
# THE STRIKING OF A NOTARY PUBLIC OFF THE ROLL

# OF

# NOTARIES PUBLIC BY THE CHIEF JUSTICE OF IRELAND

By

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## 1.Introduction and Legislative Power of Appointment of Notaries Public

This note submits that the Chief Justice of Ireland ( the appointing authority of notaries public in Ireland) has an inherent jurisdiction to strike a notary public off the roll of notaries public in Ireland for just cause in the absence of specific legislative authority.

Section 10 (1) (b) of the *Courts (Supplemental Provisions) Act 1961* (No 39 of 1961) ('the 1961') Act states:

> 'There shall be exercisable by the Chief Justice
>
> (b) the power of appointing notaries public and commissioners for oaths.'

The issue arises whether the Chief Justice has the power to strike off a notary from the 'roll' of notaries for just cause in the absence of specific statutory authority.

## 2. The Public Notaries (Ireland) Act 1821

The *Public Notaries (Ireland) Act 1821* (1 & 2 Geo 4. c.36) (' the 1821 Act') which has not been substantially repealed to date in Ireland is (subject to the 1961 Act above) the principal statutory enactment concerning the profession of notary in Ireland. Section 11 of the 1821 Act provides that where a notary allows his or her name to be used 'for or account or for the profit and benefit of any person or persons not entitled to act as a public notary' then following a complaint to the Court of Faculties (now the Chief Justice of Ireland) the offending notary

> 'shall be struck off the roll of faculties, and be for ever after disabled from practising as a public notary or doing any notarial act....'

There is no other statutory provision providing for a notary to be struck off the 'roll of faculties' or 'roll' of notaries. However the fact that there is such a current statutory provision is of some significance that is considered below.

3. Judicial Authority

The principal judicial authority - with persuasive effect in Ireland - on the inherent jurisdiction of the appointing body to strike a notary off the roll of notaries is cited as *In the Matter of Charles Goble Champion, A Notary Public* [1906] P. 86. [The Law Reports, Probate Division, 1906] The facts of the case may be stated here for ease of reference.

Mr Charles G. Champion was a notary public and a solicitor. He was struck off the roll of solicitors by order of the Lord Chief Justice of England pursuant to a determination of the Disciplinary Committee of the Law Society of England and Wales 'for misconduct in relation to property of which he had been appointed administrator'.

A memorial signed by the President and Secretary of the Society of Provincial Notaries of England and Wales was brought in the Court of Faculties and in the language of the time 'prayed that in consequence [of the decision of the Lord Chief Justice to strike Mr Champion off the roll of solicitors] the Master of the Faculties would be pleased to strike off the said C.G. Champion from the roll of practising notaries and withdraw his notarial faculty or take such other disciplinary steps as he might think expedient'.

The matter came before the Master of the Faculties , Sir Lewis Dibdin, D.C.L., in open court.

The Master of the Faculties delivered his decision on 5 February 1906.

The Master stated that the first issue was whether he had any jurisdiction to strike Mr Champion off the roll of notaries – the precise issue raised in the memorandum of the present writer. The Master referred to the transfer of jurisdiction from the Pope to the Archbishop of Canterbury and his own jurisdiction as Master of the Faculties. It was noted that there was no record of any notary having been struck off the roll but the legislation in England and Wales (at the time similar to the Irish 1821 Act) assumed the existence of a general inherent power in the Master of the Faculties to strike a notary off the roll of notaries for stated misconduct.

Reference was made by the Master to the first edition of what was described as 'the well known work on notaries by Richard Brooke - *Treatise on the Office and Practice of a Notary of England* (1839) p.15, where there is a statement to the effect that 'an

offending notary is liable to be struck off the roll of faculties and disabled from practising' for, inter alia, 'any improper or disgraceful conduct in his practice'. The

Master stated that the justification for a notary to be struck off in the instances referred to by Brooke did 'not rest on the provisions of any statute, but on the inherent jurisdiction of the Court'. [Page 91 of the Law Report].

Interestingly, the Court referred to a case before the Court of Faculties in Ireland - the case of *O'Brien v. Bennett* (Court of Faculties (Ireland) 21 April 1860, unreported) before Keatinge J, sitting in the Court of Faculties.

Counsel for the Society of Provincial Notaries Public of England and Wales quoted to the Court the following passage from the judgment of Keatinge J (sitting in the Court of Faculties in Ireland) as follows:

> 'My jurisdiction as judge of the Court of Faculties is to grant faculties to fit persons and in fit cases, and if the persons to whom these faculties are granted misconduct themselves, I have the power under the statute (reference to 28 Hen.8, c.19 (Irish); 2 Eliz.c.1 s.1 (Irish) and Bullingbrooke, *Ecclesiastical Law of the Church of Ireland*, ed.1710, vol 1, pp.114,124), and I have power independently of the statute, to withdraw their faculties, but otherwise I have no power to regulate the conduct of their business.'

Counsel for the Provincial Society of Notaries of England and Wales had stated to the Court that the dictum of Keatinge J (quoted above) was 'the more material' as the jurisdiction of the court before which he was appearing and the Court of Faculties of Ireland (described in 1906 in relation to Ireland as vesting in the Lord Chancellor of Ireland ( and now in the Chief Justice of Ireland)) was derived from the same source.

On this aspect of jurisdiction, the Master stated:

> ' The Irish statutes relating to notaries in Ireland are almost the same as those relating to notaries in England, and the two sets of statutes are precisely the same in this, that they do not expressly confer a general power to strike notaries public off the roll of notaries. If notwithstanding this, the power to strike off exists in Ireland, I apprehend that such a power must also exist in England' [Page 92 of the law report.]

The Master concluded on this issue:

> '[I] have come to the conclusion that I have as Master of the Faculties an inherent power to deal with the roll of notaries of which I am the custodian, and that for a proper cause – a cause likely to interfere with the proper discharge of the functions of a notary public – it is competent for me as Master of the Faculties to remove the name of a notary public from the roll.'

Out of interest, the Master referred to a statement in *Brooke* about the status of the notary. This statement may be quoted here:

> *'*Great is the confidence reposed in notaries and onerous are their duties. Hence the necessity of their being distinguished for extensive knowledge, probity, discretion and zeal.*'*

In the 12th edition of *Brooke's Notary* by Nigel P Ready (2002) the writer states that the Court of Faculties 'has always had inherent power to withdraw the faculty [from a notary] for good and sufficient reason' citing the decision of *Re Champion* above.

## 4. Conclusion

It is submitted that there is an inherent power in the person or body (now the Chief Justice of Ireland) who has statutory authority to appoint a duly qualified person to the 'roll' of notaries to strike such a person from the 'roll' of notaries of Ireland for stated misconduct in the absence of specific statutory authority to do so.

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