

THE DÁIL COURTS IN LIMERICK

BY MARY KOTSONOURIS

On 29 June, 1920, the revolutionary assembly called Dáil Eireann decreed that Courts of Equity and Justice were to be set up and the Minister for Home Affairs was to establish courts having a criminal jurisdiction. Already *ad hoc* arbitration tribunals were in operation in several places where there had been eruptions of agrarian violence and intimidation: these had come about through the initiative of local leaders in an effort to preserve communal order and to offer the possibility of a mediated resolution to land disputes. They had been a conspicuous success. Although arbitration courts had been part of the Sinn Féin programme since 1905, it was the example of local communities in Mayo and Clare that provided the impetus to the formal structures authorised by the Dáil. The constitution of the courts was published in booklet form known as *The Judiciary*. Very briefly, they were to comprise a Supreme Court, District Courts and Parish Courts. The first had unlimited jurisdiction and sat only in Dublin. The District Court jurisdiction corresponded to the area of a parliamentary constituency and there was a court in every Roman Catholic parish, which could adjudicate on claims up to a £10 value and in petty criminal offences. The parish justices were elected by a convention consisting of local and trade union representatives, incumbent clergy, the Sinn Féin club and the Volunteers: these justices, in turn, chose a bench of five judges for the District Court, which had two sort of sittings. When it sat as an ordinary District Court, it heard civil cases not exceeding a value of £100 and appeals from the Parish Courts. Three times a year, there was a Circuit sitting, presided over by a professional judge, who dealt with serious crime and equitable and civil claims. The sittings were organised by the District Registrar, who also issued the proceedings and supervised the clerks of the Parish Courts. The existing law was applied, together with any decrees that had been passed by the Dáil.

These courts were highly centralised, even though martial law was in operation. Austin Stack, as Minister, had an office staff and outdoor organisers

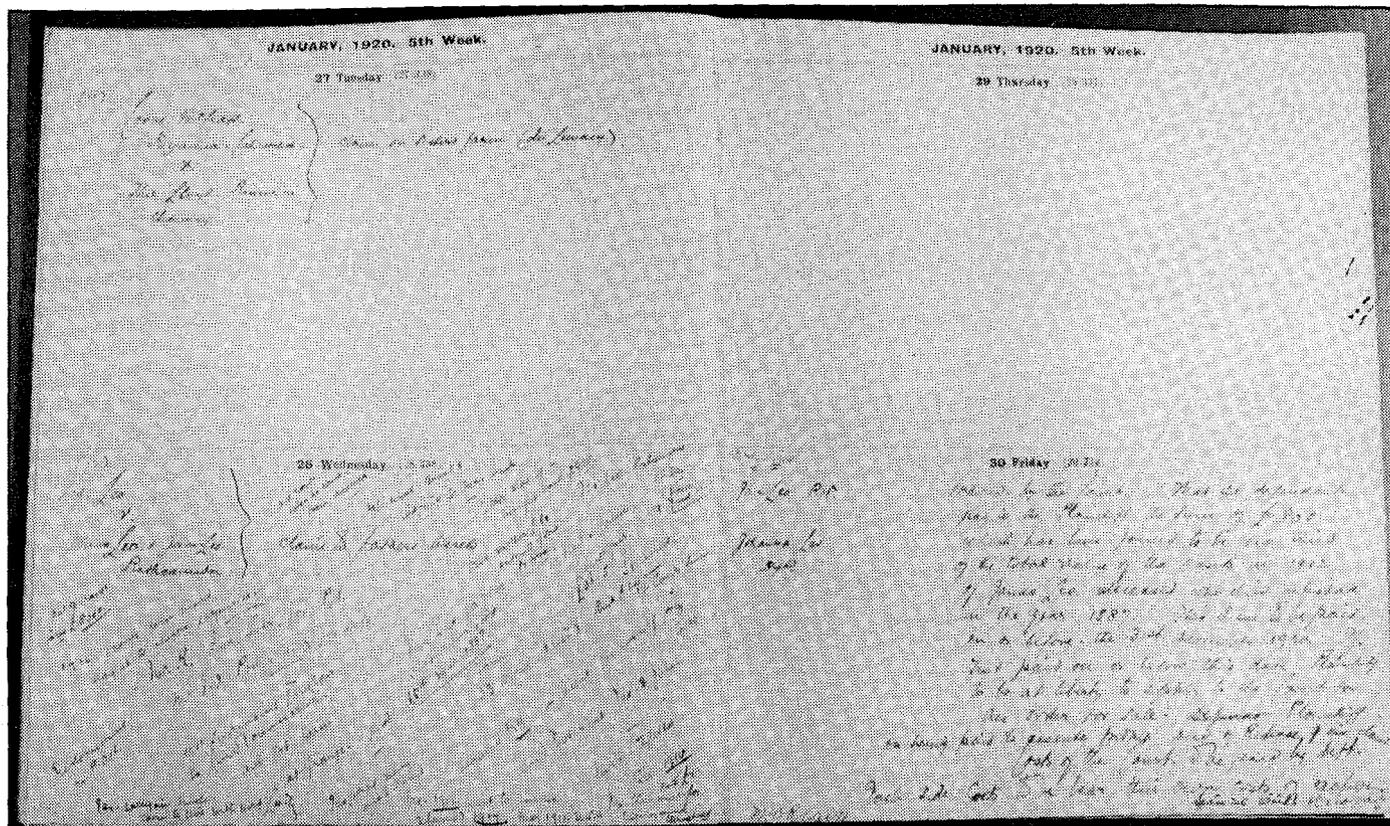
IN MEMORIAM



John A. Lynch, Kilmallock.

Member of Limerick County Council; Hon. Sec. East Limerick Sinn Féin Executive; Registrar East Limerick Dáil Eireann Court; Murdered by British Forces, in the Royal Exchange Hotel, Dublin, on the 22nd September, 1920.

Memorial postcard to John A. Lynch. Limerick Museum.



1920 court diary of John A. Lynch, Kilmallock, registrar of East Limerick Dáil Court. Limerick Museum.

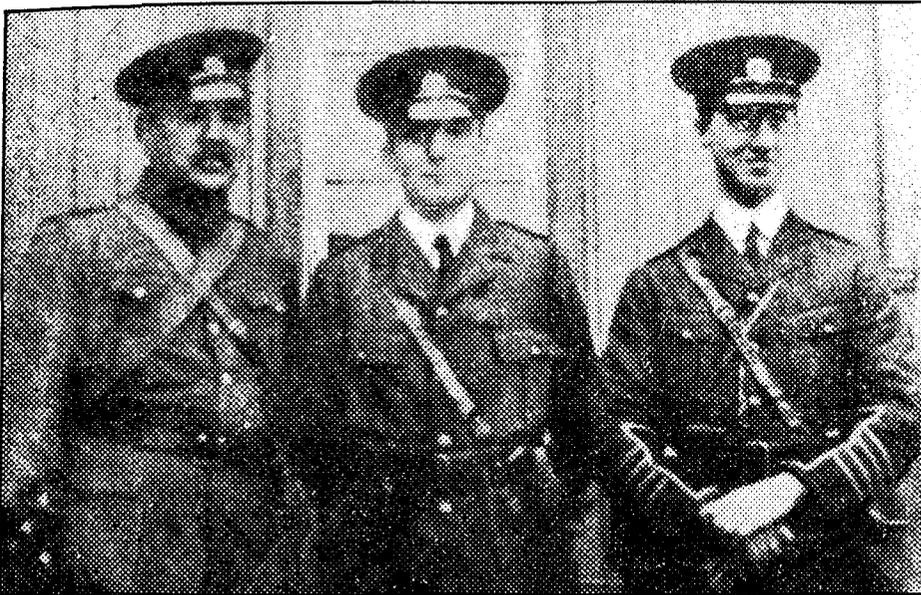
solely for the administration of the courts and every detail of their practice was controlled and critically examined. In fact, they were grafted on to the arbitration tribunals which had already taken upon themselves a rough coercive jurisdiction, and it may well be that, because the ground had been thus prepared, the courts were up and running in a very short time. It also helped that their outrageous usurpation of "the King's justice" could be veiled behind the fiction of voluntary arbitration! Though not for very long – the courts were suppressed along with Dáil Eireann and there were regular reports of intervention and arrests. In the *Tipperary People* of 16 July, 1920, it was said that a court in Limerick had been raided by armed police who carried away documents and arrested two men. However, apart from disruption, the raids made little inroads in suppressing the courts: cunning and conspiracy kept them going, albeit underground, during the period of the Terror, as it came to be called. In the meantime, by a combination of persuasion and threat, the established courts were boycotted, people no longer reported for jury duties and most of the justices of the peace resigned their commissions. Most local authorities brought all their proceedings in the new courts such as rates, enforcement of health regulations and summonses under the School Attendance Acts. Contemporary newspapers reported the County Courts and Petty Sessions frequently adjourned after five minutes because there were no cases in front of them. Cahir Davitt was a young barrister

practising on the Western Circuit and he recalled that even before the formal establishment of the Dáil Courts there had been a steady erosion of business from the statutory courts, which would be informed that "the matter had been settled elsewhere". Within a short time, he was appointed a circuit judge by Austin Stack along with another barrister, Diarmuid Crowley. James Creed Meredith, K.C. and Arthur Clery, Professor of Law at U.C.D., were the judges of the Supreme Court. Conor Maguire and Kevin O'Shiel had already been made Land Court judges, and these six men were the only salaried judges: moreover, apart from some initial outlay, these extraordinarily numerous courts were self-financing!

The first place that Judge Davitt travelled to was Limerick, when he set out to take the South-East Circuit in October, 1920. He travelled in considerable secrecy and using a false identity. He made contact with John McNeice, the District Registrar for Limerick City, before travelling on to Cork. Because of the disturbed conditions and the danger of letters being intercepted, the arrangements had to be made personally. When he returned to Limerick within a few days to take the sittings that McNeice had set up in the meantime, Davitt had a close encounter with the military who had taken over Cruise's Hotel, where he had stayed on the outward journey. He narrowly escaped arrest by putting on a bold front, while successfully extricating his suitcase at the same time! The two judges who sat with him in the following days were Stephen O'Mara and Michael

O'Callaghan, who had been Mayor of the city and was to be murdered by Crown Forces the following spring. Davitt then proceeded to East Limerick to preside at Circuit sittings in conditions fraught with even more danger. Nicholas O'Dwyer, whom he remembered as a student in U.C.D., acted as his Registrar on that occasion. It was during this period, when he was waiting at Limerick Junction for a train, he heard that his colleagues, Judge Crowley, had been arrested for holding a court in Ballina, Co. Mayo, an offence for which he was subsequently sentenced to two years' penal servitude, which meant that Cahir Davitt had to do all the circuit sittings possible throughout the country until after the Truce.

The court in Limerick city was distinguished by its refusal to be bullied by the Ministry for Home Affairs. John McNeice was an exceptionally good Registrar: moreover, he was very experienced in legal matters, having been managing Clerk of the Limerick office of a Tullamore solicitor. One of the worst failings of the Dáil Courts was the difficulty in having their judgements enforced. This was meant to be the task of the Irish Republican Police, who were military men and were liable for other duties: they also resented the fact that they were not paid for the work. McNeice arranged for a court messenger to be engaged at a modest wage to take care of this, with the approval of his court's Trustees, but Stack absolutely refused to countenance this departure from his scheme. It was very short-sighted, since the acceptability of the courts depended on the perception of the



M.P. Colivet, George Clancy and Robert Monteith in volunteer uniform.

public that their orders would be executed, but only in Limerick did the personnel refuse to accept this maddening bureaucracy: it is important to bear in mind that the messenger, like the registrar, would have been paid out of the court's own funds. McNeice offered his resignation: Mrs. O'Donovan, the Deputy Mayor, refused to accept it and angry telegrams flew in both directions. Fortunately, McNeice went on working but it was not until after the Treaty, when Stack was no longer minister, that the matter was settled. Fr. O'Carroll, who was president of St. John's Parish Court, travelled up to Dublin to see Eamonn Duggan, who was Minister for Home Affairs in the Provisional Government, and it was formally agreed that Mr. McNeice would receive a salary of £200 per annum, backdated to November. Not that the problem of execution was solved; McNeice wrote to Duggan in January 1922, that the Limerick Workers' Housing Association was preventing the Volunteers carrying out decrees for possession, adding prophetically, '... until a properly established paid police is formed, decrees of this nature cannot be executed'. In the previous October, Thomas Geary, James Casey, Martin Griffin and James Carew, all of whom had been Parish Justices, were appointed judges in the Limerick City District in place of Liam Forde, who had resigned, Robert de Courcy who was still in detention, Stephen O'Mara, who was in America and Daniel Griffin, who had not attended sufficiently. The Circuit Court had sat for several days in the city a short time previously, as advantage was taken of the peace afforded by the Truce in July, 1921, to increase the activity of the courts on every level.

West Limerick District had the distinction of having the only woman Registrar, Brigid Kennedy, certainly for the longest period when the courts were reconstituted in June, 1921. She reported that the District Court had been able to

function during the worst period of the Troubles and had not only been able to hear and adjudicate on thirty cases, but had ensured that all its orders, bar one, had been carried out. The position of a parish justice was highly regarded and there was great competition to be elected. In Abbeyfeale there was a sharp battle following the convention, in October, 1921, between the Labour candidate and a member of the Meenbela Sinn Féin Club. It was alleged that the first man was not in a union affiliated to the I.T.G.W.U. at the time, and in retort, his supporters claimed that Meenbela was not properly in the parish of Abbeyfeale. The rules were taken very seriously, and where there was dissatisfaction, there was an attempt to base it on an allegation of incorrect procedures: in spite of the general instability of the times, no one openly defied the court as an institution or had the temerity of Alice in Wonderland to point out that it was only a cardboard court! While a priest was often elected president of his local court, his calling did not insulate him from criticism by a disgruntled litigant nor ensure any special respect from the Ministry of Home Affairs. When Fr. David Fitzgerald, Abbeyfeale, reasonably pointed out that a man who had been fined for blocking a drain, and had complained to Stack should have instead appealed the decision in the District Court, the latter primly replied that he considered it his duty to investigate every complaint. Father Punch of Ballylahill defended himself against an allegation of prejudice, and said that he acted as judge, registrar and summons-server during the Black-and-Tan times when "many people wanted the case adjourned in the hope that because of the Terror, it might never be heard". Father Carroll's court had taken the responsibility of allowing a litigant to take his case to 'enemy courts' but his plea that the man would not therefore be penalised was adamantly refused by Home

Affairs, who never acknowledged that people on the ground were in a much better position to judge a situation in the light of commonsense than officials in Dublin were.

The District Court of East Limerick seems to have had an eventful tenure. The litigants appear as being particularly tenacious in the assertion of what they conceived to be their legal right. At the Spring Circuit 1921 an executor was driven to apply to Judge Davitt for an injunction to restrain the widow of the deceased from interfering in the administration. A man, disappointed in a decision, wrote a very long letter denouncing one of the Parish Justices as a man who had kidnapped him to stop the writer taking a case against him at the Limerick Quarter Sessions in October, 1921. However, the case that dominated the East Limerick District and had repercussions at the highest level for several years concerned a dispute about two fields between John Collins and his cousin Matt. It would be quite impossible to give any short account of the ramifications of this affair – the present writer devoted an entire chapter to it in a recent thesis and that barely covered the legal aspects – but suffice to say that it provoked rows between the I.R.A. and Dáil members, Judge Davitt and the Ministry and provided the only written judgement of the Winding-up Commission in 1923, as well as being the subject of all kinds of representations made by budding politicians on behalf of the warring parties. The case came before the East Limerick District Court in both its ordinary and circuit sittings, then to the Supreme Court; fresh proceedings were then brought in the Chancery Division of the High Court and finally to the Judicial Commissioners who delivered a 12-page judgement by the Chief Commissioner; he used the opportunity to answer the mean-minded and unfair attack on the Dáil Courts which Kevin O'Higgins had made in the Dáil three months previously. Of the legal personalities involved, one of the solicitors, Hugh O'Brien Moran, was to become County Registrar of Limerick in the new dispensation and two of the barristers – Michael Binchy and Michael Comyn – were later appointed Circuit Judges.

After the Treaty, the Dáil Courts entered into a period of expansion and consolidation. Outside of Dublin and Northern Ireland, no other effective courts were functioning and other barristers had to be drafted in to serve as temporary judges so heavy were the lists of cases to be heard in the busy circuits. Prisoners had heretofore been detained at Limerick Watch House, being fed on a very dreary diet of tea, bread, Woodbines and the occasional treat of cheese: the bill from Messrs O'Leary & Sons, Grocers, came to £5.13.9d. for a month, but the Provisional Government directed on 20 January, 1922, that prisoners sentenced in the Republican courts were to be kept in the gaols recently handed over by the



Free State troops at New Barracks, Limerick, 1922. (Photo courtesy Malcolm Mitchell).

departing British. Within two months, juries were sitting with the judge in criminal cases being tried in the circuit sittings and nothing was said to suggest any imminent changes were in hand. On 28 June, 1922, Judge Crowley was taking his court in Limerick: it was the same day that the Provisional Government began the attack on the Four Courts to dislodge the Republican garrison. He travelled on to Ennis and to Mallow to hear cases there before returning to Dublin where, on 19 July, application was made to him for an order of *Hebeas Corpus*. The application was made by Count Plunkett, on behalf of his son, George, who had been captured after the surrender of the Four Courts. The judge made the usual conditional order directed to the Minister for Defence, Richard Mulcahy, and the Governor of Mountjoy Prison to show cause for the prisoner's detention: they were given until the 26th, i.e. a week, to do so. On the evening of the 25th, the Government purported to rescind the original Dáil decree creating the courts, except the Parish and District Courts outside Dublin. Although a government messenger went out to Crowley's home to give him advance notice, he did sit the next day and ordered the arrest of Mulcahy and the Governor, who had failed to comply with the order of the court. However, it was Crowley who was eventually arrested and once again imprisoned for holding an illegal court – this time by the Irish!

The people who were to suffer much more by this breath-taking demonstration of state power were the thousands of litigants who were left high

and dry and the prisoners awaiting trial in courts that had evaporated overnight: there were no alternative courts in place to take up the slack in legal affairs. It was to be another year, and after a great deal of agitation, that a Bill was introduced in the Dáil in July 1923 to wind up the business of the Dáil Courts. This was done by means of a Judicial Commission which was given uniquely wide powers to re-hear matters already decided, to remove matters lawfully before other courts into its own jurisdiction and to make decisions which were beyond appeal in any court in the land. The Commission lasted for two years, until its business was removed as 'a going concern' into the new High Court, established under the 1922 Constitution, so that the jurisdiction of the Dáil courts, from lowest to the highest level, merged with that of the sovereign Irish State, which is, of course, the development that the revolutionaries would have envisaged, although, presumably, not the roundabout route taken. Nor would they have understood the oblivion into which this remarkable achievement has passed or the slightly condescending notice bestowed on it by some historians.

The Commissioners went out on circuit to preside over this phenomenon of judicial revisionism and we can find our old friend, Diarmuid Crowley, now elevated to Mr. Commissioner Crowley, setting out with renewed energy to sit in Limerick in mid-November, 1923: he complained that the solicitors were unprepared and did not seem to have read the Rules. This time around, the sittings were in public and with the Garda Síochana in attendance. They were

widely reported in the newspapers, which provide useful information on the continuance of a case that may have started in 1920. There was the case of the soviet which had run an eel fishery at Castleconnell and sued the railway company in London because a shipment had gone bad: the Mayor of Limerick – who was, unlike Crowley, still a prisoner – was brought from the Curragh to give evidence: the successful party was subsequently awarded six guineas, the cost of his conveyance under armed guard. The outcome of Supreme Court appeals, which would be heard before a full court in Dublin, but which had a local interest, like *Collins and Collins*, was also reported in the Limerick papers. As late as 1929, a Dáil Court matter – *Dundon and Dundon*, came before Mr. Justice Meredith of the High Court for a deed to be executed. A great deal of research at a local level still remains to be done in the operation of these peculiarly native courts in which decent men and women worked unselfishly and at great risk to mediate the disputes of neighbours and families. No doubt there are still residual memories, in particular where the dispute was about land, as predictably, it so often was! For anyone who is interested, the great bonus is the density of the material available in the National Archives, specifically in the Public Records, as well as the newspapers in the National Library. There are not words adequate enough to praise the friendliness and erudition of the people who work in either place: whatever disputes there may be about other judgements, there does not seem to be any on that!