

SIXMILEBRIDGE CLERKS OF PETTY SESSIONS

by Padraig de Bhaldrath

The life-story of one of Clare's most unusual nineteenth century emigrants. Patrick McMahon, of Clounteen, Sixmilebridge, as told by Mr. Bill McInerney in Volume VIII of "The Other Clare"(pp. 7-12) makes fascinating reading. The photograph of the 250 year old landmark, the Sixmilebridge elm tree, with the almost equally old Garna House in the background, sets the scene for a vivid and enthralling account, from Mr. McMahon's diary, of people, places and events in the neighbourhood in 1888, when he returned on holiday to his native place after 34 years in Australia.

Two entries in Mr. McMahon's diary particularly caught the attention of the writer of this article. In his entry for Tuesday, August 28th, 1888, he describes his visit to the old Sixmilebridge Sessions House, where a Court of Petty Sessions was assembled. After passing his card to the Chairman, through the Clerk of the Court, he was invited to sit on the Bench alongside the Magistrates. In his entry for Monday, October 8th, 1888, he states that he "wrote a letter of condolence to Mr. Thomas Frost, Clerk, Sixmilebridge Petty Sessions, who had lost his wife, leaving a large family."

As I write these lines, there hangs before me, on the wall of my sittingroom, a framed, faded, sepia-tinted photograph, almost 100 years old, depicting a funeral procession. Inscribed on this photograph are the words "Funeral of Mrs. Frost, Sixmilebridge, Co. Clare." This Mrs. Frost was the wife of Mr. Thomas Frost, the Clerk of Petty Sessions referred to in Mr. McMahon's diary. I also have in my possession the glass photographic plate from which this now faded print was made. Unfortunately, this plate was damaged many years ago by having the top and bottom right-hand corners broken off, possibly by some well-meaning relative who considered that the head of the young man which obtruded itself on the bottom right-hand corner of the photograph did not add to the solemnity of the scene! I have had a composite print made from the surviving portion of the glass negative (which is quite clear) and the right-hand corners of the old print, which is reproduced here. The prominence of the famous elm tree will be noted.

These extracts from Mr. McMahon's diary have prompted me to embark on a brief account of the involvement of the Kett/Frost family with the Clerkship of Petty Sessions in Sixmilebridge over a period of close on a hundred years and on a summary of a famous but probably long-forgotten law suit in relation thereto.

John Kett, who resided at Garna House, Sixmilebridge, occupied the post of Clerk of Petty Sessions for the District of Sixmilebridge and Newmarket-on-Fergus in 1844. I have been unable to ascertain his exact period of office. His wife, *née* Margaret O'Halloran, of Iverstown House, Sixmilebridge, married twice. She

had no issue by her first husband, Michael Carroll. By her marriage to John Kett she had five children, John, Michael, James, Mary and Margaret. The three sons, like Patrick McMahon, emigrated to Australia. It would be interesting to know if they fared as well there as their neighbour from Clounteen. As far as I am aware, none of them ever returned to Ireland. The elder daughter, Mary Kett, married William Nolan of Listowel and Limerick in 1864; these were the great-grandparents on the paternal side of the writer of this article. William Nolan's brother James was the father of Paddy Nolan, Q.C., who became known as the "father of the bar" in Alberta, Canada, and whose son, Henry Grattan Nolan, K.C., became a Judge of the Supreme Court in Canada. The Ketts' second daughter, Margaret, married Thomas Frost on 18th February, 1873, by which time it would appear that he had already succeeded his late father-in-law as Clerk of Petty Sessions. He is described on his marriage certificate as a "clerk"; the name of his bride's father does not appear on the certificate. Thomas was certainly Clerk of Petty Sessions by 1879, as he is so described on the birth certificate of his daughter, Georgina. His father, Patrick Frost, was a farmer from Rosmanagher.

Margaret Frost, who resided with her husband at Garna House, was only 39 years of age when she died in 1888, leaving five young children. Thomas continued to reside there and to act as Clerk of Petty Sessions until his retirement in 1915. He survived his wife by 50 years, dying on 8th December, 1938, aged 96 years.

The function of a Clerk of Petty Sessions during the period in question was to act as the Recording Officer of proceedings in the local Courts of Summary Jurisdiction in much the same way as would a Registrar of the Superior Courts. The jurisdiction of these local Courts would correspond roughly to that of the present-day District Courts and the duties of the Clerk of Petty Sessions to those of a District Court Clerk.

Before Thomas Frost's retirement from his post in 1915 he was assisted by his daughter, Georgina Frost. It was the function of the local Resident Magistrates to appoint the Clerks of Petty Sessions and on Thomas Frost's retirement they unanimously selected Georgina for the post. However when their recommendation was sent to the Lord Lieutenant for his approval, he refused to sanction the appointment on the ground that "a woman by virtue of her sex is disqualified from being appointed or acting as Clerk of Petty Sessions."

Many ladies at that time, faced with such a rebuff, would probably have accepted their fate and sought some alternative employment which would have been considered more suitable for a member of the fair sex. Georgina Frost, however, being a lady of sterling character, reacted by engaging the most high-powered legal team available and appealing to the High Court by means of a "Petition of Right". Her counsel were none other than the famous T.M. Healy K.C. and Michael Comyn K.C. (with them Messrs. Arthur Clery and James Comyn) in-

structed by Mr. R. W. Frost, solicitor, of Limerick. Serjeant Matheson and Mr. D.J. O'Brien K.C. (with them Mr. Devitt) were counsel for the Crown instructed by Sir H.A. Wynne, Chief Crown Solicitor for Ireland. The case is reported under the title *Frost v. The King* in 1919 Irish Reports (at page 81). The petition was heard in the Chancery Division before Mr. Justice Barton on 13th, 18th and 20th days of April, 1917, and Judgment delivered on 20th April, 1917.

The Judge in his Judgment referred to the Statutes governing the Office of Clerk of Petty Sessions (Petty Sessions Acts 1827 and 1858) and to the Interpretation Acts of 1850 and 1889. He reviewed a number of the cases which were cited to him by Counsel, including a recent case of *Bebb v. Law Society* (1914 1 Ch. 286) in which women were held to be to be disqualified by “inveterate usage” from acting as solicitors or attorneys. The Judge commented that:

“the reason of the modern decisions disqualifying women from public offices has not been inferiority of intellect or discretion, which few people would now have the hardihood to allege. It has been rather rested upon considerations of decorum, and upon the unfitness of certain painful and exacting duties in relation to the finer qualities of women.”

The Judge stated that

“the fact that it was not alleged that the holder of any Office corresponding to that of Clerk of Petty Sessions had ever been a woman seemed to amount to a usage no less inveterate than that which existed in the kindred Offices of Judge, juror and solicitor.”

He dismissed the Petition, but made no Order against the petitioner as to costs.

Nothing daunted, Georgina Frost, advised by the same legal team, appealed to the Court of Appeal. The Appeal was at hearing on 8th, 9th, 12th and 13th November 1917, before the Lord Chancellor (Lord Shandon), Lord Justice Ronan and Lord Justice T. F. Molony, and Judgment was reserved. The case did not come on for Judgment until 20th December 1918, by which time Lord Justice Molony had become Chief Justice, and Lord Shandon had resigned the Office of Lord Chancellor. The Chief Justice read a letter from Lord Shandon which was accepted as his Judgment by agreement between the parties. Lord Shandon held that the petitioner **was** entitled to a declaration as claimed in her petition. Lord Justice Ronan then delivered a lengthy Judgment (running to 20 pages in the Report) in which he stated that on minute examination of the statutes he had come to the conclusion that the Office of Clerk of Petty Sessions was confined to males and that on that ground the plaintiff must fail in her action.

Lord Chief Justice Molony then delivered his comprehensive Judgment (running to 10 pages in the report) in which he included a more detailed review of the

facts of the case, pointing out that the “suppliant” (Georgina Frost) had acted for a number of years as assistant to her father, who was Clerk of Petty Sessions for the District of Sixmilebridge and Newmarket-on-Fergus; that on his retirement on 15th June 1915, she was unanimously elected to the Office by the Justices sitting at Petty Sessions; and that it was admitted that she was thoroughly qualified by her education and experience to properly discharge the duties of the Office. He then reviewed the history of the Office and the Statutes and the Common Law relating to it, and referred to a number of cases which had been cited to the Court during the hearing relating to Offices which had been held by women. Among the more interesting cases quoted was that of the Countess of Warwick, who purported to act as Commissioner of Sewers under the Act 23 Henry VIII Cap.5 section 10. In that case the opinion was expressed (in 1685) that

“this honourable Countess being put into the Commission of Sewers, the same is warrantable by law, and the ordinances and decrees of Sewers made by her and the other Commissioners of Sewers are not to be impeached for the cause of her sex.”

Other posts which women were held capable of holding included: being a sexton and voting in the election therefor; acting as Governor of Chelmsford Workhouse; as Keeper of a gatehouse; and as an overseer of the poor. Reference was made to Brady’s History of Boroughs from which it appeared that “my Lady Packington” held Office as Returning Officer for members of Aylesbury.

At the end of this wide-ranging and exhaustive Judgment, Chief Justice Molony stated that

“inasmuch as the statutes we are dealing with in this particular case prohibit the appointment of a woman, I think that the suppliant is not entitled to a declaration that she is qualified, notwithstanding her sex, to hold the Office of Petty Sessions Clerk.”

The decision of the Court of Appeal having thus gone against Georgina Frost, by a majority of two to one, she would probably have been forgiven, even by the most fervent feminist, if she had decided to “throw in the sponge”. But no, she decided to appeal to the House of Lords! On this occasion, her counsel were Michael Comyn, K.C., Arthur Clery and James Comyn (instructed by Herbert Z. Deane, acting for R. W. Frost of Limerick). Serjeant Sullivan, K.C., Albert Wood, K.C., and S. L. Devitt acted for the Crown (instructed by the Treasury Solicitor, for Sir H. A. Wynne). The case is reported under the title *Frost, Appellant, v Rex, Respondent* in 1920/1922 Weekly Notes (House of Lords) at page 178, under date 8th May 1920. In the course of the argument for the Appellant, after the midday adjournment on 27th April 1920, the Lord Chancellor, Lord Birkenhead,

intervened and referred to the fact that, since the decision of the Court of Appeal in this case, the Sex Disqualification (Removal) Act 1919 had been passed. He said that if this act had been law [at the time of Miss Frost's election by the Justices] the Appellant would have been entitled to act. Under those circumstances, he

“found it a little unattractive that their Lordships should be invited to go through all the older Acts in order to determine whether or not before this Act became law this lady would have been entitled to act.”

The case, he said, should now be capable of arrangement. It occurred to him that if the Lord Lieutenant were communicated with, it was not improbable that he might give a retrospective approval. He said that

“on a representation made by his Lordship [Chancellor] to his Excellency [Lord Lieutenant], not, as he understood, without the approval of the representative of the Crown, the Lord Lieutenant would be likely to adopt a course which would render this enquiry unnecessary, and he therefore suggested to Counsel that the hearing of this case should, at any rate, be adjourned until that course has been explored.”

Counsel having agreed to this course, the Lord Chancellor said that

“he would make a communication to his Excellency, and he did not anticipate that there would be any great difficulty, but if quite unexpectedly some difficulty should emerge, the case could be restored.”

No difficulty did emerge, Georgina Frost's appointment was approved retrospectively and she continued to carry out her functions as Clerk of Petty Sessions until her retirement in 1922. She died on 6th December 1939 at Garna House.

The portion of the Act of 1919 which allowed Miss Frost to be appointed to her post reads as follows:

(Section 1)

“A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial Office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society . . .”

While it cannot be stated with certainty that the courage and tenacity of Georgina Frost in pursuing this litigation all the way to the House of Lords was the chief reason for the passing of the Sex Disqualification (Removal) Act 1919, it would appear to be more than a coincidence that that Act was passed on 23rd December

1919, when her appeal to the House of Lords was pending. A contemporary press report on the case, published under the heading “Lord Birkenhead and Woman’s Rights”, reads as follows:

“The Lord Chancellor of England has exhibited practical interest in the admission of women to Offices and professions from which they were heretofore excluded, by intimating, at the hearing of the appeal by Georgina Frost from the decision of the Irish Court of Appeal, holding that as a woman she was precluded from fulfilling the Office of petty sessions clerk at Sixmilebridge, Co. Clare, that he would write to the Lord Lieutenant requesting his Excellency to sanction the appointment of Miss Frost.”

This famous victory by a quiet, unassuming, Clare lady appears to have gone unnoticed by the Women’s Rights movement. I would suggest that the name of Georgina Frost deserves a place in history beside those of the more vociferous ladies of the suffrage, nationalist and labour movements of the era, such as Madame Gonne McBride, Countess Markievicz and Mrs. Sheehy-Skeffington.