

**ORIGINAL**

BUREAU OF MILITARY HISTORY 1913-21

BURO STAIRÉ MILITÉIRE 1913-21

NO. W.S. 993

ROINN



COSANTA.

BUREAU OF MILITARY HISTORY, 1913-21.

STATEMENT BY WITNESS.

DOCUMENT NO. W.S. 993

**Witness**

Mr. Justice Gahir Davitt,  
Dungriffan,  
2 Sidney Parade Ave.,  
Dublin.

**Identity.**

Circuit Judge, Republican Courts, 1920 - ;  
President of the High Court, 1951 - .

**Subject.**

- (a) National affairs, 1906-1923.
- (b) Republican Courts, Dail Eireann, 1920-1921.

**Conditions, if any, Stipulated by Witness.**

Nil

File No. S.1637

Form B.S.M. 2

ORIGINAL

BUREAU OF MILITARY HISTORY 1013-21  
BUREAU OF STATE PAPERS 1013-21  
No. W.S. 993

THE DÁIL COURTS

Statement by Mr. Justice Cahir Davitt,

Dungriffan, 2 Sidney Parade Avenue,

Dublin.

P R O L O G U E

Part 1.

Colonel Joyce has suggested that I should, by way of introduction to my memorandum on the Dáil Courts, try to give some idea of my background and environment, with some reference to politics, during the years preceding my acceptance of a Judgeship in 1920. What follows is an attempt to do so.

I was nearly twelve years old when my father, Michael Davitt, died in 1906. We four children then ranged in ages from seven to sixteen. I cannot recall that he ever talked politics to any of us or that he ever consciously tried to inculcate any particular political principles. We grew up, however, in a distinctly national and separatist atmosphere. We were aware in a general way of the main political events in his life; such knowledge being acquired doubtlessly from my mother. At school with the Christian Brothers I learned a certain amount of Irish history and I read a good deal more on my own account. As I grew up my reading included A.M. Sullivan's Story of Ireland, and my father's Fall of Feudalism, as well as Barry O'Brien's Life of Parnell, and by the time I went on to the university, I had a fair idea of Irish history in a general way.

I entered University College, Dublin, in October 1911, at the age of seventeen. My elder brother, Michael, (died 1928) had then completed his fourth year at the College and had taken and was still taking a prominent part in most of its activities. He was studying Medicine. My sister, Eileen, was also at the College studying Modern Languages. I came in with a scholarship in science and mathematics, but had no idea as to what calling in life I was going to follow. I commenced a course in Arts. Had I been asked to describe my ambitions, I suppose I would have said that I wanted to do as well as I could in my academic career, without too much study, and at the same time, to make the most of my time at the College in all other respects as well.

I am sure I took no undue interest in politics. I was, however, quite aware of the favourable position, with regard to Home Rule, in which the second general election of 1910 had placed the Irish Parliamentary Party, and of the significance of the Parliament Act of 1911 restricting the Veto of the House of Lords. My political convictions included a firm belief that Ireland was a nation justly entitled to complete independence and separation from England; that in proper circumstances she was morally justified in using physical force to secure these ends; that, in the circumstances then existing, there was no possibility of securing them by force; and that therefore the only sensible course was to pursue a policy of constitutional agitation for self-government. This, to my mind, meant giving full and loyal support to John Redmond and the Irish Party in their endeavour to achieve Home Rule. These views owed little, if anything, to any attempt at independent thought. They had just been absorbed from my environment.

I do not suppose that politics entered very much into the conversation of first year students; but my impression is that these were the opinions generally held by those with whom I came in contact. There were some "Imperial Home Rulers" who believed that independence and separation, were they capable of achievement, would not be in Ireland's best interests. I think these were very much in the minority. The College Magazine was the National Student, which had been founded the previous year, in 1910. Its tone was professedly national and not merely nationalist. The latter word at that period, to many at least, connoted allegiance to the United Irish League and not much more. The magazine expressed the view that the true policy for a National University lay in consciously realising to the fullest extent the potentialities of nationhood, and in endeavouring to send forth from the University men of liberal education, of broad views, and of enlightened judgment, who would help to create and maintain a distinctively Irish culture. The general tone of the paper did, I believe, in its serious aspects truly represent the views of the student body as a whole.

The introduction of the third Home Rule Bill in 1912 stimulated the interest of all students in political matters, and the organisation of the Ulster Unionist opposition and the course of the struggle inside and outside the House of Commons were naturally followed with great interest. The handling of the situation by Asquith and Redmond on the one hand and by Carson and his adherents on the other came in for much discussion and criticism. There was, however, great and genuine enthusiasm for Redmond and his party in their efforts to secure a worth-while National Legislature. In the great Home Rule demonstration held in O'Connell St., Dublin,

on March 31st, 1912, there was a University platform at the O'Connell monument, the speakers on which were all drawn from University College, Dublin, professors and students being both well represented. Round it were thronged hundreds of students amidst thousands of the general public. Excepting the crowds which attended the ceremonies of the Dublin Eucharistic Congress of 1932, the mass of people who attended this demonstration was the largest I have ever seen. The whole of the broad thoroughfare was tightly packed with humanity from "Findlater's" Church down to the south end of O'Connell Bridge.

The great Dublin strike and lockout of 1913 did not, I am afraid, stir my social conscience to any great extent, and I imagine I was typical enough of the students generally. I find my attitude not easy to understand now, having regard to my father's sympathy and association with Labour interests generally. I suppose I was too much preoccupied with my own interests and amusements to be much concerned with the troubles of others. There was, moreover, much talk of Syndicalism and some hints of Communism. Considerable hostility had been engendered against Larkin and the Transport Union by the attempt to ship to England some children of the men on strike with a view to sparing them the hardships which their families had to suffer. All students were not, however, as uninterested as I. The National Student observed editorially that "No one could live in Dublin during the strike or lockout and not be provoked to examine his social values and perhaps to make new ones". I believe, to the credit of the College, several students were to be found among the volunteer workers who devoted much time and attention to relieving to some extent the hardships of the strikers' families.

The vicissitudes of the Home Rule struggle continued to excite our interests. The formation of the Ulster Volunteers, the "covenant", the activities of Carson, "Galloper" Smith, and the rest, the threats of revolution and civil war, all afforded topics for lively discussion. The next outstanding event in my memory, however, is the formation of the Irish Volunteers at the meetings in the Rotunda on Tuesday, November 25th, 1913.

I cannot now recall to mind any of the circumstances leading to the meetings. I do remember that some hundred or more students formed up in Stephen's Green and marched to the Rotunda. We succeeded as early arrivals in securing admission to the Rotunda Rink, where the principal meeting was held. Others less fortunate had to be content with one or other of the overflow meetings held in the Rotunda itself and in the gardens. I confess that I have retained no clear recollection of anything said by the speakers among whom was my brother, Michael. I cannot now recall, if I ever knew, how he came to be a speaker. I presume he was invited by the organising committee by reason of his name, on account of his prominence in College affairs, and in a desire to have the younger generation represented. The one thing that does stand out in my memory is the pandemonium which broke loose when Laurence Kettle commenced to read the Volunteer Manifesto. Members of the Transport Union and their supporters were present in force and, for some reason connected with the strike, were determined not to allow Kettle a hearing. Shouts, yells, cat-calls, interspersed with explosions, greeted his appearance and continued without cessation until he sat down, having completed the reading of the manifesto not one word

of which could be heard. A respectful hearing was given to all the other speakers, but the proceedings generally were anything but impressive.

I have recently re-read some of the contemporary press reports of the speeches at the meeting. As reported, they are not arresting. There is little likely to strike the imagination or linger in the memory, and much that was said was rather vague and mystifying. My brother's speech was certainly not the least puzzling. It was deprecatory to a marked extent and indicated a definite lack of enthusiasm for the project of forming a Volunteer force. Why, holding the views he did, he came to the meeting to give expression to them is not readily apparent. I think the most likely explanation is that before accepting the invitation to speak he consulted Dr. Coffey, President of University College, and was guided by his advice. I cannot, however, say that this did, in fact, happen.

He did not join the Volunteers that night and neither did I. Some of the students remained on, after the meeting had concluded, to sign the roll of Volunteers, but very many did not. My impression is that most of us left quite unenthusiastic and unconvinced that the Volunteer movement was either necessary or advisable. It is not easy to be sure about the reasons which then and as time went on satisfied me to continue in this frame of mind. I was, no doubt, influenced by my brother's views. There may have been a certain element of priggishness also. I had no shred of "military ambition" and no desire to "play at soldiers". There were, however, also reasons which seemed sound enough. The Home Rule struggle had reached a critical stage. The

Irish Party were handling a situation as best they could and finding it somewhat difficult. One military force, the Ulster Volunteers, were making things sufficiently troublesome; another and possibly a rival force could only serve to make things more embarrassing. The issue which was then being joined was clear: on one side the ordered process of constitutional government and legislation; on the other armed opposition to the will of Parliament. For once it was not for us necessary to be "against the Government". Ranged on the side of constitutional right were the Liberal Government and the Irish Party; against it were the Tories and the Orangemen. It was the function and duty of the British Government to force a decision on the vital issue, and it seemed that the decision must inevitably be in favour of constitutional government. The creation of another military force could only complicate matters, might weaken the support of friends in England, and appeared to have no marked countervailing advantages. The "physical force" tradition in this country had always been associated to a marked degree with distrust of, and enmity towards, those who adhered to the principles of constitutional agitation.

Whatever may have been the real reasons or the effective arguments that determined our actions, and one cannot rule out mere indolence as a contributory cause, the fact was that neither Michael nor I joined the Volunteers. When in the course of time and events the Irish Party were more or less forced to "take up" the movement and to give it their official blessing a veritable fever for volunteering swept the country. A College Corps was formed in January 1914, and was fairly well supported though not with an enthusiasm sufficient to satisfy Mr. D.P. Moran of The Leader, who had some harsh things



to say about "cheap cynics" and "a dearth of national feeling" among the students. Those who did join the College Corps were apt to be virtuously critical of those who did not.

During 1914, events of crucial political importance occurred with bewildering rapidity. Carson still threatened civil war; the Liberals suggested an amendment to the Home Rule Bill providing for the exclusion of Ulster; an effort to test the temper of certain officers at the Curragh Camp led to the "Curragh Mutiny"; Redmond demanded and was given a big share in the control of the Volunteers; arms were landed for the Ulster Volunteers at Larne and distributed without any attempt at interference by Crown Forces; Austria's ultimatum to Serbia followed the Sarajevo murders; the landing of arms at Howth for the Irish Volunteers was followed by the shooting at Bachelor's Walk; the international crisis resulted in general war in Europe; Great Britain declared war on Germany; Redmond made his historic speech in the House of Commons virtually pledging Ireland's unconditional support to Britain in the struggle; and the Home Rule Bill was placed on the Statute Book and its operation suspended until the conclusion of the war.

Notwithstanding these very serious obstacles to concentration I was, during this period, well occupied with my studies as well as with other student activities. I had decided to go for the Bar and had commenced the course for the Bencher's degree of Barrister-at-Law, as well as that for the University degree of LL.B., while at the same time continuing my reading for the B.A. degree. My preoccupation with law and literature did not, however, preclude animated discussion both at home and in student circles as to events national and

international. In the family circle we were all agreed from the beginning that Redmond's attitude was a grave political error and disastrously at variance with Irish national tradition. It was soon apparent on the other hand that this was not the view generally held among the students. Those who shared our views were in a minority in the College as they were in the country. Many of the students followed Redmond's lead or their own convictions or inclinations and joined the British army. Many others who for one reason or another did not join up were convinced that those who did were right and were risking their lives in the cause of Ireland and Irish self-government as well as for the freedom of small nations generally. The minority who disapproved of Redmond's policy laid themselves open to the charge of being lacking in courage, of being factionists, of being pro-Germans, and eventually of being Sinn Féiners.

A recruiting speech of John Redmond's precipitated a split in the Volunteers. The majority who approved of his policy broke away and formed the Irish National Volunteers; while the residue who disapproved and in their disapproval adhered to MacNeill and the original Provisional Committee retained the old title of The Irish Volunteers. A meeting of the College Corps, alleged by some to have been a caucus meeting, decided to follow MacNeill. There was no unanimity, however, and after some talk of compromise and neutrality the split in the College Corps became permanent. As I was not a Volunteer the matter was no direct concern of mine; my sympathies were, however, wholly in favour of the MacNeill section.

These differences of political opinion among the students contributed greatly to the interest of college life and added spice to student conversation and discussion. The circumstance that the University and College authorities held political views which were strictly orthodox and were, we thought, unduly timorous of the students giving expression to any others, served to add zest to the entertainment and ventilation of opinions: politically heretical. The most obvious forum for the expression of these, as indeed of all shades of student opinion, was the largest and most popular debating society, the Literary and Historical. There, whenever the matter under discussion so permitted, and very often when prima facie it did not, free vent was given to political opinions of all kinds; and the ranks of the society were divided along lines of political opinion rather than, as theretofore, mainly on lines indicating support of or hostility to the Auditor and Committee.

During the sessions of 1914-15, 1915-16 and 1916-17, there were many speakers who voiced the unorthodox view and roundly condemned the policy of Redmond and the Irish Party, and many others who as strenuously defended it. I do not purport to recall the names of all or even of the principal speakers, or even to be accurate as to those I do mention. My recollection is, however, that the unorthodox included John Dowling<sup>(1)</sup>, Cecil Lavery<sup>(2)</sup>, Gerald Maguire<sup>(3)</sup>, Frank McCabe<sup>(4)</sup>, Eimar O'Duffy<sup>(5)</sup>, Godfrey O'Donnell<sup>(6)</sup>, Kevin O'Higgins<sup>(7)</sup> and myself; whilst in the ranks of the orthodox

(1) Now of 68 Baggot Street, B.D.S.

(2) Mr. Justice Lavery

(3) Solicitor, Claremorris. Brother to the Chief Justice.

(4) District Justice, Waterford.

(5) Since deceased. Author of King Goshawk and other books.

(6) One time proprietor of the Imperial Hotel, Sligo; now practising as a doctor.

were to be found: Theo Dillon<sup>(1)</sup>, Harry Briscoe<sup>(2)</sup>, James McSparran<sup>(3)</sup>, Garrett<sup>(4)</sup> and Donal McGrath<sup>(5)</sup>, and John Hearne<sup>(6)</sup>. Patrick Hogan<sup>(7)</sup> had in the National Student of December 1914, written a reasoned vindication of Redmond's policy; and the editor Denis Gwynn<sup>(8)</sup> shared his views.

I do not think, however, they were attending the Literary and Historical Society's meetings at this period. I dare say that we, the unorthodox, were hardly at all times serious in all that we said. In the result, however, we were indiscriminately labelled by our opponents as being either pro-Germans or Sinn Féiners or both.

The other principal medium for the expression of student opinion was, of course, the National Student. This had first appeared in May 1910 under the editorship of Michael McGilligan<sup>(9)</sup> and the first ten numbers up to February 1913 had been edited either by him or by James J. Doyle<sup>(10)</sup>. The next six were edited by Bernard Reid<sup>(11)</sup>. He was succeeded by Denis Gwynn, who brought out two numbers in November and December 1914. This was just the period when differences of opinion as to national policy were developing and becoming manifest in the College. The paper could not be neutral, and Gwynn declared for the orthodox view which, at the time, was probably that held by the majority of the students. The tone of the paper

- (1) Since deceased. Brother to James Dillon, late Minister for Agriculture.
- (2) In business in Dublin.
- (3) Q.C., Northern Ireland.
- (4) Barrister, since deceased.
- (5) His brother, now practising as a doctor in London.
- (6) Our Ambassador to the U.S.A.
- (7) Afterwards Minister for Agriculture. Since deceased.
- (8) Professor, U.C.C.
- (9) Senior Counsel; brother to Patrick McGilligan, later Minister for Finance.

under his editing was reasoned and moderate. It advocated the support of Redmond's policy of "burying the hatchet" with England; while it deprecated any recruiting campaign which might result in "bleeding Ireland white". It condemned on the one hand "the sycophancy of the political organisations that lend themselves as the tools of English parties", and on the other "narrow nationalism" and "morbid gloating over the past wrongs of Ireland". His second number contained the article by Patrick Hogan defending Redmond's policy, to which I have already made reference.

Notwithstanding Gwynn's moderation, the Student under his editorship fell foul of the College Authorities and the legend: Conducted by the Students of University College, Dublin, which had appeared upon the covers of the first eighteen numbers, had, by direction of the Academic Council, to be omitted. I was to some slight extent responsible for this bit of trouble. I was at the time secretary of the Music Society which had been practising some of the choral parts of Mendelsohn's Lorelei with a view to performing them at its first concert. I had contributed to the Student a report upon the Society's activities and, in an attempt to be facetious, had referred to the circumstance that it was subsisting upon German material and therefore had reason to be concerned with possible reactions by the British Government. I had occasion to have an interview with Dr. Coffey with regard to some other matter and in the course of it he condemned this report as outrageous, though he did not tax me with its authorship, nor did I avow it. He also complained

bitterly of another attempt at facetiousness in the same issue. This consisted of a series of fictitious letters purporting to be written by a girl student to a girl friend at home in the country, and evincing a mild and harmless interest in students of the other sex. These had been contributed by a medical student, Con O'Brien. The President appeared to be shocked by them and to be amazed that either of the offending items should have been allowed to appear. It is very difficult to believe that these items afforded the real reason for the disapproval of the authorities. I thought at the time that the real cause was an editorial reference to an incident which had occurred at the Inaugural Meeting of the Medical Society.

Dr. McArdle, then Professor of Surgery, read a paper on: The Medical Profession in Wartime. In this he ventured to express the opinion that the evidence that the German troops generally had been guilty of atrocities in Belgium was not convincing. At this remark some of the students in the audience applauded. Whereupon Sir Thomas O'Shaughnessy, Recorder of Dublin, who was to have proposed the usual resolution: That the Society is worthy of support - got up and left the room. Doctor Cox<sup>(1)</sup> eventually proposed this resolution and, in the course of his remarks, happened to mention the name of the Secretary of State for War, Lord Kitchener. Someone started a hiss which was taken up by many others, and there was much consequent disturbance; whereupon the President of the College of Surgeons, who was to have proposed the vote of thanks to Dr. McArdle for his paper, also got up and left. His example was followed by some others of the guests upon the platform. The incident was made the subject of a parliamentary question addressed to

(1) Father of Arthur Cox, Solicitor.  
This year (1952) President of the  
Medical Society

the Chief Secretary for Ireland, Mr. Birrell, in the House of Commons. The childishness and lack of a sense of proportion evinced in the whole affair was criticised editorially by Gwynn and this was, I believe, the real reason for the displeasure of the College Authorities. Other consequences of the incident and my unfortunate attempt at facetiousness were that no society was allowed to have an inaugural or public meeting of any kind, and the Music Society was not permitted to perform Lorelei.

Gwynn edited only the two numbers mentioned and the Student did not again appear until May 1915, when Eimar O'Duffy, as self-constituted Deputy-Editor, brought out Number 19. His editorial The College and the Country left no doubt as to what his policy was. It was to justify the word "National" in the title of the paper as well as in that of the University, and to interpret it in consonance with the tradition of Tone, Emmet and Mitchell. In June a general meeting of the students was held, at which the editor and managing committee were to be elected for the ensuing year. By this time orthodox and unorthodox opinions were more evenly shared by the students and we, the unorthodox, had been at pains to muster as many supporters as we could or, as our opponents put it, to pack the meeting. O'Duffy's editorial report dealing inter alia with the matter of the Student's policy, was adopted after a warm debate. I proposed a vote of censure upon Gwynn on what precise grounds I am quite unable to recall. I think it must have been mainly for his failure to produce any number after December 1914.

As I had helped to get him into trouble as regards his last number, and had done nothing to help him to get out another, it hardly lay with me to cast this or any stone. The vote was, I am glad to say, rejected. O'Duffy was elected Editor without opposition; George Plunkett<sup>(1)</sup> was elected manager; I was elected secretary, and the rest of the managing committee were Seán Breathnach<sup>(2)</sup>, Patrick Nolan<sup>(3)</sup> and Colm O'Loughlin<sup>(4)</sup>. The paper accordingly passed into the hands of the unorthodox. O'Duffy edited Numbers 20 and 21 in December 1915, and March 1916, in which the promised "National" note was emphasised.

At this period my closest companion was Gerald Maguire. He stayed in "digs" at 70 Lr. Leeson St., kept by a Miss McAleenan. It was a rather famous "digs" and from time to time housed many students who afterwards became wellknown public figures. These included Neil Farren<sup>(5)</sup>, Conor Maguire<sup>(6)</sup>, Patrick McGilligan<sup>(7)</sup>, J.J. (Ginger) O'Connell<sup>(8)</sup>, Michael Tierney<sup>(9)</sup>, Seán Forde<sup>(10)</sup> and Godfrey O'Donnell. Eimar O'Duffy and I were frequent visitors.

- (1) Since deceased. Brother to Jos. Plunkett and son of Count Plunkett.
- (2) I don't know anything about Seán Breathnach since leaving College.
- (3) Lecturer in Physics, U.C.D.
- (4) Of the Candle Press, Fleet Street.
- (5) Bishop of Derry.
- (6) Chief Justice.
- (7) Late Minister for Finance.
- (8) Since deceased. Afterwards held high rank and numerous appointments in the Defence Forces.
- (9) President of U.C.D.
- (10) Then editor of An Claidheamh Soluis, organ of the Gaelic League. Now District Justice, Galway.



Both O'Connell and O'Duffy were officers in the Volunteers. We had many political discussions and arguments, during which Redmond and his policy were thoroughly denounced; though I cannot remember that any alternative long-term policy was adumbrated by anyone. In so far as I can recapture my own views, I believe they were, substantially, that Ireland had every right and reason to remain neutral in the European struggle; that anyone who believed that England would willingly honour her bond in full as regards Home Rule after the war was living in a fool's paradise; and that Redmond was certain to be cheated in the end. It was, therefore, foolish and criminal to encourage Irishmen to risk their lives to no purpose in England's cause. England would use, and very possibly use up, all the troops she could get from Ireland by voluntary recruitment and would then attempt to enforce conscription. If that happened, it would be our right and our duty to resist. It was impossible to foresee what would be the position at the end of the war, but our immediate object should be to keep our men at home. O'Connell and O'Duffy made the points that if England tried to enforce conscription no resistance other than organised resistance had any prospect of success; that the only chance of organised resistance lay with the Volunteers, and the existence of a trained body of Volunteers was the one argument that might deter England from attempting to impose conscription on Ireland. They argued that, holding the views that we did, the only proper and logical course for us was to join the Volunteers. At this time the College Corps had, I believe, disintegrated, and students were to be found in each of the four Dublin Battalions. Several of those residing on the south side

of the city had joined 'C' Company of the Third Battalion, which paraded weekly each Thursday evening in a yard off Camden Row. Yielding at length to the arguments I have outlined I went down there one evening in November 1915, accompanied, I believe, by O'Donnell and Nolan and, possibly, Farren and some other residents of 70 Lower Leeson St., and was duly enrolled as a member of that Company.

At this time I had completed my course of study for the Bar and had passed my final examination. I was duly called the following January and took my seat in the Bar Library at the Four Courts, where I attended regularly until going out on Circuit in March with the Munster Bar. In the interval I duly attended Volunteer parades on Thursday evenings, and miniature rifle practice on Sunday mornings. Apart from fellow students, I cannot now recall the names of any of my fellow Volunteers of 'C' Company except one, Lieutenant Simon Donnelly (1). I remember manoeuvres at Crumlin where the Third Battalion was assigned the task of capturing a position held by one of the other battalions and was adjudged to have been wiped out in the attempt. I remember also a few route marches, and on St. Patrick's Day attended the parade of the four Dublin Battalions in College Green. This was the last parade at which I was present. During the rest of March and half of April I was attending County Courts and Quarter Sessions in Limerick and West Cork in the hope of picking up briefs.

I returned to Dublin about the middle of April and remember being entrusted by Seamus O'Connor (now City Sheriff, formerly Dublin County Registrar, then member of the Volunteer Executive) with a few briefs, one of which was to appear for

(1) Well known afterwards in the I.R.A. and Black and Tan period.

two Volunteers named Doyle and Kenny who had been arrested while conveying rifles and ammunition through Dublin in a taxi-cab. They were charged, presumably, with some offence against the Defence of the Realm Act, and tried summarily by Mr. McInerney, one of the Metropolitan magistrates, who convicted them and sentenced them to three months imprisonment. I wonder now what assistance I could have been to them.

After my return to Dublin, I did not attend any parades. I cannot now recall any reason for this and can only attribute it to slackness on my part. I had probably something else to do on the particular Thursday evenings and Sunday mornings. I can recollect meeting O'Connell and O'Duffy during Holy Week, but do not recall any conversation of significance. I have an indistinct memory of having a conversation in the Cafe Cairo with some fellow-student Volunteers, in which we discussed a certain document which had been reproduced in some newspaper. This purported to be a copy of an order issued by the General Officer Commanding the British Forces in Ireland and to provide for the steps necessary to effect the suppression of the Irish Volunteers. Our discussion was as to whether the document was genuine or had been faked for propaganda purposes. I cannot remember who my companions were, but I believe we came to the conclusion that the document was not genuine.

I do not think I had ever heard any talk of insurrection or of any desire or design on the part of anyone to declare a Republic. In the student-Volunteer circles in which I moved I had heard some rather vague references to the Irish Republican Brotherhood and to certain Volunteers who had rather "wild ideas" and to whom some of my companions

referred to as "Destiny Dopers" on account, presumably, of their expressed conviction that they were destined to play a part eventually in an armed struggle for Irish freedom. I had no idea who these were and gathered the impression that they were comparatively few in numbers and not of great influence. When parades and manoeuvres were announced for Easter Sunday, April 23rd, I attached no particular significance to them. I had other plans for spending Easter and had decided not to attend even before I saw MacNeill's order in the Sunday Independent directing their cancellation. On my way to early Mass on Sunday I was handed an order to attend a parade of 'C' Company that day. Later in the day I got another order to attend a parade of 'E' Company at Oakley Road, Ranelagh. Strange to say, this did not arouse my suspicions that anything out of the ordinary was afoot. In fact, I obeyed neither order.

We were at this time living at 1, Cambridge Terrace, Leeson Park. I was at home on Monday morning when I heard the sound of rifle fire from the direction of Portobello Bridge. This was the exchange of shots between a section of Volunteers occupying Davy's licensed premises at the Bridge and a detachment of British troops approaching from the barracks. On going out to investigate I learned that the Volunteers had occupied positions at many points in the city and that an insurrection was in progress. My reaction to this intelligence I will leave out of account for the moment. With my brother, Michael, I spent the afternoon and evening walking about the city gathering what information we could. I remember that Monday night being in Dame St. and hearing the noise of rifle fire from the direction of the Castle. It was probably an exchange of shots between the

troops in the City Hall and the Volunteers in the Evening Mail premises. People were moving freely about Dame St. We met a group of men carrying the body of a young British soldier in uniform. When Michael said he was a doctor they laid him down on the path for examination. He was quite a young lad and had no side-arms or equipment. He had been shot through the abdomen and was unconscious. We suggested getting some conveyance to bring him to hospital whereupon some of the group promptly halted a passing saloon car into which they put the wounded man and drove off with him to Mercer's Hospital.

On Tuesday we were again out and about the city. In the afternoon we were in O'Connell St. where we read the Proclamation of the Republic posted on the walls of the General Post Office. Looters had been busy and the evidence of their activities was everywhere. Lawrence's shop was burning. Henry St. was littered with broken glass from the shop fronts; and furniture and other goods were stacked upon the footpaths. There was no firing, and people were moving about freely. On Wednesday morning we were out again. For some reason that I cannot now remember, Michael wanted to go across the city to the Mater Hospital. We walked as far as O'Connell Bridge. There was intermittent rifle fire going on close by but from what points and where directed I could not say. It may have been from Trinity College. O'Connell St. was empty looking but not entirely deserted, and groups of people were gathered at the corners of side streets. We walked up Lower O'Connell St., but were glad to cut into Lower Abbey Street. I could hear the sigh of an occasional bullet passing overhead and now and then the whine of a ricochet. I was glad to get out

of the area as we made our way up to the Mater Hospital. On our return we thought to make our way back to the south side via Marlboro' St. and Butt Bridge, but were stopped at the corner of Abbey St. by men who told us it was too risky. We went back to the corner of Parnell St. and O'Connell St. Here we asked some of the sightseers congregated there whether it was safe to cross the top of O'Connell St. and got the typical Dublin reply: "Ah, chance yer arm!" We crossed to the south side eventually by one of the bridges above the Four Courts. The only British troops we saw in the course of the morning were in the vicinity of the Coombe. That afternoon we spent on Baggot St. Bridge watching what we could glimpse from there of the attack on Clanwilliam Terrace. Some time during the day Michael was told that a doctor's services were required by the men occupying the College of Surgeons. This was a detachment of the Citizen Army commanded by Countess Markievicz, who had been occupying Stephen's Green during Monday and Tuesday. I accompanied him late that Wednesday night to the College of Surgeons and saw him admitted through the side door in York St. He came home some hours later. If my recollection is accurate, the trouble was not so much gunshot wounds as several cases of incipient pneumonia due to exposure throughout Tuesday night which had been cold and wet. We continued our patrolling of the city streets on Thursday and Friday restricted to the south side and to a limited area, but I cannot recall any details of our wanderings. On Friday night the sky was lit by the glare of the buildings burning in O'Connell St. and the adjoining areas. On Saturday came the news of the cease fire and the surrender.

I had never settled down to work out by process of clear thinking what in my mind was the proper function of the Volunteers. Had I been asked to formulate my ideas I believe I should have said that they were necessary to prevent conscription from being applied to Ireland; to support her demand after the war for a reasonable measure of self-government, and to provide in the meantime a corrective influence against "West Britonism" and a rallying point for those who believed that we had a right to ultimate independence and separation. I realised, of course, that to belong to a military force meant being prepared to fight somebody at some time. In this case the most likely adversaries were the forces of the British Crown. I hoped and believed that such a conflict, if it did occur, would come only when the Volunteers had behind them the support of the people generally. I thought that the issue upon which the majority of the people would most likely unite in support of the Volunteers was resistance to conscription. To be committed to a struggle without such support would involve fighting against absurdly fantastic odds. What the position would be if the Government decided to suppress and disarm the Volunteers before the country could be united in their support I had not tried to envisage. It had never occurred to me that the Volunteers might themselves precipitate a conflict in such hopelessly unfavourable circumstances. My mental reactions to the outbreak were, I imagine, little different to those of the majority of the other thousand or more Dublin Volunteers who did not "come out". The whole thing appeared to me to be tragically insane. After a severe examination of conscience I did not feel myself bound to participate and

I had no inclination to do so. At the same time I felt like a deserter and was miserably unhappy. During the course of the week wonder at their insanity gave way to admiration for their courage and pride in the fight they made. Then came anxiety and apprehension as to their fate upon the surrender and eventually grief and futile indignation at the executions.

For the next four years I was concerned mainly in trying to acquire a practice at the Bar; an endeavour which was interrupted by a serious illness with which I was laid up during the winter of 1917-18. Michael was a member of the Committee of the Irish National Aid Association formed to provide some assistance for the families of the Volunteers in prison and interned following Easter Week. I gave him some assistance in the work. I did not rejoin the Volunteers nor did I join any Sinn Féin Club or other political organisation with the result that I had no part in the development of the national movement. I did offer myself as a speaker on behalf of the Sinn Féin candidates in the General Election of 1918. I was accepted and sent to East Mayo where de Valera was opposing John Dillon. Others of my acquaintance who also offered their services about the same time and who were also assigned to the campaign in the West were: Cecil Lavery, Leo MacCaulay<sup>(1)</sup> and Dermot Gleeson<sup>(2)</sup>. In the course of a week or ten days I spoke at some eight or ten meetings before returning to Dublin to undergo an operation on my throat. I came out of hospital on the morning of Saturday, 14th December, which was polling day, and on my way home to 42 Merrion Square where we then lived, stopped to cast my vote for Alderman Tom Kelly, the Sinn Féin candidate for our constituency.

(1) Our Ambassador to Spain



In 1917 I changed from the Munster to the Connaught Circuit and by 1920 was beginning to enjoy a growing practice when the advent of the Republican Courts began to absorb my practice and ended by absorbing myself.

Part 11.

The Republican Courts from August 1920, to the Truce.

I was appointed a Circuit Judge of the Courts of the Irish Republic in August 1920, and ceased to function as such almost exactly two years later when, at the commencement of civil strife the Minister for Home Affairs purported to withdraw the authority of the Supreme and District Courts. Over thirty years have passed since then. I kept no diary for the years 1920, 1921 or 1922. I have had the advantage of little in the way of written records to refresh my memory of my judicial experiences during that period. What follows, therefore, is dependent mainly, though not exclusively, upon my unaided recollection. While this is quite clear as to the main events, I have found that in very many instances I cannot remember the names of persons, the places where I held courts, the sequence of minor events or, what is not to be wondered at, the cases which were disposed of. What I propose to do, therefore, is limited to setting down in writing what I can now recall of my own personal experiences in connection with the Republican Courts.

Upon my call to the Bar in 1916 I had joined the Munster Circuit. After a year I changed to the Connaught Circuit, and, by 1920, was beginning to enjoy a reasonably remunerative practice which was confined mainly to the County Courts and Assize Courts in Mayo, Galway and Offaly. As the year 1920 wore on the amount of litigation in these Courts was affected more and more by the work of the Republican Arbitration Courts. These had been functioning

for some time and had made great progress. I had no contact with them. No one ever offered me a brief to appear before one of them, and I never did appear in any capacity in a Republican Court until I did so as a Judge. They, however, began seriously to affect me. On account of "the disturbed state of the country" the Assize and County Courts sat in courthouses sandbagged for defence and guarded by British military. Litigants began to desert them for the Republican Courts, and soon I was hearing from solicitors the unwelcome news that certain cases in which they had sent me briefs had been "transferred" to the Republican Courts and there disposed of without my assistance. It became apparent after a short while that the bulk of my practice was in process of being so transferred. I call to mind quite clearly one incident in connection with the Mayo County Court which brought this home to me very cogently.

It was the opening day of Swinford Sessions, and the usual quantum of counsel and solicitors, together with the customary complement of Court officers and police, were assembled before Judge Charles Doyle. There was, however, nobody else. There were no litigants or witnesses, and none of the general public to form the usual "gallery". As the list of cases was called over, one or other of the solicitors present would rise to explain that a case had been settled, or that he had no instructions, or that his retainer had been withdrawn, or that his client was not present. Everyone knew that the cases had gone to another jurisdiction, but the Republican Courts were never mentioned. I learned that all the roads leading into Swinford were picketed by Volunteers who dissuaded any litigant, who had

not already transferred his case to the Republican Courts, from attending to prosecute or defend it before Judge Doyle. One litigant did eventually make his way into Court. He appeared to be excited, and was somewhat dishevelled as if he had experienced some difficulty in reaching his objective. It transpired that he was a publican who had some application to make in connection with his licence. He had, apparently, after considerable argument, been allowed "in the public interest" to pass the pickets. This was, in fact, the last occasion upon which I appeared in the County Court.

By decree No. 5, First Session, 1920, the First Dáil provided as follows:

- "1. That Courts of Justice and Equity be established.
- "2. That the Ministry be empowered, when they deem fit, to establish Courts having criminal jurisdiction".<sup>(X)</sup>

It fell to Austin Stack as Minister for Home Affairs to implement this decree. Dorothy McArdle in her Irish Republic (fourth edition 1951, Chapter 38, p. 375) ascribes this decree to the 29th June, 1920, and states that Stack lost no time in putting it into effect. She continues: "The formidable task of drafting the Constitution and Rules of Court was entrusted to James Creed Meredith, K.C., Arthur E. Clery, B.L., Cahir Davitt, B.L., Diarmuid Crowley, B.L., Hector Hughes, B.L., Conor A. Maguire and Kevin O'Shiel". David Hogan in The Four Glorious Years at present in course of serial publication in the Sunday Press has a passage to the same effect. I think it is quite likely that there was such a committee, who either assisted Stack to draw up a scheme for the establishment of the Courts, or, what is perhaps more probable, to whom he delegated the task. I

I have, however, no recollection of ever having acted upon any such committee, and I am positive that in this my recollection is accurate.

Both as a pupil of his in University College, and afterwards as a fellow barrister, I had always been on friendly terms with Professor Arthur Clery<sup>(1)</sup>. He had shown me every kindness and given me every assistance to get started in my profession. We eventually became intimate. We had many discussions upon politics and the development and prospects of the national movement. According to my recollection it was late in July 1920 when he told me one day in the Bar Library that Austin Stack<sup>(2)</sup> had authorised him to ask me would I accept a Judgeship in the Dáil Courts. As I was then only twenty-six years of age, and of only four years' standing at the Bar, I was more than surprised at this offer. He gave me an outline of the proposed Constitution of the Courts. In addition to Parish and District Courts, similar to those already functioning as Arbitration Courts, there was to be a Supreme Court of three professionally qualified judges. The country was to be divided into four circuits, and there were to be four Circuit Judges, also professionally qualified, who were to be from time to time assigned each to a circuit where they were to preside over circuit sittings of the District Courts within the circuit. It was proposed to pay each of the seven judges a salary of £750 per annum. He told me that he and James Creed Meredith<sup>(3)</sup> had agreed to accept appointments as judges of the Supreme Court, and

(x) Quoted from a typed copy of the Decrees of the First Dáil given me by the Department of Home Affairs. This is now in the King's Inns Library.

(1) Professor of the Law of Property, U.C.D.

(2) Then Minister for Home Affairs.

that Diarmuid Crowley had agreed to accept one as a Circuit Judge. Clery at this time would have been of thirteen or fourteen years standing at the Bar. He was still a junior. Meredith, who was probably senior to Clery in any event, was a King's Counsel. I was senior to Crowley who, though much older than I, had been called to the Bar some months after I was. I was offered a Circuit Judgeship the same as Crowley, which, after some days' consideration, I accepted.

As one might well imagine, these judgeships were not keenly sought after. They were not, of course, offered to all and sundry. I understood, however, from Clery, that certain men of standing and ability had been asked to accept appointments, but had found themselves for one reason or another unable to do so. This was at least one of the reasons why men so junior and inexperienced as Crowley and myself had been approached. The remaining vacancies were never, in fact, filled. The Department of Lands set up a Land Settlement Commission and appointed Land Judges thereof, including Conor Maguire<sup>(2)</sup> and Kevin O'Shiel<sup>(1)</sup>. There were not, however, at any time more than four ordinary permanent judges of the Dáil Courts of Justice.

Dorothy McArdle, in the chapter of her Irish Republic already mentioned, states that James Creed Meredith became President of the Supreme Court; that its other members were Clery and Crowley; and that I was a High Court Judge. This is not accurate. Meredith, in a manner which I shall endeavour to describe later, did in a sense 'become'

(2) Present Chief Justice

(1) Mr. Commissioner O'Shiel of the Land Commission.

President of the Supreme Court; but Crowley and I were originally appointed as Circuit Judges only; and there never was any High Court. Instead of the seven contemplated only four could be found to accept appointments as Dáil Court Judges. To constitute a bench of three in the Supreme Court it was necessary therefore to call upon either Crowley or myself. The Provisional Constitution of the Courts, which came into operation about January 1921, contained a provision that where a case of exceptional public importance came before the Supreme Court that Court might direct that it should be heard and decided by a full Court which should consist of not less than two members of the Supreme Court and two Circuit Judges. The Constitution contains no other provision for Circuit Judges sitting in the Supreme Court; but in practice, after Crowley, as I shall describe later, had been arrested and imprisoned, it became essential to make use of me as a Circuit Judge in the Supreme Court whenever a sitting in bench was required. I have no recollection of either Crowley or myself having ever been promoted to the Supreme Court; and I don't believe that we ever were. In practice, however, after Crowley's release we sat when required in the Supreme Court as a matter of course; and came to be regarded as Supreme Court Judges in the same way as Meredith and Clery. Maguire and O'Shiel had likewise to be called from time to time to assist as Circuit Judges.

Having accepted the offer communicated by Clery I accompanied him in due course to 45, Henry Street where the work of the Department of Home Affairs was then being carried on under the style and title of Murphy and Quirke. I cannot now say whether these names represented

real or fictitious persons, or what business they were, or were supposed to be, engaged in. I was introduced to Austin Stack, and to Patrick Sheehan<sup>(1)</sup> who was then Secretary of the Department. Stack congratulated me on my decision to accept appointment. In the course of conversation he said that it would be well to keep the matter of our appointments as close a secret as possible; and that it was his wish that we should, with this object in view, continue to attend the Law Library and, as far as we could reasonably do so, to practice at the Bar. Within a few days I was again congratulated upon my appointment, this time in the Law Library by a fellow member. A few days later I was yet again, and very loudly, congratulated in the Café Cairo by an acquaintance of the other sex. To keep up the pretence of secrecy in such circumstances seemed rather futile. As I have already said, most of my practice had already taken itself off to the Republican Courts, and as I could not practise as a barrister before them, I saw no point in continuing to attend the Law Library. My last visit to the old Library, which was destroyed in 1922, was on the occasion of the first vacation sitting in August 1920. Meredith, Clery and, I believe, Crowley continued to attend the Law Library and, in accordance with Stack's express wish already mentioned, appeared occasionally in cases in the "British Courts".

I have referred to our "appointments". It is well, however, to make it clear that, as far at least as I was concerned, there was never anything in the nature of an appointment other than Clery's offer and my acceptance, as I have described. I never received anything in the nature of a warrant of appointment or other formal document

(1) Afterwards Secretary to the Prisons Board.



to witness my judicial authority. If my recollection is accurate, I was in receipt of my salary from August 1st 1920, and was paid monthly by cheques signed by Michael Collins. I cannot remember upon what bank the cheques were drawn. I know that at first I cashed them in the Sinn Féin Bank in Harcourt St. When that institution was closed down I opened an account in the National Land Bank in Leeson Street and lodged them there. I was somewhat shy about lodging them in the National Bank in College Green, where I also had an account.

The constitution of the Courts had taken shape before I had anything to do with them. After I returned from a short holiday in England during late August or early September, we four Judges met on many occasions, usually in Meredith's house in Herbert Place, to draft and settle the constitution of the Courts in detail, and the Rules of Procedure and Forms for the Parish and District Courts. We all did our share of drafting and eventually produced a Provisional Constitution, and Provisional Rules and Forms, which were in due course approved and enacted by the Minister for Home Affairs. They were issued by his authority in booklet form, consisting of some forty pages of type, and bear date 1921. I believe they became generally available in January of that year.

Although a copy of this Judiciary as it is styled accompanies this memorandum, it is not out of place here to give a short summary of the Constitution of the Courts.

There was to be a Parish Court for each Parish area. Each Court was to consist of three members, one of whom could be a clergyman. No legal qualifications were

required. They were to be appointed provisionally in the first instance. They were to select their own chairman and two could form a quorum. Their jurisdiction in civil cases was limited to claims not exceeding £10 in contract and tort, and to claims in ejectment in respect of certain small tenements. They had a summary criminal jurisdiction in respect of certain petty offences. In the case of offences other than these they had jurisdiction to investigate, take evidence, and return the accused for trial before the District Court at a Circuit sitting, or to refuse informations as the case might be. They had no jurisdiction to determine any question of title to land.

For each parliamentary constituency capable of returning a member to Dáil Éireann there was to be a Court called the District Court. This was to consist of five members of whom two might be clergymen. As in the case of the Parish Courts there was no requirement as to the qualifications of the Judges, who, in the first instance, were to be provisionally appointed. They were to select their own chairman and three could form a quorum. They were to hold ordinary sittings once a month. At such sittings they had jurisdiction to hear appeals in civil cases from the Parish Courts in their district, and an original jurisdiction which was in the main commensurate with that of the County Court except that they had no jurisdiction in chancery.

The country was to be divided into four Circuit Districts. There were to be four Circuit Judges who, after the first appointments, were to be persons legally qualified of not less than six years standing. Each was to go Circuit three times a year, holding a Circuit

sitting of the District Court in each District on the Circuit chosen. At these Circuit sittings the Circuit Judge was to preside, and the Court could exercise both an original and an appellate jurisdiction. It could hear appeals from the Parish Court in criminal cases, and from the ordinary sittings of the District Court in all civil cases other than Parish Court appeals. Save that, possibly, it had no jurisdiction co-ordinate with that of the Parish Court, its jurisdiction was at such sittings otherwise unlimited. If he so desired, the Circuit Judge could sit alone for the trial of equity suits. On the criminal side it had jurisdiction to try all persons returned to it for trial by the Parish Court.

There was, finally, to be a Supreme Court consisting of not less than three judges who, after the first appointments, were to be persons legally qualified of not less than twelve years standing. It was to have jurisdiction to hear appeals in certain cases heard at Circuit sittings of the District Court, and an original jurisdiction co-ordinate with that of the District Court at a Circuit sitting.

This preliminary work having been completed, we individually held sittings in Dublin during the months of September and October. I can remember, though incompletely, my first sitting and the first case I tried. I sat in the Technical Schools, 18, Parnell Square. As it was an equity suit, I sat alone. The case arose out of a dispute of some kind in a trades union. The plaintiff, whose name I cannot recall, had been expelled, and sought a declaration, with the usual consequential relief, that the rules of the union had not been complied with, and that his expulsion was accordingly ultra vires and void. I cannot

remember the name of the union concerned or who figured as defendants. Louis O'Doherty appeared as counsel for one party, but I cannot remember which. Finally, to make matters more or less complete (or, perhaps, more accurately, incomplete), I am quite unable to recall what my decision was.

During the period I held several other sittings in Dublin but have no recollection of the cases tried, or of the District Court Judges with whom I sat. Courts were held by all four of us in turn in the Technical Schools in Bolton Street, Kevin Street and Parnell Square, the County Council Offices in Parnell Square, the Corporation Assembly Rooms or Court of Conscience in 58 South William Street, and in the Typographical Institute in Gardiner St. and, doubtlessly, in many other places I cannot now remember.

Late in October or early in November, we held a Judges' meeting to decide about going on circuit in the country, or, to be more accurate, outside Dublin. At this time the period when the Courts could be held openly and without danger of interference by Crown Forces had very definitely come to an end; and they were compelled to function "underground". The "Black and Tans" and "Auxiliaries" were abroad in the land, and the holding of Courts was attended by some risk to all concerned: litigants, witnesses, Court officers and judges, as well as the Republican police, particularly the latter. We discussed very thoroughly the matter of holding circuit sittings outside Dublin and in the country districts. Clery and Meredith were disposed to stress the danger to

litigants and advocates; they inclined to the view that there would be little if any work to do, and that no good purpose would be served by going out. It is to be noted that there was no obligation upon either of them to go out. As Judges of the Supreme Court they had all the powers and jurisdiction of Circuit Judges, but they were in no way bound to hold circuit sittings. Crowley and I were in an entirely different position. As I have made clear, we had been appointed as Circuit Judges, and our primary function was to hold circuit sittings of the District Courts in the country as well as in Dublin. We were both in favour of going on circuit if there was any reasonable chance of holding courts successfully. We argued that there was not sufficient work in Dublin at the moment to keep both of us fully occupied; and that if we did not go out, this would be attributed to lack of courage and interpreted as a confession of failure; that the prestige of the Courts as a whole would be seriously damaged; and that the whole scheme of employing professionally qualified judges would be regarded as a fiasco. Our arguments prevailed, and it was eventually decided that Crowley and I should go out. Crowley was a member of the Munster Bar and I of the Connaught Bar. Cases in which we had been recently briefed had been transferred to the Republican Courts, and, with a view, accordingly, to avoid the risk of finding some of our own cases listed for trial before us, I suggested, and Crowley agreed, that I should take my way South and that he should go West. There was no question that I can remember of going anywhere else.

I duly reported in person to Stack that I was ready to go circuit in Munster. He told me that there were cases to be heard in Cork, Limerick and Clare, but explained that, owing to the state of the country and the difficulties of secret communication, it was not feasible for the Department in Dublin to make the necessary arrangements for circuit sittings in the rest of the country; and that this would have to be done locally. We agreed that the best thing to do was for me to go down and get in touch on the spot with the District Court Registrars in Limerick, Clare and Cork; fix dates for the circuit sittings; and leave it to them to make whatever arrangements were necessary. He gave me the names of several Registrars and instructions how to get in touch with them. I believe he gave me the names of John McNeice in Limerick City, John D. Molony in Ennis, and Frank Buckley in Cork. He said that these men would be able, if necessary, to put me in touch with the Registrars of other districts in their respective counties. Armed with this information, I set off for Limerick sometime in November 1920.

John McNeice was at this time managing an office in Limerick for James Rogers, solicitor, of Tullamore, whom I knew well, and who in fact had given me a lot of business. I called on him and agreed on a date for a circuit sitting in Limerick city. He undertook to arrange this. We also fixed a date later for a sitting in East Limerick and he undertook to get in touch with the East Limerick Registrar so that this also could be arranged. I then went to Ennis where, following instructions, I

called upon Canon O'Kennedy, President of St. Flannan's College, who put me in touch with John D. Molony. With him I made similar arrangements for sittings in East and West Clare, and departed to make like arrangements in Cork.

My instructions were to call at an address in Washington St. and ask for Frank Buckley. I found the address to be that of a small shop. I made inquiry of the only person in charge, a young girl, who promptly disclaimed any knowledge of Buckley. I asked her was she sure she did not know him, and she said she was positive. I asked her was there anyone else who could perhaps help me, and she said there was not. I knew that she suspected my bona fides; and I explained that it was very important that I should see Buckley and that I had been given that address by the Minister for Home Affairs, Mr. Austin Stack, as a place where I could find out how to get in touch with him. This had no effect whatever, and I realised that for the moment it was checkmate. I had no letter of introduction to anyone, nor any other means of proving that I was a Judge of the Dáil Courts. While I, in my own mind, commended the young lady's discretion, I was none the less embarrassed and puzzled to know what to do. As I had no contacts with the political or military side of the national movement, I could not for the moment think of anybody in Cork who was likely to be able to get me out of my difficulty. I decided to take a long walk to think matters over and, leaving the shop, I strolled out the Western Road. As I passed University College, I bethought me of Professor Alfred O'Rahilly<sup>(1)</sup>, who was then, I believe.

(1) Now President U.C.C. and Vice Chancellor, N.U.I.

Registrar of the College. I had never met him, but I believed that he was associated with the movement, and I decided to seek his help. I retraced my steps, entered the College and, in due course, was admitted to his office. He listened carefully while I explained my predicament. He then asked me, as I was afraid he would, how was he, any more than the girl in the shop, to know that I was who or what I said I was. I told him I thought I could convince him of my identity, but that I had no means of proving I was a Dáil Court Judge. I was at the time wearing a gold watch which had belonged to my father. This bore the inscription: "Presented to Michael Davitt by the Irish Nationalists of Burnley District". I showed him this and he expressed himself as being satisfied as regards my identity and willing to take me upon trust as regards my functions. He asked me where I was staying. I told him Turner's Hotel. He said he would try and arrange matters and let me know the result in due course. That evening, or the following day, I got a message that if I presented myself again at the shop in Washington Street, I could count on a different reception. I did so and on this occasion met the proprietress of the shop, who explained that her niece, whom I had encountered on my previous visit, had suspected me of being an Auxiliary officer looking for information. This lady put me in touch, not with Frank Buckley whom I never met, but with a young man, whose appearance I can clearly recollect, but whose name I have forgotten. He was acting as Registrar of the Cork City District Court. We fixed a date and he undertook to arrange a circuit sitting accordingly. I don't think we made any arrangement for a



sitting in Cork County. My business in Cork for the time being finished, I made my way back to Limerick.

When I had arrived in the first instance in Limerick from Dublin, I had put up at Cruise's Hotel. During the year I had been on the Munster Circuit I had got to know it well. The Munster Bar had had their Mess there and, as I had been the junior member, it had been my duty to pay the mess bills, tip the staff, and look after the circuit cellar. I found that there were quite a number of British army officers and Auxiliary officers staying there. When leaving for Cork, I had retained my room, in which I had left my suitcase, a small attaché case being quite sufficient for my needs for a few days' absence. On my return I walked down O'Connell St. and was about to turn into Cruise's when I was halted by a sharp challenge from a sentry. The previous Sunday was November 21st or "Bloody Sunday", the day on which a number of British Intelligence Officers had been shot in Dublin. I assumed that this was the reason for the sentry being posted outside. I explained to him that I was a guest staying in the hotel. He told me that that could not be, as the military had taken over the hotel since the previous Sunday. I told him that I had been away for some days but that I had retained my room, and that my belongings were still there. He called someone and an N.C.O. came out; I told him my trouble, whereupon he went away and returned with a member of the hotel staff, who knew me from the period when I was 'junior' on the Munster Circuit. I thought he had a good deal of drink taken and, when I explained my predicament to him, he began to mutter something to the effect that he had "the likes

of me to thank for having the hotel commandeered by the military", I did not like this at all, as it was getting on to very dangerous ground. I thought it best to assume a bold front, so I said: "Mr. ....

I have no time to waste with you. I want my suitcase at once". I gave the N.C.O. the number of my room and asked him would he be so kind as to have my stuff brought down. In a few moments two soldiers had all my belongings in the hall, and I proceeded, with their assistance, to pack my suitcase. I had a certain number of cheap novels which I had accumulated in my travels, and I distributed these among my military helpers. One of the soldiers got me a car and helped me and my suitcase aboard. A half-crown changed hands, and I went off in quite an atmosphere of goodwill to seek quarters in another hotel.

I think it must have been within the next few days that I held a circuit sitting of the Limerick City District Court. I cannot remember how long the sitting lasted or any of the cases disposed of. My impression is that it occupied a day only. I do remember, however, that the District Judges I sat with were Stephen O'Mara<sup>(1)</sup>, and Michael O'Callaghan, formerly Mayor of Limerick, who was murdered by British Crown Forces the following March.

I think it was a few days later that I held a sitting in East Limerick. This sitting had been arranged by McNeice with the Registrar of East Limerick whose name I did not then know. McNeice told me to hire a motor hackney and drive to a certain crossroads, where I would be met and directed how to proceed to the place where the sitting was to be held. I set off accordingly early one

(1) Of the wellknown bacon curing firm.

morning and was driven to the crossroads indicated. There I was met by a youngster who told me to drive on to another crossroads where I would get further directions. Some miles past this latter point we were driving along a narrow byroad when my driver stopped the car with a violent application of the brakes and exclaimed: "J.....! we're into an ambush". I saw that behind the hedges on either side of the road were men with rifles and bandoliers. I calmed the fears of the driver who was taken in charge by one of the Volunteers, while the rest conducted me across country to a house near the top of a hill (which I was told was Ardpatrick) where the Court was to be held. The Registrar I found to be Nicholas O'Dwyer<sup>(1)</sup> whom I had last known as an engineering student in University College, Dublin. There was not much business to be done at the Court. O'Dwyer explained that there was considerable difficulty in getting litigants and witnesses to attend. He asked me whether, in future, I wanted an armed guard, such as he had there that day, to attend at Circuit sittings. They were, I believe, a section of the Flying Column of the East Limerick Brigade. I replied very definitely in the negative. My view was that if a Court were surprised by Crown Forces in the absence of an armed guard the worst that was likely to happen any one concerned was perhaps a certain amount of ill-usage and a subsequent period of imprisonment. With an armed guard present, however, there was always the chance of fatal casualties, reprisals and hangings, perhaps, subsequently. In my own mind I could not help thinking that the reluctance of litigants and witnesses to attend the Court might not have

(1) The wellknown consulting engineer.

been entirely unconnected with the presence of a section of the Flying Column. I cannot now remember anything about the few cases tried at this sitting. Among the advocates in attendance were Hugh O'Brien Moran<sup>(1)</sup>, "Knock" O'Donnell<sup>(2)</sup>, both solicitors and, I believe, James Comyn<sup>(3)</sup> Counsel. I have a hazy idea that I may have held another sitting of the East Limerick District Court in some other place about this time. I cannot, however, remember where, or who attended or anything else about it. I know that on one occasion I was put up in a large square house by people by the name of Ryan, I think, while I was down to hold a Court in East Limerick. This may, however, have been in early 1921. I simply do not remember.

I now moved on to Clare and held a Court in Ennis. If my memory is accurate, we held this Court in a hall in the town right beside the R.I.C. Barracks. Apart from this my recollection does not serve me. I cannot recall who were the District Judges, who attended as advocates, or what cases we tried. About this time I also held a sitting or sittings in West Clare. The Registrar was Conor Whelan, I believe. I know that upon this occasion I held a Court at Kilminihill. One of the solicitors in attendance was Michael Killeen<sup>(4)</sup>. I can also remember one of the District Judges, a big man named Ryan, who told me he had been in the Irish Guards during the 1914-18 war. He gave me an account of how a previous court at which he had functioned had been surprised by Crown Forces. There was some shooting. If my memory serves me accurately, he described how he introduced

- (1) Afterwards County Registrar Limerick
- (2) A wellknown Limerick solicitor. I can remember only his nickname.
- (3) Brother to Judge Michael Comyn.
- (4) Afterwards County Registrar, Clare.

himself to the officer-in-charge as an ex-sergeant of the Irish Guards and was put in temporary command of a section of soldiers to carry out some duty in regard to a couple of casualties.

After finishing in Clare I set off for Cork to hold my Court there. I had a considerable time to wait at Limerick Junction. While sitting reading in the waiting room I could not avoid overhearing a group of men discussing an item of news which one of them read from a Dublin evening paper. It reported the arrest by Crown Forces of members of a Republican Court in the West. I asked for a loan of the paper for a moment and discovered that my colleague, Diarmuid Crowley, had been arrested while holding a Court more or less openly in Ballina. I learned subsequently that he had held a Court successfully in either Granard or Longford before proceeding to Mayo; and that in Ballina the Court had assembled without much if any precautions as to secrecy; with the result that it was surprised by the police or military, I forget which. If I have not already done so, I would <sup>like</sup> now to make it clear that the Courts which I had already held at this time were all held "underground". The Registrar was responsible for the arrangements in concert with the Volunteers and Republican police. I had never any cause for complaint at any time either before or after the unhappy ending to Crowley's first circuit. The arrangements were always excellent, and I never had any misgivings as to the safety of those attending the Courts, including myself. Crowley was subsequently charged before a military court with some offence under the Restoration of Order in Ireland Act, convicted and sentenced to something like eighteen calendar

months' or two years' imprisonment with hard labour.

I completed my journey to Cork and duly held my circuit sitting there in the Workhouse. Amongst those present (I think he may have been a member of the District Court, but of this I am not sure) was a Mr. Dowdall, who afterwards became a member of the Senate. He had been one of the group whom I had heard, at Limerick Junction, discussing Crowley's arrest; and he recognised me as having borrowed the newspaper. I think this sitting lasted only the one day. I can't remember sitting on this occasion anywhere else, either in or outside Cork City. Having thus concluded the rather meagre business of my first Circuit I returned to Dublin sometime shortly before Christmas.

Arthur Clery and I had planned to go to Switzerland for a couple of weeks' holiday in January 1921. I experienced no difficulty in getting the necessary passport, but Clery was refused. Instead of going to Switzerland with Clery, I accordingly spent a fortnight in London with my younger brother.

On my return to Dublin I found that, notwithstanding the depletion in our number caused by Crowley's arrest, there was not sufficient work to keep the three of us occupied. The increasing activities of the Crown Forces made communications with the Registrars in country districts extremely difficult and uncertain. It was found impossible to arrange for circuit sittings in many parts of the country and I was told that until there was sufficient business to take me again to the south-west, there was little prospect of my services being required

outside Dublin. I had, accordingly, a lot of spare time on my hands. It was in these circumstances that Stack asked me to see Mr. Cosgrave, who was then Minister for Local Government, who, he understood, was in need of legal advice in respect of some aspects of the work of his Department. I called at the Department of Local Government, which was then functioning in a basement in South William St., and found that there were several problems worrying the Minister arising out of the withholding by the British Government of the Agricultural Grant from those County Councils which had openly declared their allegiance to Dáil Éireann. De Lacey, who was, I believe, Secretary to the Department, made me out a brief setting out the facts and referring to the relevant statutes, and, armed with these, I retired to consider the matter. I wrestled with the business for some days without coming to any conclusion (other than that a satisfactory solution was apparently beyond my ingenuity to devise) and then returned to the Department for some further information. I had a chat with Cosgrave who then told me that he was in fact being advised in the matter by counsel. He showed me an "opinion" he had received in connection with something else. I read it and remarked that he was clearly being very competently advised. He then told me that the "opinion" was Hugh Kennedy's<sup>(1)</sup>. I was glad to assure him that he had no need of any assistance from me and reported back to Stack to this effect.

There was still very little for me to do in the way of judicial work, and Stack's next suggestion was that I should write a short memorandum upon the work of the

(1) Later Chief Justice

Republican Courts which was to be furnished, I believe, for the purposes of propaganda to some American journalists. I tried my hand at this, but found myself singularly ill-equipped for the task. I had not the necessary information as to the origin, development and organisation of the Courts in their initial stages before the Dáil Decree of the 29th June, 1920. My effort was very properly rejected and the task was assigned to, and I am sure ably performed by, someone else.

I think it must have been about this time that the first sitting in Bench of the Supreme Court took place. I was called upon, by whom I cannot now recall, to attend as junior judge at the first sitting. I cannot remember what was the occasion for this sitting nor any of the business transacted. My clear impression is, however, that it was for the purpose of exercising in some way our original and not our appellate jurisdiction. The sitting took place in 58 South William St. in the Court of Conscience; and I have a very definite and distinct recollection of the circumstances in which we took our seats upon the bench. In the absence of Crowley the Court naturally consisted of Clery, Meredith and myself. I had always understood that Clery was to have been President of the Supreme Court. How I got this impression in the first instance I cannot say now, but that it was in fact correct, I afterwards confirmed in conversation with Stack. Nothing had apparently been done officially about the matter, and this explains the incident which I am about to describe. As we filed on to the Bench I had, of course, no doubts as to my correct position as junior judge; and I proceeded immediately towards the chair on the



left. There was quite a number of people in Court: counsel, solicitors and members of the public; and they all stood up as we made our appearance. An awkward pause then ensued. Neither Clery nor Meredith made any move towards either of the other two chairs. I remarked sotto voce to Clery: "Go on Arthur, take the Chair; you are the President"! It was to no effect however. He was by nature abnormally diffident, and he stood there smiling and bowing in a curiously inept way he had. I tried to nudge him forward into taking what I believed to be his rightful place, but without any success. After several very awkward seconds which felt like minutes, the crisis was relieved by Meredith saying: "Well, I suppose as senior member of the Bar present, I'd better take the Chair"! and he promptly did so. As I have already said, Meredith was, apart from being a King's Counsel, senior in any event to Clery. To make a good story, however, it is necessary to cap this recital by the observation that Meredith "became" President of the Supreme Court of the Irish Republic by virtue of being one of His Majesty's Counsel, and so the story became current.

About this period it occurred to some person who was sued as defendant in one of the "British" Courts to apply to the Republican Courts for an injunction to restrain the plaintiff from thus vexing him with the process of a 'foreign' Court. The injunction was granted and the way was, accordingly, opened for a flood of similar applications. I heard a good many of them and, while I was quite satisfied that in some cases the applicants had a genuine objection to being impleaded in any court other than the Republican Courts, I was equally

convinced that in the vast majority of cases the governing motive inspiring the application was a desire to delay the plaintiff in recovering his lawful debt or demand. I began to refuse an injunction, which is a discretionary matter, in any case where the applicant did not, in his affidavit grounding the application, aver that he had a good defence in law and upon the merits; and, in addition, give some satisfactory indication of what that defence was.

About this time also, I tried a case which deserves mention if only by reason of the place in which it was heard. A certain Dublin business man, whose name I do not remember, claimed to have supplied a considerable quantity of goods, mainly groceries I believe, to some sections of the Volunteers during Easter Week, 1916. I do not recall against whom he made the claim. It may have been the surviving members of the Volunteer Executive Committee; or the Minister for Defence may have accepted liability. Whoever did figure as defendants did, in fact, accept liability to pay for whatever the plaintiff could prove was actually delivered to a responsible Volunteer officer. It was proposed to call as witnesses on one side or the other several prominent Volunteers whom the Crown Forces would have been very pleased to lay their hands on. These forces had been very active indeed in the city about this period, and most of the places in which Courts had been held from time to time had been visited in the course of military or police raids. It was of manifest necessity to secure for the hearing some place which would be reasonably safe and immune from such interference. I had a conference with the two solicitors concerned as

to where the case should be heard. They were Michael Noyk and Willie Corrigan. One of them, I cannot say which, made what seemed to me to be the truly brilliant suggestion that the safest place to hear such a case was the Four Courts, the headquarters of the British administration of the law in this country. It was at once agreed that this was the best solution of our difficulty, and it was arranged to engage one of the consultation rooms in the Solicitors Buildings for a Saturday morning. This was done, and in due course the Court and solicitors, together with the witnesses, all met in one of these rooms under the guise of an ordinary legal consultation. It was in these circumstances that I held my first sitting in the Four Courts, and it passed off without any untoward incident. I cannot remember anything about the hearing or what the decision was, except that I believe Seán McGarry was one of the witnesses examined.

About this time too I presided at a Circuit sitting of the Rathmines District Court held in the Town Hall. I can remember nothing about the sitting other than that the two members of the District Court with whom I sat were Erskine Childers and William Dwyer; both of whom ended their lives in tragic circumstances during the civil strife of 1922. I sat in many other places in and about the city during this period, and heard many cases of most of which I have no recollection whatever.

I cannot now recall when I again left Dublin to go on circuit. I know that in a period of three or four months before the Truce in July 1921, I held sittings in

East and West Clare, North and South Longford, East Limerick, Cork City and West Cork. I may have held sittings also in other parts of Limerick and Cork. I believe I did, but cannot be sure. The sequence of these sittings has also become quite hazy in my mind. I believe I started in South Longford and I know that when the Truce came I was in East Limerick.

It was sometime in March that I set out for Longford. I had been instructed to go by a certain train to Longford station and told that I would be met there by someone who would put me in touch with the Registrar of the South Longford District Court. I duly carried out my instructions, but, on alighting at Longford station and lingering upon the platform and about the precincts for quite a considerable time, could discern no one who appeared to have any interest whatever in me or my movements. I left the station and started to walk towards the town with the intention of putting up at an hotel pending further instructions how to make the necessary contacts, when I was accosted by a girl who, it transpired, had been deputed to meet me at the station. I forget what explanation she gave me for not being there to meet me, but it was very obvious that she was suffering from a bad attack of nerves as regards the Crown forces and the "Tans" in particular, who, she said, had the town terrorised. She accompanied me some short distance and then handed me over to an old gentleman with a donkey and cart who undertook to convey me to my next "contact". I expressed a decided preference for doing the next stage of my travels on foot, but my guide would not hear of it. I was very glad of the darkness and the ill-lighted

condition of the town for I must have looked quite incongruous seated beside him in his primitive conveyance. He was a very cheery and talkative soul and was intent on reassuring me as to my safety while in his charge. He instructed me that if we were stopped and questioned by the "Tans" I was to say I was Tom So-and-so who was engaged to marry his daughter, and who was down on a visit from Dublin. He handed me over in due course to someone else of whom I have no recollection, and by whom I was conducted to my lodging for the night.

This proved to be a small farmhouse well out in the country, whose only occupants were an elderly couple. They quickly made me welcome and comfortable, gave me the best bed and arranged to call me at six-thirty the following morning so as to be ready for an early start and a long drive to the scene of my labours. I chatted for some time with my host about things in general, the state of the country, the progress of "the movement", its chances of success, the misdeeds of the "Tans", and so forth. I had been introduced to him as "Mr. Doyle" from Dublin and I was amused and somewhat surprised and puzzled when he asked me had I ever run across any of Michael Davitt's sons. He said he remembered during the 1918 election seeing reports of speeches made by one of them, and that he had often wondered whether they had taken any further part in the movement. This made me feel rather small, and I began to think he was pulling my leg. I told him I had never met any of the Davitts and that in these queer times you would never know what anyone was doing.

Aroused at 6.30 the following morning, I was, after a hasty toilet, beckoned mysteriously by my host into "the room", where he insisted that I should have a drop of something to give me an appetite for my breakfast and fortify me for my long cold drive. The "something" proved to be a couple of "fingers" of poteen. I could not persist in my refusal to partake of strong spirituous liquor at that early hour, save at the risk of hurting his feelings, and so I had to take my aperitif with as good a grace as I could manage. Thus stimulated, I did ample justice to the big breakfast provided and duly set out on a twelve or fifteen mile drive on a side-car to where the Court was to sit.

As usual, I cannot remember anything about where the Court was held, who I met there, how long the Court lasted, or what cases we disposed of. I believe the Court lasted a couple of days or so and it is possible we held sittings in different places.

On my return to Dublin I found that it had been arranged for me to go to North Longford the following week. This time I was instructed that I would be met on the arrival of a specified train at Newtownforbes and taken in charge there. Nobody met me, however, and for the moment I felt completely at a loss. After idly hanging around the station for some time I inquired the way to the nearest Catholic Presbytery. To the housekeeper who answered my knock, I said I wanted to see the Parish Priest upon a matter of some urgency. He was out, as it happened, and she did not expect him in for some time. When I said I would wait, she hospitably brought me in

and insisted on providing a cup of tea. I had some considerable time to wait for His Reverence and when he returned he found me comfortably ensconced in his sitting-room reading one of his books. I explained my situation and told him that although I had not the slightest idea whether he approved of or detested the proceedings of the Dáil Courts, I felt sure that he would be able to see that I was put in touch with the Registrar of the North Longford District Court. He was rather amused and said he certainly could do so; that he thought the Registrar was young Lynch, the son of Master Lynch, who was in charge of the school at Aughnacliffe. While he hospitably entertained me, someone was sent to get in touch with Lynch, who arrived in due course with a conveyance of some kind. After bidding my host a grateful goodbye, we set out for Aughnacliffe.

We did not, however, proceed directly to the "Judge's lodgings". Lynch explained to me that the only suitable place he could find to put me up belonged to a farmer who was a litigant in a case to be tried the following day. He said he had warned him on no account to broach the subject to me, but that all the same the less time I had to spend in the "lodgings" the better. He asked me would I like to meet some of the North Longford Flying Column, Seán McKeon's men, and I said I'd be delighted. McKeon, himself, had been wounded and captured a short time previously. We pulled up at a licensed premises at a crossroads somewhere near Ballinalee, I believe, and there I met several of McKeon's officers whose names, I am sorry to say, I have forgotten. I have a rather hazy idea that one of them, a tall dark good-looking chap, was

named Brady. I have also a dim recollection of being told how another of them, a stout block of a man, had on the occasion of the attack on some R.I.C. Barracks, crawled quite a considerable distance on his hands and knees with a "land mine" on his back in order to place it so as to effect a breach. We had a very pleasant evening chatting and eventually playing "Nap". While we took our refreshments one of the party remarked that we had little fear of disturbance from the R.I.C. seeking to enforce the licensing laws. He must have omitted the precaution of "touching wood", however, for very shortly after a patrol of Republican police arrived and told our host it was time to close up. We broke up and I was conducted to my quarters. Here I joined the family round the kitchen hearth in a supper of gruel. My litigant host never mentioned the subject of his case though, whether it was merely my imagination or not, it seemed to me that the suppression of his natural inclination was costing him considerable effort.

I can remember nothing of this Court in North Longford, where it was held, how long it lasted, who were the members of the District Court with whom I sat, or who were the advocates, if any, appearing. I think the Court must have lasted a few days. My impression is that unlike my circuit in the South-West before Christmas these two trips to Longford involved the hearing of quite a considerable number of cases.

My next trip down the country was to West Clare, and this, I believe, took place in March. I think I held sittings in East Clare also, but if I did, I can



remember nothing about them. In West Clare I stayed with Father O'Donoghue, then curate at Doonbeg. He very hospitably put me up for the week or ten days which were required to complete my labours. There must have been quite a lot of work to do, and I probably sat in several different places. It is very unlikely that we would have taken the risk of sitting for more than a day or two in any one venue. As usual, I can remember nothing about these sittings other than that they were held. I know that I was driven on a side-car from Father O'Donoghue's to several Courts by a man called McNamara, a very attractive chap. He was, I believe, a captain in the Volunteers and helped to mitigate the tedium of long drives by recounting some of his own experiences, as well as other stories of the struggle in West Clare. I was very sorry to hear some time later that he had met his death in an encounter with Crown Forces. I think I held Courts about this time also in Counties Cork and Limerick but cannot actually recall doing so. Apart from the sittings in Longford and West Clare I have no recollection of what judicial work I did in the Spring of 1921, though I was, I believe, so occupied most of the time.

In May and June I was in Cork City and County. I can remember that during a period of glorious weather I was staying in the Metropole Hotel, Cork, while curfew required everyone to be indoors at 8 p.m. I was there, I believe, for nearly a fortnight. There was great difficulty in getting any premises in which Courts could safely be held. On occasions when a Court had been arranged for a certain date in a particular

premises we would have to cancel it because, before the date had arrived, the place would have been raided and wrecked by Crown Forces. They were, I was told, systematically eliminating every place which had been used as a Sinn Féin Club; and so thoroughly had they done their work, that ultimately there was only one club left, the Thomas Ashe Club on Lavitt's Quay, not very far from the hotel where I was staying. We did, however, succeed in holding several Courts successfully without mishap of any kind. I was in daily contact with the Registrar. He told me that the Volunteers expected the Thomas Ashe Club to be raided any time by the "Tans"; and that adequate preparations had been made for their reception. The place had been mined with explosives, and anyone who attempted to get in was sure of an entry to the next world. Several days passed, however, without any Crown Forces going near the place; and a difficult situation was developing, as watchers had to be posted to prevent anyone other than the enemy from springing the trap. Forced by curfew to remain so much indoors I was indulging in a good deal of reading, most of which I did in bed. I was occupied in the small hours one morning reading Prescott's Conquest of Mexico, engrossed, like Macaulay's schoolboy, in the doings of Cortes, Montezuma and Guatamozin, when the silence of the summer night was shattered by the reverberating roar of an explosion. I diagnosed that the Thomas Ashe Club had been raided and I proved to be correct. I learned the following day that a party of Auxiliary police had paid their expected visit, and that the Club in its demise had achieved everything that was desired.

I held sittings in West Cork, first in the Ballyneen-Enniskean area, and later up in the hills near Ballyvourney. Beyond the fact that I spent a week or ten days in the district, and so must have had a fair amount of judicial work to do, I can remember nothing about these sittings. I was brought to the Ballyvourney neighbourhood by a Volunteer, from Enniskean I believe. He conducted me to my quarters for the night in the dusk of a lovely evening. As we topped a rise in the mountain road we were walking, we came suddenly in view of a party of riflemen, clad in trench coats and steel helmets, coming against us at a distance of about fifty yards. My guide rapped out an oath and leaped into the ditch at the side of the road where I followed him a split second later. An exchange of challenges and salutations, however, soon established the fact that they were not, as we feared, a party of British soldiers, but a section of the West Cork Flying Column wearing captured material. They were transporting their impedimenta, I remember, including a Lewis machine gun, in a handcart. Introductions were effected and we enjoyed a chat and a smoke before going our several ways. My memory unfortunately does not serve to recall the names of any of those I met. I can remember however that I slept that night between the Registrar of the Court and the commandant of the local battalion of the Volunteers, having lost, as odd man out, in the toss for position. When I had finished my work in this area I was conducted back to Ballyneen to catch a train to Cork. As my train pulled out of the station I could see lorry loads of British troops moving along the roads

to start a big scale round-up of the area I had just left. I was very glad, shortly afterwards, to learn that it had not met with any great success.

I returned to East Limerick and held sittings, of which I can remember nothing, in the Kilfinane area. I was put up at the farmhouse of a member of the District Court called Cleary. I was made very welcome by him and his wife, and passed some pleasant evenings with them and the Registrar, a young chap called Fogarty. He told me stories of engagements in which the East Limerick Flying Column had distinguished itself, including the Dromkeen ambush, and of the fighting, some weeks previous to my visit, when Brigadier Seán Wall was killed. His account of the Dromkeen ambush was particularly vivid and realistic. Among those I met in East Limerick on this occasion were Brigade O/C D. O'Hannigan, who succeeded Wall in command of the East Limerick Brigade; and Frank Ryan, whom I tried in the early thirties at Green St. Courthouse for some alleged offence against the public safety. The jury disagreed and I was spared the necessity of passing sentence. I was still holding Courts in East Limerick when the Truce came.

I have no written records relating to the Courts for the period before the Truce. When the Dáil Courts (Winding Up) Commission was established to dispose of all outstanding cases, including appeals from Circuit sittings of the District Courts, I handed over to the Registrar of the Commission whatever I had in the way of records. These included notebooks containing my

notes of the evidence in cases heard by me, and in some cases copies of the orders made or notes of the decision given. Some years ago I thought I would like to get them back. I approached the late Mr. O'Toole, an officer of the High Court who had been employed in the work of the Commission; and he gave me back three of my notebooks all relating to the period October 1921 to March 1922. These I still have. When requested by Colonel Joyce to attempt this present memorandum, I made inquiries of Captain McDonagh, Establishment Officer at the Four Courts, and he succeeded in locating a certain quantity of material relating to the Dáil Courts in the basement of the main Four Courts building. This was removed to the Record Office and sorted by Mr. McGillicuddy. It included Parish Court ledgers and registers, and files relating to appeals heard by the Commission, but only one notebook of mine, and none belonging to Meredith, Clery or Crowley. The one notebook of mine was a small one relating also to the period October 1921 to March 1922. I have, therefore, so far in this memorandum, had to rely upon my unaided recollection. Hence the wearisome reiteration of the words: "I cannot remember".

The cases tried at the sittings I have so far referred to were of much the same type as were previously heard by the County Courts and Assize Courts, and are now dealt with in the Circuit Court. I held sittings in County Limerick in October 1921, and among some thirty odd cases tried there were four administration suits, four ejectments, three will suits, three actions for specific performance, three title cases, two

claims for work done, two actions for damages for negligence, as well as actions for libel, assault, breach of warranty, breach of promise, rent, money had and received, money due on a promissory note, and a dispute as to the ownership of money in a bank on deposit receipt. This list is fairly representative also of the class of case tried in the period before the Truce.

In this period I did not, for obvious reasons, carry much in the way of records about with me. I made notes of the evidence, and of my decisions, sometimes on loose sheets of paper, sometimes in small notebooks and school exercise books. When a particular sitting was concluded, I had these posted to my mother in Dublin. If I had not made out the Court Order before leaving the District, I drafted it at home, had it typed in the Department of Home Affairs and dispatched, after signing, to the appropriate Registrar. I usually heard nothing further about a case once I had signed the Order. It was the function of the Registrar and the Republican Police to see that Orders were executed where necessary. In respect of the pre-Truce period, I do not recollect receiving any complaint as to the execution of orders.

The Courts were held in all sorts of places. In the towns there were usually available halls of some kind or another, public buildings such as County Council Offices, Workhouses, hospital buildings or schools, or Sinn Féin Club premises. In the country districts recourse was had to creameries, farmhouses, outhouses,

barns, and any place with four walls and a roof that could be made ready and reasonably usable for the purpose.

The Constitution of the Courts provided<sup>(1)</sup> that the law to be administered was the law as recognised upon January 21st, 1919 "except such portion thereof as was clearly motivated by religious or political animosity". The effect of this provision came as an unwelcome surprise to many a hopeful and hardy litigant who thought that the advent of the Republican Courts was a golden opportunity for re-agitating a dispute which had been res judicata for many a long year. In one or two cases in Clare it was sought to reopen matters which had been litigated and decided in the time of Daniel O'Connell. I would not have relished the task of having to decide what portion of the law had been clearly motivated by religious or political prejudice; and, fortunately, the question was never seriously raised before me. The nearest approach to it was when a plaintiff sued for a debt which was long statute-barred, and one of the lay members of the Court suggested that since there was a moral obligation to pay one's lawful debts, the Statutes of Limitations must have been dictated by religious prejudice.

I always found the members of the District Courts with whom I sat very common-sense and practical. I do not remember meeting any cranks. I always found them easy to work with and ready to accept, after explanation and discussion, what I believed to be the law. I can remember only a few occasions on which I was in a minority on a question of fact.

(1) "Legal Code". Judiciary, page 9.

The Courts were usually well attended, though where a large congregation of people was likely to attract unwelcome attention precautions were taken to prevent it. Litigants often conducted their cases in person, an eventuality to which I never looked forward with pleasure since it always meant difficulty and delay. On occasions we allowed spokesmen other than qualified practitioners to assist litigants in the presentation of their cases. Quite a number of solicitors and counsel appeared to conduct cases for their clients.

When Courts were held in the country districts the question of commissariat had to be considered. This was always in the capable hands of some ladies, usually, I imagine, members of the Cumann na mBan. Whoever was responsible, the members of the Court, the Registrar, the Republican police on duty, and, very often, some of the legal practitioners as well, were always well looked after. The sittings were on occasions very protracted and I can remember on a few occasions feeling completely exhausted after a sitting beginning about ten in the morning and not completed before nine or ten at night.



Part III.The Dáil Courts - From the Truce to the Treaty.

As I have already mentioned, when the Truce came I was in East Limerick. A few days later I finished my Circuit there and returned to Dublin. On reporting to the Ministry for Home Affairs I found that sittings had been arranged for me in Longford. I have a note of my sittings there and find that I started in North Longford on July 19th and in South Longford on the 22nd. I appear to have disposed of twenty-two cases in the whole County, but none of them has left any impression upon my memory. Neither can I recollect where the sittings were held, or whether they took place openly or surreptitiously. I imagine there was no change in the practice of holding them in secret. In August I was again in West Clare, and very probably had a sitting in East Clare as well. Having completed these sittings I spent four very pleasant weeks on holiday in France.

I returned to Dublin sometime in September. I have no note or recollection of any sittings prior to the 21st; though it is very likely that I held some Courts in the City before that date. I find from my notes that I sat in Mullingar on the 21st where I disposed of nine cases, and that I heard five in Moate starting on the 23rd. I cannot remember where exactly these sittings took place, or whether they were held openly or otherwise<sup>(1)</sup>.

(1) The solicitors attending these Courts included: John Wallace, Joseph Shaw, and John Macken of Mullingar; P.V. Murtagh and Denis Hannon of Athlone; Gerald Maguire of Claremorris; Esmonde Power of Castlereagh; Joseph Dixon of Roscommon; and James Rogers of Tullamore.

For the period from October 3rd to December 13th 1921 I made the drafts of my decrees and orders in a note-book instead of on separate sheets of paper as theretofore. This I have. I have also three note-books containing my notes of the evidence given in most of the cases tried before me during that period. With the assistance of these records I am able to enumerate most of my sittings and to recall some incidents in relation to them and to some of the cases heard.

On October 3rd I was in Limerick City where I disposed of five cases. From there I went to Newcastle West where I heard six. I opened in East Limerick on October 6th in a place called Ballinvana where there were fifteen cases listed. One of these will bear mention. It was an action to recover a considerable sum for arrears of rent brought by one Augustine Hogan against Mrs. 'Binty' Marshall, an expert horse-woman and well known rider at the Dublin Horse Show. She came into Court accompanied by several members of a local Flying Column, a gesture which my colleagues the District Court Judges rightly or wrongly interpreted as an attempt either to influence them or to overawe the defendant. If such were her intention her psychology was greatly at fault as the only effect the presence of her bodyguard seemed likely to produce upon my colleagues would have been distinctly adverse to her interests. The case was in fact compromised by Mrs. Marshall consenting to judgment, with costs, for one half of the amount claimed; so that I am quite unable to say whether the plaintiff was in any way affected by the tactics attributed to his opponent.

From Ballinvana I went to Kiltelly where thirteen cases awaited trial. I can remember this sitting. It was held in a long shed of some kind whose normal function I cannot recall, if I ever knew. The Court and counsel and solicitors were accommodated with tables and chairs; but the litigants and witnesses had to be content with long wooden benches or backless forms. One of the cases for trial was an action for breach of promise of marriage in which the lady in the case claimed a thousand pounds damages. She was a good-looking woman of thirty-five or forty; but the defendant, her senior by some ten or fifteen years, was in no way her equal in appearance. He could well have served as a model for some of Dublin Opinion's caricatures of a farmer. When the case was called Mr. Hugh O'Brien Moran, who appeared for the plaintiff, asked me to pass it for the moment, as he and Mr. Jack Power of Kilmallock, who represented the defendant, believed that the parties would be able to agree on a settlement of the matter. There were several heavy cases for trial that day, and we did not finish the list until nearly six o'clock. When the breach of promise case was called again the place was deserted save for those concerned. The defendant was sitting in a crouched position on one of the forms, with his stick planted on the ground between his knees, his two hands clasped on top of the stick, and his chin resting on them. The form was narrow, and his posterior projected quite noticeably over the rear edge. Moran got up and said that he was happy to inform the Court that the parties had been able to adjust their differences, and that the Court would not be troubled with the case. It appeared that they had been courting for some sixteen years before the occurrence of the breach complained of.

The defendant was prepared to consent to judgement for the sum of one hundred and sixty pounds and costs. Power agreed that this was the settlement arrived at, and it was duly received and made a rule of Court. The defendant remained in the position and attitude that I have described while the plaintiff proceeded to leave Court on the arm of a relative, a brother I believe. Her course took her past where the defendant was sitting and when she arrived in his vicinity her feelings quite overcame her. Abandoning her brother's supporting arm she completely surprised the defendant by a sudden and smartly executed attack in the rear; and accurately and very forcibly planted her boot on that part of his anatomy which projected over the edge of the bench. Outraged both in his person and his feelings the defendant struggled to his feet and waving his stick in the air shouted: "The settlement is off! The settlement is off"! Moran and Power forthwith got hold of their respective clients, and succeeded not merely in preventing any further demonstrations of emotion but also in reconstituting the settlement. The case accordingly stood settled for one hundred and sixty pounds and costs, and a free kick.

From East Limerick I moved into Clare and opened the sessions for West Clare at a place called Ballykett near Kilrush on October 14th. There were some fifteen cases for hearing which were disposed of in one way or another inside two days. I opened the sittings for East Clare in Ennis on October 17th. and heard eight cases in the course of a three day session. I heard two cases in Limerick City on October 20th. None of these cases

calls for particular mention. At the sittings in Limerick and Clare the litigants in almost all the cases were represented by solicitors, and in some by counsel as well. My labours in the South-West concluded for the time being I returned to Dublin<sup>(1)</sup>.

On my return I probably held some Circuit Sittings in Dublin, but if so I have no record of them. The only case of which I have any note is an appeal from a decision of Arthur Clery in an Equity Suit heard at a sitting for North Roscommon in the previous August. This appeal was heard by the Supreme Court on November 9th. Crowley had been just released from gaol after more than twelve months incarceration, and he sat with Meredith and myself to hear this appeal which was in fact the first case heard by the Supreme Court in the exercise of its appellate jurisdiction. The suit was one for the specific performance of an agreement by which one William Kilgallon agreed to sell some hundreds of acres for division among a dozen landless men or uneconomic holders at the price of six thousand six hundred pounds. The plaintiffs were able and ready to complete, but the defendant alleged that he had been intimidated into making the contract and had repudiated it. Clery had made a decree for specific performance against which Kilgallon appealed. I cannot remember where we sat to hear this appeal. I imagine it was in the Technical Schools in Parnell Square.

(1) In Limerick the solicitors attending included the following from Limerick, Cork and Tipperary: R. Cussen, J.P. Lavan, D. Casey, J.G. Skinner, W.E. O'Brien, Jack Power, Roger Fox, M. Frewen, Barry Sullivan, Hugh O'Brien Moran, P. O'Donnell, M. Burke, Charles Ebrill, and Messrs. O'Meara of Mallow, Marshall and Moran of Listowel, and Liston of Charleville. Mr. James Comyn appeared in several cases. In Clare those attending included the following: Michael O'Shea and Michael Killeen of Kilrush, Dr. Daly of Ennistymon, James Lynch and J.B. Lynch of Ennis. Messrs. Hunt and Dudley of Ennis. M. Nolan of Kilkee.

St. Lawrence Devitt<sup>(1)</sup> appeared for Kilgallon and John O'Byrne<sup>(2)</sup> for the plaintiffs. Judgement was reserved and delivered subsequently in the course of a few weeks. We all three read judgments. I was in favour of upholding Clery's decision and dismissing the appeal. Unfortunately I cannot remember whether this was the view of the others. I believe it was.

On November 22nd I was in East Cavan where I opened a sessions at a place rejoicing in the name of Maudabawn. If my memory does not mislead we sat in the upper room of a shop or business premises of some kind. There were four cases for trial, and we had completed the hearing of one case when we were interrupted by the incursion of a District Inspector and several constables of the Royal Irish Constabulary. The Inspector politely and quietly asked us whether we were an arbitration court. I answered that we were not; that we were a Court of the Republic. He replied that in that case he could not allow us to continue, and would have to disperse us. I said: "By force, Inspector?" He said that he would have to take whatever steps were necessary. I asked him would he mind withdrawing for a few minutes to allow us to discuss the matter privately among ourselves and with the legal practitioners present, and he agreed to do so. In the absence of the police we debated whether to break up or await developments. I do not remember who my colleagues on the Court were. The solicitors in the case we had completed were James J. Lynch and Justin McKenna of Kells. There were several other solicitors present, I believe, but I cannot recollect who they were. I think

(1) Afterwards: Circuit Judge, since deceased.

(2) Mr. Justice O'Byrne of the Supreme Court.

E.J. Duffy of Virginia was one of them. I said that I did not believe the police had any intention of proceeding to extremes; and that I was prepared to continue the sitting; but that I would be guided by whatever view the others took of the probabilities. The majority were in favour of dispersing and holding the Court more circumspectly in some other venue at a later date. I accordingly informed the Inspector that we had concluded our business for the day, and we broke up. Before doing so I told the others that I would return at once to Dublin to seek instructions from the Minister for Home Affairs, and to have arrangements made for a further sitting in East Cavan to dispose of the rest of the business.

I went back to Dublin and saw Stack the following day. I told him what had happened and asked him whether, under the Truce, we were entitled to hold sittings of our Courts. I cannot remember what his reply was. I think he said that the matter had not been considered, or was not covered, or something to that effect. He did say that he had good reason to believe that the Royal Irish Constabulary had no Governmental authority to use force to disperse sittings of the Republican Courts, and advised me in the event of a recurrence of such an attempt to stand my ground and see what happened. Sittings had been arranged in County Monaghan commencing in Carrickmacross on November 24th; and fortified by Stack's information and advice I again repaired Northwards.

I disposed of some sixteen cases in the County Monaghan commencing in Carrickmacross on the 24th and ending in Monaghan on the 30th. None of these were of any

particular interest. We sat openly, the litigants being in all cases represented by solicitors and in many by counsel as well. Cecil Lavery and Felix Sherry came down with me from Dublin and opposed each other in quite a few. Among the solicitors attending were: Messrs. Spier, D. Keenan, M. Lardner, Marron, Smith, F.M. Duffy, Kennedy, H. Murphy and C. Laverty. Counsel included Cecil Lavery, Michael Ryan and Felix Sherry. I am not clear as to what town was the scene of the incident I am about to relate. My impression is that it was Monaghan; but the probabilities would appear to indicate Carrickmacross. We were sitting in a hall of considerable dimensions, the table at which the members of the Court were accommodated being on a dais or raised platform of some kind, at one end of the chamber, while the entrance from the street was at the other. We were in the middle of a case, Felix Sherry being on his feet cross-examining a witness, when I observed a file of about a dozen police come quietly in at the other end of the hall. They lined up across the hall just inside the door while the Head Constable in charge advanced very silently up the centre aisle towards where we were sitting, and took up his position directly behind Sherry. So silent was his approach and so immersed was Sherry and the witness in his cross-examination, that both were entirely unaware of what was happening. I said "Pardon me for a moment, Mr. Sherry!" Sherry looked at me inquiringly. I said "Would you mind resuming your seat for a moment?" He was quite at a loss to know why I should make such a request until the direction of everybody's gaze made him turn round, to find the stalwart uniformed figure towering over him, whereupon he sat down very suddenly. I addressed the Head Constable and



asked him what he wanted. He inquired: "Is this an arbitration Court?". I said: "No! This is a Court of the Irish Republic". The formula was exactly the same as at Maudabawn. "In that case" said he, "I shall have to call upon you to disperse". I had already told the other members of the Court what I intended to do in the event of such an interruption, and what I had been told by Stack. I said to the Head Constable: "We have no intention of dispersing". "Then I will have to disperse you". I adhered to the formula and inquired: "By force"? He replied "I shall have to disperse you". I called upon Sherry to continue his cross-examination, which he did somewhat nervously. The Head Constable maintained his position for some moments towering over Sherry and then announced in a loud voice: "If you are not dispersed in fifteen minutes I shall have to disperse you". I said: "Head Constable, you will find us still here in fifteen minutes". He turned and retreated to the end of the hall where he rejoined his men. The case went on without any further incident, and after about twenty minutes or half an hour the forces of the Crown withdrew as quietly as they had come. This and the previous time in Maudabawn were the only occasions on which any Court of mine was so interfered with.

Having completed my work in Monaghan I went to East Cavan to resume the sittings which had been interrupted at Maudabawn. We sat in a small farm-house. As far as I remember we sat in the kitchen. There was quite a number of cases for hearing and there was very little accommodation for litigants or witnesses particularly those in waiting. I had made a mistake as to the day fixed for this sitting. I had thought it was the 31st October instead of the 30th.

and had sat at ten o'clock that morning in Monaghan to finish the work there. While doing so I got word that they were awaiting me in East Cavan. I completed the Monaghan business and snatching a hurried lunch secured a car and departed for Cavan. We did not complete the sitting there until after ten o'clock that night. As night fell such litigants and witnesses as were in waiting for their cases to come on crowded into the kitchen in addition to those concerned in the case at hearing, and the atmosphere became almost intolerable. When we eventually rose at about half-past ten I had reached a stage of physical and mental weariness amounting almost to exhaustion. I sat the following day at a place called Laragh. I have no recollection of this sitting. In all I disposed of some twenty-five cases in Monaghan and Cavan. These were the only sittings I ever held in Ulster.

I have no record of any sittings between the 1st December when I finished in Laragh and the 13th December when I sat in Dublin for the North City. During the following fortnight I appear to have heard some ten cases from the City North and South. One of these was an action taken by the Dublin County Council against the late Patrick Belton, of Belfield Park, Drumcondra, to recover rates in respect of his premises there. I have no record of my decision. Belton was apparently contending that the rate had been improperly struck and could not be levied. Another was a 'running down' action in which the late D.O.M. Leahy, the well-known book-maker, figured as defendant. These were the last sittings I held before the resolution adopting the Treaty was passed by the Dáil on January 7th 1922.

The solicitors attending the sittings in Cavan included: Messrs. McBreen, Martin Tierney, J. Duffy, G.V. Maloney, Aidan McCabe and E.J. Duffy.

The solicitors attending the Dublin Sittings included: B.J. Goff, J. Gleeson, W. Corrigan, J.J. Shiel, E.J. Duggan, James

The period between the Truce and the Treaty was marked by an immense increase in the volume of business transacted at the Circuit Sittings over which I presided. Litigants took advantage of the cessation of hostilities to resort in greater numbers to the Courts, and counsel and solicitors appeared more frequently. There was uninterrupted communication between the District Court Registrars in the country and the Ministry of Home Affairs; and the arrangement of Circuit Sittings presented no difficulty. The result was a great expansion of business at Circuit Sittings. During this period I appear, from the records I have, to have disposed of some hundred and thirty-five cases. These included appeals from the District Courts at ordinary sittings as well as cases heard at first instance. They were of all kinds and descriptions, almost every type of claim in equity or at common law being represented. There were will suits and suits for the administration of estates, suits for declarations as to the ownership of land and other property, suits for specific performance and to set aside and rectify deeds, actions for breach of promise of marriage and for judicial separation, actions for assault, slander, trespass, trover and conversion, detinue, breach of contract, breach of warranty, work and labour done, money had and received, money due on a promissory note, ejectment, rent, and so forth and so on. Apart from the appeals most of them were very substantial cases. In several the amount involved exceeded the thousand pounds and in most many hundreds were at stake. While I was disposing of this work Clery and Meredith were not, of course, idle. I have no record, and no recollection, of what work they were doing, but I believe that they were all holding Circuit Sittings in the country

as well as in Dublin. As I have mentioned, Clery was sitting in North Roscommon in August. Crowley resumed work on his release. I should imagine that the four of us got through a vast quantity of work during this period between the Truce and the Treaty.

At this time the offices of the Department of Home Affairs were situated on Wellington Quay. Paddy Sheehan had been arrested and may have been still in gaol. Dan Browne<sup>(1)</sup> was acting as Secretary of the Department. I cannot remember who else was on the staff, save that Niall McNeill<sup>(2)</sup> was there for a short period about the time the Treaty was signed.

(1) Now a member of the Appeal Tribunal, Irish Land Commission.

(2) Now Director Ordnance Survey.

Part IV.

From the Treaty to the end.

From the day on which its provisions were first made public I was in favour of the acceptance of the Treaty. I did not like the Oath, or the Empire, or Partition or the Privy Council, any more than its most violent opponents; but I thought that the arguments for its acceptance were overwhelming. I came to the conclusion that the majority of the people, and a very big majority at that, would be of the same opinion as myself. This view was based, not on anything gathered from reading the newspapers, but upon the fruits of my own observation, and on many conversations with all and sundry during the period of my peregrinations throughout the country. I felt that once the Treaty had been signed and its provisions made public nobody, no matter who he was, or what his prestige or reputation, would be able to muster any more than a minority of the people in support of its rejection. If it were rejected and war were to result it seemed obvious that we would have to carry on the struggle burdened with all the disadvantages of disunion, disillusionment, and a greatly weakened morale; and I could see little chance of success in such a conflict. To me the rejection of the Treaty meant the postponement of all chances of reasonable self-government for a generation or longer. I was accordingly glad, but by no means jubilant, when on Saturday January 7th 1922 the Dáil by a majority of seven accepted the motion approving of the Treaty.

I assumed, without having given the matter very close

consideration, that the Provisional Government would take over all functions of government in the country, both from the Republican Government and from the British Government; and certainly did not expect that an attempt would be made by those Ministers who were in favour of the Treaty to carry on both Republican and Provisional Governments at the same time. The decision to do so was, I thought, a grave political mistake. As politics were, whatever my political opinions, none of my business, I was content to carry on with my work.

Eamonn Duggan became Minister for Home Affairs in the Republican Government in succession to Austin Stack; and George Nicholls<sup>(1)</sup> was made Assistant Minister. I think it was about this time also that Tomás O'Cleary<sup>(2)</sup> became Chief Registrar of the Republican Courts. I cannot say that such was his title; but my recollection is that, to speak very generally, such was his function. The Department was housed in 13, Wellington Quay; where it had arrived from Henry Street via South William Street and Molesworth Street, having to change its address from time to time during the pre-truce period owing to the persistent interest of the Crown Forces. As the business of the Courts continued to increase and expand in the post-Treaty period it was found necessary to find separate accommodation for O'Cleary in offices at 22 Dawson Street.

I have little in the way of records to assist my recollection as to the post-Treaty period. From one of the note-books already mentioned I find that I had a sitting in Dublin on February 3rd., but where I cannot say. I should imagine that all four of us were very busy about

(1) Afterwards County Registrar, Galway.

(2) Afterwards Chief Clerk Dublin Metropolitan District Courts.

this time. The Record Office has succeeded in finding, among the Dáil Courts (Winding Up) Commission records, a Circuit List for Spring 1922 which reads as follows:

SAORSTÁT NA hÉIREANN.

REPUBLICAN DISTRICT COURTS. CIRCUIT SITTINGS.

Spring 1922.

Western Circuit. Connaught.

|               |                    |          |                           |
|---------------|--------------------|----------|---------------------------|
| Roscommon. S. | Roscommon.         | February | 21 - 23.                  |
| Roscommon. N. | Boyle.             | "        | 24 - 25.                  |
| Leitrim. S.   | Carrick-on-Shannon | "        | 27.                       |
| Mayo E.       | Swinford.          | "        | 27 - Mar. 2 <sup>nd</sup> |
| Mayo S.       | Claremorris        | March    | 3 - 9                     |
| Mayo W.       | Castlebar          | "        | 10 - 14.                  |
| Mayo W.       | Westport           | "        | 15 - 18.                  |
| Mayo N.       | Ballina            | "        | 20 - 25.                  |
| Galway E.     | Ballinasloe        | February | 25 - 27.                  |
| Galway W.     | Galway             | "        | 28                        |
| Galway N.     | Tuam               | March    | 1 - 6                     |
| Galway S.     | Gort               | "        | 7 - 9                     |
| Leitrim N.    | Manorhamilton      |          |                           |
| Monaghan      |                    |          |                           |
| Sligo         |                    |          |                           |
| Donegal W.    |                    |          |                           |
| Donegal N.    |                    |          |                           |

Eastern Circuit. Leinster.

|                  |             |          |             |
|------------------|-------------|----------|-------------|
| Longford N.      | Longford    | February | 24 - 25     |
| Meath N.         | Navan       |          | 27 - Mar. 1 |
| Meath S.         | Trim        | March    | 2           |
| Wicklow E.       | Wicklow     | March    | 3 - 4       |
| Wicklow W.       | Tinahely    | "        | 13          |
| Wexford N.       | Enniscorthy | "        | 15          |
| Wexford S.       | New Ross    | "        | 16          |
| Waterford County | Dungarvan   | "        | 18          |
| Waterford City   | Waterford   | "        | 20          |
| Tipperary E.     | Clonmel     | "        | 21 - 25     |
| Offaly S.        | Birr        | "        | 27 - 29     |
| Offaly N.        | Tullamore   | "        | 30 - 31     |
| Kildare N.       | Kildare     | April    | 1           |
| Leix.            | Abbeyleix   | "        | 3 - 8       |
| Carlow           | Carlow      | "        | 10 - 11     |
| Kilkenny S.      | Callan      | "        | 12 - 13     |
| Louth            |             |          |             |

Southern Circuit.

|               |                |             |
|---------------|----------------|-------------|
| Limerick W.   | Newcastle West | March 3 - 7 |
| Limerick City | Limerick       | " 11 - 14   |
| Limerick E.   | Kilmallock     | " 15 - 22   |
| Kerry E.      | Killarney      | " 8 - 10    |
| Kerry W.      | Tralee         | " 11 - 14   |
| Kerry S.      | Cahirciveen    | " 15 - 17   |
| Kerry S.      | Kenmare        | " 18        |
| Cork W.       | Bantry         | " 20        |
| Cork S.E.     | Bandon         | " 21 - 23   |
| Cork E.       | Midleton       | " 24 - 25   |
| Cork N.       | Kanturk        | " 27 - 30   |
| Clare W.      | Kilrush        | " 24 - 29   |
| Clare E.      | Ennis          | " 30 - 31.  |

These Circuits were, I believe, carried out more or less as arranged; though I cannot say who went Circuit apart from myself. I think we must have all gone out. It will be seen that no dates have been assigned to some towns; and that in some instances two towns on the same Circuit have been assigned the same date. This can hardly be a mere mistake. I know that at some period Temporary Assistant Circuit Judges were appointed to help us out; and this may perhaps help to explain the duplication as to dates. I can remember that Cecil Lavery at some period acted as a Temporary Assistant Circuit Judge and sat in Mullingar; and that Denis B. Kelly<sup>(1)</sup> acted in Donegal where he had John Hearne acting as his Registrar.

The business of these Circuits was obviously going to be heavy and we asked the Minister for Home Affairs to allow each of us the assistance of a Registrar, legally qualified, to be appointed by ourselves. I selected Leo MacCaulay<sup>(2)</sup>, and his appointment was approved by the Minister on February 22nd. I find from my note-book that I started off on the Western Circuit and held sittings in Roscommon and Boyle on the dates

(1) Of Killarney, Barrister-at-Law.

(2) Now our Ambassador to Spain. Meredith appointed Michael Lennon, now a District Justice in Dublin.



fixed. I did not sit in Carrick-on-Shannon as arranged. For some reason or other the sitting was changed to Mohill where I held Court on February 27th and 28th. I disposed of twenty-one cases in Roscommon; seven in Boyle; and nine in Mohill. This seems a very good week's work. I cannot now remember why I did not continue on the Western Circuit; or who finished it. I know that I opened the business of the Southern Circuit at Newcastlewest on March 3rd and carried it out as arranged; save that I do not appear to have held any sitting in Limerick City or in Clare; and that I sat in East Limerick immediately after Newcastlewest. I disposed of eighteen cases in County Limerick and moved on into Kerry where I opened at Killarney on March 8th. There were fifteen cases for hearing there, seven at Cahirciveen, six at Kenmare, and eight at Tralee. One of the cases listed for hearing at Tralee was concerned with the several fishery in the River Laune belonging to Messrs. Power and Dodd of Killorglin. As this was expected to occupy a week or so I adjourned it to the first week in April. From Kerry I moved into West Cork where I opened at Bantry on March 20th. I disposed of some half-dozen cases in Bantry and about the same number in Bandon. My note-book ends with this Bandon sitting; and I have no record relating to the rest of the Circuit save an account which I submitted to the Department of Home Affairs of my own and my Registrar's expenses. Up to and including Bandon I had disposed of over one hundred cases between the two Circuits. I held sittings as listed in Middleton and Kanturk; and leaving Ennis and Kilrush to be done, apparently; by someone else, returned to Tralee to try the fishery case already mentioned.

Certain incidents in relation to this Circuit will bear mention. In one of the towns in Kerry, I think it was Cahirciveen but I am not sure, an officer of the I.R.A. attended at the sitting of the Court and requested me to inform him whether the Court was a Republican or a Free State one. I told him it was a Court of the Irish Republic whereupon he retired apparently satisfied. Had I not been able so to reassure him I doubt if we would have been allowed to proceed with the sitting. At some town in Cork, I think it was Bandon but again cannot be certain, I received an "Order" in typescript purporting to be signed by a Commandant in the I.R.A. directing me not to try a certain case which was listed for hearing. I immediately wrote back to the Officer in question telling him to mind his own business as I intended to mind mine. I heard no more about the matter, but when the particular case was called there was no appearance by or on behalf of either party. This was of course an instance of gross insolence and contempt of Court; I took the view, however, that nothing was to be gained by taking any judicial notice of it. Any Order that I could make in regard to this gentleman was not likely to be carried out; and could only have the effect of making me, and the Courts, look somewhat ridiculous. I reported the matter to the Department of Home Affairs on my return to Dublin; but forget whether any action was either contemplated or carried out.

The sitting at Middleton was remarkable by reason of one case which I tried there. It was an action to set aside a deed on the grounds that it had been procured by intimidation and violence. The facts were briefly

these. Back in the eighties or nineties of the last century a family I will call McCarthy (because it is not their name) was evicted from a farm holding. The landlord subsequently let the place to a family I will (for similar reasons) call O'Sullivan. The McCarthys left the neighbourhood and I think emigrated while the O'Sullivans remained on in possession of the land which in the estimation of their neighbours they had "grabbed". Some years before the case came on for hearing a scion of the McCarthys returned to the neighbourhood and joined the Volunteers. The O'Sullivans, who were then represented by two sisters and a brother in later middle age, were still living in the old McCarthy holding. Coincident with the beginning of the "troubled times" the O'Sullivan's own private troubles began. They received threatening letters requiring them to give back to the McCarthys the lands they had "grabbed". They paid no attention to these. Their fences were then levelled and their cattle driven. They were still obdurate. They were then raided at night by armed and masked men. They were forced to their knees, shots were fired over their heads, and they were made to swear that they would restore the lands. They went back on their undertaking. The next step was that the man of the house was shot on his way back from Mass one Sunday. He was not killed but he was seriously, though not dangerously, wounded. Some men who were locally prominent in the national movement, together with the Catholic Curate of the parish, called on the O'Sullivans and implored them, if they would save their own lives and prevent murder from being done, to give up the land. They consented and visiting their

solicitors instructed them to prepare a deed assigning the place to the McCarthys. This was done and the instrument was executed by both parties. It purported to assign the land to the McCarthys without any consideration or with only a nominal one. The solicitors, who were aware of the facts, were at pains to make clear to both sides that the deed was legally not worth the paper on which it was written, and would be set aside by any Court for the asking. The McCarthys went back into their old holding and the O'Sullivans went out. When the Truce brought more freedom for resort to the Republican Courts, and freer scope for their operation, the O'Sullivans thought fit to make an attempt to recover the ground they had lost and instituted proceedings to set aside the deed; and this was the suit I had to try. As it was an "equity suit" I tried it alone, the other Judges of the District Court sitting with me but taking no part in the hearing or the decision. The late James Francis Meagher appeared as counsel for the O'Sullivans and the late George Daly for the McCarthys. The case was only too clear and the evidence in favour of the plaintiffs overwhelming and conclusive. I gave judgment setting aside the deed on the grounds pleaded. We were sitting in some kind of hall or large room; I think it was a school room. I know that the table at which we sat was placed some little distance in front of a fireplace. It did not require the pregnant silence which followed the delivery of my judgment to inform me how unpopular was my decision. Meagher, sensing the hostile atmosphere, gathered up his books and papers and left the room with more haste than dignity. We were about to proceed to the next business when the Curate whom I have already mentioned

stood up and addressing me said that while he realised that according to law I could have given no other decision he would like me to know that the judgment would not conduce to the peace of the parish. I could not see then, nor can I see now, the purpose of his interjection. I forget what reply I made, if any. We were proceeding with the next case for hearing, and the O'Sullivans were leaving the room, when a young man stood up and jostled one of the O'Sullivan women. She attempted to push past him whereupon he gave her a violent shove with the result that she fell. I called upon the Republican Police, half a dozen of whom were standing at the back of the Court, to keep order. Their only response consisted of scowling looks directed at me, and some muttered observations casting doubt upon my paternity for having given such a decision. Things began to look nasty and there was some disorder. I announced that since those whose duty it was to keep order were unable or unwilling to do so I would have to adjourn the Court. I rose from the table and went and stood with my back to the fire. Seamus Fitzgerald, a member of the Dáil, who was one of the District Court Judges, appealed for order and after some time succeeded in having quiet restored. Before we resumed the sitting the Reverend gentleman, who had by his indiscreet remark contributed in some degree to causing the disturbance, came up to me and asked when the decree restoring the possession of the lands to the O'Sullivans would be executed. I was rather annoyed and replied somewhat shortly that the execution of decrees was not my function but that of the Republican Police; and that judging by their conduct

there that day it did not look as if the decree would ever be executed. He departed and we continued with the rest of the business in peace and quiet. A year or two later when I was Judge-Advocate General I was rung up at G.H.Q. by the Secretary of the Department of Justice who asked me did I remember trying this case of O'Sullivan versus McCarthy. I said I did only too well. He said: "There is some question about executing the decree in that case. There is a Reverend gentleman here with me who assures me that shortly after you gave judgment in the case you told him that while you were legally compelled to give the decision in favour of the O'Sullivans you never intended that it should be carried out". I told the Secretary, I am afraid with undue emphasis, that the Reverend Gentleman's memory must be somewhat confused. I gave him the true facts of the matter and there it ended as far as I was concerned. I heard later that the O'Sullivans were given a holding in a different neighbourhood by the Land Commission, and that the McCarthys were left in undisputed possession of their ancestral acres.

The Power and Dodd fishery case also deserves some particular mention. Messrs. Power and Dodd had for years owned the several fishery in the Laune estuary and enjoyed it without interruption, until a number of fishermen, deeming the times most opportune to assert the right of the public to fish for salmon in the tidal waters of the river, proceeded to do so openly and in defiance of anything the owners could say or do. Messrs. Power and Dodd accordingly brought suit to injunct the fishermen in question from trespassing upon their fishery. They had to establish their title to the fishery before

they could get their injunction. They were able to trace their title, as far as I can remember, back to the Earls of Desmond. No several fishery can legally exist in tidal waters unless the river was "put in defence", (i.e. made private or "several" by successfully excluding the public) before the time of Magna Charta. It is not of course easy to prove a paper title of such long standing; but where a several fishery has been enjoyed without interruption for centuries the presumption arises that it must have had a lawful origin; and therefore must have been put in defence before Magna Charta.

Henry D. Conner K.C. <sup>(1)</sup> and Barney Roche <sup>(2)</sup> appeared for Messrs. Power and Dodd; and Michael Comyn <sup>(3)</sup> K.C. and Thomas O'Donnell <sup>(4)</sup> appeared for the defendants. The case took a week. A vast quantity of documents was put in evidence; and I heard a good deal of learned argument on both sides. I reserved judgment which I later delivered in Dublin. I upheld the title of the plaintiffs and granted them their injunction. The defendants appealed to the Supreme Court which heard the appeal sometime in May or June, and on June 14th gave judgment affirming my decision.

I finished in Tralee on April 10th and returned to Dublin. I am sure that I sat in Dublin to hear cases during April, but of this I have no record and no recollection. In May I went on Circuit in Tipperary. I held sittings in Nenagh, Thurles and Tipperary. I have no record of these and have to depend on recollection unaided. I can remember holding a criminal

- (1) Afterwards Circuit Judge, Cork.
- (2) Afterwards Assistant Circuit Judge.
- (3) Afterwards Circuit Judge, Eastern Circuit.
- (4) Afterwards Circuit Judge, Cork.

sessions in Nenagh. This was the first occasion on which I tried anything but civil cases. I can remember that there was a very full attendance of Jurors. Mr. Gleeson<sup>(1)</sup>, who had been Crown Solicitor for North Tipperary, appeared for one of the prisoners and made some objection to the manner in which the jurors had been summoned. I think it was because they had not been summoned by the Sheriff. I over-ruled his objection, though on what grounds I am quite unable to recall. Neither can I remember any of the cases tried. I know that during this Circuit the late Richard Cherry, son of a former Lord Chief Justice of Ireland, appeared to prosecute upon behalf of the Republic. Martin Connolly<sup>(2)</sup> also prosecuted in some cases; and I think Joe Kenny<sup>(3)</sup>. In addition to the criminal cases there was quite a big number of civil cases to be tried. I cannot however, recall any of them. I do remember a Habeas Corpus application which, I think, will bear mention.

The applicant was a young farmer. He had got a considerable fortune with his first wife who died in giving birth to their only child. He had no female relative to look after the baby, and had to ask his wife's mother to do so. After some years he married again, and naturally wished to have his child returned to him. His first wife's mother, however, refused to give him back his child unless and until he paid back the fortune he had got on his first marriage. He refused to do this and she held on to the child. There was no other issue in the case. There was no possible answer to his application. The

(1) Father of Dermot Gleeson, District Justice.

(2) Until recently Circuit Judge.

(3) District Justice, Dundalk.



recalcitrant mother-in-law had been given notice of his application, but did not attend. Instead she sent her son to represent her. He admitted having custody of the child, and made the case that the fortune should be paid back before the child was returned. I explained to him that neither he nor his mother had any right whatever. He eventually gave me his personal undertaking that the child would be in Court the following Saturday. When I sat on the Saturday there was no sign of the child or its uncle, and I made an order attaching the uncle for contempt of Court in failing to honour his undertaking. I returned to Dublin that night to find a telegram waiting me from the Governor of Limerick Prison, informing me that he had received the uncle as a prisoner under my Order. I was amazed at the celerity with which the Order had been executed. The Order had the desired effect; the child was after some weeks handed back to its father; and sometime in June I granted an application, made on behalf of the uncle by St. Lawrence Devitt, to discharge the attachment order. I was told subsequently why the order had been so swiftly executed. It appears that the uncle had, in relation to some land dispute, fallen foul of the Officers of one of the local Volunteer battalions, so that when I made the order of attachment the Republican Police were only too anxious to enforce it.

On my return from Tipperary I held sittings in Rathmines Town Hall, and in Parnell Square, and Kevin Street. I have a note of these and find that in the course of seven days I disposed of some twenty-five cases.

About the second week in June I went back to Kerry where I held a criminal sessions in Tralee. This

coincided with the sitting of the County Court Judge, John Cusack. There was a civil and criminal court in Tralee courthouse; and he was, according to his usual practice, sitting in the criminal court. I sent my Registrar, Leo MacCaulay, to see him and ask him had he any objection to sitting in the civil court so as to allow me to use the criminal court which was the only one which was provided with a dock. He very politely agreed to do so and even went the length of lending me his copy of Archbold's Criminal Practice. There were several criminal cases for trial; and a remarkably large attendance of jurors. I can recollect only one of the cases. A woman was charged with several counts of obtaining credit by means of false pretences. She had arrived in Killarney and put up at one of the best hotels. She allowed it to be understood that she was a returned wealthy American who was interested in buying a big estate in Ireland. A prominent estate agent in Dublin travelled to Killarney to interview her. She was very difficult to please, and put off making up her mind for quite a while. She obtained credit from the hotel and from various shopkeepers in Kerry. She kept up the farce for some weeks before the bubble burst. She was an old hand at this species of fraud and had several previous convictions. Among them was one in the Dublin Metropolitan Police Court. Her name and this conviction recalled to my mind the circumstance that I had been offered, and for some reason had to refuse, a brief to defend her on that occasion. She was duly convicted and sentenced. I'm sure that she considered that her "crowded hour of glorious life" was well worth the penalty exacted.

From Tralee I returned to Dublin and presumably to the routine of sittings at Parnell Square and Kevin Street. I have no record or recollection of any cases tried at this time. I can remember that I had agreed to act as arbitrator in some dispute in Thurles and had fixed June 28th as the day for the hearing. I was at a students' dance in Holles Street Hospital on the night of the 27th; and on my way home saw the troops from Beggars Bush Barracks moving up for the attack on the Four Courts which began the Civil War. I travelled to Thurles by train the following morning, to find that the parties had not signed any submission to arbitration; and could not agree on the terms of any submission. There was nothing for me to do but return to Dublin. All trains, however, had ceased to run; and I had to hire a car for £10 to drive me home. We were stopped by armed men at various points on the road to Dublin. Comparatively few of the Free State Forces were in uniform and, of course, none of the "Irregulars". It was not easy to know which side one was dealing with. I gave a lift to two young men who asked me to take them to Dublin. I think they were of the Anti-Treaty party. I believe that before we reached town we had been given passes by both forces. At Naas we paid a visit to the Military Barracks to find Colonel John Joyce in command. He had as a prisoner Seamus Donovan who was, I think, Director of Chemicals for the "Irregulars". I spent some time walking round the barrack square and chatting with Donovan. Near the village of Kill we were halted by a party of men engaged in digging a trench across the road. The officer in charge politely requested the use of the car for a short while. We made no objection and he and

the driver went off while I and the other two passengers remained behind and watched the trenching operations. In a short while the car returned with a load of "Volunteer" labourers and we continued our journey to Dublin glad not to have been requisitioned to assist the trench diggers.

Sometime before the beginning of June we had completed the arrangements for the Summer Circuits. I have no record as to what they were but my recollection is that I was to go circuit in the midlands. I know that I had arranged to go to Mullingar and Moate. I believe that the itinerary included Counties Longford, Westmeath, Offaly, Leix and Tipperary. Clery and Crowley, as will appear later, seem to have been bound for the South and South-West. I cannot say whether Meredith had arranged to go out or not. I believe that I was due to open my Circuit on Monday July 3rd though in what town I am unable to say. Infact I never went out at all.

The Four Courts were attacked on the morning of Wednesday June 28th, and fighting continued in Dublin for some days. I had apparently asked my Registrar, Leo MacCaulay, to make the necessary arrangements for departure on Monday morning. On the Saturday he wrote me as follows:

23, Mespil Road.  
Saturday.

Dear Cahir,

All the banks are closed so that I could get no money and the manager of The Wicklow, when I tried him with a cheque, pleaded that they needed all their ready to pay their own staff.

Nor could I get through to the Broadstone. From O'Connell Bridge O'Connell Street was a great canon bleak and uninviting. I was there at 11.55 and everybody had it that the Beggar's Bush people had given the others until 12 o'clock to clear out of the Gresham etc. and as I stood at Mitchell's corner looking down the street I felt like a bather before the first dip of the season. Then some blighter in the Ballast Office or Carlisle Buildings fired a shot over our heads - which was followed by a chorus of rifles down at the Pillar - so I effected a graceful retirement. It appears that Parnell Square is very hot also.

I then thought it might be possible to reach the Broadstone by a circuitous route and tried to hire a hack supposing that they would know the best streets to go by. But they all refused to attempt it - except one who was drunk and offered to chance it for half a sovereign. He was too tight to be trusted, so I have postponed the effort until to-morrow morning after Mass.

No one from whom I inquired had any definite information about trains. Some say that they do not run out of Dublin for more than ten miles. One of the jarvies said that the trains left the Broadstone as usual this morning but that they were called off for the afternoon. I hope to have definite news to-morrow before midday.

Yours,

Leo MacCaulay.

P.S. Draft enclosed.

I hear that though the banks are closed the managers resident in the suburban ones will open up if you knock them up and they know you. Do you know any of them? I don't.

I went up to the A. and B. Taxi place at Portobello to see about a car for Monday morning. They said that two of their cars had got through to the Broadstone early this morning and the trains went all right, but the chauffeurs refused to go back there again. The garage will be open to-morrow and I will call again.

Whatever may have been the news MacCaulay had for me on the Sunday we did not go off on Monday morning or at all. I know that I got in touch with the District Court

Registrars in some of the towns which I was to visit on Circuit and cancelled the sittings. The sittings in other towns were, I believe, cancelled through Mr. O'Cleary's office. In the result no Courts were held in the towns which I had included in my Circuit.

Clery and Crowley succeeded in getting away from Dublin and holding their Circuits as arranged. I must have got in touch and discussed the situation with Meredith, who like me had remained in town. I have, however, no recollection of this. I know that I wired to Clery suggesting that he and Crowley should return to Dublin to discuss with us the position generally of the Republican Courts in the situation created by the outbreak of Civil War. Clery replied by telegram:

Ballingeary.

Judge Davitt 21 Pembroke Park Dublin.

Impossible get back carrying out Circuit as arranged. No difficulty.

Arthur Clery.

Crowley replied:

Mallow

Davitt 21 Pembroke Park Dublin.

Left Limerick Friday by boat have seen your telegram to Clery impossible to go to Dublin at present all quiet in Counties Cork and Kerry. Could you and Meredith come to Mallow for meeting.

Crowley, Hibernian Hotel,  
Mallow.

Meredith and I did not go to Mallow and the project of a meeting of the four judges lapsed for the time being.

On July 11th O'Cleary wrote me telling me that my services were required for a sitting at Parnell Square on Thursday 13th when a half dozen cases were listed for hearing. Presumably I held this sitting and very likely several others of which I have no record or recollection. Towards the end of July I went down with a very severe attack of acute gastro-enteritis and for over a week took no interest in anything save my own misery. Crowley appears to have written me on July 20th. I have not got this letter and do not recall it; but I have no reason to believe that it miscarried. On July 25th he wrote again:

58, Ellesmere Avenue,  
Dublin.

25th July, 1922.

A Chara,

As I have not heard from you since I wrote you on Thursday last I conclude that the letter did not reach you. I met Meredith on Sunday and again to-day.

Last Wednesday an application was made to me for Habeas Corpus on behalf of Mr. George Plunkett who is imprisoned in Mountjoy. It was grounded on an affidavit by his father, Count Plunkett and as I considered that a prima facie case had been made out, I made an order directing Colm Ua Murchadha and the Minister for Defence of the Republic to have the prisoner at 18 Parnell Square on Wednesday, July 26th and to show good cause (if any) for his detention. I shall be glad if you can attend the Court as the case is very important. Meredith knows all about it, and I have also written to Clery asking him to attend.

Mise do chara

D. UA. CRUADHLAIOICH.

I believe that both of Crowley's letters must have reached me while I was in the throes of my very unpleasant disorder.

I know that I was quite unfit to attend any Court, or indeed to attend to any business, for over a week or ten days. On July 31st I wrote to Crowley, (and kept a copy of the letter!).

21 Pembroke Park,  
Dublin.

31/VII/'22.

Dear Crowley,

I have had an attack of gastro-enteritis, with which I have been confined to bed for the past week or so. This is the first opportunity I have had of replying to your letter. It has of course answered itself by this.

I have received more than one communication from the M.H.A. with reference to the position of the Courts. I assume that you and the other judges have been similarly communicated with. I think that there should be a meeting of the judges to consider the position now created. As I will possibly be confined to the house for a day or two, would you undertake to get the meeting together?

Yours,

Cahir Davitt.

Before any steps could be taken to convene such a meeting there was a radical alteration in the position of the Courts. On the following day, August 1st, the following announcement appeared in the Iris Oifigiuil:

#### DÁIL ÉIREANN

The Aire um Gnothaí Duitche with the concurrence of the Cabinet of Dáil Éireann hereby decrees that the decree of the Aire um Gnothaí Duitche purporting to establish courts of law and equity and criminal jurisdiction as part of the government of the Irish Republic be and the same is hereby rescinded and declared to be of no effect as from this date save to



the extent to which the said decree was or may have been effective to establish Parish Courts and District Courts outside the city of Dublin.

Dated this 25th day of July, 1922.

E.S.O Dugain, Aire um Gnothai Duitche.

As I have said I considered that the decision to carry on at the same time both the Republican and the Provisional Governments was a grave political error. I was, perhaps, taking too simplified a view of a complex situation but the way I looked at the matter was this: the purpose of the national movement was to secure independence, in full if possible, but if not, then to as great an extent as could be achieved; the Volunteers, the Courts, the Ministries, the Dáil, the Republican Government, the Republic itself, were all means to this end and not ends in themselves; the Treaty was a compromise, in the circumstances a reasonably good compromise, but unmistakably it was nothing else; it did not give us a Republic, or unity, or complete independence any more than it continued Castle Rule; it had however, been negotiated by plenipotentiaries appointed by the Dáil and signed by them; and the Dáil had by resolution approved of it; it provided for the setting up of a Provisional Government to whom all the functions of the British Government here were to be transferred until the enactment of a constitution for the Irish Free State and the formation of a government thereunder; in implementing the Treaty the Dáil should have unequivocally provided for the transfer to the Provisional Government of all the functions of the government of the Republic; the Dáil of 1922 had as much authority from the people to do this as had the Dáil of 1919 to set

up the Republic in the first instance; amongst the functions of British Government here which were transferred to the Provisional Government was the administration of justice, and the whole machinery of the "British Courts", as they were termed, was taken over and became part and parcel of the government machinery under our own control; the decision to carry on both governments at the same time saddled the country with two systems of judicature which were mutually incompatible. The dual government was, of course, a temporary expedient only, and presumably would have come to an end with the formation of the first Free State Government. With the outbreak of civil war, however, the whole situation, and in particular the position of the Republican Courts, tended to become impossible.

While the Republican Courts were carrying on their work in the way I have described the "British Courts" were also functioning. I cannot say to what extent their work had been interfered with, but I imagine that in some parts of the country they had considerable difficulty in functioning at all. At this stage a brief reference to the constitution of these courts may not be out of place.

To commence at the lowest stage, there were first of all the Petty Sessions Courts. They were composed of "Justices of the Peace"; men who did not necessarily possess any legal qualification or experience when appointed, and who received no remuneration for their services. They were nominated by the Lord Chancellor. Up to the nineties of the last century they had been recruited almost entirely from the ranks of the Ascendancy and the proportion of Protestants to Catholics was between 3 and 4 to 1. During

the period of his second Chief Secretaryship John Morley decided to try to redress the balance; and with the co-operation of the then Lord Chancellor some 637 Justices were appointed of whom 554 were Catholics<sup>(1)</sup>. These appointments had the effect of reducing the Protestant Ascendancy majority in the magistracy to about 2 to 1. This policy was, I believe, continued by some of Morley's successors, and at the advent of the Republican Courts the magistracy must have included a very considerable proportion of Catholic and Nationalist Justices, particularly outside Ulster. In addition to the unpaid magistrates there were a certain number of Resident Magistrates who were salaried Justices. They were in some cases men with legal qualifications, but were more usually retired officers of the British Army, Navy, or Royal Irish Constabulary. Each County was divided into several districts or divisions, and there was a Petty Sessions Court for each. They had a small civil jurisdiction and a criminal jurisdiction somewhat similar to that which I have described as being conferred upon the Parish Courts.

Next there were the Courts of General Quarter Sessions and the County Courts. Originally the Quarter Sessions Courts were composed only of Justices of the Peace who met once in each quarter of the year to transact the criminal and other legal business of the County as distinct from the same Justices sitting more frequently to transact the business of each division. In criminal matters the jurisdiction of the Courts of Quarter Sessions was very considerable; and speaking very generally, they could try all except the most serious offences. They could hear appeals from Petty Sessions in cases of summary

(1) "Recollections", Morley, Vol. 1, pp.339-40.

jurisdiction and also had jurisdiction in licensing matters. In course of time the chief criminal business came to be almost invariably conducted by the County Court Judge sitting alone with a jury in his capacity as Chairman of Quarter Sessions.

The County Courts were civil courts only. Generally speaking there was a Judge appointed for each county; but in the case of the smaller counties, and those where litigation was not heavy, several counties would share the services of one judge. The judges were usually King's Counsel of considerable standing, and they were proportionately remunerated. Generally speaking the County Court had jurisdiction in common law cases where the amount involved did not exceed £50; and on the chancery side where it did not exceed £500.

At the top was the Supreme Court of Judicature, with its two divisions; the High Court of Justice and the Court of Appeal, which sat permanently in Dublin. The High Court had general unlimited jurisdiction both civil and criminal; and the Court of Appeal had jurisdiction to hear appeals from the High Court, and in certain cases from the County Court, subject to an appeal to the House of Lords. Generally speaking in criminal cases tried with a jury there was no appeal. The Court of Appeal consisted of the Lord Chancellor and two Lords Justices of Appeal. The High Court consisted of two Divisions: The Chancery Division with two judges, and the King's Bench Division with eight. There was also a Land Judge and two Judicial Commissions of the Land Commission.

Twice a year the Assizes were held in each county.

There were five Circuits: Leinster, Connaught, Munster, North-West and North East. These Assizes were held under Commissions issued by the Lord Chancellor to the Chief Justice and the other judges of the King's Bench Division as well as to the two Lords Justices of Appeal. Each Circuit required two judges, making ten in all. On occasions it was found necessary to include the Land Judge and one or more of the Sergeants-at-Law in the Commissions. Acting under their Commissions the Assize Judges sat in the chief town in each county. They tried all custody criminal cases awaiting trial as well as all bail cases returned to the Assizes for trial. They heard Civil Bill appeals from the County Court, and High Court civil cases where the parties had served notice of trial for the Assize town. In addition to these ordinary Assizes there were also held once a year - usually in December - Winter Assizes at which criminal business only was transacted. No Assizes were held for the County or City of Dublin; but six times a year a judge sat at Green Street, under similar Commissions, to dispose of the more serious criminal business.

I cannot say to what extent the work of these Courts was interfered with by the events of the period 1920-22. I should imagine that while the higher courts sat regularly in Dublin and experienced no difficulty, save perhaps as regards the execution of some judgements, the matter must have been otherwise in many parts of the country where the Courts must have functioned with difficulty if they functioned at all. The Law Reports and the Irish Law Times for the period in question do

not, however, reflect interference to the extent that one would expect. The truth is that these Courts carried on as best they could in circumstances of extreme difficulty. Their work was seriously dislocated when, during the Easter vacation of 1922, the Four Courts building was seized and occupied by the Volunteers who were opposed to the Treaty. Not only were the judges deprived of their Courts and chambers; but offices and records were no longer available; the Bar was deprived of its library and dressing rooms; and the solicitors of their headquarters. In these difficult circumstances the decision was taken to carry on the business of the Supreme Court of Judicature at the King's Inns in Henrietta Street; and the Courts continued to function there until they were transferred to the Castle after the cessation of hostilities.

The position in July 1922 accordingly was that in the midst of a Civil War the country was saddled with two mutually incompatible judicial systems. On the one hand was a system with centuries of tradition behind it, equipped with a bench of able and experienced Judges and trained and experienced staffs of Court Officers, but inevitably identified with the British regime. On the other was a system organised and established on a provisional basis during a period of revolution; not two years in existence, (and forced for half of that period to function underground;) equipped with a Bench of Judges whose experience was necessarily very short and limited; with a staff of Court Officers many of whom were "amateurs"; and which was inevitably identified with the Republic. The question at issue in the Civil War was whether the country should be

allowed to accept and implement the Treaty, or should revert to the status quo ante Truce. It became impossible for the Pro-Treaty Government to continue the dual system, and maintain both the Republican and Provisional Governments, and their respective judicial systems; and it was obvious which system would have to go. Had there been no Civil War both judicial systems would probably have continued until replaced by one established under the Free State Constitution. As it was the Civil strife and the Plunket case precipitated matters.

This was the position when the Minister for Home Affairs issued his "decree" on July 25th. From the Republican point of view its constitutional legality may well be the subject of divergent views; the argument in its favour, however, may be very briefly indicated as follows. The Courts had not in fact been established by decree of the Dáil. The decree which had authorised their establishment, and which I have quoted in full in Part 11 of this memorandum, merely provided in the most general terms that Courts of Justice and Equity be established, without making any provision as to their constitution; and that the "Ministry" be empowered, when they thought fit, to establish Courts having criminal jurisdiction. The actual constitution of the Courts was effected by the Minister for Home Affairs; and was, moreover, stated to be provisional. He could, presumably, have scrapped the provisional constitution and replaced it by another. He had, therefore, power to abolish the Courts in the circumstances. Whatever may be the merits or demerits of this argument the simple fact of the matter was that the Republic, together with its judicial system, had to make way for the Free State; and the Ministries "decree"

put an end to a situation that had become impossible. Once the decision had been taken to accept and implement the Treaty, and to maintain that position in the stress of civil conflict, there was no room for legal argument based upon the Republican constitution. Such, at all events, was my view reinforced, to no slight extent, by my experience of the working of the Courts during the post-Treaty period.

To resume my narrative of events: while I was ill Crowley completed the hearing of George Plunket's application for Habeas Corpus; made an order for his immediate release; and directed an attachment to issue for the arrest of General Mulcahy, as Minister for Defence, and Colm Ó Murchadha, who was then Governor of Mountjoy Gaol, for contempt in ignoring his preliminary order. From his letter to me it would appear that he had originally intended to arrange a sitting of the Supreme Court to deal with the matter. I was hors de combat; but I have forgotten, if I ever knew, why Clery and Meredith did not sit with Crowley.

During the interval between the attack on the Four Courts and my bout of illness I had no contact that I can remember with either Clery or Crowley. I think they were out of Dublin most of the time. My impression is that I must have been in contact with Meredith. If this is correct then we must, of course, have exchanged views upon the situation; but of any such conversations I have no record and no recollection. I think I must also have had interviews with Eamonn Duggan, who was Minister for Home Affairs; and with Hugh Kennedy, who was acting as Law



Adviser to the Provisional Government. I have, however, no record and no distinct recollection of any such interviews. I can only surmise that I made them aware of my views such as they were. I do not remember any meeting of the four Judges to consider the Minister's decree abolishing the Courts. I am practically certain that we did not meet. I was aware that Clery was opposed to the Treaty. I cannot now remember what Crowley's or Meredith's views were at the time, but I think that Meredith accepted; if he did not like myself welcome, the decree as a fait accompli. Apparently Clery and Crowley did not. Dorothy McArdle, in Chapter 78 of her book, mentions an application moved by Michael Comyn, on behalf of Mrs. Tom Clarke as a member of the Dáil, for a conditional order of mandamus directed to Eoin McNeill as Speaker to compel him to summon the Dáil to meet. She stated that Crowley granted the Conditional Order on August 4th and that Clery made it absolute on August 11th. It is hardly necessary to state that the orders made for the release of George Plunket, for the attachment of Mulcahy and Ó Murchadha, and for the assembly of the Dáil, were never complied with and could not be executed.

The authority of all Parish and District Courts outside the City of Dublin was withdrawn as from October 30th 1922 by another "decree" of the Minister for Home Affairs; and in this fashion the Republican Courts came eventually to a rather inglorious end. I propose in Part V of this memorandum to attempt to tie up some loose threads, and briefly to refer to the subsequent history of the four Judges.

Part V.EPILOGUE

On August 3rd Duggan wired me that he would like to see me, and asked me to call to Government Buildings. I did so at once. He took me across to Hugh Kennedy's office who explained the reason for the summons. The Provisional Government were becoming somewhat concerned about the matter of discipline in the National Army, and Michael Collins as Commander-in-Chief wished to establish a legal section in the Adjutant-General's Department, which would be responsible for Courts Martial and matters of Military Law in general. He said he was authorised to ask me if I would take charge of this section as Judge-Advocate General. I asked for some time to consider the matter and in the course of some few days told him that I would take the position. On August 15th I got a note from Kevin O'Higgins, who was then acting as Assistant Adjutant General, to call at his office in Portobello Barracks. I did so and he brought me to see Collins. I was by him introduced to Gearóid O'Sullivan, the Adjutant General, and to George Hodnett<sup>(1)</sup>. Collins explained that I was to take charge of the Legal Section and to be Judge-Advocate General, and that Hodnett was to be next in charge. He told us that we could recruit our own staff and that he wished us to set about doing so at once. He said that he wished us also to draft a disciplinary code and rules of procedure for Courts Martial, so they could be promulgated by General Order and put into operation as quickly as possible.

(1) At present Deputy Judge-Advocate General.

We were allotted a couple of rooms in Portobello Barracks to use as offices, and set about our task of getting together a staff. I undertook the work of drafting General Regulations as to Discipline and Rules of Procedure for Courts Martial.

I think it must have been on September 4th that George Gavan Duffy<sup>(1)</sup> called to see me. He told me that Crowley had been arrested and was detained in Wellington Barracks. I cannot remember any details of our conversation. He gave me a letter he had received from Crowley which is as follows:

Wellington Barracks,  
S.C. Road.

Saturday, 2/9/1922.

A Chara,

I am detained here since Thursday night, and should like you to call up if you can conveniently do so. Also please tell my three colleagues, and one of them may be able to give me a call. I was told that my arrest had been ordered by the Minister for Defence and accordingly wrote to him yesterday requesting an interview. So far I have got no reply. Perhaps you could see him. I was very ill yesterday but the doctor gave me a dose that pulled me round considerably. I have never recovered from the effects of the 13 months I spent in jail before, and I am afraid this will ruin my health altogether. It is very extraordinary that I should be here, and I am sure that an interview with the Minister would put the matter right,

Mise do chara,

Diarmaid O'Cruadhlaoidh.

Geo. Gavan Duffy, Esq., T.D.,  
39, Mespil Road.

(1) Signatory to the Treaty. Minister in  
Parliamentary Government. Late President of

Both Gavan Duffy and myself were at a loss to account for Crowley's arrest; and could only surmise that it had something to do with his having in the case of George Plunkett's application for Habeas Corpus made an order for the attachment of the Minister for Defence and the Governor of Mountjoy Gaol. On the following day I got the following letter myself from Crowley.

Wellington Barracks,  
Dublin.

4th September, 1922.

A Chara,

On Thursday last, August 31st. about 11.30 p.m. I stepped out of a tram-car at Nelson's Pillar. I was accompanied by an acquaintance, Mr. Thomas Holland. We had only walked a few yards when we heard an order to halt. Turning around I saw two men approaching us. One of these addressing Mr. Holland demanded: "Have you any arms about you?" and searched his pockets. As Mr. Holland is a very pronounced Free Stater and never tires of giving expression to his views, I laughingly said they had nothing to fear from him. A cab immediately stood beside us, and we were both ordered into it. Our captors sat in the cab facing us. One had a revolver in his hand. The other addressed me by my Christian name (without having asked either of us who we were) and proceeded to make offensive and threatening remarks and to ask offensive questions. This continued during our journey to this place, and throughout that time neither of the two addressed even one word to Mr. Holland, whom they did not know. My interrogator complained of the decision I had given in the Habeas Corpus application made on behalf of Mr. George Plunkett, a prisoner in Mountjoy Gaol, and threatened that I would now be tried myself and made to suffer grievously. From what I have since seen and heard I believe he is one of the body called 'Intelligence Officers' - a body specially created by Mr. Mulcahy since he became Minister for Defence, and apparently trained after the methods practised by the British Auxiliaries in this country, but with a great deal more coarseness and savagery than the Auxiliaries were capable of. On arrival here he searched my pockets and took my cheque book, some private letters I had, and a pocket book containing various things. I have got back none of these.

I have since been locked up in a filthy cell and have never undressed at night - Thursday to Monday - the two so-called blankets supplied being unclean. The dimensions of the cell are about nine feet long, seven wide, and ten in height. The following night (Friday) another person was put in with me. On Saturday there were five, and last night (Sunday) nine of us in this cell. We have been locked up here day and night except for fifteen or twenty minutes exercise each day in the yard. I have scarcely eaten anything since my arrival. The food given to the prisoners in these cells consists of the leavings of the common soldiers in the guardroom adjoining who never use a knife or fork themselves.

On Friday I wrote to the Minister for Defence stating that my captors told me that were acting on his orders, and requesting an immediate interview. Two officers have told me that the letter was sent to him at once by hand to Portobello Barracks and that he was in that barrack at the time the letter was delivered there. I have got no reply.

The threat used towards me in the cab may have been no idle one. Some of the occupants of this cell and the adjoining one have been frequently interrogated concerning themselves and other people and savagely assaulted. This is done by the 'Intelligence Officers' referred to. I have witnessed instances of it. Once when I was being interrogated myself another officer intervened and said: "This is a special case".

The prisoner brought to my cell on Friday night had been walking along Synge Street accompanied by a girl. When searched nothing was found on him but the girl had a revolver in her pocket. This was taken from her and she was allowed to go home. The man was brought here about midnight. As to this man's treatment since his capture I will exclude everything he has told me although I believe it all. I will confine myself to the evidence of my own senses. On three several occasions that night the cell door was opened and the prisoner dragged out and savagely beaten because he could not or would not give information about other people. On the third occasion an order was given outside to a number of soldiers to form a firing party and to load. I heard these orders and the actual loading of the rifles. I heard other appalling expressions likewise. My soul sickened at the thought that I belonged to a country where such abominations were committed and paid for by the people. The prisoner seemed to have been taken out into the yard out of hearing, and about half an hour passed. Then he was brought back by a different officer who remarked: "Only for me you would have gone west that time!". The next day in my presence the same prisoner was subjected to another "interrogation". A revolver was put to his face and he was told three times that he would be taken out that night at 12.30 and shot. Two hours later he was taken to an office for further "interrogation". I was standing at the door of that office. I heard his moans of pain inside. He came out with his face swollen at both sides. He said some of his teeth were broken. An officer accompanied us

back to our cell. He seemed sorry for the continued persecution of this man. I told him of the threat to take the prisoner out that night and shoot him, and asked who was in charge of the barrack, and why these "Intelligence Officers" were allowed to come in at all hours of the night to practise such infamies. This officer said: "I am in charge of the barrack, and this man will not be shot to-night". He added: "But he was lucky in not being shot as soon as he was arrested".

I will not mention other cases. This must suffice here. This military savagery must be put down at any cost and law restored. There is no way to put it down except by publicly exposing it. For having written this I shall probably lose my life here and suffer tortures worse than death. But I will not live in cowardly silence. And notwithstanding what I have, and must continue to endure, I do not regret having been brought here; because otherwise I should never have known that such inhuman atrocities were being perpetrated, or could possibly be at all, even amongst savages. If anybody had told me that such things were done, I could not believe it. Are like infamies being perpetrated in the other barracks and jails of Ireland? And if not has this barrack been specially selected by Mr. Mulcahy for me?

In order to bring the matter before the public in the most striking way and to contrast this military savagery with government by law administered in the courts which Mr. Mulcahy and his colleagues are so anxious to suppress, I must ask you to incur risk yourself, and as a member of the Supreme Court to treat this as an application by me for writ of Habeas Corpus for my release from this unlawful and outrageous imprisonment, the writ to be directed to the Minister for Defence and to the Commanding Officer of Wellington Barrack. If I did not make such application you would conclude that I refrained from doing so in the belief that personal fear would deter you from discharging your judicial duties. You will be better satisfied to face the peril and seize this opportunity to publicly raise your voice in defence of the principles of civilised government. I am writing in similar terms to my other two colleagues, in order that the obligation may rest on and be shared by all equally. There is no possibility of making an affidavit here, because nobody is allowed to see me, but an affidavit is not necessary when the application is made by the prisoner himself; a written statement is sufficient.

Mise do chara,

Diarmaid Ó Craudhlaóich

C. Davitt Esq. ;  
Judge of the Supreme Court.

Armed with a written authority from the Adjutant General, which is dated the 5th September 1922, I called to Wellington Barracks (or as it is now called Griffith Barracks) and was at once admitted to see Crowley. Again I cannot remember any details of the conversation. I can only surmise that he repeated the substance of his letter and urged me to treat it as an application for Habeas Corpus. I can hardly have failed to make the point that I had called in response to his request conveyed to me through Gavan Duffy; and that if I were to be the Judge who was to hear any application on his behalf such personal contact between us was hardly in accordance with the usual practice. I know that I did point out to him the futility of any such application having regard to all the circumstances and that I did suggest that representations from me personally to General Mulcahy were likely to be far more productive of results than the course he favoured. I left him with the assurance that I would do all I could to secure his release.

I believe I at once made representations through the Adjutant General to the Minister for Defence designed to have him set at freedom. I eventually had a personal interview with General Mulcahy but at what stage I cannot say. On Friday the 8th September I got another letter from Crowley.

Wellington Barracks.

8th September 1922.

A. Chara,

At your suggestion on Tuesday last I withheld my application for Habeas Corpus in the hope that your other efforts would secure my release. I have heard nothing since. I am therefore obliged to make the

application as I had originally intended, and you will treat the enclosed as such.

As you know I am wrongfully imprisoned here, and the conditions of my imprisonment are abominable. Well I have decided to leave it dead or alive very soon. You will have this letter on Monday morning. I shall then be on hunger-strike, and will so remain until I am free. Death makes us all free, and perhaps my death may contribute something to bring to an end the abominations now carried on under the name of "Government". I can at any rate face death calmly. Can my jailers - Mulcahy, Duggan and Cosgrave, say the same?

Allow me to thank you again for your visit last Tuesday and give my best wishes to Clery and Meredith.

Mise, le meas mór,

Diarmaid Ó Cruadhlaoidh.

C. Davitt, Esq.

As I have said I did see General Mulcahy, but whether the interview took place before or after I got this letter I am not able to say. In the course of a few days Crowley was released. While I have no record and no recollection of the details of this interview I know that I pressed the point that apart from all other considerations legal or otherwise, it was extremely unjust to penalise Crowley for doing something which he had done in good faith in the exercise of his jurisdiction as a Judge of the Dáil Courts, and which he genuinely believed it was his duty to do. Whatever was urged in justification of the arrest I cannot now recall. Neither can I remember whether I got any letter from Crowley subsequent to his release. I got no communication that I can remember from either Meredith or Clery with reference to Crowley's arrest.



On the 8th August the Free State Legislature passed the Dáil Courts (Winding Up) Act, 1923. This gave statutory recognition as far as the Free State was concerned to the existence and jurisdiction of the Dáil Courts. It provided for the registration and enforcement of their decrees; for the hearing of appeals against their decisions in certain cases; and for the appointment of Judicial Commissioners and Assistant Commissioners to carry out its provisions. It indemnified all judges and officials of the Dáil Courts against any legal proceedings in respect of any act done in the course of their duty. It also provided, significantly enough, that the authority of the Supreme and District Courts should be deemed to have been withdrawn on July 25th 1922. Meredith was appointed Chief Judicial Commissioner and Crowley accepted appointment as an Assistant Commissioner, an office from which he resigned on June 30th 1924.

On April 12th 1924 the first Courts of Justice Act was passed; and some months later was brought into operation by Order of the Minister for Justice as therein provided. It established the present system of Judicature. Under the provisions of that Act relating to the qualifications necessary for appointment to the Bench it would appear, strangely enough, that while Crowley and I might be eligible for appointment to the High Court or Supreme Court we were certainly not, at that time, eligible for appointment to the Circuit Court. Meredith was one of the first appointments to the High Court. Clery was offered a similar appointment and refused it. The Government was aware that I was not seeking any appointment. I had continued in office as Judge-Advocate

General on a whole-time basis until August 1924. At my own request I was allowed to resign my commission and resume practice at the Bar, while continuing as Judge-Advocate General on a part-time basis at a reduced salary. I accordingly rejoined Clery in the Bar Library. I continued to practice at the Bar and to hold my part-time appointment until November 1926, when I accepted an appointment as Assistant Circuit Judge in Dublin. I had by this time become qualified for appointment by reason of being a Barrister of over ten years' standing. On the death of Judge Drumgoole in January 1927 I was appointed Circuit Judge of Dublin City and County. I was promoted to the High Court Bench in January 1945 and became President in June 1952. Crowley received no further appointment. As a result mainly of his representations the Government introduced and the Legislature enacted a Dáil Supreme Court (Pensions) Bill in 1925. Under this enactment all four of <sup>us</sup> became entitled to apply for, and be awarded by the Minister for Justice, a pension each of five hundred pounds per annum. As Meredith and I were both in receipt of salaries in excess of £500 payable out of moneys provided by Parliament we were by the terms of the Act precluded from enjoying any part of such pension. Clery refused to apply for a pension under the Act. Crowley was therefore the only one who benefited. He subsequently made a claim against the Minister for Finance for arrears of his salary as a Dáil Court Judge; and unsuccessfully brought an action in the High Court to enforce it. The action was tried by Mr. Justice Johnson in 1934, and the case is reported in the 1934 Irish Reports at page 536. Clery, Meredith and Crowley are now dead.

I have tried to make this statement a purely factual record, confining myself to what I can remember from the past, reinforced where possible by such records as I possess or have had access to. I have endeavoured to refrain from criticism appreciative or otherwise. I have tried to avoid giving any expression to my own opinions save in so far as they might be of assistance in explaining certain matters. So as not to depart from the general character of this record I refrain from attempting anything in the nature of a critical appreciation of the Dáil Courts, the work they did, or the part they played in the revolution which resulted in the Treaty.

Signed:

Cahir Davitt

(Cahir Davitt)

Date:

August 20<sup>th</sup> 1954

August 20th 1954.

Witness:

J.V. Joyce  
Colonel.  
20<sup>th</sup> Aug. 1954.

(J.V. Joyce) Colonel.

20th Aug. 1954.

|                                    |
|------------------------------------|
| BUREAU OF MILITARY HISTORY 1913-21 |
| BURO STAIRÉ MILEATA 1913-21        |
| No. W.S. 993                       |