

ORIGINAL

PART VII

BUREAU OF MILITARY HISTORY 1913-21

BURO STAIRE MILEATA 1913-21

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BUREAU OF MILITARY HISTORY, 1913-21.

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Witness

Commissioner Kevin R. O'Sheil, B.L.,
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ORIGINAL

BUREAU OF MILITARY HISTORY: 1913-21

BURO STAIRÉ MILEATA 1913-21

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be blamed if they burst out into heated and indignant words to their police audience, scolding much about "sedition and its horrid growth in their midst, and the scandalous state of lawlessness that prevailed in this part of His Majesty's realm".

Such were the people's Courts that operated in many areas for the better part of a year, openly at first for several months, until driven underground by the renewed terror that broke out in the autumn of 1920 when the enemy's new reinforcements, the Black and Tans and the Auxiliaries, had been duly recruited, organised and concentrated on the country. Those Courts, as I have said, did great work, and were a success because the people backed them. Even criminals and malefactors convicted by them, and sometimes drastically dealt with, accepted their punishment with as good grace as they could, for they perceived that the punishments inflicted on them had behind them the solid buttress of public opinion. Later, however, when the Tans and Auxies got going against the Courts, things were not so good. As the Dáil pamphlet on the subject tells us:

"Some of the criminals - dealt with by fine or deportation, turned informers, and most of the captures and convictions of republican police which subsequently occurred were due to the information and evidence of thieves and drunkards who themselves secured immunity and lucrative rewards".

In their hey-day, in the late spring and summer of 1920, the Courts, civil and criminal, were operating in 27 counties, including five Ulster counties, though not so universally in most of these latter. In August, 1920, the month in which the great attack on them was opened, the Press reported the holding of no less than 80 Dáil Courts all over the country. Five of them were broken up by enemy action, of which one was a Land Court of mine that I shall presently be writing about. That was the first indication after many long months of tranquil functioning that showed us that the days of open, peaceful justice, as administered by the Dáil, were over. There are many exciting and delightful stories of those times when the popular Courts were going strong, as, for example, the case of the two criminals interned on an island in a western lough, shouting at the R.I.C. who came over in a boat to rescue and release them, to go home, that they were sound republicans and were quite prepared to carry out the sentence imposed on

them by a republican court. Then there was that other case in a Co. Westmeath town where the local D.I. of the R.I.C. and some of his constables actually watched a posse of republican police escorting two prisoners through the streets of the town, either to a Dáil Court or to some place of detention. The prisoners made not the slightest effort to appeal to the R.I.C. onlookers for help or protection from their captors.

Yes, those famous Courts were, indeed, a success. They were a success mainly for two reasons: because they had public opinion solidly behind them, and because they were pre-eminently just and impartial. The latter qualities, for which they earned, and rightly earned, a high reputation, were won despite strong pressure of all kinds which those amateur judges successfully withstood. In considering them, their judicial work and the times that they lived and functioned in, the following points must be always borne in mind: that they were local men living in and earning their bread within the area of their jurisdiction, that they were elected to their judicial posts, that they were unremunerated, that they knew well, often intimately, the parties appearing before them, that they ran the risk

by their judgements of mortally offending their neighbours, possibly large numbers of them, with dire consequences on their means of livelihood in their small and constricted world. Yet, despite all these things, they carried out to the last wherever they were established the supreme legal maxim, "Fiat Justitia"!

The Supreme and High Court of the Dáil, which was set up pursuant to the decree of June 29th, 1920, in the following August, accomplished much useful work on, of course, a higher plane than the local Courts. I don't think they were called upon to adjudicate in any serious criminal matters, such as murder, but they had their share of rapes and seductions (as indeed had the local Courts), and there was at least one case of matrimonial suit where the partner, seeking the remedy, got a decree of nullity against the other partner.

THE LAND WAR AND THE LAND COURTS.

I have endeavoured to describe in general terms the circumstances that led to the launching of the Dáil Éireann Courts. It is now necessary for me to particularise on that subject if the conditions then obtaining, and their consequences, are to be correctly understood.

The I.R.A., engaged in mortal conflict with its powerful and ubiquitous foes, having to face an ever intensifying pressure from them and to face it with wholly inadequate man power and equipment, was far from anxious to waste or weaken its strength and striking power by taking over responsibility for additional onerous work outside its own particular field. Some of its more influential leaders, Cathal Brugha, for example, the Minister for Defence, had no use whatever for Courts of any description. His simple credo was that the nation was engaged in a deadly war with England, and, accordingly, that every fibre of energy, every atom of strength, every pound collected should be concentrated exclusively and solely on that war, and on nothing else. Anything else, such as the setting up of Courts, the taking over of the machinery of local government, was a distraction,

may, a serious impediment in Cathal's opinion, that took from and debilitated the driving power that should be behind the prime purpose of "driving the English out of Ireland". In particular, he resolutely opposed the creation of a separate Republican police force, especially as it was, as it had to be, recruited from the ranks of his own I.R.A. men. In view of that attitude, which, at one time, was nearly universal among the soldiers, it was not with any particular enthusiasm that, as we have seen, the I.R.A. functioned here and there throughout the country in the earlier stages of the Dáil Government, as a kind of emergency, ad hoc, criminal judiciary and police force. Sheer necessity and nothing else, compelled them to do so.

Now, in considering this development in the Dáil's career, it is very important to bear in mind that there were two kinds of court systems involved, or, to put first causes first, two distinct categories of disputes and issues. Firstly, there were those hundred and one matters that fell, in the ordinary way, to be dealt with by courts of first instance at the petty or quarter sessions of each county, embracing such common offences against the criminal law as burglary, larceny, assault, battery, arson, poteen-making,

etc., etc.,; and, on the civil side, ordinary cases of contract and tort under a certain valuation. Secondly, there were the land disputes, which were entirely different. Now, with regard to the former there was no dire necessity at any time during the years of contention, save from a purely patriotic and, of course, propaganda standpoint, to substitute Dáil equivalents in place of the British petty sessions and county courts. Those courts were amongst the few organisms of the British Raj that, on the whole, and excepting political cases, enjoyed the confidence of the public, particularly in latter years when Catholics and Nationalists came in for a larger share of the appointments thereto. They were speedy, efficient and inexpensive in their administration, and impartial and just in their judgments. Always, of course, saving and excepting political offences; then their impartiality was impaired, to put it no further. But, as against that, even at the worst of times they dealt with few real political cases. That was particularly true of the petty sessions, save where the Resident (or "Removable") Magistrate sat alone, as, in latter years, he always did, in hearing political cases. However, what eventually killed the petty sessions courts was the nearly wholesale resignation of their personnel,

the Justices of the Peace, pursuant to the Decree of Dáil Éireann to that effect.

The County Courts, even in the days of the Dáil's greatest territorial advance, continued to function, albeit very modestly, in considerable areas of the Twenty-Six Counties, particularly in the Province of Leinster. Of course, within the Six Counties they were largely undisturbed, save to a small and very local extent in the Nationalist strongholds there.

The point I am making here is that, save for breaches of the criminal law (which had to be faced, war or no war) it was really not incumbent on the Dáil for its prestige to force an issue against the County Courts, at all events. With all the heavy responsibilities that the Dáil had been compelled to take on, and that in its early days it certainly had not fully envisioned, and with the pressure against it every day increasing, it would have suited it admirably to have turned a Nelsonian blind eye on that side of things and leave well alone. But time and events took a hand in it, and, willy-nilly the position so created had to be faced and met by the Dáil.

The disputes and issues in the first category that I have just referred to involved persons in the same stratum - mainly Catholic, mainly Nationalist - businessmen, tradesmen, artisans in the towns and villages, and farmers and labourers in the country districts, all within the same field of humanity, conforming to the same faith and, more or less, to the same social and political standards. On such a level, there could be no deep divides of unblendable types affecting religious and historical backgrounds and no very strongly marked class distinctions; the pattern of life was remarkably simple and homogeneous, and its problems all of an uncomplicated sui generis character.

Now, almost the identically opposite to all that was the position, in great measure (but, again, by no means wholly) with regard to the land disputes. Those disputes at their most grievous level, to a greater or lesser extent, involved history, religion, politics, and, if you will, race. It must be borne in mind that in the year 1920, despite forty years remedial work of the Irish Land Commission and the Congested Districts Board, there were still in existence a substantial remnant of landlords possessing estates covering

large areas of land on which there were tenants from whom they derived incomes in the form of annual rents. In other words, landlordism, though badly broken, still survived - mainly in the west and in parts of the south and midlands of Ireland. For it must be remembered that, prior to the first Land Act passed by a native Government, the Hogan Act of 1923, all Land Purchase Acts were based on a voluntary basis, on agreement between landlord and tenant, with the Land Commission filling the part of honest broker. (I must except from this the proceedings in the Encumbered Estates Courts which were largely compulsory; but that was an emergency tribunal to meet an emergent state of affairs. Its operations, however, at that time were practically finished, and, anyhow, its particular legislation formed no part of the Irish Land Code).

There remained then, at that time, not a few landlords of the traditional type, living in large, out-of-date mansions (becoming progressively burdensome as to upkeep), with agents, stewards, bailiffs, etcetera. Those, as I have said, were the remnant of that once powerful and dominant organism, Irish landlordism, the proprietors of tenanted land that, for one reason or another,

had failed to sell out to their tenantry. It is surprising to-day to realise that very considerable numbers of that class of landlord existed in Ireland in the year 1920, having no less than 170,000 tenants under them paying them rents and nearly all of whom have since been transformed into proprietors. In this connection it is interesting to refer to Schedule 1 of the Report of the Proceedings of the Irish Convention which stated that on March 31st, 1917, land unsold at that date represented 5,768,751 acres, with a Poor Law Valuation of £3,645,278. The area unsold then represented 30% of the entire agricultural area of Ireland, and 36% of the total value of agricultural land in Ireland.

Those surviving landlords were mainly, but not entirely, Protestant and Unionist. There were Catholics amongst them who were generally as Unionist and, in not a few cases, very much more anti-Irish than they were. Those latter-day county magnates clung to a kind of faded feudalism, a shabby grandeeism with little of the essentials, such as power, prestige and, above all, capital, to buttress such a position. They were, in truth, anachronisms without knowing it, living in a world where the social, political and, still more so, the economic pattern, staggering and shaken from

from the after-effects of a vast war, was in process of rapid and, indeed, revolutionary transformation. They failed to see themselves as they really were and hung on, pathetically, to a world that was in its death throes, optimistically hoping for a future on something like the old grand scale. They were not at all bad fellows, those latter-day landlords - more victims of a system that had long since seen its hey-day and that they felt destined to maintain. Had they been wiser men, they would, of course, all have sold out under the singularly advantageous terms of the Wyndham Act of 1903, which would have left them in excellent heart and without even the pretence of proprietorial responsibility. The conditions of their tenantry, though miserable enough, in all conscience, (most of them being sadly below the economic Plimsoll line) were a little better than of old, because of the operations of the Fair Rent Courts and the protective provisions in the Irish Land Law and Land Purchase Acts. For example, these Acts saw to it that, unlike the position forty years earlier, landlords could not exact rack-rents from their tenants, nor could they evict them at will, nor could they prevent them selling their "tenants' interest" in their holdings to their

successors. But, whatever beneficial or remedial changes came to the tenantry, came to them through legislative action, and that alone. As for their landlords, they were semper idem. True to the tradition of their order in Ireland, they shouldered none of the legitimate duties and burdens of normal landlordism. As A.M. Sullivan wrote, "Property in Ireland had always repudiated the idea that it had any duty beyond the extortion of rent".

I became well acquainted with the conditions of these unbought-out tenants in the west of Ireland, both when going my rounds as a Dáil Judge in the years 1920 and 1921; and later, and in much closer and more intimate detail, as a Land Commissioner. These conditions, despite the aforesaid ameliorations provided by the statutes, would certainly be stigmatised as appalling to-day. To begin with, the tenants were always settled on the poorest and least productive parts of the estate, where often the land could hardly be called arable at all. And even of that type of land, the area that comprised their holdings was small, carrying an extremely low rateable valuation and wholly inadequate from any economic criterion. That tenant was, indeed, a "strong man" who could boast of thirty acres of

that lean soil, with a rateable valuation say, of £7 or £8, when, on the lowest calculation, it took at least a rateable valuation of £10 to constitute an economic holding.

Nevertheless, great numbers lived somehow, or rather, with their wives and large families, on very much less - truly a miracle of endurance. Holdings of that sort of land of, from £5 to £2, or even less rateable valuation, were numerous, far too numerous.

Dr. Moritz Bonn's verdict on those holdings was as true of the great majority of those subsisting in 1920 as it was in the year 1906, when he gave it: -

"The power of existing under miserable conditions of life, of eking out an existence and propagating his species on soil where a Central European goat would die of hunger, has doubtless preserved the Irish people during the long period of scorn and oppression".

"Modern Ireland" (1906).

The dwelling-houses and living conditions were, of course, in keeping with the land whence they derived their existence and support. Irish landlordism, since its inception, having virtually repudiated all the obligations of ownership that just and sound landlordism elsewhere willingly accepted, the provision and maintenance of the

holding's dwelling-house fell entirely on the back of the unfortunate tenant. And it would be hard to conceive a sorrier or more wretched human habitation than the poor fellow contrived for himself and family, and to which he gave the incongruous name of "home". I saw many of these "homes of Connacht" in my time. They have all vanished now, due to the magnificent beneficial work of our own native governments over the past thirty-eight years; and I often think what a pity it is that a few of them, (certainly a "congested" or rundale village) were not preserved and maintained as national monuments, to remind succeeding generations, so apt to forget, what their grandfathers, nay indeed, their fathers had to put up with, even in the opening decades of this enlightened twentieth century.

These tenants' dwellings were the most primitive of structures, only a few degrees better than the mud cabin in that they possessed a chimney and a hearth. Here is Dr. Moritz Bonn's, the German economist's, description of the Irish mud cabin which was not so very much worse than many of the "houses" I saw in those years: -

"The Irish mud cabin with its hump-backed straw roof which in place of a chimney has a hole, whose windows, if indeed any there are, cannot be opened, whose floor is the bare ground, whose

furniture is a couple of planks which serve as a bed, and a couple of other planks which claim the title of cupboard, is the most primitive dwelling-place that can be imagined. It has frequently no proper fire-place; against one of the walls and on the bare ground the turf is set alight. The only ventilation effected is through the door, or the hole in the thatch. A couple of little stools and a dresser upon which stand broken cups complete the furniture. Frequently, cow and calf, pig and hens, share the dwelling with the owners. Of such houses, there are 10,000 in Ireland".

("Modern Ireland And Her Agrarian Problem", Dublin, 1906, p.22).

In justice, I should say that I did not see any cabin just quite as bad as what Dr. Bonn saw, so comparatively recently as 1906; and I saw very few in which the human living quarters were shared with animals. The mud cabin and the kitchen - or, rather, bedroom - byre had gone, or were passing out when I began my work in the agrarian field. Things were improving, but so slowly.

However, shortly after I joined the Land Commission, I did see one such bedroom-byrne dwelling-house, about the year 1924, I think. I was doing a tour of the Co. Mayo with the local Land Commission Inspector, the late Frank Stock, whom I had particularly requested to show me such a sight. The home in question was situate some miles down the

Mullett peninsula from the town of Belmullet. The house, a long, low, straw thatched one, with, indeed, a chimney and a hearth, stood on a slope, some distance up from the road. As he pulled up the car, Stock warned me that, if we were to see the cattle in the house, we would have to proceed there with the utmost caution because, if the family caught sight of us approaching, they would at once start driving out the cattle, they were so self-conscious and ashamed of exposing their conditions to strangers. And it was, of course, to see the cattle sharing the same habitation with the humans that I had come. We were careful; and we succeeded in getting within one hundred yards of the house when we were spotted, and then there was a sudden scuttle of ragged, bare-legged children into the house, followed almost instantaneously by a stampede of cattle emerging from the house's "hall door". As the last cow (I think there were three in all) emerged, we arrived at the house, and were met by the bean a tige, a robust, healthy-looking woman in her early forties, with a shawl round her head, a whisk in her hand with which she had been belabouring the suddenly evicted beasts, and, like her children, stockingless and shoeless. She was, obviously, deeply embarrassed and ashamed at being

caught out with animals in the house. Her embarrassment, had she known it, was contagious, for I had that horrible feeling of having been caught out, prying into a private and unsavoury domestic secret of a family, which makes one feel a cad. However, we passed it off; and, presently, hearing that we were from the Land Commission, then so soon after the Hogan Act, looked upon as a kind of Santa Claus by those poor people, she soon got over her embarrassment, and got down to business. Her man was away at some fair; but she was not a Western woman for nothing, and, before we left, we got from her a long list of her "wants", and certainly they were mostly genuine wants, the greatest being, as in nearly every case then in Connacht, a new house.

I shall never forget the interior of that house.

It was somewhat, but no much, longer than the usual house of its type, and consisted of a single large apartment. When you entered, you saw that the interior was divided by a deep rut, drain or gully, that ran the whole breadth of the house and emptied its liquid contents into the yard over the threshold, making it so filthy with manure and urine that you had to pick your steps with great care, on entering or leaving. The bare feet and legs of the children and the woman were liberally coated with bovine excrement and

carried thereon into the human section. The space, left of this gully, was devoted to the human section of the establishment; it comprised about two-thirds of the interior, fitted with primitive beds, such as Bonn has described, along the wall-side, a great open hearth at the gable end where a big, black pot was boiling on a bright turf fire; and along the opposite wall-side was a rough deal table. The floor was the earth, of exactly the same substance as the yard outside where the hens were wont to pick about; and, indeed, they were as often in the house as outside it. On the animal side, there appeared to be rude stalls for three (or was it four?) milch cows, with hay and rush bedding. The gully was overflowing with manure and urine, and the same was spattered around the floor of the living section, carried there on the bare feet of the residents who appeared quite unconscious of the existence of all that ordure.

I was told by the inspector that, a few years before I came on the scene, houses of that kind were the rule rather than the exception over much of Connacht. As I have said, the bedroom-byre outfit had almost disappeared by 1920; but what was left in the way of housing was certainly bad enough.

Now, I must say something about the congested or rundale village, an institution that was traditional, and traditional through necessity, in many parts of Connacht, and areas like Kerry and West Cork in Munster. And they were to be found elsewhere in the country, even in the hill-country of the County Dublin, but under much better conditions. Bad and all as were the living conditions of these tenants, they were rendered even worse by the circumstance that many of them, far too many, lived in congested or rundale villages. These villages were extremely common at that time, and were estimated to involve no less than thirty thousand tenants in the entire country, most of whom, though, were in the western half:

A congested or rundale village consisted of a number of the primitive type of dwellings I have been describing, bunched closely together on a very small area, perhaps not more than an acre, with the merest narrow cart-tracks providing them with streets that, in wet weather, were transformed into streams and watersheds, if not slush and mire. A village of this sort might possess anything from half-a-dozen to thirty or forty houses. Such sordid grouping, often very dense, constituted the "congested village"

or the notorious "rural slum". When you came into one of those villages, you were at once struck at the dwarf-size of the houses, low and small and shockingly thatched with straw and scroggs, little higher than the hedge or wall that lined part of the streets, and so inconspicuous, blending, as they did, in with their surroundings. These extraordinary roofs of poor straw and rushes or sods supported a luxurious growth of weeds - foxglove, ox-eye daisies, ragwort, groundsel, thistles and, occasionally, a small tree or bush. They also provided happy hunting grounds for the hens who resorted to them in considerable numbers for their pickings, and, not in vain. The "congested village" was quite unlike an ordinary country village that you saw glistening in whitewash neatness on the hillslope, or nestling in the valley, sometime before you entered it. The first thing that struck you about the "congested village" was its inconspicuousness. You came upon it suddenly without any warning, as it were. You became unexpectedly aware of its existence. It seemed to be hiding itself for shame of its misery. Actually, the first thing that, as often as not, drew your attention to such a village were the numbers of ill-clad, ragged, bare-footed but, withal, remarkably healthy looking children that swarmed along the

streets and that, on your approach, scattered and scurried, rabbit-like, and disappeared into the hedges or side-bush. The families of those congested villages were very large, and it was a wonder how those Lilliputian domiciles could put them all up at night. The houses were all one model - one storey, of course, and one chimney, with never more than two small apartments, and often only one; soil floors, and never more than two, often only one Lilliputian window, fixed rigidly in the mud wall and incapable of being opened. The only way the air could get in was through the door (which was on the half-door principle) which was sealed at night, as the night air was supposed to be injurious to health. A few large and primitive beds lined the walls and did duty as "sofas" or "couches" in the daytime; and there was always a primitive deal "dresser" that contained the rough, often cracked and broken and always scanty crockery. The brightest and most cheerful thing in the house was the huge, open hearth, with its eternally glowing turf fire, never without its big black pot or kettle simmering or singing away to the household's cats or dogs lying before it. The favourite corners in the room were the two wooden seats, fixed on either side of the fire, and, by tradition, dedicated

to the aged members of the household. Again, there was another change for the better in the lighting system, in comparison with the near-past. Not long since, they had to depend on the tallow candle for light, if they used any light at all other than the light from the fire. At that time, however, with the advent of John D. Rockefeller and the American oil companies, the candle had been replaced by the paraffin oil lamp, an ugly, oily, smelly but quite serviceable utensil, exceedingly cheap to run, whose double wicks gave forth a light surprisingly strong and mellow. Electricity hasn't it every way.

True, there were no cattle or pigs kept in these abodes. They had just got over that stage, and not so very long since either, I gathered; but fowl and ducks in great numbers, and even geese, made "liberty halls" of them, wandering in and out at will.

The food of these people was simple in the extreme - home-made bread, porridge, cheap, fat American bacon, potatoes, and, butter, curiously enough, galore. Butcher's meat, save for Christmas (in lieu of fowl or turkeys which they reared only for the markets) was unknown to them. Their drinks were fresh milk, buttermilk and tea of a very

high quality, which was drunk thick and black, with little milk and plenty of sugar. Fresh milk, or "sweet milk", as it was generally known by, was often scarce during the year, for one reason or another. A national teacher, with long experience, told me that always the period of milk shortage coincided with illness and disease in the school-going children, with an inability to concentrate on their studies.

Now, it may be asked, why did such people live in a cramped village instead of in isolated houses, which is the general pattern in Ireland, especially when there was so much room? The answer would appear to be, because of the peculiar type of tenure they were subject to, "rundale" or "intermixed". Generally, all of the holdings of these small people were held in rundale. There would be an area of land, say four or five acres, in which, let us say, ten villagers had an interest in rundale. In winter, that area would be worked by the ten as co-partners in a commonage on which each man ran a specific number of cattle, more or fewer in accordance with the value and size of his share. In spring, all the cattle were sold, the entire area was cleared and given over to cultivation. From being

purely pastoral in winter, it became mainly arable in spring and summer. But it was not cultivated in common, which would, of course, have been the sensible thing to do, with so many co-tenants. On that area of four acres, not only would every one of those ten people have a separate plot to till and work, but he would have several such plots; and, moreover, they would not always, indeed seldom, be co-terminous. I have known cases where one individual had twenty separate plots (there have been similar cases of forty plots), amounting in all to something well under two acres and, with hardly any of them, contiguous. The other nine tenants of the ten we are talking about would have the same, or less, or more, number of plots, scattered arbitrarily over an area that, in its integrity, was very far from sufficient for one. They would proceed to cultivate their plots when winter had passed, and the cattle had been disposed of. It was most intriguing to study a map of rundale holdings. If there were enough colours to go round (generally numbers had to be resorted to, the tenants were so numerous and the area so small), you would have A's plots (perhaps fifteen) tinted red, B's plots (perhaps seventeen) tinted blue, C's plots (ten, say) tinted green, and so forth; and it was

extraordinary what a speckled production that map was, seeming as though it was affected with eight or nine different types of measles, all producing spots of different colours!

Rundale holdings were, of course, the result of generations of devises by tenants on their death, resulting in the division and redivision, again and again, of the small tenancy inheritance amongst the issue, or on the marriage of the female issue - a kind of queer tenential subinfeudation, to employ a wrongful but not inapt simile.

How the rundale tenants could, each year, pick out each his tiny plotlets, scattered here and there in the area, seeing that there were no fences or even tracks on the ground to identify them, and, of course, no script of any sort, was indeed a miracle. But a still greater miracle was that a dispute as to the invisible measurings of those multitudinous plotlets was practically unheard of.

A rundale area, where the crops were well up in the late summer or early autumn, was a delightfully fantastic and, albeit on a small scale, colourful sight - here, a perch of corn, beside it a rood, or less, of potatoes, owned, of course, by another person; beside that again, another tiny plot of

cabbage, and so on. Rundale was, of course, amongst the very worst forms of usership of land known, nearly, but hardly quite as bad as bad conacre or bad agistment (and I emphasise the adjective "bad" in the latter cases).

Those western, small, uneconomic holders, whether rundale or otherwise, could not, of course, possibly subsist on their holdings alone, and support their wives and their large families. They needed another outlet, another source of livelihood if they and their dependants were to survive. That outlet was provided by the large Scottish farmers of the Lowlands of Scotland who, every autumn, sought strong labour for the intensely hard and trying work of gathering in the harvest. Those Scots found the men they wanted in the Western men, the men of Connacht, of Donegal and Kerry; but mainly the small men of the Counties Galway and Mayo. Accordingly, a custom grew up over long years of those tenants I have been describing, leaving their little farms in the autumn and winter of each year, after they had done their own scanty harvesting, and betaking themselves with their grown (and half-grown) sons (for every extra £1 that could be raked in was needful) to those Scottish farms in large numbers. One of the most trying and wearing of their jobs was

gathering in the potato crops, which got them the name of "Tatie Hokers", replacing that of "Spalpeens" of their grandfathers. As I say, their work was extremely hard, and their living conditions across the water just shocking; but, as they were exceedingly industrious, excellent and reliable workers, they were in great demand and never wanted for a job. And as they were tough, almost as immune to hardship as their Russian equivalents, and very thrifty, it was surprising the amount of money they managed to save and take back with them. That money, so hardly earned, bridged the difference for them between want and starvation and a frugal competence.

Well, that was the kernel, the heart of the land trouble, thirty years ago, as it had been, but in far greater magnitude, the heart of the problem from the beginning. That is why I have given more space to and detail of a subject in these pages that would appear more fitting for a work confined to land matters. For, did I not do so, readers of the twenty-first century might well miss the importance and gravity of the agrarian outburst of 1920. Its significance was profound, cutting deep down into historical memory and traditional background; that it was, that made it so dangerous.

But, grave as it was, the landlord and tenant aspect did not constitute the sole constituents of the trouble.

Apart from the thickly congested tenanted margins on those estates, always the poorest and least productive land, there were considerable, sometimes astonishingly large areas of untenanted land which generally comprised the fat of the estate. (It also, of course, comprised poor, barren, mountain land cut-away, useless bog, moor and heath, not even good enough to create tenancies on, and that was generally utilised as seasonal commonages). A share of that good untenanted land, the heart of it, usually comprised the landlord's demesne or mensal farm, which he worked with his steward and farm-hands, or, as often as not, let, retaining for his own use little more than a garden and a cow-plot. Most of those that comprised that remnant of landlords were far from affluent, indeed, impoverished; for one reason or another, the splendid wealth and prosperity, and certainly the high prestige, that they had enjoyed in former times had vanished.

The rest of the untenanted land on the estate, outside that which comprised his demesne or mensal farm, was hardly ever worked by the landlord. That area, often containing

some of the estate's primest and best fattening land, was usually let out, at a competitive seasonal rent, on the eleventh months' system, to a species of Irish Kulack, that were not, in any sense, farmers; they were purely cattle-dealers or cattle-jobbers. These personages, then very common in the West and Midlands, were the answer to the non-working proprietor of good land. They constituted a distinct and, at that time, a very opulent class of "cattle lords", or, to use the ancient Irish term, "bó-aires".

Their method of business was to go the rounds of the Western fairs where the small, struggling, underproof farmer, that I have been describing, brought in the cattle he had bred and reared, buy as many head of that cattle that they wanted, and put them out on those great ranches which they had hired for the purpose. The rich pastures of the ranches rapidly put meat on the cattle, with the minimum of expense to the rancher. No food but the good grass alone was necessary; and, as I have said, the cattle-lord's outlay was trivial, particularly as regards employment, and out of all proportion to his regal profits. Dr. Bonn's description of a typical ranch in the Counties Dublin, Kildare and Meath in 1906 could, with little adjustment, be adapted for a Western ranch in 1920: -

"Many parts of the country", he writes, "especially in the Counties Kildare, Meath and Dublin, are nothing but grassy deserts, covered with a dense growth of shimmering, almost blue-green grass, and sub-divided into fields by hedges and ditches. There is scarcely a human being to be seen, for the cattle graze without a herdsman in the hedged-in fields, in the centre of which a solitary post or stone, against which the animals can rub themselves, is almost the only mark of human effort. Hundreds and thousands of ruined cottages are scattered about, dwellings in which human beings formerly dwelt..... It is these wide 'grazing ranches' which have made Ireland into a land of great silence".

In fact, the sole employment given by the average "cattle-lord" was to a herd, who was miserably remunerated and shockingly housed.

The lean bullocks and stirks from the starveling farms of Connacht put on condition rapidly on the prime pastures of the landlord's estate, and the cattle-lord would thus be enabled to despatch, in the course of the year, several relays of fat cattle to England, splendid looking animals with glossy sleek hides, reaping thereby large monetary rewards at trifling cost to himself.

It was certainly a fine way of making good, dry cash, particularly as the times for the meat trade had

seldom, in history, been better; and, as I have said, outlay was negligible and employment almost a minus quantity.

Keeping well in the back of the mind that trinity of landlord, tenant and rancher, the traditional source of endemic land trouble, I shall now endeavour to describe and analyse the short but furious and exceedingly grave agrarian outbreak that erupted over the country in the spring and early summer of 1920, mainly over Connacht, Clare and Kerry, but with outpourings into many other counties as well, many of which had never before experienced agrarianism.

Amongst the counties affected, in greater or lesser degree, were Kerry, Galway, Mayo, Roscommon, Meath, Westmeath, Kildare, Leix, Offaly, Carlow, Tipperary, Longford, Leitrim and Kilkenny. In describing that "blitz" land war of nearly forty years ago, I make no apology for quoting liberally from my aforesaid article in the "Manchester Guardian Commercial Supplement on Ireland", which was written in 1923 when I was very much younger, fresher and much nearer to those events: -

"In February, 1920, paragraphs began to appear in the press, describing opposition here and there to holders of lettings or "takes" on the eleven months' system - a class of letting which grew up under Section 58 of the Land Act, 1881, and which, being

"for purely grazing purposes and for "less than a year", evades the provisions of that Act. This was not surprising, as nearly every spring, some disturbance takes place over the renewal of these lettings, particularly in the congested areas of the West. They are a cause of discontent in many parishes, as the small, uneconomic holders, who perhaps for years have been waiting for the division by the Land Commission of the neighbouring estate, consider their hopes foiled by those who thus take annually the landlord's grass lettings at high rents.

But, presently, rumours floated up to Dublin of a more ominous nature, telling of widespread cattle drivings, of the beating down of fences and boundary walls, and even of the destruction of property.

A little later came the news of the murder of Mr. Shawe-Taylor, a considerable landowner, as he was motoring to Galway fair. Then, of a sudden, all bonds were burst, and the fever swept like a prairie fire over Connacht and portions of the other provinces, sparing neither great ranch nor little farm, but showing a tendency to invade the smaller rather than the larger man, and inflicting, in its headlong course, sad havoc on man, beast and property. East-bound trains brought to Dublin large numbers of terrified landowners, who came beseeching the Dáil Government for protection, and suggesting that the only effective way to put an end to the trouble was to set up Dáil Courts.

It was indeed a strange anomaly that the first persons to advocate the establishment of a Dáil Judiciary were not the supporters of Sinn Féin (who, on the whole, rather doubted its possibilities of success), but harassed landowners, mainly of strong

"Unionist sympathies and hence opposed to the Dáil in principle.

These refugees gave alarming accounts of their treatment at the hands of land-hungry people. All had had their stock cleared - cattle and sheep driven off their fields and for miles along the hard roads of Connacht until some died of exhaustion, and the value was depreciated. Walls and gates were destroyed and trees felled, and occasionally barns and outbuildings levelled by fire. Anonymous letters, signed sometimes, "I.R.A.", sometimes "Sinn Féin", and sometimes, with greater truth, "Captain Moonlight", commanding the recipient to clear certain fields of his stock, to surrender certain acres to a local "Land Committee", and frequently to clear out himself, on pain of "getting Shawe-Taylor's medicine", were very plentiful. Posters forbidding any person to bid at the annual auctioning out of certain eleven months' lettings were posted up on the piers of the gates of the lands concerned. In places where the landlord, or landholder, proved obstinate, there was a mute, significant and generally effective gesture, in the shape of a grave neatly opened on his lawn, or at his front door.

The trouble went from bad to worse, and frightful stories came pouring in of the treatment meted out to any sort of a landowner, big or small, in the affected areas, or even to their employees. There was, of example, the terrible case of a herd beaten to death for not having obeyed an anonymous command to give up working for the landlord - a piece

"of brutality that recalls the peasant rising of France during the revolutionary epoch.

It was clear that the Dáil must act; the great test had come and, if it ever was to claim the respect and allegiance of the people, it was bound, at least, to make an attempt to restore peace".

Such was the position when I got a message in my digs in Whitworth Road, Drumcondra, that Griffith wanted to see me urgently. He was then Acting President of Dáil Éireann, in the absence of the President, de Valera, in the U.S.A. I went at once to his office. He told me, more or less, what I have recorded, but gave me astonishing particulars about the numbers and class of people who had been calling on him and importuning him daily for weeks past, begging of him to do something for them. They were all of the landlord and Unionist class, mainly Protestants, and mostly from the West, though some came from Longford and Westmeath - people who, ordinarily, would not touch Sinn Féin with a forty-foot pole. "But misfortune doth make strange bedfellows!" Their story was all the same. Their lands were driven and trespassing "Committees of the People" had, in the name of the Republic, seized them and were letting them and otherwise utilising them, as though they were the owners, with nobody to say boo to them.

These good loyalists had, of course, seen the R.I.C., but they told them bluntly that they had neither the men nor the time to spare for police work, especially on a scale so intensive. They declared that it was candidly beyond them, with all their other troubles, to attempt to cope with the agrarian situation, for they required every available man of their much depleted units for their defence against the constant I.R.A. attacks. That explanation of the R.I.C. for their inability to help was, doubtless, largely true, for the reasons I have already given. But there was much more than that to their attitude, as we shall see in due course. Hence it was that these good loyalists were, willy-nilly, driven into the arms of the rebel government. In their greivous plight, they sought out Griffith, begging of him, if he was a government, to give them the protection of a government immediately, if their lives, as well as their property, were not to be forfeited. Outlawry was abhorrent to Griffith's orderly and, indeed, naturally conservative and constitutional mind. He listened patiently and sympathetically to his petitioners, and assured them that the assaults on their property and the threat to their lives had, of course, no sanction from either the Dáil Government

or the Sinn Féin organisation; and he promised them that he would see to it that they and their property would get the protection they sought, and that they were entitled to, as soon as possible. Griffith, in my interview with him, made it very clear to me that he took the gravest possible view of the outbreak and was definitely of opinion that if it was not speedily and effectively dealt with it, it might well engulf the great Sinn Féin movement that had been built up with so much toil and sweat, and sweep it away, together with its major creation, the very Dáil itself.

Griffith informed me that Art O'Connor, T.D. for South Kildare, and soon to be made Substitute Minister for Agriculture in lieu of Barton, who had been captured, was already in the West, engaged on an inquiry into the position, and he asked me to join him there as soon as I could. Accordingly, I took the next available train to Claremorris where I met Art O'Connor in the hotel.

That was my first visit to the County Mayo and, indeed, my first trip to the West. True, I had been to Sligo on my holidays which, it is true, is in the province of Connacht, but, even at that time, the conditions there were very much higher in scale than in Mayo and Galway, and

appertained much more to the Ulster pattern. In Claremorris I also met, for the first time, Conor Maguire (now Chief Justice), his father and mother, his twin brother, George, the doctor, and his younger brother, Gerald, a solicitor, like himself, practising in that town.

The Maguire family were all ardent Sinn Féiners; and Conor had, personally, done a great deal to get the local Dáil Courts floated in the constituency of South County Mayo, and had himself actually sat on them, heard cases and adjudicated thereon. He held very sound views about the agrarian outbreak and was under no illusions as to its dangers, not alone to its victims, but to the whole future being of the Dáil Government and all that it involved. Old Dr. Maguire and his kindly wife entertained Art and myself to dinner, and the family gave us "landers" and strangers, in so far as the West was concerned, great assistance and sound advice in our investigations. The Maguire brothers, being Co. Mayo men and knowing the local conditions so well, were extremely helpful. Conor, in particular, was very concerned about the dangers in the agrarian outbreak if not speedily dealt with. "Nature abhors a vacuum", and, to cope with the menace to society,

local Arbitration Courts had spontaneously sprung up.

Those Courts, in dealing with the ordinary civil lists that the County Councils dealt with, were very effective.

But, though they had courageously taken on land cases - and dangerous ones at that - and were doing their best with them, it was clear that that was putting far too onerous a burden on local shoulders. No matter how sound the decisions of those tribunals might be in land matters (and any that I came across were very sound and just), the neighbour who was deprived of his land, or who was not awarded a slice of a neighbour's land by a Court comprised of neighbours, was, to put it no further, likely to take a very poor view indeed of such a determination. It was clear that, as regards land matters, at all events, the strain on the local Arbitration Courts would prove too severe and that the only effective way of dealing with a crisis so grave was by vesting power in some outside central authority specially constituted to deal with it. Conor Maguire saw that this was clearly the one and only effective solution, and advocated it strongly. Ultimately, a special Land Settlement Commission was created under the Decree of September 17th, 1920, of Dáil Éireann.

Art O'Connor and I toured the affected areas in the Counties Mayo, Galway and Roscommon, seeing conditions for ourselves and discussing the position with local leaders.

Let me now return to my aforesaid article in the "Manchester Guardian" Supplement: -

"The causes of the 1920 outbreak are many and complex, differing in various neighbourhoods, and depending on questions so far apart as history, tenure, local conditions, personalities, etc. But, so far as it is possible to generalise, the following would seem to have been the immediate causes: -

1. The maturing of a new generation since the termination of the Land War in the last century;
2. The effects of the great European War in -
 - (a) Staying, more or less completely, the Land Settlement work of the Congested Districts Board and the Land Commission;
 - (b) Stopping, almost completely for four years, the enormous drain of the vigorous young manhood of the West, through emigration;

(On this point, Lord French, the military Viceroy, was not far out when, in his interview with the Paris paper, Le Journal, published therein on January 23rd, 1920, he stated: "The principal cause of the trouble is that, for five years, emigration has practically stopped. In this country, there are from one hundred thousand to two hundred thousand young men from eighteen to twenty-five years of age who in normal times would have emigrated". In the eyes of British officialdom, so many young Irishmen being in their country was a wholly abnormal and most unsatisfactory state of affairs that required speedy "correcting").

- (c) Cutting off for four years in the English and Scottish harvest fields, always an essential supplement of income, to the miserable holders of uneconomic holdings and to the young landless men. The former class usually have a huge family to support, whilst the latter, generally small farmers' sons, required money to purchase farms for themselves. This occurred in two ways, through a fear of being conscripted under the Military Service Act, which applied to Great Britain but not to Ireland, and, secondly, because of the large amount of such work undertaken during the war by the organised companies of "Land girls";
- (d) Creating a great artificial inflation in price which had the effect of increasing enormously the normal value of land. At this period, it was not unusual for a small parcel of land to be sold for more than twenty times its pre-war value, and such transactions had, naturally, the effect of rousing the land hunger, particularly in the congested areas.

3. The astonishing intensification of deep, national feeling amongst the people, due to Sinn Féin propaganda, begetting a resultant determination, especially among the younger elements, to live at home at all costs, and on the land, if at all possible.

Granted the existence of those conditions, all that was necessary to create a conflagration of major magnitude was a suitable opportunity. That opportunity was provided by the virtual collapse of the R. I. C. as a functioning police force; and by the fact that the Government of the Dáil, busied with other matters, had not had time to establish a Civic Guard of any kind to take its place".

My experience of what happened in 1920 regarding prices for land has, I fear, not over-stimulated my confidence in the capacity of our professional financiers to estimate and size up conditions, particularly abnormal conditions, with any degree of accuracy, and to deduce

therefrom an intelligent and, at least, moderately sound assessment of the proximate future in the agrarian economic world. When I was going the rounds of "tramp judge", as my critics termed me, I was amazed at the prices people were getting for their land. On the termination of the great and devastating four years war, it seemed that land had become almost literally as valuable as gold. Fantastic sums were given without any haggling for land that, clearly, was not worth a fraction of what was paid for it. The war had put the farmers of every degree - big, small, uneconomic, flourishing and bad - into the possession of, for them, unheard of wealth; and, true to precedent, when such a phenomenon occurs, they were spending their wealth, right, left and centre. However, a very considerable share of that money went to acquire more land, to invest, still more deeply in the great, new "l'or noir" that they had discovered all of a sudden; and so close to them too - actually just under their feet. That post-war craze of wild and reckless spending and extravagance was bad enough; but what made it much worse and gave it a false stimulus was the keen competitive hand all the banks took in it, as I have just described.

Before I depart from those Land Committees that were such a feature of that agrarian crisis, I would like to refer to a type of re-negation that was by no means uncommon in connection with them. I personally could never make sense out of that curious and wholly untraditional toadying for business in the public fairs and market places that was such a radical departure from the stereotyped respectability and conservatism of the banks. At that period of aberration in their long and cautious career, they ran extraordinary security risks in many cases. Nearly the only thing that was necessary was that the person getting the advance should invest it in the purchase of land. That fatal stimulus that the banks gave to trafficking in land was, needless to say, whole-heartedly responded to. As I have said, everybody was interested in land. Those who had the money put it all into land purchases. Those who hadn't the money formed "Land Committees", and these committees, all having some solvent men therein, went to the banks and got what money they asked for to purchase at famine prices the land they sought. These "Land Committees" sprung up, mushroom like and over-night, as it were, all over the West and right into Leinster and down far into the South.

In the course of my peregrination between May and September, 1920, I met with and dealt with several of them. The pattern, the objectives and the financing were all the same wherever they were formed. The enormous increase in land values having violently stimulated the latent greed for land, a "Land Committee" representing "deserving congests" and deserving landless men" would be formed. They would then approach Mr. X., a landed proprietor, informing him they wished to purchase his land for their philanthropic objectives. If he refused to sell, his cattle were driven off, his gates and fences destroyed, and he himself, should he prove irrationally obstinate, fired at and, possibly, wounded, so as to reduce him to a more reasonable state of mind. He, of course, being a wise man (quite a number were not so wise and suffered for their folly) then agreed to do business with the committee, who solved their consciences by proclaiming that they did not want the purchaser's land for nothing, they were prepared to pay him a fair price for it. He accordingly would sell to them at a price settled by their valuers and his. In a great number of cases the unfortunate purchaser was, as things turned out, more to be pitied than envied, even went through, in numbers of cases, a certain

amount of duress in those sales. The price of land, soaring upwards to such an artificially high level, the figure agreed on was always, in my experience, excessive, and far more than the lands could ever be worth. The price settled, the Committee went to a bank, or, as likely as not, was approached by a bank, and had no trouble at all in getting the money, secured by a mortgage on the lands purchased, and the collateral guarantee of any man of substance amongst them, and there were always a few such. The purchase price, thus raised, having been paid over to the proprietor, the lands would be duly transferred to the ownership of the Committee, who would proceed to divide it into allotments, giving to each man for whom they acted a division at the price stipulated for. And it was at this stage that the Committee's difficulties generally commenced, for numbers of the "shareholder" beneficiaries would be found unable to pay the price stipulated for in respect of their share, when their share of land would be given to someone else who could and would pay up. Sometimes, indeed, when things came to the acid test of producing the money, it would be found that only a few on the Committee had sufficient resources to shoulder the liability to the bank and take over responsibility for all the lands. In many cases the final

upshot of such dealings in land would be that perhaps three or four, or, as often as not, but one man was found in possession of the land and liable to the bank for the excessive purchase money.

Conditions in the West proved to be much more serious than we had anticipated, so serious indeed that the people themselves, acting on the great unwritten law, "salus populi", took matters into their own hands and established arbitration courts to check the chaos. Those arbitration courts sprang up, as it were, from the hearts of the people, without the direct sanction of any Government, in order to cope with an emergency which threatened to overwhelm the whole structure of society. We found that those remarkable tribunals had grown almost in the same ratio as the speed of the fever, and during our visit we had opportunities of seeing many of them at work. There was nothing uniform about them. They differed in form and procedure in different counties and even in different districts. In some places we found a large bench of popularly appointed magistrates; in others but one or two. Then some counties like Roscommon had

established an entire Land Commission of their own, with a full-time registrar, Courts of first instance and an appeal Court. Nothing could surpass the eagerness of those arbitrators to eliminate all and deal out plain and simple justice to every man, be he landlord or tenant, claimant or "resister" (as defendants were called). The arbitrators were mainly selected from the public representatives on either the district or county councils, a priest being usually president of a Court. The fact that the judges were from the locality aided them enormously in forming just conclusions in the various cases which came before them. However, the very popularity of those courts was their weakness, for it was obvious that the responsibility of throwing grave questions of title on busy men who had no knowledge of law and who acted without any remuneration, was neither fair to the arbitrators, or the litigants.

There was also difficulty in some places in getting the decrees of these Courts executed. None saw the complexities of the situation clearer than the arbitrators themselves, who frequently approached us to prevail upon the Dáil to set up suitable machinery at once to deal with the crisis.

As we have seen, largely owing to the strong representations of the Maguires of Claremorris, Art O'Connor came to the conclusion that some special kind of arbitration court for hearing and deciding agrarian disputes, free from any connection with the local areas or their personnel, was essential; and he determined, so soon as he returned to Dublin, to get such a tribunal established and functioning at the earliest possible moment. Nevertheless, even that resolve of O'Connor's was not sufficient, as we all presently saw whilst in the West. The critical urgency of the situation would not wait on time. Conor Maguire put up to us a number of cases that should be heard at once, and heard by individuals who were not of the locality; and he suggested that Art O'Connor and I should hear them whilst we were in the county. Convinced of their urgency, O'Connor contacted the Dáil Government and got a sanction from them for him and me to sit and hear them forthwith as an emergency tribunal. Thus was held the first public sitting of any court directly under the authority of the Dáil on May 17th, 1920, which Art O'Connor in his Report to the Dáil termed "the corner-stone of our judiciary". And the first case heard by that court was

the famous one of Prendergast and Others, Claimants V Hyland and Murphy, Resisters.

At the opening of the case, the solicitor for the two joint tenants became apprehensive as to the nature of the submission form (which only the actual litigants were obliged to sign), and refused to compromise himself by pleading, unless the proceedings were held in camera. The submission form was a very simple and innocuous document, signed by the litigants and by a witness, binding the former, (1) to abide by the decision of the court, (2) to comply with any orders or obligations which the court might impose, and (3), not to submit to any alien tribunal any matter whenever the court had pronounced a decision or made an award. We told him we could not meet him there: the court had to be held openly, free to the public to come and see what was going on. He, however, declined to act, much to the disconcertion of the two unfortunate "resisters".

At this, the Very Rev. Martin Healy, the local parish priest, came forward, and pointed out to us what a hardship it would be for Hyland and Murphy, two poor men,

ignorant of the law, and wholly unable to plead on their own behalf, if they were to be deprived of expert aid, seeing that those who had caused them such grievous trouble, and were there that day, seeking to possess themselves of their lands, had the great advantage of being represented by an experienced solicitor, Mr. Conor A. Maguire. He went on to point out that he himself had made a special study of canon law during his theological course and, seeing that the principles behind canon law were similar to those behind secular law, he asked us to allow him to plead the case of those men before us, whom he felt had suffered grave injustice. This we did; and a right good ad hoc counsel, Fr. Healy proved himself to be, displaying an unusual knowledge of the law of evidence for a non-lawyer, rising occasionally and objecting to testimony, of a personal and bitter character, as not being evidence, and, therefore, irrelevant and inadmissible, which, indeed, much of it was. "There is no hatred like unto the hatred between neighbours".

Having heard the case, we reserved our decision, more because of the heat and bitterness involved in the case than because of any doubts we had about what our decision should be.

For doubts we had none. We had no difficulty in deciding in favour of the "resisters" and against the "claimants". Hyland and Murphy's holding was barely economic, barely sufficient for their needs and the needs of their families. And it was not the principle of the Dáil to cure wretched, uneconomic holdings, by making others equally wretched and uneconomic.

Nine days after the hearing, I delivered the unanimous judgement of O'Connor and myself in that case, at one of my first sittings as a Dáil Special Lands Commissioner, in the town of Ballinrobe. Seeing that it was the first judgement given by a court under the direct authority of Dáil Éireann, and as it is largely self-explanatory, I had better give it here in full, heading and all. Actually, I drafted it, at Art O'Connor's request.

"Arbitration Court.

In the matter of)	(John Hyland & John
Anthony Prendergast & Others)	(Murphy of
of)	(Ballymartin,
Cornacarton, Fountain Hill,)	(Kilmaine".
Knocknageehy, Kilmaine.)	(

v.

Recites that John Hyland & John Murphy hold 119 odd acres of the lands of Fountain Hill under lease from Edward Burke, Brunells, of date 26th October, 1870; and goes on -

"And Whereas the said lease is binding and absolute on the said lessees in every particular and respect; And Whereas it is the duty of these Courts to respect and uphold solemn obligations freely entered into in writing;

And Whereas in the said lease there is a covenant absolutely and entirely forbidding the division and partition of the said lands under penalty of forfeiture;

And Whereas this court considers that of the said 119 acres, one-sixth only is arable, the remainder being stony, marshy and mediocre quality land;

And Whereas this court further considers that without the said 119 acres odd, the said lessees could not satisfy the reasonable requirements of their families;

And Whereas this court further considers that the holding of the said Anthony Prendergast and the other claimants, are far below the standard of economic holdings;

And Whereas this court takes cognizance of the fact that, in the townland of Frenchpark, and nearing the townland of Fountain Hill, there are about 700 acres containing at least 500 acres of good, arable and pasture land which, in the opinion of this court, is in better heart than the said lands of Fountain Hill;

And Whereas the said 700 acres is untenanted and at present in the possession of the body known as the "Congested Districts Board for Ireland";

Now This Court Hereby Orders

- (1) That the claims of the said Anthony Prendergast and the other claimants to more land, in order to increase their present holdings on the basis of economic holdings, are established;
- (2) That the claims of the said Prendergast and the other claimants to the said lands of Hyland and Murphy are not established;
- (3) That the said Hyland and Murphy are entitled to enjoy undisturbed and peaceable possession of the said lands of Fountain Hill;
- (4) That the claims of the said Hyland and Murphy for the sum of £211 and upwards for the loss of sheep and consequential damages are not established against the said Prendergast and the other claimants;
- (5) That each party to this dispute abide its own costs in this matter.

Signed: ART Ó CONCHOBHAR - Presiding Arbitrator.
CAOIMHGHÍN Ó SIADHAIL.

Arbitrators duly appointed under
the Authority of Dáil Éireann.

The 26th day of May, 1920".

A few comments are necessary on that judgment.

The first thing that strikes one about it is that it is an extremely conservative, indeed, "capitalistic" decision of a court that had emerged from a revolutionary ordinance. Furthermore, it will be noted that the term or duration of the lease is not set forth or referred to; the reason for that was that it was for a life, and any reference thereto might well cause the life to lapse before its natural term, in the then unsettled state of the county. Again, the judgment was clearly drafted to draw the attention of the claimants off Hyland and Murphy's holding, by slanting it towards the big adjoining ranch that had been for so long in the hands of the Congested Districts Board. With regard to the Board's alleged tactics, it is but fair to record that, since the spring of 1915, it had been precluded by the British Government from purchasing or dividing any lands under the Land Purchase Acts, all available money being channelled on the war effort.

Father Healy, the local parish priest, who championed the cause of the two assailed lessees, had some claim to have played a not inactive part in the constitution of that first court under Dáil sanction. There is on

record a letter from him, dated 2nd May, 1920, to Conor Maguire, Solicitor, Claremorris, requesting that he would "kindly ask Dáil Éireann to send us two men to adjudicate on (Hyland & Murphy). The only condition I would wish to put in being that they should be strangers, so that they would easily give their decision independently of any local influence, one way or the other".

Conor Maguire, in his capacity as President of the South County Mayo Comhairle Ceanntar of Sinn Féin, was a person of influence and standing in the locality, which explains why Father Healy wrote to him in that wise, despite the fact that he was the lawyer for the other side.

The claimants, as well as Hyland and Murphy, and their respective advocates, were in court; and, when the effect of the judgment which I had read, dawned on them, they were highly enraged and stamped out of the hall in an arrogant temper, proclaiming, in loud and angry tones, that we were "no Sinn Féin court" (which, of course, we did not claim to be), and that we were "worse than the British". They also proclaimed their intention of completely ignoring any order, which intention they carried out, continuing on in illegal possession of the Fountain

Hill lands. Furthermore, they boasted in the fairs and markets of their contumacy and their repudiation of the arbitration submission form that they had all signed, and jeered at the futility of the Dáil's authority. It was said at the time that the local R.I.C. were encouraging the disappointed claimants in their obduracy and contempt of our judgments. Naturally, that body, in its discomfiture and impotency, would not particularly welcome the success of its formidable rival that was so grievously harassing it and endeavouring to replace it.

It was certainly a bad state of affairs, and seemed to confirm the opinion of those Sinn Féiners who discounted the setting up of our courts, on the grounds of the impracticability of such a course. While it continued, it was obviously difficult, indeed, meaningless to go round the country, holding land courts under the authority of Dáil Éireann. If our decrees were to be flouted and mocked, the sooner we abandoned the idea, the better; to continue, in such circumstances, would mean a fatal loss of prestige to the Dáil Government and all that it stood for. The question of the capability of the Dáil to enforce the orders of her courts concerned me, at the time, very closely, as I shall show presently.

Art O'Connor returned from his visit of inquiry to the West, thoroughly convinced of the urgent need of creating a national lands court system, and of having it functioning as soon as possible, as well as the establishment of an effective executive arm to ensure the enforcement of court's orders. As a first step towards that objective, O'Connor obtained authority from the Dáil Ministry to summon a representative conference of Connacht deputies, I.R.A. commandants, Sinn Féin representatives and deputies from the West, Clare and North Longford. The Minister for Home Affairs (Austin Stack), the Minister for Defence (Cathal Brugha), Conor Maguire, solicitor, and myself were also present.

O'Connor summed up the result of this conference in his report to the Dáil thus:

"The conference achieved its main purpose, by showing the necessity for a formal land policy. It showed, further, the suspicion, which was general, of all sectional attempts at land settlement not under the authority of An Dáil, and the absolute necessity for co-ordination between the work of the courts and the machinery to carry out the decrees.....

As a result of the conference and many discussions I have had with people from different parts of the country..... I have come to the

conclusion that the land question must be tackled by us, not in any half-hearted, dilettante manner, but with a desire to solve it where so many others have signally failed..... We must tackle the land question as a national proposition..... To this end, I suggest the setting up, immediately, of a Republican Land Commission under the authority of the Dáil".

That, however, was a consummation that could not be achieved for some time, and, as the epidemic was spreading with gathering force every day, some interim arrangement to deal with the distemper had to be provided immediately. Accordingly, O'Connor obtained the sanction of the Ministry to relieve the local arbitration courts of the unfair burden of land cases, and thenceforward to work the whole system of land tribunals, through a properly trained legal man, specially commissioned for the purpose. He also got the Ministry's sympathy for his suggestion that, till a Republican police force was definitely established, the Department of Defence should look after the execution of court decrees.

I was appointed special Judicial Commissioner for agrarian cases pending the establishment of a regular Land Settlement Commission. I was the only one so appointed,

though there was plenty of urgent work for a few more.

I functioned continuously in the disturbed counties from May until the said Commission, established under the Dáil Decree of September 17th, 1920, commenced operations.

"From all parts of the country, especially the West and South, registrars of district courts sent in long lists of land cases that urgently awaited hearing, and eagerly clamoured for sittings of Dáil Land Courts, presided over by myself or some representative of the Dáil. As there was at that time no machinery devised by law to meet and deal with this great accumulation of work, it became necessary to make some temporary arrangement. Accordingly, with the sanction of the Dáil Ministry, I issued a warrant to Kevin O'Shiel as a Special Lands Commissioner.

During the months of May, June and July, and part of August, Kevin O'Shiel was engaged practically every week in holding Land Courts in the troubled areas. He sat in Ballinasloe, Claremorris, Ballyhaunis, Roscommon, Castlerea, Mullingar, Castlepollard, Birr, Portlaoigaise, Tullamore, Granard, Longford, Manorhamilton and, occasionally, in Dublin. An idea of the extent of the work is seen in some of his reports to me.

It was impossible for him to stay long enough in one centre to dispose of the entire list, the most he could do being to hear the more urgent cases and adjourn the rest until he had

attended to equally urgent cases elsewhere. However, with one or two exceptions, he was never less than two days in any town. He was twice in Roscommon, the first time for a week, and the second, for a fortnight. The conditions prevailing there during the sitting of the Court he describes as surpassing the public interest displayed in the assize court of the British system in the period of its hey-day. The hotels were packed with counsel, solicitors, land valuers and litigants, whilst the streets of the town swarmed with hundreds of witnesses. Every single solicitor in the county, despite politics, and many from neighbouring counties, appeared professionally at some time or another during the sitting. The court was crowded with the general public who took the greatest interest in the proceedings, and from the very start the people's courts were everywhere enthusiastically welcomed by all classes of the community, and their awards were, with comparatively few exceptions, loyally accepted and carried out. In Roscommon alone, he dealt with 69 cases, involving 11,575 acres".

But I must return to our defied order in the Hyland and Murphy case. Shortly after that case, I received my warrant as Special Lands Commissioner, and immediately set out, holding courts in the Counties Mayo and Roscommon, hearing cases and making orders in respect of them. Most of my judgments were obeyed without question, but there were some defiant cases that modelled themselves

on the Hyland and Murphy case (which still persisted in arrant contempt of our order). As time went on and no action was taken against the Hyland and Murphy delinquents, these defiant cases showed signs of increasing in number and in defiance. My position was becoming delicate, if not critical. What would happen if, instead of a few, dozens of my orders were being ignored! Hyland and Murphy was a key case and it was clear that it had to be settled if the administrative side of the Dáil Government was to succeed.

I felt it was essential to clean up Hyland and Murphy and kindred cases before I proceeded further, handing out orders that might, or might not be obeyed. So I adjourned my Western courts, and betook me to Dublin. I saw my Minister, Art O'Connor, who was wholeheartedly behind me, and had been doing his best to get action taken taken in respect of Hyland and Murphy. But he was, at the time, an extremely busy man, handicapped by a small staff. He suggested that I should see Arthur Griffith, then Acting President. Griffith was most sympathetic, fully understanding the position and its gravity. He, however, pointed out to me that, in his position of Acting President, he could do little at that moment, but asked me to go and see Cathal

Brugha, the Minister of Defence, and put up to him that his I.R.A. men should take the necessary action against the Hyland and Murphy rebels. He asked me, when I had seen Brugha, to come back to him.

Well, I saw Brugha. It was my first and only interview with that formidable man, although we had met on a number of occasions. He was, I think, a director of Lalor's, Church Chandlers, and had his office at Bachelor's Walk. He saw me at once: a quiet, steely-eyed little man, with a rigid, inflexible but wholly expressionless face. He was silent, at first, letting me talk, which I did. I pointed out to him the gravity of the Hyland Murphy affair which, if it were allowed to continue, would certainly spread, annihilating our courts in a storm of ridicule, thereby probably proving fatal to the Dáil itself and all it stood for. He listened to me in complete silence, his utterly immobile and expressionless countenance confronting me with steely impenetrability. When I had finished, he had his say. In a few, sharp, staccato sentences, he informed me that he had no use for courts, police or their ilk. They were the organisms of peace; but we were not at peace; we were at war. We of the Republic had, or should

have, only one idea, one objective, viz., to get the English out of Ireland. Nothing should deflect or distract us from that purpose. It was time enough to think of courts and police and so forth when the English had been got out. I pleaded with him, but saw that I made small impression. He did, however, ask me where the Hyland and Murphy lands were situate, and for the names of the misdemeanants, which I gave him and which he recorded on a pad.

When I left him, I went back to Griffith immediately; and told him the effect of my interview with Brugha. That little man smiled, pulled his tie, blinked his eyes, and said not to bother, all would be well. Then he took his hat and stick, and made off for some meeting or other.

A few days later, the news came that, in the middle of the night, armed men had arrested four of the most prominent resisters of our decrees, and carried them off to an "unknown destination". I found out that the action was taken on the orders of the Dáil by the local I.R.A. commandant. He was the son of a small tradesman, and his whole force was comprised of the sons of small farmers, some of whom were closely related by blood to the aforesaid resisters. I was immensely relieved when I heard this news;

and felt that that strong action would put a stop to local "Bolshevism" in the West. But my optimism was too previous. We heard that the women of the arrested men were now taking their place and were proclaiming themselves to be equally defiant.

That day, I called upon the late Dean Macken, parish priest of Claremorris. The Dean was a magnificent figure of a man, standing more than six foot high, with a strong, square, massive head, crowned by a thick crop of white hair. When I told him about the women taking over the work of the defiant men, and my trouble that it would be exceedingly difficult to arrest women and deposit them in an "unknown destination", he gave one of his great laughs, went to his sideboard and filled me out a stiff whiskey and soda, saying, "Mr. O'Shiel, you're a young man, but you don't seem to know much about women.' You should know that women can't get on without their men.' Leave them alone, and I'll lay you anything you like, they'll be shouting for their men to come back, inside a week"!

What the good Dean foretold came true. Inside a week, the women came to the I.R.A. chiefs, begging them to release their men, and promising that, if that were done,

they would all abandon their offensive against the lessers and let them hold their lands in peace. On that basis, they were released. No event did us, or our courts, more good. Hyland and Murphy had been out of their holding for three months, and had sustained considerable loss. During all that period, the claimants had been in occupation of that holding, enjoying the usorship of it for their own stock; further, for three weeks of that period, they had been in that occupation in open defiance of our judgment.

The courageous parish priest, Father Martin, I heard, suffered materially because of his altruistic efforts in the cause of justice, by his taking on the defence of Hyland and Murphy against his other parishioners; many of the latter vented their spleen against him by refusing to pay his dues.

So ended the first and gravest attempt to repudiate the orders of the Dáil courts. There were, of course, other attempts, but they were not just so serious, and they were all effectively met and dealt with, in due course.

The decrees of the Dáil courts were not, naturally, liked when they went against land-hungry claimants. But,

after that case, and a number of others, no disaffected claimant was bold enough to defy them, openly and brazenly. Other and more subtle means of endeavouring to reduce them to practical ineffectiveness were resorted to, from time to time; but, seldom, thereafter, save during the severe Black and Tan blitz in the winter and spring of 1921, when the courts were driven underground, were our orders brazenly defied. Prendergast and Others v. Hyland and Murphy was of supreme importance, as it established confidence in the rigid impartiality of the Dáil courts, and revealed the strong discipline of the I.R.A. when neighbours' sons, and family connections of the misdemeanants, carried out, to the letter, the arrests which could not but have been singularly distasteful for them.

This case (and a few other early ones) was the test case of Dáil sovereignty, and, in the numerous cases that followed, there was never so much as a suggestion to flaunt the decisions of our courts. Public opinion was a hundred per cent. behind them. How history repeats itself! How national characteristics, national qualities endure! King James 1's Irish Attorney-General, Sir John Davis, a

highly intelligent and observant Englishman, wrote a remarkable essay, called "A Discoverie Of The True Causes Why Ireland Is Not Conquered", the final paragraph of which was as follows: -

"For there is no nature of people under the sunne that doth love equall and indifferent (i. e., impartial) Justice better than the Irish; or will rest better satisfied with the execution thereof, although it bee against themselves; so as they may have the protection and benefit of the law, when upon just cause they do desire it".

If that was true of us in the early seventeenth century, it was unquestionably true of us in the second decade of the twentieth century. Had it not been for that splendid sense of justice, embedded in the very fibre of the people, that Davis noted, the Dáil's attempt at running a judiciary would have been, particularly in the conditions then prevailing, a hopeless failure.

THE SPECIAL LANDS COURTS,

(May 17th to September 17th, 1920).

As I have said, the Hyland and Murphy case was the first to be heard, under the direct authority of the Dáil. Art O'Connor and I constituted the court that heard and decided that particular issue. We were, of course, a purely ad hoc tribunal, suddenly created to meet a dangerous and highly threatening position. Art O'Connor was Substitute-Minister for Agriculture, in place of Robert Barton, the Minister, who had been captured and was serving sentence as a convicted felon, under British law. In that capacity, Art was one of the prime executives of the Dáil Government. He rightly felt that, occupying such a post, he should not, nor could not, sit or act as a judicial personage, in any respect. Accordingly, I was appointed by him, under warrant of a special judicial commission, vested with plenary judicial powers, under the authority of the Dáil, to hear and determine all disputes and issues affecting the tenure of, and title to land in the country. Actually, I was the only judicial commissioner so appointed, under

that special authority, though there was ample work for, at least, a couple more. I had, accordingly, an extremely busy time of it, travelling round the country, hearing land cases, during the interval from May to the end of September, when the Dáil Decree of September 17th came into being, putting the land court operations of the Dáil on a firmer basis by the creation of the Land Settlement Commission.

On my appointment as Special Judicial Commissioner, the land cases, for hearing before the popularly elected district and constituency courts, were diverted to my emergency court, which resulted in my having singularly heavy lists to attend to, all over the West, as well as slightly less heavy lists in the Midlands and the South.

At that time, sittings were held in public, generally taking place in the town halls of the various centres, or in public halls, where available and where the former were lacking. The power and prestige of the British authority were then at so low an ebb that the Dáil Courts, of all types, were actually allowed to carry on their pressing business, without any molestation from the R.I.C. or the British military. But this

tolerance, on the part of those hostile bodies, was not, by any means, wholly due to the success of the I.R.A.

Another very important reason for, seemingly, the Castle's decision to permit the free functioning of the Dáil Courts, was the expectation, not to say, hope, in its mind that, before long, their decisions would be so universally detested that they would be ignored with impunity. Thus, without any special effort on the part of the Castle, it was devoutly hoped by them that the Dáil Government, in attempting to adjudicate on vital issues between neighbours and relatives, would court wholesale unpopularity, thereby undermining its vast organisation and bringing about its own ruin and downfall amidst the ridicule of the populace, who had been so blindly supporting it. And, indeed, it was far from being a bad gamble on the part of Dublin Castle; for, as I have already stated, the idea of floating a fully equipped judiciary under the Dáil's auspices, had, by no means, the unanimous approval of the Sinn Féin organisation. There were many, very many, doubting Thomases who counselled against it, and foretold its collapse and failure. Well, to continue. Having got my special

warrant and the bother about Hyland and Murphy having been satisfactorily settled, I set forth on my long itinerary of circuits, tackling, in the first place, the large number of serious and menacing cases in the western counties, later going on to the midlands and the south, where the position was not so grave.

Before setting forth on my itinerary, I met Michael Collins in Dublin. When I told him what I was embarking on, he said, with rather more than his usual emphasis, "For Christ's sake, don't let them catch you! There's always plenty of our fellows in gaol. We've got to get on with the work, and going to gaol won't do that".

I bore that counsel very much in mind during my court sessions, and said, or did, little that could possibly provoke the enemy to suppress me. However, I not only succeeded in keeping afloat for a while; but I did succeed in evading arrest and imprisonment.

At the first court I held in Ballinasloe after receiving my warrant, an I.R.A. officer came to me and told me that he, and a posse of I.R.A. men, had been detailed to act as police in my court, and see that things

went smoothly. He, naturally, not having any experience of court or police work, was anxious to know just what would be expected of him and his men, in their capacity as policemen, detailed for court duties. I told him that his work, and that of his men, would be simple enough - just keeping a general eye on things in the courtroom, maintaining the necessary ^{silence} and order, and seeing that none but themselves wore their headgear in court. These I.R.A. guards were everywhere excellent, and were a great help and buttress to me in those courts. It was certainly droll to look down from my bench on the assembled crowd, gathered there before me, and seeing, lined up on either side of the hall, about a dozen stalwart I.R.A. men, in trench coats and belts, all sporting hats, or caps, worn at every conceivable angle. And, droll still was it to behold two or three of the enemy R.I.C. men, standing up at the back of the hall, also sporting their caps - a curious and, of course, wholly unintentional mark of respect to the rebel tribunal on the part of His Majesty's Royal Constables!

Seeing that a number of R.I.C., in uniform, were nearly always present in my courts, I felt (having regard

to Mick Collins's counsel) that I should be somewhat cautious in the manner in which I promulgated my decisions, so as to give them no excuse to suppress me. With that end in view, I devised a formula that I always used when making "protection orders", i.e., orders forbidding persons from entering on the lands or interfering with any landowner whose case was sub judice in our courts. These orders were generally fairly drastically worded, forbidding all and sundry, on pain of "severe penalties", not to do anything to prevent the occupiers' free and peaceful enjoyment and user of his lands. Having pronounced the order, I would invariably add that that order would go to "the appropriate police authority, to secure its being given effect to". I could see, occasionally, a smile pass over the faces of the R.I.C. men present, when I would utter those words.

I dealt, in the first instance, as far as I could, with the trouble in the Counties Mayo and Galway, which was considered, at the time, most urgent. And, indeed, in both counties, things had been bad: - cattle-driving galore, levelling of walls, gates and fences; shootings, in more than one case, fatal; beatings-up and assaults,

the latter not even excepting some of the Franciscan Brothers of Kilkerrin, Ballinasloe.

COUNTY ROSCOMMON.

Having dealt with the more serious cases in the Counties Mayo and Galway, I crossed over into the County Roscommon. There, things were as bad as they could possibly be, and the volume of agrarian claims extremely heavy. So bad, indeed, was the agrarian trouble in the County Roscommon that that county had gone even further than others in establishing, in addition to its popular local courts, an entire Land Commission of its own, fully equipped with a registrar, court of first instance and a court of appeal. That remarkable tribunal was due to the imaginative energy of the famous Father Michael O'Flanagan, who was then curate in Roscommon Town, and to the assiduity and industry of a local auctioneer, the late Graham Sennett - that rare species, a Protestant Sinn Féiner. Sennett devoted himself, selflessly, to the building up of that local lands tribunal, and certainly deserves to be remembered for his altruistic work in that regard. Sennett, who was also registrar of the local arbitration courts, became registrar

of my special lands court, and, later, local registrar of the court of the Dáil Land Settlement Commission, on its coming into being at the end of that September.

Sennett, a man then in his early thirties, was an enthusiastic worker in the cause, a great friend of Father O'Flanagan, and he sent up to headquarters many letters and memoranda on this really grave condition of affairs in his own county. I do not think I can do better here than quote from his memoranda of May, 1920, to Art O'Connor, the Substitute Minister for Agriculture, as they give a good, albeit, perhaps, slightly prejudiced, contemporary picture of the then prevailing conditions.

In reading Sennett's papers, it must be borne in mind that he was a fervent Sinn Féiner, and, as such, his deadliest enemy, after the British Raj, was the sectarian Ancient Order of Hibernians, who were the main buttresses of the official Irish Party.

Sennett's letter of May 20th, 1920, is headed, significantly: -

"Regarding Cattle Drivers, Marauders,
Terrorists and Hooligans".

He begins by requesting the Minister, to whom the letter is addressed, "in the name of every man who has a stick in his name and who is not afraid to open his mouth, that you will see that something more invincible than a typewriter is brought to bear on the principal ringleaders". And he continues: -

"The state of this constituency is something terrible, the most vile hooligans that did the dirty work against us in the General Election, including the cur that attempted Harry Boland's murder, are marching, with the tricolour, to commandeer lands.....

I wish to draw your particular attention to the letter from Mannion, in the case of Owens's land. Firstly, the plea of necessity is absolutely overruled by the offer that Mr. Owens's stock 'will get a preference on the grazing line'; that is to say, that if the land is surrendered to those clients of Mannion's, they will take in Mr. Owens's cattle to graze upon it, at so much per head. The price these parties are offering for land, and at which they have got it, are in the ratio to the 'grazing line' revenue per half year of 5 to 2. Thus, if Mr. Owens sells to them at £25 per acre (he will be lucky to get so much) and lets his cattle back to graze, by the month or half-year, at so much per head, he will pay £10 per acre at least.....

"Secondly, Mr. Owens knows that the letter is quite enough to get six months for Mannion before the County Court Judge, and you must appreciate the fact that, instead of going to the R.I.C. in Strokestown, he comes here, twelve miles, to Roscommon to hand it to me, and you will admit that, when a man in his position has suffered as he has done, puts the most powerful weapon he has into our hands and asks for common justice, it is surely up to us to give it to him.

Now, I ask you to give us a hand in this job, because the Board (i.e., the Roscommon Land Commission), set up by the county delegates, has issued permits, and they have been walked upon. Every man in the county that has anything will stand by Sinn Féin and by the Republic, if we can prove that we can restore order and do justice where England could do neither, with all her tin hats.

It is not a case of buying their allegiance. They all admit the landless men have a case, and that there is more land submitted to me in one week, for a just decision from Sinn Féin, as to whether the owner is rightly called upon to part with some, or all, or any of it, in the interests of the landless men and non-economic holders, more land than the C.D.B. could imagine, or dream about, in all their existence.

We could do the two best things ever we did for the Republic, with the one stone:

- (1) We could have every rich man and every landed man, and every employer, and all the class of the men that read the "Irish Times" into the ranks, in a few weeks; and

(2) At the same time, we could get more than enough land from them that would satisfy every just claim, and by absolute fair play between rich and poor, Sinn Féin could be top dog for ever and a day.

[I think my friend, Sennett, was somewhat optimistic in this regard.]

"I dont want to submit that those who want the lands are, as such, less desirable members than those who are well off, but I do submit that the ranks of the land agitators are bristling with bad eggs, who have come into Sinn Féin to look for land and who, if they had it to-morrow, would set it on the eleven months', and drink the proceeds.

The landless man has a case, and I am game to do all I can for him, (I have no land myself, nor has any of my family any, nor do any of us want any) but the men who are doing the harm and defying Sinn Féin are the ones with the bad cases. There are a few good "Shinners" who have lost their heads over this land racket, and they will see reason in a short time, but there are others who should not receive a moment's consideration".

He here asks for a proclamation from Dáil Éireann, aimed against cattle-driving; and he adds, "It will be necessary to refer, in strong terms, to the system of driving first and bargaining afterwards". And he aptly observes, "How can a man make a fair and free bargain while every moment means pounds to him, and nothing to the others"! He proceeds

"This question of letting back the cattle is the sore one, and it must be settled at once. The drivers say that, if the stock are let in till November, or even till July, the owners will have the military there, and it will be impossible to make them sell their land. We say this is not arbitration, it is terrorism. Let the question be decided by the supreme authority now. I attach a list of the leaders of the defiance of the authority of Sinn Féin, and ask that they be immediately ordered to do their duty, or get out. And, if they continue on their career of destruction, then it is a matter for H/Q to decide if the Minister of Defence should be brought upon the scene".

With regard to this letter of Sennett's, it is interesting to note his constant reference to Sinn Féin, as though it was a national authority, a national government, indeed. It was very commonplace and natural, at the time, to do so. Sinn Féin was the national resurgence, the incarnation of independence and separatism; and, at that stage, and for a good while later, the term "Sinn Féin" was almost synonymous with Dáil Éireann and Dáil Government. It was, indeed, the Sinn Féin Party that made the Dáil Government.

Attached to the letter, that I have just quoted, of Sennett's are some further letters and notes. Here are extracts from a letter of the much harassed Mr.

Dominic Owens, of Strokestown, to him, dated May 15th, 1920:

"I hold the farm of Grange, containing about 196 statute acres, in which I have a tenant right interest. My late father held it for over 30 years before his demise. My stock were driven off it to my door, [The farm was, apparently, non-residential] three weeks ago, and I have made no effort to send them back. I informed Mr. Stephen Featherstone, of Grange, as head of the deputation, that called on me to surrender the farm, that I was prepared to do so, provided I received a fair price and that I was permitted to return my stock, until I could dispose of them without loss, and that I would surrender the farm, at the furthest, no later than the 1st November next. He and the other members unanimously agreed to the reasonableness of my proposal, and said that, when they would bring it before their committee, they would let me know the result of the decision arrived at, which they have so far failed to do.

The stock removed consist of 40 head of cattle and 120 sheep which I have since been compelled to maintain as best I can, in a field of 24 acres, and are, of course, daily deteriorating instead of improving in value.

What I request of your Board is to obtain its permission to return my stock at once on the lands, on the terms stated, and to receive its authority to do so. I feel absolutely certain that, if the members of your Board would consider themselves as placed in my position, they would gladly comply with my request".

That letter is addressed by Owens to "The Secretary, Arbitration (Sinn Féin) Board, Roscommon". Again, the confusion of Dáil Éireann with Sinn Féin. But, of course, at the time, they were synonymous in the public minds, at all events.

Sennett reports that "there are drives being carried out in the Kilbride locality, under the title, 'The Landless Volunteers'. Some of these are Hibernians, others profess to be Sinn Féin, and others are nondescript. Some of the driving has been done under the tricolour. On Sunday, May 16, a drive was prepared, with a tricolour in readiness, to lead the advance, but the aggrieved man declared he would appeal to Dáil Éireann, so the white and orange was torn off the rag, and the job was done in the name of the A.O.H."

Sennett reports that, on May 20, the aforesaid Dominic Owens handed him a letter he received from a prominent leader of land agitation, called John Mannion, of Hollywell. It was directed to Mr. Owens, and ran as follows: -

"Dear Sir,

With regard to your land, I am directed to inform you that your cattle will not be

allowed back to the farm in question, but, if you complete your bargain (sic!), you will get a preference to get them back, on the grazing line. If, at any time, you wish to come to terms, communicate with me, and I will summon the deputation to wait on you. I am also directed to inform you that, no matter how long the fight may last, no man's cattle is to get back to the land".

This John Mannion was, it appears, Secretary of the Kilbride Sinn Féin Club.

Sennett, furthermore, reports that Gerald O'Connor, a wealthy draper of Roscommon, had his land driven. "Without a word of warning, his stock was driven off his farm at Ballinahaglish, and when he put them back again, under authority of the Committee of Arbitration, they were driven in all directions, and he and his employees, and his motor car, were threatened with smashing, if he put the stock back."

"Dick Corr (Junr.) is Secretary of the Ballinahaglish Sinn Féin Club. He admitted to me that he directed the driving of the farm, and gloried the more in it, because O'Connor was a relation of his. He refused to submit to any court or board, and insisted that the Club had full authority to decide all land disputes."

This was on Sunday evening, May 16, in the presence of a crowd of some 25 people, at the gate of Ballinaglish Chapel. I was there present on that business and other Sinn Féin business (I.R.B. Bonds)".

Sennett later describes this Dick Corr as -

"a bit of an orator and a hero of the hurley field, a terrible feather-head, and this last, in addition to his youth, should perhaps entitle him to a chance. I, as an officer of the organisation, say, most deliberately, he is not a fit person to be a secretary to a club.

Corr, Senior, also admitted being prominent in the driving of the farms, and advocated, in strong terms, no submission to any court, except in so far as it would help them to get possession of lands they failed to get otherwise. He quoted Mr. Arthur Griffith, T.D., as his authority, by repeating a perverted version of the article in "Éire Óge", entitled 'Emigration'. Amongst other enlightening remarks of his was this: - Court and Conventions and Dáil Éireann, or any other power, must bow to the will of the people, and the united will of the people of Ballinahaglish will make them all toe the line. This man is father to the above-mentioned Secretary, and has been a U.I.L. organiser, and Town Tenants organiser, in his time. He takes too much drink".

Sennett reports thus of the Ballintubber area: -

"The farms here are all cleared, and stocked with calves belonging to other people. All these calves are branded, "S.F.", and the tricolour is flying over some cleared fields, not yet stocked. Hundreds of these calves were taken in, and branded, "S.F.", in Ballintubber on Sunday morning, May 16. I was there present, and saw it, and have two other witnesses from this town who were also there. Part of these farms extend into Southpark, especially Finnegan's, which, strictly speaking, is all Southpark; the only difference there is that the calves are branded 'I.R.'.

Sennett reports thus on the Hanley case: -

"Mr. Hanley of Carnaglough had taken the season's grass on one of the farms. It was advertised in the press, and there was no objection made to him. He paid half the money, and signed a bond for half. Without a word of warning, his cattle were left at his mother's door. He put them back, and there was another drive. It took him a week to gather them, and now he has them at home. They are penned up on a bit of tillage, up to their shoulders in mud, and, having eaten all the fodder he has, will die of hunger, and they are so hacked and lame and perished that no one will buy them. He was present in Ballintubber when I went there, and Alec Kenny refused to let his stock in, permit or not. Kenny said to me that they could never make the owner sell, if they let the eleven months' man in, and that it was a shame that the cattle-driving be stopped, because they had the

land nearly all got. I said, 'Ye have got the land, and ye have the country split!'

There is also the shameful treatment, meted out to Hanley, to be taken into consideration, regarding stripping him, naked, in the street on a fair day, in Creggs. Kenny had nothing to do with that, nor no knowledge of it".

Sennett reports on a Castleplunkett case, where -

"a Mr. Flynn of Heathfield sent a threatening letter to a Mr. Godfrey Clarke, demanding possession of the latter's land at Curlis. Mr. Clarke was a Unionist, but he came to me with the letter.

I wrote to Mr. Flynn, who is secretary of the land committee, which the local Sinn Féin Club has denounced, pointing out that his letter would be quite enough to find him guilty of the driving and scattering of Clarke's stock, and if he had any just claim on the land, either by right or necessity, to send it to me, and that if he had no claim, that any further interference with the stock or the land would result in the issue of a warrant for his arrest, followed by a courtmartial and perhaps a firing squad. To-day, Clarke has got notice that his case is adjourned for six months, and to put back his stock. I wrote Flynn that his 'court' was high treason to the Republican Government, whether they decided or adjourned, and again demanded a statement of their case, or a complete withdrawal."

The admirably courageous, efficient and patriotic Sennett had no countenance for "private courts", no more than he probably would have had for "private armies".

Sennett concludes his interesting and contemporaneous report, from which I have been quoting, by emphasising what he calls the vexed question, namely, in driven farms, must the stock come back, if the owner wishes, till the case has been tried?

Art O'Connor, Substitute-Minister for Agriculture, replied that the status quo in that respect must prevail.

Sennett, in all his reports and letters to the Dáil Agricultural Ministry, stressed again and again that that was the "sore spot", as he termed it, with them all.

The cattle drivers felt, not unnaturally, that they would never "drive a bargain" (sic!) with the proprietor of land, if they had first to restore his driven cattle to his lands. Sennett felt strongly that that feeling prevailed so strongly amongst the "claimants" and their ilk that there would need to be austere action taken "before others will obey".

The agrarian position in the County Roscommon was, indeed, extremely bad, far worse, in a way, than in the neighbouring counties of Mayo and Galway. And it would have been even a great deal still worse, had it not been for two men - Father Michael O'Flanagan and his admirable aide,

the Protestant Sinn Féiner, Graham Sennett, from whose reports I have been quoting. These two saw trouble coming in that ranch-infested county of prime limestone land, with beef products rising hourly in price, with, of course, a consequentially steep uplift in the market value of land. They anticipated the approaching problem, by creating a County Land Commission that I have already described.

Looking back on it all now, I had harder work and longer sessions in that county than in any of all the thirteen counties I then visited and held my courts in. There was an aggressive, "bolshie" spirit about the Roscommon litigants that was certainly not so obviously present in the other counties, even the worst of them. Whether that was due to their particular character, or to the stronger I.R.A. influence and discipline in the other counties, I cannot say. But I do know what it meant to me. As a Special Judicial Commissioner for agrarian disputes, under warrant of Dáil Éireann, I was twice in the Co. Roscommon in the spring and summer of the year 1920. I sat in two towns in that county - Roscommon and Castlereagh; but, by far and away, my longest sessions

were in the former town. For example, I held a big land session in the Hamilton Hall (still standing, I'm glad to see!), Roscommon for 10 days; and in hardly one of those days did I rise before 11 o'clock at night, and, on at least two occasions, so far as I can remember, I went on to one o'clock in the morning. The court was crowded all day with litigants ("claimants" and "resisters"), counsel and solicitors and an intensely interested public. And, amongst that public, a sprinkling of R.I.C. men nearly always present.

In that interregnum period from May 20th until mid September when I went around the county holding my special Land Courts, I dealt in Co. Roscommon alone with over 60 cases. In all these cases the litigants on either side were represented by solicitors, or, more often than not, by counsel. A barrister who, in those days and in those courts, appeared frequently before me in those western counties was Charles Bewley. Indeed, to give him his due, I think he was virtually the only counsel that appeared before me there. (There was, of course, the late Louis Casimir O'Doherty, son of the Catholic Mayor of Derry and a strong Sinn Féiner; but, in that western area he had nothing like the practice that Bewley had, who was a member

of the Connacht Circuit). I had any number of solicitors, Protestants as well as Catholics, Unionists as well as Nationalists, appearing before me; but the Bar authorities, at that time, were much more sticky and less liberal than the Incorporated Law Society which frightened off Counsel. However, Charles Bewley's courage stood him in good stead for, as far as I could judge, he must have made a small fortune before me. There was then, as I have said, plenty of money in the country and people were flaitiúil with it, as they generally are when they have too much of it. So plentiful, indeed, was the money that solicitors, having 10, 20, 30 or more claimants, thought nothing of charging them anything from £2 - 2 - 0 to £5 - 5 - 0 a head for preparing their cases; and a pound was a substantial sum in those days with twenty full-blooded shillings in it. The court fee for registering a case was, I think, £2 - 2 - 0, though I seem to remember a few instances when it was considerably higher. There can be little doubt that most solicitors engaged on those agrarian cases in those hectic days did very well indeed, whether they were appearing for the "claimants" to the lands or the "resisters" to those claims. No one made the slightest

objection to the high costs charged and, mirabile dictu, those costs were in nearly every case paid up.

In the kind of cases that came before us there were occasionally amusing incidents. I have forgotten most of those but one or two come back to me as I write. Charles Bewley was appearing on behalf of a Protestant land owner of the Co. Roscommon, where land, like most of that type around him, had been seized by popular committees and groups and his cattle driven off them. Charles was in his best form of "righteous indignation", and his eloquence was impressive, and, indeed, compelling, on behalf of his client. He opened his case by describing how his client, a highly respectable Christian gentleman, albeit not of the majority faith, was sitting in his study on a Sunday afternoon, engaged, very appropriately, in reading his bible when, to his alarm, the stillness of the Sabbath calm was broken by the sudden incursion of a noisy and hostile mob on to his front lawn. Bewley went on to relate how the mob placed a table and a chair (taken, of course, from the house) on the lawn and how their leader compelled Mr. X. to sit on that chair before that table. At this stage the claimants' solicitor rose amidst his numerous clients and

said to me: "Sir, I don't think my learned friend, Mr. Bewley, should take up the time of the court in this matter. I have here (holding up a deed) a properly drawn up and executed indenture, made between Mr. X. and my clients, whereby Mr. X. conveyed all his lands to my clients - for, of course, suitable consideration. I need hardly add we are not confiscators"! At this statement the 20 or 30 heads of Mr. Goff's clients, sitting behind him, wagged an emphatic approval.

I asked Bewley was he impugning Goff's deed on the ground of duress. "Yes", he replied, "on the ground of the most appalling and outrageous duress that I have ever come across or heard of". Bewley then went on to say that when they had his unfortunate client seated at the table, the leader came forward and placed in front of him the document just mentioned by Mr. Goff, the so-called conveyance, for his signature. "My client had only to glance at that precious deed to see that it involved the surrender to these so-called "purchasers" of his entire landed property for a fantastic trifle. He naturally declined to sign, whereupon two of these brigands who were standing beside him, drew revolvers and presented them at his head whilst others

of the terrorists began to dig a grave in the lawn just in front of him". Here there was much unrest among Goff's clients; seemingly Bewley's caustic words were stinging them. At a certain stage their leader, clearly on pressure from them, bent over to Goff and whispered him some instruction, whereupon he jumped up and addressed me thus: "I must protest, Sir, in the strongest possible way to the violent and uncalled for language of Counsel, and to his suggestion that this document (holding it up) was brought about by duress. My clients are amongst the most honest and respectable citizens in this county. Anything they ever got or came by, they got or came by honestly and fairly, as they came by this conveyance".

I asked Goff did he deny what Bewley had been telling us, that that man was brought out to a table on his lawn, pressed to sign a document whilst two men held pistols to his head and other men were digging a grave before his eyes. "No", Goff said, he didn't deny, or did not propose to call witnesses to deny the facts as stated by Mr. Bewley; but he took strong exception to Mr. Bewley's language, which was verging on the unprofessional; in particular he objected to his constant use of the word "duress".

"Well, Mr. Goff", I asked, "what would you call it then?"

"I would prefer", said Goff, "that my learned friend would use the word 'induce' instead."

In another Co. Roscommon case - that of Southpark claimants V. Sweeney - the unfortunate proprietor was getting a bad milling from the claimants' solicitor, the same patriotic Mr. Goff, for his alleged pro-British and imperialistic tendencies, and I was wondering how I could stop it, for it was one of the early cases and I had to feel my way warily so as to prevent them losing confidence in the court as a "British imperialistic" institution. Presently, the indefatigable Goff asked Sweeney was he not a "British J.P." and did he not know that the Dáil had passed an ordinance directing all citizens who were "J.P.s" to resign that office (which the Dáil had actually done)? Poor Mr. Sweeney was exceedingly embarrassed, to the no little pleasure and satisfaction of Goff's clients who were thoroughly enjoying his discomforture. I, too, was growing more and more embarrassed, for at the turn things were taking it was looking very like as though I would find myself trying poor

Mr. Sweeney for treason. However, the Lord sent me an inspiration that enabled me to get out of the awkward situation that was brewing and also to relieve Mr. Sweeney. I said to Goff: "This court takes no cognizance of foreign honours, Mr. Goff. Please confine yourself to the relevant facts in your case".

I should, perhaps, mention that when opening a session in any county I judged it advisable, so as to inculcate respect for our proceedings and loyal support for our judgments, to give a little prefatory dissertation in the nature of a directive. Addressing those before me, I would point out that I was there, sitting on that bench, because of their sovereign will. Therefore, they must ignore me as an individual. When I gave a decision, I told them, that that decision was theirs, not mine - the decision of the people through the organisations and courts that they had called into being and set up by their will. In the British judicial system, solicitors were the officers of their courts. Under our republican system, they, the people, were the officers of the court. It was, accordingly, their duty and their responsibility to see to it that every decree or order of those courts was honoured and obeyed in

every respect and particular. A defiance, or a contempt of such an order or decree, was not a defiance or contempt of me, who was but a citizen like the rest of them, but it was a defiance and contempt of the sovereign will of the people whose agent for court matters I was. And, if they acquiesced in that defiance or contempt, if they, through cowardice, or any other motive, declined or failed to help the republican authorities in giving effect to those orders, they were, by such misfeasance, in fact and deed, subverting the republican institution they had set up, and rendering impossible the functioning of the very government they had put into power by their votes. Mind, I would conclude, it mattered little to me as an individual whether my decisions were obeyed or not; but it mattered tremendously to them. Those dissertations were, I know, somewhat hyperbolic and not wholly accurate. They were designed to meet the then prevailing conditions by endeavouring to give a people long divorced from a love of law and courts of justice, a good conceit of themselves where their own courts were concerned, with a view to creating a public opinion strongly behind them, thereby rendering it easy to give effect to their decrees.

In my capacity as an emergency Land Judge, or Judicial Commissioner, I sat and dealt with land disputes and claims to land in 9 or 10 different counties. Having cleared off a few heavy lists in Co. Roscommon I went to Co. Westmeath. I sat first at Castletown, Finea, to hear a very urgent case in that locality. Robert Ashurst Gradwell, of Dowth Hall, Drogheda, a large landed proprietor, held lands at Castletown comprising over 1,300 statute acres. These lands were the subject of proceedings before the local district arbitration court as far back as the spring of 1920. Mr. Gradwell did not appear at that court, and the President of the court decided against him and in favour of the claimants because of his default in entering an appearance. Gradwell, being thus deprived of the occupation and use of his lands, got into touch with the Dáil and agreed to submit the matter to my arbitration, and, as a result, I was deputed to proceed to the area and hear the case. The Castletown Court had been arranged really at Gradwell's request and to get him out of his trouble. On the case being called there was again no appearance by Gradwell or on his behalf. In my judgment I set out that the resister, having refused to recognise

the court despite his undertaking to do so, I would make the following interlocating order:

That Republican military and police protection be withdrawn from Gradwell's land in that district until he signs the arbitration form and pays a fine of £50 and £2 court fee;

That, pending submission of the dispute to an arbitration court, the claimants were entitled to enter upon and take possession of the lands;

That the claimants shall auction the meadow but must keep a strict account of the money received;

That the herd be entitled to retain possession of his house and freedom;

That that order was to hold good until November 1, 1920, when, in case of Gradwell not submitting, the claimants could come into court again and make their case for final judgment.

Gradwell eventually came into court, paid the £50 fine and the case was duly disposed of, the courts, I think, ordering alienation of a certain area of the lands at a certain price. Like a great deal of these alienation of land orders made at that time, the claimants couldn't raise the purchase money and the ultimate result was that Gradwell remained in possession of the lands.

I opened my special emergency land court sessions for the County Westmeath on July 2nd 1920. I sat in the County Hall, Mullingar, to deal with a rather full list. Most of the solicitors of the county were engaged before me during the few days I was operating there. In addition to the solicitors, there were a few barristers, Charles Bewley, of course; and Conor Maguire, the solicitor at Claremorris, was also present, appearing for a number of clients.

It was during that particular session that we were given very concrete and tangible evidence that the enemy was changing his tactics towards us. For more than three months he had left us severely alone and did nothing to interfere with us beyond sending a few of his policemen into our courts, more as "observers" than anything else. And the first day of the Mullingar sessions had passed quietly and serenely in the way we had come to expect, but next day there was a radical change. The morning had passed off as quietly and sedately as proceedings in any well-established tribunal. The public took a keen interest in the proceedings, which were fully reported and published in the local press, and large numbers of them were present,

listening to the cases. I should mention that Westmeath was one of the first counties that I came across where Dáil or Republican police had been organised. I had encountered them more north of the county in Castlepollard where, with the late Louis C. O'Doherty, B.L., Charles Bewley and a few solicitors, I had stopped after my Castletown Court for some refreshments. True enough, it was very late at night, or, if you wish, early in the morning, for my court was a lone one. Nevertheless, the pubs were open and doing a good business, for there were no ordinary police available or willing to see that the licensing laws were observed. And anyhow, were not the licensing laws the creatures of the alien government that was opposing us, and in what finer way could good republicans show their contempt for them than by breaking them!

After about half an hour of taking "our ease in our inn", a posse of republican police arrived, armed with revolvers, and in no time they had the pub cleared of people and shut up. The only thing they didn't do was to take the names and addresses of those who were on the premises, which was, perhaps, just as well in the circumstances! In Mullingar an efficient squad of republican police had been

organised by the proprietor of a local shoe shop, a man called Maguire. He had, as his aide-de-camp, a remarkable little fellow about 18 or 19 years of age, whose real name I never knew but who went by the name of "The Sleuth".

This little fellow had established quite a record in detecting thieves and recovering lost or stolen property.

Maguire was rightly proud of his local gendarmerie.

He himself attended as Chief of Police in my court, with four or five of his men, and maintained very good order.

Well, to return to my court in Mullingar. After a peaceful and uneventful morning session on the second day, we resumed after lunch and were getting along very nicely indeed when about 5 p.m. there suddenly came up to us from the streets below the rumbling sound of heavy military lorries, armoured cars and tanks, with sharp military words of command. There was, apparently, a good deal of excitement going on below in the street, for every now and again derisive cheers and cat-calls would break out from the populace. Obviously, a military raid on the court was in process.

It so happened that we were in the midst of an extremely contentious case, with a long and bitter history

behind it, where two cousins, occupying adjoining farms, laid claim to the same parcel of land. One of those contestants, an old and rather deaf man, was in the witness box undergoing a lengthy and searching cross-examination by the solicitor for the other and opposing cousin, which he was facing with much spirit and indignation, giving his answers, often lengthy "speeches", in loud tones that must have carried out to the streets below. I assumed an attitude of complete indifference to the racket outside and an intense interest in the case at hearing in order to draw the attention of the audience in the court away from the external distraction. That was not easy, as every time there was an increase in the noise there would be a rush to the window to see what it was all about.

Presently there was the sound of many footsteps ascending the stairs to our room. The Police Chief, Maguire, came to me in a state of suppressed excitement and whispered: "The enemy are coming up the stairs to suppress the court. Shall I order my men to open fire on them?". "You'll do nothing of the kind", I told him emphatically, "if you and your men have guns, hide them; and remember, whatever happens you are not to use them. Leave me to manage things".

This instruction seemed to disappoint him, and I am perfectly certain that had I told him to fire on the invaders he would unhesitatingly have done so, as he and each one of his six men carried loaded revolvers. The spectators in the room were getting more and more excited and noisy when I called in a loud voice for order and silence, saying that I found it impossible to follow what the witness was saying. Presently the door of the council room burst open and in came the D.I. of the R.I.C., accompanied by his sergeant and 2 or 3 policemen, while about two dozen soldiers in tin hats, rifles and full war kit filed in and took up position here and there in the room as directed by a young officer. If the military officer was young, the D.I. of the police was, if anything, younger. He could not have been more than 27 or 28, and spoke in an unmistakable English accent. He was probably one of the new young English ex-officer recruits to the R.I.C. with which the British authorities had been replacing the large number of resignations from the force. He was, obviously, intensely nervous, and the large revolver that he brandished menacingly in his hand shook so violently that I was fearsomely expecting it to go off any second. When he

entered the room and had a look around at what was going on, his very youthful countenance registered extreme surprise, not to say, astonishment. To his English eyes what was going on looked very much like a properly ordered court of law, and with his inherent English respect for such institutions he appeared quite reluctant to pursue his orders any further. He saw the old man in the witness chair shouting out his answers to the cross-examining solicitor, utterly and wholly indifferent, perhaps unaware of his formidable intrusion. And when he turned to look at the cross-examining solicitor, who did he behold - none other than the late Mr. Joseph Shaw, a prominent and highly respectable local solicitor in whose handsome residence on the shores of Lake Owell he had spent the previous evening at a bridge party, for Mr. Shaw was by no means a Sinn Féiner! What an extraordinary country to be sent to serve in! Where were you? No wonder he was shaken, and looked embarrassingly at the sergeant as though querying "Haven't we made a mistake? Surely this is not what we've been sent on". But the sergeant was one of the old reliables - a tall, lean, grizzled old fellow that knew just what his masters in the Castle wanted and

was determined to see that its orders were discharged.

There was a short and eager whispered conversation between the pair whilst I proceeded to ask the old witness several questions to which he readily shouted answers, assuming, as I did, an indifference to the intruders that I certainly did not feel. The next minute, stimulated and encouraged by what the sergeant had said to him, the juvenile D.I. came towards me, pointing his revolver at me. "Is this a Sinn Féin Court?" he asked me. "This is an arbitration court set up by the people for the people's service.

Everyone present is here by his or her own will", and I asked the crowd before me, "Are any of you here against your will?" There was a roar of "Nos" that shook the hall.

I observed the young D.I., "You see there is no coercion.

And who are you?". That query he did not deign to answer;

but after another whispered conversation with his guide and philosopher, the sergeant, he declared "This is an illegal gathering and I must suppress it. If you don't all leave

the premises at once, I'll order my men to clear them by

force". This announcement engendered a storm of derisive

cheers and taunts from the crowd. I saw the soldiers getting

their rifles on the ready and immediately called out as loudly

as I could: -

"Citizens, leave this place at once and quietly. Give those who have broken up your peaceful court no excuse to use violence on you. It is now clear to you all on what side is law and order, and on what side is anarchy and terrorism. This court stands adjourned to another venue when, I promise you, the remainder of the list of cases will be duly dealt with. Citizens, depart now quietly and show these people that you are worthy to be citizens of a free country".

After that they all departed quietly and speedily, and soon there were none in the room but Joe Shaw, Wallace, another solicitor, Charles Bewley, Conor Maguire, myself, and the police and military. As I was walking along the street from the County Hall there were knots of men and girls hanging about on the pavements making good-humoured "cracks" at the soldiers who were surrounding the County Hall. Presently a large tank glided along, its gun wagging menacingly at the aforesaid knots of people, and a voice proceeded from its metallic depths, ordering the crowds to "gau 'home". One would expect a great iron tank, if it could speak, to possess a deep bass voice, but the voice that arose out of it was the highest, thinnest little voice of the male gender possible. It struck me at the time as being so deliciously incongruous - the heavy iron,

threatening-looking creature with its high, piping little voice.

Late that evening we reassembled in a modest but suitably obscure house in one of the back streets of the town, and completed our list without interruption from any quarter. I am not so sure that it wasn't a solicitor's office. At that new venue all the necessary counsel, solicitors, litigants and witnesses turned up, but, for obvious reasons, the public were not represented. It was, indeed, an extraordinary position: here was the very court, or "illegal assembly" to use the R.I.C. name for us, that had been duly suppressed that afternoon, reassembling sub rosa, with all the same solicitors, litigants etc., and continuing its proceedings to their conclusion. Mullingar knew all about this, I am pretty sure, but it was extraordinary the way the secret was kept from the British authorities.

The fact was that, thereafter, we could no longer sit in open court; we had been driven underground. The Castle saw that its gamble in tolerating the "Sinn Féin Courts" had failed. There was no split in the forces of the Dáil; its organisations, despite the many unpopular decisions of its courts, had stood up four-square to all the hostile winds that blew against them and were daily

gathering in prestige and popularity instead of the opposite, as the Castle had fondly counted on. The solidity of the people behind the Dáil and its rule stood unshaken.

That the attack on the courts was serious and determined every day's press gave ample proof, with reports of their suppression in various parts of the country, occasionally with intemperate and unnecessary violence, resulting in the slaying or wounding of judges and arbitrators, and nearly always in their imprisonment and internment.

Well, so much for my activities as a special Judicial Commissioner under warrant of Dáil Éireann to hear and determine emergent and critical agrarian disputes, pending the establishment of a National Land Commission. I roamed over a lot of country in that capacity, and was certainly very lucky in escaping arrest and imprisonment, especially after the Mullingar episode when I was caught, so to speak, "in flagrante delectu". Of course, my settled policy was to avoid arrest if at all possible, bearing in mind Collins's injunction that

there were enough in prison and that imprisonment was incompatible with the implementing of his slogan "Get on with the work"! Looking back on it all now, I certainly chanced a lot. I don't mean at all in taking personal risks; mine were nothing compared with the risks those brave men in the I.R.A. were running every day, indeed every hour of their lives. What I mean is I chanced my powers. Although working under the sanction of the Dáil and bidden to cure or check the dangerous agrarian tornado that was raging over large areas in the country, I was given no specific authority, by decree or otherwise, to compel the alienation of land in whole or in part. Of course, my emergency land courts were founded more on an arbitration than a juridical basis. Litigants coming before me had to sign the following submission form:

"DÁIL ÉIREANN
ARBITRATION COURTS.

In the Matter of
Concerning the lands of

SUBMISSION FORM

I, A.B. of Blackane in the County of X., hereby undertake, promise and agree

- (1) To abide by the Award or Decision of this Court on the matter submitted for the determination in this case;
- (2) To comply with any Orders or Obligations which the Court in its Award or Decision may impose;
- (3) Not to submit to any Alien Tribunal any matter whereon this Court shall pronounce a decision or make an Award.

Signed..... A.B.

Witnessed by C.D.

Date.

That, on its face, was a good and, even in British eyes, a fairly innocuous Arbitration Submission Form, and was so drafted and intended to be. The Dáil was not looking for any red rag to wave at the British Bull; on the contrary, in pursuance of the policy of Griffith and Collins, it wanted to avoid any serious clash with the rival authority where the courts were concerned. Even Clause (3) was capable of a legal construction in harmony with the British point of view. Was not an "Alien Tribunal", a French, German, American, or even a Scots Court? And, of course, if my courts were genuine arbitration courts, the litigants binding themselves of their own free will to abide by my decision or award in an issue, there was nothing wrong or against the law in their doing so.

But whilst that was true enough, there was no doubt that some of the orders made, in the absence of express Dáil legislation, went very near the line, to put it no further, as, for example, their "Protection Order" giving a landowner the right to occupy and use his land in peace pending the outcome of the arbitration, or, even more so, those orders that withdrew protection from a proprietor who had gone back on his submission, or declined to submit his cause to arbitration. However, at no time were these issues raised before me, and I went along blandly, giving myself the benefit of the doubt, assuming I had all the legal power I wanted to make the orders I did make.

Before I go on to deal with the Dáil Decree of September 17, 1920, and the Land Settlement Commission it created, I think I should say a word or two about an earlier decree that I found very helpful to invoke in the course of my adjudications. That was the Decree made by the Dáil on June 19, 1920, which declared that "it has come to our knowledge that claims have been and are being made in various parts of the country to farms and holdings which are being used and worked by the

occupiers as dairy, agricultural and residential holdings, and that such claims are being based on the assertion that the claimants or their ancestors were formerly in occupation of the property so claimed.

And Whereas these claims are, for the most part, of old date, and while many of them may be well founded, others seem to be of a frivolous nature and are put forward in the hope of intimidating the present occupiers.

Now It Is Decreed by Dáil Éireann in Session Assembled

1. That the present time, when the Irish people are locked in a life-and-death struggle with their traditional enemy, is ill-chosen for stirring up strife amongst our fellow-countrymen; and that all energies must be directed towards the clearing out - not the occupier of this or that piece of land - but the foreign invader of our country.
2. That pending the international recognition of the Republic, no claims of the kind referred to shall be heard or determined by the courts of the Republic unless by written licence of the Minister for Home Affairs.
3. That in the meantime claimants may file particulars of their claims with the Registrar of the District Court in which their property is situate.

And It Is Further Decreed - that any person or persons who persists or persist in pressing forward a disputed claim of the nature referred to shall do so in the knowledge that such action is a breach of this Decree.

And It Is Ordered that the forces of the Republic be used to protect the citizens against the adoption of high-handed methods by any such person or persons.

By Order of Dáil Éireann

This 29th day of June, 1920.

Department of Home Affairs.

Dia Leis an Saorstát"!

I often blessed that decree and made full use of it in the course of my court work, invoking it with effect in several bitter and contentious cases, thereby estopping the parties from proceeding before me, unless and until they produced the necessary licence from the aforesaid Minister. He, fortunately, was extremely conservative in issuing such licences, and the over all effect was that the decree, by preventing a lot of such cases from being heard, kept my lists, formidable as they were, from growing beyond all circumvention.

Art O'Connor, the Substitute Minister for Agriculture, having got the unanimous backing of the Conference of Westerns, already referred to, and others, for the immediate establishment of a National Dáil Land Commission, lost no time in making his preparations towards that end. O'Connor's intention was to create a body, vested with large judicial and inquisitional powers, manned by permanent Commissioners properly qualified in law or land values. In the Dáil Session of June, 1920, he presented for first reading a draft of a bill for the establishment of a body called the "Land Settlement Commission". Here are some of the salient clauses of that measure as summarised in O'Connor's report to the Dáil on the work of his Agricultural Department: -

Clause 3 stated "that on and after the appointed day, to be a day to be later determined by a Ministerial Order, all claims affecting the ownership, occupation, or use of lands automatically pass under the jurisdiction of the Land Settlement Commission and its Courts".

Clause 5 provided "that all claims to land be filed with the local Registrar of the Land Settlement Commission Courts. That pending the examination of and decision of these claims, acts of aggression against the persons in

possession of or enjoyment of the lands, or against persons working on the lands, or against the lands claimed, will seriously prejudice the future consideration of the claims".

And, in order to secure that no possible miscarriage of justice that might have been unwittingly committed in good faith by the popular courts in existence prior to the Dáil Courts, O'Connor attached a sub-section to Clause 5 which ordained that "all judgments affecting the ownership, occupation or use of lands pronounced by popularly created courts since January 31, 1919, shall be forthwith lodged with the local Registrars of the Land Courts. The Commission may confirm said judgments, or order a re-hearing of the issues before its own courts as it may think fit". This bill was read a second time at the August, 1920, session of the Dáil, and on September 17, 1920, in its finally amended state was passed by the Dáil. This Decree of September 17, 1920, establishing the Land Settlement Commission of Dáil Éireann, consisted of 12 principal and several minor clauses modelled to a considerable extent on the provisions of the Land Law (Ireland) Act 1881 which created the "Irish Land Commission". It provided that

the Commission it set up would consist of one "Legal Commissioner" and two "Lay Commissioners" to be appointed by the President of Dáil Éireann, after consultation with the Minister for Agriculture. The Legal Commissioner, and every successor in his office, was to be a person who, at the date of his appointment, was a practising barrister or solicitor of not less than three years standing. That short and inadequate qualifying period reflected the dirth of suitable legal material at the Dáil's service. There were few legal men in either of the professions then prepared to compromise themselves, or their careers, by backing a revolutionary government that was, at the time, struggling desperately against its foes for its survival. In the event of the death, resignation or incapacity of any Commissioner, provision was made for the President of the Dáil, in consultation with the Minister for Agriculture, to fill the vacancy.

Clause (2) incorporated the Commission under the name of the Land Settlement Commission and declared that all the Courts of Justice of the Republic were to take notice of its official seal. That clearly reflected the purport

of Section 42 of the aforementioned Land Act, 1881 which declared that "Judicial notice shall be taken by all Courts of Justice of the corporate seal of the Land Commission". Actually the Commission, thus created, never had an official seal. Clause (3) dealt with the sub-commissions that might be constituted; Clauses (4) & (5) with the salaries of Commissioners; Clause (6) and part of Clause (7) with appeals to the Court of Appeal of the Commission and thereafter to the Supreme Court of Appeal of the Republic. The greater part of Clause (7) refers to the Commission's powers in acquiring, holding, allocating, leasing, alienating, etc., of the land, whilst Clause (8) gave it power to make rules to implement the decree. Clause (9) dealt with the appearance of parties before the courts of the Commission, while Clause (10) made it impossible for a Commissioner to be a Deputy of the Dáil, and Clauses (11) & (12) dealt with the Annual Reports and Accounts of the Commission.

Such was the scope and character of the "Land Settlement Commission" as created by the Decree of September 17, 1920. I had, personally, nothing to do

with the drafting of that decree, nor do I know who was responsible for it. Furthermore, I do not remember having seen it ever in toto. The clause that I was most familiar with was the 7th, which gave the Commission powers to acquire, hold, allocate and lease land, which, as the clause stood, impliedly meant, of course, to do so by legal means. And, as no specific provision to do so by the exercise of compulsory powers was included, it would seem that our compulsory alienations were without even our own legal sanction. Later on Judge Dodd actually so held in a case of ours that came before him for review, and, needless to say, commented pretty caustically, not so much on its omission from our code but on our innumerable orders of compulsory acquisition of land which, he declared, were "void, irregular and illegal" even according to our own law. And I am afraid there was something in Judge Dodd's contention, but, in the circumstances, we had no alternative. Compulsory acquisition orders were absolutely imperative if the agrarian epidemic was to be conquered; and we had to assume that the word "acquiring" in the text of the decree gave us that power, which, unquestionably,

the legislators and the Dáil Ministry intended to vest in us. It was an error of draftmanship, undoubtedly a serious one, but, fortunately, nobody questioned it during our operations in the highly critical period from October, 1920, to June, 1921. Anyhow, it was hardly possible for any lawyer to do so, for if the Commissioners were not very familiar with that decree, lawyers appearing before us barely knew of its existence. But that defect was not the only thing that was wrong, or at least irregular. We have seen that the decree provided that the membership of the new Commission was to consist of one "Legal Commissioner" and two "Lay Commissioners". Actually it was composed of two "Judicial Commissioners" and one Valuation Commissioner. After the passage of the decree, Conor Maguire joined me as a second Judicial Commissioner, and Martin Heavey, C.E., was appointed Valuation Commissioner. So that, instead of one "Legal Commissioner" and two "Lay Commissioners" as decreed by the Dáil Statute, there were two "Judicial Commissioners" and one "Valuation Commissioner". We received pretty liberal salaries for those times, viz. £750 a year, paid to us monthly and paid, even in the

worst period of the terror, with unfailing regularity.

The headquarters of the Commission consisted of a few modest rooms over Winstantley's Boot & Shoe Warehouse at No. 5, North Earl St. The brass plate on the door was simplicity itself and the essence of unostentation. It merely recorded "J. McCann, C.E., Land Valuer".

We were supposed to be the employees of a "Mr. McCann", engaged in preparing maps and documents in connection with his undoubtedly extensive land business. Sailing under the cover of an engineer's and land valuer's office was eminently wise, for it would serve us, should we be raided, and enable us to explain the large number of ordinance sheets and maps dealing with the lands in dispute throughout the country. And the fact that our Minister was himself a qualified civil engineer with a good, respectable Trinity degree in that science, helped to materialise the fantasy.

Apart from the Commissioners, the permanent staff in those rooms consisted of a Secretary, the late Gearóid Magan, a Chief Registrar, Joseph O'Byrne, B.L., a lady shorthand typist, Miss Kathleen Devanny, later joined by

Miss Eileen Barry, sister of that fine young patriot, Kevin Barry, who died so nobly at the scaffold at the age of 18, refusing to buy his life by the betrayal of his comrades. Outside the Minister (Art O'Connor), the three Commissioners, the Secretary, the Chief Registrar and the two lady typists, we had, in the way of outdoor, inspectorial staff, a few professional valuers, such as J.F. Sharkey of Roscommon, who worked under Martin Heavey. But they only paid occasional visits to the office. The work of the firm of "J. McCann, C.E., Land Valuer" continued undisturbed in their rooms in North Earl Street all during that strenuous period. Through some miracle the office escaped detection, although nearly every house in the street was thoroughly raided at one time or another, some more than once. There the Minister of Agriculture conducted his business unmolested, and there the Land Settlement Commission, with its small but very efficient staff, drafted and issued final judgments dealing with over 300 agrarian cases and involving an area of over 60,000 acres. Gearóid Magan was the Secretary of the new Commission, and we largely owed our complete immunity from attack and the

preservation of hundreds of valuable documents, judgments, etc., to his well-worked out plans and foresight.

North Earl St., in the heart of Central Dublin, was a stormy zone. Nearly every day there were raids, and if not raids, armoured cars and "cages" passing up and down the street. The latter were big Crossley lorries surmounted by steel cages, behind which soldiers, Auxiliaries or Black and Tans sat, back to back, their rifles at the ready. The steel cages were to protect them from the bombs of I.R.A. ambushing parties. When those formidable lorries appeared first in the street, they struck terror in the people using the streets; and it was amazing how speedily those streets would be practically cleared of humanity on their appearance. Nevertheless, inside a few months that terror had evaporated, and when they appeared the people would crowd round, looking at them quietly in an interested, if cynical, manner. Not so the irrepressible Dublin street urchins, who, in their rags and bare feet, used to dance round them, pretending to scratch themselves, the gesture being intended to convey

to the encaged warriors that they equated to the monkeys in the Zoo Gardens! They had a song, too, those youngsters that they used to sing at their visitors. I cannot recall how exactly it went but its meaning was - "The Boers took the red coats off yez, the Germans put the tin hat on yez, and the Shinnars put yez into cages" - followed by more "scratching" and dancing.

North Earl Street was a dangerous street for a Dáil Department to be functioning in, with the constant raids, searchings and shootings-up that were such a feature of that locality. Further down in Talbot St. - which, of course, was merely a continuation of North Earl Street - was Peadar Clancy's drapery stores, very conspicuously labelled "The Republican Outfitters".

That place was the subject of constant raids. I remember well the famous raid in October, 1920, resulting in the death of Seán Treacy and several civilians. In the "safety" of our rooms over Winstanley's we watched that desperate fight about 150 yards further down in the street. We saw the lorry full of soldiers and an armoured car stopped outside the "Republican Outfitters". Suddenly a man dashed out of the shop

and ran up the street. Immediately, from the lorry jumped an intelligence officer named Price, who seized Treacy, for that is who the man was. A short but desperate struggle ensued which resulted in the death of both. The military fired away indiscriminately, killing and wounding several civilians. I understand Dick McKee had been in the premises but escaped. The British forces, however, captured Joe Vize on the premises, who had only about a month before been brought over from Glasgow by Collins to G.H.Q. as "Director of Purchases".

Those were certainly "Troublous Times" and one was always liable to encounter strife and slaughter. For example, a few months earlier, on September 22nd, 1920, to be exact, the late Gearóid O'Sullivan, Adjutant-General, I.R.A., asked me to go to the Abbey Theatre with him. At the theatre he introduced me to a Mr. John Lynch of Kilmallock, who that day had brought up to Dublin a sum of £23,000, locally subscribed to the National Loan, which he had handed over to Michael Collins. After the theatre, he returned to the Exchange Hotel, Parliament St., where he was staying, and retired to bed.

Next day, I was horrified to read in the press that Mr. Lynch had been murdered that night in his bed. It appears that about 2 a.m. a party of English officers and R.I.C. men, some in uniform and some in mufti, knocked at the hotel door. On admission by the night porter, they demanded the number of Lynch's room, and having got it, went upstairs, refusing to let the porter go with them. After a short while they came downstairs and departed. They had shot Lynch as he lay in bed, wrapping the bed-clothes so tightly round the revolver that the sound of the shot was muffled.

John Lynch was not a Volunteer and was quite unarmed. It was said they mistook him for Commandant Liam Lynch, leader of one of the Cork I.R.A. Divisions.

A sequel to this episode was that Collins, with his wonderfully organised intelligence system, right in the enemy's heart, soon discovered who poor Lynch's murderers were. One of them was an Englishman who lodged in a house in Mount St. under the name of "MacMahon". His real name was Angliss, and he had lately come across from England, with several others of the same kidney, to do intelligence and murder work. He was one of the

British secret service men who were shot dead by the I.R.A. on Bloody Sunday.

But to return to the "Dáil Land Settlement Commission"

A little later on, about the end of January, 1921, if my memory is correct, the "Land Settlement Commission" and its courts, separated from the Department of Agriculture as such, and took offices in 10, Westmoreland St., over Bewley's, I think. There we were "Valuer and land agents" too, under some name that I cannot just recall. Westmoreland St. was a much safer area than Talbot St. and North Earl St., and we carried on there in absolute safety to the end.

Apart from going down the country from time to time, hearing cases, very sub-rosa of course, as the reign of terror was raging with a daily increasing impetus, Art O'Connor asked me to draft "Constitution, Rules and Regulations" for the new Land Commission. This I did, and it was subsequently published under the following inscription:

"SAORSTÁT NA hÉIREANN.

Provisional Constitution and Regulations of the Courts of the Land Settlement Commission",

1921.

The booklet contained 53 pages and was admirably printed by Messrs. O'Loughlin, Murphy & Boland, Ltd., 111-112 Dorset St. The Courts of the Land Settlement Commission were set out in three divisions, viz.

1. Division of First Instance,

(a) Court of General Sessions, City of Dublin;

(b) Courts of District Sessions.

2. Division of Emergency.

3. Division of Appeal.

Each of those Divisions had a section in the booklet allotted to them, setting forth their particular rules.

Hearings under the General Sessions were confined to Dublin. They were to take place before one or more Commissioners - Judicial or Lay - "according as the urgency or importance of the cases warrant, or as the Commissioners may deem necessary", provided, however, that where the point at issue was purely legal it was to be heard by one or more Judicial Commissioners; where purely valuation by one or more Valuation Commissioners, and where mixed by at least one Judicial Commissioner and one Valuation Commissioner sitting together.

Any of the "several classes of cases that the Commission has power to deal with" could be heard at General Sessions if the parties consented; but the following cases had to be heard at General Sessions:

- "(a) Cases which come from a County or District which because of the action or actions of enemy troops therein, or because of any other reason which the Minister of Agriculture may deem valid, shall be declared by a Departmental Order of the said Minister, a Special area for the Land Settlement Commission;
- (b) Cases which come from a County which, in the opinion of the Minister for Agriculture, has not a sufficient number of cases to warrant the hearings locally at a County Session;
- (c) Cases which would ordinarily come before a County Session and on the venue of which the contending parties cannot agree may be changed to the General Sessions on the application of either side by an Order of the Emergency Divisional Court".

That Rule 4 explains the raison d'etre for the Court of General Sessions. Ten Rules and 14 Forms were provided for the work and proceedings of the Division. The last Rule set forth the fees payable to the court; they

ranged from £2 for an "Enrolment Notice (Form 1)" or for an "Application for the Enrolment of a Society (Form 10)" to 10/- and 5/- for affidavits and minor documents.

The second part of the "Divisions of First Instance" related to "Courts of District Sessions". Those Courts were the most important, and, for a time, the most spectacular organisms in the Commission. They related entirely to sittings and sessions down the country at selected venues in the various counties. There were 8 Rules governing the work of those District Sessions. The hearings were to take place before one or more Commissioners (in practice never more than one, and he was always a Judicial Commissioner). The 10th Rule reflects the character of the times. It ran -

"Concerning The Courthouse - It is the duty also of the District Registrar to provide a fit and proper Courthouse in a reasonably secure part of the District, and measures must also be taken to guard against surprise at the hands of the Enemy".

The "Division of Emergency" hearings were to take place before one Judicial Commissioner in Chambers in

Dublin. It was, as its name indicates, a special court to hear and deal with urgent and critical developments by way of Conditional Orders pending the final determination of issues in the courts of the other more normal divisions. One of the more usual functions of that court was to make "Protection Orders", giving Dáil protection to an owner and his property who had submitted his case to the Dáil Land Courts.

The "Division of Appeal" similarly was just what its name indicated - an Appeal Court. Its hearings were to take place in the City of Dublin - "or elsewhere as the Minister of Agriculture may direct". They were to take place before "at least two Commissioners, one of whom shall be a Judicial Commissioner". In this Division the "Enrolment Notice" fee was £5; the "Counter-Appeal Statement" had a court fee of £2 levied on it.

In the Appendix of the booklet, 19 "Specimen Forms" are set out. In those forms the contending parties are given different names; not only "plaintiffs" and "defendants" but "resisters" and "claimants" (i.e. those claiming the land and those resisting such claims). There are also

"Protestors" (in the Appeal Division) and "Co-Protestors", "Co-Resisters" and "Co-Claimants".

Such, then, in brief outline, was the structure of the Decree of September 17, 1920. It was, obviously, constructed on a very juridicial basis, with quite an elaborate chain of courts. But, like other provisions in that decree, it certainly cannot be said to have adhered, shall I say, "bigotedly" to the terms of that decree; or, for that matter, to the provisions of the aforesaid "Provisional Constitution and Regulations". For example, under Rule 3 of the Provisional Regulations of the Division of Appeal it was laid down that hearings under that Division "shall take place before at least two Commissioners, one of whom shall be Judicial Commissioner". In actual practice, that seldom happened. What happened was that I, sitting alone, heard appeals from Conor Maguire's decisions, and he, sitting alone, heard appeals from my decisions. We could, of course, have been impugned as not being appeal tribunals in accordance with our own laws and regulations, but we never were. Had we gone on much longer in anything like tolerable conditions, I have no

doubt whatever that the set up of our courts and our orders would have been so impugned, and impugned with success.

I understand that much the same was the case with the Dáil Supreme Court and High Court structure; and, of course, in even greater measure with the popularly elected District Courts. However, we escaped any such disastrous challenge, at all events during the most critical periods. Despite our Decree and Regulations, we were really ad hoc emergency courts, rising out of those turbulent revolutionary times to meet a perilous and sinister threat to the newly organised national life which was, by such essential if unorthodox methods, effectively dealt with. It was another manifestation of the supreme law "Salus Populi". To a considerable extent we were compelled to play a game of, shall I say, "fee-faw-fum", assuming an authority and the coercive power to enforce that authority that we were, in fact, far from possessing. Of course, the moral power of the nation, the will of the people, was four-square behind us; otherwise we would have been a disastrous failure. And, anyhow, most of the decisions of all Dáil Courts were eventually reviewed, re-heard and regularised by the Dáil (Winding Up) Courts

established by the Provisional Government that was formed after the vote on the Treaty in 1922. I thus summed up the work of our Land Settlement Commission in my article to the "Manchester Guardian" already mentioned:

"The Dáil Land Commission was, by its very *raison d'etre*, an Emergency Commission. It sprang up at a moment when the national Sinn Féin movement, when the structure of society itself, was severely threatened. Its object was the protection and safeguarding of these fundamentals until peace and victory brought a more suitable opportunity and a more elaborate machine for dealing with the great problem in an enduring manner.

The work of the Commission has been generally admitted to have been just and impartial. As far as possible, decisions were made in conformity with the principles of the existing English law; but, as I have said, it was a time of necessity when the lives of many owners of a hundred acres and upwards of good land were in jeopardy, and when it was occasionally necessary to meet the extraordinary conditions with extraordinary means. However, the principles of the common law were departed from as seldom as possible. Alienation was only resorted to when the claimants were able to prove their case up to the hilt on the grounds of sheer necessity, and were further able to show that the landlord's property could reasonably bear the proposed partition. Fair compensation followed every award ordering alienation. Only in one or

two exceptional cases involving a small acreage was compensation refused; and that only because of the extraordinary history of those cases. Working at top pressure in a period of great strain and under the most unfavourable conditions, it is not claimed for the Dáil Land Commission that it solved, or even went near approaching the solution of the great land question. But I think it can claim with justice to have checked the mad career of an agrarian revolution, one of the most serious that this country has ever experienced, thereby saving lives and property and warding off what might well have proved a fatal blow to the supremacy of the National Government".

Summary of Land Cases dealt with under the
Dáil Department of Agriculture.

1. The Period from May to December 31, 1920.

This period falls into two divisions, viz.,

(a) May 17 to September 20, and

(b) September 20 to December 31.

During (a) the cases came before myself as Dáil Special Judicial Commissioner in the interim pending the establishment of a national system of land courts.

During (b) the cases came before the Commissioners, Judicial (of whom I was, of course, one) and Valuation, of the Land Settlement Commission, set up as the result of the Dáil Decree of September 17, 1920. For the seven months comprised in the period, some 229 cases in 21

counties, comprising some 49, 635 statute acres, came before us. Of those cases, 43, comprising 1,833 acres, were ruled out under the Decree of June 29, 1920.

Of the remainder, 20,875 acres, affecting 83 different cases, were ordered to be alienated at prices to be fixed in due course by the Valuation Commissioner. Within that period prices to a total of £140,330 were so fixed in 25 cases, comprising 9,500 acres. In 67 cases, comprising 7,339 acres, the owners, or "resisters" were confirmed in their ownership and ordered to be left in peaceable possession and enjoyment thereof. And there were 35 cases, comprising some 17,714 acres, in which judgments had not yet been given.

11. The Period January 1st to June 30th, 1921.

During this period, which included the worst part of the Black and Tan War and the Terror, some 70 cases, in 15 counties, comprising some 13,497 acres, came before the Dáil Land Courts. Of that total, 15 cases, comprising 1,025 acres, were ruled out under the aforesaid June Decree. Lands totalling 6,094 statute acres in 29 cases, were ordered to be alienated at prices to be fixed by the Valuation Commissioner. In 31 cases, comprising 3,338 acres, the owners (or "resisters") were confirmed

in their ownership; and in 19 cases, comprising 4,004 acres, decisions were pending.

A note to the original returns explained that the above total number of cases dealt with might include some which are given as "Cases in which Decisions were Pending" on December 31, 1920, as whilst the actual court work might be finished, examination of titles and valuations might remain to be settled.

The note further warned that sums given under the heading "Purchase Prices Fixed" represented, in some cases, all the interest to which the lands were subject prior to purchase; in others only the tenant interest, with a continuing charge on the lands. As it was not possible to supply that detail in a general return, no sure data as to price per acre could therefore be deduced from the return. But, the note concluded, accurate data of all cases dealt with could be obtained on application by any deputy.

Some features of those returns are interesting. One is that of the 23 counties involved, only one, Donegal, was an Ulster County, and it had only one case, which I shall have something to say about later. No land case

came from any of the Six Counties, or from Counties Cavan, Monaghan or Louth. The worst county by a long head was Roscommon, with 88 cases involving nearly 17,000 acres. After it came Galway, with 40 cases and 10,407 acres, followed by, surprisingly enough, a Leinster County, Offaly, with 25 cases and 5,190 acres. Co. Mayo's contribution was modest enough for it - 24 cases and but 3,284 acres. The steep decrease in the number of cases for the second period, in comparison with the first, was largely due to two circumstances. Firstly, the diminution in the epidemic of agrarianism, the fever was spending itself; and, secondly, the concentrated onslaught on the entire Dáil judicial system by enemy forces. For a revolutionary period and for revolutionary tribunals - for that was what they really were, depending wholly on the goodwill of their supporters - the alienation orders were by no means drastic, affecting considerably less than half of the total area involved. And the real position, the ultimate position, was even still more striking. For, as I have already stated, in a great number of those alienation cases, I should think the vast majority, the alienation order was rendered abortive by the failure of the claimants to raise the money to meet the price fixed by our Valuation Commissioner and his valuers.

SOME SPECIMEN CASES FROM MY LISTS.

I give below only the cases I dealt with myself. My colleague, Conor Maguire, dealt with many interesting cases, under difficult and dangerous circumstances, but, as we sat always alone, never together, I cannot give an account of them. However, I understand he has recorded them, or some of them, himself, for the Bureau. He had a very effective method of his own; he always dictated his judgements subsequent to his hearings, to a shorthand-typist, before he left his venue. The typist carried them with her, through the enemy infested streets, and, in due course, typed them out from her shorthand notes. That was an excellent system, ideal for the prevailing conditions, and I only wished I had thought of it, in connection with my own particular work.

The following cases are divided between those that I heard, as Special Judicial Commissioner, and those that I heard as Judicial Commissioner of the Dáil Land Settlement Court: -

A. - SOME COUNTY MAYO CASES.

1. "South Mayo District Arbitration Court.

<u>In the matter of</u> Richard Mellitt & Ors.) of Knockroe, Ballinrobe, Co. Mayo.	}	v.	{ Peter J. Daly, M.D., of Ballinrobe, Co. Mayo.
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The decision was given in this case on May 5, 1920, signed by me, as "Presiding Arbitrator", and by Rev. Fr. Burke, C.C., Headfort, who sat with me. The decision was that lands, equivalent to a P.L.V. £50, be sold, and so divided amongst the claimants as to increase the P.L.V. of the entire area of each claimant to £11.

That a valuer be appointed by the Court, to be paid by the claimants, to determine what amount of the land in question would be equivalent to a P.L.V. £50;

That the valuer also apportion this land amongst the claimants in the shares mentioned in Order 5 (i.e., each to receive an addition, bringing their holding up to a P.L.V. £11);

That, when the said Valuer has made his valuation of the lands to be divided, the claimants and defendants do then select a valuer for each side, to ascertain the price to be paid by the claimants for the said lands;

That, if they fail to agree, the said Court Valuer to decide the price;

That, on the price of the lands being finally so fixed, a quarter of the purchase money to be paid by the claimants to the defendant, and a proper agreement of sale to be drawn up, the sale to be completed within three months of the agreement being entered into;

That possession of the said lands be given to the defendants when the balance of the purchase money is lodged by the claimants, in the joint names of Rev. M. Carney, C.C, and Dr. Daly;

That interest, at the rate of 5% p.a., be payable by the claimants to the defendant, on the said balance of the purchase money, from the date of possession until completion of purchase".

That was the only case in which I, as a Special Judicial Commissioner, sat with another Judge or Arbitrator.

2.	Thomas Melia, John Holian, Patrick Lydon, Pat Carney, of The Cross, Cong.)) v. (Walter Morrin, Patrick Morrin, Anne Morrin.
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I gave my decision in this case on June 21, 1920, at Claremorris. I said that the claimants had established their claim to economic holdings, but that they could not be provided with such holdings out of the Morrins' lands, particularly whilst there were hundreds of acres of untenanted land let in the neighbourhood. Were there no other land available in the district, it might be essential for the Court to order the alienation of some of those lands, but, whilst there were so many acres of grass lands in the district, let by their owners, it was not the policy of the Dáil to divide up small holdings. Therefore, the Order of the Court was that the three Morrins were entitled to the peaceable and undisturbed possession of their holding at Ballymagibbon. The claim

of the claimants to economic holdings would be filed in the office of Agriculture and would be dealt with, under the new land scheme, which the Dáil was devising. I dismissed the counter-claim for damages, but declared that, if there was any further interference with the Morrins, my decision would be revised, with a view to imposing damages of a penal nature. Both sides were each to abide their own costs.

The solicitors in this case were James F. Moles, for the claimants, and Louis E. O'Dea, for the Morrins.

This case had a subsequent history. On July 21, 1920, just one month after I gave my decision, Louis O'Dea, wrote to the Agricultural Ministry, saying that, since my order of June 21, 1920, the claimants have ignored the decision, and were going about the country, boasting that they would not abide by the decision of the Court, and charged that the Arbitrator (myself) was bribed! They had their own, and other cattle, on the lands, and the Morrins' servants had got threatening notices, warning them to leave the employment of the Morrins. The Morrins' name had been posted up on the walls, in the neighbourhood, and a serious attempt

had been made to boycott them. "They groan and revile Sinn Féin", the letter said. Tom Melia and his wife were the worst offenders. This Melia, the letter informed us, was formerly a landlord's bailiff.

On August 8, 1920, Art O'Connor, the Minister, wrote to Louis O'Dea, saying that he had put the matter of the ignoring of my Order, in the hands of the Minister of Defence, with a request that the Morrins' land and persons should be protected, and that protection was being accorded them. My Order was upheld by the I.R.A., and peace was restored to the Morrins and their lands.

B. - SOME COUNTY GALWAY CASES.

1. Franciscan Brothers,) (Patrick Fannin,
Franciscan Monastery,) v. (Thos. Reynolds,
Kilkerrin, Ballinasloe.) (Michael Kelly
of
Ballymore, Co. Galway.

About April, 1920, the defendants (Fannin & Ors.), together with several others, took forcible possession of the Brothers' lands at Newtown, Ballinakill, Ballymore, Co. Galway, which the said Brothers held

in freehold. The defendants put their own stock in on the said lands, and left them to graze there.

The Brothers then summoned the defendants before the Dáil District Court, at Tuam, on July 20, 1920, where plaintiffs proved their title to the lands, and that Court gave them a decree to that effect and also an order that the defendants, Fannin, Reynolds and Kelly, pay plaintiffs £100 compensation for damages.

Mr. P.J. Hosty was the solicitor acting for the defendants at that Court. The defendants appealed against that decision, and the appeal came on for hearing at the sitting of the Special Emergency Land Court, held by me, when I confirmed the decision of the District Court, with costs.

Louis O'Dea, solicitor, acted for the defendants before me, and Patrick Hogan, solicitor, Loughrea, appeared for the plaintiffs, at both sittings.

Messrs. Hogan and Shields, Loughrea, solicitors for the Brothers, some while after my decision, wrote into the Ministry, as follows: -

"The plaintiffs are since in full undisturbed possession of the lands, and are in receipt of rents and profits from same; but £100 compensation ordered to be paid by the defendants to plaintiffs, together with the costs of the circuit sitting (i.e., the appeal I heard) which have been filed and certified at £23 - 10 - 0, have not yet been paid, nor any part thereof; and it is essential, in the plaintiff's interests, that the order be now registered, so as to enable them to be in a position to try for same, if necessary. The deposit fees on the first hearing were paid to Eamonn Casey of Tuam, on entering the case for hearing, as was also a sum of £10, on the hearing of the appeal case. This latter sum was paid by the plaintiffs in court, but they cannot trace any receipt for same.

Signed HOGAN & SHIELDS, Solicitors,
5, Stephen's Green, and
Loughrea".

This was a particularly notorious case, and showed that, when men were in the clutches of the agrarian fever, all was grist to their passions, including the Franciscan Brothers, who were running a farm and agricultural school there, for the benefit of the

sons of those same defendants, or claimants, and their connections. In an affidavit, sworn by Brother Xavier Cosgrave and Brother Jarlath Edwards, they stated that the defendants, and several others, had driven their lands of Newtown, comprising 67 Irish acres, and then had put their own stock thereon. They also levelled the fences on the farm, including 62 yards of a wall, enclosing the farm from the public road.

Forty-four defendants were listed and served in this particular case, and they did not stop at personal violence. One of the Brothers was assaulted by them on the public road.

The finale of that case was that, on February 2nd, 1925, it came before Judge Wylie in the Dáil Éireann (Winding Up) Court, when he made an order, confirming mine, and ordering the payment of £100 plus £4 interest from July 2nd, 1920.

At that hearing, Eugene Sheehy, B.L., was Counsel for the defendants, and Conor Maguire (now a B.L.), Counsel for the plaintiffs.

C. - SOME COUNTY ROSCOMMON CASES.1. Mulherin v. Ballinaheglish Sinn Féin Club.

Mulherin's solicitor, Patrick Neilan of Roscommon Town, said his client had lately been given possession of seven acres. He also appears to have got $4\frac{1}{2}$ acres of bog from the C.D.B., which was vested in him by that body on June 6, 1920. On that night his boundary walls were levelled, and his stock all driven, and new stock, belonging to the drivers, put in on his lands.

Mulherin received plenty of threatening notices -

"Mulherin, if you have anything further to do with that land, you will lose your life"! - and suchlike.

Mulherin, in evidence, admitted to the horrific fact that he was a Hibernian, but added, "I am one of the poorest men in the district, and didn't think any club in Ireland would stop me, in a little patch of land like this". I had no difficulty in deciding in favour of Mulherin against Bartley Goff's clients, the Sinn Féin Club. Mulherin had no trouble after that.

2. William Farrell v. The Walk (Clooneybeirne)
(Claimants).

Lands of Killarney.

Farrell signed a submission to Arbitration Form on June 25th, 1920, and applied for a "Protection Order". I gave him one. It went as follows: -

"DÁIL ÉIREANN
ARBITRATION COURTS (LAND).

To all whom it may concern:

William Farrell of Roxboro, having agreed to submit the matter of the Killarney Lands to the Arbitration Court appointed under the authority of Dáil Éireann,

It is hereby ordered that, pending the decision of the court, no interference be made with his person, stock, buildings, servants or property.

Given this 28th day of June, 1920, by
Kevin O'Shiel, President of the Court at Castlerea".

In this case I eventually decided that the club could purchase the lands at a certain price. The late Frank G. MacSherry, Solicitor for the owner, wrote in some time afterwards to say that the claimants couldn't raise the price and that, accordingly, his client had now peaceful possession and use of his lands.

3. Patrick Murray v. Dysart Claimants.

Lands of Lisnamucklagh, 86 acres (English).

My order in this case ran as follows: -

"DEPARTMENT OF AGRICULTURE

LAND SETTLEMENT COMMISSION COURT.

Having received the report of the Court Valuer concerning the lands in dispute in this action, which report has been duly sanctioned by the Valuation Commissioner,

This Court Hereby Orders

- (1) That the Dysart claimants to that part of the lands of Lisnamucklagh (Deerpark) containing 86 acres (English) and at present in the possession of Patrick Murray, have not established their claims to the said disputed lands;
- (2) That the said Patrick Murray is entitled to the full, free and peaceful possession, use and employment of the said disputed land;
- (3) That both parties to this dispute abide each their own costs so found by the Chief Registrar.

Given this 11th day of February, 1921,

Kevin R. O'Shiel,

Judicial Commissioner Presiding.

It will be noted that this case was heard by me as a

Judicial Commissioner of the Dáil Land Settlement Commission.

which had been set going in October, 1920.

On May 4th, 1920, Joseph Dixon, Solicitor for the owner, reported that the Dysart Committee were, despite my order, still in possession of these lands and refused to vacate them in accordance with the terms of my order. He requested the Ministry that steps be taken to have the order of the court carried out.

Accordingly, Art O'Connor made the following order:

"SAORSTÁT NA hÉIREANN

Department of Agriculture
Land Settlement Commission.

Patrick Murray v. Dysart Claimants.

In re the lands of Deerpark, Dysart, Co. Roscommon

ORDER

Whereas by a Judgment of the Court of First Instance of the Land Settlement Commission dated 11th day of February, 1921, Patrick Murray was granted peaceable possession and enjoyment of his lands at Lisnamucklagh containing 86 acres (English) more or less;

And Whereas it has come to the knowledge of this Commission that you, with sundry other persons, have shown contempt, and continue to show contempt for the said lawful judgment of this said lawful court, to wit, by continuing in improper and

illegal possession of the said lands, the lawful property of the said Patrick Murray,

Now Therefore This Commission Hereby Orders and Commands

you, Martin Gately, Garrynagran, Dysart, under pain of incurring summary and drastic punishment

(1) to discontinue at once the said improper and illegal possession of the said lands of Patrick Murray;

(2) and, furthermore, to discontinue all vexations and annoying practices that militate against the said Patrick Murray's peaceful enjoyment and possession of the said lands, his lawful property.

Given this 15th day of June, 1921,

ART Ó CONCHUBHAIR

Substitute Minister for Agriculture".

I drafted that order and I cannot say why the Minister, and not the Land Court, made it. Things were exceedingly flexible in those days, even to the extent, as I have pointed out, of creating a Commission in a form that the Dáil never enacted!

The following note from the Dáil Police gives the happy ending of that particular affair:

"DÁIL ÉIREANNPríomh-Oifig na Sióthmaor
(Police Headquarters).

The following is an extract from report received from O/C Police, South Roscommon: -

"The parties trespassing on the lands of Patrick Murray, Dysart, for which I received a Protection Order, have all complied with the wishes of the Order and have removed the stock".

4. Mealy v. Kelly.

On September 30th, 1920, S.G. Sennett wrote to H.Q. asking for an order in this case, which was one pending judgment which I had heard. He wrote that there was much local hostility to Mealy and his family, and that that hostility was extended to men who gave him assistance in his hay-making and, he added, "some threats have been made which are most improper". The claimants, despite the sub judice character of the case, were still in unlawful possession of the lands.

On October 6th, 1920, Sennett again writes the Minister of Agriculture that Kelly was going around openly boasting that he will not be put out of the lands as there is not a man in the locality to support Mealy. A week