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English Law in Tipperary 1295-1314

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Introduction

On 30 June 1922 the Republicans who had occupied the Four Courts in Dublin surrendered. The Public Record Office was part of this complex of buildings and when government forces were searching for and disarming booby-trapped mines, one was accidentally triggered, and in what Tom Garvin has characterised as "an attempt to murder the nation as a collective entity with a collective memory", documents and manuscripts containing much of the island's history were destroyed.¹

A probable reason for the Republicans' lack of concern for this archive was the fact that it dealt with the history of the English in Ireland – their political, financial and legal administration of whatever part of the island was under their control at any given period. During the two centuries or so following the Norman arrival at Bannow Bay in Co. Wexford, much of Co. Tipperary was in this category. What was destroyed therefore on that June day was much of the history of Tipperary in the thirteenth and fourteenth centuries.

A government report of 1894 catalogued the extent of this archive – rolls of judicial proceedings, exchequer rolls and chancery rolls – thus indicating the scale of the loss.² These rolls consisted of membranes of parchment, usually written on both sides, about two feet long and eight-and-a-half inches wide, bound together and kept in rolls.

This article deals with the records of the administration of English justice in Ireland, by a variety of courts in which both civil and criminal cases were heard. Because of the calamity of 30 June 1922, only one justiciary roll survives, that for the sixth and seventh years of the reign of Edward II (1312-14). Fortunately, the calendars of some of this material survive, thanks to the work of the Irish Record Commission in the early nineteenth century.³ However, much more valuable and accessible are the English language calendars, three in number, which now constitute the only record of documents destroyed in 1922.⁴ The first two volumes were prepared by James Mills and published in 1905 and 1914, when the original rolls were extant and covered 1295 to 1303 and 1305 to 1307 respectively, the last years of the reign of Edward I.⁵ It was planned to continue publishing calendars of these justiciary rolls up to 1395.

By 1922, calendars covering the period 1308 to 1318 had been prepared, but nothing was published until 1956, when this material revised by Margaret Griffith (appointed deputy keeper of the Public Record Office that same year) became the last of these three invaluable volumes.⁶ Calendars can be inadequate summaries of documents and while these calendars of the justiciary rolls can no longer be compared to the originals, there is every reason to think that details of cases have not been omitted.⁷

Parts of the island were outside the jurisdiction of these courts: the regions still under Gaelic control and various Liberties, territories granted to favoured magnates. Fortunately for historians, the creation of the liberty or palatinate of Tipperary for James Butler earl of Ormond by Edward II, did not occur until 1328.⁸ (This allowed the earl to administer his own justice (with specified exceptions). Consequently much of Tipperary (the districts resistant to English

law are discussed later in this article) came under the jurisdiction of the courts, the records of which are preserved in these three volumes.

For example, a court with William de Burgo standing in for the Justiciar John Wogan, sat in Cashel on four days in January 1309 and administered English common law. As was remarked in the preface to the second volume of these calendars: "Of still greater value for the history of the country are the facts, social and political, incidentally revealed in the various pleadings recorded in the rolls".⁹ In spite of the fact that over the past twenty years or so a good deal has been published with respect to the history of Tipperary, the calendars of the justiciary rolls have been scarcely used. The period of the late middle ages in Tipperary is very much a case of "long ago and far away"; but the justiciary rolls have a wealth of information about crime, local administration, agriculture, commerce, the church, placenames, land ownership, race relations. Above all, this source allows us a faint smell of the sweat of ordinary lives 700 years ago.

Tipperary c.1300

Perhaps the most salient point about these surviving court records is that they reflect the English conquest of Ireland at its most successful, just before the Bruce invasion in 1315 raised the curtain on decades of disasters, both natural and man-made, so that royal authority in Ireland contracted. As Geoffrey Hand noted with respect to the closing years of the thirteenth century and the opening years of the fourteenth century: "English law was administered over a wider area of Ireland than was to be the case again, in all probability, until the seventeenth century".¹⁰ We know something about the handful of key individuals, Butler, de Burgh and Philip of Worcester, who were the primary grantees of land in the county. Very little is known about the specifics of land grants and settlement of those families who were the less exalted layers in what was a very hierarchical system.

Once families like Purcell, Cantwell, Stapleton, Everard, White, Keating, Tobin, Hackett, Power and Prendergast arrived in the thirteenth century and occupied their knights fees (feudal land grants, usually the same as civil parishes, in return, at least initially, for military service), parts of Tipperary assumed a very Norman character. These families in turn brought to Ireland their own tenants and service providers. One of the strongest impressions conveyed by the justiciary rolls is the depth of Norman settlement in parts of Tipperary, especially in the Suir Valley.¹¹

Because of the survival of an "extent" (a contemporary analysis) dated 1303 of Thurles and its hinterland, which was the property of Edmund Butler, father of the first earl of Ormond, something of this process of "subinfeudation" may be understood.¹² With Thurles (civil parish) at its centre and retained by Butler, there was a network of subordinate fiefs (estates), chief of which were Drom, Templemore, Inch and Moycarkey, with families like Cantwell and Purcell in occupation. Defence was a key consideration in the granting of land in exposed areas. In parts of the county, native Irish remained a threat; the justiciary rolls indicate no-go areas for the settlers. Through the fourteenth century and beyond, it was increasingly difficult to draw a line between natives and hibernicised intruders.

Grimbald de Samlisbury held "one knight's fee in Moycarkey of the manor of Thurles", and among other considerations provided five armed men towards local defence. He kept a few acres, mainly arable, in his own hands and of 62 tenants listed, 59 have names indicating a Welsh or English origin.¹³ From information based on another part of this key Butler property, it was likely that the land retained by de Samlisbury, his demesne, was farmed very profitably, at least until the close of the thirteenth century.

Very large amounts of land were devoted to labour-intensive cereal cultivation, and another source of the lord's revenue was his control over milling.¹⁴ This "manorial system" was at once a method of local administration, a system of agricultural production and an agency of colonization, bringing people to Ireland to settle and work the land. These were the people whose complaints and transgressions animate the pages of the calendars of the justiciary rolls.

With regard to the appearance of the Tipperary landscape, the main difference compared to the pattern of enclosed fields of today (which developed as a result of the much more recent estate system), is that under the Anglo-Normans, farming was on the basis of large open fields, open that is except for access ways, dividing banks and temporary hurdles to contain stock. The reference to "fields" may be misleading if thought of in terms of today's fields; they were a great deal larger.

There were six classes of tenants found on these medieval manors, though not every manor necessarily had all six.¹⁵ "Free tenants" were the most favoured. In origin they were imported settlers, perhaps paying low rents in return for providing military service. They had security of tenure and hereditary rights and participated in the lord's manorial court. "Farmers" were personally free and rented their land. Their origin and background was similar to those of "free tenants", and they enjoyed a modest degree of comfort. The third category, "tenants-at-will", like the first two, were personally free but their great disadvantage was that they did not hold their land by contract. It was likely that, as well as paying a money rent, they also provided labour for their lord's demesne. The kind of arable farming mentioned above was labour-intensive, and "cottiers", the fourth category, who rented cabins and gardens in return for a mixture of money rent and labour service, were essentially farm labourers.

"Betaghs" (the fifth category) were a carry-over from pre-1169 Ireland, men tied by the provision of their labour to a particular lord. The Anglo-Normans had no difficulty in assimilating this class as they had a similar category in England, men called villeins. In the manor of Lisronagh near Clonmel, a de Burgh property, there were 43 betaghs in 1333. An example of their labour obligation was that every betagh with a draught animal had to cart the lord's wheat to the haggard.

An essential point about this class is that they were not personally free but tied to the manor of which they were part. Betaghs were generally Irish; but in Lisronagh the majority were English or Welsh. It was possible that earlier generations of these families in Ireland had a higher status but that fortune was not with them. Land held by betaghs appears to have been apart from that held by others and, where their numbers warranted it, they probably held particular townlands.¹⁶

The lives of all those in the countryside were made more difficult as the late 1200s gave way to the early 1300s, the period covered by the calendars of the justiciary rolls. Contributing to this was the climate. The thirteenth century was benign, with cereal cultivation widespread in Tipperary. The *Annals of Inisfallen*, basically a Munster source, describes a tough winter in 1296, then very stormy conditions the following year together with an outbreak of foot-and-mouth disease; then "great hardship" during the early summer of 1305. Such was the famine during the few years after 1314, that the *Annals of the Four Masters* declared that "men were wont to devour one another".¹⁷

In some manors the majority of the tenants were "burgesses", the sixth category. The particular character of each manor depended on the attitude of the founding lord, the quality of the land, the geographical circumstances and the demands of defence – whether for example, the manor was located in a region surrounded by other manors or located more precariously in a frontier area. While agriculture was the most widespread economic activity within the manor,

the promotion of trade was also a source of revenue and this meant the promotion of settlements – villages that in some cases prospered into towns. The status of burgess conferred a number of advantages. Lords had to make concessions in order to attract enterprising tenants. Burgesses very largely had the right to regulate their own affairs and were usually artisans and traders. Burgage-plots were let at a standard rent of one shilling a year and these plots, where towns have developed, continue to dictate pattern and lay-out.¹⁸

The manor of Moyaliff was inhabited mainly by burgesses, none of whom were Irish, and while they were required to cart iron and salt from Cashel when directed by the bailiff of the manor (akin, perhaps, to the more modern estate agent), they were entitled to payment for their labour.¹⁹ Essential aspects of these settlements were charters defining the relationship between the lord of the manor and the primary householders, together with grants allowing and regulating markets and fairs. By 1300 the most substantial settlements in the south of the county were Cashel, Fethard, Clonmel and Carrick-on-Suir and in the north, Thurles and Nenagh. The status of Tipperary town is problematic because of the lack of documentation. Apart from these towns there were several dozen boroughs, some of which like Athassel were quite substantial settlements. Others such as Lisronagh, between Fethard and Clonmel, were basically farming communities.

Tipperary county had a coherent identity from about 1254 and was divided into “cantreds” which evolved into the later, but now obsolete, baronies. This county identity was superimposed on a number of dioceses – Cashel, Emly, Killaloe and Waterford. When the Normans arrived they found dioceses but no parish structure. Parishes were thus created on the basis of knight’s fees, which in turn were probably based on pre-Norman territorial divisions. (Parishes in this context are civil parishes, based on the medieval framework and not modern parishes.)

Parishes were sources of revenue or tithe and in many instances during the thirteenth century, local lords granted these tithes to religious houses. For example, a religious foundation in Dublin, the Hospital of St John the Baptist, controlled tithes from various Tipperary parishes such as Fethard, Drangan and Cordangan near Tipperary town.²⁰ Invariably where there are revenues there are disputes, and litigation is the consequence. However, the Church was always very jealous of its rights and privileges, an attitude that is very clear in the justiciary records. Perhaps the strongest impression created by the calendars of the justiciary rolls is the seeming strength of the Anglo-Norman presence in Tipperary by the end of the thirteenth century. Around 1300 a merchant from Norwich would feel at home in Cashel – two settlements where accents differed but the language spoken, Norman French, did not; where the same law operated and the same king ruled.

The Justiciar’s Court

King John left Ireland in August 1210 and, in spite of plans, no English monarch again set foot on the island until Richard 11 arrived in October 1394. The absent monarch was represented by an officer of state variously called “Lord Lieutenant” or “Justiciar”. Men from two different backgrounds were chosen by the king to represent him in Ireland; the choice being dictated by politics and circumstances. On the one hand, the king could opt for an Anglo-Norman magnate, someone who could bring his own prestige but also perhaps, his own agenda, to the position.

On the other hand, an English official could exercise administrative skill and single-minded dedication in the interests of the Crown. During the period covered by the calendars, 1295-

1314, incumbents came from both backgrounds. The chief governor for most of 1295 was Thomas fitz Maurice fitz Gerald (father of the first earl of Desmond). Other Anglo-Norman lords who held the position were Richard de Burgh, third earl of Ulster (buried in Athassel near Golden) and Edmund Butler (father of the first earl of Ormond) who played a key role during the Bruce Invasion in 1315.²¹

However, the chief governor for much of the period under discussion was John Wogan, a career servant of the Crown and a Welsh-Norman knight from a family based in Perbrokeshire. He was appointed justiciar in October 1295 and, allowing for periods when he was away from Ireland, he served for much of the next 18 years. He died in 1321.²² The justiciar was at the centre of the administration of justice, and this meant that a good deal of his time was spent bringing the king's justice to the provinces. In county Tipperary the main venue was Cashel.

Between 1295 and 1314, the calendars detail some 30 court sittings in Cashel, whereas the figure for Clonmel is eleven and for Carrick two. In 1299, Nenagh was the venue on one occasion and similarly once in Galbally in 1301 and Modeshill in 1310. According to unpublished records, Ardmayle near Cashel was a venue in December 1312.²³ Apart from the justiciar's constant itineration, other justices were also on circuit. For example, five are named as "justices itinerant" at Cashel in October 1305.²⁴ Ideally the court dealt with cases specific to the district where it was sitting; but in practice, if a case was adjourned, it was heard again wherever the court happened to be sitting.²⁵

Considerable planning had to go into the movements of the justiciar's court. Notice had to be given to prospective litigants. Juries had to be organized. If criminal cases were being heard, arrangements had to be made to transport and guard those being held for trial. Also, the probable aftermath, executions, had to be put in place. A town like Cashel, if the court was sitting there, was likely put under pressure with respect to accommodation, with suitable lodgings being requisitioned for the justiciar and his entourage. The justiciar, after all, represented the monarch and matters of protocol had to be observed.

Not surprisingly, with such temporary pressure on resources, profiteering had to be contained and so prices and quality of food and drink had to be controlled.²⁶ The official responsible for all of this was the sheriff of the county. He was under an additional burden because the discharge of his office, especially its financial aspects, came under great scrutiny. Details about the practical workings of the court are not available. Obviously, a large enough space had to be procured, perhaps a church building. Seating would have been sparse, with just the key figures on a raised dais.²⁷

As will be seen when some specific sittings of the court, mainly in Cashel, are examined, a startling volume of cases were pushed through the system in the course of a day. For example, at a sitting of the court in Cashel on 14 January 1309, some 36 cases were heard.²⁸ This was made possible because local freeholders, who comprised the juries, probably arrived in court knowing the details of the cases and with their minds made up. The pressure on accommodation in a town like Cashel was increased because large numbers of freeholders and knights were expected to attend; twelve of the former and 24 of the latter being involved in a complicated process of selection and scrutiny. In 1297, to hear a case the sheriff summoned 24 knights and twelve freeholders. Eleven of the latter came, with the twelfth showing up late, but none of the knights appeared and so the sheriff was ordered to compel them.²⁹

In 1305 at a hearing in Cashel before Edmund Butler, in a case concerning the possession of land, the sheriff had been ordered to have present twenty-four "good men" but the panel he returned was deemed to be "of too little weight and suspected" to inquire into the case and so the sheriff was ordered to have a suitable panel available at the next sitting in the county.³⁰ The

qualities looked for in these men were that they be "discreet, upright and lawful".³¹ No allowance was made for the exercise of individual judgement; consensus was everything. In a case heard in Cashel in 1313 concerning a charge of arson in Nenagh, eleven jurors acquitted the defendant but the twelfth juror held out. The case was examined by another jury who confirmed the not guilty verdict, and so the odd man out was jailed and fined on a charge of malice.³²

Cases heard before the justiciar fell into two categories: pleas of the Crown or criminal charges, and civil pleas which mainly involved disputes over land. Then, as now, murder was a most serious criminal charge. However, the law did not make a distinction between premeditated killing, i.e. murder and what today would be classed as manslaughter. Undoubtedly, juries frequently made exactly this distinction.³³ At Cashel in October 1313, a man was tried for killing his wife. "Wrangling verbally, moved with wrath he drew his knife and feloniously slew (her)". The jurors decided that he was not guilty and the record indicates that this decision was made quickly but as mentioned above, the jurors likely knew all about this case before that October day in Cashel.³⁴ (The jurors, of course, were all men.)

More common were crimes against property. In an agricultural community, theft of livestock and crops were regular fare in the courts. From the perspective of the court, acting for the Crown, a central concern in these cases, apart from the provision of redress, was the raising of revenue through a system of fines, with the threat of prison being a means to an end, which was the extraction of money for the Crown.³⁵

On the civil side of the justiciar's court, assizes of novel disseisin were common. This was an action designed to protect the property of the freeholder by submitting to the judgement of the assize jury a fundamental question. Was the plaintiff in seisin (possession) of his property and subsequently deprived of that seisin by the defendant "unjustly and without a judgement"?³⁶ A hundred years after the first settlement of the region by the Normans, tenure, or what much later would be called security of tenure, was clearly an issue. Given the nature of the society, the preservation of records was important but difficult and so the court was called on to decide.

An example of a case heard at Cashel in January 1309 was only unusual in that it concerned the archbishop of Cashel (Maurice Mac Cerbaill, 1303-1316). As with such cases the detail is tedious; but the archbishop claimed that the Lockard family usurped his freehold with respect to property in Cashel. Lockard's bailiff (agent) was in court to put his case. Richard Lockard held the property in fee at the time of his death and his heir was his brother Adam, who inherited the property and claimed that the archbishop's interests were in no way affected. However, the serjeant of the archbishop, claiming his master's superior interest in the property, attempted to seize it but was "ejected". The jury agreed that, while Adam was Richard's brother; but "whether he is heir or not they know not, because they were not born in these parts" The jury found against the archbishop.³⁷ Factors such as lay resentment against the church and the archbishop's Gaelic identity may have worked against him, as much as issues of law.

Some court sittings dealt with what was called "delivery of gaol". In May 1295, at a sitting in Clonmel before the father of the first earl of Desmond, there was a "delivery of gaol of Roscrea". During the day-long hearing, about 30 cases were dealt with; mainly robberies, a few homicides, some what might be termed aiding and abetting and one case of escape from custody. With reference to 14 cases and concerning 17 individuals, the decision of the jury was death by hanging. This penalty was not reserved for homicides; thieves were also hanged. On the other hand, around 40% of these cases resulted in "not guilty" verdicts. The revenue-raising aspect of the administration of justice was always to the forefront. There was perhaps a connection between instances where the defendant was found guilty and where it was declared that he had no "chattels". In one case where a mother and son were found guilty of larceny and

sentenced to be hanged, there were no chattels but, because the son was under age, only the mother was hanged.

Traditionally the church asserted maximum rights against the claims of the state and this included disciplining its own personnel when they committed crimes. Individuals in minor orders found it convenient to claim what was called "benefit of clergy", preferring to face the wrath of the church rather than the state. Gerald Sampson was charged with the murder of a man and his wife and the robbery of their livestock. He tried to claim that he was in minor orders but this failed because he was illiterate.³⁸

On 31 July 1312 before John Wogan sitting at Clonmel a succession of cases, pleas of the crown and delivery of gaol, allow a fair idea of certain aspects of life in medieval Tipperary. The first case had its odd features but shows the less than passive role of the jury. In a place called Burgagemylagh, William Okally was lying "in the embrace of a certain woman" when Richard Laudefey, "moved by jealousy" appeared and taking William by the feet, dragged him away. Not surprisingly, this led to the exchange of angry words, then of well-aimed sods followed by drawn swords, a fight and the death of Richard. The jury accepted that William acted in self-defence and they also vouched for his clean record and good reputation. William was committed to gaol to await judgement, which may have been a matter of deciding how much the incident was going to cost him and benefit the Crown.

John, son of Andrew de Nasshe, was taken by the king's serjeant, having been accused by Henry the dyer of stealing cloth from him in Thurles. In a real way, Henry was taking a risk in that he would have been in trouble had the case gone against him. John's excuse that he was drunk did not impress and, in the words of the calendar, "Therefore let him be hanged." The dyer got his goods back and the unfortunate John was noted as having no chattels.

In contrast to what looks like a crime of opportunity is the record of a gang of six, two of whom were husband and wife, charged that they "by night burglariously entered" John Brysky's house, stole clothing and a good deal of cloth, wounding the owner's wife and sister "almost unto death". The chief accused, one William son of Nicholas (of Bristol), appeared in court boldly claiming benefit of clergy, which claim the justiciar accepted, committing him to gaol to await developments. None of the other accused appeared except one and the jury, as it were, "threw the book at him" and declared he should be hanged.

What is clear from these cases is that in 700 years, public houses have not changed as triggers for extreme behaviour. William Drak "an Englishman", went to a tavern in an unnamed location. Later, outside the tavern there was a row between Drak and the wife of Adam de Midia. She too freely used the insult "apostate" and was assaulted by Drak. The husband failed to free his wife at close quarters and shot two arrows. His aim appears not to have been very good and when his arrows were exhausted he had to flee, pursued by Drak. The men fought, knives having been produced.

Both men were wounded and the Englishman, thinking he had killed the husband, "fled swiftly to the church of Thronoill", where he died of his wounds. The husband Adam de Midia was arrested and committed to gaol. In his favour was that he was a man of some property, including two small houses and some land from his wife's dowry. He was reckoned to be worth about 28 shillings p.a. To avoid the loss of his property, he had to get other members of his family, together with a range of substantial men in the community to guarantee his payment to the Crown of 100 shillings.

The practice of guarantors was widespread and not to be undertaken lightly. In fact, the very next case before the court involved one of the county officials being ordered to secure land in Ardfinnan which had been "taken into the King's hand" as a result of a murder but which had

been unlawfully occupied, the offending occupier being committed to gaol. There was always the suspicion that county officials looked to their own rather than the king's financial interest.

Peter Coroure stole from Mathew Raley a draught-animal worth five shillings, which he sold at Buolick to Richard Not for this amount. Not was doubtful about Coroure having such an animal and did not pay until reassured by Coroure's mother. Both mother and son appeared in court and the jurors had no difficulty declaring Coroure "of ill fame" and that he should be hanged. The mother, however, was let off. Court records do not deal with the matter of restitution or compensation for the owner of the stolen animal, but at least the conviction of the thief was a vital step on the way to compensation.³⁹

Just prior to this case, a different jury decided that a pitchfork "worth 12d.", which an individual was accused of stealing, was only worth half that amount and that "he took it owing to poverty". The defendant had ten sheep worth five shillings and sixpence, for which Sir Oliver Haket, lord of the defendant, "will answer". Haket's fief was Cordangan near Tipperary town.⁴⁰ Having the support of your lord mattered. In another case, at the "instance" of Sir Richard le Poer, an individual charged with fratricide was pardoned by the king on payment of forty shillings. Richard le Poer was sheriff of Tipperary.

There were a number of cases involving individuals who knowingly helped felons. In one case two brothers were charged with helping one John Ultagh, a murderer, "knowing him to be a common thief of everything he could lay hold of". The brothers were declared guilty and that they should be hanged. In another case, an individual charged with helping one Adam le Flemying, a double murderer and "common robber", was declared not guilty for undisclosed reasons. In a third case Hugh de Stafford was charged with helping two individuals, one of whom was also named de Stafford. The jury said the defendant was guilty and "of ill fame" and should be "re-committed to gaol". However, at a hearing in Dublin before Edmund Butler, at the suit of Sir Thomas de St John, the defendant was pardoned by the king on payment of 20 marks (a mark was worth two-thirds of a pound), to be paid over five years. Sir Thomas and James de Stafford were his guarantors.

One of the striking aspects of these cases heard in Clonmel on that July day in 1312 was the scale of the business conducted, some twenty cases, together with two matters relating to Cork and Waterford respectively. Another was the logistics of organizing the very large number of jurors involved, in many instances different juries for individual trials. For example, in the case involving Peter Coroure, the jurors were Hamoun Prat, Richard Prat, Stephen de Nasshe, Thomas de Neeth, Henry Rathlan, Ilger Heyne, Hugh Possewyk, Thomas son of Ralph, Robert Cuilfer, Andrew Broun, Henry Roth and Philip Stafford. However, in another case, concerning robbery of sheep and money, both victim and accused were from Masterstown near Golden and undoubtedly the jurors were familiar with that part of the county. This was a different group of men: Henry Inyas, Andrew Seysel, Maurice son of John, William de la Sale, Robert Crinan, Adam Staffan, Walter le Blount, Walter Weyvile, David Weyvile, Robert Flanvile, Philip Braynok and John de Loundres. While some of these names – Nash, Browne, Stafford – are not uncommon today, most of the family names in these records were swept aside or their bearers assimilated during the long retreat of this Anglo-Norman domination of Tipperary.

The Courts and the Sheriff

The sheriff or shire-reeve was the most important executive figure in the county. He was the main agent of the courts and was responsible for royal revenues in the county, not least the profits of justice. He paid a fee for the privilege of holding his office and, not surprisingly,

sheriffs did not always make a clear distinction between what was due to them and due to the Crown. Consequently, the exchequer paid close attention to the financial affairs of sheriffs and when necessary seized their property. In an effort to tighten control, the Irish exchequer ordinances of 1293 declared that because appointments made from England brought into office sheriffs who "have been less obedient to the exchequer of Ireland", future appointments would be made by the Irish Treasurer and officials of the exchequer.⁴¹

In 1306 a case was heard in Dublin before John Wogan, concerning murder and the holding of land in the parish of Knockgraffon. Because of the murder, the land was confiscated to the king, but the lord from whom the murderer held the land reoccupied it. When the courts demanded that the sheriff Hugh Purcell produce the documentation, he admitted that he could not find the writ, an example, perhaps, of the sheriff serving his own rather than the king's interests.⁴² (Incidentally, this case provides evidence with respect to the creation of placenames; many townland names date from this period. In this instance the murderer was Andrew Caddel and he held the land from Robert Loghken. Hence the townlands in the parish of Knockgraffon of Caddlestown and Loughkent.) The following year Purcell petitioned parliament in Dublin for a pardon from the king on payment of the huge fine of £90.⁴³

Purcell was the sheriff at the centre of events in Donohill near Tipperary town on the Thursday after Easter 1295. The holder of the castle of Donohill was Silvester le Ercedekne (a family firmly established in Kilkenny and known also as Archdeacon or Cody⁴⁴), who probably held it from Otho de Grandison who had been granted substantial estates in Tipperary by Edward I. Various members of the Archdeacon family are mentioned as holding land in West Tipperary in the early fourteenth century; for example, Stokaun in Templehoe parish and also land in Bruis.⁴⁵ On that Thursday after Easter 1295, Hugh Purcell the sheriff of Tipperary forcibly entered the castle, acting on information that certain felons were being harboured there. Part of the value of the description of events in the justiciary rolls is the information about the goods kept in such a residence at that time. These were confiscated by the sheriff, and Archdeacon claimed their value was £500.⁴⁶

TABLE 1

Goods confiscated in 1295 from Silvester Archdeacon's castle of Donohill

£50 cash	471 cows – value 1/2 mark each
Robes	180 heifers – value 1/2 mark each
Tableclothes, Napkins	48 stud mares – value £1 each
Coverlets, Sheets	48 oxen – value 1/2 mark each
Wall hangings	4 great horses – value £10 each
Padded military jackets	4 other horses – value £2 each
Quilted military coats	1,500 sheep – value 10d. each
Sleeveless mail coats	400 lambs – value 4d. each
Helmets, Spears, Bows etc.	215 pigs – value 12d. each
68 land charters	150 goats – value 8d. each
48 bonds of debtors – value £100	80 kids – value 2d. each
Cups and silver spoons	46 bacons
Gold rings, precious stones, brooches	20 carcasses of beef
Girdles woven with silk	4 (containers) of wheat flour
Brass pots, Cauldrons, Dishes, Basins	3 (containers) of oat flour
	4 (containers) of ale.

Allowing that this list may have been added to by the party seeking compensation (some things, including human nature, do not change), it nevertheless allows some idea of the range and value of the goods and livestock that were part of a not very important manor at the close of the thirteenth century. The fact that we are told that the sheriff's men who took these goods and livestock disposed of the ale by drinking it themselves, seems reassuringly human.

The list, in terms of its categories is what might be expected from the chief residence and centre of a manor. The defensive and military role of the castle is made clear, though (as discussed below) its defenders on this occasion were spectacularly unsuccessful. The legal and tenorial documentation one would expect to find in the administrative centre of the manor. If there were not copies of these, manorial administration was likely to have been upset for some time after. Subsequent evidence indicates that this material was not treated with much care by the sheriff's men.

In addition, there were the furnishings and personal effects, the loss of which would have been a sore trial to Archdeacon's wife Lady Johanna. Moreover, as one would expect, the castle had a substantial supply of food. One might well imagine that some of the sides of bacon and carcasses of beef ended up in the larders of the sheriff's men. Finally, there was the livestock, some of which was found in the bawn of the castle. Not surprisingly, there was a substantial difference as to numbers between Archdeacon's claim and that of the sheriff who gave suspiciously rounded figures at a subsequent court hearing. For example, the sheriff's side claimed 300 cows were taken, each valued at five shillings, rather than their owner's claim of 471 and 28 oxen, rather than the original claim of 48. These were taken from a field outside the castle, whereas the cattle were kept within the bawn.

The initial court hearing arising from this incident was in Dublin on 13 May before Thomas fitz Maurice fitz Gerald (father of the 1st earl of Desmond). Silvester Archdeacon was represented by Silvester Broun his attorney, who claimed that Hugh Purcell the sheriff and his men came to Donohill, broke into the castle and took the goods and livestock (described in the above Table). The sheriff then put his side of the matter, denying that he did anything illegal. He claimed that the castle was harbouring felons and that as he was approaching the castle "the said felons obstructed him and broke a causeway by which he had to (gain access to the castle) and attacked him there and on his coming to the castle, the said felons with others put themselves in defence and slew three Englishmen there". When Purcell gained entry to the castle, he found that the felons had fled by a back door.

When Archdeacon answered this account, the protagonists appeared to be describing two different incidents. Speaking through his attorney, Archdeacon claimed that Donohill castle was guarded by his son William, together with an esquire (attendant) and two servants. This seems a remarkably small garrison. As Archdeacon told the story, the castle defenders' nerves were on edge as they were expecting some move by their enemies. As with much of the material in this source, a clear context is not provided. The evidence suggests the presence of what the sheriff regarded as "felons", who appear to have been Irish. Whether their felony was criminal or political is not clear and neither is Archdeacon's connection with them.

When it was known to the garrison that the sheriff was approaching, not as the guardian of unbiased law but rather at the behest of the family's enemies, William Archdeacon with his esquire went to the causeway, which was probably a stairway reaching to the summit of the mound and, given the apparent ease with which it was broken, it was likely made of wood. Because Purcell represented the law, it was not surprising that the Archdeacon side of the dispute emphasised that their actions were directed against their "enemies" rather than the sheriff. The Archdeacon story was that with the sheriff outside the castle, he was offered entry

if these "enemies" remained outside. The sheriff refused this offer and forced his way into the castle. In direct contradiction to an earlier statement by the sheriff, Archdeacon denied that there was any back door to the castle.⁴⁷

This ended the hearing in Dublin and the case was continued before a jury in Clonmel on "Monday in Pentecost week". There the case began with the matter, of the felons "dwelling in the land of Silvester at Donohill". Initially it was thought that the serjeant (a local official responsible to the sheriff) would be able to deal with the matter but he made it clear that "the felons were in such great power" that it would take the sheriff with the "posse comitatus" (men called out by the sheriff to aid in enforcing the law – as in the Wild West) to arrest the felons. The story from the sheriff's point of view was that, arriving with his posse in Donohill, he "found a causeway by which he should advance broken; and on another part of the causeway (he) saw certain men, among whom William Archdeacon stood".

According to this version of events, there was a parley between William and the sheriff, who promised that if William guaranteed to have the felons before the justiciar when commanded, matters would not be proceeded with there and then. However, William declared that he had no one to stand guarantor for him and he rejected two offers, one from Robert Haket and the other from the previously mentioned serjeant. Clearly, Archdeacon was totally at odds with the legal establishment. He had, however, been guaranteed safe conduct during these discussions, so he was allowed back to the castle when negotiations broke down.

The official record tells what happened next:

The sheriff then went with his posse to the castle, and before he reached it, the said felons in a moor next the garden near the castle attacked him, and killed two Englishmen and wounded certain Irish. Asked if William was present at the attack: they say, yes, because he was wounded in it. Notwithstanding this attack, the sheriff came to the castle, broke the doors and entered it, but found no felons there. But the goods and cattle found in the castle and bawn were taken away by the sheriff and his following.

At this hearing in Clonmel, one thing of advantage to Silvester Archdeacon was the conclusion that William's contact with the felons was done without the knowledge or agreement of his father. The most perplexing lacuna is the identity and role of the "felons". The precision regarding the dead English and the vagueness about the wounded Irish is of interest. It should be remembered that the court case arose from Archdeacon's complaint about the actions of the sheriff. At the heart of the matter may have been issues between the Archdeacon and Purcell families.

The case was adjourned from Clonmel, judgement to be given in Dublin the following June. However, matters were delayed in 1295 due to the absence of Maurice fitz Gerald. The record indicates that the case came to life again two years later, by which time there was a problem with the original jury.⁴⁸ This appears to be the last mention of the matter in the extant records. The Archdeacon family retained possession of Donohill, at least into the early years of the fourteenth century. In 1319 Raymond Archdeacon and his heirs received permission from the king to hold a weekly market on Thursdays at Donohill.⁴⁹ Raymond's father was named Richard, so it is not clear how they relate to Silvester and his son William, but among the Ormond deeds is a document signed at Donohill in April 1316 by Raymond son of Richard Archdeacon.⁵⁰

A final note with regard to the Archdeacon family is an entry in the *Annals of Inisfallen* for 1309: "Conchobar O Briain, son of Donnchad, was slain by the Archdeacons, who are called

Clann Odo, when they attacked the house where he was drinking in Dun Eochaille in Eoganacht Bec". Like many such references, this one is devoid of a context which would allow a fuller understanding.⁵¹ However, it can be said that of these antagonists, the Archdeacons and O'Briens, the future lay with the O'Briens.

Sheriffs were also responsible for other local officials. Walter, son of Peter, was coroner of "Oconath and Muscrick", which was the district around Tipperary town, the later barony of Clanwilliam. For some reason he was considered unfit for office, which apart from inquests, also included "deodands" which involved the confiscation of animals, objects or their value declared responsible for death of individuals. If a person drowned from a boat for example, the boat shared in the responsibility for that death. In this instance in June 1295 the sheriff was directed to have a new coroner elected "in full county court" and to commit the office to him on the new coroner taking the oath.⁵²

In 1305, at a hearing in Castledermot in Kildare before John Wogan, a complaint was made that the sheriff of Tipperary had done nothing to enforce a judgement for compensation made at an earlier court sitting in Cashel. The court renewed its order and six weeks later at a court in New Ross, the sheriff explained that he had ordered Walter Maunsel, chief serjeant of the county, to explain the matter. This latter official told the court a complicated story, shifting blame to previous holders of these offices. It seemed that livestock was confiscated from the guilty party by these officials but then, as it were, disappeared. This left the guilty party still liable and fearful that another lot of livestock would be taken from him. This he claimed "compelled" him to leave his land "waste". The court ordered the incumbent sheriff to make his predecessor and another official "answer for their contempt". This was in late November 1305.

Two months later the case came up again at a sitting in Dublin. There was agreement that property had been confiscated, the identity of the official responsible, the fact that the original injured party had not been compensated and that the property of the guilty official should be levied. The matter came up yet again at a court sitting in Trim later that year, but little appeared to have happened. Again before John Wogan, the case was raised in April 1307, this time in Dublin. Still in Dublin, the matter came up exactly one year later. The incumbent sheriff being commanded to levy the property of the late sheriff (Henry Hacket) and two others, it appears that this had been done but that no buyers had been found. By now Wogan must have been heartily sick of this Tipperary tale, which came before him again in Dublin the following July.⁵³ This case illustrates both the geographical reach of the court and the limitations of its grasp with respect to enforcing its decisions in the face of local vested interests.

The Courts and the Church

The institutional church in medieval Ireland was careful to guard its special status. Inevitably because of its control over large amounts of property, disputes arose. Also, because churches were the most secure buildings available to most people, there was a practice of storing valuables in them, and so they were targeted by thieves. In 1295 in Clonmel a number of individuals were charged with breaking into and stealing from the church in Fethard.⁵⁴ As was often the case, the jury had to decide on claims that some or all of the accused were "clerks" and thus came under the probably less rigorous jurisdiction of the church.

Churches were also places of sanctuary, outside the reach of the state. In 1313 a jury in Cashel heard the case of Robert le Graunt, accused of murdering Richard Locard "serjeant advocate in the town of Cashel". Immediately after the crime le Graunt fled to the church of St John and

made no secret of his guilt. The "provost and commonalty" of Cashel (responsible to the archbishop who was the local lord) placed guards on the church but because of "bad guard" le Graunt escaped. As le Graunt was outside the reach of the jury, the town was fined 100 shillings, which money was granted to an official of the justiciar's court, a useful way for the court to pay its clerks.⁵⁵ (Incidentally, the compensation being pursued from court, sitting to court sitting as outlined above, was to be paid to this same clerk and his colleagues.)

Religious houses like Holy Cross, on the Suir near Thurles, had substantial estates. The Crown through its courts had an interest in the running of these institutions. Holy Cross had been taken under royal protection in 1233. In 1297 a court sitting in Cashel heard a report that the sheriff had been ordered to investigate if abbey lands had been alienated, that is unlawfully changed from corporate to individual ownership, transactions carried out without the assent of the chapter.

Evidence was taken under oath from "lawful men" and their report revealed that all was not well. Some of the land still under abbey control included a few hundred acres of pasture that no one would rent. (Medieval acres varied in extent, from place to place and often there was a relationship between extent and usage.) A local lord named Walter de la Haye was in possession of a sizeable amount of abbey land, arable, pasture and woodland in a place called "Culetti", identified by a modern scholar as Ballycamus and Lisbook.⁵⁶ This appears to have been a long-standing private arrangement between de la Haye and the abbot.

Deals were also done with several other laymen, including Lombard merchants from Italy, well established in Ireland both as wool buyers and bankers. The sheriff's investigation uncovered the fact that the abbot of Holy Cross, Peter O Conyng, while in England with the bishops of Emly and Killaloe, was "driven by necessity" to borrow a substantial amount of money from a Lombard merchant, O Conyng pledging the manors of Culetti and Grangecorkeran as security. This agreement was for 50 years. Both of the bishops died in 1281, the bishop of Emly, David O Cossaig, having been abbot of Holy Cross. The Lombards some time later sold this land to the archbishop of Cashel for three times the original debt. As if this was not bad enough, the Lombards pursued the abbot for the debt, getting the then sheriff of Tipperary to seize a large amount of livestock, which by the time of the hearing in Cashel, had not been restored.

It was clear that by 1295 Holy Cross was in trouble. The judgement of the court was that the Crown would take control of the abbey and (indicating a racial element in the matter) it was declared that the abbot of Mellifont should send responsible monks "of English race" to the Tipperary foundation. Following the Norman invasion, while there was only one church in Ireland, there were two sets of churchmen: native and Norman. Because de la Haye was considered a reliable tenant, he was not disturbed.⁵⁷

A case heard in Dublin in 1299 before Wogan allows a glimpse of parish life otherwise completely hidden because of the passage of time and the loss of records. The parish was Fennor in the modern parish of Gortnahoe and the case was the not unusual one of a dispute between local lord and local priest over money. The priest was Maurice de Bree and the lord was John de Fresingfeld, who happened to be a justice of the court and a protégé of Wogan.⁵⁸ The parties in dispute were present to hear the result of an investigation by the archbishop of Cashel. Some 24 years previously the then vicar William Okewe struck "a certain skinner" and drew blood but this happened in the church which meant that the church had to be reconsecrated. This was done by the bishop of Emly, sent by the archbishop.

To meet these considerable expenses, the parishioners agreed to make a special payment to the vicar over a period of seven years. However, after this period, successive incumbents

continued to demand this money and the case was brought by the then incumbent de Bree against de Fresingfeld, who had forbidden his tenants, who were de Bree's parishioners, to pay this money. With the local lord and the archbishop of Cashel ranged against him, this was not a case Maurice de Bree could win. The court decided de Bree should pay £40, which was reduced to £20 and then to £5 on conditions, including the payment of that amount "at once".⁵⁹

Parishes were sources of revenue and entitlement to this income was often a source of dispute. Rathkennan (in the modern parish of Holy Cross) was one of the many rectories held by the priory of Athassel, and in 1299 a dispute between the prior of Athassel and Ricard Blanchard came before Wogan, sitting in Dublin. Blanchard claimed he had the right to appoint a priest to Rathkennan as his ancestor Robert had done before Athassel usurped the right. On the other hand the prior claimed the right by gift of Roger Tyrel. Blanchard's reply was the claim that Tyrel did not have "seisin" or legal possession and consequently had no right to make such a grant. This issue of deciding the rights and wrongs of tenure occupied a huge amount of the court's time and many of the pages of the three volumes of the calendars of the justiciary rolls. The case went on over several court sittings and in the long term Rathkennan was controlled by Athassel.⁶⁰

In an age of faith when death was an everyday presence, it was not surprising that some individuals wished to make an investment in eternity by granting land to religious houses, a condition being perpetual prayers for the donor. The Crown through the courts tried to avoid the kind of wrangling outlined above, by checking that in making such a grant the donor was not interfering with other claims on the land in question. In December 1302 a court sitting in Kilkenny heard the result of an inquiry by the sheriff of Tipperary, who had been commanded to learn from the "good men of his county" if the rights of the king or of any others would be injured if John Gregori was allowed to donate three acres to the Friars Minor in Cashel.

This Franciscan friary was founded in the reign of Henry III and was on the site of the present catholic church. As the intended grant was "forever", the sheriff's "good men" had to investigate from whom, and under what terms, Gregori held this land, what service he owed and if the loss of this land would in any way diminish his obligations to his lord. The twelve "good men" are named and included William Brun (Browne) the elder and William Brun of Knockgraffon. They reported that the grant could be made; the king's interests would not be damaged; the archbishop of Cashel from whom the land was held exacted no service; the land was worth twelve pence an acre and while there was an obligation to pay six shillings annually "in free alms to the abbot and convent of the Rock of Cashel", this could be met from Gregori's other land.⁶¹

In 1308 John Wogan received a document from Windsor in the king's name, instructing him to carry out a similar inquiry whether Simon Dynbegh and Henry Rowe be allowed give sixty acres "in pure and perpetual alms" to the prior of the Hospital of St John the Baptist "without [outside] the Newgate of Dublin. This foundation, dating from the late twelfth century, was Augustinian and benefitted from grants of land in Tipperary and elsewhere and tithes from a number of parishes in the county. A jury in Cashel decided that this land in Clogher could be granted. The exact tenurial situation was examined: the fact that the land was held from Herbert de Mareys, who held it from Edmund Butler, who held it from the king. It was understood that the prior and the hospital would assume existing local responsibilities, including taxes. The account concludes: "The inquisition with the original writ was delivered to brother Nicholas de Bedeford, attorney of the prior, to bring to the king in England".⁶² Adding to the impression of a system whereby rural Tipperary, metropolitan Dublin and the royal court in England were all connected by a network of properly filed documentation, is the preservation of this grant in the register of the hospital.⁶³

In May 1308 Wogan was ordered by the king to investigate various grants of land to Athassel priory. During the reign of the king's father (Edward II had succeeded Edward I in July 1307) these lands had been taken into the king's hands because, "licence of the king not having been obtained", the granting of such property to a religious house had not been in accordance with the statute of mortmain. This statute, which had been passed in 1279, forbade the alienation of land to religious houses because it circumvented the established chain of feudal obligations. Such land granted to a religious foundation could be received back, having shed in the process military and financial obligations.

TABLE 2

Grants of land to Athassel Priory early fourteenth century⁶⁴

Grantor	Extent	Location
Thomas de Rath	180 acres	Balylothnan
Adam & Matthew Haye	40	Athassel
John de Columbariis	40	Athassel
Laurence de la Haye	28	Athassel
Robert de Hereberge	32	Athassel
Reginald le Sowere	8	Athassel
Huge de Newport	10	Athassel
William de Columbariis	20	Athassel
Reginald son of John	8	Athassel
Simon le Wyse	3	Athassel

An inquisition was taken in Cashel before William de Burgo early in the following year and the jury examined each of these grants and decided that "it is not to the damage of the king or others". Balylothnan (perhaps Ballyloughnane in Ormond Lower or, more likely, in the vicinity of Athassel) was part of a grant of land from Edward I to Otho de Grandison, an individual who very much benefitted from his close association with the king.⁶⁵ James, son of Richard, in turn held from Otho, doing suit at Otho's court of Kilfeakle, the administrative centre of his lordship. William de Naungle held from James, doing suit at his court of Balylothnan. The prior of Athassel held from de Naungle, doing suit at his court of Balinynche, possibly Ballinahinch.

Presumably, prior to the grant under investigation, the grantor Thomas de Rath held from de Naungle, but now de Rath was a tenant of the priory, doing suit "at the prior's court of Huntেকynistoun. The Cashel jury confirmed the grant because de Rath had sufficient land to meet his feudal obligations. The situations with respect to the other grants were similarly investigated, with the same results. In most instances, the lands were part of the inheritance of the heirs of Philip of Worcester, an exception being the grant of Adam and Matthew Haye, which was part of the de Burgh inheritance. Matthew was dead at this time "without heir and had no lands or tenements when he died". Adam's desire for salvation was stronger than his wish to exercise influence as his grant to Athassel left him ineligible "to be put on assizes, juries etc."

Records of land tenure, while interesting do not reveal anything about the pulse and pace of medieval life in Tipperary, especially life on the margins. Records of criminal cases did not usually touch on the church, but (as mentioned at the beginning of this section) church buildings were sometimes tempting targets for thieves. In March 1313 in Cashel Matthew

Bryan was charged that he murdered Thomas son of Matthew and Henry le Maceoun "by night in the town of Emly and straightway fled to the forest". Bryan was also charged with breaking into the church in Emly and stealing from it a trunk which contained "a great sum of money given to the land of Jerusalem" (presumably gathered, if not intended, to be spent on the relief of Christians in the Holy Land).

Bryan appeared before the court and claimed that, as he was in orders, the court had no jurisdiction over him – that "he neither can nor ought to answer here". The jury declared that he was guilty and that he had "no chattels or free land". The church was ever mindful of maintaining its rights, and Thomas Olongthy archdeacon of Cashel demanded that Bryan be delivered to him. This was done, on the understanding that Bryan be kept in prison as a convicted felon.⁶⁶

The Courts and the Native Irish

Native Irish living within the territory effectively controlled by the lordship of Ireland were seriously disadvantaged. They were treated as members of an unfree class not entitled to use the king's courts.⁶⁷ For those already unfree under native law, this hardly mattered. But for the rest, finding themselves under royal jurisdiction, they had no recourse to the courts to protect their interests. Consequently, juries were sometimes called on to adjudicate on an individual's claim that he was not Irish and thus entitled to the protection of the law. The editor of the first two volumes of the justiciary rolls used the term "hibernicus" to describe an Irishman who was of unfree status. If an Irishman's lord wished, there might be legal redress on the basis that injury to the Irishman impinged on his lord's status.

Most attention has been centred on the notion that, when an individual was being tried for murder, he was acquitted if the jury found that the victim was Irish. This could put pressure on a coroner or a coroner's jury to so identify a body. It was certainly an attractive escape route for a defendant facing the rope. In the late 1270s there was a failed attempt led by the archbishop of Cashel to purchase the protection of English law for the Irish of Munster. Apart from "native" and "newcomer", there was another ethnic group more favourably treated under the law than the native Irish. These were the "Ostmen", descendants of the earlier Scandinavian invaders and a people whose identity was losing coherence by the late thirteenth century, but who were anxious not to be taken as native Irish because of the legal situation.

A case heard in Clonmel in 1295 illustrates this. William le Teynturer of Ardfinnan accused three individuals of having unlawfully dispossessed him of property in Ardfinnan. Two of the accused, Henry and John le Norreys, appeared before the court and claimed that it had no jurisdiction because William le Teynturer was "hibernicus and of servile condition". They went on to claim that William was "of the Omoleyns and that his father was called Thomas Omoleyn". William's reply was that he was not "hibernicus" but "Houstmannus" or Ostman, a "Macmackus of the city of Limerick" and of free condition. The practice with respect to surnames and their spelling was clearly not yet fixed and the evidence suggests that contemporaries would identify these names as native or Ostman. At this point, the accused hedged their bet by claiming that even if William was an Ostman, he had no legal claim anyway to the disputed property.

The finding of the jury was that William's father "all the days of his life was held for Irish and, after his death, his wife seeing her son reduced to the servitude of his father, went to Limerick and obtained the liberty of the Ostman for her son". Perhaps this woman was herself

Ostman. What exactly was done in Limerick is unclear. What mattered for William was that he was able to prove that in another unspecified case in another court, he had been accepted as an Ostman and thus set a precedent this court was unlikely to overturn. Not only did this court accept his status claim, but it decided he had lawful claim to the property in dispute. He was awarded damages of ten shillings and his three opponents were at the mercy of the court for their false claims.⁶⁸

Given the basic fact that these courts were not for the Irish, it is unsurprising that there are few references to the hibernici. However, a case heard in Cashel in April 1305 demonstrated something of the status of the hibernicus and the importance of having protection from an establishment figure. David Maunsel, "without reasonable cause" in the opinion of the jury, attacked "one Omachthy, hibernicus of Edmund Butler", who was going about his business in Cashel market. An individual named William Schorthales intervened to point out that the Irishman was "the man" of Butler and asked for his release, being assaulted for his pains.

This case was about Maunsel's assault on Schorthales, not what was done to the hibernicus. The jury awarded damages against Maunsel and committed him to gaol. Butler asked the court to deal with the original issue, the attack on his hibernicus, who had been selling cloth in Cashel. A motive appeared to be Maunsel's wish to have the Irishman's horse, and to this end accused him of theft and had him imprisoned. It would seem that Maunsel misjudged his victim, not reckoning on Butler's reaction, taking the matter as an attack on him. The jury saw it this way and awarded additional damages, including 40 shillings "for trespass to the Irishman".⁶⁹

The Courts and Property

One way or another, property was held from the king, who took it back if rules were broken. Sometime in the mid-1290s John son of Adam, who held a house and 80 acres in Knockgraffon, was convicted of receiving thieves. He was convicted and sent to prison in Roscrea, where he died. His property, worth twenty shillings annually was "taken into the king's hands". In June 1297 a court in Cashel directed local officials to inquire into the matter, including the situation of the dead man's six year old son and heir. A key part of the inquiry was the identity of the person from whom this land was held. The jury declared Peter son of Meyler de Bermingham as the lord. He had inherited large estates in Tipperary through his mother Basilia, who was the sister and heir of William of Worcester, a family who had been among the early grantees in the region.

A complication was the claim of Ralph Leynagh that the dead man had granted him seven acres; that he (Ralph) was in possession when John was imprisoned but that the sheriff had ejected him and taken this land also into the king's hands. The sheriff's claim was that, while John was intending to put Ralph into possession, it had not been done. The court awarded possession to John's young son and also noted that the sheriff owed the Crown money from the period when it was in the king's hands.⁷⁰

This lord, Peter son of Meyler (or Meiler) de Bermingham, was also mentioned in connection with another case before this same court session. Reginald de Lundres (of London?) held land from Oliver de Wyncester (of Winchester?) in Railstown, but fell behind with his rent. The latter seized livestock but Reginald with a party of men "rescued" the livestock and assaulted Oliver and three of his men "to his damage of £50. Oliver brought the matter to court and jurors, "chosen by consent of the parties", found that Oliver had seized the cattle and impounded them at the house of a neighbour.

De Bermingham was the overlord and when his serjeant arrived on the scene, required, at the request of Reginald, delivery of the cattle. When Oliver refused, arrows were fired but the serjeant's forces were greater and so the cattle were taken. Clearly this was a more complicated matter than the complainant indicated and so the sheriff was ordered to have all the interests brought before a future sitting of the court.⁷¹

Today road building and property rights are frequently contentious issues. It was ever so. In March 1299 before a court in Nenagh Theobald Butler (who died that same year and was uncle of the 1st earl of Ormond) petitioned that he might divert a highway that went through "the midst of his wood of the Nanagh" and build another road below the wood towards the south and maintain it at his own expense. He also wished to enclose the wood and make a park of it. The jury investigated if this plan would damage the interests of the king or other interests.

They jury found that the only people whose interests were damaged were Robert son of David and his neighbours "in the street below the castle towards the east". They would lose some of their property; but the jury indicated a level of compensation.⁷² It indicates a certain standing for the law that Butler, one of the most powerful figures in the county, went through proper channels. On the other hand, what were the odds on the jury proving difficult?

Marriage and property rights can be even more troublesome. In a case of 1303 an individual was sued for not paying up the sum agreed as part of a marriage contract. His defence was that he was under 18 years of age at the time and therefore not bound by any agreement. (Birthdays appear to have been less certain then, as the defendant was vague about his exact age.) The argument against him was that because he was a burgess, he ought to be subject to the "custom merchant", which allowed that sons of burgesses could contract and bind themselves after the completion of their fourteenth year. However, the jury accepted that a contract relating to marriage was not the same as one relating to a consignment of wool and so the defendant won.⁷³

A good deal of the time of these courts was taken up with cases of debt. At a court sitting in "Natherlagh" (Aherlow, probably Galbally) in 1301 before John Wogan, Gilbert Laundry (as in Ballylanders?) admitted that he owed William de Berdesfeld 100 shillings. This debt had not been paid by January 1305 when the matter was raised before a court sitting in Dublin. The sheriff reported that Gilbert and his two pledges had been summonsed but were not forthcoming. When the matter was raised again the following July, this time before a sitting in county Kildare, the sheriff reported that Gilbert and one of the pledges were not found and had nothing worth seizing. With respect to the other guarantor, William of Donohill, he was "warned and came not" and so the chief serjeant Walter Maunsel, acting in the king's name, seized six oxen, each worth three shillings and ten acres of oats, each acre valued at two shillings but for which buyers had not been found.

Both the sheriff and his underling were in trouble with the court for this entirely inadequate response.⁷⁴ Seizing livestock or crops was only a prelude to finding buyers, which appeared to be a recurring difficulty. In 1308 the incumbent sheriff was ordered to collect a debt which a Cashel court ordered a previous sheriff to pay. Twenty acres of wheat, worth 40 pence an acre, were taken and "exposed for sale"; but no buyers were found. The impatience of the court was directed against the incumbent. The courts demanded that their judgements be enforced but clearly the muscle available to their agents frequently failed to make an impression on the weight of vested interests.⁷⁵

On the other hand, recourse to the courts was worth the trouble because the law was the only defence for many individuals in the face of bullying. William Cantwell let a farm of 14 acres for a term of 16 years to Adam le Blound. Half-way through this term Cantwell's brother and heir sought to break the agreement. He seized livestock in lieu of rent. Adam claimed no rent was

owed. When Cantwell "had to assign a dower to a woman, he of malice assigned her one a half acres of Adam's land, sown with corn and oats, by which Adam lost the crop", The same woman was assigned a storage area in which Adam had flax. The jury were not amused and awarded damages for each injury, for example two shillings for the loss of the flax. To further make their point, Cantwell was committed to gaol until he and his two pledges or guarantors paid up.⁷⁶

The Courts and Violent Crime

On the Tuesday after the feast of St Michael in 1303 Michael de Fernden visited the house of John Gregory in Cashel. That night after supper he left to return to his own lodging. "On account of the plots of his enemies, he sent his servingman before him, to see that no one was lying in wait for him" On the road, Henry of Norwich had a cart loaded with his merchandise, over which Henry and his servingman John de Rughburgh were keeping night watch. This merchant was clearly in a state of nervous anticipation; his exposed position a target for robbers. Hearing de Fernden's servant nearby in the dark, the merchant called out for identification. Initially he got no response, but "at length words of insult having been bandied between them", the merchant's servant struck the other servant on the head with a stick, "so that he lay in the street as if half dead".

In the meantime Michael de Fernden, hurrying to his lodging, heard a cry and (bravely in the circumstances) thinking his servant was in trouble, rushed towards the sound. In doing so, he came into contact with the merchant. They grappled and the merchant was thrown to the ground. His servant rushed to help him and using the same tactics as before, struck de Fernden on the head with a stick, so that he fell to the ground. This latter was armed with an axe and the merchant rose, took the axe and struck him in the back.

The jury assessed damages to Michael de Fernden at 40 shillings and committed Henry of Norwich to gaol. Concerning his servant John Rughburgh, the sheriff told the court that "he was not found". Bearing in mind that Henry was a merchant, and that his great concern to guard his wagon had led to this sequence of events, the nature of his goods is of interest. The sheriff confiscated one hawk worth ten shillings, one tercel (male hawk) worth half a mark and a length of russet, a type of coarse cloth, worth fifteen shilling (Confusingly, the account indicates that these items belonged to the servant.)

The sheriff was ordered to capture Rughburgh and have him before the justiciar "at his next coming". Henry of Norwich was not without friends and one of them undertook to pay up and make good the injury done.⁷⁷ The extent to which it was safe for merchants to travel and thus safeguard commerce was central to the wellbeing of the state. This comedy of errors can hardly have inspired confidence.

Two years later another incident in Cashel reminds us that human nature has not changed in 700 years. Peter Stykehare and William son of Roger de la Sale were drinking together in Cashel. Both drunk, they departed for home. In that drunken state, where what would normally be seen as stupid behaviour but which they considered reasonable, they entered a field and had a jousting match. Peter and his horse were thrown to the ground. William, turning his horse, rode towards his friend with great speed, "which Peter arising saw, and fearing that greater evil would happen him, drew his sword to defend himself". William also had his sword drawn, and having the advantage, struck Peter in the face under the eye "and gave him a severe wound, by which his eye is injured".

The jury, having inspected Peter's face, awarded considerable damages and committed

William to gaol.⁷⁸ This was not part of the punishment but an encouragement to pay up. Much of the value of this kind of story, unimportant in itself, is that it helps to remove some of the perceived strangeness about the medieval period, and perhaps remind us that the thirteenth and fourteenth centuries are not just rooms to be rushed through on the way to the grander chambers of the sixteenth and subsequent centuries.

Each of these Cashel-associated episodes showed the criminal justice system working, after a fashion. Its successful operation was to some extent a matter of geography. A feature of Tipperary in the fifteenth century, especially the mid-west, was the strength of the Burkes/Bourkes, shown by their independent actions.⁷⁹ There were already signs of this in the earlier period. Hubert de Burgo has several mentions in the calendars. He attacked and robbed property of the archbishop of Cashel and generally was seen by the authorities as a public enemy.

When de Burgo defaulted on debts owed to the state, the sheriff was ordered to make seizures, only to have one of his officials admit that de Burgo's base "is so strong a march", in other words a "no-go" area.⁸⁰ These calendar references are to the closing years of the thirteenth century. Some years later, the situation was not improving. The excuse was still being advanced that property cannot be seized because it was in the march (boundary) of Muscry,⁸¹ which was Burke territory. From around the same period the same situation obtains "in a strong march at Kenwath" in Elyocarroll (north of Roscrea).⁸²

For the year 1313 there are records of the court sitting in the county on three occasions. Cashel was the venue and the dates were 13 January, 26 March and 27 October. On the first and last of these dates, Edmund Butler presided. On the March date the chancellor stood in for him as Butler was "acting elsewhere in remote parts". On 2 January Butler sat in Limerick. The actual record for 13 January is very limited – three cases, one of which was a case in Waterford. Information about another case is tentative: one of the de Burgo family was charged with robbing the bishop of Killaloe of eight oxen at Lysboyn and, more to the point, that he murdered (presumably with a gang) four named individuals "and ten other Englishmen of the town of Cashel near the said town and robbed them of divers goods and equipment to the value of one hundred shillings".

Suggesting a pre-arranged deal, de Burgo appeared before the court and admitted his guilt and threw himself on its mercy. What happened next is unclear, but during the sitting of the court on 27 October, there is reference to an individual charged with buying the eight oxen, knowing them to be stolen by de Burgo from the bishop. The final (January) case relates to one of the Hackets putting forward an individual, who on payment of 20 shillings and with two guarantors supporting him, was excused "all trespasses to this day, excepting crimes reserved to the king", which included "the killing of an Englishman".⁸³

Sixteen cases were heard on 26 March, most of the crimes being exactly what one would expect in a rural environment where many people, fending for themselves, lived on a very narrow margin between subsistence and want. A list of what was stolen includes the following: various quantities of oats, peas, beer and wool; livestock both individually and in multiples, and various pieces of equipment. Granges, or storage places for grain and crops, were obvious targets. In the cases under discussion, the granges of the bishop of Lismore and Edmund Butler (Nenagh) were robbed. The scale of some of the robberies suggest profit rather than survival. For example, a charge of stealing five cows (with another named individual "lately slain") and of removing this livestock to Ossory is a different matter from the crime of stealing a pig from "John the cook" in Buolick, which was then consumed in the thief's house, aided by the "other malefactors".

Very few instances of robbery were linked with violence. The most notorious case was discussed earlier, that of Matthew Bryan who stole from the church in Emly and (also)

committed two murders. In another case, William Don was charged that by night he burned the house of Roger Hervy in Nenagh "and his goods in the house to the value of forty marks". The accused appeared before the court, eleven jurors clearing him; but the remaining juror opted for a guilty verdict.

Therefore, "it seemed expedient to the court to be more fully informed of the premises" and consequently "inquiry proceeded by the oaths of other good and lawful men who declared Don not guilty and not suspected of any other misdeed. The juror who stood alone was declared guilty of "malice", committed to gaol and fined. In this case, it appears that value was put on the goods in the house rather than the house itself, which perhaps was of mud and thatch and easily rebuilt.⁸⁴

On 27 October 1313 the final hearing of criminal cases for that year in Tipperary was in Cashel before Edmund Butler. The first case concerned "a man of Richard le Poer sheriff of the county", who was waylaid "in a trackway" and robbed of his horse. The accused claimed the horse had been his in the first place, a claim believed by the jury. Next was a case about a stolen cow in the neighbourhood of Fethard.

The third case concerned the purchase of six cows worth four shillings each from William Fyn O Keyff, (sic) "a common thief and felon". The accused was acquitted of knowing the animals were stolen. This was followed by a case against a man for stabbing his wife to death during a argument. None of these four crimes resulted in conviction, and were followed by several instances of individuals being granted (for money) the favour of the Crown, in spite of their transgressions.

Acting legitimately, the burgesses of Corketeny (Templemore), a fief north of Thurles, were taking three named members of the de Valle (Wall) family, "taken for divers trespasses and robberies to the prison of the king's castle of Roscrea". Peter and John, sons of John Purcell (presumably with others) were charged with freeing the prisoners by force of arms and giving them refuge. In spite of the fact that this had all the signs of medieval gangsterism, the Purcells were able to buy their way out of trouble with the court.

Five men (including Gilbert O Nolan, a combination of Norman and Irish name elements) were charged that "by force of arms [they] waylaid Alicia Walour on the highway between the town of Ardmayle and Cashel and against her will led her to KilmcClegh (in Waterford?) and that [one of the men] Maurice de Bathe there raped her". This crime was probably not as it appears. More likely it was similar to eighteenth-century abductions. The accused appeared before the court and with the support of both the archbishop and archdeacon of Cashel, satisfied the law with the payment of a very large fine of £40. Of this money, the court ordered £30 to be paid to Thomas Butler, as a gift from the king, in compensation for Butler's expenses in repressing felons in Leinster and Munster.

The remaining six cases before the court on that October day in 1313 resulted in revenue for the exchequer. The case of Robert le Graunt was discussed earlier. He murdered an officer of the law in Cashel, fled to a nearby church but then escaped. The town was fined 100 shillings, money given to an official of the court.

In other cases, ten individuals bought themselves into the king's favour. In two other cases, the results were the same. However, the accused were exceptional. In one instance, the "provost and commonalty" of Modeshill (Slieveardagh) paid forty shillings as a fine for not raising "hue and cry" over members of the Tobin family "and others of their following", who murdered Milo Prat in that town. The remaining instance concerned David Mac Mathgamna bishop of Killaloe (1299-1317) who was charged with receiving various named felons. The fact that the bishop was Irish (McMahon) was probably a factor.⁸⁵

Conclusion

In writing the history of local communities in county Tipperary, this source, the calendars of the justiciary rolls are of great interest in two respects: specific information about various localities (better for the south than the north of the county) and general insights to the social and economic life of the people. This reference to the "people" has, of course, to be qualified.

As the calendars and this article makes clear, the thirteenth century resulted in a very substantial settler community in Tipperary. Reading the calendars of the justiciary rolls, one is struck by the "foreign" sound of many of the surnames, and sometimes it is disconcerting that these names belonged to people who lived their lives in familiar places – Cashel, Nenagh, Knockgraffon, Ardmayle and so on, all places we are conditioned to think of without Norman-French as the vernacular. The justiciary rolls allow a glimpse of this "foreign country" at the zenith of its development and remind us of this essential strand that is part of our own identity.

Footnotes

1. *Irish Times*, 18 May. 2000.
2. 26th Rep. D.K.P.R.T. Nothing better illustrates this tragedy than an entry in one of the catalogues of the National Archives.
"M. 5231. Scraps of paper blown away in explosion 1922 and picked up in a garden in Howth. Presented by Dr. R. C. Simington 6 Oct. 1959."
3. G. J. Hand, *English Law in Ireland 1290-1324* (Cambridge, 1967), appendix 3.
4. James Mills (ed.), *Calendar of the Justiciary Rolls or Proceedings in the Court of the Justiciary of Ireland, preserved in the Public Record Office of Ireland, xxiii to xxxi. Years of Edward I* (Dublin, 1905).
James Mills (ed.), *Calendar of the Justiciary Rolls or Proceedings in the Court of the Justiciary of Ireland, preserved in the Public Record Office of Ireland, i to vii. Years of Edward II* (Dublin, 1956).
5. Edward I was the English king featured in the film *Braveheart*.
6. Griffith's obit. in *Irish Times*, 28 July 2001.
7. These calendars are certainly better than H. S. Sweetman (ed.), *Calendar of Documents relating to Ireland, 1171-1307* (London, 1875-86), 5 volumes.
8. C. A. Empey, The Norman Period: 1185-1500, in Nolan, *Tipperary: History & Society*, p. 89.
9. *Cal. justic. rolls Ire.*, ii, p. iv.
10. Hand, *Eng. Law*, p. 214.
11. For background see Empey, *Norman Period*.
12. R. Frame, *Colonial Ireland, 1169-1369* (Dublin, 1981), map p. 81.
13. *Ibid.*, p. 80.
14. Empey, 'The Anglo-Norman Settlement in the Centred of Eliogarty' in J. Bradley (ed.), *Settlement & Society in Medieval Ireland* (Kilkenny, 1988), pp. 217-19.
15. See J. Otway-Ruthven, The Organization of Anglo-Irish Agriculture in the Middle Ages in *Jn. R.S.A.I.*, lxxxi (1951), pp. 1-13; H. Jager, Land Use in Medieval Ireland: a review of the documentary evidence in *Ir. Econ. Soc. Hist.*, x (1983), pp. 51-65.
16. D. G. Marnane, *Land and Settlement: a history of West Tipperary to 1660* (Tipperary, 2003), chapter five.
17. See R. E. Glasscock, Land and People, c. 1300 in A. Cosgrove (ed.), *A New History of Ireland, 1169-1534*, ii (Oxford, 1987), p. 206.
18. See J. Bradley, The Medieval Towns of Tipperary in Nolan, *Tipperary: History & Society*, pp. 34-9.
19. Otway-Ruthven, The Character of Norman Settlement in Ireland in *Historical Studies V* (London, 1965), pp. 64-7.
20. E. St. John Brooks (ed.), *Register of the Hospital of S. John the Baptist* (Dublin, 1936), pp. xv-xvii; M. Hennessy, 'The Priory and Hospital of New Gate: the evolution and decline of a medieval monastic estate' in Smyth and Whelan (eds.), *Common Ground* (Cork, 1988), pp. 41-54.

21. *New History of Ireland*, ix.
22. Hand, *Eng. Law*, pp. 21-2, 37-8.
23. *Ibid.*, p. 32.
24. *Cal. justic. rolls Ire.*, iii, pp. 6, 72, 108; H. G. Richardson & G. O. Sayles, *The Administration of Ireland 1172-1377* (Dublin, 1963), pp. 144-5.
25. G. J. Hand, Procedure without writ in the court of the justiciar of Ireland in *R.I.A. Proc.*, lxii (1961-3), C, pp. 14-15.
26. W. C. Bolland, *The General Eyre* (Cambridge, 1922), pp. 41-2.
27. *Ibid.*, pp. 38-40.
28. *Cal. justic. rolls Ire.*, iii, pp. 119-27.
29. *Cal. justic. rolls Ire.*, i, p. 344.
30. *Cal. justic. rolls Ire.*, ii, p. 39.
31. *Cal. justic. rolls Ire.*, iii, p. 7.
32. *Cal. justic. rolls Ire.*, iii, p. 273
33. A. R. Dewindt & E. B. Dewindt, *Royal Justice and the Medieval English Countryside* (Toronto, 1981), i, p. 43.
34. *Cal. justic. rolls Ire.*, iii, p. 301.
35. Dewindt, *op. cit.*, p. 101; Bolland, *op. cit.*, p. 68.
36. Dweindt, *op. cit.*, p. 21.
37. *Cal. justic. rolls Ire.*, iii, pp. 132-3.
38. *Cal. justic. rolls Ire.*, i, pp. 8-14.
39. Bolland, *op. cit.*, p. 58.
40. R. Frame, The Campaign against the Scots in Munster 1317 in *I.H.S.*, xxiv., 95 (1985), p. 370.
41. H. F. Berry (ed.), *Statutes and Ordinances, John to Henry V* (Dublin, 1907), pp. 191-2.
42. *Cal. justic. rolls Ire.*, ii, pp. 271-2.
43. *Cal. justic. rolls Ire.*, ii, p. 335.
44. E. MacLysaght, *More Irish Families* (Dublin, 1996), pp. 58-9.
45. *Cal. doc. Ire.*, i, no. 392.
46. *Cal. justic. rolls Ire.*, i, pp. 6-8.
47. St. John D. Seymour, Notes on a Tipperary Parish in *Jn. Cork Hist. & Arch. Soc.*, xxii, 112 (1916), pp. 152-3.
48. *Cal. justic. rolls Ire.*, i, pp. 141-2.
49. *Chartae priv. imm.*, p. 51.
50. *Cal. Ormond Deeds*, i, p. 210
51. F. J. Byrne, Eoganach Ninussa in *Éigse*, 9 (1958), pp. 24-5.
52. *Cal. justic. rolls Ire.*, i, p. 71.
53. *Cal. justic. rolls Ire.*, ii, pp. 145, 160, 217, 324, 337-8; *Cal. justic. rolls Ire.*, iii, pp. 58-9, 110.
54. *Cal. justic. rolls Ire.*, i, pp. 12-13.
55. *Cal. justic. rolls Ire.*, iii, pp. 302-3.
56. G. Carville, *The Heritage of Holy Cross* (Belfast, 1973), pp. 61-2.
57. *Cal. justic. rolls Ire.*, i, pp. 134-5.
58. Richardson & Sayles, *op. cit.*, pp. 144-5.
59. *Cal. justic. rolls Ire.*, i, pp. 219-20, 257.
60. *Cal. justic. rolls Ire.*, i, pp. 231-2, 250, 288.
61. *Cal. justic. rolls Ire.*, i, p. 449.
62. *Cal. justic. rolls Ire.*, iii, pp. 127-8.
63. *Reg. Hosp. St. John Bapt.*, p. 335.
64. *Cal. justic. rolls Ire.*, iii, pp. 129-32.
65. For de Grandison see, E. R. Clifford, *A Knight of Great Renown* (Chicago, 1961).
66. *Cal. justic. rolls Ire.*, iii, p. 274.
67. See Hand, *Eng. Law*, chapter ten.

68. *Cal. justic. rolls Ire.*, i, p. 59.
69. *Cal. justic. rolls Ire.*, ii, p. 56.
70. *Cal. justic. rolls Ire.*, i, p. 138.
71. *Cal. justic. rolls Ire.*, i, p. 132.
72. *Cal. justic. rolls Ire.*, i, p. 234.
73. *Cal. justic. rolls Ire.*, i, pp. 461-2.
74. *Cal. justic. rolls Ire.*, ii, pp. 14, 100.
75. *Cal. justic. rolls Ire.*, iii, pp. 110-11.
76. *Cal. justic. rolls Ire.*, iii, p. 122.
77. *Cal. justic. rolls Ire.*, i, p. 463.
78. *Cal. justic. rolls Ire.*, ii, p. 116.
79. See A. O'Sullivan (ed.), *Poems on Marcher Lords* (Irish Texts Soc., 1987).
80. *Cal. justic. rolls Ire.*, pp. 9, 18, 147, 309.
81. *Cal. justic. rolls Ire.*, ii, p. 167.
82. *Cal. justic. rolls Ire.*, ii, p. 194.
83. *Cal. justic. rolls Ire.*, p. 270.
84. *Cal. justic. rolls Ire.*, iii, pp. 272-4.
85. *Cal. justic. rolls Ire.*, iii, pp. 301-3.