

# **Report on the Trial of Myles Joyce, November 1882**

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## 1. Introduction

This report examines whether the trial of Myles Joyce for murder in 1882 was consistent with the standards of the criminal justice system which existed at that time.

Five members of the Joyce family in Maamtrasna, County Galway were brutally killed in August 1882. The initial victims were John Joyce, the head of the family, his mother, Margaret Joyce, his wife, Bridget Joyce, his daughter, Margaret Joyce (also known as Peggy). John's son, Michael Joyce, was still alive when the attack was discovered, but died of his injuries the following day. The sole survivor was Patsy Joyce, John's youngest son, aged around nine or ten years, who had been severely beaten.

Myles Joyce was convicted in November 1882 of murdering his cousin, Margaret Joyce. He was one of ten men arrested. Two of these men, Anthony Philbin and Thomas Casey, later testified against the others. Five pleaded guilty and received prison sentences; these were Michael Casey, Martin Joyce (Myles's brother), Patrick Joyce (another brother of Myles), Tom Joyce (Patrick's son) and John Casey. Three men, Myles Joyce, Patrick Joyce and Patrick Casey were tried, convicted and hanged. Given the number of victims, accused persons and accusers, and the remote, tight-knit nature of the area, it is unsurprising that there were various relationships between the main protagonists. They were neighbours, cousins, brothers, fathers and sons, many of whom shared the same names and surnames.

Myles Joyce's death sentence was executed at Galway Gaol in December 1882. Right up until the point of death Myles protested his innocence, and is now widely accepted as having been innocent of the offence. Two other men who were hanged alongside Myles, (Patrick Joyce and Patrick Casey), claimed responsibility for the murders before they were executed. Both emphasised Myles Joyce's innocence.

The question for this report is, were the circumstances of the trial, conviction, or punishment of Myles Joyce so inconsistent with the legal standards of the period that they justify an act of public recognition? The report begins by outlining how the criminal justice system operated in the late nineteenth century, and explains how a murder trial would typically be conducted. The next part of the report identifies aspects of the Myles Joyce case which may have been problematic in terms of fairness. These include language issues, press bias, legal representation, evidentiary issues and procedural issues. The last part of the report reaches a conclusion as to the fairness of Myles Joyce's conviction and sentence.

## 2. Irish Criminal Justice in the 1880s

### a. Overview of the criminal justice system

The late nineteenth century criminal justice system, resembled the twenty-first century system in many ways. There was a system of public prosecution,<sup>1</sup> with criminal cases prosecuted by Crown counsel selected by Crown solicitors, who were in turn appointed by the attorney general. There was a centralised police force.<sup>2</sup> Although the investigatory role of the police was more limited than is the case today, the constabulary nevertheless had a significant role in the collection of evidence.

After an arrest was made there were various preliminary procedures such as arraignment and indictment (see the next section for further details).<sup>3</sup> The decision whether or not the prosecution had a strong *prima facie* case was made by a grand jury.<sup>4</sup> There was no Director of Public Prosecution in the 1880s.

Several times a year the judges from the superior courts in Dublin travelled around on circuit to preside at county assizes to hear important criminal cases. Special commissions were convened as a supplement to the assizes, during turbulent periods, or if there was a significant number of prisoners awaiting trial.<sup>5</sup> From an operational perspective, these operated along similar lines as regular assizes, and the trial procedure would have been the same.

In the late nineteenth century, all jurors had to hold property of a specified rateable value in order to qualify. Most accused persons were tried by 'common juries', but very occasionally 'special juries' were used at criminal trials. These were juries comprised of men who had

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<sup>1</sup> See William H. Dodd, 'The Preliminary Proceedings in Criminal Cases in England, Ireland, and Scotland, compared', (1878) *Journal of the Social and Statistical Inquiry Society of Ireland* 201–9; John F. McEldowney, 'Some Aspects of Law and Policy in the Administration of Criminal Justice in Nineteenth-Century Ireland' in John McEldowney and Paul O'Higgins (eds), *The Common Law Tradition: Essays in Irish Legal History* (Dublin, 1990); John McEldowney, 'Crown Prosecutions in Nineteenth-Century Ireland' in Douglas Hay and Francis Snyder (eds), *Policing and Prosecution in Britain 1750-1850* (Oxford, 1989) and Ian O'Donnell and Finbar McAuley (eds) *Criminal Justice History* (Dublin, 2013).

<sup>2</sup> See Stanley Palmer, *Police and Protest in England and Ireland 1780-1850* (New York, 1988); Brian Griffin, *The Bulkies: Police and Crime in Belfast 1800-1865* (Dublin, 1997); Donal O'Sullivan, *The Irish Constabularies 1822-1922* (Kerry, 1999); Elizabeth Malcolm, *The Irish Policeman 1822-1922* (Dublin, 2006); Anastasia Dukova, *A History of the Dublin Metropolitan Police and its Colonial Legacy* (London, 2016).

<sup>3</sup> See generally William E. Vaughan, *Murder Trials in Ireland, 1833-1914* (Dublin, 2009).

<sup>4</sup> See William Huband, *A Practical Treatise on the Law Relating to the Grand Jury in Criminal Cases, the Petty Jury and the Coroner's Jury* (rev. ed., Dublin, 1911), pp 123–208 and Niamh Howlin, *Juries in Ireland: Laypersons and Law in the Long Nineteenth Century* (Dublin, 2017), ch 3.

<sup>5</sup> See Vaughan, *Murder Trials*, p. 4.



greater wealth and higher social standing than common jurors.<sup>6</sup> The use of special jurors was typically restricted to civil and commercial cases.<sup>7</sup>

The criminal trial itself was, in broad terms, similar to the twenty-first century trial. The fundamental rules of evidence with which we are familiar today were broadly settled by the late nineteenth century. The prisoner was presumed innocent and the burden of proof lay on the prosecution. An opening statement was made by prosecuting counsel (Crown counsel), then witnesses for the prosecution were called. Each witness was examined in turn by Crown counsel, cross-examined by defence counsel, and could be re-examined by Crown counsel if this were deemed necessary. Witness testimony was governed by the principles of competence, compellability and reliability, and was limited by evidentiary rules such as the best evidence rule and the rule against hearsay. One notable feature of the late nineteenth-century trial was that jurors could (and frequently did) directly question witnesses.<sup>8</sup> When the Crown had finished presenting its case, the defence made its opening statement and proceeded in the same manner. When all the evidence had been presented and the witnesses examined, counsel on each side could make closing statements. The jury then listened to the judge's charge, which included a summary of the evidence presented, as well as the judge's own views as to how the case ought to be disposed of. A noticeable distinction between the nineteenth- and twenty-first-century trial is the speed at which proceedings operated. The length of time between arrest, trial, and in some cases, execution was short, and even capital trials might be dispensed with in a day or two.

Lengthy imprisonment, penal servitude and capital punishment were still notable features of the criminal justice system by the 1880s, although the punishment of transportation to the colonies was no longer used after the late 1860s.<sup>9</sup>

Criminal offences were usually tried in the county where the alleged offence had taken place. However, it was possible in some circumstances to have a trial moved to a different venue, if it were anticipated that a fair and impartial trial could not be had in the original county. Before the 1880s, it was rare for a change of venue to be granted in a criminal case, as will be discussed further below.

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<sup>6</sup> See the Juries (Ireland) Act, 1871 (34 & 35 Vic., c. 65), sch. iv; the Juries (Ireland) (Amendment) Act 1873 (36 & 37 Vic., c. 2)7, sch. 2; the Jurors' Qualification (Ireland) Act, 1876 (39 & 40 Vic., c. 21), sch. i.

<sup>7</sup> See Howlin, *Juries in Ireland*, ch 4.

<sup>8</sup> See Niamh Howlin, 'Irish Jurors: Passive Observers or Active Participants? Jurors in Civil and Criminal Trials (2014) 35(2) *Journal of Legal History* 143-171.

<sup>9</sup> The Penal Servitude Act 1857 (20 & 21 Vict., c.3).

## 2.b. Typical procedure in murder trials

The standard procedures in murder trial in late nineteenth-century Ireland have been described in detail by Vaughan.<sup>10</sup> The pre-trial procedures included a coroner's inquest and the return of a verdict by a jury as to the cause of death;<sup>11</sup> the swearing of an information (i.e. a complaint) against a suspect; his or her arrest and appearance before a magistrate. At the magisterial inquiry, the magistrate determined if there was a case sufficient for trial. At the assizes, a grand jury considered the case once more, and if they returned a 'true bill', the accused person was sent for trial. After a bill of indictment was found against the accused, he or she was arraigned, and pleaded guilty or not guilty. The trial, usually before a common jury, then began. In practical terms it was no different from any other type of criminal felony trial. If a guilty verdict were returned by the jury, a mandatory capital sentence was imposed. This might be commuted to a term of imprisonment by the executive, and many condemned prisoners petitioned the Lord Lieutenant to exercise clemency.<sup>12</sup> these petitions were stronger where they were accompanied by the jury's recommendation to mercy, endorsed by the judge.

## 2.c. The 1882 Act and its Context.

The Prevention of Crime (Ireland) Act 1882<sup>13</sup> was a piece of coercive legislation passed in the aftermath of the gruesome murders of Lord Frederick Cavendish, the Chief Secretary, and his Under Secretary, T.H. Burke. Referred to as the Phoenix Park Murders, they took place in May 1882 against a backdrop of increasing unrest and violence in the country. The Preamble to the 1882 Act pointed out that 'The operation of the ordinary law' had become 'insufficient for the repression and prevention of crime', as a result of 'the action of secret societies and combinations for illegal purposes'. Part I of the Act abrogated the right to trial by jury and allowed cases of treason, murder, arson, attacks on dwelling-houses and crimes of aggravated violence to be tried by special commissions of three judges.<sup>14</sup> The legislation also provided for proclaimed districts, summary trials for certain offences, curfews, the power to prohibit illegal meetings, among other things. The Act proved to be extremely controversial, and the juryless trials were never used in practice.

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<sup>10</sup> Vaughan, *Murder Trials*.

<sup>11</sup> See Howlin, *Juries in Ireland*, pp 78-83.

<sup>12</sup> See e.g. Vaughan, *Murder Trials*, ch. 10.

<sup>13</sup> 45 & 46 Vic., c. 25. Also referred to as the Crimes Act.

<sup>14</sup> Section. 1.



The 1882 Act also provided for special juries to be used instead of common juries in certain criminal cases, on the application of either the attorney general or the accused person.<sup>15</sup> No grounds had to be stated for such application. It was unusual for special juries to be used in criminal cases - traditionally this type of jury was not available in felonies (such as murder), in part because the procedures involved with empanelling special jurors would have interfered with defendants' right to peremptorily challenge jurors. However, in the context of the agrarian agitation of the early 1880s, special juries were perceived to be more likely than common juries to convict persons involved in agrarian crimes. Special jurors generally had higher socioeconomic status, and were considered to have less sympathy for such defendants.

The 1882 Act also included procedures to allow trials to be held in counties other than those where alleged offences had taken place.<sup>16</sup> Prior to this enactment, under some circumstances, an indictment could be moved from an inferior court up to the Court of Queen's Bench by a writ of *certiorari*, which could order that the issue be tried in another county. Applications by the attorney general for a change of venue in a criminal trial had to be supported by affidavits which showed that a fair or impartial trial could not be had in the original county.<sup>17</sup> Until the 1880s, these procedures had been cumbersome and costly. For example, the procedures laid down by the Peace Preservation (Ireland) (Amendment) Act, 1870<sup>18</sup> were so cumbersome that the power to have the venue changed was underused.<sup>19</sup> The provisions in the 1882 Act stemmed from a recommendation by an 1881 parliamentary committee that 'in all crimes of a political or agrarian complexion it is desirable to offer every facility for the removal of the trials whenever the circumstances of the locality appear to call for such a step'.<sup>20</sup> Under section 4 of the Act, the Attorney General was entitled as of right to obtain an order for a change of venue where this was 'expedient in the interests of justice.'

The 1882 Act met with fierce opposition, with the *Freeman's Journal* describing it as 'a tremendous instrument ... perhaps the fiercest coercion act ever proposed for Ireland.'<sup>21</sup> Humphreys described the Act as being subject to 'hostile, severe, and even angry criticism.'<sup>22</sup> The Irish bench was of the view that the proposed measures 'would seriously impair the public

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<sup>15</sup> Section 4.

<sup>16</sup> Section 6.

<sup>17</sup> *Select Committee on Irish Jury Laws 1881*, para. 4199 (Fitzgerald J).

<sup>18</sup> 33 Vic., c. 9, s. 29.

<sup>19</sup> *Select committee appointed to inquire into the state of Westmeath, and certain parts adjoining of Meath and King's County, and the nature, extent, and effect of a certain unlawful combination and confederacy existing therein 1871*, HC 1871 (147) xiii, 547, paras 2485-7.

<sup>20</sup> *Report from the Select Committee of the House of Lords on Irish Jury Laws*, HC 1881 (40) xi, 1, p. ix.

<sup>21</sup> *Freeman's Journal*, 12 May 1882.

<sup>22</sup> Henry Humphreys, *The Prevention of Crime (Ireland) Act, 1882 : 45 & 46 Vict., Cap. 25: With a Review on the Policy, Bearing, and Scope of the Act* (Dublin, 1882), p. ix.

confidence in the administration of justice in Ireland.<sup>23</sup> Their opposition related, in the main, to the proposed juryless trials. One judge, Baron Fitzgerald of the court of exchequer, went so far as to resign on a point of principle over the proposed legislation.<sup>24</sup>

### 3. Potentially Problematic Aspects of Myles Joyce's Trial

This section considers some potentially problematic aspects of Myles Joyce's trial. The matters considered are the venue for the trial, pre-trial publicity, the language barrier, the use of a special jury, procedural issues and evidentiary issues.

#### 3.a. The change of venue

Instead of being tried in Galway, the county where the murder was committed, Myles Joyce (along with the other accused persons) was tried in Dublin. The venue was changed to Dublin under section 4 of the Prevention of Crime (Ireland) Act 1882,<sup>25</sup> discussed above.

On the face of it, the change of venue was lawful. Such changes could be made where the Attorney General considered it 'expedient in the interests of justice'. Given the high number of victims and accused persons in the Maamtrasna case, as well as the complex relationships between the various parties, there may have been genuine doubt regarding the ability to secure an unbiased jury. George Bolton, the Crown prosecutor, later noted that the Crown had interviewed 643 persons when trying to establish the facts of the case.<sup>26</sup>

It is also reasonable to suppose that there was a genuine belief on the part of the administration and criminal justice officials that the Maamtrasna murders were as a result of secret society activities. John Joyce was rumoured to be the treasurer of a branch of a secret society. The killing of the Joyce family was one of several murders and attempted murders which had recently taken place in the region, which may have given the authorities reason to

<sup>23</sup> Anon., 'The Administration of Justice in Ireland' (1882) 16 *Irish Law Times and Solicitors' Journal* 232, reporting on a meeting of the judges.

<sup>24</sup> See Howlin, *Juries in Ireland*, p. 223. Barry J, who presided over the Maamtrasna trials, had opposed proposals for this legislation before an 1881 parliamentary committee. When asked his view on the possibility of a trial by three judges, he responded: '[i]t is a proposal so startling and so novel that I am not prepared to give an opinion on it.' *Report from the Select Committee of the House of Lords on Irish Jury Laws; together with the proceedings of the committee, minutes of evidence, and appendix*, HC 1881 (430) xi, 1, para. 1355. When later asked his view on trying cases before two judges without a jury, he considered it 'an unfortunate suggestion indeed', which would 'destroy confidence' in the justice system: para. 1449.

<sup>25</sup> 45 & 46 Vic., c. 25.

<sup>26</sup> George Bolton, *A Short Account of the Discovery and Conviction of the 'Invincibles' and of Some Trials of Which the Writer had Charge in 1881, 1882, 1883 and 1884* (Dublin, 1887), p. 38.



suspect that a secret society was involved,<sup>27</sup> or that the killing was connected with the agrarian agitation. Harrington writes that 'there was no suggestion in the evidence of the witnesses, and nothing in the circumstances of the case to warrant the belief that the murder was of an agrarian character.'<sup>28</sup> While there was no concrete proof that these murders were related to the land war, it is likely that the circumstances prevailing in the countryside in the summer of 1882 lent themselves to a belief that most instances of serious crime were related to the land agitation.

On the other hand, all of the persons (victims, accused persons, witnesses) involved with the Joyce case lived and worked within a compact geographical area in one part of the county of Galway. It would not have been impossible to secure a jury consisting of persons from other parts of the county, who had no relationship with anyone from the Maamtrasna area.

An argument that the removal of Myles Joyce's trial to Dublin was unlawful cannot be sustained. Myles was not the only criminal defendant to have his trial removed to Dublin around this time. A Special Commission was convened in Dublin in the autumn of 1882, to which a number of cases had been transferred from other counties, including Kerry,<sup>29</sup> Cork<sup>30</sup> and Westmeath,<sup>31</sup> to be tried by special juries.

While this procedure was lawful, it should be added that changing the venue of criminal trials was very unusual in nineteenth century Ireland. At the time of Myles Joyce's trial in December 1882, the legislation had only been in operation for a few months, and was something of an aberration from typical practice up to that time.<sup>32</sup> The change of venue could have given rise to a risk of injustice given that Maamtrasna and Dublin were, in many respects, worlds apart.

### 3.b. Trial before a special jury

Trial by jury is often described as 'trial by one's peers'. Trial by peers, however, is not to be literally construed. In late nineteenth-century Ireland, there was no right to be tried by members of one's local community, or by persons of the same age, gender, social class or occupation. 'Trial by peers' essentially denoted a right to be tried by laypersons rather than by a professional judge or judges.

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<sup>27</sup> See Jarleth Waldron, *Maamtrasna: the Murders and the Mystery* (Dublin, 1992), p. 17.

<sup>28</sup> Tim Harrington, *The Maamtrasna Massacre: Impeachment of the Trials* (Dublin, 1884)p. iii.

<sup>29</sup> *R v O'Connor and others*, reported in the *Freeman's Journal*, 11 August 1882.

<sup>30</sup> *R v Bryan, Kinsella and Duggan*, reported in the *Freeman's Journal*, 15 August 1882.

<sup>31</sup> *R v Kenny*, reported in the *Freeman's Journal*, 15 August 1882.

<sup>32</sup> The 1882 Act expired in 1885, and in 1887 a similar provision was enacted as part of the Criminal Law and Procedure (Ireland) Act 1887 (50 & 51 Vic., c. 20).

Myles Joyce was tried by a Dublin special jury. By the late nineteenth century Dublin special jurors were not necessarily drawn from the upper echelons of society, but represented the middle-class businessmen and tradesmen of the city. These men were considered to have little sympathy for the land movement, and were thought to be more likely to convict. Indeed, of the cases transferred from the south and west of Ireland for trial in Dublin in 1882, there was a high conviction rate.

As with the change of venue, trial by a special jury was unusual, but was lawful under section 4 of the 1882 Act. One could argue that this mode of trial, although not unlawful, was nevertheless unfair, because having this type of jury tipped the balance in favour of a conviction. It was also inconsistent with general practice throughout the United Kingdom at the time.<sup>33</sup>

### 3.c. Press coverage and possible jury bias.

The circumstances surrounding the murder and the trials received substantial coverage in the national and regional press. Detailed, blow-by-blow accounts of the trials and preliminary procedures were given in leading newspapers such as the *Freeman's Journal*, the *Belfast News-Letter* and the *Irish Times*. There was also extensive coverage in regional papers. By the time that Myles Joyce came to be tried, two other trials (those of Patrick Joyce and Patrick Casey) had been conducted under intense public scrutiny. At the commencement of Myles's trial, his legal team sought a postponement, alluding to the ongoing publicity, and the fact that the verdict in Patrick Joyce's case had been made public. It was claimed by Myles's lawyers that 'the comments ... in the public press of this city are calculated to render an impartial, unprejudiced trial of the cause impossible for some time to come.'<sup>34</sup>

The application for postponement was opposed by the Attorney General.<sup>35</sup> Barry J considered the grounds underpinning the application to be 'vague and unsubstantial', and refused the application. He indicated that he might have decided otherwise if he had been presented with examples of newspapers 'containing comments calculated to prejudice the fair trial of this case, whether the fair trial was to the prejudice or in favour of the prisoner.'<sup>36</sup>

Arguably, this motion ought to have been granted. Certainly, some of the coverage and commentary in Irish newspapers during the week of the trials was objectionable. The

<sup>33</sup> Dicey, for example, remarked in 1889 that '[t]he law of England now knows nothing of exceptional offences punished by extraordinary tribunals.' AV Dicey, *Introduction to the Study of the Law of the Constitution* (3rd ed, London, 1889), p. 199. This is at odds with the Irish experience of coercive legislation in the 1870s and 1880s.

<sup>34</sup> Anon., *The Dublin October Commission, 13 November 1882. County of Galway. The Maumtrasna Massacre* (Dublin, 1882), p. 149.

<sup>35</sup> *Dublin October Commission*, p. 150.

<sup>36</sup> *Dublin October Commission*, p. 151.



language used to describe the offences in the newspapers was highly emotive, with phrases such as 'Exceptional and appalling atrocity',<sup>37</sup> 'Savage and truculent slaughter'<sup>38</sup> and 'One of the most horrible and bloodiest deeds on record'.<sup>39</sup>

Some newspapers commented favourably on the jurors in the trial of Patrick Joyce, expressing the view that they had reached the only possible conclusion. This could be interpreted as putting pressure on the prospective jurors in the following cases. One paper wrote that Joyce was 'found guilty by an intelligent jury'.<sup>40</sup> Another stated: 'The trial was one requiring special care on the part of a jury,' and that the jurors' questions 'evinced a highly intelligent interpretation of the facts'.<sup>41</sup> The *Dublin Daily Express* wrote that Patrick Joyce's 'guilt was established yesterday by evidence not only sufficient but overwhelming ... The country will cordially endorse the finding of the jury'.<sup>42</sup>

Another stated:

'The first trial of the persons accused of the Maamtrasna massacre has ended as might have been anticipated. The jury returned a verdict of guilty. On the evidence no other decision was possible. The case was presented with a clearness which left no room for doubt'.<sup>43</sup>

Some newspapers went so far as to speculate on the outcome of pending trials, or comment on the presumed guilt of Myles Joyce and the other accused men. For example, the *Dublin Daily Express* wrote: 'The conviction of the Maamtrasna murderer Joyce will probably be followed by that of other persons implicated in the same crime'.<sup>44</sup> The same newspaper also quoted from the *English Standard*: 'The successful assassins of the Phoenix Park are still at large ... The Maamtrasna murderers are happily secured'.<sup>45</sup>

Had counsel for the defence presented some of these examples then it is likely that the adjournment might have been granted. In other murder trials, the courts took seriously the issue of press coverage and potential jury bias. Changes of venue, for example, were sometimes granted on this basis.<sup>46</sup> The lawyers did not, however, produce any examples of

<sup>37</sup> *Dublin Daily Express*, 16 November 1882.

<sup>38</sup> *Cork Examiner*, 16 November 1882.

<sup>39</sup> *Belfast Newsletter*, 16 November 1882.

<sup>40</sup> *Belfast Newsletter*, 16 November 1882.

<sup>41</sup> *Dublin Daily Express*, 16 November 1882.

<sup>42</sup> *Dublin Daily Express* 16 November 1882.

<sup>43</sup> *Cork Examiner*, 16 November 1882.

<sup>44</sup> *Dublin Daily Express*, 17 November 1882.

<sup>45</sup> *Dublin Daily Express*, 17 November 1882.

<sup>46</sup> e.g. *R v McEneaney* (1878) 14 Cox CC 87 (change of venue granted); 2 LR Ir. 236; *R v Fay* (1872) IR 6 CL 436 (change of venue not granted).

newspaper coverage, and simply relied on a statement that there had been adverse and widespread coverage.

In his application for an adjournment, Malley also pointed out that some of the men on the special jury panel, who might be called to serve on Myles's trial, had been present in court at the previous trials. They had heard the evidence given by the various witnesses, and had also heard the judge summing-up the evidence and indicating that it was 'cogent and conclusive'.<sup>47</sup> This was substantially the same evidence which would be presented at Myles's trial, and it was argued that the judge's comments were likely to be very influential on the potential jurors. In fact, one of the jurors who was ultimately sworn, informed the court that he had been present in court during part of the earlier trials, but that he was not fully acquainted with all of the details, having abstained from reading the daily newspaper reports.<sup>48</sup>

It is surprising that this juror, who had attended part of the earlier trials, was allowed to be sworn on the jury, regardless of his claim not to have read the newspaper coverage. This could not be justified on grounds of practicality, as there was an adequate number of potential jurors in attendance. In the interests of fairness he ought not to have been sworn.

The combination of the refusal of the application for an adjournment based on prejudicial newspaper coverage, and the fact of at least one of the jurors having attended the earlier trials, had the potential to adversely affect the fairness of Myles Joyce's trial.

### 3.d. The language issue

There were significant problems with regard to language in this case. All of the accused men, including Myles, were native Irish speakers. In Joyce's country, where the family lived, nearly 40 per cent of the population did not know English in 1871,<sup>49</sup> and many defendants and witnesses in this case had no English. When Constable Johnson went to the scene of the murders, a sub-constable, Lenihan, acted as interpreter.<sup>50</sup> Witness Patrick McGing gave a statement in Irish which was later translated into English.<sup>51</sup> At the inquest, some members of the jury did not speak English and a juror had to act as interpreter.

This report focuses on two problematic issues in relation to language. The first was that Myles Joyce did not speak or understand English, the language of the court, and was provided with

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<sup>47</sup> *Dublin October Commission*, p. 149.

<sup>48</sup> *Dublin October Commission*, p. 153.

<sup>49</sup> E.G. Ravenstein, 'On the Celtic Languages of the British Isles: A Statistical Survey', (1879) 42(3) *Journal of the Statistical Society of London* 579-643, 590.

<sup>50</sup> Waldron, *Maamtrasna*, p. 15.

<sup>51</sup> Waldron, *Maamtrasna*, p. 33.



inadequate interpretation. The second was that the limited interpretation which was provided was conducted by a police officer.

### 3.d.i. Myles Joyce could not fully understand and follow the proceedings

Practice around this time was that when defendants were legally represented, an interpreter would be provided at the police station, in a lower court, and in court to interpret the charge, evidence and verdict.<sup>52</sup> Mary Phelan writes that '[m]onolingual Irish speakers were supposed to be afforded interpreters.'<sup>53</sup> Where an interpreter was unavailable, it appears to have been common practice to seek and secure an adjournment, until an interpreter was found.<sup>54</sup>

While some of the accused persons in the Maamtrasna cases had a limited understanding of English, this does not appear to have extended to understanding court proceedings and legal terminology.<sup>55</sup> The defence solicitor, Henry Concannon, did not speak Irish, which rendered him unable to effectively communicate with his client.

There were no salaried interpreters in Dublin, as there would have been in Galway and other rural counties.<sup>56</sup> Instead of adjourning the trial until an independent interpreter could be found, it was decided that interpretation could be provided by a police constable, Evans. The interpretation he provided, however, was extremely limited in scope. Its purpose was to ensure that the judge and jury could understand witness testimony, rather than to ensure that the defendant could comprehend the proceedings.

At the trial, the testimony given by Irish-speaking witnesses (such as Anthony Joyce<sup>57</sup>) was interpreted by the interpreter. This was for the benefit of the court; the jurors, judge and lawyers. But the testimony from other witnesses, given through English, was not translated for the benefit of the defendant. Waldron notes that limited interpretation was provided at the beginning and end of the trial.<sup>58</sup>

Commentary surrounding the case seems to suggest that Evans, the police interpreter, performed the task satisfactorily. The *Freeman's Journal*, for example, described Evans as 'the

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<sup>52</sup> Mary Phelan, *Irish Language Court Interpreting 1801-1922* (PhD thesis, Dublin City University 2013), p. 89, citing Ruth Morris, 'The Face of Justice: Historical Aspects of Court Interpreting' (1999) 4(1) *Interpreting* 97-103, pp 101-2.

<sup>53</sup> Phelan, *Irish Language Court Reporting*, p. 83.

<sup>54</sup> Phelan, *Irish Language Court Reporting*, p. 113.

<sup>55</sup> Waldron, *Maamtrasna*, p. 56.

<sup>56</sup> Phelan, *Irish Language Court Interpreting*, p. 95.

<sup>57</sup> *Dublin October Commission*, p. 162.

<sup>58</sup> Waldron, *Maamtrasna*, p. 108.

accomplished police interpreter'.<sup>59</sup> Barry J. was reported as saying: 'I must say that I have never heard better interpretation in my life'.<sup>60</sup> That being said, the basis for Barry J's positive evaluation is unclear, as he himself was not an Irish speaker. One possible problem with the interpretation was that Constable Evans spoke Ulster Irish, and was not familiar with the Connaught Irish spoken by the defendants. At the time, this could have been a problem as there was not much movement between Irish-speaking areas, there was no radio and little opportunity for people to hear dialects from other parts of the country.<sup>61</sup>

It appears to be part of the accepted narrative of the Myles Joyce case that Barry J was unaware of the extent of Myles's lack of understanding of the English language, and that this was the reason why such limited interpretation was provided. However, Myles Joyce's monolingualism was clearly outlined to the court by his barrister, Malley, at the opening of the trial. He referred to his client as 'this wretched Irish-speaking creature ... who is unable to understand the language in which his accusers will give their evidence, or the language in which the counsel will arraign him, or your lordship's address to the jury'.<sup>62</sup> He also added that he was 'incapable of instructing us'. These statements were either wilfully ignored or inadvertently overlooked by the trial judge.

The *Freeman's Journal* also reported on the issue of Myles's comprehension. According to that newspaper, the Attorney General asked counsel for the defence if the prisoner spoke English. Concannon replied that he thought he did not, and that it might be better to have the evidence of the witnesses who speak English interpreted to the prisoner in Irish. 'The interpreter asked the prisoner in Irish if he understood the evidence that was being given in English, and informed the Court that the prisoner answered in the affirmative'.<sup>63</sup> As Phelan observes, '[w]e can only guess that perhaps the defendant did not catch the question, or misunderstood it, or that the interpreter misunderstood his reply. The result of this exchange was that Evans did not interpret any of the evidence given in English.'

Even if there was some misunderstanding at this stage of the proceedings about whether or not Myles had any understanding of English, it is clear from the trial transcript<sup>64</sup> that his lack of understanding of the English language was stated in court, and that this was not acted upon in the provision of adequate translation services.

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<sup>59</sup> *Freeman's Journal*, 21 November 1882.

<sup>60</sup> *Irish Times*, 15 November 1822.

<sup>61</sup> Phelan, *Irish Language Court Interpreting*, p. 88, citing communication with Dr Emer Ní Bhrádaigh.

<sup>62</sup> *Dublin October Commission*, p. 149.

<sup>63</sup> *Freeman's Journal*, 20 November 1822.

<sup>64</sup> *Dublin October Commission*.



Myles spoke no English during the proceedings. When he was pronounced guilty, the Clerk of the Crown 'informed the prisoner in the usual language of the result', but the defendant 'seemed like a man who had only the vaguest notion of what was going on'. So much so, that the judge then called on the interpreter to interpret the information to the defendant. At this point, it must have been plainly evident to Barry J that Myles Joyce did not understand the proceedings. The interpreter went on to interpret the defendant's response (which was an assertion of his own innocence) into English for the court.<sup>65</sup>

The limited interpretation provided for Myles Joyce can be contrasted with the interpretation provided for Michael Casey, the next defendant to be tried. Concannon, the solicitor, told the Court that Casey did not understand any English and the judge said 'Then all the evidence must be interpreted to him'.<sup>66</sup> This is entirely at odds with what had happened in Myles Joyce's case. In fact, as Phelan observes, '[i]t is clear ... that, with the exception of Myles Joyce, Head-Constable Evans did provide interpretation of what witnesses said in English.'<sup>67</sup>

The fact that Myles Joyce could not understand and participate in the proceedings denied him the right to a fair trial. Moreover, the inadequate provision of interpretation services was inconsistent with standard practice at the time, and was even inconsistent with the practice at some of the other Maamtrasna trials.

### 3.d.ii. Interpretation was provided by a police officer

The lack of a salaried interpreter in Dublin led the authorities to allow interpretation by a sworn police officer. According to Waldron, Constable Kelly had acted as interpreter for the men from the time of their arrest and had travelled with them to Kilmainham.<sup>68</sup> However, it was felt that he was too friendly with them and Constable Thomas Evans acted as interpreter in court in Dublin. Phelan believes this was the first time that Evans had acted as a court interpreter.<sup>69</sup> It would not have been difficult to secure a civilian interpreter in Dublin, but the authorities chose to have a police officer perform this service. As Waldron remarks, 'No one ever questioned the probity of the move though the Interpreter was crucial in the case.'<sup>70</sup>

Constable Evans, who provided the limited interpretation, was not directly involved in the investigation and prosecution of the case. Nevertheless, the use of a police officer as an interpreter for a non-English-speaking defendant appears to be not only improper, but

<sup>65</sup> *Dublin October Commission*, p. 210, and *Freeman's Journal*, 20 November 1882.

<sup>66</sup> Phelan, *Irish Language Court Interpreting*, p. 92.

<sup>67</sup> Phelan, *Irish Language Court Interpreting*, p. 93.

<sup>68</sup> Waldron, *Maamtrasna*, p. 58.

<sup>69</sup> Phelan, *Irish Language Court Interpreting*, p. 93. Note that Evans also subsequently acted as a translator in the Lough Mask trial in December 1882. Phelan, p. 94.

<sup>70</sup> Waldron, *Maamtrasna*, p. 57.

potentially prejudicial to the accused person. It certainly gives rise to a perception of unfairness, if not actual unfairness. In any common law criminal justice system, is important that the accused and the public have confidence in the administration of criminal justice. It is impossible to have such confidence if an interpreter is a member of the police, who are not neutral parties to a case.

It is worthy of note that in Michael Casey's trial, the defendant interrupted proceedings a number of times in order to ask questions through the interpreter (also Evans in that case). Barry J suggested that Evans could 'communicate to Mr Concannon anything of importance which the prisoner said. Mr Evans is a man of sufficient intelligence to distinguish what was important.'<sup>71</sup> It was inappropriate and prejudicial to delegate to the police interpreter the task of filtering the defendant's comments and questions to the court. While there are no reports of anything similar happening in Myles Joyce's trial, it demonstrates the role played by the police interpreter and how he was viewed by the court - not necessarily as an independent and impartial conduit between the defendant and the other court actors.

Overall, the use of a police officer to provide interpretation services was potentially prejudicial to the defendant, and could be perceived as unfair in the circumstances.

### 3.e. Procedural Issues

This section examines a number of problematic procedural issues.

#### 3.e.i. Alleged Jury Packing

One means of altering the composition of a jury at a particular trial was through the use of jury challenges. Both Crown counsel and the accused's counsel were entitled to challenge an unlimited number of jurors 'for cause'.<sup>72</sup> The right to challenge was a safeguard against biased or otherwise unsuitable jurors, and was traditionally seen as a vital aspect of jury trial.<sup>73</sup> The rules were fairly complex, and the volume of case-law generated by disputes over challenges is some indication of the perceived importance of the practice in Ireland. By contrast, challenges do not appear to have been used as much in English trials. The challenge procedure was an important mechanism for determining who actually sat upon a particular jury.

As well as challenging jurors for cause, the Crown enjoyed an additional right known as the 'stand-by' or 'stand-aside' power. This allowed the Crown to exclude certain jurors without

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<sup>71</sup> *Freeman's Journal*, 21 November 1882.

<sup>72</sup> See R. Browne Blake, "'A Delusion, A Mockery, and A Snare': Array Challenges and Jury Selection in England and Ireland, 1800-1850' (2004) 39(1) *Canadian Journal of History* 2-26.

<sup>73</sup> See John McEldowney, 'Stand By for the Crown: An Historical Analysis' (1979) *Criminal Law Review* 272-83, p. 273



showing cause. In theory, the men who were asked to stand aside were being asked to do so temporarily, or until the jury list was called over for a second time. In reality, however, the list was almost never called over twice, and the men who were put aside did not make it onto the jury.<sup>74</sup> This unlimited power was controversial, and frequently gave rise to claims of jury packing, despite official guidance from the Attorney General.<sup>75</sup> 'Jury-packing' here refers specifically to the over-use of the stand-aside procedure so as to affect the composition of the jury and secure a conviction.<sup>76</sup>

The stand-aside procedure was more likely to be abused at special commissions than at ordinary assizes.<sup>77</sup> Cases which were politically-tinged gave rise to considerable scrutiny of jury composition, and there was a concentration of claims of jury packing during the Land War years of 1879-82. During 1882, in particular, there were frequent instances of over-use of the stand-aside procedure.

Tim Harrington commented that the juries in the Maamtrasna trials 'were packed after the manner of all political and agrarian trials in Ireland.'<sup>78</sup> At the start of the Special Commission, two special jury panels, consisting of two hundred names, were called over by the Deputy Clerk of the Peace, though only 117 men answered.<sup>79</sup> At the trial of Myles Joyce, the Crown ordered twenty-seven men to stand by.<sup>80</sup> Those who had served on the two previous trials were ordered to stand by.<sup>81</sup>

Twenty-seven was a high number of jurors to order to stand-by. There are few cases recorded where the number was higher.<sup>82</sup> In the course of reading reports of hundreds of nineteenth-century jury trials, I have only encountered half a dozen where the number of jurors asked to stand-by was higher than this, and these include Patrick Joyce's trial and the trials of the Phoenix Park murderers in 1883.<sup>83</sup>

<sup>74</sup> See Howlin, *Juries in Ireland*, ch 10.

<sup>75</sup> *Rule for Guidance of Crown Solicitors in Ireland in Relation to the Impanelling of Jurors*, HC 1894 (33) lxxii, 29.

<sup>76</sup> There were a number of publications in the 1880s focusing on jury packing, including E.P.S. Counsel, *Jury Packing in Ireland* (Dublin, 1887) and Daniel Crilly, *Jury Packing in Ireland* (Dublin, 1887).

<sup>77</sup> E.g. *Reports of Proceedings at the Special Commissions (1867) for the County and City of Cork and the County and City of Limerick* (Dublin, 1871).

<sup>78</sup> Harrington, *The Maamtrasna massacre*, p. iv.

<sup>79</sup> Waldron, *Maamtrasna*, p. 62.

<sup>80</sup> *Dublin October Commission*, pp. 152-154.

<sup>81</sup> *Dublin October Commission*, p. 152.

<sup>82</sup> At Patrick Joyce's trial there were 37 jurors ordered to stand by, which was an exceptionally high number.

<sup>83</sup> See *R v Fagan*, reported in the *Leeds Mercury*, 26 April 1883; see also *Hansard*, 3rd series, vol. cclviii, col. 1134-5 (26 April 1883). See also *R v Kelly*, reported in the *Freeman's Journal*, 8 December 1871.

It was subsequently claimed that all of those challenged were marked 'C' on Peter O'Brien's brief,<sup>84</sup> and that this stood for 'Catholic', although he refuted this and said the 'C' simply stood for 'challenge'<sup>85</sup>:

'During the trial of Myles Joyce, my brief in the case was abstracted from my brief-bag, and was missing for three years. To the brief were attached some names from the jury panel, and in the marginal note was the letter C, which indicated that the Crown would exercise its prerogative to challenge. In 1885, during the debate in the House known as the Maamtrasna debate, my brief, the letter C on which was represented as meaning Catholic, was produced by one of the nationalist members of parliament, in order to support the statement that I had endeavoured to prevent Catholics from serving on juries.'<sup>86</sup>

According to Waldron, however, all of the names thus marked were Catholics.<sup>87</sup> This seems to be a much more likely explanation. There are reports of other nineteenth-century cases where a shorthand such as 'P' for Protestant or 'RC' or 'C' for Catholic was used.<sup>88</sup> Furthermore, the jurors marked 'C' were not 'challenged' in a legal sense - they were asked to 'stand by'. Although the practical consequences of this were the same, procedurally and legally it was quite different, and Peter O'Brien would have been aware of such distinctions. A challenge had to be for cause, for example, whereas a 'stand-by' did not. It is therefore unlikely that he would have marked with a 'C' those men who were to be asked to stand by. In the 1880s O'Brien earned for himself the nickname 'Peter the Packer'<sup>89</sup> as a result of his propensity to over-use the stand-aside procedure and exclude Catholics or nationalists from juries.

Based on the available information, it seems likely that the juries in the Maamtrasna cases were packed in an attempt secure a conviction. There was an over-use or abuse of the stand-

<sup>84</sup> Other jurors were marked as 'sturdy', which probably signified that they were considered likely to convict, or unlikely to be intimidated by a secret society. *Hansard*, 3rd series, vol 293 col 178-9 (24 October 1884).

<sup>85</sup> *Hansard*, 3rd series, vol 293 col 131 (23 October 1884).

<sup>86</sup> Georgina O'Brien, *The Reminiscences of the Right Hon. Lord O'Brien (of Kilfenora), Lord Chief Justice of Ireland* (London, New York, 1916), pp 49-50.

<sup>87</sup> It should be pointed out that not all of the Catholic potential jurors were asked to stand by - It seems that between two and five of the sworn jurors were in fact Catholics (the uncertainty is because of conflicting accounts, and as there is no official record or note of the jurors' religious persuasion, it is impossible to state with accuracy the number of Catholic jurors. The fact remains, however, that all of those who were asked to stand by were Catholics, which evidences a desire to pack the jury.

<sup>88</sup> E.g. A. Brewster, *A Report of Seven Trials at the Clonmel Summer Assizes of 1829, Including Those Which Arose Out of the Occurrences at Borrisokane, on the 26<sup>th</sup> and 28<sup>th</sup> of July, 1829* (Dublin, 1830). In this set of reports, 'P' and 'RC' were used to denote the religion of jurors on the panel.

<sup>89</sup> See generally N. McAree, *Murderous Justice: A Study in Depth of the Infamous Connemara Murders* (Limerick, 1990).



by power which was inconsistent with standard practice in nineteenth-century trials. This adversely affected the fairness of Myles Joyce's trial.

### 3.f.ii. Use of challenges by the prisoner

A person accused of a capital felony, such as murder, could challenge an unlimited number of jurors 'for cause.' In addition, he could challenge up to twenty jurors 'peremptorily', without showing cause. It has previously been claimed that Myles may not have known of his right to challenge jurors. However, it is clear from the trial transcript that Myles's legal team was fully aware of and exercised this right. Usually it was the lawyers who dealt with jury challenges, and it was not necessary that the defendant was directly involved with this. However, the poor communication between Myles and his legal team could potentially have meant that the jury challenges were not exercised in a manner of his choosing. This, however, is not a very strong argument.

Myles Joyce's counsel challenged sixteen potential jurors without cause. They unsuccessfully challenged one juror for cause.<sup>90</sup> When challenging the juror for cause (a Mr. Andrew Fitzpatrick from Nassau St), his counsel sought leave to cross-examine the potential juror on a *voir dire*, in order to establish the cause for the challenge. Partly for reasons of expediency and efficiency, Barry J. was unwilling to allow each potential juror to be cross-examined as to his views regarding the case.<sup>91</sup> He pointed out that it was unreasonable to expect that potential jurors, who may have read some of the press coverage, would not have formed some view or opinion on the case. However, in the opinion of Barry J, the jurors ought to be able to put aside such opinions and decide the case solely on the basis of the evidence adduced.<sup>92</sup>

Instead of questioning the potential juror, counsel submitted a formal challenge on the basis that the juror did not 'stand indifferent between our said Lady the Queen and the prisoner.' This was a standard form of challenge. Two jurors were chosen at random to try the challenge. (The usual procedure was that the two immediately preceding jurors should try such a challenge, but in this case there had not yet been a juror sworn). On being questioned, the potential juror, Andrew Fitzpatrick, admitted to having been present in court during the previous trials, but said he had abstained from reading newspaper accounts during the trials, and had not formed an opinion as to the guilt or innocence of Myles. Barry J directed the triers to find against the challenge, and he was sworn in as the foreman of the jury. Arguably, this challenge ought to have been allowed on the basis of the juror's potential bias. It certainly would have provided the appearance of fairness and transparency. However, there was

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<sup>90</sup> Harrington, *The Maamtrasna Massacre*, pp 32-3.

<sup>91</sup> *Dublin October Commission*, p. 152.

<sup>92</sup> *Dublin October Commission*, p. 152.

nothing to show actual bias on the part of the juror. The failure of this challenge did not significantly impact the fairness of the trial overall.

### 3.e.iii. Application for a 'view jury'.

Counsel for Myles Joyce sought a 'view jury' but this was refused. This was a procedure which allowed members of a trial jury to visit the locality of an alleged crime, in order to better understand the facts of the case. Barry J claimed that he had no jurisdiction to grant such an order. However, it was not unheard of for a prosecutor or defendant in a criminal case to request a view of the locality where an alleged crime was committed.<sup>93</sup> The Juries Act (Ireland) 1871<sup>94</sup> stated that the court in a criminal trial could, at any time after the jurors were sworn and before they gave their verdict, order that they have a view. However, the judge had no power to order a sheriff to bring jurors out of their own county for the purpose of a view.<sup>95</sup> Occasionally judges granted a change of venue in order to facilitate a view,<sup>96</sup> but Barry J was unwilling to do so in this case. The venue had already been changed from Galway to Dublin under the 1882 Act and so they could not undertake a view as this would have taken them out of their own county in violation of the Act.

Instead of viewing the location of the alleged crime, the jurors in the Maamtrasna cases had to rely on the descriptions described by witnesses and counsel, and the maps produced by the engineer. Commenting on the refusal to grant a view, one Dublin newspaper remarked:

'The peculiarity of the mountain route, the contour, so to speak, of a wild and rugged district, and the relative situation of different and widely removed places and cabins, were all important factors in its elucidation, and as they had not an opportunity of viewing the scene of the massacre, they were dependent entirely upon the description of counsel, and the sketches of the engineer.'<sup>97</sup>

The use of maps, models and other visual aids increasingly replaced the view procedure in the late nineteenth century,<sup>98</sup> so it was not out of line with current practice for Barry J to refuse the view.

That being said, the jurors would, in all likelihood, have had a greater understanding of the evidence presented had the view been granted. The inconsistencies and improbabilities in the witness testimony (discussed in the following sections) were not easy to discern without

<sup>93</sup> E.g. *R v McNamara* (1878) 4 L.R. Ir. 185 and the English case *R v Martin and Webb* (1872) L.R. 1 C.C.R. 378.

<sup>94</sup> 34 & 35 Vic., c. 65, s. 11.

<sup>95</sup> See the English cases of *Stoke v Robinson* (1889) 6 TLR 31 and *Malins v Lord Dunraven* (1845) 9 Jur. 690.

<sup>96</sup> E.g. *Loughnan v. Dempsey* (1860) 6 Ir. Jur. (n.s.) 86 (Dublin to Belfast); *Atkinson v Mills* (1863) 8 Ir. Jur. (n.s.) 153 (Dublin to Kildare).

<sup>97</sup> *Dublin Daily Express*, 16 November 1882.

<sup>98</sup> E.g. Anon., *Trial of James Spollen for the Murder of Mr George Samuel Little at the Broadstone Terminus of the Midland Great Western Railway, Ireland, Aug. 7th, 8th, 10th & 11th, 1857* (Dublin, 1857), p. 1 and *Delany v United Dublin Tramways Co.* (1891) 30 LR Ir 725.



familiarity with the terrain and a better special understanding of the area. Even though the decision not to grant a view was lawful, granting it would have enhanced juror comprehension and therefore the overall fairness of the trial.

### 3.f. The Evidence

Myles Joyce was convicted of the murder of Margaret Joyce, on the basis of witness evidence. As will be seen, there were problems with the reliability of this evidence. Furthermore, relevant evidence appears to have been excluded. Myles Joyce did not testify at his own trial - this was not possible until the Criminal Justice (Evidence) Act 1924. Similarly, his wife was prohibited from testifying in his defence, so was unable to provide an alibi for the night of the murders. The fact that he called very few defence witnesses was also typical of nineteenth-century criminal trials.<sup>99</sup>

#### 3.f.i. Depositions were not shared with the defence.

Under the Prisoner's Counsel Act 1836,<sup>100</sup> all persons released on bail 'or committed to prison for any offences against the law' were

'entitled to require and have, on demand, (from the person who shall have lawful custody thereof, and who is hereby required to deliver the same), copies of the examinations of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison'.

It also provided that 'all persons under trial' were 'entitled, at the time of their trial to inspect without fee or reward, all depositions which have been taken against them, and returned into the court before such trial shall be had.'<sup>101</sup> The right to have the depositions was important that an accused person could be fully prepared for trial. It was also important for cross-examination.<sup>102</sup>

At the first trial, the defence team had not been supplied with copies of the depositions by the approvers,<sup>103</sup> and sought a postponement on this basis. The application was refused.

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<sup>99</sup> Vaughan, *Murder Trials*, p. 241.

<sup>100</sup> 6 & 7 Will. IV, c. 114, s. 2.

<sup>101</sup> 6 & 7 Will. IV, c. 114, s. 3.

<sup>102</sup> Criminal Procedure Act 1865 (28 & 29 Vic., c. 18), s. 5.

<sup>103</sup> These were the accused persons who had turned Queen's evidence and would now testify for the prosecution - see further below.

Although this application did not relate specifically to Myles Joyce's trial, it impacted upon all three of the Maamtrasna trials, as these witnesses testified in each of the three trials. Arguably this adjournment ought to have been allowed in order to allow the defence team to access the depositions and adequately prepare for trial. The many inconsistencies in the approvers' evidence may have been picked up on, making their cross-examination more effective.

The defence team were not provided with the deposition taken by Resident Magistrate E Newton Brady from Patsy Joyce (see the next section). This would have been crucial in challenging the prosecution's case and the testimony of the approvers and informants. It should be pointed out that in the case of this deposition, and that of Michael Joyce, the defence team did not request them, and on a strict interpretation of the 1836 Act they would not have been automatically entitled to them. These were not depositions 'against' Myles Joyce; nor were they the basis on which Myles was held to bail or committed to prison.<sup>104</sup>

It appears that the statements by the Joyce brothers were in the public domain before the trials, and Myles Joyce's defence team probably ought to have requested them.

### 3.f.ii. Patsy Joyce did not testify

On Saturday 19 August, RM Newton Brady visited the Joyce house and took depositions from both Michael Joyce and Patsy Joyce before Michael died. Patsy had been badly beaten and Michael had received a bullet wound below the ear. It was clear that the latter was very seriously injured. The boys both stated that the intruders had had blackened faces. Patsy Joyce, who was the sole survivor of the attack, did not testify at the trial of Myles Joyce.

In the 1880s, there was no definite age-limit for child witnesses to testify under oath.<sup>105</sup> Pitt pointed out in 1872 that '[i]n practice, it is not unusual to receive the testimony of children of eight or nine years of age', and gave examples of children even younger than this testifying.<sup>106</sup> Similarly, Smith wrote in 1874 that 'of late years no particular age is required in

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<sup>104</sup> The Solicitor-General for Ireland (Samuel Walker) stated in the subsequent House of Commons debates that: 'It was suggested that these depositions were kept back; but the fact was that they were published in the public Press and in The Freeman's Journal long before the trials, and the information was thus scattered far and wide.' *Hansard*, 3rd series, vol 293 col 177 (24 October 1884). However, I have found no mention of the depositions in the *Freeman's Journal* in the months between the murders and the trials.

<sup>105</sup> Pitt, *Treatise on Evidence*, vol. ii, p. 1194.

<sup>106</sup> Pitt, *Treatise on Evidence*, vol. ii, p. 1195. In 1779 it was said that a child of seven years could be sworn: *R v Brasier* (1779) 1 Leach 199: 168 ER 202. In *R v Holmes* (1861) 2 F & F 788; 175 ER 1286 a child of six years testified.



practice to render the evidence of a child admissible.<sup>107</sup> It was at the trial judge's discretion as to whether or not a child was to be deemed competent to testify.<sup>108</sup> The deciding factor was usually whether the child understood the nature of an oath,<sup>109</sup> and was capable of distinguishing between good and evil.<sup>110</sup> Smith explains that 'the admissibility of children depends not merely on their possessing a competent degree of understanding, but also in part upon their having received a certain share of religious instruction.'<sup>111</sup>

Patsy took the stand at the trial of Patrick Joyce, and was questioned as to his understanding of the nature of an oath; about whether he said his prayers and about whether he knew right from wrong. He answered in the negative to all of these questions, and was therefore deemed unfit to testify, under the principles outlined above.

In *R v Williams*,<sup>112</sup> an eight-year-old girl was not allowed to testify because the judge was of the view that her religious instruction had been too recent, having taken place after the deceased's death. However, Pitt Taylor observed [2nd edition] that it was irrelevant when she had received the instruction, so long as she understood the nature of the oath at the time of the trial. In the 1841 Irish case of *R v Milton*,<sup>113</sup> Doherty CJ held that an infant could testify at a murder trial even if her religious instruction had been received after the murder, and for the sole purpose of rendering her a competent witness. He also noted that 'there are instances where trials have been put off for the very purpose of having infant witnesses instructed in the nature of an oath.'

Patsy Joyce could have been given religious instruction to allow him to understand the nature of the oath. His age was no automatic barrier to testifying, and therefore he could have been rendered a competent witness. This ought to have been done in the interests of fairness. Furthermore, he ought to have been examined at an earlier stage, before the Grand Jury hearing, so that his understanding could be assessed.<sup>114</sup> If he was found to be incompetent, the trial could have been postponed, in accordance with the usual practice, to allow time for religious instruction.<sup>115</sup>

<sup>107</sup> Horace Smith, *Roscoe's Digest of the Law of Evidence in Criminal Cases* (8th ed, London, 1874), p. 113.

<sup>108</sup> Pitt, *Treatise on Evidence*, vol. II, p. 1195.

<sup>109</sup> *R v Brasier* (1779) 1 Leach 199: 168 ER 202. The child in *R v Perkins* (1840) 2 Mood. 135: 169 ER 54 clearly articulated that he understood the moral consequences of lying. The child in *R v Holmes* (1861) 2 F & F 788: 175 ER 1286 was questioned as to her understanding of the consequences of lying.

<sup>110</sup> Smith, *Roscoe's Digest*, p. 113.

<sup>111</sup> Smith, *Roscoe's Digest*, p. 113.

<sup>112</sup> (1836) 7 C & P 320: 173 ER 142.

<sup>113</sup> (1841) Ir Cir Rep 16.

<sup>114</sup> Smith *Roscoe's Digest*, p. 114.

<sup>115</sup> Smith *Roscoe's Digest*, p. 114.

It was unusual that Patsy was called by the Crown, as his evidence would have cast doubt on the narrative being presented by the prosecution. It appears that the Crown had little interest in having Patsy testify, because his statement would be inconsistent with those of other witnesses. This is probably why the Crown failed to explore the possibility of providing religious instruction so as to render him competent.

The exclusion of Patsy Joyce's evidence undoubtedly impacted upon the fairness of the trial.

### **3.f.iii. Exclusion of Michael Joyce's dying declaration.**

As noted above, Michael Joyce made a statement to RM Newton Smith about the physical appearance of the attackers. This statement was not admitted at trial. Michael described the attackers as wearing light-coloured flannel jackets, and having blackened faces. This is in direct contradiction of the evidence of the two informants, who said that the perpetrators wore dark clothes, and did not mention any blackening of the faces. It seems certain that Michael Joyce's version is the true description of the assailants. Later, for example, after the executions, approver Tom Casey confirmed in a conversation with Tim Harrington that the murderers had faces blackened with polish, and wore white flannel jackets.<sup>116</sup> This information was in the possession of the Crown, in the form of a deposition.

Irish-speaking John Collins testified (through the interpreter) that he had spoken with Michael Joyce. When he was being cross-examined by defence counsel Malley, one of the jurors asked for details about this encounter. The juror said: 'May we ask him whether he said anything to him?' Usually the jury would pose this question directly to the witness during the cross-examination<sup>117</sup> (and this jury was quite active and vocal), but they had to go through the intermediary of the interpreter.

Barry J said that the statement by the dying Michael Joyce could not be admitted, as it would be unreliable: 'The fact is the boy was unconscious. He could not tell what he was saying. It could not be relied upon at all.'<sup>118</sup> It does not appear from the facts that Michael was in fact unconscious when he gave his deposition to the Resident Magistrate. Clearly the boy was not unconscious if he was having a conversation. It seems that Barry J was trying to imply that Michael may not have been of sound mind when making the statement, and may have been delirious.

Malley stated that he had no objection to the question being posed, but Collins was not asked about this. There is nothing in the transcript to indicate why, and no mention of a discussion

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<sup>116</sup> Harrington, *The Maamtrasna Massacre*, p. 24.

<sup>117</sup> See Howlin, 'Passive Observers'.

<sup>118</sup> *Dublin October Commission*, p. 189.



of evidentiary principles. It simply notes that the next witness was sworn. The next witness was Dr Hegarty, who had treated Michael before his death. He was asked to describe not only Michael's wounds but also 'the condition of his mind.' He noted in the course of his evidence that 'although he had lucid intervals when he was responsible - he was wandering.'<sup>119</sup>

In the late nineteenth century, 'dying declarations' were recognized as an exception to the general rule against hearsay. However, by the late nineteenth century their admission was limited to cases of homicide, and only when the death of the person making the declaration was the subject of the charge.<sup>120</sup> Myles Joyce was only charged with the murder of Margaret Joyce, and not with any of the other members of the Joyce family. Therefore the dying declaration by Michael would not have been admissible in his case.

Even if Myles had been charged in relation to Michael Joyce's death, Michael's declaration would have to have been made in full apprehension of the danger of death.<sup>121</sup> He would also have to have been of sound mind for the declaration to be admissible. This seems to have been the basis for Barry J's statement that Michael 'could not tell what he was saying', and the reason for Dr Hegarty's testimony as to Michael's state of mind.

There was nothing unlawful about the exclusion of evidence as to Michael's deposition or dying declaration, although in practical terms it was detrimental to the defence case.

### 3.f.iv. Problems with the informants' evidence.

This and the next section examine the witness testimony of two categories of witness: the informants (also referred to as the 'unimpeachable witnesses' or 'independant witnesses' in some reports), and the approvers (the co-accused men who 'turned Queen's evidence' to testify for the crown). The evidence on which Myles Joyce was convicted was essentially that he had been part of the group of men who visited the Joyce family home, and was seen entering the house, whereupon screams were heard.<sup>122</sup>

Anthony, Paddy and John Joyce, the informants, named Myles Joyce, among others, as the perpetrators of the murder. Anthony and John were brothers, and Paddy was John's son. They swore depositions to this effect on Saturday 19 August. Anthony Joyce, one of the accusers,

<sup>119</sup> *Dublin October Commission*, p. 190.

<sup>120</sup> John Pitt Taylor, *A Treatise on the Law of Evidence, as administered in England and Ireland: With Illustrations from the American and Other Foreign Laws* 2 vols (6th ed, London, 1872), vol i, p. 640. Also *R v Gray* (1841) 1r Cir Rep 76.

<sup>121</sup> Taylor, *Treatise on Evidence*, p. 642. *R v Perkins* (1840) 2 Mood. 135: 169 ER 54.

<sup>122</sup> Waldron, *Maamtrasna*, p. 110.

was in a long-standing feud with Myles.<sup>123</sup> This had gone on for many years, and Myles had recently served one month's imprisonment in Galway for assaulting Anthony. Anthony was also feuding with Pat Joyce, Myles's brother, who was one of the men imprisoned for his alleged part in the Maamtrasna murders.<sup>124</sup>

It was most unusual for informants to willingly present themselves to the police, and elements of their story seem improbable and implausible. They claimed to have followed a group of men, in the middle of the night, around the countryside to the home of Michael Casey and eventually to the home of the Joyces. They said that they saw ten men at the Joyce house, and that a number of them had gone into the house, whereupon screaming was heard and the three informants fled the scene. There were numerous discrepancies between the witnesses' accounts of what happened on the Friday night.<sup>125</sup> They were also quite vague and unspecific as to many of the details; for example, Harrington summarizes these as follows:

'Neither of them would say what hour at night they turned out; which of the men passed them first or last at the alleged point of recognition; what description of clothes any particular man wore; what man entered the house of the murder and what man did not; how many shots were fired; what description of arms the accused carried, nor any word they heard them speak to one another.'<sup>126</sup>

The reliability of these witnesses' testimony is doubtful. It was dark night with very little moonlight, and the track itself was a difficult one to navigate.<sup>127</sup> Their story seems implausible. Their description of the route taken by the accused men also suggests that some of the men took an extremely circuitous route to the scene of the murder, which also seems unlikely given the hour and the darkness.

After Tim Harrington visited the scene of the murders, he wrote: 'The view which all three Joyces say they got of the men entering Michael Casey's house at this point is simply impossible.'<sup>128</sup> It is also unlikely that from their vantage point the two men could positively have identified Myles Joyce entering the darkened house.

It is also noteworthy that these witnesses claimed to have witnessed the murders on Friday night, but did not report them immediately, but waited until someone else had discovered

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<sup>123</sup> Waldron, *Maamtrasna*, p. 41.

<sup>124</sup> Harrington, *The Maamtrasna Massacre*, p. 7.

<sup>125</sup> Waldron, *Maamtrasna*, refers to a memorandum on the various discrepancies in the State Paper Office.

<sup>126</sup> Harrington, *The Maamtrasna Massacre*, p. 13.

<sup>127</sup> Harrington, *The Maamtrasna Massacre*, p. 10.

<sup>128</sup> Harrington, *The Maamtrasna Massacre*, p. 10.



the bodies on Saturday. This was despite the fact that there was a police station quite close to the scene of the murder. As Harrington notes,

‘The car road to the Finney police-station was the easiest, the shortest, and the safest mode of retreat open to those men who allege they were frightened, but yet they never sought the police.’<sup>129</sup>

This suggests a) that they did not in fact witness the attack, and first heard of it after someone else had discovered the bodies, or b) that even if they witnessed the attack, they spent some time constructing a narrative around it. In fact, Anthony admitted during the second trial that they had discussed the murders before reporting them to the police. Harrington is of the view that ‘their evidence was from beginning to end pure fabrication.’<sup>130</sup>

At the trial of Patrick Joyce, the jury was warned that the informant’s evidence needed to be corroborated, and they were told that one informant’s testimony would suffice to corroborate the others.<sup>131</sup> It is likely that this was also explained to the jury in Myles’s case.

Overall, the evidence from these three witnesses seems unreliable and insufficiently corroborated. The previous acrimony between Anthony Joyce and Myles Joyce also tainted Anthony’s evidence. Either his testimony ought to have been excluded, or the jury ought to have been made aware of the enmity which existed between them. The admission of this evidence adversely impacted on the fairness of Myles Joyce’s trial.

### 3.d.v. Problems with the approvers’ evidence

After the arraignment on 1 November, two of the accused persons ‘turned approver’. Although the evidence of the three informants (discussed above) was considered to be legally untainted, the evidence of the two ‘approvers’ was considered legally tainted.

Anthony Philbin and Tom Casey were now to act as prosecution witnesses. They named the three men who had supposedly carried out the murders - Myles Joyce, Patrick Casey and Patrick Joyce. There is evidence to suggest that Casey was told which men he was to name, in order that his testimony would tally with Philbin’s.

In fact, after the execution of Myles and the two others, Tom Casey stated that he had been taken from his cell in Kilmainham on 6 November and left outside in the yard with Philbin for

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<sup>129</sup> Harrington, *The Maamtrasna Massacre*, p. 12.

<sup>130</sup> Harrington, *The Maamtrasna Massacre*, p. 13.

<sup>131</sup> Waldron, *Maamtrasna*, p. 85.

around an hour, so that they might compare stories.<sup>132</sup> The following day, Philbin turned approver, and a couple of days later Tom Casey wrote to Bolton, the Crown Solicitor, and was brought to see him that day.<sup>133</sup> Casey claimed that Bolton read out Philbin's statement to him, and would not accept Casey's statement as it was inconsistent with those of Philbin and the three other witnesses.. It was not until the day of the first trial (that of Pat Joyce) that Casey decided to corroborate Philbin's story. When they arrived at the courthouse, he was taken to a room with Bolton, who told him he had twenty minutes in which to make a statement. He claimed that he was told which three men to name as having entered the Joyce's house.<sup>134</sup> Harrington, who interviewed Casey at length, considered his story both credible and probable.<sup>135</sup> It was also corroborated by Philbin and by the two executed men, Patrick Casey and Patrick Joyce.

The defence team knew that Philbin had turned approver but they did not find out about Casey until Pat Joyce's trial was already underway. The defence then sought a postponement on the basis of this surprise, but this was refused. They served notice on the Crown seeking to know the contents of Philbin's statement, but this was also refused. It was unusual for the defence to be left unaware of the content of a prosecution witness's statement.<sup>136</sup> At the start of Myles Joyce's trial, both Malley and Stritch highlighted the last-minute nature of the approvers' evidence.<sup>137</sup>

There were inconsistencies between the approvers' evidence, regarding such details as what the accused men were wearing on the night of the murder.<sup>138</sup> They also contradicted one another as to how they had approached the Joyce house. As with the informants, the accuracy of the approvers' evidence should also be considered in light of the darkness of the night. When testifying at Pat Joyce's trial, Tom Casey changed his story and named two additional suspects (making the party which had allegedly talked to the scene of the murder a total of twelve). This inconsistency is problematic - the other approver, Philbin, did not mention the two additional names.

Another problem with the approvers' evidence was that it was given in Irish and translated by the interpreter. The general consensus on this is that interpretation was provided despite it being suspected their level of knowledge of English was more than adequate. Phelan notes that

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<sup>132</sup> Harrington, *The Maamtrasna Massacre*, p. 28.

<sup>133</sup> Harrington, *The Maamtrasna Massacre*, p. 29.

<sup>134</sup> Harrington, *The Maamtrasna Massacre*, p. 30.

<sup>135</sup> Harrington, *The Maamtrasna Massacre*, p. 33.

<sup>136</sup> Waldron, *Maamtrasna*, p. 61.

<sup>137</sup> *Dublin October Commission*, p. 151.

<sup>138</sup> Waldron, *Maamtrasna*, pp. 111-112.



'[t]he consequent drawn out nature of their direct evidence and cross-examination allowed the three men plenty of time to think about their answers and made it extremely difficult for Malley to discommode them in any way by changing the rhythm of the questioning.'<sup>139</sup>

When charging the jury in Myles's case, Barry J warned them that they could not have convicted on the uncorroborated evidence of one of the approvers. He noted the rule that jurors were to be warned not to convict on the evidence of approvers or accomplices unless corroborated 'in material particulars'.<sup>140</sup> However, if the jury were of the view that the evidence of the approvers was corroborated in material particulars by independent testimony, then they could 'attach full weight and effect' to the approvers' testimony. So, for example, Anthony Joyce's statement that he saw Myles as part of the group of men could corroborate the approvers' evidence that Myles was one of the party.

It appears that the evidence of the approvers was not entirely corroborated by that of the informants. There were inconsistencies as between the evidence of the approvers and the evidence of the informants. These mainly related to the positions the various men claimed to have taken outside the Joyce home, and their running away after shots were fired.<sup>141</sup> Anthony Philbin also added two additional names to the list of those present at the scene of the murder (Pat Kelly and Michael Nee). Neither of these men had been mentioned by the three informants.

In 1884 Thomas Casey, one of the approvers, publicly declared that he had committed both murder and perjury, and that he had caused the death of an innocent man - Myles Joyce.<sup>142</sup> He did this in Tourmakeady Church in the presence of the Archbishop of Tuam, Dr John McEvilly. Anthony Philbin, the second approver, confessed to the truth of these revelations. These revelations led to lengthy parliamentary discussions and demands for an official inquiry.

It is clear from this and the foregoing section that the evidence on which Myles Joyce was convicted was unreliable. The witness testimony was vague, contradictory, inconsistent, almost certainly fabricated in parts, and in some instances, suspect.

### 3.g. Legal representation

<sup>139</sup> Phelan, *Irish Language Court Interpreting*, citing Myles Dungan, *Conspiracy: Irish Political Trials* (Dublin, 2009), p. 142.

<sup>140</sup> *Dublin October Commission*, p. 205.

<sup>141</sup> Harrington, *The Maamtrasna Massacre*, pp. 18-19.

<sup>142</sup> Harrington, *The Maamtrasna Massacre*, p. vii.

Myles Joyce was represented in court by a solicitor, a junior counsel and a senior counsel. The solicitor was Henry Concannon, from Tuam, the junior counsel was John R Stritch and the senior counsel was George Orme Malley.

By the standards of the day, this was, on the face of it, adequate representation. Vaughan notes that prisoners generally only had one counsel, usually a junior.<sup>143</sup> Judges could assign defence counsel to those accused persons who were unable to afford the legal fees.<sup>144</sup>

There were certainly problematic aspects with the way the legal team conducted the defence. The language barrier was a major problem. There were a number of failed applications which might have been granted had they been more forcefully argued – for example, the application for postponement on the basis of press coverage of the trials. The legal team did not appear to appreciate the significance of Patsy and Michael Joyce's statements to the Resident Magistrate. They did not push to have Patsy Joyce instructed as to the nature of an oath, to render him a competent witness. Indeed, they did not call Patsy as a defence witness at all.

Whilst it is easy, at this remove, to identify weaknesses in the defence case and strategy, the fact that the case could have been handled differently (or better) does not mean that Myles Joyce lacked adequate legal representation.

#### 4. Sentence and Execution

There was a mandatory death sentence in cases of murder, and so Myles, Patrick Joyce and Patrick Casey were all duly sentenced to death by hanging by Barry J.

Before the execution of Myles and the other convicted men, Patrick Joyce and Patrick Casey admitted that they had been present at the scene of the murders, and that Myles had not been there.<sup>145</sup> Their statements do not appear to have been sworn, but were made and signed in the presence of the Governor of Galway Gaol on 13 December. They were forwarded with a letter to Dublin Castle for the attention of John Spencer, the Lord Lieutenant, as a petition for clemency. This was common practice in capital cases.<sup>146</sup> The Lord Lieutenant possessed the prerogative of mercy, and could order the commutation of the death sentence in a capital case such as murder.

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<sup>143</sup> Vaughan, *Murder Trials*, p. 213.

<sup>144</sup> *Report on the State of Ireland in Respect of Crime*, HC 1839 (486) xi, xii 1, p. 878. See also the Prevention of Crime (Ireland) Act 1882 (45 & 46 Vic., c. 25), s. 1. A senior and a junior counsel were assigned for Joseph Brady at the Phoenix Park Murder trials in 1883.

<sup>145</sup> Harrington, *The Maamtrasna Massacre*, p. v.

<sup>146</sup> See Vaughan, *Murder Trials*, ch. 10.



Spencer received the letter or knew of its contents on the morning of 14 December. The hanging was scheduled for the following day. He wrote to the Governor of Galway prison late on the 14 December that he had considered the statements, but that the law must take its course. Vaughan notes that in the period from 1831 to 1920 'the lord lieutenant commuted the sentences of more than half of those sentenced to death.'<sup>147</sup> Declining to extend mercy to Myles Joyce in this case was therefore unusual. This is particularly so considering the statements made by Patrick Joyce and Patrick Casey regarding Myles's innocence.<sup>148</sup>

The other defendants who had pleaded guilty (Michael Casey, Martin Joyce, Patrick Joyce, Tom Joyce and John Casey) were sentenced to death but had this commuted to life imprisonment in the days before.<sup>149</sup>

The three prisoners were executed on the morning of 15 December 1882. Myles protested his innocence right up until the moment of death, and it was noted that the vehemence of his protestations caused the hangman's rope to change position, resulting in a prolonged and painful death.<sup>150</sup>

## 5. Conclusions

There are two understandings of the term 'wrongful conviction.' The first, which may be termed a lay interpretation, is the conviction of a factually innocent person. The legal interpretation focuses more on the procedures and processes which were used to secure a conviction - in other words, whether the investigation and prosecution of the alleged offence conformed to legal norms such as the rules of evidence.

In the case of Myles Joyce, it is possible to point to both the legal and the lay interpretations and conclude that he was wrongfully convicted.

First, the question of factual innocence. Based on the post-trial statements of the witnesses and other convicted men, it seems possible to say (with as much certainty as the lapse of over 130 years allows), that Myles Joyce was innocent of the murder of Margaret Joyce. The other two men convicted alongside him swore that he was innocent, and the approvers who had given evidence against him retracted their statements following his death.

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<sup>147</sup> Vaughan, *Murder Trials*, p. 307.

<sup>148</sup> It should be pointed out, however, that most successful petitions to mercy were accompanied by a recommendation to mercy by a jury, and/or support from a trial judge, neither of which were present in this case.

<sup>149</sup> Waldron, *Maamtrasna*, p. 146.

<sup>150</sup> Waldron, *Maamtrasna*, pp. 150-1.

Secondly, the research conducted for this report points to a number of deficiencies in the investigation and the conduct of the trial. Rather than a single issue rendering the trial of Myles Joyce unfair, a combination of factors meant his trial was unfair by the standards of late nineteenth-century criminal justice.

The change of venue was lawful, as explained above. However, as Phelan points out,

‘There were many problems with the Maamtrasna ... murder trials. However, the decision to hold them at the Dublin Special Commission was crucial because it meant a move to a place where there was no salaried court interpreter. If the trials had been held in Galway, the county interpreter would have been engaged and this would have removed the element of distrust related to a police officer who was acting as interpreter.’<sup>151</sup>

The trial in Dublin essentially deprived Myles Joyce of the opportunity of having any Irish-speaking bilingual jurors, or a salaried court interpreter. The result of this was that he was unable to adequately understand and participate in his own trial.

The application for an adjournment ought to have been allowed on the basis of the nature and extent of the press reporting of the trials. As demonstrated, there was widespread reporting of the preceding trials and the verdicts delivered therein, with some reports using strong or emotive language. This may have affected the jurors’ ability to try the case impartially, and ought to have given rise to an adjournment until the public discourse had died down.

Myles was convicted on the basis of witness testimony which subsequently turned out to have been inaccurate, and possibly fabricated. There were significant inconsistencies in the testimony provided. Inadequate warnings were given to the jury regarding the testimony of certain witnesses. At least one of the witnesses had a vendetta against Myles Joyce.

Had the testimony of Patsy Joyce been admitted, it would have significantly weakened the prosecution’s case. He ought to have been allowed to testify, following religious instruction as to the nature of the oath. The failure to do this adversely affected the fairness of Myles Joyce’s trial.

As well as the unfair aspects of the trial, there were aspects of the punishment which also seem inconsistent with the typical practice of the period. It was unusual for the Lord Lieutenant not to grant a commutation of the sentence, particularly given the statements made by Patrick Joyce and Patrick Casey before the hanging.

In conclusion, the trial, conviction and execution of Myles Joyce were unfair by the standards of criminal justice at the time. The witness evidence against him was of doubtful reliability.

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<sup>151</sup> Phelan, *Irish Language Court Interpreting*, p. 95.



Procedural irregularities, in particular in relation to language and translation and the refusal to admit the testimony of Patsy Joyce, rendered the trial process unfair.