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'The Trials of Peter Barrett: A Microhistory of Dysfunction in the Irish Criminal Justice System'

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Introduction

In 1869 an assassination attempt was made on Captain Thomas Eyre Lambert, a prominent Galway landowner. Lambert was returning home from visiting his brother, Giles, who resided at neighbouring Moor Park.¹ He spotted a man lurking beneath some lime trees near the entrance to his house, Castle Lambert. He was fired at a number of times, and was eventually felled by a shot to the forehead. He staggered to the door of his house, later stating: '[w]hen I reached the hall door I knocked violently, my butler opened the door and I fell into his arms.'² He soon sent for his brother. Given a description of the assailant, Giles hastened to the Athenry constabulary station, a mile or two away, and relayed the information to acting constable John Griffith.³

Sub-constable Edward Hayden was quickly dispatched, in plain-clothes, to take the midnight train to Oranmore, ten miles away, to try to apprehend the suspect.⁴ He returned around 5 a.m. the following morning with Peter Barrett in custody. He had spotted Barrett sleeping in his train compartment, and he matched the description provided by Giles Lambert. On being asked a few questions by sub-constable Hayden, his answers were 'both evasive and contradictory',⁵ and he was arrested. Barrett appeared to match the description given by Lambert: 'I described the assassin as a man of slight figure dressed in dark clothes

¹ *The Galway Express*, 17 July 1869.

² *Copy of Information of Thomas Eyre Lambert*, 12 July 1869. National Archives of Ireland (NAI) CCS/1870/197, box 1.

³ *Copy of information of Acting Constable John Griffith*, 12 July 1869. NAI, CCS/1870/197, box 1.

⁴ *Ibid.*

⁵ *Copy of Information of Sub-Constable Edward Hayden*, 12 July 1869. NAI, CCS/1870/197, box 1.

sharp features with not much hair on his face darkish complexion'.⁶ Furthermore, Lambert said he told his brother that 'if Peter Barrett was in the country he was the man.'⁷ Lambert, as will be seen, had reason to suspect that Barrett might have had a motive for the assault.

Barrett was committed for trial at the next assize in August. On the face of it, it had the appearance of a relatively straightforward case destined for a quick resolution. However, this was not to be. What ensued was three trials, a change of venue to Dublin, allegations of jury intimidation, extensive press coverage around the United Kingdom, enormous expense and, ultimately, an acquittal.

Context

The shooting of Captain Lambert was one of 43 reported cases of firing at the person for the year 1869,⁸ sixteen of which were classified as agrarian cases. This may not seem like a high number of instances, but 43 cases represented a sharp increase compared to the previous three years, which had averaged at around 22 cases per annum, of which two were agrarian.⁹ There was also, in 1869, a significant rise in the number of homicide and other offences against the person.

What was the reason for these increasing levels of violence? In a nutshell – land. Land reform had become an increasingly pressing issue in Ireland, with Gladstone's Liberal party having been elected in November 1868 on promises to address the 'Irish question'.¹⁰ The disestablishment of the Church of Ireland was firmly on the agenda and landlord-tenant relations were increasingly strained in the late 1860s. Fenianism had been on the rise since a failed uprising of March 1867, and one of Gladstone's first acts in March 1869 was to free almost fifty Fenian convicts.¹¹ The scale of the amnesty was disappointing to many of Gladstone's Irish supporters, and the Amnesty Association, headed by barrister Isaac Butt

⁶ *Copy of Information of Thomas Eyre Lambert*, 12 July 1869. NAI CCS/1870/197, box 1.

⁷ *Ibid.*

⁸ *Return of Outrages Reported to Constabulary Office in Ireland, 1869*, C. 60, lvii 353, 16

⁹ *Ibid.* 24-27.

¹⁰ See RV Comerford, 'Gladstone's First Irish Enterprise, 1864-70' in WE Vaughan (ed), *A New History of Ireland: V: Ireland Under the Union 1801-70* (Oxford University Press, 2010), 431-451.

¹¹ *Ibid.*, 445.

(of whom more later), began to campaign with public meetings in the autumn of 1869.¹² The issues of amnesty and tenant rights went hand-in-hand. As Comerford puts it, '[t]he Irish tenants and their friends expected land legislation from Gladstone as firmly as they expected disestablishment. Many of them did not wait for the legislation ... The result was a wave of agrarian unrest.'¹³

Once disestablishment had been successfully legislated for,¹⁴ attention focused squarely on the land question in the summer of 1869. In November 1869 the Chief Secretary, Chichester Fortescue proposed that the 'Ulster custom' of security of tenure¹⁵ be protected by law. Gladstone's Land Bill was laid before the House of Commons in February 1870,¹⁶ and was passed into law in August 1870.¹⁷ The Act legalized the Ulster custom, and afforded greater security of tenure to some tenants, as well as a right to compensation where improvements had been made to their holdings.¹⁸

It was against this backdrop of unrest among tenants and unease among landlords that the shooting of Lambert had taken place. It would appear that the authorities took the attempted assassination seriously, and were determined to secure a conviction.

Who was Peter Barrett?

By all accounts, Peter Barrett was a handsome and respectable young man. He was described in the *Freeman's Journal* as 'about twenty-five years of age, tall, and has dark brown hair.'¹⁹ The *Galway Vindicator*, a liberal-independent newspaper, expressed

¹² *Ibid.*, . 446-7.

¹³ *Ibid.*, . 447-8.

¹⁴ Irish Church Act 1869 (32 & 33 Vic., c. 42)

¹⁵ Under the 'Ulster custom', tenants who paid their rent could expect reasonable security of tenure; by contrast, tenants in other parts of the country did not enjoy such security.

¹⁶ *Hansard*, 3rd series, vol. 199, col. 333 (15 Feb 1870).

¹⁷ Landlord and Tenant (Ireland) Act 1870 (33 & 34 Vic., c. 46).

¹⁸ Alvin Jackson, *Ireland 1798-1998* (Blackwell, 1999), 107.

¹⁹ *The Freeman's Journal*, 29 Sept 1869. In his opening statement at Barrett's first trial in Galway the attorney general described him as 'a person of respectable character.' *Ibid.*, 30 Sept 1869.

sympathy 'for the position in which young Barrett is placed, as he is a person of very respectable appearance.'²⁰

Barrett lived in lodgings in London, where he worked as a letter-carrier in the General Post Office. This was a position secured for him by Captain Lambert's brother, Richard. The popular perception of Barrett was reflected in a ballad written around the time of his eventual release: 'But Barrett was respected well / In London and in Ireland O / Young and old and rich and poor / His conduct all admired O.'²¹

Peter was the oldest son of Pat Barrett, a 'respectable' and 'snug farmer,'²² later described by Keogh J. as 'worthy and excellent.'²³ Pat Barrett was a fairly formidable figure, described as 'a man of gigantic stature...over six feet one inch, and made in proportion, and about seventeen stone weight.'²⁴ He was a tenant of Captain Lambert, occupying a 77-acre farm and a 'handsome slated cottage'²⁵ in a place later known as 'Barrett Hill'. Pat Barrett had been forced to surrender his lease in the early summer of 1869. According to the attorney general, this had been as a result of a dispute over covenants in Barrett's lease.²⁶ These would appear to have been covenants to repair and to rotate his crops.²⁷

Who was Thomas Eyre Lambert?

Thomas Eyre Lambert had taken possession of the Lambert estate on the death of his father, Walter Lambert, in 1867.²⁸ In accounts of the Barrett trial, descriptions of Lambert

²⁰ *The Galway Vindicator*, 11 Aug 1869.

²¹ *Lines written on the Liberation of Barrett*, National Library of Ireland (NLI) Ms. LO 4051 /112.

²² *The Galway Express*, 21 July 1869.

²³ *Shorthand Writers' Notes of Judgment of Mr Justice Keogh on Trial of Galway County Election Petition; Minutes of Evidence, Appendix, Index*. 1872 HC 241 xlviiii 17, 71, 14.

²⁴ *The Galway Express*, 21 July 1869. He was politically active, and in an 1872 bye-election supported Captain Nolan. He was said to have insulted and intimidated voters, and was imprisoned for contempt of court. *Shorthand Writers' Notes*, v. 193, 254-5, 371-5.

²⁵ *The Galway Vindicator*, 25 May 1870.

²⁶ *Freeman's Journal*, 30 Sept 1869.

²⁷ *The Galway Vindicator*, 25 May 1870. An alternative version of events, which has been handed down through folk histories, was that the cause of the eviction was jealousy. The Barrett family's smart cottage was said to be superior to the house of Thomas Lambert's brother Tom, who was also a tenant on the estate, and this was a cause of some embarrassment. Other accounts of the case point to a religious dispute relating to the use of a burial ground.

²⁸ Walter Lambert had been a high-profile figure locally, serving as a Justice of the Peace and High Sheriff. Finbar O'Regan, *The Lamberts of Athenry* (Lambert Project Society 1999), 176.

and his standing in the community vary. The *Galway Vindicator* wrote before the first trial that 'the name of Lambert is one much respected in our county.'²⁹ It referred specifically to Captain Lambert's deceased father, Walter Lambert, as 'one of our best landlords, and deservedly beloved by his tenantry.'³⁰ By contrast, McCarthy Downing, MP for Cork, described Thomas Eyre Lambert as 'one of the most unpopular men in Galway.'³¹

Pre-Trial Proceedings

In August, Peter Barrett was committed for trial at the next assizes, and it was reported that 'many of the lower classes of the people testified their warm sympathy with the prisoner by cheering him in the streets.'³² Instead of having Barrett tried at the assizes, however, the lord lieutenant issued a special commission for Galway.³³ This meant that the judges would make an additional visit to Galway outside of the scheduled assizes. The *Galway Vindicator* was critical of the use of the special commission, describing it as 'a disgrace to our peaceable county',³⁴ and criticizing the expense involved. It was claimed that Barrett 'should have ordinary jurors and not the landlords and magistrates of the county.' A letter to the paper stated that 'to try Barrett by such a jury, as will, in all likelihood be empanelled at the special commission, would be to expose trial by jury of one's peers to all distrust which forms the disintegrating element in the present relations between landlord and tenant.'³⁵ Two days later, the paper further entreated the government to 'let the accused be tried by ordinary tribunal and avoid the excitement which necessarily must be created by a special commission.'³⁶ Despite such misgivings, the sub-sheriff of Galway, Richard Carter, was served with notice of the special commission on 4 September.³⁷

²⁹ *The Galway Vindicator*, 11 Aug 1869.

³⁰ *Ibid.*

³¹ *Hansard*, 3rd series, vol. 200, col. 429 (22 March 1870).

³² *The Galway Express*, 7 Aug 1869.

³³ *Dublin Evening Mail*, 20 Aug 1869.

³⁴ *The Galway Vindicator*, 23 Aug 1869.

³⁵ *Ibid.*

³⁶ *The Galway Vindicator*, 25 Aug 1869.

³⁷ *Dublin Evening Mail*, 6 Sept 1869.

At the opening of the commission, Chief Justice Whiteside referred to the otherwise 'relatively tranquil' state of county Galway, and 'the danger of its being affected by the contagion of a bad example'.³⁸ In his address to the grand jury at the opening of the special commission, the Chief Justice remarked that '[t]he spirit which invades one class of the community will extend to the destruction of the rights and liberties of others.'³⁹ This sort of rhetoric, also found in some newspaper accounts of the trial, hints at the unease developing among members of the landed classes in Ireland in 1869. It also reflects what were probably Whiteside's own views of the developing situation in Ireland.⁴⁰ The grand jury found a true bill against Barrett and he was then arraigned for trial.⁴¹

First Trial

Shortly before the first trial was due to commence, *The Galway Express* mused that it would undoubtedly 'cause a great sensation,'⁴² due the increasing centrality of the land question. It hinted that someone like Barrett should have the sympathy of 'the peasant and middle-class section of the community.'⁴³ Whatever their sympathies, Barrett's trial certainly attracted significant press attention, as well as 'considerable interest from 'the upper, as well as from the middle and lower classes', according to the *Freeman's Journal*.⁴⁴ It is worth noting that the proprietor of the *Freeman's Journal*, Sir John Gray, MP, was a strong proponent of tenant right, and the organiser of a series of well-attended public meetings in 1869 and 1870

³⁸ *The Freeman's Journal*, 29 Sept 1869.

³⁹ *The Freeman's Journal*, 29 Sept 1869.

⁴⁰ As a devout Anglican, he vehemently opposed the disestablishment of the Church of Ireland Patrick Maume, 'James Whiteside', *Dictionary of Irish Biography* <www.dib.cambridge.org> (accessed 1 Feb 2018).

⁴¹ It was later asserted that one of the Grand Jurors who had delivered the true bill, Robert Bodkin, 'one of the most influential men in the county of Galway' had later said that 'he did not believe any jury would believe the evidence of said Thomas Eyre Lambert the prosecutor in this case.' *Affidavit of John Kirwan*, 2 Dec 1869. NAI, CCS/1870/197, box 1. Kirwan was also a grand juror and a special juror, though he had not been involved in Barrett's trial.

⁴² *The Galway Express*, 26 Sept 1869.

⁴³ *Ibid.*

⁴⁴ *Freeman's Journal*, 29 Sept 1869.

on the question of land reform.⁴⁵ Reporting on Barrett's case may have been subsumed by the general pro-tenant, anti-landlord position of his paper.

A public subscription was raised in order to fund Barrett's defence,⁴⁶ and a fundraising concert was organized by a temperance society.⁴⁷ This was initially proposed to his father, Pat Barrett, in August, with the hope of employing eminent Queen's Counsel Isaac Butt, or someone of a similar calibre. Barrett's solicitor objected to this manner of funding the defence, and recommended that Barrett apply to the government to his legal fees.⁴⁸ Before the opening of the special commission it was reported that a memorial 'bearing the names of several of the most influential shopkeepers and traders of Galway' had been forwarded to Denis Caulfield Heron QC, asking him to defend Barrett.⁴⁹ Heron was an extremely high-profile barrister who had previously served as law advisor to the Lord Lieutenant and professor of jurisprudence at Queen's College, Galway. He had been involved in defending a number of the Fenian prisoners in 1867.⁵⁰ Also defending Barrett was Hugh MacDermot, a junior barrister on the Connaught circuit, instructed by Henry Concannon and Henry White. They faced the sessional Crown Solicitor, PJ O'Loughlin, Attorney-General Edward Sullivan MP, Solicitor-General Charles Barry, Mr West QC and Mr Jordan.

Chief Justice Whiteside and Keogh J presided over the trial. Galway courthouse was crowded on the first day, with a number of 'ladies and gentlemen' having reportedly gained access before the courthouse officially opened.⁵¹

At the outset, Barrett's counsel challenged the array of the jury panel. This was a challenge to the manner in which the panel of jurors had been constituted, rather than a challenge to a particular juror. Two jurors were appointed to try issue, as was the usual practice. Heron claimed that the jury panel had not been impartially returned and was not the

⁴⁵ Jackson, *Ireland*, 107.

⁴⁶ *Irish Times*, 28 Sept 1869.

⁴⁷ *Pall Mall Gazette*, 4 Sept 1869.

⁴⁸ *Ibid.*

⁴⁹ *Dublin Evening Mail*, 23 Sept 1869.

⁵⁰ Bridget Hourican, 'Denis Caulfield Heron', *Dictionary of Irish Biography* (www.dib.cambridge.org).

⁵¹ *Freeman's Journal*, 29 Sept 1869.

same as the panel returned for the assize.⁵² Noting several differences between the two, Heron pointed out that while there were 31 landlords on the assize panel, while on this panel there were 77 landlords, as well as 29 magistrates. The landlords' names had been placed at the top of the panel, which made it more likely that they would be sworn onto the jury. Unlike in civil cases, where the names of jurors were randomly drawn by ballot, in criminal trials the jurors were called in the order in which they appeared on the panel. Coupled with the common practice of putting the names of the highest-ranking men at the start of the panel, this unsurprisingly led to allegations of jury packing. In this instance, the panel was specially drafted for the special commission, so it appeared inevitable that Barrett would be tried by a jury of landlords for shooting at a landlord. Sullivan, the attorney general refused to consent to the jurors being balloted for. The triers, on the direction of the chief justice, found that the jury panel had been impartially arrayed by the sheriff.⁵³ Twelve jurors were duly sworn, with the prisoner exercising his right to peremptorily challenge several potential jurors.⁵⁴

In his opening statement, attorney general Sullivan was at pains to create some distance between Peter Barrett and his father's dispute with Captain Lambert.⁵⁵ He also emphasised that it had been eighteen months since Peter had last lived locally. The purpose of this appears to have been to add weight to Captain Lambert's statement that he believed that had Barrett been in the country, he would have named him as his attacker more definitely.

The prosecution case rested mainly on Captain Lambert's identification of Barrett. His testimony reflected the information he had sworn in the aftermath of the trial, referred to above. The rest of the evidence was circumstantial, going to show that Barrett had taken sick leave from his work, purchased a pistol in London, and had been seen in the vicinity of

⁵² *Freeman's Journal*, 29 Sept 1869.

⁵³ *Ibid.*

⁵⁴ The jurors names were Redmond S Burke (foreman), James A. Jackson, John MA Lewis, Charles M. Blake, John Fahey, Anthony Lynch, Yelverton Leonard, Lawrence Mullen, James F Egan, Owen Lynch, Stephen J. McDonagh and Martin T Conlahan.

⁵⁵ *The Freeman's Journal*, 30 Sept 1869.

Athenry after the attack. The identification of Barrett also seemed in a large part to be based on the type of hat he wore – Lambert described it as a flat hat, while other witnesses referred to a tall hat, or implied that Barrett might have had with him two hats.

Michael Kelly, variously described as a butler or a servant boy, testified that he had seen a person dressed in black near Castle Lambert on the evening in question. He had ‘whistled to him to go off the grass’, and soon afterwards heard shots fired.⁵⁶ He could not, however, identify the man as Barrett. Giles Lambert testified that had been summoned by his brother and had travelled to Athenry police barracks.⁵⁷ Sub-constable Hayden then picked up the narrative, describing his journey to Oranmore and his apprehension of Barrett.⁵⁸ Two passengers on the train corroborated Hayden’s testimony, but only one of them could positively identify Barrett.⁵⁹ The other witness, Martin McDonnell, stated that the man on the train had two hats, one tall and one flat.⁶⁰ Mariott Wilson, a railway porter at Athenry station, testified to having spoken briefly with Barrett around ten o’clock on the night in question. He also heard him enquire about buying a ticket all the way to London.⁶¹ This was corroborated by the stationmaster, James Carberry. Constable Griffith told the court about sub-constable Hayden bringing Peter Barrett back to the Athenry barracks, where he was recorded as having in his possession a tall hat.

A significant crown witness was Thomas Wolloms, from Tottenham Court Road in London. Wolloms was a seller of surgical instruments and firearms. He testified that on 9 July a man he identified as Peter Barrett came into his shop to look at some firearms. The man had told him he needed a revolver for taking care of a house for a family, and rented a small, cheap revolver for twenty-five shillings. A document was drawn up and it was signed

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid. Evidence of Martin McDonnell and William Cotton.

⁶⁰ Ibid.

⁶¹ Ibid.

'P Barrett'. Wolloms testified that the pistol was 'more a toy pistol which might make a noise in a home and alarm the police than anything else.'⁶²

The next witness was Mrs Stirling, in whose house Peter Barrett lodged in London. She had last seen him on the morning of Saturday 10 July, when he said he was going to visit a cousin for a day or two. He had been wearing a low crowned hat.⁶³ George Clarke, chief inspector of detectives at Scotland Yard, testified that he had visited Mrs Stirling's house at Valsover street and found a box of Barrett's possessions, which included the bill relating to the pistol and a black hat.⁶⁴ Dr Edward Leonard then gave dramatic testimony about attending Captain Lambert on the night of the attack. He presented to the court the bullet he had extracted from Lambert's temple.

It was noteworthy that all of the prosecution witnesses who had dealings with Barrett described him as respectable. As his own barrister pointed out, Barrett was far from a 'wretched peasant' whose 'family had been cast out on the roadside'. It would seem that Heron QC sought to distance Barrett from the narrative of the poor, angry tenant who was driven by desperation to attack his landlord. He asked the jury to consider the likelihood that a young man of previously 'irreproachable character should all at one become a murderer like Cain.'⁶⁵

The strategy devised by the defence was that this was a case of mistaken identity, and that Peter Barrett was not the man responsible for the attack. However, they proffered no alternative explanation as to why Barrett was in the country. Heron in his opening address to the jury referred in somewhat vague terms to a 'band of private assassins who now keep Ireland in terror.'⁶⁶ He sought to cast doubt on the prosecution's case by suggesting that other men had been lurking around the grounds of Castle Lambert on the day in question, and furthermore that the distances between various places where supposed

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid. William Manly of the London Post Office testified the Barrett had been certified for sick leave from 9-14 July. This was corroborated by Dr Lancelot Hare, who had examined Barrett's apparently sore knee.

⁶⁵ Ibid.

⁶⁶ Ibid.

sightings of Barrett had taken place rendered it impossible that he was at Castle Lambert at the relevant time. Heron QC, when cross-examining Lambert, sought to imply that Lambert had disputes with a number of other tenants, any of whom may have been his attacker. He highlighted a recent case in which one of Lambert's tenants, Shaughnessy, had brought an action against Lambert for false imprisonment after Lambert, in his capacity as JP, had issued a warrant for his arrest and subsequently refused him bail. Lambert had accused Shaughnessy of removing sheep stock from the land. The civil jury, however, had found in favour of Shaughnessy and awarded eighty pounds in damages.

The defence also pointed out inconsistencies as to the crown witnesses' statements of the time of the attack. Heron asked why Captain Lambert would have called out to his attacker asking who he was, when Peter Barrett was well known to him. He questioned the identification of Barrett by his hat, which was of a fairly common design at the time.

Curiously, one of the servants at Castle Lambert, Bridget Browne, had sworn a deposition but had not been produced as a crown witness. The defence therefore called her as their witness. She had been alone in Castle Lambert on 11 July, as the rest of the household attended church services. She testified that several times that afternoon, starting at 1 pm, there was a double knock at the hall-door of the house, but when she went to the door there was nobody there. On the third occurrence of the knock she saw through the hall window the dark-trousered legs of a man running away. Bridget continued in the employment of Captain Lambert.⁶⁷

Other witnesses testified to having seen Barrett, or someone resembling him, at times and places which did not accord with the prosecution evidence. Timothy Keenan, who knew Barrett, testified to having seen him at Athenry railway hotel between 9.30 and ten o'clock that night. Michael Cannon, who also knew Barrett, testified to having seen him

⁶⁷ Bridget Browne's upkeep at Castle Lambert was paid by the crown for the duration of the trials. It will be seen that Lambert subsequently sought to pay her passage to the United States, which was one way of dealing with her unhelpful testimony. *Affidavit of James Blake Concannon*, 13 Dec 1869. NAI, CCS/1870/197, box 1.

around 9 o'clock on the road near Athenry railway station.⁶⁸ This was corroborated by another witness who was with him.⁶⁹

Bridget Murray who lived about two miles from Castle Lambert said that on the day in question a man called to her house around three p.m. and she gave him some bread and milk and refused payment. She saw him walking towards Castle Lambert. She said on re-examination that the man was not Barrett and had told her he was from Tipperary.⁷⁰ Thomas Conlan, a tenant on the Lambert estate who lived about a mile and a half from the house, testified that he saw a tall man walking in a lane near the house between 3 and 4 that afternoon.

In his closing statement, McDermott reminded the jury of the presumption of innocence and urged them to decide on the evidence alone. He referred to the ongoing outrages around the country which could blind the jury's judgment of an individual case. He tried to discredit the evidence of Captain Lambert who, he said, 'had not sufficient opportunity in the terrible excitement of the moment to see the man who fired at him.' His speech was met with 'loud applause in the court, which was instantly suppressed.'⁷¹ Members of the jury (who had been quite active in questioning witnesses in this case⁷²) then requested that Captain Lambert be recalled. The chief justice hesitated, considering this to be an unusual development, but allowed it. Captain Lambert was closely questioned as to what he had said, and in what order, to the man he had spotted lurking beneath the trees, at what stage he had set his dog on him, and whether he had recognised him as Peter Barrett. Lambert swore that he had indeed recognised the man as Barrett. The jury deliberated for seven hours and failed to reach a verdict,⁷³ and were discharged.

Reaction

⁶⁸ *The Freeman's Journal*, 30 Sept 1869.

⁶⁹ *Ibid*, 1 Oct 1869.

⁷⁰ *Ibid*.

⁷¹ *Ibid*.

⁷² See Howlin, 'Irish jurors: passive observers or active participants?' (2014) 35(2) *Journal of Legal History* 143–71.

⁷³ *Ibid*.

It was reported in the *Freeman's Journal* that nine jurors had been in favour of an acquittal and three for a conviction.⁷⁴ The immediate public reaction to this in Galway was described as 'dissatisfaction' that Barrett had not been acquitted. This was said to have been 'expressed in a rather violent manner immediately after the adjournment of the special commission.'⁷⁵ The courtroom itself was packed, and outside the building was 'an immense crowd of people of the humbler classes' awaiting the outcome of the trial.⁷⁶ Local and national newspapers reported that 'a common rumour got afloat through town that eleven to one were for liberating the prisoner.'⁷⁷ It was later claimed in the house of commons that '[w]hile the jury were in deliberation in the room one of them threw up the window and flung down to the excited mob outside a slip of paper containing the names of the jurors who were favourable to conviction.'⁷⁸

The prosecution claimed that 'even before the jurors were discharged by the Court, the name of one of those who were in favour of a conviction (Jackson) became known to the people in and around the Court',⁷⁹ and that a crowd of locals pursued him through the town. The *Galway Express* reported, somewhat sensationally, that the mob had attempted 'the summary execution of a refractory jurymen.' Jackson was 'hooted and groaned' at, and 'attacked with bricks and stones, and one old woman seemed so bitter that she brought out a sod of turf and rolled it in the mud before throwing it at him.'⁸⁰ Jackson was assisted by a priest well-known to him, Father Dooley, and two other Galway residents, who escorted him, along with the acting sergeant, down the street to the barracks. Just as they reached the barracks a stone, presumably thrown at Mr Jackson, hit a soldier in the face. Jackson was later escorted by fifty armed police to Black's hotel. The mob apparently continued to shout and throw stones, one of which hit the carriage of the two judges who were passing the

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid, 2 Oct 1869.

⁷⁷ *The Galway Express*, 2 Oct 1869. See also *The Freeman's Journal*, 2 Oct 1869.

⁷⁸ *Hansard*, 3rd series, vol. 200, col. 441 (22 March 1870, Lord John Manners).

⁷⁹ *R v Barrett* (1870) Ir Rep 4 CL 285, 286. The Attorney general believed that such happenings had 'no precedent in the history of Irish trials.' *The Freeman's Journal*, 17 Jan 1870.

⁸⁰ *Galway Express*, 2 Oct 1869.

crowd on their way to Salthill. Several persons who had thrown stones were arrested, and the police maintained their presence at Black's hotel, where some of the jurors were staying.⁸¹

A Change of Venue

Although traditionally criminal trials were to be conducted in the county where the alleged offence had taken place, it was possible in some instances to have the venue moved to a different county. This was usually done where it was considered unlikely that a fair and impartial trial could take place in the original county, because of, for example, the intimidation of jurors or witnesses, or because of the standing or influence of an accused person or victim.⁸²

It was decided by the crown that it would be desirable that the second trial of Barrett take place somewhere other than Galway. This was not without controversy. A memorandum sent by the chief crown solicitor, William Lane Joynt, to solicitor Lewis Clare stated: 'I fancy that there will be fierce opposition ... Pray keep a close watch on the case.'⁸³ Attorney general Sullivan sought a writ of *certiorari* removing the trial to the Queen's Bench, so that a motion for a change of venue could then be made.⁸⁴ The *certiorari* was granted, and handed in to the adjourned special commission two days later in Galway.⁸⁵ Sullivan referred to the attack on Mr Jackson, and also made somewhat mysterious references to another, 'unprecedented' outrage, 'which in the presence of your lordships I do not wish to more particularly refer to than to say that of its true character there can be no doubt, as very soon will be made apparent.' He referred to 'indecent and lawless scenes of outrage'. It

⁸¹ *The Freeman's Journal*, 2 Oct 1869.

⁸² For example, many such instances were discussed by a parliamentary committee in the 1850s: *Report from the select committee on outrages (Ireland)*, HC 1852 (438) xiv, 1.

⁸³ *Memorandum* 12 Oct 1869, NAI, CCS/1870/197, box 3.

⁸⁴ *The Freeman's Journal*, 12 Oct 1869.

⁸⁵ *Ibid*, 15 Oct 1869.

would seem that perceptions of the 'scenes of outrage' around Galway varied. The *Galway Vindicator*, a liberal newspaper, described the precautions taken by the authorities in relation to security around Barrett as 'extraordinary': 'A company of twenty-four men were day and night guarding the prison, which we emphatically assert was absolutely unnecessary.'⁸⁶

Barrett was then transferred to custody in Dublin, and the attorney general applied for a change of venue in January 1870.⁸⁷ The motion for a change of venue was largely based on the alleged intimidation of jurors at the first trial.⁸⁸ In support of the motion, a number of affidavits were sworn by the resident magistrates and the Galway Crown Solicitor, from one of the jurors, and from several members of the constabulary. According to those affidavits, around the time of the attempted assassination, several serious outrages had been perpetrated around the county, and there existed amongst the peasantry 'a strong sympathy in favour of many of the parties arrested for such offences, and a disinclination to aid the Government in detecting the criminals.'⁸⁹

It was also claimed in the affidavits that during the first trial, the people of Galway 'manifested, in the most marked manner, their sympathy for the accused; that several of the jurors were threatened, and thereby intimidated and prevented from attending the assizes'.⁹⁰ These claims were corroborated by reports from the conservative *Galway Express*, which described how '[a]n organised mob, with the avowed determination to obstruct the course of justice by every possible means, took possession of our streets...'⁹¹ The claims in this newspaper ought to be read alongside the knowledge that it described itself as 'the only Protestant organ in Galway',⁹² and was likely to have a pro-landlord bias.

⁸⁶ *The Galway Vindicator*, 16 Oct 1869.

⁸⁷ See the *Irish Times*, 15 Jan 1870, for an account of the motion for a change of venue.

⁸⁸ As the 1870s and 1880s progressed, motions for changes of venue became increasingly frequent, particularly in cases of an agrarian nature. See Howlin, *Juries in Ireland*, . 161-165. A parliamentary committee on Irish jury laws devoted significant attention to this issue in 1881: *Report from the select committee of the House of Lords on Irish jury laws*, HC 1881 (430) xi, 1.

⁸⁹ *The Galway Express*, 26 Sept 1869.

⁹⁰ *R v Barrett* (1870) Ir Rep 4 CL 285, 286.

⁹¹ *The Galway Express*, 2 Oct 1869.

⁹² Marie-Louise Legg, *Newspapers and Nationalism: The Irish Provincial Press 1850-1892* (Four Courts Press 1999), 195.

Barrett denied all claims of juror intimidation and insisted that 'no where can there be so fair and impartial a trial as in the County of Galway.'⁹³ He swore that there was no 'intimidation practiced by my friends or by any person on my behalf or at all.' A number of the special jurors who had tried Barrett denied having been in any way influenced or intimidated.⁹⁴ For example, one juror swore that he was 'not in the slightest degree influenced' in his decision.⁹⁵ Another, who described himself as 'a special juror with £2,000 a year landed property', swore that he was in no terror or dread [sic] whatever.⁹⁶ In total, seven of the twelve jurors swore that they had not been intimidated or terrorised.⁹⁷ It would also appear that the crowds of supporters for Barrett who were seen on the streets during the trial were mainly women, who were attracted by his youth and good looks. Similarly, many of those sitting in the courtroom were 'respectable' ladies, similarly attracted. The 'mob' which had followed and attacked Jackson was sworn by many to have consisted entirely of women and children. Several witnesses swore that there was not a man among them, and that the threat posed to Jackson was not to be taken seriously.⁹⁸ Others claimed that no stones had been thrown at Jackson, and that the missiles were merely sods of turf or mud.

A Roman Catholic Priest, Martin Murphy, also swore an affidavit to the effect that there was no intimidation of the Galway special jurors, and no risk of an impartial trial. One of the Crown witnesses, Mary Anne Starling, Barrett's landlady from London, swore that she walked openly through the town every day without 'the slightest insult'. She said that it was 'well known' around the town that she had travelled from England to give evidence against Barrett, but that nevertheless, she did not feel threatened, particularly by the crowd of women and children at the court house each day.⁹⁹ It was also claimed that since the trial, Captain Lambert had encouraged one of the witnesses, Bridget Browne, to emigrate to

⁹³ *Affidavit of Peter Barrett*, 3 December 1869, NAI CCS 1870/197, box 1.

⁹⁴ *Affidavit of Stephen J. McDonagh*, 4 Dec 1869, NAI CCS 1870/197, box 1.

⁹⁵ *Affidavit of Martin Colohan*, 6 Dec 1869, NAI CCS 1870/197, box 1.

⁹⁶ *Affidavit of John Michael Aylward Lewis* 12 Dec 1869. NAI CCS 1870/197, box 1

⁹⁷ These were John Michael Aylward Lewis, Anthony Lynch, Owen Lynch, Lawrence Mullen, John Fahy, Edward Rochford and James J Egan.

⁹⁸ For example, *Affidavit of Edward Rochford*, 3 Oct 1869, CCS 1870/197.

⁹⁹ *Affidavit of Mary Anne Starling*, 1 Dec 1869, NAI CCS 1870/197, box 1.

America, and that he had done other acts which would 'affect injuriously the evidence against the prisoner at a second trial'.¹⁰⁰

It was also suggested that a fair trial could not be had in Dublin, because of a sign posted by Lambert at his Dublin club, where many potential special jurors were likely to see it.¹⁰¹ The sign in the United Service Club was as follows: 'Captain Lambert bring about to leave Ireland in consequence of the late attempt on his life at Castle Lambert in the County of Galway, is anxious to sell a wagonette (reversible) a horse now 7 years old and harness, all in perfect order, the horse has been driven by a lady. Price £120'.¹⁰² It was alleged that this notice had been the subject of gossip in all of the Dublin clubs, and was likely to influence special jurors.¹⁰³

Despite the various affidavits to the effect that there was no system of intimidation of the jurors, Whiteside CJ granted the motion for the change of venue. He emphasised the importance of protecting the institution of trial by jury. Jurors, he said, suffered considerable inconvenience, and 'must not be allowed to suffer additional persecution at the hands of lawless mobs.'¹⁰⁴ It is worth reflecting that the Chief Justice's judgment in this instance may have been clouded by the fact that his own carriage had been struck by a stone or a sod of turf in the rowdy aftermath of the trial.

Second trial

The case was set to be tried again in February 1870, in the Court of Queen's Bench before a special jury of the county of Dublin. In the interlude since the first trial, there had been some changes in personnel on the legal teams. Edward Sullivan had taken up the post of master of the rolls in Ireland and Charles Barry had been appointed attorney general for Ireland in his place. Denis Caulfield Heron had been returned as a Liberal MP for Tipperary, so this time Barrett was represented in court by Isaac Butt, QC, who had 'made himself more widely

¹⁰⁰ *R v Barrett* (1870) Ir Rep 4 CL 285, 287. See above.

¹⁰¹ *Affidavit of James Blake Concannon*, 13 December 1869. NAI CCS 1870/197, box 1.

¹⁰² *The Queen v Peter Barrett. Copy Notice posted in Club*. NAI CCS 1870/197, box 2.

¹⁰³ *Affidavit of James Blake Concannon*, 13 December 1869. NAI CCS 1870/197, box 1.

¹⁰⁴ *R v Barrett* (1870) Ir Rep 4 CL 285, 287.

known through the newspapers as a friend of the tenants, by means of propaganda on the land question.¹⁰⁵ Butt's profile was high in early 1870. Like Heron, he had defended the Fenian prisoners, and he had recently been appointed president of the Amnesty Association. The landlord-tenant angle of this case probably suited Butt's political agenda at the time. He was probably also relieved that Barrett's legal fees in this case were to be defrayed by the government. Despite his high profile, Butt existed in a continual state of poverty or near-poverty, and had served a period on debtors' prison following his defence of the Fenians in 1867.¹⁰⁶

The second trial at the court of Queen's Bench in Dublin was well-attended by the public,¹⁰⁷ and several security measures were taken; Barrett was escorted to the court by a party of mounted police; he was guarded by three warders while in court; police officers were stationed around the passages in the court building and a barricade was erected at the door of the court of Queen's Bench.¹⁰⁸ Public attendance appears to have outstripped attendance by potential jurors. A number of the jurors did not answer to their names, and Whiteside CJ indicated that fines on absent jurors would be strictly enforced.¹⁰⁹ About 61 of the 128 jurors summoned answered on the first call, and 9 more answered when fines were threatened. This was not an unusually low turnout of jurors – usually around half of jurors summoned actually presented themselves for service and answered when their names were called.¹¹⁰ Butt, for the accused, objected that the panel contained more than sixty names, without any precept having been issued to authorise this. It was, however, quite common for large numbers of jurors to be summoned,¹¹¹ particularly where it was anticipated that there

¹⁰⁵ Comerford, 447.

¹⁰⁶ Phillip Bull, 'Isaac Butt', *Dictionary of Irish Biography* <www.dib.cambridge.org> (accessed 1 Feb 2018). Correspondence with William Lane Joynt, the crown and treasury solicitor, indicates that Butt was anxious that his fees were paid: e.g. *Butt to Joynt*, 1 July 1870; *Butt to Joynt*, 13 July 1870, *Butt to Joynt* 29 July 1870. A memo dated 30 July 1870 indicates that Butt's fees were to be increased

¹⁰⁷ *The Warder and Dublin Evening Mail*, 19 Feb 1870; *Irish Times*, 19 Feb 1870.

¹⁰⁸ *Tuam Herald*, 19 Feb 1870.

¹⁰⁹ It was common for jurors to be called on threat of fines where attendance was particularly poor, although such fines were not always strictly enforced: Howlin, *Juries in Ireland*, 111-115.

¹¹⁰ See Howlin, *Juries in Ireland*, 105-106.

¹¹¹ *Ibid* 102.

would be a low turnout, or in what was considered to be a serious criminal case or a state trial.

Butt unsuccessfully challenged the array of the jury panel. He also claimed that the jurors' names ought to be balloted for,¹¹² rather than being called in the order in which they appeared on the panel. It will be recalled that this had been the cause of a challenge to the array in the first trial. Legislation provided for jurors' names to be drawn at random from a box in civil actions, but at the time of Barrett's trials this had not yet been made mandatory for criminal cases. Both parties would have to consent to balloting in this way, and the Attorney general in this instance declined to consent. When the panel was called over, the Crown ordered a number of jurors to stand aside.¹¹³ The power to order jurors to stand aside was a controversial power enjoyed by the crown.¹¹⁴ Unlike an accused person's right to challenge jurors peremptorily, there was no limit to the number of jurors who could be objected to in this way. Barrett challenged twenty jurors in total.¹¹⁵

Apparently, the jury was composed largely of Catholics.¹¹⁶ Like the Galway jury, they frequently asked questions of the witnesses and generally played quite an active role in the trial.¹¹⁷ They also recalled one of the witnesses in order to further question him. This was Wolloms, the proprietor of the shop from which Barrett had bought his pistol. On being questioned, he stated that he could not say with any certainty whether the bullet extracted from Lambert's skull came from the pistol which he had sold to Barrett. The bullet was so flattened and misshapen that he could not identify it.¹¹⁸ Butt QC observed that the bullet extracted from Lambert was 'evidently a bullet which struck on the skull with considerable

¹¹² See Howlin, *Juries in Ireland*, 117-118.

¹¹³ According to *The Evening Freeman*, 17 Feb 1870, there were 12 men ordered to stand aside; while the *Daily Telegraph*, 19 Feb 1870 reported that there were 8. The *Warder and Dublin Evening Mail*, 19 Feb 1870, listed eight names, including two Justices of the Peace.

¹¹⁴ 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.

¹¹⁵ *The Warder and Dublin Evening Mail*, 19 Feb 1870.

¹¹⁶ *The Evening Freeman*, 21 Feb 1870. Their names were James Barrett, John Buckley, Arthur Galway, John Denis, James Drury, William Gardiner, Andrew William Ferguson, Edward Lea, Robert Tedcastle, Daniel Sullivan, Horatio Wallace and Patrick Kenney. *Warder and Dublin Evening Mail*, 19 Feb 1870.

¹¹⁷ E.g., *The Evening Freeman*, 19 Feb 1870.

¹¹⁸ *The Galway Vindicator*, 23 Feb 1870.

force', and asked the jury to consider whether this was 'consistent with it being fired from a toy pistol at twelve yards.'¹¹⁹

In this and in other regards, Butt appears to have thrown considerable doubt on the prosecution case. The identification of Barrett the day after the attack was portrayed as prejudicial, as he was brought to Lambert manacled and accompanied by police officers, with no attempt made to include similarly-built men, as in a line-up. Butt also argued that the sightings of Barrett before and after the alleged attack rendered it impossible that he was the perpetrator.¹²⁰ He also questioned the reliability of Captain Lambert as a witness, pointing out that he had deliberately mis-stated the time of the attack in his original deposition.¹²¹ 'Equivocation' said Butt, 'was characteristic of his entire evidence.'¹²²

Lambert's testimony was similar to that given at the first trial, and it was noted in the *Cork Examiner* that his identification of Barrett 'was not shaken on cross-examination.'¹²³ The *Galway Vindicator*, however, noted that Lambert had 'somewhat varied his evidence' since the first trial.¹²⁴ Butt cross-examined him closely as to the nature and shape of the lime trees under which Barrett had apparently lurked on the night of the attack. Lambert swore that there was dense foliage, but not so as to obscure his view of Barrett's face. Giles Lambert, however, stated on cross-examination that the foliage from the trees was likely to obscure the face of a man standing under them.¹²⁵ It emerged during the questioning of Thomas Lambert that the trees had been moved since the attack, and that therefore the map of the estate, which was being used at the trial, was inaccurate.¹²⁶ It also meant that there was no way to be sure whether the tree branches would actually obscure an intruder from view.

¹¹⁹ *The Galway Vindicator*, 23 Feb 1870.

¹²⁰ *Irish Times*, 19 Feb 1870.

¹²¹ *Irish Times*, 19 Feb 1870.

¹²² *Irish Times*, 19 Feb 1870.

¹²³ *The Cork Examiner*, 19 Feb 1870.

¹²⁴ *The Galway Vindicator*, 19 Feb 1870.

¹²⁵ *Irish Times*, 19 Feb 1870.

¹²⁶ *The Warder and Dublin Evening Mail*, 19 Feb 1870.

At the end of third day of the trial, the jurors retired at around half past five. Almost three hours later, they came back to the box, and informed the judge that they were unable to agree on a verdict. He sent them back to the jury-room, though one juror complained that he would 'catch his death' if forced to remain in the chilly jury-room much longer.¹²⁷ When asked two hours later whether there was any possibility of reaching agreement, one juror evoked laughter from the court, replying: 'not in the slightest, my lord, if you keep us until this day twelvemonths.'¹²⁸ Eventually, when midnight approached they were discharged without a verdict.¹²⁹

Reaction to the Second Trial

The chief justice expressed his disappointment with the verdict.¹³⁰ The crowds which had gathered outside the courthouse (and which had remained there until almost midnight) 'cheered Mr Butt vociferously.'¹³¹ Barrett was returned to Kilmainham gaol. The *Dublin Daily Express* considered the inability of the jury to agree on a verdict as a 'failure of justice'.¹³² The *Freeman's Journal* reported that ten of the jurors had been in favour of a conviction,¹³³ while the *Dublin Daily Express* reported that eight had been for a conviction, two for an acquittal and two were undecided.¹³⁴ Either way, it is clear that a clear majority on the jury wanted to convict Barrett, but the law only allowed for majority verdicts. The case was discussed in the House of Commons, with Gladstone stating that the outcome of the Barrett trials was due to 'special circumstances', rather than an outright failure in the administration of justice.¹³⁵

¹²⁷ *Dublin Evening Mail*, 21 Feb 1870.

¹²⁸ *Ibid*, 21 Feb 1870.

¹²⁹ *The Galway Express*, 19 and 26 Feb 1870.

¹³⁰ *Dublin Daily Express*, 21 Feb 1870.

¹³¹ *Dublin Daily Express*, 21 Feb 1870.

¹³² *Dublin Daily Express*, 21 Feb 1870.

¹³³ *The Freeman's Journal*, 21 Feb 1870.

¹³⁴ *Dublin Daily Express*, 21 Feb 1870. The *Irish Times* reported that the jurors were eleven to one for a conviction. *Irish Times*, 21 Feb 1870

¹³⁵ Hansard, 3rd series, vol. 199, col. 876 (28 Feb 1870).

There was some speculation that Barrett would not be tried for a third time, particularly given the considerable expenses incurred during the first two trials.¹³⁶ The *Belfast Newsletter*, however, appeared to favour a retrial, with an editorial stating that if Barrett were guilty, he ought not to escape punishment.¹³⁷ An editorial in the *Derry Journal* stated that this second abortive trial 'suggests very ugly conclusions, so far as appertains to the practical workings of our jury system.'¹³⁸ It speculated that '[t]he immunity with which agrarian murderers have been allowed to escape of late, may probably induce the crown to make a third attempt to obtain a conviction against Barrett.'¹³⁹ Indeed, the crown did make such an attempt, and Barrett was set to be tried again in the summer.¹⁴⁰

Third Trial

Barrett was tried for a third time in June 1870 in the court of Queen's Bench,¹⁴¹ this time before Fitzgerald J. It was considered necessary to have policemen stationed around the courthouse to prevent overcrowding and possible violence.¹⁴² At first, there was some difficulty in securing a jury, as only 46 of the 120 men called responded. Fitzgerald J warned that he would have no difficulty in levying fines of £50 on those who failed to answer¹⁴³, and a further 18 jurors materialised.¹⁴⁴ About 24 jurors were fined in total.¹⁴⁵ Of the 64 jurors who

¹³⁶ *Clare Journal and Ennis Advertiser*, 21 Feb 1870; *Pall Mall Gazette*, 21 Feb 1870, *Irish Times*, 21 Feb 1870.

¹³⁷ *Belfast Newsletter*, 21 Feb 1870.

¹³⁸ *The Derry Journal*, 23 Feb 1870.

¹³⁹ *The Derry Journal*, 23 Feb 1870.

¹⁴⁰ In May 1870, shortly before Barrett's third trial was due to commence in Dublin, a letter from Captain Lambert was published in a number of Irish newspapers. It outlined his version of the dispute over Pat Barrett's lease, and described how he had taken civil action against Barrett. This may have been misguided, as it had the potential to prejudice the third trial, but it does not appear to have attracted significant attention. *The Galway Vindicator*, 25 May 1870.

¹⁴¹ Again, the case was tried by a special jury.

¹⁴² *The Galway Express*, 25 June 1870.

¹⁴³ He said he would impose the fines, 'and let the jurors try, as best they could, to get out of the matter afterwards.' *The Galway Express*, 25 June 1870.

¹⁴⁴ *The Queen against Peter Barrett. Report of the Third Trial of Peter Barrett for shooting at with intent to murder Captain Thomas Eyre Lambert on Sunday the 11th of July 1869* (Dublin, Alexander Thom, 1870), 2.

¹⁴⁵ As at the second trial, Butt asked that the jurors' names be drawn by ballot, although he had no expectation that the court would acquiesce to this, remarking: 'Your lordship will, of course, take the course the chief justice took at the last trial. It is a mere matter of form.' *The Queen against Peter Barrett*, 3.

answered to their names, the crown ordered 19 to stand aside, and the prisoner challenged 23. By the time the panel was exhausted only ten jurors had been sworn. Fitzgerald J ordered that the names be called over again on 100 pound fines, which he emphasised that he would strictly enforce.¹⁴⁶ No additional jurors answered, so those who had been directed to stand aside were called again. The attorney general suggested that the trial might be postponed until the following day because of the low juror turnout but Fitzgerald J wanted to move things along,¹⁴⁷ and so the trial commenced.

Interestingly, an unsigned note found among the Barrett files indicates that there was once more a majority of Catholics on the jury. The note stated, somewhat baldly: 'if you packed the jury, it is clear you packed it *the other way*'. It is accompanied by a list of the jurors, with either 'Catholic' or 'Protestant' written beside each name.¹⁴⁸ Only Robert Neil and Samuel Wall were described as 'Protestant.'¹⁴⁹

In his opening statement, the attorney general referred to the fact that the case had been tried before and asked the jurors to 'dismiss from your minds all you have ever heard and all you have ever read in reference to this trial'.¹⁵⁰ When Captain Lambert came forward to testify, he asked the court whether the case could be abandoned: 'I have come forward twice to prosecute, and I wish the matter to be dropped.'¹⁵¹ Fitzgerald J pointed out that he had no power to do make such an order, and the examination of the witness proceeded. Butt's cross-examination makes it clear why Lambert had wanted the case to be dropped. He was quite vague and uncertain when being cross-examined about the time at which he had been shot.¹⁵² He testified that had said between 9 and 10 when giving his deposition as he did not want to be too specific, in case this could be used by the defence to concoct an

¹⁴⁶ *The Queen against Peter Barrett*, 11. It was later reported that the fines, which had risen to £150.00, were reduced to £50 y Fitzgerald J., and were levied on thirty jurors who had failed to attend for the third trial. *Freeman's Journal*, 16 July 1870.

¹⁴⁷ *Ibid* 12.

¹⁴⁸ The jurors for this trial were James P Corcoran [foreman] Robert Neill, William McDonnell, High O'Rourke, Francis P Malins, Gregory Murphy, Joseph Croker, Samuel Wall, James Duffy, Walter Tyrell, William Meagher, Patrick Joseph Fogarty. Meagher and Fogarty had originally been asked by the crown to stand aside.

¹⁴⁹ NAI, CCS/1870/197, box 2.

¹⁵⁰ *Ibid* 13.

¹⁵¹ *Ibid* 26.

¹⁵² *Ibid* 36-40.

alibi; he 'did not think it expedient that the prisoner's legal advisors should know everything.' However, he testified in court that he had been shot at 9.15 pm.

He was also cross-examined in relation to the lime trees outside his house. He testified that the first shot fired had gone in to the tree branches.¹⁵³ This seemed to be the first time in the entire proceedings that he had mentioned this. When asked about whether the low-hanging branches might have obscured his view of Barrett's face, he told the court that on the day following the attack, he had asked either his brother or brother in law to stand in the same position under the tree, in order to determine if he could identify him, and he could.¹⁵⁴ He had not said a word about this at the previous trial. Butt also questioned him about the cutting down of the lime trees, implying that this had been done with an improper motive.¹⁵⁵ Lambert's protests that the trees had been moved at the behest of his wife rang somewhat hollow. Butt referred back to Giles Lambert's testimony at the second trial, to the effect that the branches on the lime trees would obscure the face of anyone standing under them. He implied that Thomas had been angry with Giles for this testimony, and had spoken harshly to him about it.¹⁵⁶ This may or may not have been true, but helped to diminish Captain Lambert's reliability. It would be a reasonable assessment to say that Butt's cross-examination of Lambert threw considerable doubt on his evidence.

By the time all witnesses had been examined and counsel's speeches had concluded it was after 6pm. Proceedings were adjourned until the next day so that the jurors could have refreshment.¹⁵⁷ At some point, it must have become known to the prosecution which way the jurors were voting, as a note found among the Barrett files states that 'Wall, Neill, Williams are for a conviction but are timid men and will give in.'¹⁵⁸ It is possible that this

¹⁵³ Ibid 40.

¹⁵⁴ Ibid 41-42.

¹⁵⁵ Ibid 42-43.

¹⁵⁶ Ibid 42.

¹⁵⁷ Ibid 152. Once the jurors withdrew to consider their verdict, they would be denied refreshment or a fire in their room; thus it made sense to wait until the following day to deliver the charge.

¹⁵⁸ NAI, CCS/1870/197, box 2.

became known overnight when the jurors were staying at the hotel; security in such situations could be lax.¹⁵⁹

When they returned to court the following morning, Fitzgerald J told the jurors ‘if you entertain rational doubt of his guilt, you can and you ought to acquit him. But rational doubt is not that wild conjecture, or wild suspicion, or wild doubt, that people of weak mind may entertain, but that real doubt that you would entertain on any occasion.’¹⁶⁰ His charge to the jury took almost three hours; the jurors spent less time than that deliberating, before delivering an acquittal. Peter Barrett was then discharged from custody.¹⁶¹

Reaction

A ballad was circulated soon after the delivery of the jury’s verdict of acquittal, with the chorus: ‘Thank Heaven, Butt and the jury too / The news is great and glorious O, / Their evidence was knocked to rags / Young Barrett is victorious O.’¹⁶² The acquittal, however it might have been viewed by the authorities, was welcomed by the inhabitants of Galway; ‘[t]he town here this afternoon was in the greatest ecstasies on receipt of information relative to the acquittal of Barrett. At every corner, crowds were congratulating each other with agreeable news...’¹⁶³ The *Galway Vindicator* reported that church bells were rung in Galway city.¹⁶⁴ Support for Barrett was also evident in Dublin. A bonfire was lit in celebration by some of those who had waited near the court buildings in Dublin, and a number of young men were arrested for rowdy and drunken behaviour. On Monday morning, Barrett was driven through Dublin city with his parents. When they stopped off at a photographic studio with Butt to have their pictures taken, a large crowd of well-wishers gathered.¹⁶⁵ When he

¹⁵⁹ For example, at the 1882 trial of Francis Hynes, the jurors stayed overnight in a hotel and were seen in the hotel billiard room mixing with persons who were not on the jury. *Dublin Commission Court (Francis Hynes)*, HC 1882 (408) lv, 167, 5.

¹⁶⁰ *The Queen against Peter Barrett*, 185.

¹⁶¹ *Ibid* 186. In April 1871 he emigrated to the United States: *The Evening Freeman* 4 April 1871. He married and ultimately settled there. Finbarr O’Regan, *The Lamberts of Athenry* (Lambert Project Society 1999), 205

¹⁶² *Lines written on the Liberation of Barrett*, National Library of Ireland (NLI) Ms. LO 4051 /112.

¹⁶³ *The Galway Express*, 2 July 1870.

¹⁶⁴ *The Galway Vindicator*, 19 July 1870.

¹⁶⁵ *The Irish Canadian*, 20 July 1870.

returned to Galway he was warmly greeted by supporters, including Captain Richard Lambert, 'who shook him heartily by the hands'.¹⁶⁶ A fund was established for the benefit of Peter Barrett and his family.¹⁶⁷

Overall, Irish attitudes towards Barrett following his acquittal were positive. The *Northern Star*, for example, remarked that 'right [had] triumphed over might'.¹⁶⁸ The *Freeman's Journal* opined that 'Peter Barrett, now free and innocent in the sight of the law, is a ruined man. The honourable and respectable office he held is filled by another, and there is little probability of his ever again being employed in the department from which the cruel and unjust charge brought against him drove him as one with Cain's brand upon his brow'.¹⁶⁹ Speaking some years later before a parliamentary committee examining Irish jury laws, Lawson J condemned the trial this and similar cases, and claimed that it would be better to ignore the offence in question than to have justice receive such a public affront.¹⁷⁰

Expense

One effect of the Barrett trials was the significant expense incurred by the crown. Many of the surviving documents from the trials relate to accounts and expenses. Legal teams, witnesses and jurors all had to be paid for, as well as the expenses paid to sheriffs and other officials.

Jurors were well-accommodated during the trials. For example, at the first trial, the jurors were accommodated in Black's hotel in Galway.¹⁷¹ Jurors at the second and third trials in Dublin were put up in a Dublin hotel (probably the Gresham or the International). At the second trial in Dublin, Whiteside CJ remarked that he hoped that the jurors 'would not be the

¹⁶⁶ *The Freeman's Journal*, 1 July 1870.

¹⁶⁷ See for example *The Freeman's Journal*, 1, 4, and 12 July 1870

¹⁶⁸ *The Northern Star*, reprinted in the *Irish Canadian*, 20 July 1870.

¹⁶⁹ *The Freeman's Journal*, 9 July 1870.

¹⁷⁰ *Report from the Select Committee of the House of Lords on the Operation of the Irish Jury Laws as regards Trial by Jury in Criminal Cases, with the Proceedings, Evidence, Appendix and Index, 1881*, par. 4054, H.L. 1881 (430), xi, 1.

¹⁷¹ *The Freeman's Journal*, 30 Sept 1869.

worse for it in the morning'¹⁷² – this may be a reference to his belief that the jurors would be drinking and carousing until a late hour. Based on the practice in other trials,¹⁷³ it is probable that all of the jurors' hotel expenses were paid, including food and liquid refreshments. Details of the expenses incurred accommodating the jurors at the third trial show that £27 were spent on keeping the jurors for three days, with an additional £3 for the bailiffs and police who supervised them, and £3 for car hire to transport them to and from the hotel.¹⁷⁴

Witness expenses also had to be paid, and as some of the witnesses had travelled from London, these were not insignificant. When it became clear that there was to be a second trial, and that the London witnesses would have to travel once more, not all of them were happy about this. Wolloms, for example, seemed to be extremely reluctant to travel again.¹⁷⁵ He wrote to Thomas O'Farrell, the crown solicitor: 'It is perfectly useless your wasting your time and words either threatening me with consequences or coaxing me with fine promises, neither will succeed'.¹⁷⁶ He demanded to be fully compensated for his time and expense, initially claiming thirty pounds.¹⁷⁷ This rose to forty¹⁷⁸ and then to a hundred pounds,¹⁷⁹ and he then threatened to act as a defence witness if his demands were not met.¹⁸⁰ The authorities took a relatively dim view of this, and refused to pay him the hundred pounds. After some grandstanding, Wolloms eventually travelled to Dublin for the second trial in February. Having been subpoenaed, it may have simply been too risky not to appear and testify. He also testified at the third trial in June. The Galway witnesses also had to travel twice down to Dublin, incurring both travel and accommodation expenses. Both the prosecution and the defence witnesses were paid for by the crown. Most received three or

¹⁷² Ibid 18 Feb 1870.

¹⁷³ E.g. *R v Hynes, Dublin Commission Court (Francis Hynes)*, HC 1882 (408) lv, 167.

¹⁷⁴ *Queen v Barrett. Sheriff's Account. Account of Expenses Incurred by the Sub-Sheriff of the County of Dublin for Keep of Jury during Trial of Defendant for a period of Three Days. 24 Aug 1870.* NAI CCS/1870/197, box 2. This appears to be similar to the expenses incurred at the second trial.

¹⁷⁵ *Wolloms to O'Farrell*, 10 Sept 1869; *Wolloms to O'Farrell*, 11 Sept 1869; *Wolloms to O'Farrell*, 14 Sept 1869. NAI CCS/1870/197, box 1.

¹⁷⁶ *Wolloms to O'Farrell*, 14 Sept 1869. NAI CCS/1870/197, box 1.

¹⁷⁷ *Wolloms to O'Farrell*, 14 Sept 1869. NAI CCS/1870/197, box 1.

¹⁷⁸ *Wolloms to O'Farrell*, 22 Nov 1869. NAI CCS/1870/197, box 1.

¹⁷⁹ *Crown Solicitor to Attorney general*, 16 Nov 1869. NAI CCS/1870/197, box 1.

¹⁸⁰ *Henderson to O'Farrell*, 7 December 1869. NAI CCS/1870/197, box 1.

four pounds.¹⁸¹ Captain Lambert proved to be the most expensive witness of all. As well as the security provided to him by the Royal Irish Constabulary, he submitted expense claims of hundreds of pounds.¹⁸²

Another expense incurred by the trials related to cartography. Several maps were drawn up for the purpose of illustrating the relative distances between various locations referred to in witness testimony. When it emerged that these maps may not have been entirely accurate, new maps had to be drawn up.¹⁸³

Legal fees were, unsurprisingly, another significant expense. It was common practice in Ireland at the time for the state to cover a prisoner's legal costs in serious criminal prosecutions.¹⁸⁴ Before the first trial, the under-secretary, JH Burke, wrote to Concannon, Barrett's solicitor, to relay the attorney general's opinion that, 'as the prisoner's attorney you ought to be allowed your proper fees in regard to his trial and that the prisoner ought to be permitted to select any counsel he may wish to name on the Connaught circuit to aid in his defence; that the crown solicitor ought to supply you with copies of all informations and that all the foregoing expenses ought to be defrayed by the crown.' Burke also wrote that it was 'reasonable' that the cost of employing the attorney and counsel 'should not be borne by the prisoner'.¹⁸⁵ This was common enough practice at the time, and the prisoner was entitled to choose his own counsel. The advocacy of Isaac Butt QC came at a price – for example, at the third trial his fees were set at '£31, 10 shillings for the first day and £5, 5 shillings a day for each day in court'.¹⁸⁶

¹⁸¹ *Names of witnesses to be subpoenaed and amount of Viaticum paid to each. 13 June 1870.* NAI CCS/1870/197, box 2.

¹⁸² He claimed £742, 2 shillings in total. *Queen v Barrett, Thomas Lambert's Account 1870.* NAI CCS/1870/197, box 2.

¹⁸³ *John Coghlan to William Lane Joynt, 26 Jan 1870; J. Nagle to William Lane Joynt, 14 June 1870.* NAI CCS/1870/197, box 1. See *Maps made by Mr Fitzgerald. 23 June 1870.* NAI CCS/1870/197, box 2.

¹⁸⁴ For example, this was also done at the Maamtrasna trials, discussed by Conor Hanly in this volume.

¹⁸⁵ *Copy of letter from Under-Secretary JH Burke to JB Concanon, Esq, 10 Sept 1869.* NAI CCS 1870/197, box 1. It was also noted that 'the expenses of any witnesses which the prisoner may adduce cannot be so defrayed.' NAI CCS/1870/197, box 1.

¹⁸⁶ *Memorandum by the Attorney general, 30 July 1870.* NAI CCS/1870/197, box 2.

It was estimated that the cost of the first two trials was around fifteen thousand pounds.¹⁸⁷ If this is to be taken as broadly accurate, the final figure for the three trials but have exceeded twenty thousand pounds.

Aftermath

The Barrett affair had taken place against a dramatic backdrop of church disestablishment, land agitation, law reform, and the prominence of the 'Irish question' in parliament. For example, Gladstone's land bill was published just before Barrett's second trial in February 1870. In March 1870, shortly after the second trial, a Peace Preservation Bill for Ireland was debated in the House of Commons. Chief Secretary Chichester Fortescue specifically mentioned the attack on Lambert and the trials of Barrett when describing the rise in agrarian outrages over the previous eighteen months or so.¹⁸⁸ He argued that the recent wave of both violent and non-violent agrarian criminality required a firm response. This led to the passing of the Peace Preservation (Ireland) Act 1870, a coercive measure which allowed, amongst other things, for the suspension of *habeas corpus*.¹⁸⁹ It was shortly after Barrett's acquittal that Gladstone's Land Act was passed, in August 1870. As Comerford points out, it marked 'the interference of parliament with previously sacrosanct property rights.' Although a significant step towards protecting the rights of tenants, it ultimately did not go far enough, and its passing did not represent closure on this chapter of Irish politics and law reform.

The trials of Peter Barrett were widely reported in national and regional papers in Ireland, England, Wales and Scotland.¹⁹⁰ They also received some coverage in North America.¹⁹¹ During other periods of the nineteenth century, a non-fatal attack such as this may have been relatively unremarkable. But coming at this precise moment, when the 'Irish

¹⁸⁷ *Clare Journal and Ennis Advertiser*, 21 Feb 1870.

¹⁸⁸ *Hansard*, 3rd series, vol 200, col 81-83 (17 March 1870).

¹⁸⁹ See Jonathan Gantt, *Irish Terrorism in the Atlantic Community, 1865–1922* (Palgrave, 2010), 73-74.

¹⁹⁰ The case also made its way into the law reports: *R v. Barrett* (1870) Ir Rep 4 CL 285.

¹⁹¹ *The Irish Canadian*, 20 July 1870; the *Daily Alta California*, 26 July 1870.

question' was to the fore, the Liberals were in power, and agrarian violence was just beginning to rise.

Had Barrett's case arisen at another time in Irish politics, it probably would not have gained such notoriety.