

13
COPY OF THE CORRESPONDENCE

BETWEEN

THE LORD CHANCELLOR OF IRELAND

AND

MR. JAMES BYRNE, J.P.



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1887.

COPY OF THE CORRESPONDENCE

BETWEEN

THE LORD CHANCELLOR OF IRELAND

AND

MR. JAMES BYRNE, J.P.

Lord Chancellor's Secretary's Office,
Four Courts, Dublin,
15th day of October, 1887.

SIR,

I am directed by the Lord Chancellor to inform you that his attention has been called to certain circumstances seriously reflecting on your conduct as a magistrate.

The Lord Chancellor has learned that a limited number of magistrates, of whom you are one, have recently adopted a very reprehensible practice of going outside their customary and appointed Petty Sessions Districts, for the express purpose of adjudicating on particular cases, or a particular class of cases. He has been informed that recently, and within the same fortnight, you have on four occasions adopted that course—attending twice in one district, and once each in two others, and that prior to those occasions you had never acted as a magistrate at any of these Petty Sessions.

This exceptional action has necessarily given rise to serious comment, and is obviously open to the gravest suspicion.

On the 30th of September you were at Mitchelstown Petty Sessions for the first time, and having joined in signing publican's certificates which were opposed by the police, left the Court immediately afterwards, thus showing plainly the object of your attendance.

On the 5th of October you attended at Kildorrery Petty Sessions for the first time, and signed certificates for publicans which were opposed by the police, and which the local bench, at the Annual Licensing Petty Sessions had previously declined to sign.

On the 7th of October you were at Mitchelstown Petty Sessions for the hearing of a charge of assault against a Divisional Magistrate, and your presence, and that of other magistrates who were strangers to the district, called forth comment from the presiding Resident Magistrate.

On the 11th of October you were at Fermoy Petty Sessions for the first time, for the hearing of a charge of assault against some members of the local police, and your presence, and that of other magistrates who were strangers to the district, was again the subject of comment, and the Resident Magistrate left the Bench to mark his sense of the occurrence.

This conduct on your part is entirely opposed to the practice of magistrates. A magistrate when assigned to the Commission of the Peace by the Lord Chancellor is appointed expressly for a special Petty Sessions District, and with direct reference to the requirements of that district.

The Lord Chancellor is deeply impressed with the grave public scandal involved in the course of action to which I have referred. Such conduct, if generally adopted by other magistrates, would lead to the most unseemly and discreditable scenes. It is an abuse and not a *bona fide* exercise of the powers of the Commission of the Peace, and it cannot be sanctioned by the Lord Chancellor.

His Lordship, therefore, requests that you will without delay furnish him with any explanation of your conduct which you may think it desirable to offer.

I am,

Sir,

Your obedient servant,

(Signed),

J. NUGENT LENTAIGNE.

James Byrne, Esq., J.P.,

Wallstown Castle,

Shanballymore.

Wallstown Castle,

Shanballymore,

24th October, 1887.

SIR,

I have the honour to acknowledge the receipt of your letter of the 15th inst.

I beg to state in reply to that letter, and for the information of the Lord Chancellor, that I emphatically deny that I have in any way whatever acted either illegally or improperly in the discharge of my duty as a magistrate.

I was not aware until the receipt of his Lordship's letter, I am not aware up to this moment of any rule of law or practice limiting the attendance and jurisdiction of magistrates to a particular Petty Sessions district of the county for which they are appointed; the only instrument under which I hold the office of Justice of the Peace is the Commission of Her Majesty the Queen, under and by virtue of which I am "assigned" with

“one or more of my brother Justices in and throughout the County of Cork to inquire by the oath of all good and lawful men” into all misdeeds and offences over which the Justices have jurisdiction. I have never, until the receipt of his Lordship’s letter, heard it questioned by any authority whatever, that in the plain and strong language of my commission I had full power to sit at all Sessions, Quarter and Petty, “throughout the County of Cork.”

I am a layman and do not pretend to any knowledge of the law ; but I may be permitted to point out that in a work, which I believe is the highest authority on the powers of Justices of the Peace in Ireland, the book of which the late Mr. Walsh, the Master of the Rolls, was one of the joint authors, it is laid down: “From the interchange and communication of opinion between the Magistrates result the further advantages of certainty and uniformity of practice in the same Petty Sessions, and this uniformity will gradually extend to others, as the same Magistrates may and often do attend at different Petty Sessions.” It will thus be seen that in Nunn and Walsh the practice of sitting at various Petty Sessions is treated as not alone lawful but commendable.

Ever since my appointment I have, in common with many neighbouring Magistrates, from time to time attended different Petty Sessions in the locality in which I reside, and have done so without objection or comment on the part of any person.

As a proof of my allegation that this is customary among Magistrates, let me inform His Lordship that at the very Sessions which it is complained I adjudicated at, viz., the Sessions of Fermoy, Kildorrery, and Mitchelstown, Mr. John J. Terry, J.P., who I believe lives in the Conna District, also adjudicated. I differ from some of my brother Magistrates in politics, but we have the same commission, we are governed by the same law, and I submit that in sitting out of the district in which we reside we are either all in the right or all in the wrong.

I now come to the specific charges made against me. His Lordship will see how grossly he has been deceived by the author of the report against me—deceived first as to the alleged facts, and secondly because the author of that report has omitted circumstances which place my conduct in a light which must, I think, convince His Lordship how unjust is the suspicion that I attended these Sessions in order to serve the interests of any party, or to carry out a preconceived determination.

It is true that I attended the Annual Licensing Petty Sessions at Mitchelstown on the 30th September. It is untrue that I so attended for the first time. It is true that after a fair and careful hearing I concurred in the decision of the majority of the Bench granting certain licenses objected to by the police. It is untrue that I left the Court before the business had terminated.

It is quite true that I was again at Mitchelstown Petty Sessions on the 7th instant, where one of the cases for trial was a charge of trespass against Captain Plunkett, Divisional Magistrate. It is quite true that the Resident Magistrate thought

proper to assail from the Bench the conduct of myself and other magistrates, who, in obedience to the law and in pursuance of our rights, sat by his side. I humbly submit to His Lordship that the conduct of the Resident Magistrate in so acting was a grave public scandal. I further humbly submit that it would have been a grave public scandal of the first magnitude if the unpaid magistrates permitted a charge against the Divisional Magistrate to be solely or mainly adjudicated on by Resident Magistrates, the official subordinates of the accused, acting directly under his orders and answerable to him for their conduct. That I acted with no injustice towards Captain Plunkett is plain from the fact that I concurred in the judgment of the Court, dismissing on technical grounds the charge against him.

It is true that I attended at the Petty Sessions at Kildorrery on the occasion referred to. It is untrue that I attended there for the first time. At the previous Petty Sessions, the Bench being equally divided, there was "no rule" on certain applications for Renewals of Licenses. The cases, therefore, of necessity stood adjourned, and in concurring in issuing the necessary Certificates at the Sessions in question, I believe I was entirely within my magisterial rights and the law.

It is true that I attended at the Fermoy Petty Sessions mentioned in your letter. It is untrue that I attended these Sessions for the first time. It is true that some cases against the police were tried at these Sessions. His Lordship's correspondent has not, I presume, informed him that a large bench, including gentlemen of great landed estate, and supporters of Her Majesty's present Government, and in two cases Mr. Eaton, R.M., arrived in all the cases for and against the police at an absolutely unanimous decision. This fact speaks for itself. Furthermore, I have seen a letter from the Secretary of Lord Chancellor O'Hagan, written in the year 1882 to Colonel Reeves, of Castlekevin, which has a direct bearing on this subject. He in that year went to reside for a short time at Kinsale, and in reply to his inquiry as to whether he might adjudicate at Kinsale Petty Sessions, he was informed, "You have authority to preside at any Petty Sessions Court in the County of Cork," and I presumed the law remained the same.

I submit then to His Lordship that there was no grave public scandal, nor any scandal whatever in my course of action on the occasions under discussion. I submit that my action was a *bona fide* exercise of my rights as a magistrate, that I acted within the strictest limits of law and propriety. I cannot conceive how my conduct could lead to "unseemly and discreditable scenes," unless indeed the novel abuse should be tolerated of the paid magistrates, the assistants of the ancient and constitutional unpaid magistracy of the country, lecturing their brother justices upon the Bench and in public, an abuse against which I felt it my duty, in very moderate, but very firm language, to protest at Fermoy.

I am confident that the Lord Chancellor will not consider it

any disrespect to his undoubted authority, if I say that I await his decision in my case with a strong feeling that as I have in no way sinned against my own conscience, so also I have in no way forfeited the good will of fair men, of whatever party, who are interested in the cause of justice, fair play, and the independence of the magistracy. I have entered into a full and respectful explanation of my conduct, but I have nothing to retract, nothing to apologize for, and nothing to regret.

I am, sir,

Your obedient servant,

(Signed) JAMES BYRNE.

J. Lentaigne, Esq.,

Secretary to the Lord Chancellor.

Lord Chancellor's Secretary's Office,
Four Courts, Dublin,
26th day of October, 1887.

SIR,

I am directed by the Lord Chancellor to acknowledge the receipt of your letter of the 24th instant, which his Lordship does not regard as any explanation of the grave circumstances mentioned in my letter of the 15th instant.

Your attention was drawn to the reprehensible practice recently adopted by you of going outside your customary district for the express purpose of adjudicating in particular cases, or a particular class of cases, and you were pointedly reminded that you had so acted on four occasions within the same fortnight.

You have entirely failed to offer any explanation of such conduct. You do not state how or why you so attended, and it is plain that you attended for the purpose of adjudicating in particular cases.

You deny that you attended the particular petty sessions for the first time, but you do not say when before you ever sat there as a magistrate. The official returns of attendances of magistrates at petty sessions do not show that, for a period of sixteen years from the date of your appointment in 1871 down to the 31st August, 1887 (the date of the last return), any attendance of yours was recorded at Mitchelstown, Kildorrery, or Fermoy. It is manifest, at all events, that you attended on the occasions referred to as a novel practice.

The Lord Chancellor is perfectly familiar with the terms of the Commission of the Peace, but is of opinion that your conduct was a grave abuse of that commission. Magistrates before being appointed sign a return saying distinctly what petty sessions they propose to attend, and they are required to add, to guide the Lord Chancellor as to the need of appointing them, a statement of the number of magistrates usually attending such petty sessions.

The conduct you have adopted is entirely opposed to the general practice of magistrates, and to the proper and decent discharge of the magisterial office. It is manifest that if such conduct was for a moment sanctioned by the Lord Chancellor, magistrates would be canvassed, it might be from opposite points of view, to go from a distance to outvote a local Bench, or it might be to drive through the county from petty sessions to petty sessions to sit in particular cases.

His Lordship has noticed that you express yourself unable to see that there was any public scandal involved in your conduct, and that you do not hold out the slightest hope or expectation that you would modify or amend your action.

Under these circumstances the Lord Chancellor has no alternative but to direct that you be superseded from further acting in the Commission of the Peace.

I am, Sir, your obedient servant,

(Signed), J. NUGENT LENTAIGNE.

James Byrne, Esq.,

Wallstown Castle, Shanballymore.

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