



## **THE LEGAL TRIAL**

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Mankind has a remarkable interest in sensational legal cases. Television, the cinema, the theatre, the press and writers of books satisfy this interest by devoting considerable attention to sensational details of legal cases. One reason for this natural phenomenon may be found in the sentiment expressed by Lord Byron in Don Juan: “’Tis strange - but true; for truth is always strange, stranger than fiction’”. Another writer expressed the view that readers prefer such reports over other kinds of literature because the reader is brought into “contact with solid facts possessing all the charm of their brutal reality.”

It has been argued that there are two possible motives for reading anything: to learn or to be entertained. Famous Irish Trials by McDonnell Bodkin will certainly entertain and, at the same time, readers will gain an insight into events that have aroused great public interest.

Famous Irish Trials follows in a classical tradition. The most theatrical manifestation of the law's drama is the trial. The Old Testament contains stories of murders and other evil doings that resulted in trials and the subsequent meting out of punishment. For example, the fourth chapter of Genesis records the murder of Abel. The motive, the murder, the trial and sentence are all described, albeit tersely. Incidentally, Cain's punishment for the murder of Abel was not death but exile.

A celebrated English classic of crime non-fiction was written by a Dutch Surgeon, A.O. Exquemelin, whose book Bucaniers of America was first published in Amsterdam in 1679. It contains lurid accounts of crime that may have contributed to its success. This was followed by many others. The publication of trial reports excited interest among general readers. Select Trials for Murders, Robbery, Rapes, Sodomy, Coining, Frauds and other Offences at the Old Bailey, first published in 1734, generated popular interest in legal proceedings. This tradition was continued by T.B. Howell's Complete Collection of State Trials (1816 - 26), George Borrow's Celebrated Trials (1825) and the Notable British Trials series published by William Hodge that became very popular. Apart from collections of trial reports, the newspapers were the main purveyors of information relating to

sensational trials. McDonnell Bodkin, uses contemporary newspapers accounts of the time extensively in his famous trials.

Sometimes, one must query the purpose of the publication of these sensational and intimate details of the events in the lives of the most unfortunate of persons. There is the element of the cautionary tale and the satisfaction of an innate curiosity that most persons possess. Sometimes the cautionary tale phenomenon may be an excuse to satisfy human curiosity and the desire to read of tragedies suffered by others. The Rev. John Vilette, associated with Newgate Prison, located opposite London's Old Bailey, described lurid details of crimes and criminals in his Annals of Newgate (1776). On the title page of the book, he stated that the book was "calculated to expose the deformity of vice, the infamy and punishments naturally attending those who deviate from the paths of virtue;" the book was also "intended as a beacon to warn the rising generation against the temptations, the allurements, and the dangers of bad company".

When McDonnell Bodkin was invited to write a book on famous Irish trials, he recounts in his preface that he was advised that there is nothing the public "so love to read as a good savage, sensational murder". But another colleague counselled him to "drop" murders. He was advised that the taste that sets people reading murder trials and visiting chambers of horrors is morbid and ought not to be encouraged. Another friend insisted on the author concentrating on political trials. In the best tradition, the author compromised. He did not write a book devoted exclusively to murders, but did include a "couple of murder trials"

selected “not for the gruesome details of crime, but for the curious incidents or interesting illustrations of character that were brought to light at the trial”.

Before considering the trials which the author has selected, it is appropriate to introduce the reader to the author. The author was born in October 1850 in Tuam, Galway, the second son of Dr. Thomas Bodkin, FRCSI. He received his early education at the Christian Brothers' School at Tuam and later at the Jesuit College, Tullabeg, and the Catholic University, Dublin. Elected auditor of the Law Students' Debating Society in University, he was the winner of the gold medal in oratory. The author joined the staff of the Freeman's Journal as a junior reporter and while there studied law, was called to the Irish Bar in Michaelmas Term 1877 and became a King's Counsel in 1894. Journalism remained a primary love of the author. The author was described by Maurice Healy, the barrister and author of the celebrated The Old Munster Circuit (1939), as “one of the most charming and genial of men, of wide general culture, and particularly well qualified as a critic of current literature and drama”. But Healy observed that these were the qualities in least demand in his office, particularly in his role as a journalist and as a leader writer in the Freeman's Journal, regarded as the official organ of the Nationalist Party.

As a journalist, writer and barrister, McDonnell Bodkin took an active interest in party political affairs and was a member in the Irish National interest for North Roscommon in the House of Commons from 1892 to 1895. He did not seek re-election. Although his period as a parliamentarian was brief, he developed a reputation for the wit and pungency of his speeches.

Considerable controversy followed the elevation of the author to the Bench as County Court Judge for Clare in 1907. Alexander Martin (A.M.) Sullivan, a barrister who rose to become King's Serjeant, an acknowledged leader of the Irish Bar, and the last person to hold the title of King's Serjeant, led a determined campaign at that time, to fight what he called "political jobbery". Incidentally, the term "Serjeant" referred to a barrister of superior degree of the Order of the Coif to which they were called by writ under the Great Seal. The degree of King's or Queen's Counsel, now Senior Counsel in Ireland, supplanted that of Serjeant. Serjeant Sullivan argued that judicial vacancies should be filled upon the fundamental principle of appointing the best qualified candidates. Sullivan in his reminiscences, Old Ireland: Reminiscences of an Irish KC (1927) describes how he informed the Lord Chancellor of the day, Sir Samuel Walker, that he (Sullivan) would challenge the legality of any judicial appointment that did not fulfil the requirements concerning eligibility to judicial office. Subsequently, the Lord Chancellor appointed McDonnell Bodkin, Sullivan's "ancient friend and colleague of journalistic days" to the County Court judgeship for Clare. Sullivan considered that it was more than 17 years since McDonnell Bodkin "had ceased even to pretend to practise at the Bar." The qualification for a County Court judgeship was that a person must be a practising barrister for a minimum of 10 years preceding the appointment. Sullivan recounts how his brethren on the circuit undertook to advise clients that His Honour Judge McDonnell Bodkin had no authority to try their cases. In one of the early cases before the newly-appointed judge, Sullivan challenged the judicial appointment and obtained a conditional order of Quo Warranto, the name of a species of prerogative writ issued by a superior court against a person who claims or usurps any public office without proper authority.

The Attorney-General, Richard Cherry, and the Solicitor-General, Redmond Barry, argued the case for the Crown in the Four Courts, Dublin defending the validity of the appointment of His Honour Judge McDonnell Bodkin. It was argued for the Crown that the King's prerogative of appointing judges was absolute. Secondly, it was argued that the proper procedure for bringing the action before the court, the writ of Quo Warranto, could only be instituted with the leave of the Attorney-General which had not been obtained. It was also argued that there was no definition of the phrase "practising barrister". Sullivan noted that there were "three days' delightful argument" in the Four Courts in Dublin. The judicial career of McDonnell Bodkin was in considerable jeopardy. The drama of trials described by the author is palpable but the trial in which the author was a focus of a forensic debate was also dramatic. As happens in great human dramas, a sudden twist of fate intervened. The defendant, Stephen Markham the litigant who challenged the validity of the appointment of Judge McDonnell Bodkin, changed his stance: the brief of Markham's barrister, AM Sullivan was withdrawn and the challenge to the judge's appointment collapsed. Judge McDonnell Bodkin successfully, and bravely, served as a County Court Judge for Clare until the signing of the Anglo-Irish Treaty in 1921. Famous Irish Trials was published in 1918 in his eleventh year on the Bench.

The author died on June 7, 1933. An obituary in The Irish Law Times and Solicitors' Journal (1933) did not refer to the challenge to the author's appointment as a judge but stressed his success as a lawyer and the fact that he had attracted a good practice on the Connaught Circuit. The obituarist describes the judge as "a very successful novel writer" and "virtually" the "founder of modern detective fiction". The judge wrote about 30 books and his "Paul Beck" stories of detective fiction were translated into Swedish, French and German. Apart from his detective fiction he also wrote Lord Edward Fitzgerald, White

Magic and Poteen Punch. Described in the obituary in The Irish Law Times and Solicitors' Journal as a notable sportsman, prominent as a runner, a cyclist, a swimmer, in the cricket field and in the golf course, he was the father of Dr. Thomas Bodkin, a former Director of the National Gallery, Dublin.

The account of a participant in historical events has the opportunity of giving a special perspective - a special flavour of the current event to subsequent generations. The author had a particular interest in politics and in this book one of his famous trials relates to the defence of that enigmatic figure, Charles Stewart Parnell, "the uncrowned King of Ireland", before the so-called Parnell Commission in 1888. In March 1887, the demand for Home Rule in Ireland was at its height. Unfortunately, that demand was accompanied by scenes of violence and public opinion was inflamed. In March 1887, The Times commenced the publication of a series of articles under the heading of "Parnellism and Crime". The gist of the argument was that the Parnell movement depended upon a system of intimidation carried out by the most brutal means and whose ultimate sanction was murder. On April 18, 1887 The Times published a facsimile letter purporting to bear Parnell's signature in which the dreadful murders of Lord Frederick Cavendish, Chief Secretary for Ireland, and T.H. Burke, Under-Secretary in the Phoenix Park, Dublin on May 6, 1882 were condoned. The publication of the letter caused a great sensation. Subsequently, a Special Commission composed of three judges was established by the House of Commons. The author considers the case from the perspective of whether or not the letter bearing Parnell's signature was a forgery. The author introduces us to Sir Charles Russell, QC, MP, Counsel for Parnell. Sir Charles later became Attorney General and Lord Chief Justice of England, an advocate who towered over his colleagues. The commission sat for 129 days, more than 450 witnesses were examined, 98,177 questions were put to them and the official

record fills twelve large folio volumes. In his description of the trial, McDonnell Bodkin examines the crux of the proceedings - the cross-examination of one Richard Pigott on February 21 and 22, 1888.

The cross-examination of Richard Pigott, a former clerk in the Ulsterman Office during Russell's Belfast days, is a model of artistry by a great master of cross-examination. In fact books on the art of advocacy often quote Russell's cross-examination of Pigott as a model. Pigott was proved to be a liar. During his cross-examination, Pigott fled to Paris and from there to Madrid when the police tracked him down in a hotel. When shown a warrant for his arrest on a charge of perjury, Pigott asked the police officers to wait until he collected some personal belongings from this room. The officers waited: a pistol shot was heard and Pigott was found on the floor with a bullet through his brain. He had committed suicide. The Commission resulted in a triumph for Parnell and a denunciation for The Times.

Incidentally, during the Parnell trial, McDonnell Bodkin wrote an article in a newspaper critical of the conduct of the Commission. The article was the subject of an application by the Attorney-General for contempt of court but a conditional order was subsequently discharged.

The Yelverton Case, a story of passion, intrigue and religious tension, is another of the famous trials described by the author. The chief reporter of the Freeman's Journal, a shorthand writer at the Yelverton trial, enthralled the author, then a junior reporter, with aspects of that fascinating trial in the Four Courts, Dublin. At stake for Therese Longworth, otherwise Therese Yelverton, was a coronet, wealth and an assured position in society. Defeat, in the words of the author, would brand her as a "dissolute wanton and a

perjurer". The issue was whether her Scotch marriage to Major Yelverton was irregular and void. The author recounts how the issue was tried five times with varying results by 14 different judges, two trials in Dublin, two in Edinburgh, and a final decision in the House of Lords.

Percy Fitzgerald, in Memoirs of an Author (1895) writes of his wandering into the Four Courts, Dublin at the opening day of the Yelverton case. A more interesting heroine, than Therese Longworth could not be imagined, he wrote. Judge, lawyers, audience, everybody were carried away by their feelings. The giants of the Irish Bar ranged on opposite sides in this extraordinary trial. The Freeman's Journal, at the close of the cross-examination of the "heroine" published "a flaming leading article in her favour" which in the opinion of McDonnell Bodkin deserved to have been the subject matter of contempt of court proceedings. The leading article wrote of the "purity" of Mrs Therese Yelverton's heart; described her as being "the victim" of Major Yelverton's "brutal lust, and of the more brutal code which abets his villainy".

The author sets out extracts of the cross-examination by Serjeant Sullivan of Major Yelverton and describes that cross-examination as "the most sensational development of this sensational trial". The author notes that "for brilliancy and pitiless severity it has probably never been equalled, certainly never surpassed". The author, McDonnell Bodkin, does not spare his words:

"The unhappy wretch in the witness chair (Major Yelverton) had his infamy mercilessly exposed to the contempt and execration of the public. He passed through an ordeal of fire which no man of any feeling could possibly have survived.

In the very first question, he was caught on the horns of an intolerable dilemma from which extrication was impossible, no matter what might be his reply”

Counsel for Major Yelverton, Serjeant Armstrong, had, in the words of the author a “hard task before him when he came before a hostile judge, jury, and crowded court, to reply for his dishonoured client, and he accomplished that task with supreme ability”. The author noted that Serjeant Armstrong did not indeed attempt the impossible task of whitewashing his client but he made a tremendous attack on the lady whom he described as “a temptress”, an erratic, clever adventuress, a bold crafty, wayward, unscrupulous woman - a syren, who pursued her man, inveigled him into the church, cast her wiles and charms around him.

This was followed by a speech from one of the counsel for Mrs Yelverton, Mr. Whiteside, Q.C., later Chief Justice of Ireland, a speech described by the author as throbbing with passionate eloquence and whose echoes were heard outside the court to the furthest corners of the United Kingdom. The author describes it as a speech of superlative eloquence to which no extracts can do justice. Mr. Whiteside asked a question and then gave them an answer soaring to great heights of eloquence:

“Ask yourselves what fact has been proved against her with any living man save the defendant? Her crime is, she loved him too dearly and too well. Had she possessed millions, she would have flung them at his feet. Had she a throne to bestow, she would have placed him on that throne. She gave him the kingdom of her heart, and made him sovereign of her affections. There he reigned with undisputed sway.

Our affections were by an Almighty hand planted in the human heart. They have survived the fall, and repaired the ravages of sin and death. They dignify, exalt and inspire our existence here below, which without them were cold, monotonous and full. They unite heart to heart by adamant links. Nor are their uses limited to this life. We may well believe that when the mysterious union between soul and body is dissolved, the high affections of our nature purified, spiritualized, immortalised, may pass to the felicity unspeakable reserved for the spirits of the just made perfect through the countless ages of eternity.” (Loud applause).

Mr. Whiteside continued:

“She gave him her affections - she gave him her love - a woman’s love! Who can fathom its depths? Who can measure its intensity? Who can describe its devotion? She told you herself what that love was when she wrote to him: ‘If you were to be executed as a convict I would stand beneath the gallows.’ If he had taken that woman for his wife, misery would have endeared him to her, poverty she would have shared, from sickness and misfortune she would never have fled; she would have been his constant companion, his guide, his friend - his polluted mistress never!

Therefore, I now call on you to do justice to that injured woman. You cannot restore her to the husband she adored or the happiness she enjoyed. You cannot give colour to that faded cheek, or lustre to that eye that has been dimmed by many a tear. You cannot relieve the sorrows of her bursting heart, but you may restore her to her place in society. You may by your verdict enable her to say: ‘Rash I have

been, indiscreet I may have been through excess of my affection for you, but guilty never!'. You may place her in the rank which she would never disgrace - you may restore to that society in which she is qualified to shine and has ever adorned.”

The Judge in his summing up that the lady excited the admiration, love and affection of the Honourable William Charles Yelverton - Major Yelverton:

“[B]ut my God, should not the garb in which she appeared, and the work of charity on which she was engaged, have had some influence on this man, and driven from his mind the idea which he says he entertained at the time. My God, gentlemen, all of us see, in this city, numbers of young and beautiful women who have engaged in this holy work of charity, and though men may entertain different opinions as to the prudence and propriety of a convent life, there is not a man amongst you who would be capable of offering an insult to those young and devoted women as they go to and from on their mission of charity. That, gentlemen, is the account that this gentleman gives of himself, and the idea he entertained at the time. He says that he loved and admired her, but that she was not of gentle blood, and that, therefore, he formed an idea or desire of obtaining possession of her person by dishonouring her.”

The trial and its subsequent aftermath has passed into folklore.

A couple of murder trials, a breach of promise case, a trial involving a disputed will and political or quasi political prosecutions are the subjects of the other trials chosen by the author.

There is a view expressed that the drama of law courts has been replaced by mass entertainment industries. Lord Birkett in a broadcast talk about Sir Edward Marshall Hall BBC (1961) emphasises a typical comment of many who are getting old and who recollect the great advocates of an earlier period:

“We shall not look upon his like again, for the age that produced him, and glorified in his spectacular triumphs in the courts, has passed away for ever. The advocate no longer plays the part in our public life he once did. The fashionable divorce suit, the sensational libel action, the great murder trial - they are no longer the dramatic events that once occupied public attention to the exclusion of almost everything else. The television star and the film actor, idolised by millions, now take pride of place.”

The television star and the film actor may be idolised by millions but the trial and the advocates still exert a profound influence in our society and still attract the public attention.

It is appropriate to finish this foreword with a tribute to the central players in the dramas described by the author in this book of famous Irish trials. The central character in most of the dramas apart from the person instituting the proceedings or defending the proceedings is the advocate. One of the great advocates and an advocate who plays a significant role in one of the dramas described by the author was Sir Charles Russell, Q.C. Charles Russell was born on November 10, 1832 at Newry, County Down. Educated at the Vencentian College, Castleknock, Dublin, he qualified as a solicitor and later as a barrister. He was one of the great advocates of his time and was leading counsel for Parnell during the

Parnell Commission (1888 - 1890) described earlier in this introduction and is one of the author's famous trials. He was elevated to the Bench, became Lord of Appeal in 1894 and created Baron Russell of Killowen. A month later he was appointed Lord Chief Justice of England, the first Catholic to hold the position since the Reformation. He died on August 10, 1900 after a short illness.

Speaking in the court of the dead Lord Chief Justice, the Attorney General, Sir R. Finlay paid tribute to a great advocate and in a tribute to Charles Russell summed up many of the excellent qualities of a great advocate. The Attorney General in his tribute said:

“It is, as yet, difficult to speak of Lord Russell of Killowen, particularly in the Court where one still seems to see his form, and his glance, and which still seems to echo his voice. In him we have lost a consummate advocate, a great judge and a true friend... His forensic eloquence recalls what was said of the greatest orator and advocate of all time - that his dominant characteristic was reason penetrated, and made red hot by passion. He commanded success alike by the magnetic force of his personality, by the brilliance of his intellect, and by that capacity for taking pains, in which he was hardly, if ever, surpassed....

When he left the Bar for the Bench no one who ever casually saw him at work as a judge could fail to be impressed by the combination of power and indignity - dignity which was but the appropriate embodiment and expression of great powers concentrated on the great task of getting at the truth. On the Bench, as at the Bar, Lord Russell never grudged any time or any labour necessary to enable him to

master all the ramifications of fact and all the problems of law which the case presented....

Of Lord Russell in private life and as a friend I find it difficult, if not impossible, to speak. He was simple with the simplicity of great and kindly nature. There never was a man more thoroughly genuine. He seemed what he was, and he said what he meant. He was loved by those who knew him best, and no one who knew him can ever forget him.”

The great advocate lives on and is still thriving in our own time.

Dr Eamonn G. Hall, Solicitor and Notary Public

[Text of the Introduction to *Famous Irish Trials* (McDonnell Bodkin K.C) 1997]