

The Law and the Famine



he administration of justice in Ireland during the famine period is an aspect of that terrible time which is rarely touched upon or emphasised. The law remained impervious to the desperation of the people and was oblivious to the extenuating circumstances attendant on many breaches of the legal code which exacted the same penalties as would apply in the normal circumstances. Indeed the special commission set up in 1847 to try criminal cases displayed all the trappings of the Star Chamber.

Today we look with horror at the draconian penalties handed out in Islamic courts, yet if we look back to the last century, the system of justice (or lack of it) in operation here, especially during the famine period, was no better.

In July, 1850, a young married woman, Margaret Doyle, of Scott's Lane, Irish-town, was sentenced to seven years transportation beyond the seas for stealing a loaf of bread from a shop in Patrick Street. In her defence it was stated that her husband was disabled as a result of an accident while working at the harbour and her two children were starving. She was brought to Cork, with her two infants, and placed aboard a hulk that brought them to Hobart. Her husband was not allowed to accompany her. He never saw her again.

Just twelve months afterwards, Mary Hannan (Hannan) was given a similar sentence for stealing a cloak (a witness deposed in court that the cloak was so threadbare as to be completely useless even to a rag-man). According to her convict files, she was a widow, with two children. One child died before she was transported, the other accompanied her to Hobart. Her letter pleading for mitigation of sentence is worth noting here:

To the Honourable
T.N. Reddington.

Honoured Sir,
Pardon me for taking the liberty of stating to your honour that on or about the 12th. of Septr. 1851, I forwarded a memorial addressed under cover directed to his Excellency, the Right Honourable Lord Clarendon, humbly imploring his excellency would be most mercifully pleased to mitigate the sentence of seven years transportation passed on me by the assistant barrister at the last June sessions held in and for the County and County of the City of Limerick and in which I stated that it was my first offence and have four helpless children depending on me for support and humbly implore your honour's speedy answer to my said memorial by directing to the Governor or Matron of the City Gaol of Limerick.

by Kevin Hannan

City Gaol of Limerick,
20th. Septr. 1851.
Mary Hannan.

His Excellency was not "mercifully pleased" and Mary was shipped off with her surviving child and never saw Limerick again. This patent cruelty must not be measured against the law but rather against the human agents who administered it.

For sheer inhuman brutality and senseless cruelty, the treatment of a County Limerick family in 1847 is the worst I have ever heard of. This case of judicial murder and barbarity is set out in the letters of Alexander Somerville, who travelled through Ireland during 1847 and left us a unique chronicle of his experiences:

A farmer was distrained upon for rent and his potatoes stored in a pit in the haggard were under restraint watched by two keepers. The farmer's family had no other food but those potatoes. The keepers would not allow them to have any potatoes, the orders being against it. In desperation the family rose against the keepers and murdered them. They were tried and hanged, but not all at once. The father was hanged first; next two sons; next their mother was hanged; and at last one of the daughters. The whole expense of the trials and the rewards to witnesses was £10,000, for which Mr. Dolan (commandant of police) holds vouchers, and to the correctness of which he says he is ready to make oath. He says that his undoubting opinion is, that had the most ordinary feelings of humanity, simply fair play, been observed towards those people, no murder would have been committed. The two lives of the keepers would have been saved, and the five lives of father, mother, daughter and two sons would not have been given to vengeance and the gallows. And there would have been saved £10,000, expended on a special commission, on different trials, on prosecuting, council, witnesses and hangmen; besides the saving to England in not being called upon to augment the garrison of Limerick and the other towns with additional cavalry, infantry and artillery.

But the most extraordinary part of this drama of cruelty, vengeance and judicial butchery is probably this, that the owner of the property (Lord Stradbroke), on which the distraint for rent was made and the murder committed, lived at this time in Yorkshire, lives there still, draws, it is believed, about £60,000 per annum out of his Irish estates, chiefly in

the County of Limerick; has not been in Ireland once during the present century, though an Irishman born; and averred to Mr. Dolan, on the latter paying him a visit some years ago, that he had never, before Mr. Dolan told him, heard of the distraint, the murders, the trials, and the executions; that he left everything to his agents, and that it was their business, not his, to know those things.

Keepers were persons employed by land agents to see that no crops in the ground, or harvested, were removed by evicted tenants. On eviction these became the property of the landlord. In Irish history the keepers take their places beside the informers, tithe proctors, priest-hunters and bailiffs, whose numbers and debased activities have cast a dark shadow over our race.

Another sad case of injustice occurred in 1847 in the hills overlooking the little village of Broadford, Co. Clare. A farmer named O'Keeffe fell upon hard times and was unable to meet his rent; he offered two-thirds of it to the landlord's agent, Watson, who refused to accept it, and distrained O'Keeffe's cattle, ten cows and a bull, which were the only source of sustenance to him, his wife and large family. The landlord was one of the well known Arthur family of Limerick.

Some short time afterwards three young men from Co. Limerick, William Ryan (Puck); William Ryan (Small) and "Butt" Shea set off to settle the score with the uncompromising Watson. They visited O'Keeffe who innocently gave them details of his misfortune. They did not disclose the purpose of their visit. While strolling around the district, they learned from a schoolboy that Watson usually rode on horseback to Arthur's house at a certain time each day. Fortified with this information, they waylaid the agent and murdered him. They then moved off in different directions. Shea and Ryan (Small) were arrested and convicted of the murder and were hanged in Ennis. Ryan (Puck) got clean away, but was later hanged outside the gaol in Mulgrave Street for the murder of John Kelly, of Knocksentry, Lisnagry.

The most harrowing part of the drama was the arrest of the innocent O'Keeffe, who was charged with being an accessory to the murder. He was convicted and hanged in Ennis.

Nearer home again, at Rathurd, less than two miles from Limerick City, another tragedy occurred. A farmer, James Quane, was unable to meet his full rent, and offered as much as he could afford. The landlord's agent, David Fitzgerald, refused to accept nothing short of the full rent, and distrained Quane's property "for the purpose of enforcing the

A REPORT
 TRIALS
 UNDER A
 SPECIAL COMMISSION
 FOR THE
 COUNTY OF LIMERICK.

HELD AT LIMERICK, JANUARY 1848.

By JOHN SIMPSON ARMSTRONG, Esq.,
Barrister-at-Law.

DUBLIN:
 HODGES AND SMITH,
 Booksellers to The Hon. Society of King's Inns,
 104 GRAFTON STREET.

rent due". The property consisted of five or six stacks of corn, some corn which had been threshed, and some other property. Fitzgerald appointed a wretch named Ralph Hill as bailiff, or keeper, to watch over the property until the time he had arranged for the sale of the corn.

Quane's family, a wife, four sons and two daughters, were incensed at this treatment by Fitzgerald and his determination to deprive them of their only means of surviving at that critical time. On the day of the sale, Hill was murdered, having received a gunshot wound to the head. One of Quane's sons, James, together with a friend, James Skeehan, were arrested and charged with the murder. Both were tried before the Special Commission, and, like all those who were tried before the same tribunal, were convicted. They were hanged outside the gaol in Mulgrave Street in the presence of a vast concourse of people, including their families and friends.

The members of the jury who brought in the guilty verdict were: George Gubbins, Robert Ievers, Robert Hunt, W.D. De Massey, Brian Sheehy, Robert Featherstone, Samuel Maunsell, Burke

White, Francis Browne, Robert Hunt, Jr., James Ievers and Richard Langford.

R.B. McDowell, in an article, 'The Irish courts of law, 1801-1914, published in *Irish Historical Studies*, September, 1957, has given an assessment of the occupations and backgrounds of the men who presided over these courts:

Traditionally the typical justice of the peace in England was a landed gentleman. But in Ireland, where the landlord was often an absentee and where most of the landlords were protestants and the majority of the tenants were catholics and where agrarian questions were acute, there were obvious difficulties in making appointments to the bench. At the beginning of the nineteenth century it was said that in some parts of the country highly unsuitable persons were placed on the bench. For instance it was said that in one disturbed area (in county Cork) the justices were 'brewsters, malsters, distillers and rackrent landlords'. And since the first three categories would not offend their customers and the tenants of the last were rioters, it was hard to restore order. In 1833 a general

revision of the commission began and within a few months the lord lieutenant noticed 'that the mere knowledge of the existence of a plan of revision had produced salutary consequences by increasing the diligence, accuracy, and careful conduct of the magistrates'. About the same time a strong check was imposed on individual failings and eccentricities by the development of the practice of holding petty sessions. This substituted for 'the arbitrary and irregular discharge of his functions by a single magistrate' the joint action of at least two and possibly more justices acting publicly and after the petty sessions act of 1827, sitting at fixed times with a clerk records, and fixed fees. From about 1830, when justices of the peace were attacked, it was usually not on the grounds of incompetence but for alleged displays of political bias. And the composition of the bench as a whole was criticised, since in 1886 out of 5000 justices of the peace only 1200 were catholics, and while there were only 350 justices who were described as farmers, there were 2700 landed proprietors in the commission. Attempts were made by liberal governments to change the balance and by 1912 out of 6000 justices of the peace 2400 were catholics.

Critics of the courts pointed out that many of the seneschals (as the judges of the courts were termed) were grossly ignorant, that discharged clerks and drunkards often practised as attorneys before them, that the courts were sometimes held in public houses, because publicans believing that a court day was good for business were willing to provide a room, and that the proceedings were often disorderly and dangerously informal.

In her book, *The Irish Famine: An Illustrated History*, Helen Litton describes the rise in the crime rate during the famine and tells how many people were driven to commit crimes deliberately in order that they would be transported rather than face death by starvation:

The rise in crime during the Famine, from 20,000 on trial in 1845 to nearly 39,000 in 1849, was mainly due to non-violent crimes against property, not against persons. The use of cash on the relief works brought money into areas where it was uncommon before, and increased the opportunities for robbery. The most common crime was theft, of food or clothing, but large numbers of those arrested died before they could be brought to trial.

The usual punishment at the time was transportation - convicted persons would be exiled abroad, to hard labour in Australia, and rarely returned. As the Famine worsened, people began to commit crimes deliberately so that they could be transported. However dreadful it might be, it could not be worse than dying of starvation or fever where they were.