulties in the way of taking away the testamentary jurisdiction from the Consistorial Courts in the country, or Diocesan Courts, and leaving only the matrimonial and other jurisdictions, 2042–2047. 2049–2059——If the testamentary jurisdiction be taken away, it will be absolutely necessary to consolidate some of the Diocesan Courts, 2048—— This consolidation would, in some respects, be preferable to establishing one Court in Dublin, 2060–2086——It would not be desirable to restrict the examination of witnesses in the Prerogative Court to *vivâ voce* evidence taken before the Judge, as proposed in the 46th clause of the Bill, 2087–2095——It would be very desirable to have an officer who should specially have charge of the records of the Prerogative Court, 2096–2098.

Radcliffe, Judge. See *Attorneys.*

Real Estate. It would be very important in testamentary law, that the validity of wills of real and personal estate should be determined by the same tribunal, and that the decision as to one kind of property should extend to the other, Hon. *R. Keatinge* 284–303. 677.

See also *Bona Notabilia.*

Record Keeper. Evidence on the subject of the office of Record Keeper of the Court, who has the custody of the wills and documents, Hon. *R. Keatinge*, 700 *et seq.*——It would be very desirable to have an officer who should specially have charge of the records of the Prerogative Court, Dr. *Radcliffe* 2096–2098.

See also *Custody of Wills.*

Records, Wills, &c. The deputy registrar of the Ardfert Diocesan Court has the custody of the wills of this diocese; he keeps them in his own private house, *Leahy* 1361–1365. 1458–1469——Witness does not consider that the registrar keeping them in his private house is the proper way to keep public documents, *ib.* 1458–1469.

See also *Custody of Wills.*

Reform of the Court. Upon the accession of the present Judge of the Prerogative Court it was supposed that a great many of the evils that existed might have been corrected; but witness is not aware whether he had the power of doing so or not, *Leahy* 1430.

Registrars:

1. *Prerogative Court.*
2. *Consistorial Court.*
3. *Diocesan Courts.*

1. *Prerogative Court:*

Particulars relative to the appointment of Mr. Stewart as registrar of the Prerogative Court; net emoluments of the office; emoluments of the deputies; way in which the fees are regulated, Hon. *R. Keatinge* 58–97.

2. *Consistorial Court:*

Name of the registrar of the Consistorial Court of Dublin; the duties are done by deputy, Dr. *Radcliffe* 1816–1818.

3. *Diocesan Courts:*

The general registrar of Diocesan Courts of Ardfert and Aghadoe is Mr. M'Mahon; Mr. Eagar is the deputy registrar; he is the proprietor of a local newspaper, *Leahy* 1354–1360——Source from which the emoluments of the registrar of the Ardfert Diocesan Court are derived, *ib.* 1366, *et seq.*——The registrar of the Court of Cork and Ross is Mr. Henry Stopford Kyle; he resides in London; the duties are performed by Mr. William Cockburn Bennett, solicitor and notary public, residing in Cork, Dr. *Kyle* 1512–1515. 1692, 1693. 1708, 1709——The registrar of the Court of Cloyne is Mr.

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

REGISTRARS—continued.

3. *Diocesan Courts*—continued.

Mr. Wilkinson, who is advanced in years, and his son who is his deputy, performs the duties; both reside in Cloyne, Dr. *Kyle* 1516——Names of the registrar and deputy registrar of Clogher; the duties are performed by the deputy, Dr. *Radcliffe* 1809–1815——Names of the registrars of the diocese of Armagh, *ib.* 1819–1821.

See also, *Administrations.* *Admission of Proctors.* *Apprentices.* *Records, &c.* *Taxation of Costs.*

Registry of Wills. A central registry of wills in Ireland, in connexion with a local one, would be very desirable, Dr. *Kyle* 1552.

Retiring Pensions. Inadequacy of the retiring pension of the Judge of the Prerogative Court; observations on the amount at which, and conditions on which, it is proposed to be fixed by this Bill, Hon. *R. Keatinge* 682–688.

Roman Catholics. Witness has objected, and would still object, from the fact of its being an innovation of practice, to admit Roman Catholics as advocates or proctors without the question as to their eligibility being discussed and decided in the regular way, Hon. *R. Keatinge* 342, *et seq.*——There is no reason why Roman Catholics should not be admitted as advocates, Hon. *R. Keatinge* 360–384; Dr. *Wily* 2367–2370; Dr. *Kyle* 1530–1534. 1537–1551——It has never been the practice to appoint Roman Catholics; the oaths they would have to take are the bar, Dr. *Kyle* 1530–1534. 1537–1551——Roman Catholic advocates or barristers do act in witness's Court, although they cannot be admitted members, *ib.* 1743–1753. 1756–1760——Roman Catholics are not admissible to practise in the Consistorial Court; they cannot take the oaths conscientiously; witness would admit nobody who did not take the oaths required, Dr. *Radcliffe* 1852–1857. 1861.

Witness has known instances in which commentaries have been made upon the conduct of Roman Catholic clergymen; their conduct has been arraigned with respect to obtaining wills by undue influence, Dr. *Ratcliffe* 1827–1841——Witness sees no reason on principle to ecclesiastics of the Established Church being the persons placed in a position to decide upon such cases, *ib.* 1842–1850.

See also, *Advocates.* *Cork Diocesan Court.* *Oaths.*

S.

Salaries. Lowest salary paid to any of the clerks in the office of the Judge of the Prerogative Court, Hon. *R. Keatinge* 712, 713——Opinion in favour of paying the officers of the Ecclesiastical Court by salary instead of by fees, Dr. *Radcliffe* 1954–1956.

See also, *Clerks.* *Fees.* *Judges*, 1. *Registrars.* *Taxation of Costs.*

Scale of Fees. See *Taxation of Costs.*

Solicitation Fee. Until the Nineteenth Report, there was what was called the Solicitation Fee, a fee which the proctor paid to the solicitor and charged in his own bill of costs against his client; this fee has been discontinued for many years, Hon. *R. Keatinge* 459–462.

Solicitors. Objection to solicitors being also allowed to act as proctors, Hon. *R. Keatinge* 518–572. 579–588——It is not necessary for a client to apply to a proctor through a solicitor, but it is the usual practice in Ireland for the solicitor to introduce the party to his proctor, *ib.* 595–597. 600–609——If solicitors were to be admitted to practise in the Prerogative Court, it would be absolutely necessary that the Court should have the same supervision over them as the Courts of Law have over attorneys at present, *ib.* 599——There might be some saving to the client if he were allowed to conduct his case by the solicitor, *ib.* 615——If there were an Act of Parliament or a rule of Court, providing that the solicitor should not be allowed to charge his client for the attendances on the proctors, the proctors would then most probably be brought into personal communication with the client, and perhaps the business as well done, *ib.* 616–622——In carrying on the suits, the proctors are in constant communication with the solicitors of the parties; but the solicitors are not always the persons from whom they derive their business; parties have the option of coming to the proctors themselves, *Hamilton* 1021–1050——Witness believes that the body of solicitors would have no objection to be permitted to transact their own business in the Prerogative Court relating to wills, *Blakeney* 2171–2174. 2188, 2189.

See also, *Attorneys.* *Barristers.* *Ffrench* v. *Ffrench.* *Proctors.* *Solicitation Fee.*

Special Pleadings. In a contested suit in a Prerogative Court there is only one special pleading on each side, Hon. *R. Keatinge* 160–162.

Stamp Duty. There is no stamp duty on administration *ad litem* specially granted for the purposes of the suit, *Hamilton* 1051–1060——Evidence relative to the difference in the practice between this country and Ireland in respect to advances for stamp duty on legacies, &c., *Leahy* 1428, 1429. 1431, 1432.

See also, *Administrations.* *Advocates*, 2. *Attorneys.* *Poundage Fee.*

Stewart, Mr. See *Registrars*, 1.

Stock, Dr. See *Cork Diocesan Court.*

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

Suits. How far suits in the Consistorial Court are more tedious and expensive than in the Prerogative Court, *Hamilton* 973–1000——All the suits in the Consistorial Court are plenary suits; in the Prerogative Court they are summary suits, Dr. *Radcliffe* 1871, 1872——This does not now entail any prolongation of the proceedings in the Consistorial Court as compared with the Prerogative Court, *ib.* 1873, 1874——The doctrine of "plenary" and "summary" was more applicable than it is now, *ib.* 1873.

See also, *Administrations.* *Central Court of Probate.*

Summary Suits. See *Suits.*

Surrogates. If Surrogates were appointed, the expense of proving a will would not be enhanced, by being proved in Dublin instead of in a Diocesan Court, Hon. *R. Keatinge* 633–642——If all the jurisdiction should be removed to Dublin, it would be quite impossible to do without having some Surrogates in Dublin, *ib.* 640——Witness's duties in the Diocese of Clogher and Armagh are, to a large extent, performed by deputy; he has a Surrogate in each Court, both in Monaghan and Armagh, Dr. *Radcliffe* 1822–1825——Witness communicates with his Surrogates in all important cases, *ib.* 1823–1826.

See also, *Ardfert and Aghadoe Diocese.* *Commissioners for taking Affidavits.*

T.

Taxation of Costs. Evidence and observations generally on the subject of the taxation of costs, Hon. *R. Keatinge* 471–491——The Registrar of the Prerogative Court is the taxing officer; there is an appeal to the Judge; rarity of appeals, Hon. *R. Keatinge* 471–491. 690; *Hamilton* 1331–1337——It would be advisable that the duty of taxing costs should be discharged by an officer who does not receive any fees taxable in these costs, Hon. *R. Keatinge* 689, 690. 697–699——If the Bill passes, and the Registrar is put on a salary, there would be no objection, provided he has time, to his taxing the costs, *ib.* 690–696——The Judge of the Prerogative Court controls the taxation of costs; but it does not appear to witness that the Judge has any power to alter the charges of the Court, or to establish a regular scale of charges, *Hamilton* 1145–1147——The bills of costs which are taxed in a year are not very numerous, *ib.* 1330——Unsatisfactory nature of the present system of taxation of costs; there are no practically effectual means of taxing proctors' costs, *Leahy* 1408, 1409.

See also, *Appeals.* *Bills of Costs.* *Briefs.* *Costs.*

Testamentary Jurisdiction. See *Central Court of Probate.* *Diocesan Courts.* *Jurisdiction*, 2.

Titles to Property. See *Bona Notabilia.*

Tralee. See *Ardfert and Aghadoe Diocese.*

Travelling Expenses. See *Commissions.* *Examiners.*

Trial by Jury. In certain difficult cases witness would wish very much to have them sent to a jury to be investigated, perhaps with certain restrictions, Hon. *R. Keatinge* 179, 180. 182–207——But witness would not introduce the principle of trial by jury in the first instance, until the Judge had himself sifted the case, *ib.* 180. 182–207——Grounds for forming the opinion that in cases on which witness would consider it would be desirable to have trial by jury, there is no reason why the trial should not be before the Prerogative Judge, rather than before the Nisi Prius Judges, *ib.* 207–270——Opinions in favour of adopting the system of trial by jury in the Prerogative Court, under certain circumstances, *Hamilton* 970–972; Dr. *Kyle* 1578; *Blakeney* 2170. 2175–2181.

See also *Ecclesiastical Commissioners.*

V.

Vivâ Voce Examination. The introduction of *vivâ voce* examination into the Prerogative Court, to a certain limited extent, would be an advantage; such as in the case of sanity, for instance, Hon. *R. Keatinge* 165–167. 169, 180——If witness had to choose between one system and the other, to provide for all cases, he would prefer the *vivâ voce* to the present system, *ib.* 198——Witness believes that one of the recommendations of the Ecclesiastical Commissioners in 1832 was, to adopt the system of *vivâ voce* examination under certain limitations, *Hamilton* 963——Witness considers that *vivâ voce* examination is the best test of truth, *ib.* 969.

The system of *vivâ voce* examination and trial by jury, as provided by the Bill, would tend greatly to lessen the expense of proving wills in contested cases, *Leahy* 1392–1394——It would be very desirable to introduce the system of *vivâ voce* examination, Dr. *Kyle* 1576, 1577——It would not be desirable to restrict the examination of witnesses in the Prerogative Court to *vivâ voce* examination taken before the Judge, as proposed in the 46th Clause of the Bill, Dr. *Radcliffe* 2087–2095——It would be advisable to substitute a system of *vivâ voce* examination for written depositions, *Blakeney* 2168, 2169. 2190–2198.

See also *Ecclesiastical Commissioners.*

Printed image digitised by the University of Southampton Library Digitisation Unit

Report, 1850—*continued.*

W.

Wilkinson, Mr. See *Registrars,* 3.

Wills. If the original wills were sent to Dublin, and attested copies kept, which would be evidence in Courts of Justice for local purposes in the different districts, great advantage would arise, Dr. *Kyle* 1552——How far a question with regard to the competency of a person to make a will could arise in the Diocesan Courts, *ib.* 1727-1742.

See also, *Administrations. Affidavits. Central Court of Probate. Cloyne and Ross Diocese. Cross-examination. Custody of Wills. Examination of Witnesses. Inspection of Wills. Probate of Wills. Real Estate. Records, &c. Registry of Wills. Roman Catholics. Solicitors. Surrogates. Witnesses.*

Wily, William, LL.D. (Analysis of his Evidence.)—Advocate of the Court of Prerogative in Ireland, and a barrister, 2222-2226——The number of Advocates practising in the Court is very limited; it does not exceed seven or eight; there are not above five that are in considerable business, 2227-2237——Witness has read the clause in this Bill which proposes to admit to practice in this Court the general body of the Bar in Ireland, 2238——Witness has numerous objections to make to this clause; statement of the nature of these objections, 2239, *et seq.*——The business of the Prerogative Court is so limited, that unless there is an exclusive Bar for this Court, a Bar that is in some degree protected, witness does not consider that the business can be at all properly performed, 2241. 2343——Witness does not mean to say that it is necessary that they should be all Doctors of Law, 2241.

The business is so limited that it would not be worth any man's while, unless he were in some degree protected, to give so much attention to the business of that Court as would enable him to acquire a knowledge of the practice of the law of this or the other Ecclesiastical Courts, so as to work the cases for the interests of the clients, 2241—— There is in the Prerogative Court a branch of jurisdiction which is confined exclusively to it, and which none of the general Bar usually know anything about; that is, the law of administrations, 2241——Also, the practice and the principles of this Court are founded upon the Civil and Canon Law, in a great degree, and it is necessary that men should have an interest in devoting their time to acquiring it, 2241, 2242. 2305-2330. 2406-2408——And witness also considers the Advocates of the Prerogative Court are the only persons competent for conducting the other ecclesiastical business of the country, and the matrimonial business, which is very important, 2241-2244——Extent of the jurisdiction of the Prerogative Court in matrimonial causes, 2242-2244. 2246-2256. 2361-2366.

Another objection to the admission of the body of barristers is, that there would be no persons from whom to select the Judge of the Superior Court, 2242-2257——There is a lower ground which may be taken with respect to the Prerogative Court, which is, that unless a few men make it worth their while to attend in the Court and conduct the business, the interests of the clients in the Court will not be properly attended to; grounds for forming this opinion, 2242——Witness would say that the Advocates in the Prerogative Court have been the only persons by whom a knowledge of Civil Law in the country is preserved, 2244. 2305-2330. 2406-2408.——Opinion that it would be highly injurious to the public to prevent a body of men from still cultivating this law, which is the foundation of the Ecclesiastical Courts, *ib.*

How far the Advocates in the Prerogative Court confine their business exclusively to that Court, 2258-2288. 2331-2342. 2389-2405——Practice of the Advocates to bring in Common Law lawyers into the Prerogative Court in very heavy causes, 2288-2297. 2323 ——There is nothing to prevent Advocates entering the Prerogative Court but the payment of the stamp duty, and the necessity of taking the degree of Doctor of Laws, 2298-2304——Witness does not concur in the evidence of Judge Keatinge, that the admission of the Bar generally would tend to the better administration of justice in the Prerogative Court, 2344-2360——Witness sees no reason why Roman Catholics should not be admitted as Advocates, 2367-2370——How far it would be desirable to concentrate the business of the Diocesan Courts into one Court at Dublin, 2371-2381——The barristers in Ireland generally practise in both Chancery and Common Law Courts, 2382-2388—— Reference to the clause in this Bill, authorizing a party to commence a suit in the Prerogative Court by petition and affidavit, 2411-2413——Evidence showing that this cannot work; way in which it affects the question of the admission of the general Bar of Ireland to practise in the Prerogative Court, *ib.*

Witnesses. Suggestions, with a view to enabling a party to prove a will in special form of law, to meet the difficulties arising from witnesses dying or leaving the country, Dr. *Radcliffe* 2039-2042.

See also *Examination of Witnesses.*

Written Depositions. See, *Depositions. Vivâ Voce Examination.*

Printed image digitised by the University of Southampton Library Digitisation Unit